

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

10:00 AM

6:20-16519 Maria Yesenia Villalba

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and Wescom Central Credit Union, in the amount of \$13,135.58, re: 2017 Honda/Civic

EH____

Docket 12

***** VACATED *** REASON: CONT. TO 12:00 P.M. CALENDAR**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Yesenia Villalba

Represented By
Arlene M Tokarz

Movant(s):

Wescom Central Credit Union

Represented By
Letty Ildefonso

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

11:00 AM

6:19-10556 Timothy Mark Aitken and Esmeralda Aitken

Chapter 7

#2.00

Defendant's Alicia Aiken's Motion to Reconsider Order granting Trustee Motion to Void Transfer of Equity, and setting aside Debtor's Exemptions

EH____

(Tele. appr. Larry Simons, rep. Howard Grobstein, chapter 7 trustee)

Docket 63

Tentative Ruling:

12/2/2020

BACKGROUND

On January 23, 2019, Timothy & Esmeralda Aitken ("Debtors") filed a Chapter 7 voluntary petition. On March 3, 2020, Trustee filed a complaint against Debtors' daughter, Alicia Aitken ("Defendant"), to avoid and recovery a fraudulent transfer. After Defendant failed to respond to the complaint, the Court entered Defendant's default on April 14, 2020. Since her default was entered, Defendant attempted to file multiple pleadings in the adversary proceeding.

On June 9, 2020, Trustee filed a motion for default judgment. The Court ultimately denied Trustee's motion without prejudice. On November 23, 2020, Trustee filed a second motion for default judgment, which is set for hearing on December 16, 2020.

In the main bankruptcy case, on November 4, 2020, the Court entered an order

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CONT... **Timothy Mark Aitken and Esmeralda Aitken** **Chapter 7**
extending Trustee's deadline to object to Debtors' exemptions to February 3, 2021.

On November 10, 2020, Defendant, in the main bankruptcy case, filed a pleading which is titled "Defendant Alicia Aiken's Motion to Reconsider Order Granting Trustee Motion to Void Transfer of Equity, and Setting Aside Debtor's Exemptions." On November 19, 2020, Trustee filed an opposition to the motion.

DISCUSSION

As noted by Trustee "the Motion fails to describe what order Movant is requesting that the Court reconsider. . . . It appears that Movant seeks to dismiss the pending Complaint brought by the Trustee against her." The Court notes that the transfer that is the subject of the adversary proceeding has not been avoided nor have Debtors' exemptions been disallowed.

Setting aside the procedurally defectiveness of the motion, the Court agrees with Trustee that Movant's motion fails on substantive grounds, although for a slightly different reason that that articulated in the opposition. As stated in *Mathiason v. Aquinas Home Health Care, Inc.*, "[o]nce a default is established, defendant has not further standing to contest the *factual* allegations of plaintiff's claim for relief." 187 F. Supp. 3d 1269, 1274 (D. Kan. 2016) (emphasis added). But being precluded from presenting evidence does not mean Defendant is precluded from appearing or presenting a purely legal argument. The Court notes that Trustee's cited case of *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114 (2nd Cir. 2011), does not stand for the proposition that Defendant "lacks the ability to appear." See also Peter H. Bresnan & James P. Cornelio, *Relief from Default Judgments Under Rule 60(b) – A Study of Federal Case Law*, 49 FORDHAM L. REV. 956, 959-60 (1981) ("A default is not an absolute confession of liability. A defaulting party does not admit to facts that are not well-pleaded or to conclusions of law.") (collecting cases); see also *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975).

Here, however, Defendant's argument is based on the factual assertion that the subject

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CONT... Timothy Mark Aitken and Esmeralda Aitken Chapter 7

transfer was based on fair market value. [Dkt. No. 63, pg. 9, lines 9-10]. This argument fails because: (1) as noted above, Defendant is precluded from presenting evidence; (2) Defendant has not actually presented any evidence in support of her motion; and (3) it would appear Defendant's request is actually properly characterized as a motion for summary judgment, although Defendant did not follow any of the proper procedural steps in bringing such a motion

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Timothy Mark Aitken	Pro Se
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Joint Debtor(s):

Esmeralda Aitken	Pro Se
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Movant(s):

Alicia Aitken	Pro Se
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Trustee(s):

Howard B Grobstein (TR)	Represented By Larry D Simons
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**United States Bankruptcy Court
Central District of California
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Wednesday, December 2, 2020

Hearing Room 303

11:00 AM

6:19-19797 Ramona Garcia

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 18

Tentative Ruling:

12/2/2020

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,303.30
Trustee Expenses: \$ 36.50

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Ramona Garcia

Represented By
Daniel King

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

11:00 AM

6:19-19925 Mihai Bejerea

Chapter 7

#4.00 Debtor's Motion to Reopen Chapter 7 Case to Amend Schedules B and C

EH__

(Tele. appr. Benjamin Heston, rep. Debtor)

Docket 22

Tentative Ruling:

12/2/2020

BACKGROUND

On November 11, 2019, Mihai Bejerea ("Debtor") filed a Chapter 7 voluntary petition. On February 24, 2020, Debtor received a Chapter 7 discharge. On May 27, 2020, Debtor's case was closed.

