

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

Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:13-29444 Biani Berlenda Mora

Chapter 13

#1.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 12648 Casa Bonita Place, Victorville, CA 92392

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 12/6/16

EH__

Docket 82

***** VACATED *** REASON: ORDER ENTERED 12/19/16**

Tentative Ruling:

12/06/2016

Service: Proper

Opposition: Yes

The parties are to come prepared to discuss whether there has been any progress in reaching an APO. If no agreement is reached, the Court is inclined to GRANT the Motion under § 362(d)(1) and as otherwise requested in the Motion based on the excessive number of missed postpetition payments asserted by Movant (and which the Debtor has not controverted).

APPEARANCES REQUIRED

Party Information

Debtor(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

Movant(s):

U.S. Bank National Association, as

Represented By
Joely Khanh Linh Bui
Daniel K Fujimoto

**United States Bankruptcy Court
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10:00 AM

CONT... Biani Berlenda Mora

Caren J Castle

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:15-15522 Scott Allan Oswald and Lisa Frances Oswald

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 30249 Sierra Madre Dr, Temecula, CA 92591

MOVANT: FREEDOM MORTGAGE CORPORATION

EH__

Docket 42

Tentative Ruling:

Tentative Ruling:

12/20/2016

Service: Proper

Opposition: Yes

Movant has established grounds for relief from stay under 11 U.S.C. § 362(d)(1). Parties to confirm cure of arrears, and discuss terms of stay current APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Scott Allan Oswald

Represented By
Richard Lynn Barrett

Joint Debtor(s):

Lisa Frances Oswald

Represented By
Richard Lynn Barrett

Movant(s):

Freedom Home Mortgage

Represented By
Leslie M Klott

**United States Bankruptcy Court
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10:00 AM

**CONT... Scott Allan Oswald and Lisa Frances Oswald
Erin M McCartney**

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:16-10604 Juan Manuel Plascencia De La Torre

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15835 Oro Glen Drive, Moreno Valley, California 92551

MOVANT: WELLS FARGO BANK, N.A.

From: 11/15/16, 11/29/16

EH__

Docket 28

Tentative Ruling:

11/15/2016
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
DENY request for APO as moot.

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

Party Information

Debtor(s):

Juan Manuel Plascencia De La Torre

Represented By
M Wayne Tucker

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Megan E Lees

**United States Bankruptcy Court
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10:00 AM

CONT... Juan Manuel Plascencia De La Torre

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:16-13388 James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow Chapter 13

#4.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 31944 Ruxton Street

MOVANT: WELLS FARGO BANK, N.A.

From: 10/18/16, 11/15/16

EH__

Docket 34

Tentative Ruling:

10/18/16

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT requests under ¶¶ 2, 3 and 12.

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

Party Information

Debtor(s):

James Leonard Blow Jr.

Represented By
Jonathan D Doan

Joint Debtor(s):

Amanda Joyce Atkinson-Blow

Represented By
Jonathan D Doan

Movant(s):

Wells Fargo Bank, NA

Represented By

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CONT...

James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow

Chapter 13

Kristin A Zilberstein

Deborah L Rothschild

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:16-14358 Mirna Lorena Sanchez

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5536 Tyler St, Riverside, CA 92503

MOVANT: NATIONS DIRECT MORTGAGE LLC

EH__

Docket 23

Tentative Ruling:

Tentative Ruling:

12/20/2016

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶ 2 and 6. DENY request for APO as moot.

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

Party Information

Debtor(s):

Mirna Lorena Sanchez

Represented By
Donald E Iwuchuku

Movant(s):

Nations Direct Mortgage LLC

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-15097 Arlene Wilson Jackson

Chapter 13

#6.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 416 Dale Street, Perris, California 92571

MOVANT: WELLS FARGO BANK, N.A.

From: 10/4/16, 11/1/16, 12/6/16

EH__

Docket 18

Tentative Ruling:

Tentative Ruling:

10/4/16

Service: Proper

Opposition: Filed 9/22/16

Initially, the Court notes that the stay terminated by operation of law on July 7, 2016, pursuant to § 362(c)(3)(B) because Debtor had a case pending within the year preceding the instant filing (Case No. 15-18025, filed on 8/12/15 and dismissed on 4/13/16).

Debtor alleges that the fair market value of the Property is \$263,000, but does not provide any evidence to support such allegation. Thus, Debtor's arguments that there is equity in the Property and that Movant has an equity cushion are without merit.

Parties are to appear and discuss Debtor's request for an APO.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Arlene Wilson Jackson

Chapter 13

Debtor(s):

Arlene Wilson Jackson

Represented By
Christopher Hewitt

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Erica T Loftis
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
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Hearing Room 303

10:00 AM

6:16-18853 Patricia Jennifer Westenberg

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13020 Banning Street, Victorville, CA 92392

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 12

Tentative Ruling:

Tentative Ruling:

12/20/2016

Service is Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. GRANT as to ¶¶ 3 and 12.

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

Party Information

Debtor(s):

Patricia Jennifer Westenberg

Represented By
David H Chung

Movant(s):

Nationstar Mortgage LLC, its

Represented By
Kristin A Zilberstein

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-19387 Theresa Thompson

Chapter 7

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2009 MERCEDES-BENZ C300, VIN WDDGF54X79R061281

MOVANT: SANTANDER CONSUMER USA INC

EH__

Docket 7

Tentative Ruling:

Tentative Ruling:

12/20/16

Service is Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. GRANT as binding and effective despite conversion. DENY request for APO as moot.

