

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

: **Chapter 0**
Adv#: 2:16-01109 Steuben, On behalf of herself and other California v. Life Partners, Inc

#1.00 Status Hearing re Notice or Removal by Marilyn Steuben RE: [1] Adversary case
2:15-ap-01273 Complaint

Docket 0

***** VACATED *** REASON: TRANSFERRED TO TEXAS 5-31-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

Life Partners, Inc

Represented By
Bruce J Zabarauskas

Plaintiff(s):

Marilyn Steuben, On behalf of

Represented By
James Orr
Charles Miller

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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10:00 AM

2:10-57294 Roni Yani

Chapter 7

Adv#: 2:14-01185 Aylozyan v. Yani

#2.00 Status Hearing RE: [30] Amended Complaint / Second Amended Complaint by Victor J Daniels on behalf of Sarkis Aylozyan against Roni Yani . (Lomeli, Lydia R.)

Docket 30

Tentative Ruling:

7/11/2016

No appearances required.

On the Court's own motion:

Continued to October 18, 2016 at 10:00 a.m.

Party Information

Counter-Claimant(s):

Roni Yani

Represented By
Henrik Mosesi

Counter-Defendant(s):

Sarkis Aylozyan

Represented By
Victor J Daniels

Debtor(s):

Roni Yani

Represented By
Eileen Keusseyan
Henrik Mosesi

Defendant(s):

Roni Yani

Represented By
Henrik Mosesi

Mediator(s):

Richard W Esterkin

Represented By
Richard W Esterkin

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CONT... Roni Yani

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Plaintiff(s):

Sarkis Aylozyan

Represented By
Victor J Daniels

Trustee(s):

David L Hahn (TR)

Pro Se

David L Hahn (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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Adv#: 2:14-01185 Aylozyan v. Yani

#3.00

Status conference

RE: [44] [COUNTERCLAIM](#) by Victor J Daniels on behalf of Sarkis Aylozyan against Roni Yani . (RE: related document(s)1 Adversary case 2:14-ap-01185. Complaint by Sarkis Aylozyan against Roni Yani . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) filed by Plaintiff Sarkis Aylozyan). (Lomeli, Lydia R.)

fr. 2-10-15; 10-26-15; FR. 2-16-16; 4-25-16

Docket 16

Tentative Ruling:

7/11/2016

No appearances required.

On the Court's own motion:

Continued to October 18, 2016 at 10:00 a.m.

Party Information

Debtor(s):

Roni Yani

Represented By
Eileen Keusseyan
Henrik Mosesi

Defendant(s):

Roni Yani

Represented By
Henrik Mosesi

Plaintiff(s):

Sarkis Aylozyan

Represented By
Victor J Daniels

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Trustee(s):

David L Hahn (TR) Pro Se

David L Hahn (TR) Pro Se

U.S. Trustee(s):

United States Trustee (LA) Pro Se

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2:10-62208 EPD Investment Co., LLC

Chapter 7

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

#4.00 Status Hearing: [14] Amended Complaint First Amended Complaint Against John C. Kirkland, Individually and Against John C. Kirkland and Poshow Ann Kirkland as Trustees of the Bright Conscience Trust Dated September 9, 2009 for 1. Aiding and Abetting Breach of Fiduciary, 2. Post-Petition and Post-Order for Relief Fraudulent Concealment, 3. Post-Petition and Post-Order for Relief Fraud Upon Court, etc. by Larry W Gabriel on behalf of Jason M Rund, Chapter 7 Trustee against John C Kirkland, as Trustee of the Bright Conscience Trust, Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust, John C Kirkland, individually. (RE: related document(s)1 Adversary case 2:12-ap-02424. Complaint by Jason M Rund, Chapter 7 Trustee against John C Kirkland, individually, John C Kirkland, as Trustee of the Bright Conscience Trust, Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust. filed by Plaintiff Jason M Rund, Chapter 7 Trustee). (Gabriel, Larry)

fr. 3-7-13; 4-4-13; 4-18-13; 5-16-13; 9-5-13; 11-7-13; 11-18-14
FR. 12-17-13; 1-14-14; 6-5-14; 9-16-14; 3-10-15; 3-10-16

fr. 5-10-16

Docket 14

Tentative Ruling:

7/11/2016: The Court has reviewed the joint status report. It appears that all pending appeals in this adversary have been resolved. Therefore, the Court ORDERS the following dates:

Discovery cut-off: January 31, 2017

Pretrial: February 14, 2017 at 11:00 a.m.

Trial: During the Week of February 27, 2017. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried. After trial, the Court will prepare Proposed Findings of Fact and

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Conclusions of Law directed to the District Court (*see* Gen. Order 13-05 entered July 1, 2013).

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The trial day begins at 9:00 a.m.

Plaintiff shall lodge a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If submitting on the tentative, please contact Daniel Koontz or James Yu at 213-894-1522 no later than 1 hour prior to the hearing.

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

John C Kirkland, individually	Pro Se
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John C Kirkland, as Trustee of the	Pro Se
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Poshow Ann Kirkland, as Trustee of	Pro Se
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Interested Party(s):

Courtesy NEF	Represented By Corey R Weber
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Plaintiff(s):

Jason M Rund, Chapter 7 Trustee	Represented By Larry W Gabriel Corey R Weber
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Trustee(s):

Jason M Rund (TR)

Pro Se

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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2:10-62208 EPD Investment Co., LLC

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

#5.00 Hearing

RE: [57] Motion to Dismiss Adversary Proceeding NOTICE OF MOTION AND MOTION OF DEFENDANT POSHOW ANN KIRKLAND, INDIVIDUALLY AND AS TRUSTEE OF THE BRIGHT CONSCIENCE TRUST DATED SEPTEMBER 9, 2009 TO DISMISS SECOND AMENDED COMPLAINT OF JASON M. RUND, CHAPTER 7 TRUSTEE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

FR. 9-17-13; 1-14-14; 6-5-14; 9-16-14; 11-18-14; 3-10-16

FR. 12-17-13; 3-10-15

fr. 5-10-16

Docket 57

Tentative Ruling:

7/11/2016: For the reasons set forth below, the Motion to Dismiss is GRANTED IN PART and DENIED IN PART. The Motion to Dismiss is denied with respect to all claims for relief against Poshow Ann Kirkland as Trustee of the BC Trust. However, the Complaint fails to state claims for relief against Poshow Ann Kirkland in her capacity as an individual. The Complaint is dismissed as to Poshow Kirkland individually, but the Trustee is given leave to amend. An amended complaint must be filed by no later than August 12, 2016.

Pleadings Filed and Reviewed:

- 1) Second Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland, Individually and as Trustee of the Bright Conscience Trust Dated September 9, 2009 ("Complaint")
- 2) Motion of Defendant Poshow Ann Kirkland, Individually and as Trustee of the Bright Conscience Trust Dated September 9, 2009 to Dismiss Second Amended Complaint of Jason M. Rund, Chapter 7 Trustee ("Motion to Dismiss") [Doc. No.

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- 3) Trustee's Opposition to Motion of Defendant Poshow Ann Kirkland, Individually and as Trustee of the Bright Conscience Trust Dated September 9, 2009 to Dismiss Second Amended Complaint of Jason M. Rund, Chapter 7 Trustee ("Opposition") [Doc. No. 66]
 - 4) Reply of Defendant Poshow Ann Kirkland, Individually and as Trustee of the Bright Conscience Trust Dated September 9, 2009 to Opposition of Jason M. Rund, Chapter 7 Trustee to Defendants' Motion to Dismiss Second Amended Complaint of Plaintiff ("Reply") [Doc. No. 67]

I. Facts and Summary of Pleadings

Procedural History

On May 24, 2013, the Chapter 7 Trustee ("Trustee") filed a Second Amended Complaint ("Complaint") against John C. Kirkland ("Kirkland"), Poshow Ann Kirkland ("Poshow") individually, and Poshow Ann Kirkland as Trustee of the Bright Conscience Trust Dated September 9, 2009 ("BC Trust"). Doc. No. 45. The Complaint seeks to (1) disallow or equitably subordinate proofs of claim filed by the BC Trust and (2) avoid alleged fraudulent transfers from the Debtors to John Kirkland, Poshow Kirkland, and the BC Trust. The First Amended Complaint was filed to correct clerical errors in the initial complaint. After the Trustee entered into a settlement with Kirkland's former law firm Luce Forward Hamilton & Scripps LLP ("Luce Forward"), the Court approved a stipulation between the parties permitting the Trustee to file the Second Amended Complaint. Doc. No. 39. The Second Amended Complaint removes certain of the claims against Kirkland that were resolved through the settlement with Luce Forward.