On October 14, 2020, Debtor filed a motion to reopen the case to amend Schedules A & C. On November 5, 2020, the Court set the matter for hearing.

DISCUSSION

Local Rule 5010-1(b) provides "[a] request for any relief other than the reopening of a case, including relief based upon the grounds for reopening the case, must be made in a separate motion or adversary proceeding, which may be filed concurrently with the motion to reopen."

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CONT... Mihai Bejerea

Chapter 7

Rule 1009(a) provides "[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." There is a split in caselaw as to whether Rule 1009(a) operates to require a motion pursuant to Rule 9006(b)(1) in order for a debtor to amend their schedules in a reopened case. *See, e.g., In re Dollman*, 583 B.R. 268, 271-73 (Bankr. D.N.M. 2017) (summarizing different approaches); 9 COLLIER'S ON BANKRUPTCY ¶ 1009.02[3] (16th ed. 2015) ("Once the case has been closed, a debtor may have to show excusable neglect in order to amend the schedule of exemptions."). *But see In re Goswani*, 304 B.R. 386, 392 (B.A.P. 9th Cir. 2003) ("If the drafters had intended to require court permission before the filing of amended schedules in reopened cases, they would have explicitly said so.").

While BAP opinions certainly can be persuasive, this Court has a duty to consider the reasoning detailed in the decision. The Court does not consider the reasoning in *In re Goswani* to be persuasive. As noted by *In re Dollman*, 583 B.R. 268, 271-273 (Bankr. D.N.M. 2017), three different approaches to this issue have been developed.

First, the broad approach, as articulated in *In re Goswani*, essentially concludes that there is no difference between an open (never closed) case and a re-opened case. However, "[r]eading Rule 1009(a) to permit a debtor to amend schedules in a reopened case anytime as a matter of course before the case is re-closed would make the limiting clause, "at any time before the case is closed," inoperative and superfluous because schedules can be amended only in an open case." *Dollman*, at 272. Based on the reasoning in *Dollman*, the Court concludes that Rule 1009(a) does impose a deadline – the closing of the case – and rejects the broad approach's attempt to reverse time and undo the passing of that deadline.

Second, the Court rejects the narrow approach, which prohibits any amendment to schedules after a case is closed, then reopened, for the simple reason that this approach does not explain why Rule 9006(b)(1) is inapplicable to the instant situation. *Id.* ("The Court finds the narrow approach too restrictive. It fails to recognize or apply Rule 9006(b)(1) allowing enlargement of time under certain circumstances if the period has expired before the motion to enlarge time is filed.").

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CONT... Mihai Bejerea

Chapter 7

Consequently, the Court finds the middle approach to be the appropriate approach. Rule 1009(a) imposed a deadline for amendment of the schedules – the closing of the case – and that deadline passed in the instant case. Rule 9006(b)(1), however, affords Debtors an opportunity to file a motion to amend their schedules, which Debtor will need to do here.

TENTATIVE RULING

The Court is inclined to GRANT the motion to the extent of REOPENING the bankruptcy case to allow Debtor to file a motion for leave to amend the schedules. If no matter is pending at the expiration of the sixty-day period, the case may be closed without further notice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mihai Bejerea

Represented By
Benjamin R Heston

Movant(s):

Mihai Bejerea

Represented By
Benjamin R Heston

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:19-20316 Jack Neil Angus, III

Chapter 7

#5.00 Notice of Trustee's Final Report; Applications for Compensation

EH__

Docket 17

Tentative Ruling:

12/2/2020

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 698.50
Trustee Expenses: \$ 17.75

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Jack Neil Angus III

Represented By
Edgar P Lombera

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

11:00 AM

6:20-11187 Edmundo Murillo and Maria Cortez

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 30

Tentative Ruling:

12/2/2020

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,222.50
Trustee Expenses: \$ 143.35

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Edmundo Murillo

Represented By
George P Hobson Jr

Joint Debtor(s):

Maria Cortez

Represented By
George P Hobson Jr

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 2, 2020

Hearing Room 303

12:00 PM

6:20-16519 Maria Yesenia Villalba

Chapter 7

#7.00 Reaffirmation Agreement Between Debtor and Wescom Central Credit Union, in the amount of \$13,135.58, re: 2017 Honda Civic

From: 10:00 a.m. calendar

EH___

(Tele. appr. Maria Villalba, Debtor)

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Yesenia Villalba

Represented By
Arlene M Tokarz

Movant(s):

Wescom Central Credit Union

Represented By
Letty Ildefonso

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#8.00 Motion in Limine on Defendant's Witnesses

EH____

Also #9

(Tele. appr. Charles Schrader pro se Plaintiff)

Docket 405

Tentative Ruling:

12/2/2020

BACKGROUND

On April 18, 2013, Narinder Sangha ("Defendant") filed a Chapter 7 voluntary petition. On April 25, 2013, Charles Schrader ("Plaintiff") filed an adversary complaint against Defendant for non-dischargeability pursuant to 11 U.S.C. § 523(a) (6).