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

Party Information

Debtor(s):

Theresa Thompson

Pro Se

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Charles W Daff (TR)

Pro Se

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10:00 AM

6:16-20094 William Pitts

Chapter 13

#9.00 CONT Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property

MOVANT: WILLIAM PITTS

From: 11/17/16, 11/29/16

EH__

Docket 13

Tentative Ruling:

11/17/2016

The Motion is deficient for the following reasons:

1. The Debtor filed two prior cases that he voluntarily dismissed. Both cases were dismissed within one year of the filing of the instant case. Therefore, the Debtor must move to impose the stay under § 362(c)(4). Instead, the Debtor has moved under § 362(c)(3).
2. Even assuming, arguendo, that the Court is willing to construe the Motion as a motion brought § 362(c)(4), the Debtor has not met his burden of rebutting by clear and convincing evidence the presumption that the case has been filed not in good faith. Specifically, the Debtor has provided no information addressing the reasons why he voluntarily dismissed both of his prior cases, and, more importantly, no evidence to indicate that the instant third filing will be any different.

Based on the foregoing, the Court is inclined to DENY the Motion without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William Pitts

Represented By

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CONT... William Pitts

Chapter 13

C Scott Rudibaugh

Movant(s):

William Pitts

Represented By
C Scott Rudibaugh

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 20, 2016

Hearing Room 303

10:00 AM

6:16-19530 Omar Figueroa

Chapter 7

#9.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 11016 3rd Ave. Hesperia CA 92345 . Exhibit Trustees Deed Upon Sale, Notice to Quit, Summons & Complaint, Writ of Possession) (O'Connor, Barry)

MOVANT: ATLAS CORPORATION OF ARIZONA

EH__

Docket 13

Tentative Ruling:

Tentative Ruling:

12/20/2016
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1). GRANT waiver of 4001(a)(3) stay.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Omar Figueroa

Represented By
Cecil R Taylor

Trustee(s):

Karl T Anderson (TR)

Pro Se

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Hearing Room 303

10:00 AM

6:16-20388 Noe Marmolejo

Chapter 13

#9.20 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate REAL PROPERTY

MOVANT: NOE MARMOLEJO

EH__

Docket 18

***** VACATED *** REASON: APPLICATION SHORTENING TIME
DENIED PER ORDER ENTERED 12/14/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noe Marmolejo

Represented By
Daniel A DeSoto

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

10:30 AM

6:16-15900 Yesenia Campuzano

Chapter 7

#10.00 CONT Reaffirmation Agreement filed 10/17/16 between Debtor and Foreman Financial Inc in the amount of \$9,690.70 Re: 2006 Lincoln Navigator
(SC Case)

From: 12/7/16

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yesenia Campuzano

Pro Se

Trustee(s):

Helen R. Frazer (TR)

Pro Se

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Tuesday, December 20, 2016

Hearing Room 303

11:00 AM

6:09-14033 Matthew Graham Mighell and Diana Marie Mighell

Chapter 7

#11.00 CONT Order to show cause why Daniel Brown, Attorney at Law, should not be held in Civil Contempt

From: 7/20/16, 9/28/16, 10/5/16, 11/16/16, 12/7/16

EH__

Docket 167

Tentative Ruling:

12/20/2016

PROCEDURAL BACKGROUND

On March 4, 2009, Matthew and Diana Mighell ("Debtors") filed a Chapter 11 voluntary petition. On September 18, 2009, the case was converted to Chapter 7. On August 26, 2010, Debtors received a standard discharge.

On January 19, 2016, Debtors filed a Motion for Contempt against Daniel Brown ("Brown"). On January 27, 2016, Brown filed his opposition. Debtors filed their reply on March 14, 2016. On April 4, 2016, an order to show cause was entered.

On May 20, 2016, Debtors filed a brief in support of their motion. On June 21, 2016, Brown filed his opposition brief. After a continuance on July 20, 2016, Debtors filed their reply brief on August 10, 2016. On September 14, 2016, Brown filed a motion to continue hearings, which was opposed by Debtors on September 21, 2016. On October 4, 2016, an amended order was entered continuing the hearing until December 7, 2016.

On November 13, 2016, Brown filed another opposition. On November 17, 2016, Debtors filed another reply. Brown corrected technical flaws in his opposition on November 29. On November 30, an order was entered continuing the hearing until December 20.

FACTUAL BACKGROUND

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CONT... Matthew Graham Mighell and Diana Marie Mighell

Chapter 7

In December 2008, Debtors and Brown began discussions regarding representation of Debtors in a state court proceeding¹ in addition to a bankruptcy proceeding. The representation was discussed over the ensuing weeks, resulting in two agreements: (1) a contingency fee arrangement²; and (2) a bankruptcy fee arrangement. The former governed representation in the state court proceeding and provided for a forty percent contingency fee. The latter governed representation in the bankruptcy proceeding, and provided for a flat fee of \$5,000 for limited scope representation. The contingency fee arrangement was disclosed to the Court.

On September 9, 2010, Brown filed a fee application requesting \$25,420 for services provided outside the scope outlined in the bankruptcy retainer. Brown's application made clear that these fees were accrued pre-conversion, while Debtors were in a Chapter 11. On September 15, 2010, Trustee objected on the basis that Brown failed to seek employment authorization from the court and failed to disclose any subsequent fee arrangement. On January 5, 2011, an order was entered denying the fee application.

