

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

9:30 AM

1:14-15360 Oracle Transportation Solutions, Inc.

Chapter 11

#1.00 Motion For Final Decree and Order Closing Case

Docket 312

Tentative Ruling:

Service proper. No objections filed. Having considered the Motion, reviewed the docket and the procedural history of the case, and finding that the case has been fully administered, the Motion is GRANTED.

Movant to lodge order within 7 days.

NO APPEARANCE REQUIRED on 4/25/18.

Party Information

Debtor(s):

Oracle Transportation Solutions, Inc.

Represented By
Ovsanna Takvoryan
Joseph Chora

Movant(s):

Oracle Transportation Solutions, Inc.

Represented By
Ovsanna Takvoryan
Ovsanna Takvoryan
Joseph Chora
Joseph Chora

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9:30 AM

1:14-15360 Oracle Transportation Solutions, Inc.

Chapter 11

#2.00 Post Confirmation Status Conference

fr. 8/13/15, 9/17/15, 12/10/15; 8/18/16, 9/29/16,
12/8/16; 3/16/17, 3/22/17, 7/26/17; 11/15/17, 2/7/18,
3/21/18

Docket 1

***** VACATED *** REASON: See tentative ruling for cal. no. 1 - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oracle Transportation Solutions, Inc.

Represented By
Steven R Fox

**United States Bankruptcy Court
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9:30 AM

1:15-13495 Picture Car Warehouse Inc

Chapter 11

#3.00 Motion for Order Disallowing Claim # 16 filed by
Sony Pictures Studios, Inc.

Docket 335

Tentative Ruling:

Debtor objects to the proof of claim filed on 2/22/16 by Sony Pictures Studios ("SPS"), in the amount of \$37,100. The claim stems from a contract entered into between Debtor and SPS on or about March 26, 2012, that provided for the sale of certain vehicles to Debtor for \$160,000, and a credit for SPS of \$40,000 towards future rentals from Debtor for a period of four years from the date of contract. Objection, Ex. A. The breakdown attached to the Proof of Claim indicates that it used \$2,900 of the credit and based the claim on what it asserted was a remaining credit balance of \$37,100.

A proof of claim is deemed allowed unless a party in interest objects under § 502(a) and constitutes "prima facie evidence of the validity and amount of the claim" pursuant to Bankruptcy Rule 3001(f). See also Fed. R. Bankr.P. 3007. The filing of an objection to a proof of claim "creates a dispute which is a contested matter" within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief. See Adv. Comm. Notes to Fed. R. Bankr.P. 9014.

Upon objection, the proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir.1991) (quoting 3 Collier on Bankruptcy § 502.02, at 502-22 (15th ed.1991)); see also Ashford v. Consolidated Pioneer Mort. (In re Consol. Pioneer Mort.), 178 B.R. 222, 226 (9th Cir. BAP 1995), aff'd, 91 F.3d 151, 1996 WL 393533 (9th Cir.1996). To defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." Holm, 931 F.2d at 623.

"If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." In re Consol. Pioneer, 178 B.R. at

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CONT... Picture Car Warehouse Inc

Chapter 11

226 (quoting In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir.1992)). The ultimate burden of persuasion remains at all times upon the claimant. See In re Holm, 931 F.2d at 623.

Debtor argues that implicit in the contract was that SPS was under no obligation to rent vehicles from Debtor, and Debtor's only obligation was to provide a credit *if* (1) SPS decided to rent a vehicle from it; and (2) SPS decided to use the credit towards that particular rental. The contract also provided for a four year time period within which the credit was available to SPS, or March 26, 2016. Thus, because there the contract created no right to payment of money and because there is no enforceable contract obligation to support this claim, Debtor objects to the allowance of this claim.

Service proper per proof of claim. No response filed.
Objection SUSTAINED. Debtor to lodge order within 7 days.

APPEARANCES WAIVED ON 4/25/18

Party Information

Debtor(s):

Picture Car Warehouse Inc

Represented By
Carolyn A Dye

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9:30 AM

1:16-11985 Samuel James Esworthy

Chapter 11

#4.00 Status and Case Management Conference

fr. 9/1/16, 2/9/17, 3/22/17, 4/26/17, 7/5/17,
8/16/17; 9/27/17, 11/29/17, 2/14/18

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Samuel James Esworthy

Represented By

M Jonathan Hayes

M Jonathan Hayes

M Jonathan Hayes

M Jonathan Hayes

M Jonathan Hayes

**United States Bankruptcy Court
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Hearing Room 302

9:30 AM

1:16-12920 Bang T Phan

Chapter 11

#5.00 Application for Payment of Final Fees and
Expenses of Rounds & Sutter, LLP

Docket 75

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the First and Final Fee Application for Debtor's Reorganization Counsel, the Court finds that the fees and costs are reasonable, necessary and are approved as requested.

Applicant to lodge order within 7 days.
APPEARANCES WAIVED ON APRIL 25, 2018

Party Information

Debtor(s):

Bang T Phan

Represented By
John K Rounds

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

9:30 AM

1:16-13295 K&A Global Management Company, a California corpor Chapter 11

#6.00 First and Final Application Of Jeffrey S. Shinbrot, APLC,
General Reorganization Counsel to Chapter 11 Debtor
For Approval of Compensation

Period: 11/21/2016 to 3/31/2018
Fees: \$89977.50 Expenses: \$3136.88

Docket 88

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the First and Final Fee Application for Debtor's Reorganization Counsel, the Court finds that the fees and costs are reasonable, necessary and are approved as requested.

Applicant to lodge order within 7 days.
APPEARANCES WAIVED ON APRIL 25, 2018

Party Information

Debtor(s):

K&A Global Management

Represented By
Jeffrey S Shinbrot

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Hearing Room 302

9:30 AM

1:17-10064 Nahrin Beno

Chapter 11

**#7.00 Post Confirmation Status and Case Management
Conference**

fr. 3/8/17, 6/14/17, 7/26/17, 8/16/17, 11/1/17, 11/8/17

Docket 1

Tentative Ruling:

Having reviewed the Status Report and the docket for this case, the Court finds cause to continue this status conference to **May 3, 2018, at 9:30 a.m.**, so that Debtor's Motion for Final Decree & Order Closing Case can be resolved.

If the Order Granting Motion for Final Decree & Order Closing Case is entered before the continued date, the continued status conference may be vacated.

NO APPEARANCE REQUIRED ON 4/25/18

Party Information

Debtor(s):

Nahrin Beno

Represented By
Matthew D Resnik
Roksana D. Moradi

**United States Bankruptcy Court
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9:30 AM

1:17-10861 FAMOSO PORTERVILLE, LLC

Chapter 11

#8.00 Second Amended Chapter 11 Plan of Reorganization

Docket 108

Tentative Ruling:

After having reviewed Debtor's Second Amended Plan, the ballot summary, and Motion for Confirmation, the Court finds that all requirements for confirmation have been met. Debtor should include requisite findings under § 1129(a) and (b) in confirmation order.