On August 12, 2013, the Court entered its first scheduling order, directing the parties to complete mediation by October 16, 2013; that deadline was ultimately continued to October 29, 2013. On December 4, 2013, the Court entered a second scheduling order, directing the parties to complete mediation by January 31, 2014.

On August 7, 2014, the Court entered an order granting Plaintiff's motion for summary judgment, and a corresponding judgment. This judgment was appealed, ultimately being vacated and remanded by the Ninth Circuit on March 10, 2017. On

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CONT... Narinder Sangha

Chapter 7

April 19, 2017, Plaintiff filed a renewed motion for summary judgment which, after several continuances, was ultimately granted in part and denied in part on March 15, 2019 (the "Opinion").

Since the Court issued the Opinion granting partial summary judgment to Plaintiff, the parties have engaged in several discovery disputes, with Defendant switching counsel on multiple occasions during the course of the case. On May 3, 2019, Defendant filed a motion to reopen discovery. As noted by the Court on the hearing of May 22, 2019, the Court had never actually set a discovery deadline, and, therefore, the Court denied the motion. Based upon the discussion with parties at the hearings of May 22, 2019, the Court entered a scheduling order on May 24, 2019. The scheduling order set a discovery deadline of July 31, 2019, and a deadline to file dispositive motions of August 23, 2019.

On July 10, 2019, the Court heard Defendant's (then *pro se*) motion to serve additional discovery requests. That motion was denied for the reasons stated on the record at the hearing of July 10, 2019.

On July 30, 2019, Defendant filed a motion to extend discovery cutoff and related dates. On September 3, 2019, the Court granted Defendant's motion to extend the discovery cutoff to the limited extent of clarifying that discovery need only be propounded, not completed, by July 31, 2019. On September 11, 2019, the Court issued an amended scheduling order. On October 16, 2019, Defendant filed a motion for sanctions against Plaintiff, which the Court ultimately denied.

On October 28, 2019, Defendant filed a motion to reconsider the Opinion, arguing that: (1) the state court judgment was void for failure to properly plead damages; (2) issue preclusion was inappropriate because certain affirmative defenses were neither actually litigated nor necessarily decided; and (3) public policy is not served by application of issue preclusion. On November 12, 2019, Plaintiff filed his opposition. On December 16, 2019, the Court entered an order denying Defendant's motion for reconsideration.

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CONT... Narinder Sangha

Chapter 7

On March 11, 2020, Plaintiff filed a motion, which was titled "Motion *in Limine* on Defendant's First Affirmative Defense of Privilege." On March 18, 2020, Defendant filed an opposition. On April 1, 2020, the Court orally denied the motion.

On March 31, 2020, Defendant filed a motion for leave to amend his answer to include affirmative defenses of truth and privilege. On April 6, 2020, Plaintiff filed an opposition. The motion was denied pursuant to order entered May 18, 2020

On April 23, 2020, Plaintiff filed the instant "Motion *in Limine* on Defendant's Affirmative Defenses" [Dkt. No. 367]. On April 29, 2020, Defendant filed an opposition. The motion was granted pursuant to order entered June 24, 2020.

On July 8, 2020, Plaintiff filed a motion for partial summary adjudication on Defendant's affirmative defenses. On August 12, 2020, Defendant filed his opposition. The Court granted the motion pursuant to order entered October 15, 2020.

On November 10, 2020, Plaintiff filed the instant Motion in Limine on Defendant's Witness [Dkt. No. 405]. Plaintiff amended the motion on November 12, 2020, although it appears that the only change in the amended version is the inclusion of Defendant's witness list, which was previously included in the pre-trial stipulation filed on February 13, 2020. In the instant motion, Plaintiff argues that five of Defendant's seven witnesses were not timely disclosed during initial disclosures or during discovery. Specifically, Plaintiff contends that Defendant did not disclose these five witnesses: (1) during Rule 26 initial disclosures; (2) in response to written interrogatories issued during August 2013; and (3) in response to interrogatories served during May 2019. Defendant did not file an opposition to the instant motion.