On March 30, 2010, the underlying state court proceeding resulted in a jury verdict in favor of Debtors and two non-debtor companies in the amount of \$1,066,000. Debtors appear to have fired Brown immediately after the issuance of the state court verdict. Brown was not compensated for his services. The verdict was overturned on appeal.

On March 21, 2012, Brown filed a complaint against the Debtors in state court for breach of contract, breach of implied covenants, quantum meruit, unfair business practices, and fraud. The claim requested damages in relation to both representation in the state court proceeding and in the bankruptcy proceeding. This complaint was amended on July 1, 2013, to drop all causes of action except quantum meruit. On October 21, 2013, Debtors filed a cross-complaint against Brown for negligence. On February 2, 2014, Debtors amended their cross-complaint to add causes of action for breach of fiduciary duty and deceit.

Debtors make the following arguments in support of their contention that Brown has violated the discharge injunction: (1) that Brown's filing of the state court complaint violated the discharge injunction because the underlying services were provided pre-petition; (2) that to the extent Brown is seeking repayment of fees associated with bankruptcy, those fees have to be repaid from the estate and Brown's application has already been denied by the Court; (3) that Brown has engaged in various dishonest billing practices; (4) that Brown has harassed debtor-wife's mother and committed other unprofessional acts; and (5) Brown has violated attorney-client privilege. Only the first argument has merit. It is not clear how (3) through (5) are

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CONT... Matthew Graham Mighell and Diana Marie Mighell
related to the discharge injunction.

Chapter 7

Brown argues in response that all fees arose post-petition and are therefore not subject to the discharge injunction.

DISCUSSION

While this case includes voluminous briefing, ultimately Debtors assert that Brown has violated the discharge injunction by filing a lawsuit to collect in state court on a debt which Debtors believe was discharged. Brown alleges that the underlying claims he is asserting were not discharged and that, therefore, the discharge injunction was not violated.

There are two preliminary matters which admit of quick disposition. First, to the extent that Brown is attempting to collect on a disputed claim for bankruptcy services provided post-petition, that action is a violation of the discharge injunction. 11 U.S.C. § 348(b) (2010) provides:

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1201(a), 1221, 1228(a), 1301(a), and 1305(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case to such chapter.

Furthermore, the second page of the discharge issued by this court states: "If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted." Therefore, while the bankruptcy services provided by Brown were provided post-petition, they were provided pre-conversion, and, therefore, were discharged.

Second, there is extensive discussion and confusion regarding the actual merits and details of any claim Brown does or does not possess.³ In order to determine whether the discharge injunction was violated, this Court need not analyze the merits of Brown's claim; it is not this Court's duty to determine whether Brown has a valid claim, or the form of that claim. As further explained below, the discharge injunction prevents attempts to collect on discharged debt. The collection action initiated by Brown represents the action Debtors contend violated the discharge injunction.

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CONT... **Matthew Graham Mighell and Diana Marie Mighell** **Chapter 7**

Therefore, the debt that Brown is attempting to collect on is the debt that is outlined in his state court action. It is not appropriate for this Court or Debtors or any other entity to redefine the claim upon which Brown is attempting to collect. To the extent the debt described by Brown is different from what this Court may determine should be the claim asserted by Brown, it is Brown's account that controls.

I. Standard for Contempt-Violation of Discharge

11 U.S.C. § 524(a)(2)(2010) states:

(a) A discharge in a case under this title-

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived;

Section 524(a) can be enforced through the court's contempt power under 11 U.S.C. § 105(a). *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002); *see also In re Nash*, 464 B.R. 874, 880 (B.A.P. 9th Cir. 2012) ("A party that knowingly violates the discharge injunction can be held in contempt under § 105(a)."). "The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *In re Eady*, 2008 WL 8444808 at *4 (9th Cir. B.A.P. 2008). "[T]o justify sanctions, the movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction." *In re Bennett*, 298 F.3d at 1069; *see also In re Valley Health Sys.*, 2015 WL 4512178 at *1 (Bankr. C.D. Cal. 2015) ("The violation must be willful."). Regarding the first prong, "[t]he Ninth Circuit has held that the first prong of the *Hardy* test requires that the bankruptcy court be shown that the target creditor knew that the discharge injunction was applicable to its claim." *In re Nash*, 464 B.R. at 880 (*citing In re ZiLOG, Inc.*, 450 F.3d 996, 1007-09). But, "[i]n applying the second prong of this test, the bankruptcy court's focus is not on the offending party's subjective beliefs or intent, but on whether the party's conduct in fact violated the order at issue." *In re Garcia*, 2014 WL 1345936 at *4 (9th Cir. B.A.P. 2014). The Ninth Circuit's comments on sanctions for violation of the automatic stay best illustrate the willfulness standard: "Willful violation does not require a specific intention to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional." *In re Pace*, 67 F.3d 187, 191 (9th Cir. 1995). Here, it is clear that the actions at issue were intentional and that Brown knew of the

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discharge injunction, since he was actively involved in the bankruptcy case at the time. Therefore, the remaining question is whether there was, in fact, a violation of the discharge.

