

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

**2:15-18820 Artorn Benyasri**

**Chapter 7**

**#1.00** HearingRE: [36] Motion to Avoid Lien Pacific Mercantile Bank with Pacific Mercantile Bank with proof of service

Docket 36

**Tentative Ruling:**

5/11/2021

**Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing. The cost for persons representing themselves has been waived.**

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

**Pleadings Filed and Reviewed**

- 1) Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) (the "Motion") [Doc. No. 36]
- 2) Creditor Pacific Mercantile Bank's Memorandum of Points and Authorities in Opposition to Debtor's Motion to Avoid Lien [Dkt. #36]; Declaration of Glen R. Segal (the "Opposition") [Doc. No. 38]
- 3) Notice of Opposition and Request for a Hearing [Doc. No. 39]
- 4) Notice of Motion for Debtor's Motion to Avoid Lien of Creditor Pacific Mercantile Bank [Doc. No. 40]
- 5) Debtor's Response to Creditor Pacific Mercantile Bank's Opposition to Debtor's Motion to Avoid Lien (the "Reply") [Doc. No. 44]

**I. Facts and Summary of Pleadings**

On June 2, 2015, Artorn Benyasri (the "Former Debtor") filed a voluntary chapter 7 petition. The Former Debtor scheduled a piece of real property, located at 23823 Via Campana, Valencia, CA 91354 (the "Property") at a value of \$445,000 with \$345,588 in liens against it. On the petition, the Former Debtor claimed a homestead exemption of \$98,481, per California Code of Civil Procedure ("CCP") § 704.730. On September 14, 2015, he received a discharge and the chapter 7 case

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

**CONT...**

**Artorn Benyasri**

**Chapter 7**

trustee filed a Report of No Distribution on January 27, 2016. The case was closed on March 23, 2016. On March 9, 2021, the Former Debtor filed a motion to reopen the case in order to avoid two judicial liens. The case was reopened the next day, and the Former Debtor filed the instant Motion on March 30, 2021.

The Former Debtor asserts that the Property is encumbered by a judicial lien, held by Pacific Mercantile Bank ("PMB"), in the amount of \$187,213 (the "PMB Lien"). Motion at 2. The Debtor argues that, as of the date of the petition, the Property was valued at \$445,000. In addition to the Debtor's scheduled value on his petition of \$445,000, the Former Debtor also submits a retroactive appraisal that values the property at \$445,000. *See* Ex. A to Motion at 11-43. With the senior lien on the Property of \$333,798.94 and his claimed exemption of \$98,481, the Former Debtor asserts that he should be able to be able to avoid the PMB Lien entirely. Motion at 4.

On April 13, 2021, PMB filed its Opposition. PMB asserts that the Former Debtor is only entitled to claim a homestead exemption of \$75,000 because when the petition was filed in 2015, the relevant code section only allowed for a \$75,000 exemption. Opposition at 2. PMB also argues that the value of the Property is \$470,000. *Id.* PMB also hired an appraiser to perform a retroactive appraisal, which is how it came to the value of \$470,000. *See* Ex. A to Opposition at 5-36. Finally, PMB argues that the Former Debtor's calculation of the senior lien on the property is likely incorrect because the Former Debtor's only evidence of the balance of the senior lien is a statement showing his balance as of April 1, 2015. However, the Former Debtor did not file any evidence of the balance of the senior lien as of the petition date of June 2, 2015. PMB asserts that there is still \$61,202 in equity to which its lien can attach.

On April 19, 2021, the Former Debtor filed his Reply. The Former Debtor argues that, at the time he filed his petition, he was 59 years old and made \$6,000 in 2015; therefore, he was actually entitled to a higher exemption amount of \$175,000, according to CCP § 703.740(a)(3)(C). The Former Debtor attached his 2015 tax return and W-2 as evidence of his wages for 2015. Reply at 5-9. The Former Debtor also reiterates his assertion that the Property had a value of \$445,000, per the appraisal he attached to his original Motion. Finally, the Former Debtor states that the amount owed on the senior lien as of the petition date was at least \$333,798.94 because he did not make a payment in the month of May. Therefore, at the beginning of June, the

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

Wednesday, May 12, 2021

Hearing Room 1568

---

10:00 AM

CONT...