Party Information

Debtor(s):

FAMOSO PORTERVILLE, LLC

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

9:30 AM

1:17-10861 FAMOSO PORTERVILLE, LLC

Chapter 11

#9.00 Scheduling and Case Management Conference

fr. 5/31/17; 11/8/17; 11/15/17, 1/17/18

Docket 0

Tentative Ruling:

Post-confirmation status conference will be held on February 27, 2019 at 9:30 am
Please advise if any date conflict.

Party Information

Debtor(s):

FAMOSO PORTERVILLE, LLC

Represented By
Jeffrey S Shinbrot

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Wednesday, April 25, 2018

Hearing Room 302

9:30 AM

1:17-11686 Vladimir Vekic

Chapter 11

#10.00 Motion for relief from the Automatic Stay

WILMINGTON TRUST

Docket 63

Tentative Ruling:

Petition Date: 6/27/17

Chapter: 11

Service: Proper. Opposition filed.

Property: 17169 Stare St., Northridge, CA 91325

Property Value: \$750,000 (per debtor's schedules)

Amount Owed: \$703,815

Equity Cushion: 6.2%

Equity: \$46,185.

Post-Petition Delinquency: approx. \$50,712 (10 post-petition payments of approx. \$5,071.24)

Movant alleges cause for relief under 11 U.S.C. 362(d)(1); (d)(2); and (d)(4), with the specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); and 7 (waiver of the 4001(a)(3) stay); and 9 (*in rem* relief). Movant alleges that grounds for *in rem* relief exist here because the Property has been affected by multiple filings and transfers of interest, evincing a scheme to delay, hinder, or defraud creditors. Debtor has filed two prior chapter 13 cases that were dismissed, 16-12675-VK (dismissed 11/10/16) and 16-13514-MT (dismissed w/ 180-day bar 2/27/17). On 3/11/18, Debtor allegedly executed a quitclaim deed transferring the Property to himself and Virginia Vilciauskaite as a "bona fide gift." Motion, Ex. 4. Thereafter, on 3/13/18, Virginia Vilciauskaite filed a facesheet voluntary chapter 7 petition (17-10625-VK, the "Virginia Bankruptcy"). The Virginia Bankruptcy was dismissed for failure to file schedules on 3/31/18. Movant filed a motion for relief from stay in the Virginia Bankruptcy, seeking *in rem* relief as to this Property. It is currently not set for hearing, as the case is closed.

Debtor opposes the Motion, arguing that this income property is necessary for his reorganization. Debtor intends to file a plan that may propose a cram down. Debtor alleges that he did not authorize the filing of the prior cases, and offers adequate

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9:30 AM

CONT... Vladimir Vekic

Chapter 11

protection with respect to the Property. The opposition does not have a declaration from Debtor to support these assertions.

Is Movant amenable to an offer of adequate protection?

APPEARANCE REQUIRED

Party Information

Debtor(s):

Vladimir Vekic

Represented By
Stephen L Burton

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Hearing Room 302

9:30 AM

1:17-12958 Tatonka Acquisitions, Inc.

Chapter 11

#11.00 U.S. Trustee Motion to dismiss or convert under 11 U.S.C. § 1112(b)
with an Order Directing Payment Of Quarterly Fees And For Judgment Thereon

fr. 4/4/18

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tatonka Acquisitions, Inc.

Represented By
Dana M Douglas

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Wednesday, April 25, 2018

Hearing Room 302

9:30 AM

1:18-10520 Zarui Sarah Adjian

Chapter 11

#11.01 Status Conference re: Emergency Motion

Docket 0

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

Zarui Sarah Adjian

Represented By
Robert S Altagen

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Hearing Room 302

11:00 AM

1:13-13468 Aliakbar Barzinpour

Chapter 13

#12.00 Motion for relief from stay

WILMINGTON SAVINGS FUND SOCIETY

Docket 69

Tentative Ruling:

Petition Date: 05/22/2013

Chapter: 13

Service: Proper. No opposition filed.

Property: 19507 Schoolcraft St., Reseda, California 91335

Property Value: \$362,000 (per debtor's schedules)

Amount Owed: \$158,014.60 (per RFS motion)

Equity Cushion: 0.0%

Equity: \$0.00.

Post-Petition Delinquency: \$7,938.41

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraphs **2** (proceed under non-bankruptcy law);

3 (Movant permitted to engage in loss mitigation activities); and **7** (waiver of 4001(a)(3) stay).

Party Information

Debtor(s):

Aliakbar Barzinpour

Represented By
Matthew Abbasi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 302

11:00 AM

1:15-14137 Ronald Krivitsky and Tina Lynne Greisman

Chapter 13

#13.00 Motion for relief from stay

FORD MOTOR CREDIT CO.

Docket 70

Tentative Ruling:

Petition Date: 12/22/2015
Chapter: 13
Service: Proper. No opposition filed.
Property: Vehicle 2012 GMC Canyon
Property Value: \$16,790 (per debtor's schedules)
Amount Owed: \$9,509.78
Equity Cushion: 35%
Equity: \$7,280.22
Post-Petition Delinquency: \$9,509.78

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Ronald Krivitsky

Represented By
Todd J Roberts

Joint Debtor(s):

Tina Lynne Greisman

Represented By
Todd J Roberts

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

1:15-14037 David Brown Levy

Chapter 7

Adv#: 1:16-01024 Poteet et al v. Levy

#14.00 Status Conference re Complaint to determine dischargeability of debt

fr. 5/4/16; 11/16/16; 3/29/17, 8/2/17; 10/18/17

Docket 1

Tentative Ruling:

Having considered the Status Report and for good cause appearing, this status conference will be continued to August 15 at 11:00 a.m.

Plaintiff to provide notice of continued status conference.

APPEARANCES WAIVED ON APRIL 25.

Party Information

Debtor(s):

David Brown Levy Pro Se

Defendant(s):

David Brown Levy Pro Se

Plaintiff(s):

The Workshop LLC Represented By
Bernard J Kornberg

Gene Salkind Represented By
Bernard J Kornberg

Michael Clofine Represented By
Bernard J Kornberg

Victor Poteet Represented By
Bernard J Kornberg

**United States Bankruptcy Court
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11:00 AM

CONT... David Brown Levy

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Wesley H Avery

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:16-12982 Gabriel Fagiani

Chapter 7

#15.00 Motion for relief from stay

WILMINGTON SAVINGS FUND SOCIET

Docket 69

Tentative Ruling:

Petition Date: 10/17/2016

Chapter: 7

Service: Proper. No opposition filed.