On November 5, 2013, the Court entered an Order Denying Motion of Defendant John C. Kirkland to Compel Arbitration and Stay Adversary Proceeding (as joined by the BC Trust)) ("Order Denying Motion to Compel Arbitration") [Doc. No. 92]. Kirkland and the BC Trust appealed the Order Denying Motion to Compel Arbitration to the District Court, which affirmed the Bankruptcy Court. Kirkland and the BC Trust appealed the District Court's affirmance to the Ninth Circuit. On May 9, 2016, the Ninth Circuit affirmed the District Court and Bankruptcy Court. On June 16, 2016, the Ninth Circuit denied Kirkland's petition for rehearing en banc.

On January 14, 2014, the Court entered an order staying the adversary proceeding

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pending resolution of Kirkland's appeal of the Motion to Compel Arbitration. Doc. No. 151. On June 23, 2016, the Court entered an order providing notice that the stay had terminated. The Court explained:

Other than filing a petition for a writ of certiorari before the Supreme Court, the Kirklands have exhausted their avenues of appeal. If the Kirklands intend to file a petition for a writ of certiorari, they must so notify this Court by no later than June 29, 2016. Otherwise, the Court will consider the appeal to have been resolved and the stay of this adversary proceeding to be terminated, and as previously ordered, will conduct on July 12, 2016 a status conference hearing and a hearing on the Motion of Defendant Poshow Ann Kirkland, Individually and as Trustee of the Bright Conscience Trust Dated September 9, 2009 to Dismiss Second Amended Complaint of Jason M. Rund, Chapter 7 Trustee ("Motion to Dismiss") [Doc. No. 57]. No additional papers will be accepted in connection with the Motion to Dismiss, which has been fully briefed.

Order Providing Notice that the Stay Pending Appeal of this Adversary Proceeding Has Terminated Unless John and Ann Kirkland Notify the Court that they Intend to File a Petition for a Writ of Certiorari before the Supreme Court [Doc. No. 194].

John and Ann Kirkland (the "Kirklands") did not notify the Court that they intended to file a petition for a writ of certiorari by the June 29 deadline. Therefore, the stay of the adversary proceeding has terminated.

On October 15, 2014, Baker & Hostetler LLP filed a motion to withdraw as counsel for Poshow Ann Kirkland, individually and as trustee of the BC Trust. At the time the motion to withdraw was filed, the instant Motion had been fully briefed. The Court entered an order granting the Motion to Withdraw on November 5, 2014. Doc. No. 178. At this time, Poshow and the BC Trust are not represented by counsel.

The Bankruptcy Cases

The EPD bankruptcy case was commenced by the filing of an involuntary petition against EPD on December 7, 2010. The Court entered an Order for Relief on February 9, 2011. On February 1, 2012, Jerrold S. Pressman ("Pressman") filed a voluntary Chapter 7 petition. On June 4, 2012, the bankruptcy cases of EPD and Pressman (collectively, the "Debtors") were substantively consolidated.

Summary of the Complaint's Allegations

The Complaint's allegations and claims for relief are as follows: Between the

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1970s and June 27, 2003, EPD Investment Co. was an unincorporated sole proprietorship run by Pressman. *Id.* at ¶12. On June 27, 2003, EPD was formed as a California limited liability company to provide corporate protection and to satisfy Pressman's goal of retirement. *Id.* Upon EPD's formation in 2003, the EPD sole proprietorship's assets and liabilities were transferred from Pressman to EPD. *Id.* At all times, the members and managers of EPD were Pressman and his son, Keith Pressman ("Keith"). *Id.*

EPD operated as a Ponzi scheme since its formation in 2003. *Id.* at ¶24. Between 2003 and mid-2009, EPD repaid existing creditors by using funds from new creditors. *Id.* EPD was balance sheet insolvent from at least December 2003, according to its tax returns, and has never been profitable. *Id.* at ¶¶20–21. Many of EPD's creditors mistakenly believed that EPD owned substantial real property assets in Tennessee, Mississippi, and elsewhere, when in fact EPD owned no real property. *Id.* at ¶16. Instead, EPD owned promissory notes secured by Pressman's assets, and it was Pressman who held an ownership interest in entities owning property in Tennessee, Mississippi, and elsewhere. *Id.*

In mid-2009, EPD could not pay creditors because the companies Pressman partially owned lacked sufficient operating cash flow, and because EPD was no longer receiving cash infusions from new creditors. *Id.* at ¶25.

Kirkland was outside counsel for the Pressmans, EPD, and other business entities owned by the Pressmans. Kirkland invested and/or loaned in excess of \$150,000 of his personal funds to EPD (Kirkland's "EPD Interests"). *Id.* at ¶29. In September 2009, after EPD had ceased making payments to most creditors, Kirkland assigned his EPD Interests to the BC Trust (his family trust), and/or to his wife Poshow Ann Kirkland as Trustee of the BC Trust, through a Notice of Assignment. The Notice of Assignment provides: "Notice is hereby given that all rights of John C. Kirkland under all such Loan Documents have been sold, transferred, and assigned to the Bright Conscience Trust Dated September 9, 2009." *Id.*

Poshow took the assignment subject to all claims and defenses of Kirkland. Poshow, as Trustee of the BC Trust, did not take the assignment in good faith or for adequate consideration. On September 11, 2009, Kirkland caused a UCC-1 financing statement in favor of the BC Trust to be recorded, knowing that such recordation was a fraudulent conveyance in violation of §§544 and 548 of the Bankruptcy Code. *Id.* at ¶30h.

Despite knowing that EPD operated as a Ponzi scheme, Kirkland continued to represent EPD and the Pressmans. Kirkland engaged in various actions that helped

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perpetuate the Ponzi scheme. *Id.* at ¶30. During the period that Kirkland represented EPD in its involuntary bankruptcy case, Kirkland knowingly filed pleadings falsely stating that EPD was a going concern business that was paying its debts as they came due. *Id.* at ¶32. Kirkland took these actions to conceal the true financial condition of EPD, and to protect himself and the BC Trust. *Id.* at ¶36.

First Claim for Relief: Disallowance of Proofs of Claim, or, in the Alternative, Equitable Subordination of Proofs of Claim Against the BC Trust and Kirkland

On December 12, 2011, the BC Trust filed three proofs of claim in the bankruptcy case, all in the amount of \$2.672 million. On February 15, 2013, the BC Trust filed a proof of claim in the Pressman bankruptcy case—which has now been substantively consolidated with the EPD case—in the amount of \$3.529 million. All Proofs of Claim are secured claims, and were executed by Poshow Ann Kirkland as Trustee of the BC Trust. *Id.* at ¶39.

The BC Trust is the assignee of Kirkland’s EPD Interests and the BC Trust’s Proofs of Claim are based on the assignment of Kirkland’s EPD Interests. The BC Trust did not separately invest or loan funds to the Debtors; its rights are based solely on the assignment of Kirkland’s EPD Interests. Kirkland orchestrated the BC Trust’s filing of the Proofs of Claim while serving as outside counsel for Pressman and EPD. *Id.* at ¶40.

Kirkland engaged in inequitable conduct by facilitating the EPD Ponzi scheme. The BC Trust, as Kirkland’s assignee, stands in Kirkland’s shoes and took the assignment subject to Kirkland’s actions. Accordingly, the BC Trust’s claims should be disallowed or equitably subordinated. *Id.* at ¶42–43.