DISCUSSION

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CONT... Narinder Sangha

Chapter 7

Fed. R. Civ. P. Rule 26 outlines the litigants' obligation to disclose certain information. Fed. R. Civ. P. Rule 37(c)(1) states, in pertinent part:

If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

And the Ninth Circuit has recently stated:

The Federal Rules of Civil Procedure require parties to provide to other parties the name of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses. And a party who has made a disclosure under Rule 26(a) must supplement or correct its disclosure in a timely manner if the party learns that in some material respect the disclosure is incomplete or incorrect, and if the addition or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. A party that does not timely identify a witness under Rule 26 may not use that witness to supply evidence at a trial unless the failure was substantially justified or is harmless. Indeed, Rule 37(c)(1) is intended to put teeth into the mandatory disclosure requirements of Rule 26(a) and (e).

Ollier v. Sweetwater Union High School Dist., 768 F.3d 843, 861 (9th Cir. 2014). Factors that the Court may consider include: "(1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability of the party to cure the prejudice; (3) the extent to which introducing such testimony would disrupt the trial; and (4) the moving party's bad faith or willfulness." *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999).

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CONT... Narinder Sangha

Chapter 7

Here, applying the legal standard set for in *Ollier and Woodworker's Supply*, the Court finds that Plaintiff has established caused to preclude Defendant from introducing witnesses who were not timely and properly disclosed. The Court notes that the evidence submitted in support of the motion establishes that Plaintiff took the initiative to prompt Defendant to supplement or amend his discovery responses, and that Defendant did not use the opportunity to disclose the witnesses. Defendant has not offered an adequate explanation to justify the non-disclosure, and, at this late stage of the proceeding, the Court cannot conclude that the error is harmless. *See, e.g., Davis v. Green*, 2015 WL 3505665 at *3 (N.D. Ga. 2015) ("The Court also finds that the failure to disclose these witnesses is not harmless because Defendant Green did not have the opportunity to depose them and conduct proper discovery."); *see also Ollier*, 768 F.3d at 862-63 (outlining harm to adversarial system by non-compliance with disclosure requirements).

Finally, the Court deems Defendant's failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

Tentative Ruling:

The Court is inclined to GRANT the motion, prohibiting Defendant from introducing witness testimony from Randy Wissel, James Sutherland, Mark Rappaport, Robert Burns, and Clem Jones.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

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Central District of California
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CONT... Narinder Sangha

Chapter 7

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#9.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury))

From: 4/17/19, 5/22/19, 8/28/19, 11/6/19, 1/29/20, 3/4/20, 4/1/20, 4/22/20, 7/1/20, 9/2/20, 9/9/20, 11/18/20

(Holding Date)

Also #8

EH__

(Tele. appr. Charles Schrader, pro se Plaintiff)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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CONT... Narinder Sangha

Chapter 7

**United States Bankruptcy Court
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2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01308 Revere Financial Corporation v. BWI CONSULTING, LLC et al

#10.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01308. Complaint by A. Cisneros against BWI CONSULTING, LLC, Black and White, Inc., BLACK AND WHITE BILLING COMPANY, BLACK AND WHITE INK, MEHRAN DEVELOPMENT CORPORATION. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 1/13/16, 3/23/16, 5/25/16, 7/27/16, 8/31/16, 11/2/16, 2/1/17, 5/3/17, 9/13/17, 12/13/17, 2/14/18, 5/16/18, 6/11/18, 8/22/18, 11/28/18, 2/27/19, 5/29/19, 8/28/19, 11/20/19, 1/29/20, 5/27/20, 7/29/20, 9/30/20, 11/25/20

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/17/21 @ BY ORDER
ENTERED 11/30/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

BWI CONSULTING, LLC	Pro Se
Black and White, Inc.	Pro Se
BLACK AND WHITE BILLING	Pro Se
BLACK AND WHITE INK	Pro Se

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**CONT... Douglas J Roger, MD, Inc., A Professional Corporat
MEHRAN DEVELOPMENT Pro Se**

Chapter 7

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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Wednesday, December 2, 2020

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01307 Revere Financial Corporation v. OIC MEDICAL CORPORATION, a

#11.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01307. Complaint by A. Cisneros against OIC MEDICAL CORPORATION, a California corporation, LIBERTY ORTHOPEDIC CORPORATION, a California corporation, UNIVERSAL ORTHOPAEDIC GROUP, a California corporation. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17, 7/12/17, 9/13/17, 11/15/17, 2/14/18, 5/16/18, 7/25/18, 8/22/18, 10/31/18, 11/14/18, 12/12/18, 12/19/18, 3/27/19, 6/12/19, 7/31/19, Advanced 3/4/20, 11/20/19, 1/29/20, 5/27/20, 7/29/20, 9/28/20, 11/25/20

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/17/21 BY ORDER
ENTERED 11/30/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

OIC MEDICAL CORPORATION, a

Represented By
Misty A Perry Isaacson

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**CONT... Douglas J Roger, MD, Inc., A Professional Corporat
LIBERTY ORTHOPEDIC**

Chapter 7

Represented By
Misty Perry Isaacson
Misty A Perry Isaacson

UNIVERSAL ORTHOPAEDIC

Represented By
Misty Perry Isaacson
Misty A Perry Isaacson

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#12.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))(Fraley, Franklin)

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17, 6/7/17, 8/2/17, 8/23/17, 11/8/17, 1/31/18, 4/25/18, 2/27/18, 6/12/19, 1/29/20, 5/27/20, 9/30/20, 10/26/20

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/17/21 BY ORDER
ENTERED 10/30/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw
Marc C Forsythe

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT...

