Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

**2:18-12417** David Reyes

Chapter 13

#1.00 Hrg re: Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB

٧S

**DEBTOR** 

Docket 42

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 44).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

David Reyes

Represented By William G Cort

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020 Hearing Room 1545

10:00 AM

CONT... David Reyes Chapter 13

Movant(s):

Wilmington Savings Fund Society, Represented By

Mark S Krause

**Trustee(s):** 

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:18-13303 Ryan Gregory Ortiz and Debra Diane Ortiz

Chapter 13

#2.00 Hrg re: Motion for relief from stay [RP]

DITECH FINANCIAL LLC

٧S

**DEBTOR** 

Docket 49

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 51).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Ryan Gregory Ortiz

Represented By Charles J Brash

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**CONT...** Ryan Gregory Ortiz and Debra Diane Ortiz

Chapter 13

**Joint Debtor(s):** 

Debra Diane Ortiz Represented By

Charles J Brash

Movant(s):

Ditech Financial LLC Represented By

Daniel K Fujimoto Julian T Cotton Caren J Castle

**Trustee(s):** 

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

2:18-24110 Elfego Martinez Dominguez and Floriberta Martinez Cruz

Chapter 13

#3.00 Hrg re: Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST

VS

**DEBTOR** 

Docket 52

\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed on

3/30/20 [dkt 55]

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Elfego Martinez Dominguez Represented By

Suzette Douglas

**Joint Debtor(s):** 

Floriberta Martinez Cruz Represented By

Suzette Douglas

Movant(s):

Deutsche Bank National Trust Represented By

Robert P Zahradka Megan E Lees

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:18-24499 Maria Annette Brooks

Chapter 13

#4.00 Hrg re: Motion for relief from stay [RP]

WILMINGTON SAVINGS FUND SOCIETY, FSB

VS

**DEBTOR** 

Docket 31

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Maria Annette Brooks Represented By

D Justin Harelik

**Movant(s):** 

Wilmington Savings Fund Society, Represented By

Nichole Glowin Sean C Ferry Erin Elam Arnold L Graff

**Trustee(s):** 

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

**2:19-10115** Ronny Heredia

Chapter 13

#5.00 Hrg re: Motion for relief from stay [RP]

US BANK TRUST NA

٧S

**DEBTOR** 

Docket 37

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 39).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Ronny Heredia

Represented By William G Cort

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**CONT...** Ronny Heredia

Chapter 13

Movant(s):

US Bank Trust NA as Trustee of Represented By

Lemuel Bryant Jaquez

**Trustee(s):** 

Kathy A Dockery (TR)

Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

2:19-13053 Thomas Virden Tolley

Chapter 13

#6.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION

VS

**DEBTOR** 

Docket 64

## **Tentative Ruling:**

Grant as set forth below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

### <u>Termination</u>

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(4). To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### Relief notwithstanding future bankruptcy cases.

Grant the following relief pursuant to 11 U.S.C. 362(d)(4) and the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re* 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

## **CONT...** Thomas Virden Tolley

Chapter 13

Choong (case no. 2:14-bk-28378-NB, docket no. 31), as applicable:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within two years after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

Note: Per Judge Bason's posted procedures (available at www.cacb.uscourts.gov) this Court's order will state that the Court "does not make" a finding that Debtor was involved in the "scheme" referenced in section 362(d)(4), unless there is sufficient evidence that Debtor was involved and Debtor is given clear notice that the movant seeks an express finding that Debtor was involved. The tentative ruling in this particular case is that there is not sufficient evidence and notice.

No prejudice to Debtor intended. Based on the record, it appears that this is a "hijacked" case, and that Debtor is innocent of any involvement. See e.g., In re Vazquez, 580 B.R. 526 (Bankr. C.D. Cal. 2017) (describing hijacking); In re Dorsey, 476 B.R. 261 (Bankr. C.D. Cal. 2012) (same). In a hijacking case, the Debtor faces the legitimate concern of being subject to a 180-day bar and other adverse consequences if, for example, Debtor later requests and obtains a voluntary dismissal and subsequently needs to file another bankruptcy petition. See, e.g., 11 U.S.C. 109(g)(2), 362(b)(21) (A). There is authority that section 109 "eligibility issues" are nonjurisdictional, can be waived, forfeited, or subject to estoppel, and should not be applied if that would produce an "illogical, unjust, or capricious result, or when the benefit of dismissal would inure to a bad faith creditor." In re Leafty, 489 B.R. 545, 550-51 (9th Cir. Bap 2012) (citing cases including under 109(g)(2)). See also In re Mendez, 367 B.R. 109, 116-17 (9th Cir. BAP 2007); In re Luna, 122 B.R. 575, 577 (9th Cir. BAP 1991); Dorsey, 476 B.R. 261, 270. The same principles apply to any other adverse consequences from a hijacking. Accordingly, the tentative ruling is to condition the relief from the automatic stay granted in this tentative ruling such that no adverse consequences apply to Debtor from the hijacking, including under 11 U.S.C.