II. Violation of Discharge

11 U.S.C. § 727(b) (2005) states, in part: "Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter." A violation of the discharge occurs when: "(1) the creditor took an action to collect, recover or offset a particular debt as a personal liability of the debtor, and (2) such debt is a debt discharged under section 727. A debt is discharged if it arose before the date of the order for relief and has not been excepted from discharge as provided in section 523 of this title." *In re Azevedo*, 506 B.R. 277, 282 (Bankr. E.D. Cal. 2014).

11 U.S.C. § 101 (2010) defines debt as "liability on a claim" and defines claim as:

- (A) Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (B) Right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

The definition of claim, and, therefore, damages, is thus extremely broad under the Bankruptcy Code. *See e.g., In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993) ("This broadest possible definition of claim is designed to ensure that all legal, equitable, secured, or unsecured."); *Matter of Rosteck*, 899 F.2d 694, 697 (7th Cir. 1990) ("by bringing even contingent and unliquidated claims into the bankruptcy case, Congress has insured that the debtor will receive the complete discharge of his debts, without the threat of lingering claims riding through the bankruptcy.").

"To facilitate this broad definition and the fresh start policy, the Ninth Circuit ordinarily employs the 'fair contemplation test' in determining when a claim arises." *In re Gillespie*, 516 B.R. 586, 591 (B.A.P. 9th Cir. 2014). "However, the Ninth Circuit has adopted a different standard for determining for discharge purposes when an attorney's fee claim arises," the *Ybarra* rule. *Id.* "Under that standard, even if the underlying claim arose prepetition, the claim for fees incurred postpetition on account

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of that underlying claim is deemed to have arisen postpetition if the debtor 'returned to the fray' postpetition by voluntarily and affirmatively acting to commence or resume the litigation with the creditor." *Id.* (citing *In re Ybarra*, 424 F.3d 1018, 1027 (9th Cir. 2005)). *Ybarra* states that:

In sum, we have held that post-petition attorney fee awards are not discharged where post-petition, the debtor voluntarily pursued a whole new course of litigation, commenced litigation, or returned to the fray voluntarily. We have also endorsed the notion that by voluntarily continuing to pursue litigation post-petition that had been initiated pre-petition, a debtor may be held personally liable for attorney fees and costs that result from that litigation.

Id. at 1024; see also *Matter of Hadden*, 57 B.R. 187, 188 (Bankr. W.D. Wis. 1986) ("To the extent that the attorney's fees arose before the filing of the bankruptcy petition, Stettler's claim is a dischargeable pre-petition debt. To the extent that the fees arose after the debtor filed for bankruptcy, they constitute a nondischargeable post-petition debt."). "Whether attorney fees and costs incurred through the continued prosecution of litigation initiated pre-petition may be discharged depends on whether the debtor has taken affirmative post-petition action to litigation a prepetition claim and has thereby risked the liability of these litigation expenses." Here, the Debtors unquestionably continued to pursue litigation postpetition that had been initiated pre-petition; the contingency fee agreement was only signed approximately 1.5 months prior to the bankruptcy filing, while the verdict was rendered more than one year after the bankruptcy filing, and after conversion. Therefore, the attorney's fees arising post-petition are not considered discharged under the Ninth Circuit's *Ybarra* rule.

III. *Classification of Claims*

As the *Hadden* quote makes clear, if an attorney fee arising from a contractual arrangement produces fees both pre-petition and post-petition, the fees that arise pre-petition are considered pre-petition claims that are subject to discharge. Therefore, it is necessary to review Brown's claims which Debtors rely on to form the basis of their motion. Brown's most expansive state court complaint included eight causes of action: (1) breach of contract (oral contract); (2) breach of contract (contingency agreement); (3) breach of contract (bankruptcy agreement); (4) breach of implied covenants; (5) quantum meruit-unjust enrichment (state court proceeding); (6) quantum meruit-unjust enrichment (bankruptcy matters); (7) unfair business practices under § 17200; and (8) fraud.

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CONT... Matthew Graham Mighell and Diana Marie Mighell

Chapter 7

A. Claim (1)

Brown alleges in his state court complaint that an oral contract was formed containing the general terms that would later become the two representation contracts. Brown simply alleges a general breach of that oral contract; the referenced exhibit, however, makes clear Brown is referring to a breach of that part of the agreement that deals with the state court proceeding. Because compensation as to that proceeding as governed by the "oral contract", according to the allegations made by Brown in his complaint, was based on a percent of money obtained, the fees would naturally arise post-conversion (at the time the state court judgment was rendered). Therefore, the first cause of action is not a violation of the discharge injunction.

B. Claim (2)

The second cause of action, for breach of the contingency fee agreement requires separate analysis because the relevant contractual provisions are more extensive than those that comprise the alleged oral contract.

Section 4 of the contingency fee arrangement, titled "Legal Fees," states, in part:

Attorney will only be compensated for legal services rendered if a recovery is obtained for Client. If no recovery is obtained, Client will not be obligated to pay any amounts, including fees, costs, disbursements or expenses. . . .

In the event of Attorney's discharge or withdrawal as provided in Paragraph 11, Client agrees that, upon recovery of a settlement, arbitration award or judgment in Client's favor in this matter, or upon receipt of any other form of recovery for this matter, Attorney shall be entitled to be paid by Client a reasonable fee for the legal services provided.