Douglas Jay Roger

Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#13.00 CONT Status Conference RE: Amended Complaint (First) by Revere Financial Corporation and Jerry Wang, as State-Court Appointed Receiver by Franklin R Fraley Jr on behalf of Revere Financial Corporation, a California corporation against Revere Financial Corporation, a California corporation. (Attachments: # 1 Exhibit 1-8)

From: 4/25/18, 6/13/18, 8/22/18, 10/31/18, 7/31/19, 9/11/19, 11/20/19, 1/29/20, 5/27/20, 7/29/20, 9/30/20, 11/25/20

EH__

Docket 82

***** VACATED *** REASON: CONTINUED TO 2/17/21 BY ORDER
ENTERED 11/30/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw
Marc C Forsythe

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw
Thomas J Eastmond
Marc C Forsythe

Plaintiff(s):

Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Jerry Wang

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT... Douglas Jay Roger

Chapter 7

Franklin R Fraley Jr
Anthony J Napolitano

Trustee(s):

Helen R. Frazer (TR)

Represented By
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

#14.00 CONT Objection to Claim #17 by Revere Financial Corporation
(Holding date)

From: 10/1/14, 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15,
10/21/15, 11/18/15, 12/16/15, 1/13/16, 3/2/16, 5/4/16, 6/1/16, 9/28/16, 11/16/16,
2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17, 9/20/17, 3/21/18, 6/27/18, 12/19/18,
3/27/19, 5/8/19, 6/12/19, 7/31/19, 1/29/20, 5/27/20, 7/29/20, 9/30/20, 11/25/20

EH__

Docket 333

*** VACATED *** REASON: CONTINUED TO 2/17/21 BY ORDER
ENTERED 11/30/20

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw
Marc C Forsythe

Trustee(s):

Helen R. Frazer (TR)

Represented By
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:17-18617 Christy Carmen Hammond

Chapter 7

#15.00 CONT Motion for Order Compelling Debtor to Vacate and Turnover Real Property
HOLDING DATE

From: 11/13/19, 12/18/19, 5/20/20, 9/9/20, 11/4/20

Also #

EH ____

Docket 40

***** VACATED *** REASON: CONTINUED TO 1/6/21 BY ORDER
ENTERED ON 10/28/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christy Carmen Hammond

Represented By
Eric C Morris

Movant(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:17-18617 Christy Carmen Hammond

Chapter 7

Adv#: 6:19-01144 Whitmore v. Hammond

#16.00 CONT Status Conference RE: [1] Adversary case 6:19-ap-01144. Complaint by Robert S. Whitmore against Kenneth Hammond. (Charge To Estate) \$350.00 (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Unexecuted Summons) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (91 (Declaratory judgment))

HOLDING DATE

From: 12/18/19, 5/20/20, 9/9/20, 11/4/20

EH ____

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/6/21 @ 2:00 P.M. BY
ORDER ENTERED ON 10/28/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christy Carmen Hammond

Represented By
Eric C Morris

Defendant(s):

Kenneth Hammond

Pro Se

Plaintiff(s):

Robert S. Whitmore

Represented By
Douglas A Plazak

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:17-18617 Christy Carmen Hammond

Chapter 7

#17.00 CONT Motion to Disallow Homestead Exemption
HOLDING DATE

From: 12/18/19, 5/20/20, 9/9/20, 11/4/20

Also #

EH__

Docket 49

***** VACATED *** REASON: CONTINUED TO 1/6/21 BY ORDER
ENTERED ON 10/28/20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christy Carmen Hammond

Represented By
Eric C Morris

Movant(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:18-10939 Vance Zachary Johnson

Chapter 7

Adv#: 6:18-01106 Bankers Healthcare Group, LLC v. Johnson

#18.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:18-ap-01106. Complaint by Bankers Healthcare Group, LLC against Vance Zachary Johnson. 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)) (Turoci, Todd)

From: 7/10/18, 2/20/19, 4/24/19, 7/3/19, 7/17/19, 8/21/19, 11/20/19, 1/29/20, 3/25/20, 4/1/20, 4/15/20, 7/1/20, 7/29/20, 10/7/20, 10/14/20

EH ____

(Tele. appr. Ryan Riddles, rep. Defendant, Vance Johnson)