Property: 5131 Strohm Avenue, Los Angeles, CA 91601

Property Value: \$520,000 (per debtor's schedules)

Amount Owed: \$51,816.57 (per RFS motion)

Equity Cushion: 82%

Equity: \$468,183.43.

Post-Petition Delinquency: Not listed in motion

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a)(3) stay).

Party Information

Debtor(s):

Gabriel Fagiani

Represented By
Julie J Villalobos

Trustee(s):

David Seror (TR)

Represented By
Jessica L Bagdanov

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11:00 AM

1:16-13053 Pablo Arreola

Chapter 13

#16.00 Motion for relief from stay

WILMINGTON TRUST

Docket 45

*** VACATED *** REASON: Settled by stipulation, Doc. No. 50 -CT

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pablo Arreola

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:16-13053 Pablo Arreola

Chapter 13

#17.00 Motion for relief from stay

WILMINGTON TRUST

Docket 45

*** VACATED *** REASON: Duplicate of #16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pablo Arreola

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:17-12523 **Jacqueline B Urenda**

Chapter 13

#18.00 Motion for relief from stay

WELLS FARGO BANK N.A.

Docket 29

Tentative Ruling:

Petition Date: 09/20/2017

Chapter: 13

Service: Proper. Opposition filed on 04/06/18

Property: 19919 Lassen Street, Chatsworth, CA, 91311

Property Value: \$851,184.00 (per debtor's schedules)

Amount Owed: \$603,036.06 (per RFS motion)

Equity Cushion: 21%

Equity: \$248,147.94.

Post-Petition Delinquency: \$6,352.70 (3 payments of \$3,032.83, less suspense account of partial paid balance of \$2,745.79)

Movant requests relief under 11 U.S.C. 362(d)(1) with specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); **6** (Co-debtor stay is waived); **7** (waiver of the 4001(a)(3) stay); and **12** (Upon entry of the order, for purposes of Cal. Civ. Code 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code 2920.5(c)(2)(C)).

Debtor opposes the motion and argues that the value of the Property is \$776,000 based on comparable sales, more payments have been made to Movant than the Motion accounts for, the Property is necessary for an effective reorganization, and denies that this bankruptcy case was filed in bad faith. Debtor also asserts that she has equity in the Property in the amount of \$102,672.

APPEARANCE REQUIRED.

Party Information

Debtor(s):

Jacqueline B Urenda

Represented By
James Geoffrey Beirne

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CONT... Jacqueline B Urenda

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

1:17-12534 Richard Khatibi

Chapter 13

#19.00 Motion for relief from stay

ROSAMOND COMMUNITY SERVICES
DISTRICT

Docket 97

Tentative Ruling:

APPEARANCE REQUIRED

The plan provided for direct payments to the Rosamond Comm. Services District, so there is no improper amendment to the plan. The claim was timely filed. There is no automatic stay in place. To the extent there is any confusion, an order can be entered confirming such.

Party Information

Debtor(s):

Richard Khatibi

Represented By
Michael D Kwasigroch

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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11:00 AM

1:17-13162 Jose Rivas and Sandra Alas

Chapter 13

#20.00 Motion for relief from stay

GATEWAY ONE LENDING & FINANCE

Docket 20

Tentative Ruling:

Petition Date: 11/27/2017

Chapter: 13

Service: Proper. No opposition filed.

Property: Vehicle 2008 Infiniti EX35

Property Value: \$6,000 (per debtor's schedules)

Amount Owed: \$8,389.38

Equity Cushion: N/A

Equity: \$0.00.

Post-Petition Delinquency: \$860.94 (3 payments of \$286.98)

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Jose Rivas

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Sandra Alas

Represented By
Rebecca Tomilowitz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:18-10485 Marina Novak

Chapter 13

#21.00 Motion for relief from stay

DAIMLER TRUST

Docket 25

Tentative Ruling:

Petition Date: 02/23/2018

Chapter: 13

Service: Proper. No opposition.

Property: Vehicle 2017 Mercedes Benz E300

Property Value: \$0.00 (Surrendering lease; Per debtor's schedules)

Amount Owed: \$49,496.82

Equity Cushion: N/A

Equity: \$0.00.

Post-Petition Delinquency: \$704.71

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Marina Novak

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:18-10608 Jillian Rhonda Peterson

Chapter 13

#22.00 Motion for relief from stay

JENNIFER SARTORY (LC106039)

Docket 10

Tentative Ruling:

Petition Date: 03/09/2018
Chapter: 13
Service: Proper. No opposition filed.

Movant: Jennifer Sartory
Relief Sought to: Pursue Pending Litigation X Commence Litigation ____
Pursue Insurance ____ Other

Litigation Information

Case Name: Jennifer Sartory v. Bernice Peterson, et al.
Court/Agency: Los Angeles Superior Court – Northwest District
Date Filed: 08/07/2017
Judgment Entered:
Trial Start Date: 10/15/2018
Action Description: Quiet Title Action

Grounds

Bad Faith ____ Claim is Insured ____ Claim Against 3rd Parties ____ Nondischargeable

____ Mandatory Abstention ____ Non-BK Claims Best Resolved in Non-BK Forum X
Other:

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs **2** (proceed under non-bankruptcy law to judgment, with stay against enforcement against property of the estate); **5** (waiver of the 4001(a)(3) stay); **6** (binding and effective against the Debtor for 180 days); and **7** (order binding & effective against any debtor).

NO APPEARANCE REQUIRED--RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

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CONT... Jillian Rhonda Peterson

Chapter 13

Party Information

Debtor(s):

Jillian Rhonda Peterson

Represented By
Christopher J Langley

Movant(s):

Jennifer Sartory

Represented By
Hamid R Rafatjoo

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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11:00 AM

1:18-10608 Jillian Rhonda Peterson

Chapter 13

#23.00 Motion for relief from stay

JENNIFER SARTORY (17VERO00648)

Docket 11

*** VACATED *** REASON: Withdrawal filed by debtor's atty on 4/24/18
- Doc. #16. If

Tentative Ruling:

Petition Date: 03/09/2018
Chapter: 13
Service: Proper. No opposition filed.

Movant: Jennifer Sartory
Relief Sought to: Pursue Pending Litigation X Commence Litigation ____
Pursue Insurance ____ Other

Litigation Information

Case Name: Jennifer Sartory v. Jennifer Peterson, et al.
Court/Agency: Los Angeles Superior Court – Northwest District
Date Filed: 08/28/2017
Judgment Entered:
Trial Start Date: 05/11/2018
Action Description: Civil Harassment Prevention

Grounds

Bad Faith ____ Claim is Insured ____ Claim Against 3rd Parties ____ Nondischargeable

Mandatory Abstention ____ Non-BK Claims Best Resolved in Non-BK Forum X
Other:

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs 2 (proceed under non-bankruptcy law to judgment, with stay against enforcement against property of the estate); 5 (waiver of the 4001(a)(3) stay); 6 (binding and effective against the Debtor for 180 days); and 7 (order binding & effective against any debtor).