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

### **CONT...** Thomas Virden Tolley

Chapter 13

109(g)(2) or 362(b)(21)(A). <u>Note</u>: None of the foregoing will shield Debtor if it turns out that Debtor was not, in fact, innocent of any involvement in the apparent hijacking or other abusive scheme.

### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Thomas Virden Tolley Represented By

Matthew D. Resnik

Movant(s):

U.S. Bank Trust National Represented By

Joseph C Delmotte

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:19-13208 Patricia Ann Oliver

Chapter 13

#7.00 Hrg re: Motion for relief from stay [RP]

NATIONSTAR MORTGAGE, LLC

VS

**DEBTOR** 

Docket 45

# **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue this motion for relief from the automatic stay to 4/21/20 at 10:00 a.m., in view of Debtor's motion to sell the property and order thereon (dkt. 47, 51), and with Debtor directed to file and serve a status report no later than 4/14/20. Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

Hearing Room

1545

10:00 AM

**CONT...** Patricia Ann Oliver

Chapter 13

**Debtor(s):** 

Patricia Ann Oliver Represented By

Hale Andrew Antico

Movant(s):

Nationstar Mortgage LLC Represented By

Cassandra J Richey

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:19-14728 Rogelio Cuevas- Flores and Beatriz Garcia Cuevas

Chapter 13

#8.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION

٧S

**DEBTOR** 

Docket 24

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 26).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Rogelio Cuevas-Flores

Represented By William G Cort

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

CONT... Rogelio Cuevas-Flores and Beatriz Garcia Cuevas

Chapter 13

**Joint Debtor(s):** 

Beatriz Garcia Cuevas

Represented By William G Cort

Movant(s):

U.S. Bank National Association, as

Represented By Renee M Parker Cassandra J Richey

**Trustee(s):** 

Kathy A Dockery (TR)

Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

2:19-15357 Deonne Louise Marilyn Watson

Chapter 13

#9.00 Hrg re: Motion for relief from stay [RP]

SELECT PORTFOLIO SERVICING, INC.

٧S

**DEBTOR** 

Docket 32

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 35).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Deonne Louise Marilyn Watson

Represented By Elena Steers

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**CONT...** Deonne Louise Marilyn Watson

Chapter 13

Movant(s):

Select Portfolio Servicing Inc., as Represented By

Josephine E Salmon

**Trustee(s):** 

Kathy A Dockery (TR)

Pro Se

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:19-18994 Ruthee Short

Chapter 13

#10.00 Hrg re: Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION

VS

**DEBTOR** 

Docket 28

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

- NONE LISTED -

**Party Information** 

**Debtor(s):** 

Ruthee Short Represented By

Axel H Richter

**Movant(s):** 

U.S. Bank National Association, as Represented By

Robert P Zahradka

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:19-21677 Jan Michael Foster

Chapter 13

#11.00 Hrg re: Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST CO

٧S

**DEBTOR** 

Docket 35

## **Tentative Ruling:**

Grant as set forth below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

#### Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

### Co-debtor stay

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

### **CONT...** Jan Michael Foster

Chapter 13

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Jan Michael Foster Represented By

Stephen L Burton

Movant(s):

Deutsche Bank National Trust Represented By

Robert P Zahradka

Trustee(s):

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:19-25217 Beridiana Perez

Chapter 7

#12.00 Hrg re: Motion for relief from stay [RP]

NATIONSTAR MORTGAGE, LLC

VS

**DEBTOR** 

Docket 34

\*\*\* VACATED \*\*\* REASON: Withdrawal of Motion Filed 02/20/20 (Dkt.

**36)** 

## **Tentative Ruling:**

- NONE LISTED -

## **Party Information**

**Debtor(s):** 

Beridiana Perez Represented By

Stephen L Burton

**Movant(s):** 

Nationstar Mortgage LLC d/b/a Mr. Represented By

Angie M Marth

**Trustee(s):** 

Timothy Yoo (TR) Pro Se

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

**2:20-10019** Martin Orozco

Chapter 13

#13.00 [CASE DISMISSED ON 3/5/20]

Hrg re: Motion for relief from stay [RP]

UNITED STATES DEPARTMENT OF HOUSING

AND URBAN DEVELOPMENT

VS

**DEBTOR** 

Docket 38

\*\*\* VACATED \*\*\* REASON: Withdrawal filed on 3/17/20 [dkt. 43]

**Tentative Ruling:** 

- NONE LISTED -

**Party Information** 

**Debtor(s):** 

Martin Orozco Pro Se

**Movant(s):** 

United States Department of Represented By

Elan S Levey

**Trustee(s):** 

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:20-10178 Judith Gonzalez

Chapter 13

#14.00 Hrg re: Motion for relief from stay [RP]

WANG YANG ENTERPRISES, LLC

VS

**DEBTOR** 

Docket 34

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Judith Gonzalez Represented By

Sunita N Sood

Movant(s):

Wang Yang Enterprises LLC Represented By

Henry D Paloci

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:20-10320 Rose R Ramirez

Chapter 7

#15.00 Hrg re: Motion for relief from stay [RP]

WELLS FARGO BANK, NA

VS

**DEBTOR** 

Docket 12

## **Tentative Ruling:**

Grant as provided below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, <u>ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

### Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1), (d)(2) and (d) (4).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. *See In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Relief notwithstanding future bankruptcy cases.