(Tele. appr. Todd Turoci, rep. Plaintiff, Bankers Health Care Group)

Docket 1

Tentative Ruling:

4/15/20

TENTATIVE RULING

Opposition: None

Service: Proper

Pursuant to the stipulation agreement between Bankers Health Care Group, LLC, and Vance Zachary Johnson, the Court GRANTS this stipulation to continue Status Conference to July 1, 2020. A Status Report is due on June 24, 2020.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT... Vance Zachary Johnson

Chapter 7

Debtor(s):

Vance Zachary Johnson

Represented By
Robert P Goe

Defendant(s):

Vance Zachary Johnson

Represented By
Robert P Goe
Stephen Reider

Plaintiff(s):

Bankers Healthcare Group, LLC

Represented By
Todd L Turoci

Trustee(s):

Todd A. Frealy (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:19-10556 Timothy Mark Aitken

Chapter 7

Adv#: 6:20-01022 Grobstein v. Aitken

#19.00 CONT Status Conference RE: [1] Adversary case 6:20-ap-01022. Complaint by Howard Grobstein against Alicia Aitken. (Charge To Estate). with adversary cover sheet Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))

From: 5/6/20, 6/10/20, 7/1/20, 8/19/20, 9/30/20

Also #

EH__

(Tele. appr. Larry Simons rep. Plaintiff, Howard Grobstein)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Mark Aitken	Pro Se
---------------------	--------

Defendant(s):

Alicia Aitken	Pro Se
---------------	--------

Joint Debtor(s):

Esmeralda Aitken	Pro Se
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Plaintiff(s):

Howard Grobstein	Represented By Larry D Simons
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT... Timothy Mark Aitken

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:19-12225 Nathaniel James Cardiel

Chapter 7

Adv#: 6:19-01135 O'Gara Coach Company, LLC v. Cardiel

#20.00 CONT Status Conference RE: [1] Adversary case 6:19-ap-01135. Complaint by O'Gara Coach Company, LLC against Nathaniel James Cardiel. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(65 (Dischargeability - other)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Polis, Thomas)

From: 12/11/19, 5/20/20, 7/1/20, 9/30/20, 10/28/20

Also #21

EH__

(Tele. appr. Thomas Polis, rep. Plaintiff O'Gara Coach Company)

Docket 1

***** VACATED *** REASON: ORDER ENTERED 11/17/20 DISMISSING
ADVERSARY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nathaniel James Cardiel

Represented By
Sevan Gorginian

Defendant(s):

Nathaniel James Cardiel

Represented By
W. Derek May

Plaintiff(s):

O'Gara Coach Company, LLC

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

2:00 PM

CONT... Nathaniel James Cardiel

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:19-12225 Nathaniel James Cardiel

Chapter 7

Adv#: 6:19-01135 O'Gara Coach Company, LLC v. Cardiel

#21.00 CONT Plaintiff O'Gara Coach Company's Motion For Summary Judgment
(Holding Date)

From: 7/1/20, 9/30/20, 10/28/20

Also #20

EH__

(Tele. appr. Thomas Polis, rep. Plaintiff O'Gara Coach Company)

Docket 18

***** VACATED *** REASON: ORDER ENTERED 11/17/20 DISMISSING
ADVERSARY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nathaniel James Cardiel

Represented By
Sevan Gorginian

Defendant(s):

Nathaniel James Cardiel

Represented By
W. Derek May

Movant(s):

O'Gara Coach Company, LLC

Represented By
Thomas J Polis

Plaintiff(s):

O'Gara Coach Company, LLC

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT... Nathaniel James Cardiel

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:19-16470 Ana Rosa Lopez

Chapter 7

Adv#: 6:20-01104 Grobstein v. Torres

#22.00 CONT Status Conference RE: [1] Adversary case 6:20-ap-01104. Complaint by Howard B Grobstein against Joshua Daniel Torres. (Charge To Estate - \$350.00). Complaint for: (1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 548(a)(1)(A)]; (2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 548(a)(1)(B)]; and (3) Recovery of Avoided Transfer [11 U.S.C. §550] (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Madoyan, Noreen)

From: 7/22/20, 10/28/20

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED 11/10/2020**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana Rosa Lopez

Represented By
Raymond Perez

Defendant(s):

Joshua Daniel Torres

Represented By
Raymond Perez

Plaintiff(s):

Howard B Grobstein

Represented By
Noreen A Madoyan
Meghann A Triplett

Trustee(s):

Howard B Grobstein (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, December 2, 2020

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2:00 PM

CONT...

