

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

9:30 AM
8:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Meeting URL: <https://cacb.zoomgov.com/j/1607310868>

Meeting ID: 160 731 0868

Password: 073715

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Smith by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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Judge Erithe A. Smith's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-erithe-smith> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect 10 minutes before your hearing time so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

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- NONE LISTED -

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8:19-13441 Alpha Floors, Inc.

Chapter 7

Adv#: 8:20-01065 Kosmala v. U.S. Customs and Border Protection

#1.00 CON'TD STATUS CONFERENCE RE: Complaint: (1) To Avoid preferential transfer pursuant 11 U.S.C. section 547; (2) For recovery of avoided transfer under 11 U.S.C. section 550; (3) To preserve transfer for the benefit of the Estate pursuant to 11 U.S.C. section 551; (4) Turnover of the property of the Estate pursuant to 11 U.S.C. section 542
[Set per another summons issued on 7/7/2020]

FR: 9-29-20, Rm 5D; 10-1-20; 12-10-20; 2-11-21

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/17/2021 AT 9:30 A.M.,
PER ORDER ENTERED ON 3-18-2021 (XX)**

Courtroom Deputy:

**CONTINUED: Status Conference Continued to 6/17/2021 at 9:30 a.m., Per
Order Entered 3/18/2021 (XX) - td (3/19/2021)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alpha Floors, Inc.

Represented By
Eric J Fromme

Defendant(s):

U.S. Customs and Border Protection

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden
Reem J Bello
Ryan W Beall

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CONT... Alpha Floors, Inc.

Chapter 7

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello

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8:20-11898 Louis Sandoval

Chapter 7

Adv#: 8:20-01110 Myers v. Sandoval

#2.00 Hearing RE: Plaintiff's Motion for Default Judgment Under LBR 7055-1

Docket 19

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Continue this hearing to May 11, 2021 at 2:00 p.m., same date and time as the hearing on Defendant's motion to dismiss the adversary so that all matters can be heard in the same hearing. (XX)

Note: No appearances for the April 15, 2021 hearing are required.

Party Information

Debtor(s):

Louis Sandoval

Represented By
Steven B Lever

Defendant(s):

Louis Sandoval

Pro Se

Plaintiff(s):

Charlotte Cysner Myers

Pro Se

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:20-11898 Louis Sandoval

Chapter 7

Adv#: 8:20-01110 Myers v. Sandoval

#3.00 CON'TD STATUS CONFERENCE RE: Complaint to Object to Debtor's Discharge and Complaint to Determine Non-Dischargeability of Debt Under Section 523(A) (2) of The Bankruptcy Code and For Denial of Discharge Under Section 727(A)(4) of The Bankruptcy Code (Another Summons Issued 10/30/2020)

FR: 1-14-21

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

January 14, 2021

No answer or other response to the Complaint has been filed by the defendant, Louis Sandoval. Accordingly, this Status Conference will be continued to April 15, 2021 at 9:30 a.m. to allow Plaintiff to file a motion for entry of a default judgment against the defendant which provides evidence to support the required elements of fraud under Bankruptcy Code Section 523(a)(2)(A). (XX)

Special Note:

A motion for default judgment may self-calendared for the same date/time as the continued Status Conference date. Alternatively, the motion may be filed without a hearing pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).

The motion for default judgment, supported by evidence, must be served on defendant and defendant's counsel in accordance with Local Rule 9013-1(d). If the motion for default judgment is not heard by the continued date of the Status Conference, **THE ADVERSARY MAY BE DISMISSED** at the Status

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CONT... Louis Sandoval

Chapter 7

Conference for failure to prosecute.

The court strongly suggests that Plaintiff seek legal counsel regarding the preparation of a motion for default judgment.

Note: If Plaintiff accepts the foregoing tentative ruling, appearance at today's hearing is not required; Plaintiff to serve the defendant by mail with notice of the continued hearing date/time.

April 15, 2021

Continue this hearing to May 11, 2021 at 2:00 p.m., same date and time as the hearing on Defendant's motion to dismiss the adversary so that all matters can be heard in the same hearing. (XX)

Note: No appearances for the April 15, 2021 hearing are required.

Party Information

Debtor(s):

Louis Sandoval

Represented By
Steven B Lever

Defendant(s):

Louis Sandoval

Pro Se

Plaintiff(s):

Charlotte Cysner Myers

Pro Se

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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10:00 AM

8:12-18188 Luis Savastano

Chapter 7

Adv#: 8:13-01220 Bobinski v. Savastano

#4.00 CON'TD Third Person Examination of Dominic Savastano RE: Enforcement of Judgment

FR: 12-5-19; 1-16-20; 3-19-20; 4-30-20; 7-23-20; 10-22-20; 1-21-21

Docket 183

***** VACATED *** REASON: OFF CALENDAR: Order to Vacate Orders for Appearance and Examination of Guadalupe Savastano and Dominc Savastano Entered 3/16/2021**

Courtroom Deputy:

OFF CALENDAR: Order to Vacate Orders for Appearance and Examination of Guadalupe Savastano and Dominc Savastano Entered 3/16/2021 - td (3/16/2021)

Tentative Ruling:

December 5, 2019

Examinee Dominic Savastano to appear in court for swearing in by the courtroom clerk; the examination will thereafter proceed outside the courtroom.

January 16, 2020

Examinee Dominic Savastano to appear in court for swearing in by the courtroom clerk; the examination will thereafter proceed outside the courtroom

March 19, 2020

Continue his matter to April 30, 2020 at 10:00 a.m. in light of special pandemic policy in effect. The parties are, however, free to stipulate to an

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CONT... **Luis Savastano**

Chapter 7

examination outside the courthouse prior to April 30, 2020. (XX)

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required.

April 30, 2020

Continue his matter to July 23, 2020 at 10:00 a.m. in light of the special pandemic policy in effect. The parties are, however, free to stipulate to an examination outside the courthouse via video conference or otherwise prior to July 23, 2020. (XX)

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required. Nonappearance at the hearing will be deemed acceptance of the tentative ruling.

July 23, 2020

Continue his matter to Oct. 22, 2020 at 10:00 a.m. in light of the special pandemic policy in effect. The parties are, however, free to stipulate to an examination outside the courthouse via video conference or otherwise prior to Oct. 22, 2020. (XX)

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required. Nonappearance at the hearing will be deemed acceptance of the tentative ruling.