Second through Sixth Claims for Relief: Avoidance and Recovery of Intentional and Constructive Fraudulent Transfers

Prior to the filing of the petition, the Debtors made transfers to the BC Trust by means of the BC Trust’s September 11, 2009 recordation of a UCC-1 financing statements as to all assets of the Debtors. *Id.* at ¶29 and 49. The transfer to the BC Trust is avoidable as actually fraudulent pursuant to §544 (applying California Civil Code §§3439.04(a) and 3439.07) and §548(a)(1)(A). The transfer is avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§ 3439.04(b), 3439.05, and 3439.07) because it was made without the Debtors receiving reasonably equivalent value at a time when the Debtors were (1) insolvent or (2) were engaged in a business or transaction for which any property remaining was an

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unreasonably small capital or (3) intended to incur debts beyond their ability to pay. For the same reasons, the transfer is avoidable as constructively fraudulent pursuant to §548(a)(1)(B).

Prior to the filing of the petition, the Debtors made transfers for the benefit of Kirkland and the BC Trust by issuing checks to a Union Bank account. Those transfers are avoidable as intentionally fraudulent pursuant to §544 (applying California Civil Code §§3439.04(a) and 3439.07) and §548(a)(1)(A). Those transfers are avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04(b), 3439.05, and 3439.07) and §548(a)(1)(B).

All the avoidable transfers are recoverable pursuant to §550(a)(1).

Summary of Motion to Dismiss, Opposition, and Reply

Defendants Poshow Ann Kirkland, individually and as Trustee of the BC Trust, move to dismiss the Complaint (as used herein, "Defendants" refers to Poshow and the BC Trust, but not to Kirkland, who is not a party to the Motion).

First, Defendants argue that the claims for relief based on actual fraud fail to meet the heightened pleading standards required by Civil Rule 9(b), which requires the pleader to "state with particularity the circumstances constituting fraud." Motion at 12. [Note 1] The Trustee responds that the Ninth Circuit recognizes the Ponzi presumption—namely that a debtor's actual intent to hinder, delay, or defraud creditors is established as a matter of law where the Trustee proves that the debtor operated a Ponzi scheme. *In re AFI Holdings, Inc.*, 525 F.3d 700, 704 (9th Cir. 2008) ("the mere existence of a Ponzi scheme' is sufficient to establish actual intent under § 548(a)(1) or a state's equivalent to that section"). Opposition at 10. Defendants assert that the Ponzi presumption is inadequate to meet Rule 9's heightened pleading requirements, because the Trustee has not sufficiently pleaded fraud with respect to the specific transfers he seeks to avoid. Reply at 6.

Second, Defendants argue that Complaint fails to sufficiently allege that the Debtors acted with actual intent to hinder, delay, or defraud creditors:

[T]he Complaint requests that this Court treat John Kirkland and the Debtors as one and the same for purposes of §548, a supposition which they provide no demonstrative evidence to support. The entirety of the Complaint focuses on the bad faith and fraudulent acts of John Kirkland and includes only conclusory fraud allegations against the Debtors. For instance, the Complaint alleges that John Kirkland caused the recording and filing of the Notice of Claim in favor of the BC Trust, against the assets of EPD and Pressman, *at the*

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direction and with the consent of Pressman. Complaint at ¶30. These conclusory allegations are entitled to no weight under *Iqbal* and *Twombly*. See *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (conclusory allegations are to be disregarded "because they do nothing more than state a legal conclusion—even if that conclusion is cast in the form of a factual allegation").

Motion at 13–14.

Defendants argue that the Complaint's allegation that Kirkland controlled the Debtors cannot make the Debtors liable for transfers that were orchestrated by Kirkland:

The cases are careful to point out that vicarious intent is an extreme situation that is dependent upon nearly total control of a debtor by a transferee.... Courts will only impute a transferee's intent to defraud to the debtor transferor when the transferee's dominion or control over the debtor's management of its business decisions is complete and so extensive that the debtor "from its subordinate position, lacks the independent means to reverse the exercise of dominion over it." *Jackson v. Mishkin (In re Adler, Coleman Clearing Corp.)*, 263 B.R. 406, 447–48 (S.D.N.Y. 2001). So exacting is this standard that "[c]ases imputing a transferee's intent to a transferor have typically involved sole shareholders of the transferor, with complete control of the transferor, transferring assets to themselves as the transferee." *Miller v. Elway Co., LLP (In re Elrod Holdings Corp.)*, 421 B.R. 700, 712 (Bankr. D. Del. 2010).... There is nothing in the Complaint that would support a reasonable inference that John Kirkland exercised such complete domination and control over EPD or Pressman that either entity essentially became John Kirkland's alter ego.

Motion at 14.

The Trustee argues that Debtors' actual fraud is sufficiently established by allegations that the Debtors operated as Ponzi scheme, given that the Ninth Circuit recognizes the Ponzi presumption. Opposition at 10.

Third, Defendants maintain that through the Complaint, the Trustee is attempting to recover against the BC Trust as a subsequent transferee pursuant to §550(a)(2). See Motion at 16 ("Although the Complaint is in no way clear, considering that the Trustee has fallen well short of proving that the Debtor and John Kirkland were one and the same (and thus that BC Trust is an initial transferee), the Defendants assume that the Trustee is attempting to recover the transfers from the BC Trust on the grounds that the BC Trust is a subsequent transferee"). Defendants' characterization of the Complaint is that the Kirkland was the initial transferee of EPD's property, on

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account of the fact that Kirkland acquired some unspecified interest in EPD when he loaned or invested money in EPD. According to Defendants, the recordation of UCC-1 financing statements by the BC Trust on September 11, 2009, reflecting Kirkland's assignment of his EPD Interests to the BC Trust, was a subsequent transfer of EPD's property. Noting that a trustee may recover from a subsequent transferee only if the subsequent transferee did not accept the transfer for value and in good faith, Defendants argue that the Complaint fails to allege any facts showing that Poshow or the BC Trust did not act in good faith with respect to the transfer. Motion at 16.

The Trustee disagrees with Defendants' contention that the BC Trust was a subsequent transferee. Pointing to the broad definition of "transfer" in the Bankruptcy Code and in California's Uniform Fraudulent Transfer Act, the Trustee asserts that the "purported secured liens filed and/or recorded in favor of the BC Trust and against the assets of the Debtors clearly qualify as transfers from the Debtors pursuant to California Civil Code §3439.01(i) and 11 U.S.C. §101(54)." Opposition at 12.

The Trustee disputes Defendants' contention that the Complaint fails to allege that Poshow or the BC Trust did not act in good faith with respect to the transfer of Kirkland's EPD Interest. According to the Trustee, the BC Trust, as assignee of the EPD Interests, "stands in the shoes' of the assignor, taking his rights and remedies, subject to any defenses which the obligor has against the assignor prior to notice of the assignment." 1 Witkin, Contracts, §948, p. 844. Because the Complaint alleges fraudulent acts committed by Kirkland, and because the BC Trust acquired Kirkland's EPD Interests subject to Kirkland's rights and liabilities, the Trustee argues that Kirkland's fraudulent acts may be imputed to the BC Trust.

Defendants dispute that the BC Trust stands in the shoes of Kirkland with respect to the transferred EPD Interests, for the following reasons:

- 1) The transfers that the Trustee seeks to avoid are loan documents, which are "negotiable instruments" as defined by the California Commercial Code ("Cal. Comm. Code").
- 2) The BC Trust is a holder in due course of the Promissory Note that effectuated the allegedly avoidable transfer. As a holder in due course, the BC Trust is exempted "from virtually all defenses assertable by the debtor against the original payee." *In re Lee*, 408 B.R. 893, 899 (Bankr. C.D. Cal. 2009).

Reply at 4–5.

Fourth, Defendants argue that the BC Trust cannot be held liable based on the actions of John Kirkland. Defendants assert that the BC Trust is an irrevocable trust

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and as such, cannot be held liable for the actions of its settlor, John Kirkland. Motion at 19. The Trustee responds to this argument as follows:

The Second Amended Complaint does not plead that the BC Trust is an irrevocable trust. Therefore, Mrs. Kirkland and the BC Trust are arguing matters outside of the four corners of the Second Amended Complaint.