**Artorn Benyasri**

**Chapter 7**

balance would be no less than what he originally scheduled. Between the senior lien and his \$175,000 exemption, the Former Debtor believes he should be able to avoid the entirety of the PMB Lien.

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

Section 522(f) allows a debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the property; (2) he is entitled to the exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; *see also In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Here, both PMB and the Former Debtor agree that the PMB Lien impairs the Former Debtor's interest in the Property. The next question is to what extent the PMB Lien impairs his interest. To determine the extent to which the PMB Lien impairs the Former Debtor's interest, the Court must determine 1) the homestead exemption that the Former Debtor was allowed to claim and 2) if the Former Debtor can claim a higher exemption amount, whether the he can amend his petition to claim that higher amount.

As of June 2, 2015, the 2012 California Legislative Service was the operative exemption scheme. *See* 2012 Cal. Legis. Serv. Ch. 678 (A.B. 929). CCP § 704.730 reads:

(a) The amount of the homestead exemption is one of the following:

...

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

...

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars

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

Wednesday, May 12, 2021

Hearing Room 1568

10:00 AM

CONT...

**Artorn Benyasri**

**Chapter 7**

(\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

CCP § 704.730(a)(3)(C) 2012 Cal. Legis. Serv. Ch. 678 (A.B. 929). The Former Debtor's signed declaration attached to his Reply states: "I was 59 years old in 2015." Reply at 4. Therefore, the determinative question is what the Former Debtor's gross annual income was.

The Ninth Circuit defines "gross annual income" as "income over a *calendar* year." *In re Goldman*, 70 F.3d 1028, 1029 (9th Cir. 1995). There, the debtor filed for bankruptcy protection on March 25, 1993. Brief for Appellee at \*3, *In re Goldman*, 70 F.3d 1028 (9th Cir. 1995) (No. 94-55489). The debtor in *Goldman* argued that his estimated gross annual income for the 1993 year would be less than the statutory maximum, and he could therefore claim a higher homestead exemption. *Id.* The Bankruptcy Court agreed, ruling that "'gross annual income' as used in Section 704.730(a)(3)(C) means the 1993 calendar year [the year in which the petition was filed] and not the twelve (12) months immediately preceding the filing of the bankruptcy petition." 70 F.3d at 1029. The Ninth Circuit agreed with the Bankruptcy Court's ruling. It determined that the plain meaning of "annual income" is over a "calendar year." The court continued: "[w]e cannot ignore the plain meaning of the statute merely because unscrupulous debtors may underestimate their income over the remaining months of the calendar year to qualify for the exemption. Nothing obligates the court to accept a debtor's estimate if the evidence suggests that it is understated." *Id.*

Here, at the time the Former Debtor filed his petition, his income for 2015 was \$4,462. Petition at 37. While the Former Debtor did not estimate his income for the remainder of the year, by electing to take a higher exemption amount than the normal \$75,000 that he would be entitled to, the Former Debtor implied that he believed his estimated 2015 gross annual income would be less than \$25,000. *Id.* at 16. Furthermore, in his Reply, the Former Debtor attached his 2015 W-2 and tax return, confirming that his income was just \$6,000. Therefore, the Former Debtor, at the time he filed his petition, would have been entitled to a \$175,000 homestead exemption.