Section 11, titled "Discharge and Withdrawal" states, in part:

Notwithstanding Attorney's withdrawal or Client's notice of discharge, and without regard to the reasons for the withdrawal or discharge, Client will remain obligated to pay Attorney for all costs incurred prior to the termination and, in the event that there is any net recovery obtained by Client after conclusion of Attorney's services, Client remains obligated to pay Attorney for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge.

The second cause of action in Brown's state court complaint appears to

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alternatively suggest that Debtors owed Brown pursuant to the contingency provision and that Debtors owed Brown pursuant to the discharge/withdrawal provision of the representation agreement. The former, under the *Ybarra* rule, would have arisen post-conversion, according to Brown's account and Section 4, since it would have matured at the time the state court judgment was issued. Therefore, attempting to collect on the contingency provision in the representation agreement is not a violation of the discharge injunction. Furthermore, attempting to collect on the reasonable value of services provided also arises post-petition since, according to Brown's account and in accordance with Section 4 of the representation agreement, the duty to compensate Brown for reasonable services would appear to have matured at the time the state court judgment was issued.

Brown also requests reimbursement for costs. Section 11 makes clear that Debtors' reimbursement of Brown's costs was not conditioned on a recovery by Debtors. Therefore, under *Ybarra*, any claim based on costs arose at the time those costs were incurred. Brown's state court complaint does not detail what costs were sought in the action. Because Debtors have the burden to demonstrate by "clear and convincing evidence" that the discharge injunction was violated, Debtors have not satisfied their burden with regard to Brown's second cause of action.

C. Claim (3)

The third cause of action, for breach of the bankruptcy retainer agreement is much more straightforward. Because the services were provided pre-conversion, any claim arising from those services was discharged pursuant to 11 U.S.C. §§ 348(b) and 727 (b).

D. Claim (4)

Brown's fourth claim is for breach of the implied covenants of good faith and fair dealing. Brown alleges that this breach occurred because Debtors "breached their obligations of good faith and fair dealing by breaching the contracts, treating the Plaintiff unfairly, and committing fraud against the Plaintiff, all in such a manner as to deprive the Plaintiff from deriving any benefit whatsoever from any one or all three of the contracts that were entered into between the Plaintiff and the Defendants." While Brown's claim does not directly specify whether he believes this breach occurred pre-conversion or post-conversion, it would appear Brown has alleged that the continuing action of Debtors constituted the breach, with parts occurring both pre-conversion (fraud) and postconversion (breach of contract). Because Brown has failed to differentiate between a pre-conversion claim (which would have been discharged) and

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a post-conversion claim (which would not have been discharged), the claim itself represents a violation of the discharge injunction since it seeks to recover, in part, on a discharged claim.

E. Claim (5)

Brown's fifth cause of action is quantum meruit-unjust enrichment (legal services-civil matter). Brown performed services both pre-conversion and post-conversion for Debtors, and, therefore, a portion of this cause of action was discharged, while a portion was not. Because the cause of action was partially discharged, this cause of action is a violation of the discharge injunction.

F. Claim (6)

Brown's sixth cause of action is quantum meruit-unjust enrichment (legal services-bankruptcy matters). For the reasons stated in section III.C, *supra*, this claim is a violation of the discharge injunction.

G. Claim (7)

Brown's seventh cause of action is unfair business practices under California Business & Professions Code § 17200. Again this claim fails to distinguish between pre-conversion and post-conversion violations. While some of the allegations in the cause of action appear to have arisen post-conversion, there are certainly parts that arose pre-conversion, and were, therefore, discharged. For example: "Defendant MATT MIGHELL has acted fraudulent because MATT MIGHELL intentionally defrauded the Plaintiff into performing vast amounts of legal work and expending major costs and expenses without ever intending to pay." This refers to conduct that occurred pre-conversion, and represents, therefore, a discharged claim. For that reason, this cause of action is a violation of the discharge injunction.

H. Claim (8)

Brown's eighth cause of action is fraud. Many of the "frauds" alleged by Brown were committed pre-conversion and were, therefore, discharged. For that reason, this cause of action is a violation of the discharge injunction.

TENTATIVE RULING

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The Court is inclined to hold Brown in contempt. Specifically, the Court finds that third through eighth causes of action in Brown's state court complaint, and the actions related to, or premised upon, those causes of action, violated the discharge injunction. Movant will be required to submit evidence demonstrating actual damages and costs.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Matthew Graham Mighell

Represented By
Daniel G Brown
Richard A Brownstein
Christopher Hewitt

Joint Debtor(s):

Diana Marie Mighell

Represented By
Daniel G Brown
Richard A Brownstein
Christopher Hewitt

Trustee(s):

Helen R. Frazer (TR)

Pro Se

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6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#12.00 CONT Motion For Sale of Property of the Estate under Section 363(b) - No Fee

From: 12/7/16

Also #13

EH__

Docket 81

Tentative Ruling:

12/07/2016

BACKGROUND

On February 28, 2013, Michael & Maricar Santos ("Debtors") filed a Chapter 7 voluntary petition. On April 17, 2013, a pro se reaffirmation agreement was filed between Debtors and Wescom Credit Union regarding real property located at 5689 Andover Way, Chino Hills, CA 91709 ("the Property"). Debtors received a discharge on June 17, 2013.