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

CONT... Jillian Rhonda Peterson

Chapter 13

NO APPEARANCE REQUIRED--RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Jillian Rhonda Peterson

Represented By
Christopher J Langley

Movant(s):

Jennifer Sartory

Represented By
Hamid R Rafatjoo

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:18-10645 Mohammad Hashim Hassankhail

Chapter 7

#24.00 Motion for relief from stay

TOYOTA MOTOR CREDIT CORPORATION

Docket 8

Tentative Ruling:

Petition Date: 03/13/2018

Chapter: 7

Service: Proper. No opposition filed.

Property: Vehicle 2015 Lexus GS350

Property Value: \$5,000 (listed as 2014 Lexus per debtor's schedules)

Amount Owed: \$37,492.62

Equity Cushion: N/A

Equity: \$0.00.

Post-Petition Delinquency:

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Mohammad Hashim Hassankhail

Represented By
Ali R Nader

Movant(s):

Toyota Motor Credit Corporation,

Represented By
Austin P Nagel

Trustee(s):

David Seror (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:18-10747 Andy Hong

Chapter 13

#25.00 Motion for relief from stay

DESERT SHADOWS INVESTMENTS LLC

Docket 10

*** VACATED *** REASON: Lead case dismissed

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andy Hong

Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:17-12702 Jose R. Fernandez and Esther Fernandez

Chapter 13

#25.01 Motion for relief from stay

US BANK NATIONAL ASSOCIATION

Docket 28

Tentative Ruling:

Petition Date: 10/8/2017
Chapter: 13
Service: Proper. Opposition filed on 4/23.
Property: 16439 Jersey St., Granada Hills, CA 91344
Property Value: \$ 542,000 (per debtor's schedules)
Amount Owed: \$ 461,626.14 (per RFS motion)
Equity Cushion (assumes 8% cost of sale): 7.0%
Equity: \$80,373.86
Post-Petition Delinquency: \$4,526.62

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs **2** (proceed under non-bankruptcy law); **3** (Movant permitted to engage in loss mitigation activities); and **7** (waiver of the 4001(a)(3) stay).

Debtor opposes the motion and argues that the value of the Property is \$562,367 based upon online valuation tools and realtor comments, and that the total amount of debt on the Property is \$461,626.14. Additionally, debtor claims to have incurred unforeseeable expenses because he traveled to Mexico to tend to his ill brother.

APPEARANCE REQUIRED.

Party Information

Debtor(s):

Jose R. Fernandez

Represented By
Donald E Iwuchuku

Joint Debtor(s):

Esther Fernandez

Represented By

**United States Bankruptcy Court
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11:00 AM

CONT... Jose R. Fernandez and Esther Fernandez

Chapter 13

Donald E Iwuchuku

Movant(s):

U.S. Bank National Association, not

Represented By
Kelsey X Luu

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:16-11141 Hope H. Landeros

Chapter 13

Adv#: 1:16-01155 Landeros v. HSBC BANK USA, NATIONAL ASSOCIATION et al

#26.00 Status Conference re: Complaint

fr. 1/25/17; 3/29/17, 8/2/17; 8/23/17, 11/29/17,
1/3/18, 1/17/18

Docket 1

***** VACATED *** REASON: Lead case dismissed -CT**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hope H. Landeros

Represented By
R Grace Rodriguez

Defendant(s):

HSBC BANK USA, NATIONAL

Pro Se

Sylvia Villapando

Pro Se

Frank Villapando

Pro Se

Plaintiff(s):

Hope H. Landeros

Represented By
R Grace Rodriguez

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:17-12107 Rima Aboudaher

Chapter 7

Adv#: 1:17-01090 Solimani v. Aboudaher

#27.00 Status Conference Re: Second Amended Complaint

Docket 20

*** VACATED *** REASON: moved to 1:00 pm to be heard with the
Motion of Dismiss (eg)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rima Aboudaher

Represented By
Navid Kohan
Sanaz S Bereliani

Defendant(s):

Rima Aboudaher

Represented By
Sanaz S Bereliani

Plaintiff(s):

Arman Solimani

Represented By
Jan T Aune

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:17-12547 Joseph Peaks Durant

Chapter 7

Adv#: 1:17-01113 Sajadi et al v. Durant

#28.00 Status Conference re: Complaint

fr. 2/28/18

Docket 1

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

Joseph Peaks Durant

Represented By
Dominic Afzali

Defendant(s):

Joseph Peaks Durant

Pro Se

Plaintiff(s):

Shawn S Sajadi

Represented By
Adela Z Ulloa

Zhila T Sajadi

Represented By
Adela Z Ulloa

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:17-13122 Laurie Jean Steichen

Chapter 7

Adv#: 1:18-01015 American Express Bank FSB et al v. Steichen et al

#29.00 Status Conference re: Complaint

Docket 1

*** VACATED *** REASON: Stip for Judgment ent 4/2/18 - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laurie Jean Steichen

Represented By
J. Bennett Friedman

Defendant(s):

Walter Clifford Ingram

Pro Se

Laurie Jean Steichen

Pro Se

Joint Debtor(s):

Walter Clifford Ingram

Represented By
J. Bennett Friedman

Plaintiff(s):

American Express Centurion Bank

Represented By
Dennis Winters

American Express Bank FSB

Represented By
Dennis Winters

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:15-10446 Thomas R D'Arco

Chapter 7

Adv#: 1:17-01012 David K. Gottlieb, solely in his capacity as chapt v. D'Arco et al

#30.00 Pre-Trial Conference re: Complaint

fr. 4/26/17, 5/24/17, 7/26/17; 1/31/18

Docket 1

***** VACATED *** REASON: Stip. cont. to 11/14/18 @1pm (eg)**

Tentative Ruling:

This matter will be continued to June 20 to be heard with the Motion for Summary Judgment. Plaintiff to provide notice of continued hearing.

APPEARANCES WAIVED on April 25.