October 22, 2020

[Special Notice: This hearing is being conducted by Zoomgov. See the first page of the calendar for today's hearings for participation details.]

Once the witness has been sworn in by the Court Clerk, the parties will be placed in a separate Zoom break-out room for the examination scheduled for

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CONT... Luis Savastano
today.

Chapter 7

January 21, 2021

Continue the third party judgment debtor examination **one final time** to April 15, 2021 at 10:00 a.m.; if Judgment Creditor intends to pursue an Order to Show Cause, then she must file and serve a proper motion in accordance with Local Bankruptcy Rule 9020-1; she must also serve the examinees with proper Zoom notice of the continued hearing. (XX)

Additional Comments:

1. Judgment Creditor was advised by the court's courtroom deputy on 1/5/21 that a proper motion had not been filed and, to date, no motion has been filed.
2. Judgment Creditor did not serve the examinees with Zoom notice of the hearing.
3. This matter will be taken off calendar if Judgment Creditor continues to failure to properly prosecute this matter.

Note: If Judgment Creditor accepts the foregoing tentative ruling, appearance at this hearing is not required.

Party Information

Debtor(s):

Luis Savastano

Represented By
Nathan Fransen

Defendant(s):

Luis Savastano

Represented By
Nathan Fransen

Plaintiff(s):

Richard Bobinski

Represented By

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CONT... Luis Savastano

Crystal Bergstrom

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Karen S Naylor (TR)

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8:12-18188 Luis Savastano

Chapter 7

Adv#: 8:13-01220 Bobinski v. Savastano

#5.00 CON'TD Third Person Examination of Guadalupe (Lupe) Savastano RE:
Enforcement of Judgment

FR: 9-12-19; 11-19-19; 1-16-20; 3-19-20; 4-30-20; 7-23-20; 10-22-20; 1-21-21

Docket 175

***** VACATED *** REASON: OFF CALENDAR: Order to Vacate Orders
for Appearance and Examination of Guadalupe Savastano and Dominc
Savastano Entered 3/16/2021**

Courtroom Deputy:

**OFF CALENDAR: Order to Vacate Orders for Appearance and
Examination of Guadalupe Savastano and Dominc Savastano Entered
3/16/2021 - td (3/16/2021)**

Tentative Ruling:

September 12, 2019

Examinee Guadalupe Savastano to appear in court to be sworn in by the
court clerk. Thereafter, the examination will take place outside the courtroom

November 19, 2019

Continued to Jan. 16, 2020 at 10:30 a.m. per stipulation of the parties. (XX)

March 19, 2020

Continue his matter to April 30, 2020 at 10:00 a.m. in light of special
pandemic policy in effect. The parties are, however, free to stipulate to an
examination outside the courthouse prior to April 30, 2020. (XX)

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CONT... Luis Savastano

Chapter 7

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required.

April 30, 2020

Continue his matter to July 23, 2020 at 10:00 a.m. in light of the special pandemic policy in effect. The parties are, however, free to stipulate to an examination outside the courthouse via video conference or otherwise prior to July 23, 2020. (XX)

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required. Nonappearance at the hearing will be deemed acceptance of the tentative ruling.

July 23, 2020

Continue his matter to Oct. 22, 2020 at 10:00 a.m. in light of the special pandemic policy in effect. The parties are, however, free to stipulate to an examination outside the courthouse via video conference or otherwise prior to Oct. 22, 2020. (XX)

Note: If the parties accept the foregoing tentative ruling, appearances at this hearing are not required. Nonappearance at the hearing will be deemed acceptance of the tentative ruling.

October 22, 2020

[Special Notice: This hearing is being conducted by Zoomgov. See the first page of the calendar for today's hearings for participation details.]

Once the witness has been sworn in by the Court Clerk, the parties will be placed in a separate Zoom break-out room for the examination scheduled for today.

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CONT... Luis Savastano

Chapter 7

January 21, 2021

Continue the third party judgment debtor examination **one final time** to April 15, 2021 at 10:00 a.m.; if Judgment Creditor intends to pursue an Order to Show Cause, then she must file and serve a proper motion in accordance with Local Bankruptcy Rule 9020-1; she must also serve the examinees with proper Zoom notice of the continued hearing. (XX)

Additional Comments:

1. Judgment Creditor was advised by the court's courtroom deputy on 1/5/21 that a proper motion had not been filed and, to date, no motion has been filed.
2. Judgment Creditor did not serve the examinees with Zoom notice of the hearing.
3. This matter will be taken off calendar if Judgment Creditor continues to failure to properly prosecute this matter.

Note: If Judgment Creditor accepts the foregoing tentative ruling, appearance at this hearing is not required.

Party Information

Debtor(s):

Luis Savastano

Represented By
Nathan Fransen

Defendant(s):

Luis Savastano

Represented By
Nathan Fransen

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CONT... Luis Savastano

Chapter 7

Movant(s):

Judicial Judgment Enforcement

Represented By
Crystal Bergstrom

Plaintiff(s):

Richard Bobinski

Represented By
Crystal Bergstrom

Trustee(s):

Karen S Naylor (TR)

Represented By
Karen S Naylor (TR)

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10:00 AM

8:20-12607 Jose J Sanchez

Chapter 13

#6.00 Hearing RE: Motion for relief from the automatic stay [REAL PROPERTY]

U.S. BANK NA

VS.

DEBTOR

Docket 42

Courtroom Deputy:

SPECIAL NOTE: Supplemental notice of hearing to be held remotely using Zoomgov audio and video, fld. 3/19/21, dkt #43 (RE: 4/15/21 hrg.) - td (3/22/2021)

Tentative Ruling:

April 15, 2021

[UPDATED SINCE ORIGINAL POSTING TO REFLECT LATE OPPOSITION FILED BY DEBTOR]

Though no proof of payments is attached to the late Opposition, if Movant agrees that Debtor is now current on payments, the court will grant a standard adequate protection order 1) requiring that Debtor remain current and 2) allowing Movant to file a declaration re nonpayment along with a proposed order granting immediate relief from the stay if Debtor fails to timely make a payment within the contractual grace period in the future.

Note: If the parties accept the foregoing tentative ruling, appearances at today's hearing are not required.

Note: This matter appears to be uncontested. Accordingly, no court

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CONT... Jose J Sanchez

Chapter 13

appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Jose J Sanchez

Represented By
Gary Polston

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
JaVonne M Phillips
Nancy L Lee

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:20-12607 Jose J Sanchez

Chapter 13

#6.10 CON'TD Hearing RE: Amended Motion for Relief from Stay

VEROS CREDIT, LLC

VS.