Ana Rosa Lopez

Noreen A Madoyan
Meghann A Triplett

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:19-19337 Marc Anthony Capoccia

Chapter 7

Adv#: 6:20-01012 Canyon Springs Enterprises dba RSH Construction Se v. Capoccia

#23.00 CONT Status Conference RE: [1] Adversary case 6:20-ap-01012. Complaint by Canyon Springs Enterprises dba RSH Construction Services, a California corporation against Marc Anthony Capoccia. 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)) (Schlecter, Daren)

From: 3/25/20, 4/1/20

EH__

(Tele. appr. Daren Schlecter, rep. Plaintiff Canyon Springs Enterprises)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marc Anthony Capoccia

Represented By
Douglas A Crowder

Defendant(s):

Marc Anthony Capoccia

Pro Se

Plaintiff(s):

Canyon Springs Enterprises dba

Represented By
David P Berschauer
Daren M Schlecter

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:20-11490 Niels Erik Topping

Chapter 7

Adv#: 6:20-01123 Thompson v. Topping

#24.00 CONT Status Conference RE: [1] Adversary case 6:20-ap-01123. Complaint by Greg Thompson against Niels Erik Topping . 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))

From: 9/2/20, 10/7/20, 10/14/20

Also #25

EH__

(Tele. appr. John Dickman, rep. Plaintiff Greg Thompson)

(Tele. appr. Niels Topping, Defendant pro se)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Niels Erik Topping Pro Se

Defendant(s):

Niels Erik Topping Pro Se

Joint Debtor(s):

Sonja Haupt Topping Pro Se

Plaintiff(s):

Greg Thompson Represented By
John G Dickman

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2:00 PM

CONT... Niels Erik Tarring

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:20-11490 Niels Erik Topping

Chapter 7

Adv#: 6:20-01123 Thompson v. Topping

#25.00 CONT Plaintiff's Motion for Default Judgment under LBR 7055-1

From 10/14/20

Also #24

EH__

(Tele. appr. John Dickman, rep. Plaintiff Greg Thompson)

(Tele. appr. Niels Topping, Defendant pro se)

Docket 11

Tentative Ruling:

12/2/2020

BACKGROUND

On February 25, 2020, Niels & Sonja Topping (collectively, "Debtors") filed a *pro se* Chapter 7 voluntary petition. On July 10, 2020, Debtors received a Chapter 7 discharge.

On July 1, 2020, Greg Thompson ("Plaintiff") filed a complaint against Niels Thompson ("Defendant") to determine dischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). On August 10, 2020, the clerk entered Defendant's default.

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2:00 PM

CONT... Niels Erik Tarring

Chapter 7

On September 18, 2020, Plaintiff filed a motion for default judgment. On October 2, 2020, Defendant filed a *pro se* pleading, which appears to be an answer, but could also be construed as an opposition to the motion for default judgment. The pleading alleges that the adversary complaint fails to state a claim and is barred by the statute of limitations.

On October 14, 2020, the Court held a hearing on the motion for default judgment. The Court noted that the meeting of creditors was originally set for April 2, 2020, and, therefore, the complaint appeared to have been filed untimely pursuant to FED. R. BANKR. P. Rule 4007(c). The Court continued the matter for supplemental briefing.

On November 3, 2020, Plaintiff filed his supplemental brief. Plaintiff argued, *inter alia*, that the Court extended the deadline to file a non-dischargeability complaint in this case and that Defendant lacked standing to present affirmative defenses. On November 18, 2020, Defendant filed his *pro se* opposition brief, reiterating his position that the complaint was filed untimely and requesting that his "answer" be permitted to be filed late.

DISCUSSION

Plaintiff's argument that the Rule 4007 deadline has been extended in this case is based on Judge Tighe's General Order 20-03, dated March 23, 2020. Paragraph 5 of General Order 20-03 purported to extend the Rule 4007(c) deadline for cases in which the original meeting of creditors was scheduled between March 17, 2020 and April 10, 2020, with the new deadline being calculated from the re-set meeting of creditors. In Debtor's case, the meeting of creditors originally set for April 2, 2020, was re-set for May 5, 2020 pursuant to a notice entered on April 6, 2020. As a result, the Court concludes that Plaintiff is correct that the Rule 4007 deadline in this case was extended (to July 6, 2020), and, therefore, that the instant complaint was timely filed.

The Court now turns to the merits of Plaintiff's motion for default judgment.

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CONT...

Niels Erik Tarring

Chapter 7

1. Proper Service of Summons and Complaint

FED. R. BANKR. P. Rule 7004(b)(1) states, in part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

- (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Here, Defendant was served at 24317 Songsparrow Ln., Corona, CA 92883, the address listed by Defendant on his bankruptcy petition. Therefore, it appears that service is proper.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *see also Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at *4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

Here, the complaint includes three causes of action: (1) 11 U.S.C. § 523(a)(2)(A); (2)

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CONT... Niels Erik Tarring

Chapter 7

11 U.S.C. § 523(a)(4); and (3) 11 U.S.C. § 523(a)(6).

Regarding the first cause of action, the elements of a § 523(a)(2)(A) claim are: (1) the debtor made representations; (2) that at the time debtor knew the representations were false; (3) that debtor made the representations with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made. *See, e.g., In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010).