On December 3, 2015, Trustee filed an application to employ Neiman Realty as real estate broker. An order was entered granting that application on December 30, 2015. On February 24, 2016, Trustee filed a motion for turnover of property regarding the Property. On March 10, 2016, Debtors filed their opposition. The motion for turnover was granted and an order was entered on April 14, 2016. That order was appealed to the Bankruptcy Appellate Panel, and the appeal was dismissed on June 7, 2016. Trustee filed another motion for turnover relating to the property on September 27, 2016. Debtors filed a motion to convert case to Chapter 13 and an opposition to the second motion for turnover on October 4, 2016. Trustee filed his opposition to the motion to convert on October 12, 2016. On November 3, 2016, an order was entered granting the motion for turnover and providing the terms by which Debtors were to allow prospective buyers access to the Property.

On November 3, 2016, Trustee filed a motion for sale of property of the estate

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under §363(b).

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DISCUSSION

11 U.S.C. § 363(b) (2010) provides that a trustee may use, sell, or lease property of the estate, outside the ordinary course of business, after notice and a hearing. "A bankruptcy court has discretion when ruling on a § 363(b) motion." *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 656 (B.A.P. 9th Cir. 1996). The movant must demonstrate that the proposed sale has a "valid business justification" and is proposed "in good faith." *Id.* at 659 (citing *In re Wilde Horse Enters. Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)); see also *In re Kellogg-Taxe*, 2014 WL 1016045 at *4 (Bankr. C.D. Cal. 2014) ("A bankruptcy court can authorize the sale of substantially all of the assets of the estate under § 363(b) upon a proper showing that the sale is in the best interests of the estate, that there is a sound business purpose for the sale, and that it was proposed in good faith.).

Here, Trustee has provided evidence that the Property was sufficiently marketed and that the purchase price is approximately equivalent to the fair market value of the property. Specifically, Trustee has provided a declaration estimating that the net sale proceeds from the sale of the Property will be approximately \$122,500 and that, therefore, the sale benefits the estate and satisfies the business judgment test. Furthermore, Trustee's declaration and the attached exhibits demonstrate that the property was listed on a variety of real estate websites beginning on July 25, 2016 for a listing price of \$545,000, indicating that the sale was an arms-length transaction that was proposed in good faith. Therefore, the Trustee has met his burden.

The Trustee further requests that Elizabeth Kanashiro ("Kanashiro") be found to be a good faith purchaser pursuant to 11 U.S.C. § 363(m). Section 363(m) states:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

"Absence of good faith is 'typically shown by fraud, collusion between the purchaser and other bidders of the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1041 (9th Cir. 2016) (quoting *In re Filtercorp. Inc.*, 163 F.3d 570, 577 (9th Cir. 1998)). A finding that the

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agreement was the product of an arms-length negotiation and entered into without collusion, in the absence of any opposition or conflicting evidence, is sufficient to support a good faith finding under § 363(m). *See id.* Therefore, the Court will find that Kanashiro is a good faith purchaser under § 363(m).

TENTATIVE RULING

Subject to discussion on the Debtors' motion to convert, and as to whether the proposed sale is to be free and clear pursuant to § 363(f), the Court is inclined to GRANT.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Movant(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)

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#13.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 11/9/16, 12/7/16

Also #12

EH__

Docket 69

Tentative Ruling:

12/20/2016

BACKGROUND

On February 28, 2013, Michael & Maricar Santos ("Debtors") filed a Chapter 7 voluntary petition. On June 17, 2013, Debtors received a standard discharge. The Chapter 7 case, however, remained open.

On October 4, 2016, Debtors filed a motion to convert case from Chapter 7 to 13. On October 12, 2016, Trustee filed his opposition. On November 2, 2016, Debtors filed a reply. A hearing on the matter was held on November 9, 2016. The hearing was continued to allow for additional briefing on the issue whether, and in what circumstances, a Chapter 7 case could be converted to a Chapter 13 post-discharge. Debtor filed their response on November 18, 2016. Trustee filed their response on November 29, 2016. After the December 7, 2016, hearing was continued, Debtors filed their reply on December 14, 2016.

DISCUSSION

The preliminary question before the Court is whether, and under what circumstances, a Debtor can convert their Chapter 7 case to a Chapter 13 post-discharge.

No binding law has been identified with respect to this issue. It appears, however, that the majority of courts do not afford a debtor the absolute right to convert a case to Chapter 13 after a discharge has been obtained. *See, e.g., In re*

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Starling, 359 B.R. 901, 907-09 (Bankr. N.D. Ill. 2007) (conversion only authorized after vacation of discharge); *In re Hauswirth*, 242 B.R. 95, 96 (Bankr. N.D. Ga. 1999) ("The other courts which have considered that question have all reached the tacit conclusion that a debtor may not convert from Chapter 7 to Chapter 13 and retain the Chapter 7 discharge."); *In re Lesniak*, 208 B.R. 902, 907 (Bankr. N.D. Ill. 1997) (no conversion allowed). Other courts have held that a debtor's right to conversion is not constrained by a discharge. *See, e.g., In re Young*, 237 F.3d 1168 (10th Cir. 2001) (conversion allowed if plan is proposed in good faith).