DEBTOR

FR: 2-11-21; 3-4-21; 4-1-21

Docket 35

***** VACATED *** REASON: OFF CALENDAR: Order Approving APO
Entered 4/13/21**

Courtroom Deputy:

OFF CALENDAR: Order Approving APO Entered 4/13/21- mp/td(4/13/21)

Tentative Ruling:

February 11, 2021

Grant with 4001(a)(3) waiver; deny relief request #7 as Movant has provided no evidence or grounds for extraordinary relief.

Basis for Tentative Ruling:

Movant seeks an order making it effective for two years -- essentially requesting relief under 362(d)(4) without meeting the requirement for such relief as set forth in 362(d)(4) (e.g., multiple filings or transfer of property).

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required if Movant accepts the tentative ruling. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

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CONT... Jose J Sanchez
March 4, 2021

Chapter 13

Movant to advise the court re the status of this matter. If more time is needed to finalize the adequate protection order, a further continuance may be requested during the Clerk's calendar roll call prior to the commencement of the hearing. Available continued dates: March 11, 2021, April 1, 2021, April 8, 2021 or April 22, 2021 at 10:00 a.m.

April 1, 2021

No APO has been filed. Continue hearing one final time to April 15, 2021 at 10:00 a.m. (XX)

Note: Appearances not required if the parties accept the foregoing tentative ruling; Movant to serve notice of the continued hearing date/time.

April 15, 2021

Take this matter off calendar in light of APO stipulation filed 4/12/21

Note: Appearances at this hearing are not required; Movant's counsel to lodge an adequate protection order within 7 days of the hearing.

Party Information

Debtor(s):

Jose J Sanchez

Represented By
Gary Polston

Movant(s):

Veros Credit, LLC

Represented By
Robert M Tennant

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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CONT... Jose J Sanchez

Chapter 13

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Thursday, April 15, 2021

Hearing Room 5A

10:00 AM

8:21-10279 Jay Chihwan Jung

Chapter 13

#7.00 Hearing RE: Motion for relief from the automatic stay [REAL PROPERTY]
PRIME BUSINESS CREDIT, INC.
VS.
DEBTOR

Docket 34

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant motion with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Jay Chihwan Jung

Represented By
Jaenam J Coe

Movant(s):

Prime Business Credit, Inc.

Represented By
Maria L Garcia
Aviram Edward Muhtar

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CONT... Jay Chihwan Jung

Scott Lee

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:21-10493 Teresa Beazley

Chapter 7

#8.00 Hearing RE: Motion for relief from the automatic stay [PERSONAL PROPERTY]
TOYOTA LEASE TRUST
VS.
DEBTOR

Docket 11

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant motion with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Teresa Beazley

Represented By
Timothy McFarlin

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Austin P Nagel

Trustee(s):

Thomas H Casey (TR)

Pro Se

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CONT... Teresa Beazley

Chapter 7

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10:00 AM

8:21-10572 Ronaldo Marquez and Cristina Marquez

Chapter 13

#9.00 Hearing RE: Motion for relief from the automatic stay [PERSONAL PROPERTY]
BRIDGECREST CREDIT COMPANY, LLC
VS.
DEBTORS

Docket 22

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Ronaldo Marquez

Represented By
Stephen L Burton

Joint Debtor(s):

Cristina Marquez

Represented By
Stephen L Burton

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CONT... Ronaldo Marquez and Cristina Marquez

Chapter 13

Movant(s):

Bridgecrest Credit Company, LLC

Represented By
Erica T Loftis Pacheco

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:19-10898 Alicia K Pipitone

Chapter 13

Adv#: 8:19-01108 Pipitone v. Choice Motor Credit, LLC

#10.00 Hearing RE: Motion to Withdraw as Plaintiff's Counsel

Docket 78

***** VACATED *** REASON: OFF CALENDAR: Voluntary Dismissal of Motion to Withdraw as Counsel filed 4/14/2021**

Courtroom Deputy:

OFF CALENDAR: Voluntary Dismissal of Motion to Withdraw as Counsel filed 4/14/2021 - td (4/14/2021)

Tentative Ruling:

April 15, 2021

Continue hearing to May 20, 2021 at 10:30 a.m. to allow Movant to correct service issue: Debtor was not served with the Motion. However, if Movant is able to file an amended proof of service showing timely service of the Motion to Debtor within 24 hours of today's hearing, the Motion will be granted and the May 20, 2021 hearing will be taken off calendar.

Note: If Movant accepts the foregoing tentative ruling, appearance at today's hearing is not required.

Party Information

Debtor(s):

Alicia K Pipitone

Represented By
Marc A Goldbach

Defendant(s):

Choice Motor Credit, LLC

Represented By
Misty A Perry Isaacson

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10:30 AM

CONT... Alicia K Pipitone

Chapter 13

Plaintiff(s):

Alicia Pipitone

Represented By
Douglas A. Crowder

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:30 AM

8:20-10127 Milan & Sahadev Inc.

Chapter 7

#11.00 Hearing RE: Trustee's Final Report and Application for Final Fees and Expenses

[RICHARD A. MARSHACK, CHAPTER 7 TRUSTEE]

Docket 38

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Milan & Sahadev Inc.

Represented By
John R Setlich

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

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10:30 AM

8:20-10127 Milan & Sahadev Inc.

Chapter 7

#12.00 Hearing RE: Application for Payment of Final Fees and/or Expenses

**[DONALD W. SIEVEKE, ATTORNEY FOR RICHARD A. MARSHACK,
CHAPTER 7 TRUSTEE]**

Docket 34

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Milan & Sahadev Inc.

Represented By
John R Setlich

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-10127 Milan & Sahadev Inc.

Chapter 7

#13.00 Hearing RE: First and Final Application for Compensation for the Period
September 8, 2020 Through December 30, 2020

**[KARL T. ANDERSON CPA, INC., ACCOUNTANTS FOR RICHARD A.
MARSHACK, CHAPTER 7 TRUSTEE]**

Docket 35

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Milan & Sahadev Inc.

Represented By
John R Setlich

Trustee(s):

Richard A Marshack (TR)

Represented By
Donald W Sieveke

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-10262 MESCO, Inc.