Party Information

Debtor(s):

Thomas R D'Arco

Represented By
Chris Gautschi

Defendant(s):

Does 1-100

Pro Se

Carol V D'Arco

Pro Se

Plaintiff(s):

David K. Gottlieb, solely in his

Represented By
Fahim Farivar

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ashley M McDow
Michael T Delaney
Fahim Farivar

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
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Wednesday, April 25, 2018

Hearing Room 302

11:00 AM

1:11-12168 Doron Ezra and Nava Tomer-Ezra

Chapter 7

#31.00 Trustee's Final Report and Application for
Compensation

Trustee:
David Serror

Attorney for Trustee:
Brutzkus Gubner

Accountant for Trustee:
LEA Accountancy LLP

Docket 292

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

Doron Ezra

Represented By
Shalem Shem-Tov

Joint Debtor(s):

Nava Tomer-Ezra

Represented By
Shalem Shem-Tov

Trustee(s):

David Seror (TR)

Represented By
Steven T Gubner
Corey R Weber
Michael W Davis
David Seror (TR)
Richard Burstein
Nina Z Javan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

1:00 PM

1:17-12107 Rima Aboudaher

Chapter 7

Adv#: 1:17-01090 Solimani v. Aboudaher

#32.00 Defendant's Motion to Dismiss Second Amended Complaint and All Causes of Action

Docket 22

Tentative Ruling:

I. BACKGROUND

On November 9, 2017, Plaintiff Arman Solimani (Plaintiff) filed this adversary complaint against chapter 7 Debtor Rima Aboudaher (Defendant). Three days later, Plaintiff filed its First Amended Complaint (FAC), to determine the nondischargeability of debt pursuant to 11 U.S.C. § 727(a)(2), (a)(3), (a)(4), (a)(5), and (a)(7). Defendant filed a Motion to Dismiss the Adversary Proceeding under FRCP 12(b)(6) and FRBP 7012, arguing that Plaintiff has failed to establish a claim upon which relief could be granted. At the hearing on January 17, 2018, this court acknowledged the vagueness of the FAC, commenting that the FAC lacked necessary facts to move forward to trial. This court also noted that § 727 is a high standard and suggested Plaintiff's counsel to research § 727 case law prior to amending the FAC. Defendant's Motion to Dismiss was granted with leave to amend.

The FAC alleges that Defendant asked Plaintiff to pay her attorney's fees in her dissolution of marriage case and fraudulent transfer case against Defendant's husband, Mohtadi (Husband). Plaintiff paid approximately \$27,500 in attorney's fees for Defendant in both cases. According to Defendant's allegations against her Husband, Plaintiff alleges that Defendant claimed an interest in a property located at 4950 Dobkin Avenue in Tarzana (Dobkin property), worth approximately \$500,000.000 as of August 2017. Plaintiff also alleges that Defendant claimed more than the \$17,000 settlement she received from a previous lawsuit against Griffith Park. On August 9, 2017, Defendant filed her chapter 7 petition and dismissed her Fraudulent Transfer case against her Husband with prejudice. Two days later, Defendant filed a stipulation ending the Dissolution of Marriage case.

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CONT...

Rima Aboudaher

Chapter 7

On February 16, 2018, Plaintiff filed a Second Amended Complaint (SAC). The SAC heavily relies on previous allegations and claims Defendant made in her Dissolution of Marriage case against her husband back in 2015. Plaintiff's SAC adds that around January 28, 2016, Plaintiff and Defendant entered into a written agreement where Defendant agreed to repay the money Plaintiff loaned to her to litigate the Dissolution of Marriage case. The SAC alleges that in 2016, Plaintiff and Defendant attended a meeting with their attorney Michael Champ present. It was at this meeting where Defendant explained how her Husband defrauded her out of her interest in the Dobkin property. Additionally, the SAC alleges that Defendant dismissed the pending actions against her Husband because he offered her \$50,000 to settle the cases. Plaintiff also asserts the \$50,000 settlement offer was not listed in Defendant's schedules.

On March 26, 2018, Defendant filed a Motion to Dismiss. Plaintiff opposed the Motion. Defendant filed her Reply to the Opposition on April 16, 2018.

II. STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the allegations set forth in the complaint." A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008), *quoting* Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).

In resolving a Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true. Johnson, 534 F.3d at 1122; Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001). On the other hand, the court is not bound by conclusory statements, statements of law, and unwarranted inferences cast as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

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Rima Aboudaher

Chapter 7

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). "In practice, a complaint ... must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Twombly, 550 U.S. at 562, *quoting Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984).

Moreover, Federal Rule of Civil Procedure 9(b) imposes heightened pleading requirements for claims of fraud. See Fed. R. Civ. P. 9(b). Under Rule 9(b), a plaintiff "must state with particularity the circumstances constituting fraud," but can allege generally "[m]alice, intent, knowledge, and other conditions of a person's mind." Id. The particularity requirement "has been interpreted to mean the pleader must state the time, place and specific content of the false representations as well as the identities of the parties to the misrepresentation." In re MannKind Sec. Actions, 2011 U.S. Dist. LEXIS 145253, 19-20 (C.D. Cal. Dec. 16, 2011).

The plaintiff "must specifically plead as to (1) how, (2) where, and (3) when the alleged misrepresentation was communicated as well as the (4) specific contents of the misrepresentation, rather than a vague and conclusory synopsis." Blake v. Dierdorff, 856 F.2d 1365, 1369 (9th Cir. 1988).

"Averments of fraud must be accompanied by the who, what, when, where and how of the misconduct charged." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotations omitted) and Walling v. Beverly Enterprises, 476 F.2d 393, 397 (9th Cir. 1973). "Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985). "It also prevents the filing of a complaint as a pretext for the discovery of unknown wrongs and protects potential defendants - - especially professionals whose reputations in their fields of expertise are most sensitive to slander - - from the harm that comes from being charged with the commission of fraudulent acts." Id.

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Rima Aboudaher

Chapter 7

III. ANALYSIS

a. **First Cause of Action: 11 U.S.C. § 727(a)(2) – Fraudulent Transfer or Concealment of Property**

The Bankruptcy code provides for situations when the Court shall not grant a discharge. This is covered in §727(a). In relevant part:

- (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--
- (A) property of the debtor, within one year before the date of the filing of the petition; or
- (B) property of the estate, after the date of the filing of the petition.

11 U.S.C. §727(a)(2). Section 727 is to be construed liberally in favor of debtors and strictly against the creditor. In re Neff, 505 B.R. 255, 262 (B.A.P. 9th Cir. 2014), aff'd, 824 F.3d 1181 (9th Cir. 2016). The 9th Circuit Bankruptcy Appellate Panel has specifically articulated the elements necessary to for the moving party to show that a §727(a)(2) claim has merit. The burden of proof is on the creditor to show that: (1) the debtor transferred or concealed property; (2) the property belonged to the debtor; (3) the transfer occurred within one year of the bankruptcy filing; and (4) the debtor executed the transfer with the intent to hinder, delay or defraud a creditor. In re Aubrey, 111 B.R. 268, 273 (9th Cir. B.A.P. 1990).

Here, Plaintiff fails to even allege the elements of a §727(a)(2) claim.

1. **The Debtor Transferred or Concealed Property**

First, this SAC contains no allegations that Defendant transferred or attempted to conceal property. Plaintiff merely alleges Defendant claimed an interest in the Dobkin property in a separate state court lawsuit. No facts are alleged that Defendant owned the property or attempted to transfer the property within the relevant one-year period for purposes of § 727(a)(2). Moreover, the allegations specify that Defendant's ex-husband fraudulently kept property from the Defendant

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Rima Aboudaher

Chapter 7

and the defendant was not able to get it back. This allegation is insufficient for denial of discharge under § 727(a)(2), which requires intentional or fraudulent action on the part of the Defendant.