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

#### **CONT...** Rose R Ramirez

Chapter 7

Grant the following relief pursuant to 11 U.S.C. 362(d)(4) and the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31), as applicable:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within two years after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

Note: Per Judge Bason's posted procedures (available at www.cacb.uscourts.gov) this Court's order will state that the Court "does not make" a finding that Debtor was involved in the "scheme" referenced in section 362(d)(4), unless there is sufficient evidence that Debtor was involved and Debtor is given clear notice that the movant seeks an express finding that Debtor was involved. The tentative ruling in this particular case is that there is sufficient evidence and notice.

### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020 Hearing Room 1545

10:00 AM

CONT... Rose R Ramirez Chapter 7

**Debtor(s):** 

Rose R Ramirez Pro Se

Movant(s):

Wells Fargo Bank, N.A. Represented By

Dane W Exnowski

**Trustee(s):** 

Howard M Ehrenberg (TR) Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:20-10843 Mario Alberto Reyes

Chapter 7

#16.00 Hrg re: Motion for relief from stay [RP]

2nd CHANCE MORTGAGE, INC.

٧S

**DEBTOR** 

Docket 26

## **Tentative Ruling:**

Grant as set forth below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

#### Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(2).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

## Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

## **CONT...** Mario Alberto Reyes

Chapter 7

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

#### Evidence

This Court notes that the declaration attached to the motion is incomplete and/or contains changes to the mandatory form (which are hereby treated as a request to amend the form per LBR 9009-1). This Court makes no determination whether such omissions/changes would withstand an evidentiary objection. Nevertheless, this Court has considered the key documents because (a) there are no evidentiary objections and/or (b) those documents appear to be admissible on other grounds. In future the movant's failure to complete the form properly may result in denial of the motion sua sponte.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Mario Alberto Reyes Represented By

Andrew P Altholz

**Movant(s):** 

2nd Chance Mortgages Inc. Represented By

Henry D Paloci

Trustee(s):

Heide Kurtz (TR) Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

2:19-20410 Carlys Franklin Bays

Chapter 13

#17.00 Hrg re: Motion for relief from stay [PP]

WILMINGTON TRUST, NATIONAL ASSOCIATION

VS

**DEBTOR** 

Docket 27

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 30).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Carlys Franklin Bays

Represented By William G Cort

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

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1545

10:00 AM

**CONT...** Carlys Franklin Bays

Chapter 13

Movant(s):

Wilmington Trust, National Represented By

Cassandra J Richey

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

2:19-23754 Clara Lila Gonzales

Chapter 13

#18.00 Hrg re: Motion for relief from stay [PP]

BRIDGECREST CREDIT COMPANY, LLC

VS

**DEBTOR** 

Docket 26

## **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 28).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Party Information

#### **Debtor(s):**

Clara Lila Gonzales

Represented By Steven A Alpert

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Pro Se

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**CONT...** Clara Lila Gonzales

Chapter 13

Movant(s):

Bridgecrest Credit Company, LLC Represented By

Lemuel Bryant Jaquez

**Trustee(s):** 

Kathy A Dockery (TR)

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**Hearing Room** 

1545

<u>10:00 AM</u>

2:20-10046 Samini Cohen Spanos LLP

Chapter 7

#19.00 Hrg re: Motion for relief from stay [UD]

333 South Hope Co., LLC

VS

**DEBTOR** 

Docket 31

\*\*\* VACATED \*\*\* REASON: Withdrawn [dkt. 57]

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Samini Cohen Spanos LLP Pro Se

Movant(s):

333 South Hope Co., LLC Represented By

R Gibson Pagter Jr.

**Trustee(s):** 

Howard M Ehrenberg (TR) Represented By

Daniel A Lev

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**2:19-14994** Patricia Smith

Chapter 13

#20.00 Hrg re: Motion for relief from stay [NA]

AMERICREDIT FINANCIAL SERVICES, INC.