Chapter 11

#14.00 Hearing RE: Second Interim Application for Compensation and Reimbursement of Costs

[THE LAW OFFICES OF MICHAEL G. SPECTOR, ATTORNEYS FOR THE REORGANIZED DEBTOR]

Docket 181

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

MESCO, Inc.

Represented By
Michael G Spector
Vicki L Schennum

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-10262 MESCO, Inc.

Chapter 11

**#15.00 CON'TD STATUS CONFERENCE Hearing on Status of Chapter 11 Case; and
(2) Requiring Report on Status of Chapter 11 Case (Holding Date)**

FR: 4-2-20; 9-10-20; 11-5-20; 12-17-20; 2-11-21

Docket 1

***** VACATED *** REASON: OFF CALENDAR: Order Confirming
Debtor's First Amended Chapter 11 Plan of Reorganization, as Modified
Entered 3/9/2021**

Courtroom Deputy:

**OFF CALENDAR: Order Confirming Debtor's First Amended Chapter 11
Plan of Reorganization, as Modified Entered 3/9/2021 - td (3/9/2021)**

Tentative Ruling:

April 2, 2020

Debtor's counsel to advise the court re the status of procuring insurance for the uninsured properties.

Deadline to file plan and disclosure statement is July 25, 2020. Continue status conference to August 20, 2020 at 10:30 a.m. Updated status report must be filed by August 6, 2020 unless a plan and disclosure statement has been filed by such date, in which case the requirement of a status report will be waived.

Note: Appearance at this hearing is required.

September 10, 2020

Continue the status conference to November 5, 2020 at 10:30 a.m.; updated status report not required. (XX)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT... MESCO, Inc.

Chapter 11

Note: Appearance at this hearing is not required.

November 5, 2020

Continue status conference to January 21, 2021 at 10:30 a.m.; updated status report not required.

Note: Appearance at this hearing not required.

December 17, 2020

Continue the status conference to February 11, 2021 at 10:30 a.m. (XX)

February 11, 2021

No tentative ruling. Disposition will depend on the outcome of the confirmation hearing.

Party Information

Debtor(s):

MESCO, Inc.

Represented By
Michael G Spector

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-10566 Eric C. Bryant and Gina K Bryant

Chapter 7

#16.00 Hearing RE: Motion to Approve Compromise with Chapter 7 Trustee, Karen Naylor

Docket 109

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant the Motion.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Eric C. Bryant

Represented By
Christine A Kingston

Joint Debtor(s):

Gina K Bryant

Represented By
Christine A Kingston

Trustee(s):

Karen S Naylor (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-12488 Christopher Summers

Chapter 11

#17.00 Hearing RE: Motion by United States Trustee to Dismiss or Convert Case to One Under Chapter 7 Pursuant to 11 U.S.C. Section 1112(b)

Docket 43

***** VACATED *** REASON: OFF CALENDAR: Voluntary Dismissal of U.S. Trustee's Motion, filed 3/19/2021**

Courtroom Deputy:

OFF CALENDAR: Voluntary Dismissal of U.S. Trustee's Motion, filed 3/19/2021 - td (3/19/2021)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Summers

Represented By
J Scott Williams

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:20-12564 Bryce Allen McGall

Chapter 7

#18.00 Hearing RE: Chapter 7 Trustee's Motion for Order Compelling Turnover of Real Property of the Estate Requiring Vacating of Premises, and Allowing Trustee to Exercise All Legal Remedies to Obtain Possession

Docket 66

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant the Motion -- Debtor and all tenants must vacate the subject property by or before May 21, 2021, or such later time that the parties may agree to.

Basis for Tentative Ruling:

1. Debtor has known since he voluntarily converted the case to chapter 7 on or about January 25, 2021 that a) the property has substantial equity and b) the chapter 7 trustee would have a duty to sell the property and he, therefore, should have started making preparations to move soon thereafter.

2. May 21, 2021 is more than 90 days from the conversion of the case on January 25, 2021 and more than 60 days after the filing of the Motion on March 19, 2021.

Note: If the Trustee and Debtor accept the tentative ruling, appearances at today's hearing are not required.

Party Information

Debtor(s):

Bryce Allen McGall

Represented By
Edmond Richard McGuire

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT... Bryce Allen McGall

Chapter 7

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Erin P Moriarty

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10279 Jay Chihwan Jung

Chapter 13

#19.00 Hearing RE: Debtor's Motion to Avoid Junior Lien on Principal Residence
[Creditor Holding Junior Lien: Prime Business Credit, Inc.]

Docket 30

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Deny the Motion.

Basis for Tentative Ruling

Using Debtor's own figures, Prime's third priority lien is partially secured by Debtor's residence, and, therefore, the lien cannot be stripped under § 506(d) as a matter of law due to the anti-modification statute found in § 1322(b). See *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1224 (9th Cir. 2002) ("The Supreme Court rejected this approach of bifurcation and stripping down, primarily because the debtors' argument failed to consider the fact that § 1322(b)(2) 'focuses on the modification of the 'rights of holders,'... because the creditor's claim was partially secured... it was entitled to the protections of the antimodification clause.")(internal citations omitted)(citing *Nobelman v. Am. Sav. Bank*, 508 U.S. 324 (1993)).

The court further notes that the Guaranty signed by Jung created a debt independent from that of the primary obligor in the event of default.

Party Information

Debtor(s):

Jay Chihwan Jung

Represented By
Jaenam J Coe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT... Jay Chihwan Jung

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10513 Rosa A Fridman

Chapter 7

#20.00 Hearing RE: Creditor Karl Avetoom's Motion to Dismiss Bankruptcy Case Pursuant to 11 U.S.C. Section 707 with 180 Day Bar to Refiling

Docket 14

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Deny the Motion due to insufficient grounds stated therefor.

Basis for Tentative Ruling

Movant has the burden of proving that the case was filed for an improper purpose or in bad faith. Movant has failed to meet that burden in this instance.

Party Information

Debtor(s):

Rosa A Fridman

Represented By
Scott Talkov

Movant(s):

Karl Avetoom

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10513 Rosa A Fridman

Chapter 7

#21.00 Hearing RE: Debtor's Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) [Creditor: Karl Avetoom and Beach Crest Villas Owners Association (Potential Partial Assignee)]

Docket 13

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant the Motion.