2. The Property Belonged to the Debtor

Second, Plaintiff's allegations fail to state whether the property belonged to the Debtor. The SAC is ambiguous as to which property Plaintiff is alleging that Defendant has transferred, removed, destroyed, mutilated, or concealed. In addition to ambiguity regarding the alleged property, the SAC does not allege that the property was owned by the Defendant or belonged to the estate. The best that can be said is that the Defendant tried to make a claim to some property, but was unsuccessful. What the Plaintiff's theory is, on his third attempt, is unclear.

3. Transfer Occurred Within One Year of Bankruptcy Filing

Third, there are no allegations that pertain to Defendant attempting to transfer or transferring any property within one year of her bankruptcy filing.

4. Debtor Executed the Transfer with the Intent to Hinder, Delay, or Defraud a Creditor

Fourth, there are no facts that indicate an intent to hinder, delay, or defraud creditors. Defendant's schedules indicate that Defendant never received ownership in the Dobkin property, and the allegations do not explain anything about the intent to hinder, delay or defraud.

Plaintiff fails to sufficiently allege a viable §727(a)(2) claim because none of the four required elements have been met.

b. Second Cause of Action: 11 U.S.C. § 727(a)(3) - Failure to Keep or Preserve Records

Section 727(a)(3) provides for denial of a debtor's discharge if the debtor "has concealed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure was justified under all of the circumstances of the case." 11 U.S.C. § 727(a)(3).

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Rima Aboudaher

Chapter 7

The [Debtor] must present sufficient written evidence which will enable his creditors reasonably to ascertain his present financial condition and to follow his business transactions for a reasonable period in the past. In re Cox, 904 F.2d 1399, 1400 (9th Cir. 1990). In some cases, a failure to produce proper records will not justify a denial of discharge when the missing information can be reconstructed from records kept by others. See COLLIER ON BANKRUPTCY, ¶ 727.03 (Alan N. Resnick & Henry J. Sommer eds., 16th ed).

Here, the SAC contains no allegations regarding any information or documents to support a §727(a)(3) action. Although Plaintiff cites the text of §727(a)(3), Plaintiff does not plead any facts or allegations regarding Defendant's failure to keep or preserve records under §727(a)(3). Formulaic recitation of the elements of a cause of action are insufficient. Twombly, 550 U.S. at 555.

c. Third Cause of Action: 11 U.S.C. § 727(a)(4) – Knowingly and Fraudulently Making a False Oath or Account

Under §727(a)(4), a debtor may not be granted a discharge if:

- (4) the debtor knowingly and fraudulently, in or in connection with the case--
- (A) made a false oath or account;
 - (B) presented or used a false claim;
 - (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
 - (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs.

11 U.S.C. §727(a)(4).

Thus, the code here reflects the overall twofold purpose of bankruptcy: 1) to secure the equitable distribution of the bankrupt's estate among his creditors and 2) to relieve the honest debtor from the weight of indebtedness and provide an opportunity for him to have a fresh start. In re Devers, 759 F.2d 751, 754 (9th Cir. 1985). The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations. In re Wills, 243 B.R. 58, 63 (B.A.P. 9th Cir. 1999).

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Chapter 7

Here, like in Plaintiff's failure to establish a §727(a)(2) cause of action, Plaintiff again fails meet its burden in establishing a §727(a)(4) cause of action because Plaintiff lacks facts in its SAC. The SAC contains no allegations about what specifically is the false oath or omission Defendant has made. While Plaintiff alleges that Defendant "ha[s] violated 11 U.S.C. § 727(a)(4)(A), (B), (C), and/or (D)," there are no specific facts that seem to give rise to a plausible claim under any of those subsections. Plaintiff has not clearly expressed how, where, and when the alleged misrepresentation was communicated as nor the specific contents of the misrepresentation. Blake v. Dierdorff, 856 F.2d at 1369. The SAC fails to give Defendant notice of the particular misconduct alleged to constitute fraud, and therefore fails to satisfy the heightened pleading standard of Fed. R. Civ. P. 9(b). Plaintiff has failed to establish a cause of action under §727(a)(4).

d. "Sixth" Cause of Action: 11 U.S.C. § 727(a)(5) – Explaining Loss of Assets

The SAC skips from the third cause of action to the "sixth" cause of action. It is unclear which cause of action under § 727 is being pursued by Plaintiff in the "sixth" cause of action. While the heading of the sixth cause of action indicates a claim under § 727(a)(7), this portion of the complaint only provides the rule for § 727(a)(4)–(5). Because § 727(a)(4) is addressed under "Third Cause of Action" above, and because there is no indication that "(a)(7)" was anything other than a typographical error, the court will treat the "sixth" claim as a claim under § 727(a)(5).

Section 727(a)(5) is broadly drawn and gives the bankruptcy court broad power to decline to grant a discharge in bankruptcy when the debtor does not adequately explain a shortage, loss, or disappearance of assets." Aoki v. Atto Corp. (In re Aoki), 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005). See In re D'Agnesse, 86 F.3d 732, 734 (7th Cir.1996)(*citing* First Fed. Life Ins. Co. v. Martin (In re Martin), 698 F.2d 883, 886 (7th Cir.1983)).

Plaintiff's last cause of action is garbled and confusing, and there are no details about which assets have disappeared or been lost. Plaintiff simply restates the rule and then alleges that "[a]s stated in the factual allegations," Defendant has "violated 11 U.S.C. § 727(a)(5)." This inartful pleading is simply inadequate. As noted above, the SAC contains no additional allegations that contradict what Defendant has disclosed in her schedules. Plaintiff has not met its burden in establishing any basis for a § 727(a)(5) action.

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Rima Aboudaher

Chapter 7

IV. CONCLUSION

The Motion to Dismiss the Second Amended Complaint is granted as to all causes of action and Plaintiff's Second Amended Complaint is dismissed with prejudice because the factual allegations under each cause of action are insufficient to meet the applicable pleading standards under Fed. R. Civ. P. 12(b)(6) and 9(b). This Second Amended Complaint merely contains boiler-plate terms found civil complaints, and since Plaintiff has had two opportunities to amend the complaint, this third complaint should have been clear with well-plead factual allegations. Here, Plaintiff's allegations found in lines 15 – 26 under "General Allegations" make no sense in a §727 complaint, indicating how boilerplate this SAC is. Although only allegations – not evidence - are considered on a motion to dismiss, Plaintiff's boilerplate terms and allegations are insufficient and fail to meet the applicable pleading standard.