VS

**DEBTOR** 

Docket 69

## **Tentative Ruling:**

Grant as provided below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (1) <u>Limited relief</u>. Modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movant may proceed with all acts necessary or appropriate to collect insurance proceeds (and remit any overage to the Cjapter 13 Trustee).
- (a) No enforcement against property of the bankruptcy estate. The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate any such property shall be distributed when and how provided by the Bankruptcy Code. Nevertheless,

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

## **CONT...** Patricia Smith

Chapter 13

the movant is permitted to enforce its claim by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is <u>not</u> property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

- (b) <u>Claim allowance, priority, and discharge issues</u>. Any deficiency claim after application of insurance proceeds is subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.
- (c) No relief in *other* bankruptcy cases. To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Patricia Smith

Represented By Joy M Johnson

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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10:00 AM

CONT... Patricia Smith Chapter 13

Movant(s):

AmeriCredit Financial Services, Inc. Represented By

Jennifer H Wang

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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1545

<u>10:00 AM</u>

2:19-21870 Anthony Siracusa

Chapter 13

#21.00 Hrg re: Motion for relief from stay [NA]

BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP

VS

**DEBTOR** 

Docket 30

### **Tentative Ruling:**

Grant as set forth below. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (1) <u>Limited relief</u>. Modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to the following limitations (Judge Bason's standard limitations).
- (a) <u>No enforcement against property of the bankruptcy estate</u>. The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate any such property shall be

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1545

10:00 AM

#### **CONT...** Anthony Siracusa

Chapter 13

distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is <u>not</u> property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

- (b) <u>Claim allowance, priority, and discharge issues</u>. Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.
- (c) No relief in *other* bankruptcy cases. To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. *See In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

In limiting the nonbankruptcy litigation as set forth above, this Bankruptcy Court emphasizes that it does not seek in any way to impinge on the authority of the Nonbankruptcy Courts presiding over the nonbankruptcy action. Rather, this Bankruptcy Court takes seriously its obligations, as a subordinate unit of the District Court, to manage this bankruptcy case. Those obligations include taking into consideration the interests of creditors (who are not parties to the underlying nonbankruptcy litigation), and preserving the bankruptcy estate by placing limits on any relief from the automatic stay that Congress has mandated (11 U.S.C. 362(a) & (d)).

#### Additional analysis:

The Bankruptcy Court "shall grant relief from the stay" upon a showing of "cause." 11 U.S.C. 362(d)(1). Such relief need not take the form of a complete termination of the automatic stay, but instead may include "modifying or conditioning such stay." *Id.* 

"'Cause' is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.1990). In determining whether "cause" exists to grant relief from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr.

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#### **CONT...** Anthony Siracusa

Chapter 13

D. Utah 1984). See In re Kronemeyer, 405 B.R. 915 (9th Cir. BAP 2009); In re Plumberex Specialty Prods., Inc., 311 B.R. 551, 559-60 (Bankr. C.D. Cal.2004). Those factors are: (1) Whether the relief will result in a partial or complete resolution of the issues; (2) The lack of any connection with or interference with the bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary; (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) The impact of the stay on the parties and the "balance of hurt." Plumberex, 311 B.R. at 559. "[W]hile the Curtis factors are widely used to determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." In re Landmark Fence Co., Inc., 2011 WL 6826253 at \*4 (C.D. Cal. Dec. 9, 2011).

Based on the present record, the tentative ruling is that these factors weigh in favor of granting relief as set forth above. Most significantly:

As to the first *Curtis* factor (would relief result in partial or complete resolution of the issues?), granting relief would result in complete resolution of the issues and the issues involve matters of state law that can be resolved most expeditiously in the non-bankruptcy forum.

As to the second *Curtis* factor (connection with or interference with the bankruptcy case) and seventh *Curtis* factor (prejudice to other creditors/interested parties) this Court finds that proceeding to final judgment in the state court will not interfere with this case and will be most expeditious in bringing this litigation to a conclusion.

As to the fourth *Curtis* factor (whether a specialized tribunal has been established to hear the action) and the eleventh *Curtis* factor (whether the

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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1545

#### 10:00 AM

#### **CONT...** Anthony Siracusa

Chapter 13

proceedings have progressed to the point where the parties are prepared for trial), this Court finds that although not a specialized tribunal, the state court would be best suited to determine the state law claims.

As to the tenth *Curtis* factor (interest of judicial economy) and the twelfth *Curtis* factor (the impact of the stay on the parties and the "balance of hurt"), this Court is persuaded that the matter is more properly determined by the state court because it involves matters of state law and Debtor has not filed an opposition or presented any argument to persuade this Court that the issues would be better dealt with in this Court.

#### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Anthony Siracusa Represented By

Ryan A. Stubbe

#### Movant(s):

Wells Fargo Bank, N.A. Represented By

Cassandra J Richey

Barrett Daffin Frappier Treder & Represented By

Darrett Darrin Trappler Treder & Represented D.

3/31/2020 9:03:24 AM

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CONT... Anthony Siracusa Chapter 13

Cassandra J Richey

Trustee(s):

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<u>10:00 AM</u>

2:19-21870 Anthony Siracusa

Chapter 13

#22.00 Hrg re: Motion for relief from stay [NA]

GREEN FORCE, INC.

VS

**DEBTOR** 

Docket 32

### **Tentative Ruling:**

Grant, as set forth below.

Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

# (A) Relief to be granted

#### (1) Limited relief

Modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to the following limitations.

(a) No enforcement against property of the bankruptcy estate

The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate - any such property shall be

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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10:00 AM

#### **CONT...** Anthony Siracusa

Chapter 13

distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is <u>not</u> property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

### (b) Claim priority and discharge issues

Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.

### (c) No relief in other bankruptcy cases

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

(d) Retroactive relief

Grant the request for retroactive annulment of the stay.

(e) Relief notwithstanding *future* bankruptcy cases

Grant the following relief pursuant to *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31) (applying 11 U.S.C. 362(d)(4) post-foreclosure and distinguishing *In re Ellis*, 523 B.R. 673, 678-80 (9th Cir. BAP 2014)), and alternatively grounds other than section 362(d)(4) set forth in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017):

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within 180 days after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

As set forth below, the tentative ruling is to find that Debtor was involved in the scheme to hinder, delay, or defraud creditors.

(f) Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

(3).

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10:00 AM

# **CONT...** Anthony Siracusa

Chapter 13

(g) Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

### (B) Analysis

### (1) Background

Multiple bankruptcy cases have been used as part of a scheme to hinder and delay the foreclosure sale of the property commonly known as 340 Alahmar Terrace, San Gabriel, CA 91775 (the "Subject Property") by Wells Fargo Bank, N.A. ("Wells Fargo"). More recently the foreclosure sale finally occurred, but the current disputes concern the attempted eviction of Debtor Anthony Siracusa by the purchaser of the Subject Property, Green Force, Inc. ("Green Force").

According to Green Force, Debtor is acting in bad faith, "has not paid to live in the property since 2011," and has personally "evaded and hindered creditors for nine (9) years." Dkt.37, p.5:19-20. Debtor paints a different picture.

Debtor declares that he was ignorant of the multiple bankruptcy cases that were used to hinder, delay, and defraud Wells Fargo. According to Debtor, he was the victim of a scam by his former attorney and an employee of Wells Fargo to take his money in exchange for false promises of relief from foreclosure, and Debtor claims he was part of a "sting" operation by the Federal Bureau of Investigation. This Court will return to these allegations later, but for now this Court focuses on the relevant history and legal issues.

#### (2) Relevant history

On 11/13/18, in one of the multiple bankruptcy cases hindering the foreclosure sale, Chief Judge Maureen Tighe issued an order granting "in rem" relief from the automatic stay with respect to the Subject Property under 11 U.S.C. 362(d)(4). See In re Pan Lea Kim (Case No. 1:18-bk-12380-MT), dkt. 21. That order was recorded in the real estate records on 12/18/18. See dkt.32, Ex.C. Much later Debtor filed a motion seeking relief from that order (the "Anti-In Rem Motion," id., dkt.27), but Judge Tighe denied that motion. Dkt.44, 45.

Meanwhile, on 10/8/19, Debtor filed his chapter 13 petition commencing this case (dkt.1). On or about 10/10/19 a foreclosure sale was

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10:00 AM

#### **CONT...** Anthony Siracusa

Chapter 13

held and the Subject Property was sold to Green Force. Dkt.32, Ex.D. Debtor does not dispute that, pursuant to the *in rem* order, that foreclosure sale did not violate the automatic stay. *See In re Alakozai*, 499 B.R. 698 (9th Cir. BAP 2013) (foreclosure sale did not violate automatic stay because of *in rem* order in prior case).

On or about 11/13/19, Green Force served Debtor with a 3-day notice to quit. On or about 12/23/19, Green Force filed an unlawful detainer complaint against Debtor. See dkt.38.

This Court takes judicial notice that Green Force filed a notice in the unlawful detainer proceeding, on or about 2/4/20, asserting that, due to the *in rem* order, Debtor's bankruptcy case "does not create a stay." See In re Pan Lea Kim (Case No. 1:18-bk-12380-MT), dkt.29, Ex.4. Green Force's notice made no distinction between *in rem* acts (which the *in rem* order clearly permitted) and *in personam* acts, as to which the automatic stay still might apply.

### (3) The parties' contentions

Debtor does not dispute that any attempts to evict him did not violate the automatic stay. But Green Force also seeks damages, and Debtor asserts that this violates the automatic stay.

The parties are vague about what damages Green Force seeks from Debtor. But based on this Court's review of a proposed State Court judgment, referencing a hearing on 2/13/20, it appears that the State Court's oral ruling was to grant Green Force not only restitution of the Subject Premises but also \$11,436.38 "as holdover damages" and "court costs as provided by law in the sum of \$1,100.00" (dkt.36, Ex.4) (emphasis added).

Green Force continues to maintain that no automatic stay applies, but it does not explain why the automatic stay is inapplicable to its *in personam* acts to obtain a judgment for damages against Debtor. Nevertheless, the tentative ruling is to agree with Green Force's conclusion that the automatic stay does not apply to those specific acts.