However, even assuming that the Court were to consider the arguments made in regard to irrevocable trusts, the case law cited in the Motion to Dismiss relates to the liability of irrevocable trusts for the actions of its settlor.

However, the Trustee's claim for disallowance of the BC Trust's proofs of claim does not seek to recover an asset, but rather seeks to disallow proofs of claim. Mrs. Kirkland and the BC Trust do not cite case law for the proposition that the Trustee cannot object to proofs of claim filed by an irrevocable trust; instead they cite to general California case law unrelated to bankruptcy cases or objections to proofs of claim.

Opposition at 21–22.

Fifth, Defendants argue that the allegations for constructively fraudulent transfer fail because the Complaint fails to plead facts showing that the Debtors were insolvent when the transfer was made and did not receive reasonably equivalent value for the transfer. Motion at 17. The Trustee responds that the Complaint alleges that Kirkland “invested and/or lent an amount in excess of \$150,000 of his personal funds to EPD,” ¶29, but caused a UCC-1 financing statement in favor of the BC Trust to be filed against the assets of the Debtors in the amount of approximately \$2 million, ¶30k. Opposition at 16. The Trustee notes that the Complaint alleges that EPD's tax returns show that it was balance-sheet insolvent since at least December 31, 2003, ¶20, and has never been profitable, ¶21. *Id.*

Sixth, Defendants argue that the Complaint contains no allegations of any wrongful conduct by Poshow Kirkland that provide a basis for her to be sued as an individual. Motion at 20. The Trustee argues that Poshow Kirkland is properly sued in her individual capacity: “Because, as the allegations in the Second Amended Complaint reflect, the exact nature and controlling provisions of the BC Trust, as opposed to actions taken by Mrs. Kirkland as an individual, will not be known until the Trustee conducts discovery, and because Mrs. Kirkland is the wife of Kirkland (counsel for the Debtors both pre-petition and post-petition),” Poshow Kirkland in her individual capacity is a proper defendant. Opposition at 22.

II. Findings and Conclusions

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"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)).

Poshow and the BC Trust's Lack of Representation by Counsel

Notwithstanding the fact that Poshow and the BC Trust are not presently represented by counsel, the Court finds that the Motion to Dismiss may be determined at this time without prejudicing the rights of Poshow or the BC Trust. The Motion to Dismiss was fully and thoroughly briefed prior to counsel's withdrawal. Having reviewed the briefing, the Court finds that Poshow and the BC Trust have had a full opportunity to present to the Court those arguments relevant to the Motion to Dismiss.

The Complaint States a Claim for Relief for Disallowance or Equitable Subordination of the Proofs of Claim filed by the BC Trust

Equitable Subordination

Section 510(c) provides that "the court may under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim." The subordination of claims based on equitable considerations generally requires three findings: "(1) that the claimant engaged in some type of inequitable conduct, (2) that the misconduct injured creditors or conferred unfair advantage on the claimant, and (3) that subordination would not be inconsistent with the Bankruptcy Code." *Henry v. Lehman Comm. Papers, Inc. (In re First All. Mortgage Co.)*, 471 F.3d 977, 1006 (9th Cir. 2006).

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At issue is whether the alleged inequitable conduct of Kirkland may be imputed to Poshow and the BC Trust as assignees of Kirkland's EPD Interests. As discussed below, the Complaint sufficiently alleges inequitable conduct by Kirkland to state a claim for equitable subordination of any claim infected by that inequitable conduct. Therefore, if Kirkland's inequitable conduct may be imputed to the BC Trust, the Complaint states a claim to equitably subordinate the proofs of claim filed by the BC Trust.

The Complaint alleges that the BC Trust's proofs of claim are predicated upon (1) a Notice of Assignment by which Kirkland transferred his EPD Interests to the BC Trust, followed by (2) the BC Trust's recordation of a UCC-1 financing statement as to all assets of the Debtors. Complaint at ¶29. Under California law, an "assignment merely transfers the interest of the assignor. The assignee 'stands in the shoes' of the assignor, taking his rights and remedies, subject to *any defenses* which the *obligor* has against the assignor prior to notice of the assignment." *Johnson v. Cty. of Fresno*, 111 Cal. App. 4th 1087, 1096, 4 Cal. Rptr. 3d 475, 482 (2003); *see also Searles Valley Minerals Operations Inc. v. Ralph M. Parson Serv. Co.*, 191 Cal. App. 4th 1394, 1402, 120 Cal. Rptr. 3d 487, 493 (2011) (same).

The BC Trust acquired the EPD Interests through an assignment, according to the Complaint. Therefore, the BC Trust's interest in the EPD Interests remains subject to the rights and liabilities of Kirkland, including any liability flowing from Kirkland's inequitable acts prior to the assignment.

Defendants incorrectly assert that they did not acquire the EPD Interests subject to liability resulting from Kirkland's acts. Defendants claim that they are entitled to the protections of a holder in due course under Cal. Comm. Code §3302(a). If Defendants qualified as holders in due course, they would have acquired the EPD Interests free of any liability. Defendants overlook the requirement that to qualify as a holder in due course, they must take the instrument "for value [and] in good faith." Cal. Comm. Code §3302(a). The Complaint alleges that the BC Trust "did not take the assignment in good faith, or for adequate consideration." Complaint at ¶29. The Complaint pleads sufficient facts to support this allegation—it alleges that the BC Trust is Kirkland's family trust, ¶29; that Poshow, the BC Trustee, is Kirkland's wife, ¶4; and that prior to the assignment which encumbered EPD's assets, EPD had stopped making payments to creditors, except for certain favored creditors such as Kirkland, ¶25.

Defendants unsuccessfully attempt to distinguish the cases on assignment cited by the Trustee. Defendants assert that those cases are inapplicable because they dealt with the assignment of indemnification rights and lease rights. However, the

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proposition for which the Trustee cited the cases—that assignees take an assignment subject to rights and liabilities of the assignor—does not depend on the specific property being assigned. Defendants are asserting a distinction without a difference.

The Complaint alleges sufficient inequitable conduct by Kirkland to state a claim for equitable subordination. Since Kirkland’s inequitable conduct infects the BC Trust as a result of the assignment, the Complaint states a claim for equitable subordination against the BC Trust. Kirkland’s alleged inequitable conduct included causing the recordation of the UCC-1 financing statement in favor of the BC Trust, despite knowing that such recordation was a fraudulent conveyance and that other creditors remained unsecured, ¶30h; depleting the Debtors’ assets by causing the Debtors to pay Kirkland’s mortgage payments, ¶30d; representing Plush Lounge, an entity that owed significant sums to EPD, in litigation that severely depleted the assets of Plush Lounge while simultaneously representing EPD, ¶40; and knowingly accepting payments for legal services from companies that owed EPD money, ¶30n. This inequitable conduct harmed EPD’s creditors, and gave Kirkland an unfair advantage, by diverting funds from EPD for Kirkland’s benefit.

Defendants argue that the BC Trust cannot be held liable based on actions committed by Kirkland because the BC Trust, as an irrevocable trust, is not liable for the actions of its settlor. The Complaint does not allege that the BC Trust is an irrevocable trust, so this argument goes beyond the four corners of the Complaint and is not appropriately raised in the context of a motion to dismiss. In addition, the Court does not find the argument to be persuasive. The case cited by Defendants, *Laycock v. Hammer*, 141 Cal. App. 4th 25, 29 (2006), only supports the proposition that creditors of the settlor cannot reach the assets of an irrevocable trust created by the settlor. The equitable subordination claim does not seek to recover against the assets of BC Trust; it seeks to subordinate the BC Trust’s claim to the claims of other creditors.

Disallowance

Section 502(d) provides in relevant part: “[T]he court shall disallow any claim of any entity ... that is a transferee of a transfer avoidable under section ... 544 ... [or] 548 ... of this title, unless such ... transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable” As set forth below, the Complaint states claims for relief for avoidance of transfers under §§544 and 548. The proofs of claim filed by the BC Trust are based upon the transfers that the Trustee seeks to avoid. Therefore, the Complaint states a claim for disallowance of those proofs of claim.