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

**CONT...**

**Artorn Benyasri**

**Chapter 7**

Next, the Court must determine whether the Former Debtor can now claim the full \$175,000 exemption when he originally only claimed \$98,481. The Ninth Circuit Bankruptcy Appellate Panel wrote: "[a] debtor's ability to amend his or her claim of exemptions does not terminate upon closure." *In re Goswami*, 304 B.R. 386, 392 (BAP 9th Cir. 2003). Therefore, the Former Debtor may amend his petition even though his case was closed in 2016. Although the Former Debtor did not amend his Schedule C to claim a higher exemption amount, "pleadings should be liberally construed" and courts may "temporarily overlook deficiencies in pleadings in order to construe them in a manner that does substantial justice." *In re Little*, 220 B.R. 13, 18 (Bankr. D.N.J. 1998). Therefore, for the purposes of this Motion, the Court will allow the Former Debtor to claim the higher exemption amount given his signed declaration requesting the ability to do so. Reply at 4. The Former Debtor must, however, formally amend his Schedule C to reflect the higher exemption amount.

Finally, to determine the extent to which the PMB Lien impairs the Former Debtor's interest in the Property, the Court will use the calculation from *In re Hanger*, 217 B.R. 592, 595 (BAP 9th Cir. 1997):

The sum of:	1) the PMB lien .....	\$187,213
	2) all other liens .....	\$333,798.94
	.....	\$2,704,498
	.....	\$6,327
	.....	\$693.28 [Note 1]
	3) the exemption .....	\$175,000
		= \$3,407,530.22

The sum of \$3,407,530.22 exceeds the value of the Former Debtor's interest in the Property in the absence of any liens. The extent of the impairment is \$3,407,530.22 minus the value of the property in the absence of any liens. For the purposes of this Motion, the Court will assume the value of the Property is \$470,000 [Note 2]. Subtracting \$470,000 from \$3,407,530.22 leaves an impairment of \$2,937,530.22. Therefore, judicial liens may be avoided to that amount, in reverse order starting at the most junior. The most junior judicial lien of \$2,704,498 may be avoided entirely because the amount is less than the extent of the impairment. Subtracting the \$2,704,498 lien leaves \$233,032.22. The next lien to be avoided is the PMB Lien. Because the amount of the PMB Lien (\$187,213) is also less than the remaining

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

Wednesday, May 12, 2021

Hearing Room 1568

10:00 AM

CONT... **Artorn Benyasri**

**Chapter 7**

impairment, that lien can be avoided in its entirety as well. Therefore, the Former Debtor may avoid the PMB Lien.

**III. Conclusion**

Based upon the foregoing, the Motion is GRANTED.

The Former Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. Concurrently with the order, the Former Debtor must file an amended Schedule C with the higher exemption amount that he is claiming.

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 Andrew Lockridge 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:** PMB disputes the Former Debtor's calculation of this HOA lien; however, under either PMB's calculation or the Former Debtor's calculation, the PMB Lien can still be entirely avoided. The Court's calculation of this HOA lien is for the purposes of this Motion only.

**Note 2:** The Court need not address the issue of the value of the Property because, under both a \$445,000 and \$470,000 valuation, the PMB Lien can be fully avoided.

**Party Information**

**Debtor(s):**

Artorn Benyasri

Represented By

Jarintorn Tanatchasai

**Trustee(s):**

Rosendo Gonzalez (TR)

Pro Se

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

Wednesday, May 12, 2021

Hearing Room 1568

10:00 AM

2:21-12655 5465 LLC

Chapter 7

**#2.00** Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Jonathan Hart, Erica Lemus . (Collins, Kim S.) Additional attachment(s) added on 4/1/2021 (Collins, Kim S.).

Docket 1

**Tentative Ruling:**

5/11/2021

**Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing. The cost for persons representing themselves has been waived.**

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

**Pleadings Filed and Reviewed:**

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
  - a) Certificate of Service [Doc. No. 6]
- 3) Order Regarding Manner of Appearance at Status Conference [Doc. No. 5]
  - a) Certificate of Service [Doc. No. 6]

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

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

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

**CONT... 5465 LLC**

**Chapter 7**

proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

Based upon the foregoing, the involuntary petition is **DISMISSED**.

The Court will prepare and enter an appropriate order.