### (4) Debtor has not established any violation of the automatic stay

As noted above, Green Force has not explained why the automatic stay does <u>not</u> apply. But that is putting the cart before the horse. Debtor has not explained how the automatic stay of 11 U.S.C. 362(a) <u>does</u> apply. In particular, Debtor does not address some important limitations on the

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### **CONT...** Anthony Siracusa

Chapter 13

automatic stay, emphasized below:

- (a) Except as provided in subsection (b) of this section, a [bankruptcy petition] operates as a stay, applicable to all entities, of—
- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained <u>before the commencement of</u> the case under this title:
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate:
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a <u>claim against the</u> <u>debtor that arose before the commencement of the case</u> under this title:
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor: and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title. [11 U.S.C. 362(a) (emphasis added)]

Debtor does not explain how Green Force's <u>postpetition</u> unlawful detainer proceeding "was or could have been commenced <u>before</u> the commencement of the [bankruptcy] case" under paragraph "(1)" above. Green Force had no interest in the Subject Property until the postpetition

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Chapter 13

foreclosure sale, so its unlawful detainer proceeding could not have been commenced prepetition.

Nor has Debtor explained how Green Force's acts to recover holdover damages from Debtor and costs of suit can constitute acts involving a "claim against the debtor that arose <u>before</u> the commencement of the [bankruptcy] case" under paragraph "(6)" above, or could amount to enforcement of a "judgment obtained <u>before the commencement of the [bankruptcy] case</u>" under paragraph "(2)" above. Again, Green Force could not have had any claim or judgment against Debtor before commencement of the case because the foreclosure sale to Green Force did not occur until two days postpetition, and the holdover damages that Green Force seeks all arose postpetition.

The tentative ruling is that Debtor has not established that the automatic stay applies to any acts Green Force has taken to date. To be clear, as Green Force concedes, it cannot "enforce" any damages award in this chapter 13 case - that would be an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" that is prohibited by paragraph "(3)" of section 362(a). See 11 U.S.C. 1306 (property of estate includes postpetition earnings, and property acquired postpetition); and see Reply (dkt.37, p.9:3-9).

In sum, the tentative ruling is that Green Force is correct when it asserts in its motion that the automatic stay does not apply to the acts that it has already pursued, and any future acts to obtain (not collect) any judgments against Debtor arising from Debtor's postpetition acts or failures and refusals to act. That is one ground to issue an order granting the motion.

(5) Alternatively, if the automatic stay does apply for some reason (contrary to this Court's tentative ruling above), it is appropriate to grant prospective and retroactive relief

Green Force is the owner of the Subject Property. It has been unable to take possession because Debtor is occupying the property, notwithstanding the foreclosure sale to Green Force. That is "cause" under 11 U.S.C. 362(d)(1) to terminate the automatic stay prospectively to permit Green Force not only to evict Debtor but also to recover any postpetition damages and costs.

As for retroactive annulment of the stay, one issue is whether Green Force knew or should have known of the automatic stay but proceeded in disregard of the stay. See In re Fjeldsted, 293 B.R. 12 (9th Cir. BAP 2003);

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Chapter 13

and see also In re Williams, 323 B.R. 691, 697-702 (9th Cir. BAP 2005) (various issues involving annulment, and application of *Fjeldsted*), *aff'd*, 204 Fed.Appx. 582 (9th Cir. 2006), *overruled on other issues, In re Perl*, 811 F.3d 1120 (9th Cir. 2016) (scope of automatic stay).

Green Force asserts that prior to the hearing on the Anti-In Rem Motion it was "not aware of any ... stays that could hinder its possession of the property." Dkt.37, p.6:15-18. This Court interprets that phrase to mean that, although Green Force was aware of this bankruptcy case, it was not aware of any theory under which the automatic stay in this case would stay its postpetition efforts to obtain (but not collect) a judgment for holdover damages and costs. As set forth above, this Court is not aware of any such theory either.

This favors annulment, as do the other facts and circumstances. *See id., and see* Reply (dkt.37) pp.5:1-7:27 *and passim.* Therefore, even supposing for the sake of discussion that Debtor could articulate some persuasive argument that the automatic stay did apply, the tentative ruling is that retroactive annulment of the automatic stay would be appropriate.

In sum, the alternative tentative ruling is that, if the automatic stay somehow does apply (contrary to this Court's tentative ruling above), then Green Force is entitled to both prospective and retroactive relief from the automatic stay. That is an alternative basis to grant Green Force's motion.

# (6) <u>Debtor's allegations about being a victim, rather than a perpetrator, of the scheme to hinder, delay, or defraud creditors</u>

Debtor does not clearly explain the relevance of his claims that he was ignorant of the multiple bankruptcy cases that were used to hinder, delay, and defraud creditors, or that he was the victim of a scam by his former attorney and an employee of Wells Fargo to take his money in exchange for false promises of relief from foreclosure, and that he was part of a "sting" operation by the FBI. Presumably Debtor is attempting (a) to counter Green Force's allegations of "bad faith," which is alternative "cause" for relief from the automatic stay (11 U.S.C. 362(d)(1)), and (b) to counter Green Force's allegations that he was part of the scheme to hinder, delay, and/or defraud creditors. The tentative ruling is that there is sufficient evidence of Debtor's bad faith to support both forms of relief.