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The Complaint States a Claim for Avoidance of Actually Fraudulent Transfers as to the BC Trust

Section 548(a)(1)(A) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer ... with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made ... indebted." Section 544(b)(1) permits the trustee to avoid transfers avoidable under applicable state law. Similar to §548(a)(1)(A), Cal. Civ. Code §3439.04(a)(1) provides that transfers made "with actual intent to hinder, delay, or defraud any creditor of the debtor" are avoidable.

A claim to avoid an actually fraudulent transfer must satisfy the heightened pleading standard of Civil Rule 9(b). *In re Caremerica, Inc.*, 409 B.R. 346, 353 (Bankr. E.D.N.C. 2009); *In re Automated Fin. Corp.*, No. 1:08-BK-14339-MT, 2011 WL 10502417, at *4 (Bankr. C.D. Cal. Jan. 25, 2011). This means that the Complaint must "state with particularity the circumstances constituting fraud." Civil Rule 9(b). To satisfy Civil Rule 9(b), allegations of fraud must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." A pleading "is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations." The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." *Neubronner v. Milken*, 6 F.3d 666, 671–72 (9th Cir. 1993); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.").

The Complaint satisfies Rule 9(b)'s heightened pleading standards through allegations that EPD operated as a Ponzi scheme. As explained in *Barclay v. Mackenzie (In re AFI Holding, Inc.)*, the Ninth Circuit follows the Ponzi presumption—namely, "the mere existence of a Ponzi scheme' is sufficient to establish actual intent under § 548(a)(1) or a state's equivalent to that section." 525 F.3d 700, 704 (9th Cir. 2008). In *AFI Holding*, Mackenzie invested funds in AFI, a Ponzi scheme. *Id.* AFI subsequently transferred fictitious profits to Mackenzie on account of his investment. *Id.* The *AFI Holding* court concluded that the mere fact that AFI was a Ponzi scheme before Mackenzie invested was sufficient to establish that

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the subsequent transfer to Mackenzie was made with actual fraudulent intent. *Id.*

Here, the Complaint alleges sufficient facts to show that EPD operated as a Ponzi scheme. The Complaint alleges that “Pressman used EPD to bring in funds from lenders, investors, and others, which funds were used to pay amounts due to earlier lenders, creditors, and investors,” ¶13; that EPD was never profitable, ¶20; and that many of EPD’s creditors mistakenly believed that EPD had substantial real estate holdings when in fact it owned no real property, ¶16. As was the case in *AFI Holding*, the Complaint here alleges that EPD continuously operated as a Ponzi scheme from the time that Kirkland initially acquired his EPD Interests until the time that the Debtors transferred the EPD Interests.

The Court disagrees with Defendants’ contention that the Complaint does not sufficiently allege that the Debtors, as opposed to Kirkland, acted with actual fraudulent intent. *See* Motion at 13–14 (the “entirety of the Complaint focuses on the bad faith and fraudulent acts of John Kirkland and includes only conclusory fraud allegations against the Debtors”). “A corporation, being an entity created by law, is incapable of formulating or acting with intent. Thus, for the purpose of recovering impermissibly transferred corporate assets and thereby facilitating creditor recovery, the intent of the officers and directors may be imputed to the corporation.” *In re Nat’l Audit Def. Network*, 367 B.R. 207, 221 (Bankr. D. Nev. 2007). An individual’s fraudulent intent may be imputed to the debtor corporation if the following elements are satisfied:

First is that the controlling *transferee* possesses the requisite intent to hinder, delay or defraud the debtor's creditors. Second, the transferee “must be in a position to dominate or control.” And third, the pertinent domination and control relates to “the debtor's disposition of his property.”

In re Adler, Coleman Clearing Corp., 263 B.R. 406, 443 (S.D.N.Y. 2001).

All the elements are satisfied here. First, the Complaint sufficiently alleges that the transferees were in a position to dominate or control EPD. Here, the transferees were Kirkland and Pressman—the Complaint alleges that Kirkland transferred assets to the BC Trust at the direction and consent of Pressman, EPD’s managing member. Contrary to Defendant’s assertion, the allegation that Kirkland executed the transfer at the direction of Pressman is not conclusory. The Complaint alleges specific facts to show a close relationship between Kirkland and Pressman, which shows that it is plausible that Pressman would direct the recordation of the financing statement that effectuated the transfer. For example, the Complaint alleges that Pressman caused EPD to make significant mortgage payments on Kirkland’s house, ¶30d; that Kirkland

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attended law school with Pressman's son, ¶28; and that Kirkland represented all of the Pressman's various business entities, ¶28. Pressman and Kirkland's domination or control of EPD is shown by allegations that Pressman, along with his son Keith, were the managing members of EPD, and that Pressman used EPD to siphon money to his other corporations, relying upon Kirkland's services as outside counsel to effectuate the fraudulent transactions.

Second, the allegations that EPD was operated as a Ponzi scheme and used to channel money to Pressman's other businesses establish that Kirkland and Pressman's domination and control related to the debtor EPD's disposition of its property. Third, Kirkland and Pressman's fraudulent intent is established by the Ponzi presumption. Accordingly, the Complaint's allegations are sufficient to impute Kirkland's alleged fraudulent intent to the Debtors.

Defendants rely upon *Jackson v. Mishkin (In re Adler, Coleman Clearing Corp.)*, 263 B.R. 406, 447–48 (S.D.N.Y. 2001) and *Miller v. Elway Co., LLP (In re Elrod Holdings Corp.)*, 421 B.R. 700, 712 (Bankr. D. Del. 2010) for the proposition that Kirkland's alleged fraudulent intent cannot be imputed to the Debtors. In both cases, the Court declined to impute the intent of the transferee to the corporate debtor. However, in those cases, the relationship between the transferee and the corporate debtor was far more attenuated than the relationship between Kirkland and EPD. In *Adler Coleman*, the transferee was a separate corporation that performed brokerage services for the debtor. 263 B.R. at 417. In *Elrod Holdings*, the transferees were on the debtor's board, but held only a minority of the seats. 421 B.R. at 708. By contrast, the Complaint alleges facts showing a very close relationship between Kirkland, Pressman, and EPD. *See, e.g.*, Complaint at ¶41 (Kirkland served as outside counsel for EPD and Pressman since the formation of EPD, and is a fiduciary and insider of the Debtors); ¶30d (Kirkland arranged for the Pressmans, through EPD, to make monthly payments for Kirkland's mortgage to Union Bank of California); ¶30f (at the direction and consent of Pressman, Kirkland formed HMB Holdings in order to hinder EPD's unsecured creditors); ¶30e (Kirkland defended suits on behalf of EPD and Pressman without a good faith basis to do so); and ¶37 (Kirkland contested the involuntary bankruptcy petition against EPD notwithstanding his knowledge of EPD's insolvency).

The claim for relief for transfers made with actual fraudulent intent is further bolstered by numerous allegations of badges of fraud. Because "it is often impracticable, on direct evidence, to demonstrate an actual intent to hinder, delay or defraud creditors," courts "frequently infer fraudulent intent from the circumstances

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surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 805 (9th Cir. 1994). Those badges of fraud include "(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer." *Id.* Cal. Civ. Code § 3439.04 codifies badges of fraud that have traditionally been recognized by the courts, stating that the following may be considered when determining whether the transfer was made with actual fraudulent intent:

- (1) Whether the transfer or obligation was to an insider.
- (2) Whether the debtor retained possession or control of the property transferred after the transfer.
- (3) Whether the transfer or obligation was disclosed or concealed.
- (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- (5) Whether the transfer was of substantially all the debtor's assets.
- (6) Whether the debtor absconded.
- (7) Whether the debtor removed or concealed assets.
- (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
- (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

The Complaint alleges (1) that the transfer was of substantially all of EPD's assets, since at the time of the transfer EPD had negative equity, ¶20; (2) that the transfer was concealed by means of false pleadings filed by Kirkland in EPD's involuntary case, ¶30i; (3) that EPD was insolvent at the time of the transfer, ¶¶19–25; (4) that EPD had been sued and was threatened with lawsuits at the time of the transfer, ¶30e; and (5) that the BC Trust is an insider of EPD, having acquired the EPD Interests subject to the liabilities of Kirkland, an insider, ¶¶28 and 31–32. The badges of fraud pleaded in the Complaint are sufficient to state a claim for an actually

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fraudulent transfer under both §548(a)(1)(A) and Cal. Civ. Code §3439.04.