Basis for Tentative Ruling

Debtor seeks to avoid 7 judicial liens encumbering the condominium located at 16542 Blackbeard Lane #304, Huntington Beach, CA 92649 (the "Property") under § 522(f)("Motion")[dkt. 13]. Title is currently held by Moisey O. Fridman and Rosa A. Fridman, Trustees of The Fridman Family Trust u/d/t April 14, 2000 ("Trust"), as to an undivided 68.3% interest and Alex Fridman, a single man, as to an undivided 31.7% interest, all as tenants in common. The fair market value of the Property is \$337,687, with \$230,640 (all figures rounded down) representing the fair market value of Debtor's 68.3% interest in the Property. Debtor has claimed a homestead exemption under Code of Civil Procedure §704.730(a) in the amount of \$600,000 ("Homestead Exemption"). As such, Debtor seeks to avoid the following 7 judicial liens which were all recorded in Orange County in favor of creditor Karl Avetoom ("Avetoom"):

<u>Preliminary Exception No.</u>	<u>Judgment Entry Date</u>	<u>Judgment Recording Date</u>	<u>Court</u>	<u>Case</u>
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**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT...

Rosa A Fridman

Chapter 7

"Exception 14"	11/18/11	11/18/11	OC Superior Court	Avetoom v. Mosey and Rosa Fridman (30-2010-003454 90) ("2010 IIED Action")
"Exception 15"	11/18/11	1/17/12	Same	2010 IIED Action
"Exception 17"	8/13/14	9/30/14	Same	2010 IIED Action
"Exception 15-Amendment"	11/18/11	3/11/15	Same	2010 IIED Action
"Exception 18"	3/16/15	3/11/15	Same	2010 IIED Action
"Exception 21"	8/13/20	11/19/20	Same	Avetoom v. Risbrough, et al. (30-2015-008207 60) ("2015 Fraudulent Transfer Action")
"Exception 22"	10/6/20	11/19/20	Same	2015 Fraudulent Transfer Action

Creditors Avetoom [dkt. 16, 22, 33], Charles L. Murray III ("Murray")[dkt. 25], and Victor Balakin [dkt. 30] oppose the Motion.

The procedural objections raised by Murray and Balakin are overruled

As a preliminary matter, LBR 9013-1(f) requires that any opposition to a motion must be filed no later than 14 days before the hearing. Here, the opposition deadline in this case was April 1, 2021. Yet, Avetoom (dkt. 33-filed Apr. 13, 2021), Murray (dkt. 25-filed Apr. 7, 2021), and Balakin (dkt. 30-filed Apr. 12, 2021) all filed untimely oppositions. The court could exercise its discretion to strike these pleadings and not consider them since they were filed after the reply deadline under LBR 9013-1(f). Instead, the court will consider these pleadings by exercising its discretion under in LBR 1001-1(d)

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Santa Ana
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CONT... Rosa A Fridman

Chapter 7

which states, "The court may waive the application of any Local Bankruptcy Rule in any case or proceeding, or make additional orders as it deems appropriate, in the interest of justice."

Similarly, the court will exercise of discretion under LBR 1001-1(d) to overrule the objections raised by Avetoom, Murray, and Balakin regarding Debtor's failure to comply with LBR 4003-2 to file separate motions for each Avetoom lien to be avoided, and failing to serve a copy of the Motion and notice to purported lienholders Murray and Balakin. The court finds that the objecting parties have not been prejudiced by Debtor's procedural deficiencies because only Avetoom's liens are being avoided under the Motion and he had ample opportunity to object, and Murray and Balakin were able to each file their own oppositions which the court will consider. Moreover, if the Motion is granted, Murray and Balakin would appear to benefit from ruling since their purported liens would presumably move up in priority.

The Motion is granted under § 522 (f)

The Ninth Circuit Bankruptcy Appellate Panel summarized the statutory requirements to avoid a lien under § 522(f) as follows:

There are four basic elements to avoiding a lien under §522(f)(1)(A): First, there must be an exemption to which the debtor 'would have been entitled under subsection (b) of this section.' 11 U.S.C. §522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. *In re Goswami*, 304 B.R. 386, 390-1 (9th Cir. BAP 2003) (*citing In re Mohring*, 142 B.R. 389, 392-3 (9th Cir. 1994)). "The debtor has the burden of showing she is entitled to lien avoidance under section 522(f)." *Mohring*, 24 F.3d at 247.

As for the first element, Debtor has demonstrated that she would be entitled to the Homestead Exemption. Debtor has provided her declaration that establishes that she has lived at the Property since it was acquired in 2013 and that her 68.3% interest in the Property is property of the estate, notwithstanding that it was previously placed into a family trust. And Debtor

**United States Bankruptcy Court
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Thursday, April 15, 2021

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CONT... Rosa A Fridman

Chapter 7

has indicated her intent to continue to reside there. See Reply, 22-24; *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336 (BAP 9th Cir. 2016); *But see* Avetoom Opp'n [dkt. 22], 2-3. As for the second element, the Property was listed on Debtor's schedules and claimed as exempt under Code of Civil Procedure § 704.730(a)(2) thereby satisfying the second element. See Mot., 16-17 (page nos. at top of document).

And with regard to the third element, the liens to be avoided, individually and collectively, impair Debtor's Homestead Exemption. The fair market value of Debtor's 68.3% interest in the Property is only \$230,640 and the amount of Debtor's Homestead Exemption is \$600,000. *Goswami*, 304 B.R. at 390 ("Avoidance of a judicial lien may be allowed even if the claimed exemption amount is de minimis."). Thus, the liens to be avoided impair Debtor's Homestead Exemption because Debtor is unable to fully take her \$600,000 exemption in this case. *Avetoom*, relying on *In re Pederson*, 230 B.R. 158, 164 (B.A.P. 9th Cir. 1999), argues that Exceptions 14 and 15 (Part 1) [and Exception 15 Part 2 because it relates back to Exception 15 Part (1)] cannot be avoided because those liens were recorded in 2011 and 2012 and before Debtor acquired her interest in the Property in 2013. See Opp'n [dkt. 22], 4-5. because "A debtor must acquire an interest in property before the judicial lien attaches in order to be able to avoid the lien under § 522(f)(1)." *Pederson, supra*, at 164. The reasoning in that case is that under California law, a judgment lien recorded before a judgment debtor acquires real property attaches simultaneously with the judgment debtor's acquisition of the real property. *Id.* at 163. But this case is unique because, unlike *Pederson*, the automatic stay was in effect at the time Debtor acquired the Property, so the judgment liens could not "attach" to Debtor's property due to § 362(a)(5) which prohibits "any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before commencement of the case under this title." See Reply, 11-14. At best then, Exceptions 14 and 15 (Part 1) [and Exception 15 (Part 2) which relates back as an amendment to Exception (Part 1)] attached on after October 29, 2013 when the automatic stay was lifted, i.e. after Debtor had acquired her interest in the Property in May 2013. And there's no question that the remaining liens, Exceptions 17, 18, 21, and 22 were recorded after 2013 when Debtor acquired the Property. Accordingly, the third element is satisfied for all of the liens to be avoided.