As a preliminary matter, Debtor's story is unsupported by any evidence. For example, Debtor alleges (a) that in March of 2018 his then-

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#### **CONT...** Anthony Siracusa

Chapter 13

attorney Mr. Brifman continued to press Debtor to "bribe Wells Fargo employee(s)" to get "a loan modification for [the Subject Property] approved by Wells Fargo" (dkt.36, Ex.1, p.3:13-18); (b) the FBI allegedly provided him with \$17,000 to "put in my bank account and then wire to Brifman" (*id.*, p.7:16-17); and (c) on 6/26/18 Debtor allegedly "deposited the FBI money directly into Brifman's Comerica account" and "provided the deposit receipts and emails to the FBI." *Id.*, p.8:1-3. Debtor does not provide any such deposit receipts or emails. Likewise, all of Debtor's other allegations are unsupported by any evidence.

Second, Debtor's allegation that he was ignorant of the other bankruptcy cases used to hinder, delay, and defraud Wells Fargo is contradicted by the evidence before this Court. That evidence shows that Debtor was served with the motion seeking "in rem" relief in one of the bankruptcy cases. See In re Pan Lea Kim (Case No. 1:18-bk-12380-MT), dkt. 11 (last page).

In this case Debtor flatly denies having received the motion (dkt.36, Ex.1, p.12, para.61) ("I was never served with a copy of the motion"), but he offers no legal authority or factual basis to disregard the proof of service. In any event, Debtor's declaration admits (dkt.36, Ex.1, p.11, para.59 & 60) that he was shown the document sometime during the same month (October of 2019).

Next Debtor claims he "did not understand the significance of this document or how it was connected to me or my house." *Id.* That is nonsense.

The motion lists the Subject Property as "The Property at Issue"; it refers to Debtor by name; it describes in detail the multiple bankruptcy cases that were used to hinder, delay, and defraud creditors with respect to the Subject Property; and it requests that the automatic stay not apply in any future bankruptcy case affecting the Subject Property ("in rem" relief). See In re Pan Lea Kim (Case No. 1:18-bk-12380-MT), dkt. 11, at p.3, para.2, pp. 14-15, and passim. The most casual review of that motion would have alerted Debtor to the scam of which he claims he was ignorant.

In sum, the tentative ruling is to find that Debtor has indeed engaged in bad faith, and was part of the scheme to hinder, delay, and defraud creditors. That is an alternative basis to grant Green Force's motion.

### (7) Conclusion

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### **CONT...** Anthony Siracusa

Chapter 13

For all of the foregoing reasons, Debtor has not established that any provision of the automatic stay prevents Green Force from obtaining (but not collecting) a judgment against Debtor for holdover damages, costs, and any other postpetition damages. Alternatively, if the automatic stay somehow does apply (contrary to this Court's conclusion), Green Force's purchase of the Subject Property at the foreclosure sale, and Debtor's continued occupancy of the property, are sufficient "cause" for retroactive and prospective relief from the stay, including *in rem* relief. Alternatively, Debtor's bad faith, including his participation in the scheme to hinder, delay, or defraud creditors, is an alternative ground for such relief.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

**Debtor(s):** 

Anthony Siracusa Represented By

Ryan A. Stubbe

Movant(s):

Green Force, Inc. Represented By

Zi Chao Lin

Trustee(s):

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<u>10:00 AM</u>

2:14-24842 Ali Rahimi

Chapter 13

#23.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 06/04/19

SUNTRUST BANK

٧S

**DEBTOR** 

Docket 64

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This matter was originally self-calendared for hearing on 6/4/19, but was taken off calendar to allow Debtor an opportunity to participate in the loan modification program. On 2/25/20, Movant re-noticed this matter for this date based on Debtor's failure to obtain a loan modification or otherwise address Movant's claim - which Movant states is now \$132,128.58 postpetition delinquent (see dkt. 88).

Debtor timely opposed the motion (dkt. 94) arguing that his brother has obtained financing and is ready to proceed with a refinance that would pay Movant in full. But Debtor states that the contemplated refinance cannot occur until this case is closed. Debtor asks this Court to deny the motion or delay the foreclosure sale for 60 days.

The tentative ruling is that the evidence of a refinancing offer may provide some protection, but (a) it is unclear whether the proposed refinancing, if it closes, will provide Movant with the same recovery it could expect as of the petition date (*i.e.*, whether any protection from the proposed refinancing would be "adequate") and (b) it is unclear how certain the

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### **CONT...** Ali Rahimi

Chapter 13

refinancing is (*i.e.*, is it really "protection" or just the hope of protection?). The tentative ruling is that, even if the proposed refinancing looks promising on both grounds, the proposed continuance or delay of 60 days is too long.