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

**Debtor(s):**

5465 LLC

Pro Se



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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

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

**Chapter 11**

**#3.00** Hearing

RE: [6144] Motion for Allowance of Administrative Expense Claim and Request for Payment under 11 U.S.C. § 503(b) (Reynolds, Michael)

FR. 12-9-20; 12-16-20; 1-20-21; 2-17-21; 317-21

Docket 6144

**\*\*\* VACATED \*\*\* REASON: CONTINUED 6-16-21 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

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

**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

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

10:00 AM

**2:20-14485 Michael Stuart Brown**

**Chapter 11**

**#4.00** HearingRE: [141] Motion for Authority to Obtain Credit Under Section 364(b), Rule 4001(c) or (d)

Docket 141

**Tentative Ruling:**

5/11/2021

**Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing. The cost for persons representing themselves has been waived.**

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

**Pleadings Filed and Reviewed**

- 1) Notice of Motion and Debtor's Motion for Authority to Incur Debt (EIDL Loan); Declaration of Michael Brown (11 USC Section 364) (the "Motion") [Doc. No. 141]
- 2) As of the preparation of this tentative ruling, no opposition is on file

**I. Facts and Summary of Pleadings**

Michael Stuart Brown (the "Debtor") commenced a voluntary chapter 11 petition on May 15, 2020. The Debtor is the owner and managing partner of California Lawyers Group, LLP ("CLG"). Amended Petition [Doc. No. 25] at 8. On April 13, 2021, the Debtor filed the instant Motion, requesting that the Court permit CLG to enter into a loan agreement with the Small Business Administration (the "SBA"). The Debtor plans to serve as a guarantor on the loan, which is why he has requested Court approval. Motion at 4. The Debtor had previously applied to the SBA for an Economic Injury Disaster Loan for CLG in the amount of \$20,833 (the "EIDL Loan"). The Debtor intended to use the EIDL Loan for payroll, rent and utilities, because his firm has seen a slowdown in business due to the pandemic. The SBA denied the loan on the grounds that the Debtor had "filed for bankruptcy and the process has not been completed." *Id.* at 4, 9. However, in the denial letter, the SBA

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

Wednesday, May 12, 2021

Hearing Room 1568

10:00 AM

CONT... Michael Stuart Brown

Chapter 11

stated that it would "consider loan approval upon receipt of a request for reconsideration, written documentation from the court or trustee approving the additional debt of the loan, and the payment history of the current plan." *Id.* at 9.

The Debtor requests that the Court approve his ability to enter into the EIDL Loan agreement with the SBA under § 364(b) as an administrative expense. The Debtor argues that even though he needs the Court's authority, there should be no expense to the estate because the EIDL Loan will be forgiven. Nevertheless, the Debtor argues that if he does need to repay the EIDL Loan for any reason, he has the funds to do so. *Id.* at 4. In the alternative the Debtor asks the Court to declare the SBA's blanket rule that debtors may not receive EIDL loans as "arbitrary and capricious." *Id.* at 6,11 U.S.C. § 706(1) & (2)(A).

## II. Findings of Fact and Conclusions of Law

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: "[t]he court, after notice and hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense." 11 U.S.C. § 364(b). Section 503(b)(1) provides, in relevant part: "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . [t]he actual, necessary costs and expenses of preserving the estate . . . ." 11 U.S.C. § 503(b)(1)(A).

The loan will be in the amount of \$20,833 and the terms are as follows: "the [loan] is forgivable so long as the proceeds are used for CLG's payroll, rent and utilities." Motion at 4. The Debtor states that CLG intends to use the loan for "payroll, rent and utilities." *Id.*; *see also In re Standard Oil & Exploration, Inc.*, 136 B.R. 141 (Bankr. W.D. Mich.) (finding that a debtor could obtain credit under § 364(b) in order to pay operating expenses associated with its business). Having reviewed the declaration by the Debtor (the "Brown Decl."), the Court finds that the terms of the proposed loan are reasonable. Brown Decl. at ¶ 7. Furthermore, the Court finds that the loan is necessary to preserve the estate under § 503(b)(1)(A) because, although the

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

Wednesday, May 12, 2021

Hearing Room 1568

10:00 AM

CONT...