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CONT... Rosa A Fridman

Chapter 7

Finally, with regard to the fourth element, all of the liens to be avoided are judicial liens which arose from Avetoom's recording of either judgments or abstracts of judgements. See Mot., 25-66 (page nos. at top of document). Under California law, upon recording of an Abstract of Judgment, a judgment lien is created against a debtor's real property. See CCP § 697.310(a)("[A] judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder."). Under the Bankruptcy Code, a judgment lien is a judicial lien. See 11 U.S.C. § 101(36) (defining "judicial lien" as a "lien obtained by judgment ..."). See *In re Coy*, 552 B.R. 199, 203 (Bankr. C.D. Cal. 2016). Avetoom's argument that the court should find Exception 21 is not a judicial lien because it is the product of a settlement is denied for two reasons. First, the actual document recorded giving rise to Exception 21 was a judgment- not a settlement agreement or a hearing transcript which Aveetom argues demonstrates the parties' intent to create a lien via the settlement. See Opp'n, 5-7. Second, even consensual judgment are judicial liens subject to avoidance under § 522(f). See *In re Applebaum*, 162 B.R. 548, 552 (Bankr. E.D. Cal. 1993)("As with most consent judgments, the Bank's lien derives from an abstract of judgment, not the party's consent. Section 522(f) accordingly applies and the filing of the lien may be avoided.").

Finally, the court rejects Avetoom's argument that the court's § 522(f) ruling is a collateral attack on the parties' prior settlement or will somehow impede on the state court's jurisdiction. See Opp'n, 22. The avoidance of judicial liens under § 522(f) is within the bankruptcy court's exclusive jurisdiction over Debtor's property. See 28 U.S.C. § 1334(c) ("The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction...of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate[.]"). Sustaining these arguments would have the effect of empowering the parties or the state court to limit the court's jurisdiction to effectuate § 522(f) which would be contrary to 28 U.S.C. § 1334(c).

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
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Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT... Rosa A Fridman

Chapter 7

Debtor(s):

Rosa A Fridman

Represented By
Scott Talkov

Movant(s):

Rosa A Fridman

Represented By
Scott Talkov

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10525 The Source Hotel, LLC

Chapter 11

#22.00 Hearing RE: Motion of Shady Bird Lending, LLC for Order Designating Chapter 11 Case as Single Asset Real Estate Case Pursuant to 11 U.S.C. Sections 101(5aB) and 362(d)(3)

Docket 49

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Deny the Motion.

Basis for Tentative Ruling

Movant has the burden of proof to demonstrate that the subject property is a single asset real estate within the meaning of Section 101(51B) of the Code. It has not met that burden in the court's view.

1. The court recognizes that the majority view is that undeveloped land generating no income may meet the requirements of Section 101(51B). This court does not necessarily agree with that view but, even if it did, where the property is partially developed for a purpose that will involve more than simply the operation of real property, such as a full-service hotel with restaurant, bar, laundry services, etc., 101(51B) does not apply.

2. Movant has not established the legal status of Debtor's interest in the real property. Debtor doesn't own fee title to the property and it is unclear whether Debtor does or does not have an active leasehold interest and, if so, the length of such lease.

Party Information

**United States Bankruptcy Court
Central District of California
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Judge Erithe Smith, Presiding
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Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

CONT... The Source Hotel, LLC

Chapter 11

Debtor(s):

The Source Hotel, LLC

Represented By
Ron Bender
Juliet Y Oh

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10525 The Source Hotel, LLC

Chapter 11

#23.00 Hearing RE: Motion of Shady Bird Lending, LLC for Order Excusing State Court Receiver from Turnover of Assets Pursuant to 11 U.S.C. Section 543

Docket 51

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Deny Motion.

A more detailed tentative ruling may be posted at any time prior to the hearing.

Party Information

Debtor(s):

The Source Hotel, LLC

Represented By
Ron Bender
Juliet Y Oh

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, April 15, 2021

Hearing Room 5A

10:30 AM

8:21-10594 Z Real Estate Holdings LLC

Chapter 11

#24.00 STATUS CONFERENCE Hearing on Status of SubChapter V Case; (2) Requiring Report on Status of SubChapter V Case by Debtor and SubChapter V Trustee; and (3) Requiring SubChapter V Trustee to Appear at the Status Conference

Docket 1

*** VACATED *** REASON: OFF CALENDAR: Order Reassigning Bankruptcy Case Pursuant to General Order 11-01 to Judge with Prior Related Case/Proceeding Entered 3/18/2021; Case Transferred to LA Division, New Case Number is 2:21-12171-BR

Courtroom Deputy:

OFF CALENDAR: Order Reassigning Bankruptcy Case Pursuant to General Order 11-01 to Judge with Prior Related Case/Proceeding Entered 3/18/2021; Case Transferred to LA Division, New Case Number is 2:21-12171-BR - td (3/19/2021)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Z Real Estate Holdings LLC

Represented By
Marc A Goldbach

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, April 15, 2021

Hearing Room 5A

2:00 PM

8:20-10436 Chandra Marie Adam

Chapter 7

Adv#: 8:20-01174 Chicago Title Insurance Company v. Adam

#25.00 Hearing RE: Defendant, Chandra Marie Adam's Motion to Dismiss Complaint

Docket 6

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

April 15, 2021

Grant the Motion to Dismiss

Basis for Tentative Ruling:

Short Answer:

- 1) Plaintiff has not established standing to bring the Complaint.
- 2) Even if standing had been established Plaintiff was properly listed on Defendant's schedules and received notice of the bankruptcy filing and deadline to file a nondischargeability complaint. Plaintiff offers no evidence that it did not receive the bankruptcy notice. In fact, there is no declaration from any employee of Plaintiff explaining the entity's office mail procedures.
3. The complaint was filed seven months after the deadline. This court lacks authority to extend the deadline.

Long Answer:

On February 7, 2020, Chandra Marie Adam ("Defendant") filed a voluntary chapter 7 petition. The 341(a) meeting of creditors was first set for March 26, 2020. The deadline for dischargeability complaints was May 15, 2020 ("523 Deadline"). Debtor received her discharge on May 26, 2020.