Party Information

Debtor(s):

Rima Aboudaher

Represented By
Navid Kohan
Sanaz S Bereliani

Defendant(s):

Rima Aboudaher

Represented By
Sanaz S Bereliani

Movant(s):

Rima Aboudaher

Represented By
Sanaz S Bereliani

Plaintiff(s):

Arman Solimani

Represented By
Jan T Aune

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CONT... Rima Aboudaher

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

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1:17-12107 Rima Aboudaher

Chapter 7

Adv#: 1:17-01090 Solimani v. Aboudaher

#33.00 Status Conference Re: Second Amended Complaint

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rima Aboudaher

Represented By
Navid Kohan
Sanaz S Bereliani

Defendant(s):

Rima Aboudaher

Represented By
Sanaz S Bereliani

Plaintiff(s):

Arman Solimani

Represented By
Jan T Aune

Trustee(s):

David Seror (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, April 25, 2018

Hearing Room 302

1:00 PM

1:17-12238 Juliana Njeim

Chapter 7

Adv#: 1:18-01010 Seyedan v. Njeim

#34.00 Motion to Dismiss Adversary Complaint to Object
to Discharge Pursuant to 11 U.S.C. section 727

Docket 5

Tentative Ruling:

I. Background

Juliana Njeim ("Debtor") filed a voluntary chapter 7 bankruptcy on August 22, 2017. On November 14, the Court granted Maryam Seyedan's ("Plaintiff") motions for examination under Rule 2004 upon subpoena served upon Bank of America and Wells Fargo Bank. The Rule 2004 examinations were intended to determine whether Debtor made false statements or omissions in her schedules with respect to funds held in certain accounts at Bank of America and Wells Fargo Bank. Two days after the court granted the motions for the Rule 2004 examinations, Debtor filed an amended Statement of Financial Affairs. ECF doc. no. 22. Debtor's original Statement of Financial Affairs indicates that each of her three businesses operated until 1/2016 (January 2016). After those dates were called into question, Debtor amended the Statement of Financial Affairs. The only apparent change in the first amended Statement of Financial affairs was to change the dates that her businesses existed to reflect that the businesses closed in 2016, and that those dates are estimates only.

Plaintiff filed this adversary action on January 23, 2018 objecting to Debtor's discharge under § 727(a)(4)(A). Plaintiff's complaint alleges that the documents obtained pursuant to the Rule 2004 subpoenas contain evidence that Debtor knowingly and fraudulently made material false statements under in her original and first amended Statement of Financial Affairs. Specifically, Debtor lists her gross income from wages and tips in 2016 as \$35,280, but Debtor's personal bank statements allegedly show deposits of \$71,995 into her two bank accounts in 2016. Complaint 4:5-7. Further, the Complaint alleges that the bank statements for Debtor's corporation, Beauty Live Forever, Inc. ("Beauty Live Forever"), shows deposits of \$269,187 in 2016, none of which was disclosed in Debtor's original or first amended Statement of Financial Affairs. Although Part 11 of Debtor's original and first amended Statement of Financial Affairs indicate that Beauty Live Forever existed until "1/1/2016" and "2016" respectively, the complaint alleges that Beauty

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Live Forever had ongoing bank deposits from sales as late as May 2017. Complaint 4:25-5:2. Plaintiff's sole grounds for objecting to dischargeability is that Debtor made a false statement or omission in her schedules in this bankruptcy case.

On February 15, Debtor obtained new counsel for both the lead bankruptcy case and the adversary action. In early March, Debtor filed amended schedules A/B, C, I, and J as well as a second amended Statement of Financial Affairs. ECF doc. no. 36, March 5, 2018. The amended schedules and second amended Statement of Financial affairs contain a number of changes large and small, including disclosing a "Potential Malpractice Suit vs Debtor's Former Bankruptcy Attorney, Richard Garber." Debtor filed the instant Motion to Dismiss ("Motion") on March 13, 2018.

II. Standard

A motion to dismiss under Civil Rule 12(b)(6) challenges the sufficiency of the allegations set forth in the complaint. "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008) (*quoting* Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)).

In resolving a Civil Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to the plaintiff, and accept all well-pleaded factual allegations as true. Johnson, 534 F.3d at 1122; Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001). On the other hand, the court is not bound by conclusory statements, statements of law, and unwarranted inferences cast as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). "In practice, a complaint . . . must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Id. at 562 (emphasis added) (*quoting* Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984)).

Moreover, Federal Rule of Civil Procedure 9(b) imposes heightened pleading requirements for claims of fraud. See Fed. R. Civ. P. 9(b). Under Rule 9(b), a plaintiff "must state with particularity the circumstances constituting fraud," but can allege

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generally "[m]alice, intent, knowledge, and other conditions of a person's mind." Twombly, 550 U.S. at 559. The particularity requirement "has been interpreted to mean the pleader must state the time, place and specific content of the false representations as well as the identities of the parties to the misrepresentation." In re MannKind Sec. Actions, 2011 U.S. Dist. LEXIS 145253, 19-20 (C.D. Cal. Dec. 16, 2011).

"Averments of fraud must be accompanied by the who, what, when, where and how of the misconduct charged." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotations omitted) and Walling v. Beverly Enterprises, 476 F.2d 393, 397 (9th Cir. 1973). "Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985). "It also prevents the filing of a complaint as a pretext for the discovery of unknown wrongs and protects potential defendants - - especially professionals whose reputations in their fields of expertise are most sensitive to slander - - from the harm that comes from being charged with the commission of fraudulent acts." Id.

III. Analysis

a) 11 U.S.C. 727(a)(4)(A)

The sole grounds for nondischargeability alleged in the complaint is § 727(a)(4)(A). Pursuant to § 727(a)(4)(A), the court shall grant the debtor a discharge unless –

- (4) the debtor knowingly and fraudulently, in or in connection with the case—
(A) made a false oath or account

§ 727(a)(4)(A). A false statement or omission in debtor's bankruptcy schedules or Statement of Financial Affairs can constitute a false oath within the meaning of § 727(a)(4). In re Khalil, 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007), aff'd, 578 F.3d 1167 (9th Cir. 2009). "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." Id. A false statement or omission must be material to the bankruptcy case to provide grounds for a denial of discharge. In re Khalil, 379 B.R. at 172. Therefore, there are three elements to an action under § 727(a)(4)(A): (1) Debtor made such a false statement or omission, (2) regarding a material fact, and (3) did

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so knowingly and fraudulently. Id.; In re Retz, 606 F.3d 1189, 1197 (9th Cir. 2010).

1) False Statement or Omission

When accepting all well-pleaded allegations in the complaint as true, the first element is clearly met. The allegation is clear that Debtor made certain misstatements in the original and first amended Statement of Financial Affairs as detailed above. This is bolstered by the fact that Debtor amended the Statement of Financial Affairs and various schedules after 1) the Order Granting Motion for 2004 Examination and 2) the filing of this adversary action. Those amendments indicate that earlier statements were changed.