**Michael Stuart Brown**

**Chapter 11**

funds will be used by CLG, the income that the Debtor receives from CLG is necessary to fund his chapter 11 plan of reorganization. *See* Motion at 4. Finally, given that the loan will be used for payroll, rent, and utilities, it is very likely that the loan will be forgiven in its entirety and will not need to be recovered as an administrative expense. The Court will grant the Debtor the ability to enter into the loan agreement with the SBA so long as the SBA agrees. **[Note 1]**

**III. Conclusion**

Based upon the foregoing, the Motion is GRANTED.

The Debtor shall submit a conforming 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 Daniel Koontz or Andrew Lockridge 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 is approving the EIDL Loan pursuant to 11 U.S.C. § 364(b), it declines to address the Debtor's second argument regarding the validity of the SBA's rule.

**Party Information**

**Debtor(s):**

Michael Stuart Brown

Represented By  
Michael F Chekian

**Trustee(s):**

Gregory Kent Jones (TR)

Pro Se

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

Wednesday, May 12, 2021

Hearing Room 1568

11:00 AM

2:21-10152 Dean M Harris

Chapter 7

#100.00 Hearing  
RE: [92] Motion of Objection to the Debtor's Homestead Exemption Claim

Docket 92

**Tentative Ruling:**

5/11/2021

**Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing. The cost for persons representing themselves has been waived.**

Because the Debtor is precluded from challenging the District Court's finding that he is not entitled to a homestead exemption in the Property, the Court will enter an order sustaining the Objection and disallowing the claimed exemption in its entirety. So that the Debtor's appeal of this order can be heard by the same Ninth Circuit panel that is already hearing the Debtor's appeal of the Sale Order which raises the same issues, the Court will certify a direct appeal to the Ninth Circuit.

**Pleadings Filed and Reviewed:**

- 1) Notice of Objection and Objection to the Debtor's Homestead Exemption Claim [Doc. No. 92] (the "Objection")
- 2) Opposition to Objection to Debtor's Homestead Exemption Claim [Doc. No. 95] (the "Opposition")
- 3) Reply in Support of Objection to the Debtor's Homestead Exemption Claim [Doc. No. 96] (the "Reply")

**I. Facts and Summary of Pleadings**

**A. Background**

On July 11, 2019, the United States District Court for the Central District of California (the "District Court") entered judgment (the "Judgment") against Rosalina Lizardo Harris ("Harris"), the Debtor's spouse. The Judgment is in favor of Crystal Holmes ("Holmes"), and the amount of the Judgment that remains unsatisfied exceeds

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

11:00 AM

**CONT... Dean M Harris**

**Chapter 7**

\$3 million. The Judgment attaches to the family residence of the Debtor and Harris (the "Property").

The Debtor filed a voluntary Chapter 7 petition on January 11, 2021. Prior to the filing of the instant case, on December 8, 2020, upon Holmes' application, the District Court issued an order requiring the Debtor and Harris to show cause why the Property should not be sold to satisfy a portion of the Judgment (the "OSC").

On February 22, 2021, the Court conducted a hearing on a motion for relief from the automatic stay [Doc. No. 58] (the "RFS Motion") brought by Holmes. Holmes sought stay relief so that she could "complete her efforts before the District Court to [sell] the Property." RFS Motion at 1, ll. 17–18. Three days prior to the hearing on the RFS Motion, the Debtor filed a motion under § 522(f) to avoid the judicial lien against the Property that was created through Holmes' recordation of the Judgment (the "§ 522(f) Motion"). The Debtor did not file a written opposition to the RFS Motion, but did appear at the hearing and request that the Court delay ruling upon the RFS Motion until after the § 522(f) Motion had been adjudicated. The Debtor asserted that granting the RFS Motion prior to adjudication of the § 522(f) Motion could result in inconsistent rulings, because in connection with the OSC, the District Court would be required to determine the amount of the Debtor's homestead exemption, an issue also arising in connection with the § 522(f) Motion.