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Thursday, April 15, 2021

Hearing Room 5A

2:00 PM

CONT...

Chandra Marie Adam

Chapter 7

1. The Adversary Proceeding

On December 17, 2020, plaintiff Chicago Title Insurance Company, a Florida corporation ("Plaintiff") filed a nondischargeability complaint against Defendant alleging causes of action under §§ 523(a)(2)(A) and (a)(3)(B) ("Complaint"). The Complaint alleges that Plaintiff issued a title insurance policy to Wachovia Bank ("Wachovia") for real property that served as collateral for a HELOC obtained by Defendant and her brother during the pendency of Defendant's parents' chapter 7 bankruptcy case. After the chapter 7 trustee in Defendant's parent's bankruptcy case successfully obtained a judgment against Wachovia avoiding the unauthorized postpetition transfer of the deed of trust securing the HELOC, Plaintiff paid Wachovia pursuant to the title insurance policy and the defect in title. Plaintiff, who holds the rights and remedies available to Wachovia against Defendant due to a subrogation provision in the title insurance policy, then sued Defendant in state court and obtained a judgment in the amount of \$324,185 ("State Court Judgment")(figures rounded down) for Defendant's fraud based on misrepresentations made to Wachovia during the HELOC loan transaction with respect to the ownership of the subject property. The Complaint seeks a judgment finding the State Court Judgment to be nondischargeable.

The answer deadline was January 19, 2021 and on that date, Defendant filed the instant FRCP 12(b)(6) motion seeking to dismiss the Complaint under FRCP 12(b)(6) and FRBP 7012 for failure to allege a plausible claim for relief because the Complaint was filed almost seven months after the 523 Deadline ("Motion")[dkt. 6, 7] and ("Reply")[dkt. 18]. Plaintiff opposes the Motion ("Opposition")[dkt. 15].

2. Legal standard

FRCP 12(b)(6), made applicable to this adversary proceeding under FRBP 7012, provides that a party may move to dismiss a claim for relief for "failure to state a claim upon which relief can be granted[.]" In *Atlantic Corp. v. Twombly*, 550 U.S. 544, 561 (2007), the Supreme Court established more stringent notice-pleading standards for motions to dismiss under FRCP 12(b)(6). A plaintiff is required to provide more than "labels and conclusions, and a

**United States Bankruptcy Court
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Thursday, April 15, 2021

Hearing Room

5A

2:00 PM

CONT...

Chandra Marie Adam

Chapter 7

formulaic recitation of the elements of a cause of action" *Id.* at 555. The plaintiff must provide "enough facts to state a claim to relief that is plausible on its face" to nudge "their claims across the line from conceivable to plausible[.]" *Id.* at 570.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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." *Id.* The plausibility standard is not akin to a 'probability requirement,' but it asks more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and probability of entitlement to relief." *Id.* While legal conclusions can provide the framework of a complaint, "they must be supported by factual allegations." *Id.* at 679. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* (internal citations omitted). The court must construe the complaint in the light most favorable to the plaintiff, accept all well-pleaded factual allegations as true, and "all reasonable inferences drawn from them". *Johnson v. Riverside Healthcare Sys., LP.*, 534 F.3d 1116, 1122 (9th Cir. 1990).

The court may consider: 1) the complaint and answer; 2) any documents attached or mentioned in the pleadings; 3) documents not attached but "integral" to the claims; and 4) matters subject to judicial notice. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)("If the documents are not physically attached to the complaint, they may be considered if the documents' 'authenticity ... is not contested' and 'the plaintiff's complaint necessarily relies' on them."); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 1988)("The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit."); *Gerritsen v. Warner Bros. Ent. Inc.*, 116 F. Supp. 3d 1104, 1118 (C.D. Cal. 2015)("The incorporation by reference doctrine "permits a district court to consider documents whose contents are alleged in a complaint and

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whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleadings."). When documents attached to a complaint contradict allegations in the complaint, the document must prevail. See *Ott v. Home Sav. & Loan Assoc.*, 265 F.2d 643, 646 fn.1 (9th Cir. 1958) (when allegations are inconsistent with the terms of a contract attached as an exhibit, the terms of the contract must prevail over the inconsistent allegations). If the court considers evidence that is outside the four categories listed above, the court must convert the FRCP 12(b)(6) motion to a motion for summary judgment under FRCP 56. See FRCP 12(d); *Gerritson*, 116 F.Supp.3d at 1118.

3. Plaintiff lacks standing to prosecute the Complaint

In the Reply, Defendant argues that Plaintiff lacks standing because the State Court Judgment was entered in favor of "Chicago Title Insurance Company, a Nebraska corporation" but the Complaint alleges that Plaintiff is "Chicago Title Company, a Florida corporation." See Reply, 6-7; Compl., ¶4 and Ex. 23. Although this argument was raised for the first time in the Reply, the court will consider it because the court can raise the issue of standing *sua sponte*. See *Carrico v. City & Cnty of San Francisco*, 656 F.3d 1002, 1005 (finding that a court may raise standing issue at any time *sua sponte*). Standing is comprised of two components as follows:

Standing is comprised of Article III requirements and prudential considerations: "[S]tanding jurisprudence contains two strands: Article III standing, which enforces the Constitution's case-or-controversy requirement... and prudential standing, which embodies "judicially self-imposed limits on the exercise of federal jurisdiction[.]" *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11–12 (2004)(citation omitted), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). "A federal court may exercise jurisdiction over a litigant only when that litigant meets constitutional and prudential standing requirements." *In re Veal*, 450 B.R. 897, 906 (B.A.P. 9th Cir. 2011)(citing *Elk Grove Unified Sch. Dist.*).

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- First, the plaintiff must have suffered an "injury in fact" - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'"

- Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court."

- Third, it must be "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable decision."

Kardules v. City of Columbus, 95 F.3d at 1346 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-1 (1992)). The party invoking federal jurisdiction has the burden of establishing the elements of standing. *Id.* at 561-562. Each element of standing "must be supported with the manner and degree of evidence required at each successive stage of the litigation." *Defenders of Wildlife*, 504 U.S. 16 at 561.