Here, the Court concludes that the complaint does not contain sufficiently detailed allegations to warrant judgment on a § 523(a)(2)(A) cause of action. Specifically, the only factual representation that the complaint appears to allege was false was that Defendant was a licensed broker of automobiles. The complaint, and the instant motion for default judgment, however, do not meet the heightened pleading standards associated with pleading fraud. Instead, the complaint, and the declaration of Plaintiff attached to the motion for default judgment, simply state that Defendant led Plaintiff to believe that Defendant was a licensed broker of automobiles, and do not contain the requisite supporting details. *See, e.g., Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 737 (7th Cir. 2014) ("While the precise level of particularity required under Rule 9(b) depends upon the facts of the case, the pleading 'ordinarily requires describing the who, what, when, where, and how of the fraud.'").

Regarding 11 U.S.C. § 523(a)(4), the complaint appears to allege that Defendant embezzled funds from Plaintiff. The elements of an embezzlement claim are: "(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud." *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991).

Here, while the complaint does contain allegations regarding the first and third elements of an embezzlement claim, the complaint does not, at any point, allege that Defendant appropriated money or property of Plaintiff "to a use other than which it was entrusted."

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CONT... Niels Erik Topping

Chapter 7

Regarding 11 U.S.C. § 523(a)(6), a claim for willful and malicious injury, the willfulness requirement is met when "the debtor subjectively intended to cause injury to the creditor or the debtor subjectively believed that the injury was substantially certain to occur to the creditor as a result of her actions." *In re Chunchai Yu*, 2016 WL 4261655 at *3 (B.A.P. 9th Cir. 2016). "The [d]ebtor is charged with the knowledge of the natural consequences of his actions." *In re Ormsby*, 591 F.3d 1199, 1207 (9th Cir. 2010). "A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *In re Jercich*, 238 F.3d 1202, 1209 (9th Cir. 2001).

Here, the allegations do not appear to be sufficiently pled to meet the § 523(a)(6) standards. For example, Plaintiff has obtained a state court judgment that found that Defendant "demonstrated a conscious disregard for the rights and property of the plaintiff." But "acts in conscious disregard of another's rights or safety [] fail to satisfy the requisite state of mind for § 523(a)(6) willfulness." *In re Plyam*, 530 B.R. 456, 465 (B.A.P. 9th Cir. 2015). Nor is it clear that any of the allegations present in the complaint rise to the level of maliciousness. *See, e.g., In re Jercich*, 238 F.3d 1202, 1206 (9th Cir. 2001) ("We therefore hold that to be excepted from discharge under § 523(a)(6), a breach of contract must be accompanied by some form of 'tortious conduct.'").

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Niels Erik Topping

Pro Se

**United States Bankruptcy Court
Central District of California
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CONT... Niels Erik Topping

Chapter 7

Defendant(s):

Niels Erik Topping Pro Se

Joint Debtor(s):

Sonja Haupt Topping Pro Se

Movant(s):

Greg Thompson Represented By
John G Dickman

Plaintiff(s):

Greg Thompson Represented By
John G Dickman

Trustee(s):

Steven M Speier (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:20-12197 Russell Ray Bomar, Jr.

Chapter 7

Adv#: 6:20-01151 Chaffey Federal Credit Union v. Bomar, Jr.

#26.00 CONT. Status Conference RE: [1] Adversary case 6:20-ap-01151. Complaint by Chaffey Federal Credit Union against Russell Ray Bomar Jr.. false pretenses, false representation, actual fraud)) (Simon, A. Lysa)

EH__

From: 11/4/20

(Tele. appr. Lysa Simon, rep. Plaintiff Chaffey Federal Credit Union)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Russell Ray Bomar Jr.

Represented By
Neil R Hedtke

Defendant(s):

Russell Ray Bomar Jr.

Represented By
A. Lysa Simon

Plaintiff(s):

Chaffey Federal Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

6:20-14283 Donyel Betrice Johnson

Chapter 7

Adv#: 6:20-01163 Phillips Chiropractic, Inc. v. Johnson

#27.00 CONT. Status Conference re: Complaint by Phillips Chiropractic, Inc. against Donyel Betrice Johnson . (d),(e)) ,(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury))

*Another Summons issued 10/14/20

From: 11/25/20

EH__

(Tele. appr. John Sarai rep. Defendant, Donyel Beatrice Johnson)

(Tele. appr. J. Phillips, pro se Plaintiff)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donyel Betrice Johnson

Represented By
John D Sarai

Defendant(s):

Donyel Betrice Johnson

Represented By
John D Sarai

Plaintiff(s):

Phillips Chiropractic, Inc.

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 2, 2020

Hearing Room 303

2:00 PM

CONT... Donyel Betrice Johnson

Chapter 7