The Court rejected the Debtor's contention that a delay in ruling upon the RFS Motion was necessary to avoid inconsistent rulings between the Bankruptcy Court and the District Court with respect to the Debtor's homestead exemption. The Court stated that the District Court had jurisdiction to determine the Debtor's homestead exemption and to adjudicate any issues arising in connection with § 522(f). The Court stated that the RFS Motion would be granted "so that the District Court can determine what it wants to do with the Property." [Note 1]

On February 26, 2021, the District Court conducted a hearing on the OSC. The Debtor's counsel appeared at the hearing and raised arguments concerning the Debtor's homestead exemption. The District Court directed Holmes to submit a proposed order authorizing the sale of the Property, and fixed March 5, 2021 as the deadline for the Debtor to assert any objections to the proposed order, including objections based upon the Debtor's homestead exemption.

On March 2, 2021, Holmes filed a motion to extend the deadline to oppose the § 522(f) Motion. *See* Doc. No. 63 (the "Continuance Motion"). Holmes asserted that a continuance was warranted based on the fact that the District Court was prepared to rule upon the issue of the Debtor's homestead exemption.

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

11:00 AM

**CONT...**

**Dean M Harris**

**Chapter 7**

On March 5, 2021, the Court entered an order granting the Continuance Motion over Debtor's objection. *See* Doc. No. 70 (the "Continuance Order"). The Continuance Order provided in relevant part:

As the Court explained on the record at the hearing on the RFS Motion, the District Court has the jurisdiction to determine the amount of the Debtor's homestead exemption and to adjudicate any issues arising under § 522(f). As it appears that the District Court is prepared to rule upon the issues presented by the § 522(f) Motion, it makes no sense to require Holmes to simultaneously file an opposition to the § 522(f) Motion before the Bankruptcy Court. There is no merit to the Debtor's argument that deferring adjudication of the § 522(f) Motion until after the District Court has ruled will deprive him of the ability to obtain a determination of his rights under § 522(f). The Debtor has always had the opportunity to present his arguments under § 522(f) to the District Court.

Continuance Order at ¶ 1.

On March 10, 2021, the District Court entered an order authorizing the United States Marshal to sell the Property (the "Sale Order") to satisfy a portion of the Judgment. The Sale Order contains a finding that "neither the Judgment Debtor [Harris] nor Mr. Harris [the Debtor] satisfied their burden of proof at the Hearing that the Property is a homestead as required by CCP § 704.780(a)(1)." Sale Order at p. 3. The Sale Order contains an additional finding that "the maximum exemption in the Property available to [Harris and/or the Debtor], if they were able to satisfy their burden of proof that the Property is a homestead, would be \$100,000 pursuant to CCP §§ 703.050 and 704.730." *Id.*

On April 7, 2021, Harris and the Debtor appealed the Sale Order to the Ninth Circuit. On April 14, 2021, Harris and the Debtor filed a motion in the District Court seeking reconsideration of the Sale Order (the "Motion for Reconsideration"). A hearing on the Motion for Reconsideration is set for May 24, 2021. The Motion for Reconsideration asserts that the Sale Order should be modified to provide for a homestead exemption of \$600,000.

*B. Summary of Papers Filed in Connection with the Motion*

On Schedule C, the Debtor claimed a homestead exemption of \$600,000 in the Property pursuant to Cal. Code Civ. Proc. § 704.730. Holmes moves for disallowance of the claimed homestead exemption in its entirety (the "Objection"). Holmes argues

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

Wednesday, May 12, 2021

Hearing Room 1568

---

11:00 AM

CONT...

**Dean M Harris**

**Chapter 7**

that the Debtor is precluded from challenging the Sale Order's finding that he is not entitled to any exemption in the Property.