Two related situations are when a debtor files sequential bankruptcies (i.e. the filing of a Chapter 13 upon the closing of the Chapter 7 case), and when the Debtor attempts to file simultaneous bankruptcies (the filing of a Chapter 13 case while a Chapter 7 case is pending). The former is permissible and is commonly referred to as a Chapter 20 case. *See, e.g., In re Metz*, 67 B.R. 462, 465 (B.A.P. 9th Cir. 1986). The latter appears to be permissible in the Ninth Circuit upon a finding that the later filing occurred in good faith. *See In re Blendheim*, 803 F.3d 477, 500 (9th Cir. 2015). The question presented to the Court, and the question considered in *Starling*, considers an approach between these two situations: the conversion of a case prior to closing, but post-discharge.

11 U.S.C. § 109(e) (2010) states:

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under chapter 13 of this title.

One issue here is whether § 109(e) requires that a debtor owe any debt. Because Debtors' personal liability has been extinguished by the Chapter 7 discharge, it would not appear that there are any claims that would be subject to a Chapter 13 reorganization plan. "Because the creditors that had their claims discharged in the Chapter 7 no longer have any right to receive payment under a Chapter 13 plan or the right to objection to confirmation, the debtor 'no longer has any meaningful debts to repay pursuant to a Chapter 13 plan.'" *In re Starling*, 359 B.R. at 911 (*citing In re Marcakis*, 254 B.R. 77, 82 (Bankr. E.D.N.Y. 2000)). It is questionable whether a debtor who does not owe any debt is eligible to be a debtor under Chapter 13.

More importantly, however, to allow a conversion in this situation would be to

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create a loophole that could potentially lead to abuse of the bankruptcy system. *See, e.g., In re Lesniak*, 208 B.R. 902, 906 (Bankr. N.D. Ill. 1997) ("[T]he Court finds that it would be an abuse of process to permit the Debtors to convert to Chapter 13 at this stage of their Chapter 7 case."). If "a debtor converts to Chapter 13 after the Chapter 7 discharge, but before the estate property is liquidated, he has received all of the benefits of Chapter 7 without any of the burdens, because he regains his nonexempt property, and his debts have all been discharged." *In re Rigales*, 290 B.R. 401, 407 (Bankr. N.M. 2003).

Debtors contend that *Marrama* provides a "very narrow" exception to their "absolute" right of conversion. While *Marrama* is noted for establishing the bad faith exception to conversion, it is important to note that *Marrama's* holding was that conversion could be denied when grounds existed to "re-convert" or dismiss the case under 11 U.S.C. §1307(c) (2010):

There are at least two possible reasons why *Marrama* may not qualify as such a debtor, one arising under § 109(e) of the Code, and the other turning on the construction of the word "cause" in § 1307(c). The former provision imposes a limit on the amount of indebtedness that an individual may have in order to qualify for Chapter 13 relief. More pertinently, the latter provision, § 1307(c), provides that a Chapter 13 proceeding may be either dismissed or converted to a Chapter 7 proceeding "for cause" and includes a nonexclusive list of 10 causes justifying that relief. . . . In practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13. That individual, in other words, is not a member of the class of "honest but unfortunate debtor[s]" that the bankruptcy laws were enacted to protect. The text of § 706(d) therefore provides adequate authority for the denial of his motion to convert.

Marrama v. Citizens Bank of Mass., 549 U.S. 365, 373-74 (2007) (citation omitted). Therefore, *Marrama* concluded that an individual whose potential Chapter 13 case was subject to dismissal or conversion under § 1307(c) was not entitled to a right to convert. Because § 1307(c) provides for conversion or dismissal "for cause", it follows that the Court has the authority to deny conversion "for cause."

"For cause" is an expansive standard and many different findings could lead to a dismissal for cause. *See, e.g., Marrama*, 549 U.S. 365 (abuse of process); *In re Molitor*, 76 F.3d 218 (8th Cir. 1996) ("unfair manipulation of Code"); *Matter of Love*, 957 F.2d 1350, 1357 (7th Cir. 1992) (fairness to creditors). "A judge should ask whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated

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the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner.'" *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) (*quoting In re Goeb*, 675 F.2d 1386, 1390 (9th Cir. 1982); *see also In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (listing factors that should be considered).

The Court agrees with the reasoning presented by the *Starling* court and finds that cause would exist to convert or dismiss a Chapter 13 case that was converted to Chapter 13 post-discharge, prior to closing, when administration of the estate was still occurring. Bankruptcy relief involves a "quid pro quo." *See In re Jeffrey*, 176 B.R. 4, 6 (Bankr. D. Mass. 1994). While Debtors have repeatedly argued that there has been no bad faith conduct in this case, obtaining a discharge and then prohibiting the Trustee from administering the case is unfair to creditors, and is a manipulation and abuse of the Bankruptcy Code. Therefore, cause would exist to convert the case under § 1307 (c). Cause does not require "fraudulent intent" or any bad conduct by Debtors. *Leavitt*, 171 F.3d at 1224. It is unclear whether any circumstances would permit conversion of a Chapter 7 case to a Chapter 13 prior to case closing, but, if so, those circumstances are not present here. *See David Guess, Exposing the Convert's Loophole: Postdischarge Conversion as an Abuse of the Bankruptcy Process*, 2005 Ann. Surv. of Bankr. Law 19 (2005) (strongly questioning whether there is a good faith reason to convert to Chapter 13 post-discharge).