Defendants incorrectly assert that through the Complaint, the Trustee is attempting to recover against the BC Trust as a subsequent transferee. Defendants' characterization of the Complaint is that the Kirkland was the initial transferee of EPD's property, on account of the fact that Kirkland acquired some unspecified interest in EPD when he loaned or invested money in EPD. According to Defendants, the recordation of UCC-1 financing statements by the BC Trust on September 11, 2009, reflecting Kirkland's assignment of his EPD Interests to the BC Trust, was a subsequent transfer of EPD's property. Motion at 16.

Defendants' argument overlooks the broad definition of "transfer" in both the Bankruptcy Code and Cal. Civ. Code §3439.01. Section §101(54) of the Bankruptcy Code defines "transfer" as "(A) the creation of a lien; ... or (D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—(i) property; or (ii) an interest in property." Cal. Civ. Code §3439.01 defines "transfer" as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance."

The Complaint alleges that Kirkland caused the UCC-1 financing statement to be recorded in favor of the BC Trust, and against the assets of the Debtors, at the direction and with the consent of Pressman. *Id.* at ¶30h. The "creation of a lien" qualifies as a "transfer" under both the Bankruptcy Code and Cal. Civ. Code § 3439.01. A corporation such as EPD "can speak and act only through its agents and so must be accountable for any acts committed by one of its agents within his actual or apparent scope of authority and while transacting corporate business." *See In re Pers. & Bus. Ins. Agency*, 334 F.3d 239, 243 (3d Cir. 2003). The Complaint alleges sufficient facts to show that Kirkland caused the recordation of the UCC-1 financing statement within the scope of his authority as an agent of EPD. The Complaint contains numerous allegations showing that Kirkland had authority to act on EPD's behalf—see, for example, Complaint at ¶41 (Kirkland served as outside counsel for EPD and Pressman since the formation of EPD, and is a fiduciary and insider of the Debtors); ¶30d (Kirkland arranged for the Pressmans, through EPD, to make monthly payments for Kirkland's mortgage to Union Bank of California); ¶30f (at the direction and consent of Pressman, Kirkland formed HMB Holdings in order to hinder EPD's unsecured creditors); ¶30e (Kirkland defended suits on behalf of EPD and Pressman without a good faith basis to do so); and ¶37 (Kirkland contested the involuntary

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bankruptcy petition against EPD notwithstanding his knowledge of EPD's insolvency). Therefore, the Complaint sufficiently alleges that the Debtors, acting through Kirkland, caused the transfer of assets to the BC Trust.

Defendants argue that the BC Trust cannot be held liable based on actions committed by Kirkland because the BC Trust, as an irrevocable trust, is not liable for the actions of its settlor. The Complaint does not allege that the BC Trust is an irrevocable trust, so this argument goes beyond the four corners of the Complaint and is not appropriately raised in the context of a motion to dismiss. Further, the Court does not find the argument persuasive. In *Goodrich v. Briones (In re Schwarzkopf)*, the Ninth Circuit held that a bankruptcy trustee could avoid the fraudulent transfer of assets to an irrevocable trust. 626 F.3d 1032 (9th Cir. 2010). The *Schwarzkopf* court noted that "a trust created for the purpose of defrauding creditors or other persons is illegal and may be disregarded." 626 F.3d at 1037. The Complaint sufficiently alleges that the BC Trust was created for the purpose of defrauding creditors.

The Complaint States a Claim for Avoidance of Constructively Fraudulent Transfers as to the BC Trust

Section 548(a)(1)(B) permits the trustee to avoid a transfer if the Debtor "received less than a reasonably equivalent value in exchange for such transfer" and if the Debtor:

1. was insolvent on the date that such transfer was made ... or became insolvent as a result of such transfer ...;
2. was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
3. intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debtors matured; or
4. made such transfer to or for the benefit of an insider ... under an employment contract and not in the ordinary course of business.

Section 544(b) permits the trustee to avoid transfers of the debtor under applicable state law. Cal. Civ. Code §3439.05, which is substantially identical to §548(a)(1)(B), provides that a "transfer made ... by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made ... if the debtor made the transfer ... without receiving reasonably equivalent value in exchange for the transfer ... and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer."

Civil Rule 9(b)'s heightened pleading standard "does not apply to claims for

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avoidance of constructively fraudulent transfers because such claims are not based on actual fraud but instead rely on the debtor's financial condition and the sufficiency of consideration provided by the transferee." *Angell v. Haveri (In re Caremerica, Inc.)*, 409 B.R. 346, 353 (Bankr. E.D.N.C. 2009).

The Complaint sufficiently alleges that the Debtors did not receive reasonably equivalent value for the transfer. The Complaint alleges that Kirkland loaned or invested \$150,000 to EPD, ¶29. The Complaint alleges that the financing statement against the assets of EPD and Pressman that Kirkland caused to be recorded in favor of the BC Trust was in the amount of \$2 million, ¶30k. Recordation of a secured interest in the amount of \$2 million, based upon a loan or investment of \$150,000 to a company that was never profitable, is not reasonably equivalent value.

The Complaint sufficiently alleges that the Debtors were insolvent at the time of the transfer. *See* Complaint at ¶¶20–21 ("The Trustee is informed and believes and based thereon alleges that EPD was insolvent on a balance sheet basis from at least December 31, 2003, according to EPD's tax returns filed with the Internal Revenue Service. EPD's capital account/partners' equity (EPD's assets less liabilities) started at (\$1,191,312) as of December 31, 2003, and by December 31, 2008 was (\$21,521,893). The negative equity increased to (\$38,209,405) as of the date of the involuntary bankruptcy petition against EPD (based on EPD's Statements and Schedules showing \$32,278,078 in assets and \$70,487,483 in liabilities). The Trustee is informed and believes and based thereon alleges that EPD's tax returns also show that since its formation in mid-2003, EPD has never been profitable. The tax returns show net losses as follows: (\$1,356,192) for 2003 (between its formation and the end of 2003), (\$3,223,395) for 2004, (\$1,990,744) for 2005, (\$5,131,269) for 2006, (\$584,301) for 2007 and (\$573,412) for 2008. According to its tax returns, EPD had a cumulative net loss of (\$12,859,313) during fiscal years 2003-2008. EPD did not file any tax returns for fiscal years 2009-2011."). Accordingly, the Complaint states a claim for avoidance of constructively fraudulent transfers under both §548(a)(1)(B) and §544(b) (applying Cal. Civ. Code §3439.05).

The Complaint Does Not State a Claim for Relief Against Poshow Ann Kirkland Individually

The Complaint contains no allegations of wrongdoing by Poshow Kirkland in her capacity as an individual. All of the allegations pertain to wrongdoing allegedly committed by the BC Trust. In fact, the Trustee acknowledges that the precise wrongdoing allegedly committed by Poshow Ann Kirkland will not be known until

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the Trustee conducts discovery. *See* Opposition at 22 (“[T]he exact nature and controlling provisions of the BC Trust, as opposed to the actions taken by Mrs. Kirkland as an individual, will not be known until the Trustee conducts discovery”).

Under *Iqbal*, a complaint must contain “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 U.S. at 678. A complaint that permits the court to infer “only the mere possibility of misconduct” cannot survive a motion to dismiss. *Id.* Here, the Complaint does not allege any specific wrongdoing committed by Poshow Kirkland, leaving the Court to infer “only the mere possibility of misconduct” based on Poshow’s relationship to John Kirkland. The Complaint as to Poshow Kirkland in her capacity as an individual is dismissed, but the Trustee is given leave to amend. An amended complaint must be filed by no later than August 12, 2016.

Conclusion

Based upon the foregoing, the Motion to Dismiss is denied with respect to all claims for relief against Poshow Ann Kirkland as Trustee of the BC Trust. The Complaint is dismissed as to Poshow Kirkland individually, but the Trustee is given leave to amend. An amended complaint must be filed by no later than August 12, 2016.