2) Materiality

A fact is material "if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." In re Retz, 606 F.3d at 1198. An omission or misstatement that "detrimentally affects administration of the estate" is material. Id. (denying discharge under § 727(a)(4)(A) where debtor omitted information relating to his assets, property, and business dealings, making it almost impossible to reconstruct his financial affairs). A false oath may be "material" even though it does not cause direct financial prejudice to creditors. In re Wills, 243 B.R. 58, 63 (B.A.P. 9th Cir. 1999).

Here, Debtor has allegedly made misstatements regarding the amount of income received by her and her business for the years leading up to the bankruptcy. Plaintiff alleges that Debtor disclosed as income less than half of the money she deposited into her personal bank accounts. Furthermore, Plaintiff alleges a number of misstatements or omissions regarding the Debtor's fully-owned business. It would not be possible to "reconstruct" Debtor's financial affairs without an understanding of what happened to Debtor's business, which, Debtor now admits in the second amended Statement of Financial Affairs, received almost \$270,000 in gross income in 2016. ECF Doc. No. 36, p. 15.

With the limited discovery granted under the Rule 2004 motion, Plaintiff alleges to have discovered information that Debtor now seems to acknowledge should have been disclosed in the statement of financial affairs. The Plaintiff has met her burden of showing that the false statements or omissions were material.

3) Knowingly and Fraudulently

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The "knowing and fraudulent" intent standard of § 727(a)(4) means that Debtor must have actual (not constructive) intent in concealing records or making an omission in schedules. In re Wills, 243 B.R. at 64. However, for purposes of pleading under Fed. R. Civ. P. 9(b) and 12(b), Plaintiff may allege fraud generally. Twombly, 550 U.S. at 559. The complaint alleges as follows:

Plaintiff alleges that Defendant knowingly and fraudulently made material false statements under penalty of perjury in her Schedules and Statement of Financial Affairs filed on September 4, 2017 ("Original SOFA") and in her Amended Statement of Financial Affairs filed on November 16, 2017 ("Amended SOFA"), including those set forth below.

Complaint 3:22-27. The complaint goes on to allege particular misstatements or omissions from the original Statement of Financial Affairs, most or all of which were amended into the Statement of Financial Affairs following the filing of the complaint in this adversary. The complaint provides specific enough information regarding the details of the alleged fraud to enable Debtor to answer the allegations. The complaint contains sufficient details regarding the "who, what, when, where and how of the misconduct charged" to allow Debtor to defend herself. Vess v. Ciba-Geigy Corp. USA, 317 F.3d at 1106. Indeed, Debtor was eager to explain why the facts alleged by Plaintiff were misconstrued or out of context. In the Motion, Debtor explains that the alleged additional income evidenced by deposit and withdrawal discrepancies were contributions made by Debtor's family to keep the business running; however, this factual assertion is improper in the context of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 925 (9th Cir. 2001). The Court is required to accept as true all well-pleaded allegations in the complaint, with exceptions not relevant here. Debtor's arguments go primarily to the weight of the evidence and whether Plaintiff can meet her burden of proof, issues which cannot be considered on a motion to dismiss.

The fact that Debtor amended her schedules does not excuse her from full disclosure at the time of filing the initial schedules and Statement of Financial Affairs. In re Shoemaker, No. 1:14-AP-01206-GM, 2018 WL 300524, at *14 (Bankr. C.D. Cal. Jan. 4, 2018); In re Beauchamp, 236 B.R. 727, 734 (B.A.P. 9th Cir. 1999), aff'd, 5 F. App'x 743 (9th Cir. 2001) (no error in denying discharge under § 727, even though debtor amended schedules, where bankruptcy court found that the amendment was motivated by the setting of a Rule 2004 examination); In re Cummings, 595 F. App'x 707, 709 (9th Cir. 2015)(chapter 7 debtors' eventual disclosure, on their third amended Schedule B, of their interest in a limited liability

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company (LLC) did not negate their initial fraud for discharge denial purposes).

b) Conversion to Motion for Summary Judgment

The Court declines Debtor's invitation to treat the Motion as a motion for summary judgment pursuant to Fed. R. Civ. P. 12(d), which states:

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Courts have complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a motion to dismiss under Fed. R. Civ. P. 12(b)(6), and conversion of a motion to dismiss to a motion for summary judgment is therefore in the discretion of the court. § 1366 Conversion of a Rule 12(b)(6) Motion Into a Summary Judgment Motion, 5C Fed. Prac. & Proc. Civ. § 1366 (3d ed.); Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1997)(refusing to rule on motion for summary because discovery had not taken place when case was dismissed, Rule 56(f) motion was pending, and court could not determine from record whether genuine issue of material fact existed). Consideration of materials outside of the pleadings is unlikely to dispose of this matter, as Plaintiff has had no opportunity for discovery other than the Rule 2004 motion. The Court excludes the declarations submitted by Debtor.

The Court may furthermore consider facts subject to judicial notice in deciding a motion to dismiss. Hsu v. Puma Biotechnology, Inc., 213 F. Supp. 3d 1275, 1280 (C.D. Cal. 2016). Debtor has filed a request for judicial notice under Federal Rule of Evidence Rule 201. However, the two documents attached have no bearing on this Motion. Both documents are related to Debtor's argument that the chapter 7 trustee in Michel Kanaan's case investigated all of Kanaan's assets and liabilities, including conducting a Rule 2004 examination against Debtor Juniana Njeim. Motion to Dismiss, 9:15-25. Debtor also points to the fact that the chapter 7 trustee in this case has not pursued any action related to Debtor's business entities. Motion to Dismiss, 9:26-10:4. While it is clear from the pleadings that Mr. Kanaan, Debtor's spouse, was closely involved with Debtor's business dealings, he is not the Debtor in this case and his actions are not relevant to whether Plaintiff has stated a plausible claim under § 727(a)(4)(A).

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IV. Conclusion

Plaintiff meets the heightened pleading standard for all three elements of an action under § 727(a)(4)(A). The declaration of Debtor and the declaration of Kevin Simon are excluded from consideration on this motion to dismiss.

Party Information

Debtor(s):

Juliana Njeim

Represented By
Kevin T Simon

Defendant(s):

Juliana Njeim

Represented By
Kevin T Simon

Movant(s):

Juliana Njeim

Represented By
Kevin T Simon

Plaintiff(s):

Maryam Seyedan

Represented By
James R Selth

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Adv#: 1:18-01010 Seyedan v. Njeim

#35.00 Status Conference re: Complaint

fr. 3/28/18

Docket 1

Tentative Ruling:

Continued to 4/25 at 1 pm to be heard with Motion to Dismiss

Party Information

Debtor(s):

Juliana Njeim

Represented By
Richard Mark Garber

Defendant(s):

Juliana Njeim

Pro Se

Plaintiff(s):

Maryam Seyedan

Represented By
James R Selth

Trustee(s):

Nancy J Zamora (TR)

Pro Se