Debtor argues that the Court should abstain from ruling upon the Objection for the following reasons:

- 1) Abstention would be consistent with the Court's finding in the Continuance Order that the District Court has jurisdiction to rule upon the issues presented by the § 522(f) Motion.
- 2) An order from the Bankruptcy Court disallowing the Debtor's homestead exemption is unnecessary given that the Sale Order already contains a finding that the Debtor is not entitled to a homestead exemption.
- 3) Entry of an order disallowing the exemption by the Bankruptcy Court would prejudice the Debtor. An appeal of such an order would be heard by either the Bankruptcy Appellate Panel or the District Court, not the Ninth Circuit, which is already hearing the Debtor's appeal of the Sale Order. There is a risk that two different appellate courts could reach different conclusions on the exact same dispute.

Holmes opposes the Debtor's request that the Court abstain from ruling upon the Objection. Holmes maintains that a ruling is necessary because the Debtor continues to claim a homestead exemption in this case, and under the Bankruptcy Code, a claimed exemption is allowed unless an interested party objects and the Court sustains the objection.

## **II. Findings and Conclusions**

Bankruptcy Rule 4003(a) requires a debtor to "list the property claimed as exempt under § 522 of the Code." "Unless a party in interest objects, the property claimed as exempt on such list is exempt." § 522(l). Pursuant to Bankruptcy Rule 4003(b)(1), "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after an amendment to the list or supplemental schedules is filed, whichever is later." Bankruptcy Rule 4003(c) states that "the court *shall* determine the issues presented by the objections" after a "hearing on notice" (emphasis added).

The Bankruptcy Code prevents the Court from abstaining from ruling upon the Objection, as the Debtor requests. Under § 522(l), the Debtor will continue to have a \$600,000 exemption in the Property unless the Court sustains the Objection.



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

Wednesday, May 12, 2021

Hearing Room 1568

11:00 AM

CONT... Dean M Harris

Chapter 7

Therefore, the practical effect of abstention would be to allow the Debtor to continue to assert the \$600,000 exemption despite the Objection. The fact that a claimed exemption persists absent a ruling from the Court is why Bankruptcy Rule 4003(c) *requires* the Court to adjudicate an objection to an exemption if one is presented.

Fortunately, the Debtor's concerns regarding inconsistent rulings from appellate courts can be easily resolved. Title 28 U.S.C. § 158(d)(2) provides that the Bankruptcy Court, acting on its own motion, may certify a direct appeal of an order to the Court of Appeals where necessary to "materially advance the progress of the case or proceeding." Certification is warranted here. The Debtor's appeal of the Sale Order's provisions regarding the amount of his homestead exemption is already pending before the Ninth Circuit. The identical issue is presented by the instant Objection. Certification will eliminate any risk of inconsistent rulings from different appellate courts.

The Court finds that under principles of claim preclusion, the Debtor is barred from contesting the Sale Order's finding that he is not entitled to a homestead exemption in the Property. "Under the doctrine of claim preclusion, a final judgment forecloses successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit." *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008) (internal quotation omitted). By "precluding parties from contesting matters that they have had a full and fair opportunity to litigate," the doctrine protects against "the expense and vexation attending multiple lawsuits, conserv[es] judicial resources, and foste[rs] reliance on judicial action by minimizing the possibility of inconsistent decisions." *Id.* Claim preclusion applies "when there is: (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between parties." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (internal quotation omitted).

The three elements of claim preclusion are satisfied here. With respect to the first element, an "[i]dentity of claims exists when two suits arise from 'the same transactional nucleus of facts.'" *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003). The instant Objection and the Sale Order involve the same facts and implicate the same rights—the amount of the Debtor's homestead exemption in the Property. With respect to the second element, the Sale Order is final for purposes of claim preclusion even though it is the subject of an appeal. *See Coleman v. Tollefson*, 575 U.S. 532, 539, 135 S. Ct. 1759, 1764, 191 L. Ed. 2d 803 (2015) (stating that a federal "judgment's preclusive effect is generally immediate, notwithstanding any appeal"). With respect to the third element, privity is

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

Wednesday, May 12, 2021

Hearing Room 1568

11:00 AM

CONT... Dean M Harris

Chapter 7

satisfied because the Debtor has opposed both the instant Objection and the Sale Order entered by the District Court.