The primary case cited by Debtors in their reply, *Blendheim*, is distinguishable from the instant situation. In *Blendheim*, the question was whether the Debtors could simultaneously maintain Chapter 7 and Chapter 13 proceedings. First, *Blendheim* determined that there was no absolute prohibition on maintaining simultaneous bankruptcy cases. Likewise, there is no absolute prohibition on converting a case from Chapter 7 to Chapter 13 post-discharge, but pre-closing. For the reasons stated in the preceding paragraphs, however, Debtors' case is subject to re-conversion under 11 U.S.C. § 1307 and is, therefore, not eligible for conversion.

It is also unclear what administrative consequences *Blendheim* caused. Assuming that the maintenance of simultaneous bankruptcy cases would allow for administration of both cases, rather than result in quasi-conversion (where administration of the first case would effectively cease), the dissolution of the bankruptcy quid pro quo would not be dissolved. Continuing administration of both cases would not necessarily be unfair to creditors, or result in a manipulation or abuse of the Bankruptcy Code. Here, however, Debtors are proposing to cease administration of their Chapter 7 case after receiving a discharge. Therefore, the case is fundamentally different.

Additionally, Debtors stated that they are willing to waive their discharge as a

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condition of conversion. 11 U.S.C. § 727(a)(10) (2005) states:

Chapter 7

(a) The court shall grant the debtor a discharge, unless –

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter.

Here, Debtor has not provided a written waiver of discharge for the Court's approval. Even if Debtor had presented a written waiver of discharge, the statutory language "shall grant the debtor a discharge, unless" makes clear that the waiver must occur prior to the granting of the discharge. *See In re Aubry*, 2015 WL 5735204 at *1 (Bankr. C.D. Cal. 2015) ("Having considered Debtor's so-called 'Waiver,' the court now rules and disapproves the so-called 'Waiver,' holding that it is legally ineffective since it is untimely under 11 U.S.C. § 727(a)(10), having been made after the bankruptcy discharge has been entered.); *see also In re Bailey*, 220 B.R. 706, 710 (Bankr. M.D. Ga. 1998). The cases cited by Debtor in support of a post-discharge waiver of discharge do not support his contention; none of the cases deal with § 727(a)(10) or waiver of a discharge, but, instead, deal with other provisions and procedural mechanisms.

Because *Marrama* allows a court to deny conversion "for cause", the Court is inclined to deny the motion to prevent an inequity.

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

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Chapter 7

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Movant(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith
Jeffrey B Smith

Michael Sevilla Santos

Represented By
Jeffrey B Smith
Jeffrey B Smith
Jeffrey B Smith

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#14.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/15/16, 12/6/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

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CONT... Allied Injury Management, Inc.

Chapter 11

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Plaintiff(s):

Allied Injury Management, Inc. Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR) Pro Se

**United States Bankruptcy Court
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2:00 PM

6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#15.00 Application to Employ Michael Kogan as Attorney

Also #16

EH__

Docket 23

***** VACATED *** REASON: ORDER ENTERED 12/13/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

Movant(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan
Michael S Kogan
Michael S Kogan
Michael S Kogan

**United States Bankruptcy Court
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6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#16.00 Motion for Authority to Maintain Certain Prepetition Bank Accounts for a Limited Purpose

Also #15

EH__

Docket 47

Tentative Ruling:

12/20/2016

BACKGROUND

On October 28, 2016, Sam Daniel Dason DDS, A Professional Corporation ("Debtor") filed a Chapter 11 voluntary petition. On November 3, 2016, an order was entered granting first day motions relating to pre-petition wages and, on an interim basis, adequate assurance of payment for postpetition utility services. On November 7, 2016, an order was entered authorizing the use of cash collateral on an interim basis. On December 5, 2016, an order was entered determining adequate assurance of payment for postpetition utility services.

On November 16, 2016, Debtor filed a motion for authority to maintain certain prepetition bank accounts for a limited purpose. The Court notes that Debtor limited service to only UST and one secured creditor.

DISCUSSION

"Debtor requests that it be allowed to maintain certain of its prepetition bank accounts for the limited purpose of obtaining credit card payments and clearing certain transactions that would be extremely difficult to set up in the DIP accounts."

11 U.S.C. § 105(a) (2010) states, in part: "The court may issue any order,

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CONT... Sam Daniel Dason DDS,A Professional Dental Corpora Chapter 11

process, or judgment that is necessary or appropriate to carry out the provisions of this title." Courts allow the maintenance of prepetition bank accounts as a practical concern. *See, e.g., Matter of Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995); *In re Columbia Gas Sys. Inc.*, 997 F.2d 1039, 1061 (3rd Cir. 1993); *In re The Colad Group, Inc.*, 324 B.R. 208, 216 (Bankr. W.D.N.Y. 2005) (maintenance of prepetition cash management system for convenience reasons).

The Court notes that this motion should have been brought with the remainder of the first-day motions, since the UST Guidelines applicable to Chapter 11 debtors require the closing of prepetition bank accounts. *See, e.g., In Marciano*, 459 B.R. 27, 56 (B.A.P. 9th Cir. 2011). Nevertheless, in the absence of any opposition, requiring Debtor to redirect all installment payments to a DIP account would be an administrative burden without any clear benefit.

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPERANCES REQUIRED.

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

Movant(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan
Michael S Kogan
Michael S Kogan
Michael S Kogan

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

Tuesday, December 20, 2016

Hearing Room 303

2:30 PM

6:12-38240 Israel De La Cruz

Chapter 13

#17.00 Debtor's Motion for Authority to Sell Real Property

EH__

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Israel De La Cruz

Represented By
Daniel King

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)