The Trustee 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 James Yu 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

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Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

John C Kirkland, individually	Represented By Aleksandra Zimonjic Michael I Gottfried
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John C Kirkland, as Trustee of the	Pro Se
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Poshow Ann Kirkland, as Trustee of	Represented By Ashley M McDow Scott C Timpe
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Poshow Ann Kirkland, individually	Represented By Ashley M McDow
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Poshow Ann Kirkland, as Trustee of	Pro Se
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Interested Party(s):

Courtesy NEF	Represented By Corey R Weber
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Plaintiff(s):

Jason M Rund, Chapter 7 Trustee	Represented By Larry W Gabriel Corey R Weber
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Represented By
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Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#6.00 Status Hearing RE: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

Docket 1

Tentative Ruling:

7/11/2016:

The court has reviewed the joint status report.

Based upon the Report, the Court ORDERS the dates set forth as follows:

Discovery cut-off: February 28, 2017

Pretrial: March 14, 2017 at 11:00 a.m.

Trial: During the Week of March 27, 2017. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The trial day begins at 9:00 a.m.

Plaintiff shall lodge a scheduling order.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

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

No appearance is required if submitting on the court's tentative ruling. If submitting on the tentative, please contact Daniel Koontz or James Yu at 213-894-1522 no later than 1 hour prior to the hearing.

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

UNION BANK, N.A., a national	Represented By Byron B Mauss
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Union Bank, N.A.	Pro Se
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Plaintiff(s):

JASON M. RUND	Represented By Ronald P Abrams Michael W Davis
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Trustee(s):

Jason M Rund (TR)	Represented By Corey R Weber Robert A Hessling Richard K Diamond Daniel H Gill Michael W Davis Steven T Gubner Ronald P Abrams
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Jason M Rund (TR)

Represented By
Ronald P Abrams
Corey R Weber
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

2:15-16771 David Mollahassani

Chapter 7

Adv#: 2:16-01191 Avery v. Nextgear Capital, Inc., a Delaware Corporation,

#7.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01191. Complaint by Wesley H Avery against Nextgear Capital, Inc., a Delaware Corporation,. (Charge To Estate). Violation of 11 U.S.C. Section 362(a) and damages pursuant to 11 U.S.C. 362(k) Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: DISMISSED 6-15-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Mollahassani

Represented By

Art Hoomiratana - SUSPENDED -
Dennis A Rasmussen
Phillip Myer

Defendant(s):

Nextgear Capital, Inc., a Delaware

Pro Se

Joint Debtor(s):

Grace Fernandez

Represented By

Art Hoomiratana - SUSPENDED -
Dennis A Rasmussen
Phillip Myer

Plaintiff(s):

Wesley H Avery

Represented By

Stella A Havkin

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

CONT... David Mollahassani

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

Wesley H Avery (TR)

Represented By
Stella A Havkin

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

2:15-17179 William S Chang

Chapter 7

Adv#: 2:16-01024 United States Trustee (LA) v. Chang

#8.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01024. Complaint by United States Trustee (LA) against William S Chang. (Fee Not Required). Complaint to Revoke Defendant's Discharge Pursuant to 11 U.S.C. sections 727(a)(4)(A) and (D), 727(a)(5) and 727(d)(4)(B); Adversary Cover Sheet; Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Lau, Kenneth)

fr. 4-12-16

Docket 1

***** VACATED *** REASON: MOTION FOR DEFAULT JUDGMENT
GRANTED AT 6-9-16 HEARING**

Tentative Ruling:

4/11/2016

Continued to July 12, 2016 at 10:00 a.m.

Party Information

Debtor(s):

William S Chang Pro Se

Defendant(s):

William S Chang Pro Se

Plaintiff(s):

United States Trustee (LA) Represented By
Kenneth G Lau

Trustee(s):

Rosendo Gonzalez (TR) Pro Se
Rosendo Gonzalez (TR) Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

CONT... William S Chang

Chapter 7

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

2:15-27357 JOSEPHINE TAN LAO

Chapter 7

Adv#: 2:16-01187 LAO v. Avery

#9.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01187. Complaint by JOSEPHINE TAN LAO against Wesley H Avery. (Fee Not Required). (Attachments: # 1 Exhibit # 2 Exhibit) Nature of Suit: (72 (Injunctive relief - other)) (Marin, Victor)

Docket 1

***** VACATED *** REASON: DISMISSED 7-6-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JOSEPHINE TAN LAO

Represented By
Mariano A Alvarez
Victor A Marin

Defendant(s):

Wesley H Avery

Pro Se

Plaintiff(s):

JOSEPHINE TAN LAO

Represented By
Victor A Marin

Trustee(s):

Wesley H Avery (TR)

Represented By
Charles Shamash
Joseph Caceres

Wesley H Avery (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

2:15-17429 General Imaging Company

Chapter 11

#10.00 Post Confirmation Status Conference re Chapter 11 plan

fr. 2-16-16

Docket 0

Tentative Ruling:

7/11/2016:

No appearance is required.

This is the first post-confirmation status conference. The Court issued an Order to Comply with the Local Bankruptcy Rule 3020-1(b) directing the Debtor to file a post-confirmation status report by July 5, 2016 ("Status Report"). Doc. No. 76. The Debtor filed the Status Report on June 29, 2016. Doc. No. 79. Upon review of the Status Report, the Court continues the status conference to August 24, 2016 at 10:00 a.m. A further post-confirmation status report is due fourteen days prior to the hearing.

Party Information

Debtor(s):

General Imaging Company

Represented By
M Jonathan Hayes

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

Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls LLC v. HCL 2011, LLC, a California limited liability

#11.00 Status Hearing

RE: [13] Amended Complaint by Ian Landsberg on behalf of Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian)

fr. 6-8-16

Docket 13

Tentative Ruling:

7/11/2016

The Court has reviewed the individual status conference statements. **The following dates will apply to the related counterclaim as well and the dates previously set in that matter are VACATED:**

Discovery cut-off: March 31, 2017

Pretrial: April 11, 2017 at 11:00 a.m.

Trial: During the Week of April 24, 2017. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The trial day begins at 9:00 a.m.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

10:00 AM

CONT... Crystal Waterfalls LLC

Chapter 11

Plaintiff shall lodge a scheduling order for this action and the counter-claim.

No appearance is required if submitting on the court's tentative ruling. If submitting on the tentative, please contact Daniel Koontz or James Yu at 213-894-1522 no later than 1 hour prior to the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC, a California limited

Pro Se

Interested Party(s):

Interested Party

Represented By
Lei Lei Wang Ekvall
Kyra E Andrassy
Raymond H Aver

Plaintiff(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:09-35755 Mojgan Boodaie

Chapter 7

Adv#: 2:15-01617 Farad Rashti and Mahnaz Rashti, as Individuals, an v. Boodaie et al

#100.00 Pre-Trial Conference

RE: [1] Adversary case 2:15-ap-01617. Complaint by Farad and Mahnaz Rashti against Mojgan Boodaie, Joseph Boodie. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(65 (Dischargeability - other)) (Walker, Holly)

Docket 1

***** VACATED *** REASON: CONTINUED 10-18-16 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mojgan Boodaie

Represented By
Stephen F Biegenzahn

Defendant(s):

Mojgan Boodaie

Pro Se

Joseph Boodie

Pro Se

Plaintiff(s):

Farad Rashti and Mahnaz Rashti, as

Represented By
Holly Walker

Trustee(s):

Sam S Leslie (TR)

Represented By
Sam S Leslie
Carolyn A Dye

David A Gill (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... Mojgan Boodaie

Chapter 7

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#101.00 Pre-Trial Conference: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 7-18-13; 10-17-13; 3-6-14; 5-8-14; 7-10-14; 10-16-14; 1-22-15; 5-12-15; 9-15-15; 1-12-16; 4-12-16

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE SET FOR TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

UNION BANK, N.A., a national Pro Se

Plaintiff(s):