In this case, Defendant's argument focuses on the first element of Article III standing, injury-in-fact. The plaintiff must clearly allege sufficient facts demonstrating injury-in-fact. *Spokeo, Inc. v. Robins*, 578 U.S. ___, 136 S.Ct. 1540 (2016). Under the *Twombly/Iqbal* standards, the complaint must allege sufficient facts to make the operative allegations "plausible," even as to allegations pertaining to injury-in-fact that would give rise to subject matter jurisdiction. *Amidax Trading Group v. S.W.I.F.T. SCRL*, 671 F.3d 140, 145-149 (2d Cir. 2011). Viewing the allegations in the Complaint as true, on the face of the Complaint, Plaintiff lacks standing because it has not suffered any injury-in-fact. "Chicago Title Insurance Company, a Nebraska corporation" ("CTIC-Neb") obtained the State Court Judgment, not Plaintiff, who is a separate legal entity incorporated in Florida. Because the Complaint does not explain how Plaintiff came to acquire the rights of CTIC-Neb under the State Court Judgment, Plaintiff has

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failed to state a plausible claim for relief since Plaintiff lacks standing.

4. Plaintiff has failed to allege a plausible claim for relief under § 523

Under Rule 4007(c), the deadline to file a dischargeability complaint is 60 days after the first date set for the meeting of creditors. The primary purpose for the deadline in Rule 4007(c) is to facilitate the debtor's fresh start in a timely and expeditious manner. See *Schunck v. Santos (In re Santos)*, 112 B.R. 1001, 1006 (9th Cir. BAP 1990). Rule 9006(b)(3) authorizes the court to enlarge the time for filing a complaint under Rule 4007(c) only when a motion for such an extension is made before the time has expired.

In this case, the court served notice of the 523 Deadline on February 9, 2020 to "Chicago Title Insurance Company" at Plaintiff's main Orange County office located at 16969 Von Karmen Ave, Ste. 150, Irvine, CA 92606 ("OC Office"). See Mot. Ex. A. And there is no question that the Complaint was filed almost seven months after the 523 Deadline and that Plaintiff did not file a motion to extend the 523 Deadline before it expired. Accordingly, Defendant argues that the Complaint is barred by Rule 4007(c). See Mot., 2-3.

Plaintiff counters that the Complaint is not time barred because notice was improper due to Defendant improperly scheduling Plaintiff's debt and did not include the address for Plaintiff's attorneys in the underlying state court action. See Opp'n, 7-8. In addition, Plaintiff argues that Defendant "cleverly" chose to list the OC Office in an effort to not provide notice to Plaintiff and Defendant's schedules lacked identifying information which would have made it easier for Plaintiff to determine that Defendant was judgment debtor of Plaintiff. *Id.* at 6. These arguments are unpersuasive for several reasons.

First, Defendant duly scheduled the debt owed to Plaintiff. In determining whether a debtor has been duly scheduled, the BAP has explained:

The correct test is whether this debt was scheduled in time to permit a timely request for a determination of discharge or a timely proof of claim.... In order for a debt to be duly listed, the debtor must state the name and address

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of the creditor.... The burden is on the debtors to use reasonable diligence in completing their schedules and lists.... If a creditor proves that an address is incorrect, the debtor must justify the inaccuracy in preparing his schedules.... An incorrect or careless omission is not enough.

In re Fauchier, 71 B.R. 212, 215 (B.A.P. 9th Cir. 1987); *In re Kern*, 171 B.R. 679, 682 (Bankr. D. Ariz. 1994).

Here, Debtor has explained the efforts she went through to find an address for CTIC-Neb which were reasonable in light of the fact that this search proved to be more difficult since CTIC-Neb was a dissolved corporation. See Mot. 6-8. The 523 Deadline notice also included Defendant's identifying information. See Reply, 3. More importantly, Plaintiff has not argued that the OC Office *is not* a valid address for Plaintiff or that it was not actually received in that office.. See *generally*, Opp'n. The court finds that Plaintiff's debt was properly scheduled.

Second, because there is a presumption that the court's mailing of the 523 Deadline notice was received by Plaintiff. "The Supreme Court has held that upon proof that mail is properly addressed, stamped and deposited in an appropriate receptacle, it is presumed to have been received by the addressee in the ordinary course of the mails." *In re De la Cruz*, 176 B.R. 19, 22 (B.A.P. 9th Cir. 1994). "In order to rebut this presumption, something more than a mere declaration of a creditor alleging non-receipt is required." *Id.* Here, Plaintiff has failed to rebut the presumption that it received the 523 Deadline notice because Plaintiff has not demonstrated that the OC Office is not a valid address for Plaintiff.

Third, the argument that Defendant was required to serve Plaintiff's state court counsel is flawed because an "attorney who has represented a creditor in state court proceedings does not, by virtue of that relationship alone, represent the creditor with respect to that same debt in a federal bankruptcy proceeding." *Fauchier*, 71 B.R. at 215. Finally, the Complaint fails to allege when Plaintiff received actual notice of Defendant's bankruptcy filing. See Mot., 8-9. This date is relevant because, "The Ninth Circuit has held that notice is sufficient when the creditor has actual knowledge of the bankruptcy filing in time to file a complaint under § 523." *De la Cruz*, 176 B.R.

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at 23. Accordingly, viewing the allegations in the Complaint in the light most favorable to Plaintiff, Plaintiff has not pled plausible claims for relief under § 523 because the Complaint is time-barred by FRBP 4007(c).

Party Information

Debtor(s):

Chandra Marie Adam	Pro Se
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Defendant(s):

Chandra Marie Adam	Pro Se
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Plaintiff(s):

Chicago Title Insurance Company	Represented By Karen A Ragland
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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Adv#: 8:20-01174 Chicago Title Insurance Company v. Adam

#26.00 CON'TD STATUS CONFERENCE RE: Complaint by Chicago Title Insurance Company To Determine Nondischargeability of Debt

FR: 3-11-21

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

March 11, 2021

Continue Status Conference to April 15, 2021 at 2:00 p.m., same date/time as Defendant's Motion to Dismiss Adversary Proceeding; updated status report not required. (xx)

Note: Appearances at this Status Conference are not required; Plaintiff to serve notice of the continued hearing date/time.

April 15, 2021

Take the matter off calendar if the motion to dismiss the adversary proceeding is granted.

Party Information

Debtor(s):

Chandra Marie Adam

Pro Se

Defendant(s):

Chandra Marie Adam

Pro Se

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Plaintiff(s):

Chicago Title Insurance Company

Represented By
Karen A Ragland

Trustee(s):

Thomas H Casey (TR)

Pro Se