**III. Conclusion**

Because the Debtor is precluded from challenging the District Court's finding that he is not entitled to claim a homestead exemption in the Property, the Court will enter an order disallowing the claimed exemption in its entirety. So that the Debtor's appeal of this order can be heard by the same Ninth Circuit panel that is already hearing the Debtor's appeal of the Sale Order which raises the same issues, the Court will certify a direct appeal to the Ninth Circuit. 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 Andrew Lockridge 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**

An audio recording of the proceedings is on file with the Clerk of the Court.

**Party Information**

**Debtor(s):**

Dean M Harris

Represented By  
Jeffrey B Smith

**Trustee(s):**

John J Menchaca (TR)

Represented By  
Wesley H Avery

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

Wednesday, May 12, 2021

Hearing Room 1568

11:00 AM

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

**Chapter 11**

Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

**#101.00** Pre-Trial Conference  
RE: [13] Amended Complaint /First Amended Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay and Injunctive Relief by Steven J Kahn on behalf of ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (RE: related document(s)1 Adversary case 2:19-ap-01042. Complaint by VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation against HERITAGE PROVIDER NETWORK, INC., a California corporation. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Notice of Required Compliance with Local Bankruptcy Rule 7026-1) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(71 (Injunctive relief - reinstatement of stay)) filed by Plaintiff ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, Plaintiff VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, Plaintiff ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation). (Kahn, Steven)

FR. 5-14-19; 2-11-20; 4-14-20; 3-9-21

Docket 13

**\*\*\* VACATED \*\*\* REASON: DISMISSED 3-15-21**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Verity Health System of California,

Represented By  
Samuel R Maizel

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

Wednesday, May 12, 2021

Hearing Room 1568

---

11:00 AM

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

Chapter 11

John A Moe II  
Tania M Moyron  
Claude D Montgomery  
Sam J Alberts  
Shirley Cho  
Patrick Maxcy

**Defendant(s):**

HERITAGE PROVIDER

Pro Se

**Plaintiff(s):**

VERITY HEALTH SYSTEM OF

Represented By  
Steven J Kahn

ST. VINCENT MEDICAL

Represented By  
Steven J Kahn

ST. FRANCIS MEDICAL

Represented By  
Steven J Kahn

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

**Wednesday, May 12, 2021**

**Hearing Room 1568**

11:00 AM

**2:21-12463 J.H. Bryant Jr., Inc.**

**Chapter 11**

**#102.00** Hearing  
RE: [59] Application to Employ Armory Consulting Co. as Financial Advisor  
Notice Of Application And Application Of Debtors And Debtors-In-Possession To  
Employ Armory Consulting Co. As Financial Advisor; Declaration Of James  
Wong In Support Thereof, with Proof of Service

Docket 59

**\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 4-30-21**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

J.H. Bryant Jr., Inc.

Represented By  
Zev Shechtman  
Michael G D'Alba  
Aaron E de Leest

**Trustee(s):**

Susan K Seflin (TR)

Pro Se

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

Wednesday, May 12, 2021

Hearing Room 1568

11:00 AM

2:21-12463 J.H. Bryant Jr., Inc.

Chapter 11

#103.00 Hearing  
RE: [50] Application to Employ Danning, Gill, Israel & Krasnoff, LLP as General Bankruptcy Counsel Debtor And Debtor In Possession's Notice Of Application To Employ Danning, Gill, Israel & Krasnoff, LLP S As General Bankruptcy Counsel; Statement Of Disinterestedness, with Proof of Service

Docket 50

\*\*\* VACATED \*\*\* REASON: PER ORDER ENTERED 5-7-21

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

J.H. Bryant Jr., Inc.

Represented By  
Zev Shechtman  
Michael G D'Alba  
Aaron E de Leest

**Trustee(s):**

Susan K Seflin (TR)

Pro Se