JASON M. RUND Represented By
Ronald P Abrams

Trustee(s):

Jason M Rund (TR) Pro Se

Jason M Rund (TR) Represented By
Corey R Weber
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Richard K Diamond
Daniel H Gill
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:12-26943 James Gibson and Cassandra L Gibson

Chapter 7

#102.00 Hearing re [43] and [52] Motion to Avoid Lien Judicial Lien with First National Bank of Omaha, a National Banking Association

Docket 0

***** VACATED *** REASON: CONTINUED 8-16-16 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Gibson

Represented By
Bradley E Brook
Timothy Quick

Joint Debtor(s):

Cassandra L Gibson

Represented By
Bradley E Brook
Timothy Quick

Trustee(s):

David A Gill (TR)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#103.00 Pre-Trial Conference
RE: [55] Amended Complaint by Robert J Berens on behalf of Great American Insurance Company against **Ramin Emami**. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Berens, Robert)

FR. 5-10-16

Docket 55

*** VACATED *** REASON: PER ORDER ENTERED 5-26-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Represented By
Baruch C Cohen

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... Ramin Emami

Chapter 7

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#104.00 Pre-Trial Conference
RE: [56] Amended Complaint by Robert J Berens on behalf of Great American Insurance Company against **Vicki Ann Emami**. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Berens, Robert)

FR. 5-10-16

Docket 56

***** VACATED *** REASON: PER ORDER ENTERED 5-26-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Represented By
Baruch C Cohen

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... Ramin Emami

Chapter 7

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:14-11252 Cynthia Darlene Rocker

Chapter 7

Adv#: 2:14-01134 Simon v. Rocker

#105.00 PRETRIAL

RE: [1] Adversary case 2:14-ap-01134. Complaint by Arnold H Simon against Cynthia Darlene Rocker . fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Moulton, Sheila)

fr. 12-18-14; 5-12-15; 10-13-15; 1-12-16; 4-12-16

Docket 1

***** VACATED *** REASON: CONTINUED 8-9-16 AT 11:00 A.M.**

Tentative Ruling:

5/11/2015

Based upon the joint status conference statement, the following dates are ORDERED;

Discovery cut-off: September 30, 2015

Pretrial: October 13, 2015 at 11:00 a.m.

Trial: During the Week of October 26, 2015. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The trial day begins at 9:00 a.m.

Plaintiff shall lodge a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If submitting on the tentative, please contact the judge's law clerk, Jessica Vogel at 213-894-0294 no later than 1 hour prior to the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... Cynthia Darlene Rocker

Chapter 7

Party Information

Debtor(s):

Cynthia Darlene Rocker

Represented By
George J Paukert

Defendant(s):

Cynthia Darlene Rocker

Pro Se

Plaintiff(s):

Arnold H Simon

Represented By
Timothy C Aires

Trustee(s):

Sam S Leslie (TR)

Pro Se

Sam S Leslie (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-16111 Jung Hee Choi

Chapter 7

Adv#: 2:15-01381 DOOIN INDUSTRIAL CORPORATION, a foreign corporatio v. Choi

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:15-ap-01381. Complaint by DOOIN INDUSTRIAL CORPORATION, a foreign corporation against Jung Hee Choi. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

fr. 3-8-16

Docket 1

***** VACATED *** REASON: CONTINUED 10-18-16 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jung Hee Choi

Represented By
Kelly K Chang

Defendant(s):

Jung Hee Choi

Pro Se

Plaintiff(s):

DOOIN INDUSTRIAL

Represented By
Nico N Tabibi

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

Brad D Krasnoff (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-16146 Sun Kyung Lee

Chapter 7

Adv#: 2:15-01387 DOOIN INDUSTRIAL CORPORATION, a foreign corporatio v. Lee

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:15-ap-01387. Complaint by DOOIN INDUSTRIAL CORPORATION, a foreign corporation against Sun Kyung Lee. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Tabibi, Nico)

FR. 3-8-16

Docket 1

***** VACATED *** REASON: CONSOLIDATED WITH LEAD CASE
2:15-ap-01381-ER. PRETRIAL ON LEAD CASE 7-12-16 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sun Kyung Lee

Represented By
Kelly K Chang

Defendant(s):

Sun Kyung Lee

Pro Se

Plaintiff(s):

DOOIN INDUSTRIAL

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

Peter J Mastan (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

CONT... Sun Kyung Lee

Chapter 7

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-17887 Edward Leon Guy, III

Chapter 7

Adv#: 2:15-01567 Guy III v. AT&T,Corporation et al

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:15-ap-01567. Complaint by Edward Leon Guy III against AT&T,Corporation , Does 1 to 100, Inclusive . (Fee Not Required). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Serrano, Vera) Additional attachment(s) added on 10/29/2015 (Serrano, Vera).

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-19-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Leon Guy III	Pro Se
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Defendant(s):

AT&T,Corporation	Pro Se
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Does 1 to 100, Inclusive	Pro Se
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Plaintiff(s):

Edward Leon Guy III	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Pro Se
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U.S. Trustee(s):

United States Trustee (LA)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-17887 Edward Leon Guy, III

Chapter 7

Adv#: 2:15-01607 Guy, III v. First Premier Bank et al

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:15-ap-01607. Complaint for Damages by Edward Leon Guy III against First Premier Bank , Does 1 to 100 . (Fee Not Required). Nature of Suit: (91 (Declaratory judgment) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Mendoza, Maria Patricia)

Docket 1

***** VACATED *** REASON: DISMISSED 3-11-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Leon Guy III	Pro Se
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Defendant(s):

First Premier Bank	Pro Se
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Does 1 to 100	Pro Se
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Plaintiff(s):

Edward Leon Guy III	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Pro Se
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U.S. Trustee(s):

United States Trustee (LA)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-22478 Toby John Grear

Chapter 7

Adv#: 2:15-01586 Jones v. Grear

#110.00 Pre-Trial Conference

RE: [1] Adversary case 2:15-ap-01586. Complaint by Jessica Jones against Toby John Grear . (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera) CORRECTION: Nature of suit added to CM/ECF is 424 (Obj/Revocation Discharge 727); Modified on 11/13/2015 (Evangelista, Maria).

Docket 1

*** VACATED *** REASON: AMENDED COMPLAINT FILED 12-11-15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Toby John Grear

Represented By
Sylvia Lew

Defendant(s):

Toby John Grear

Pro Se

Plaintiff(s):

Jessica Jones

Represented By
Paul E Heidenreich

Trustee(s):

Richard K Diamond (TR)

Pro Se

Richard K Diamond (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-22764 Tillman Pink

Chapter 7

Adv#: 2:15-01591 Weizer v. Pink, III

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:15-ap-01591. Complaint by Isaac Weizer against Tillman Pink III. willful and malicious injury) ,(71 (Injunctive relief - reinstatement of stay)) (Palacio-Garcia, Sabrina)

Docket 1

***** VACATED *** REASON: BANKRUPTCY CASE DISMISSED ON 10-29-15**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tillman Pink

Represented By
Arman Saakyan

Defendant(s):

Tillman Pink III

Pro Se

Plaintiff(s):

Isaac Weizer

Pro Se

Trustee(s):

Alberta P Stahl (TR)

Pro Se

Alberta P Stahl (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

2:15-27598 Leticia Monreal

Chapter 7

#112.00 HearingRE: [24] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Steven Lee and Concord Law (request for injunction) (Maroko, Ron)

Docket 24

Tentative Ruling:

7/11/2016: On the Court's own motion:

Continued to July 19, 2016 at 11:00 a.m.

Party Information

Debtor(s):

Leticia Monreal

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

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

Tuesday, July 12, 2016

Hearing Room 1568

11:00 AM

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

Chapter 11

#113.00 MOVANT: CASTELLINO VILLAS, LLC

Post confirmation status conference

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

Docket 6

Tentative Ruling:

7/11/2016:

Pleadings Filed and Reviewed

No appearances for this hearing.

This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to January 10, 2017 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

Castellino Villas, a K.F. LLC

Represented By
Ron Bender

Movant(s):

Castellino Villas, a K.F. LLC

Represented By
Ron Bender