The parties should be prepared to address the issues set forth above.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 6/4/19:

Take this motion for relief from the automatic stay off calendar, in view of this Court's order (dkt. 73) granting the debtor's motion to commence loan modification program, without prejudice to the movant self-calendaring this motion again if the loan modification program is terminated without a consensual loan modification. Appearances are not required.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Ali Rahimi Represented By

Stella A Havkin

#### Movant(s):

SunTrust Bank as attorney in fact for Represented By

Caren J Castle

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CONT... Ali Rahimi Chapter 13

**Trustee(s):** 

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<u>10:00 AM</u>

**2:17-20998** Alfred Ken Wing Li

Chapter 13

#24.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 3/3/20

AJAX MORTGAGE LOAN TRUST 2018-G, MORTGAGE-BACKED SECURITIES, 2018-G

VS

**DEBTOR** 

Docket 30

### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This matter was continued to this date to allow time for the parties to negotiate the terms of an adequate protection order. There is no tentative ruling, but the parties should be prepared to provide an update on the status of those negotiations.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 3/3/20:

Appearances required. There is no tentative ruling, but the parties should be

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### **CONT...** Alfred Ken Wing Li

Chapter 13

prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 32).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Alfred Ken Wing Li Represented By

Ryan A. Stubbe

Movant(s):

Ajax Mortgage Loan Trust 2018-G, Represented By

Reilly D Wilkinson

Trustee(s):

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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<u>10:00 AM</u>

2:18-10248 Rosa Candida Perez

Chapter 13

#25.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 3/3/20

ABS LOAN TRUST VI

VS

**DEBTOR** 

Docket 38

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This matter was continued to this date to allow time for Movant to confirm whether the alleged arrears have been brought current. There is not tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 40).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 3/3/20:

Appearances required. There is no tentative ruling, but the parties should be

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#### **CONT...** Rosa Candida Perez

Chapter 13

prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 40).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

**Debtor(s):** 

Rosa Candida Perez Represented By

Thomas B Ure

Movant(s):

ABS Loan Trust VI Represented By

Robert P Zahradka

**Trustee(s):** 

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1545

<u>10:00 AM</u>

2:18-15031 Sonia Noemi Delgado

Chapter 13

#26.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 3/3/20

CARRINGTON MORTGAGE SERVICES, LLC

**DEBTOR** 

Docket 5

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Sonia Noemi Delgado Represented By

Axel H Richter

Movant(s):

Carrington Mortgage Services, LLC Represented By

S Renee Sawyer Blume Christopher Giacinto Bonni S Mantovani

**Trustee(s):** 

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1545

<u>10:00 AM</u>

2:18-19093 Rodney Albert Gabriel, Jr

Chapter 13

#27.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 06/11/19, 7/2/19; 08/06/19, 9/17/19, 10/15/19,

02/18/20

NATIONAL MORTGAGE, LLC

VS

**DEBTOR** 

Docket 62

#### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

At the previous hearing, this Court was informed that Movant's counsel was awaiting information from Movant about whether the loan is postpetition current or reinstated. There is no tentative ruling, but the parties should be prepared to address (a) whether the Chapter 13 Trustee has received the information she requested, (b) whether the alleged arrears have been brought current and/or (c) whether some other disposition is appropriate.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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1545

10:00 AM

# **CONT...** Rodney Albert Gabriel, Jr

Chapter 13

resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 2/18/20 (same as for 10/15/19):

<u>Appearances required</u>. At the previous hearing, this Court was informed that the Chapter 13 Trustee had not yet received certain information requested from Movant. There is no tentative ruling, but the parties should be prepared to address (a) whether the Chapter 13 Trustee has received the information she requested, (b) whether the alleged arrears have been brought current and/or (c) whether some other disposition is appropriate.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Tentative Ruling for 9/17/19:**

Appearances required. At the previous hearing, Movant informed this Court that it had provided the Chapter 13 Trustee with a payoff statement and that the Chapter 13 Trustee required further accounting. There is no tentative ruling, but the parties should be prepared to address (a) the status of that further accounting, (b) whether the alleged arrears have been brought current and/or (c) whether they will agree to the terms of an adequate protection order.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 8/6/19:

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

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### **CONT...** Rodney Albert Gabriel, Jr

Chapter 13

<u>Appearances required</u>. At the previous hearing, the parties noted that another of Debtor's properties had been sold and that Movant's debt may be paid in full out of the proceeds. There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 7/2/19:

Grant as provided below. Appearances are not required.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

#### Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### Effective date of relief

Deny the request to waive the 14-day stay provided by FRBP 4001(a) (3) for lack of sufficient cause shown.

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you

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### **CONT...** Rodney Albert Gabriel, Jr

Chapter 13

wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

### **Debtor(s):**

Rodney Albert Gabriel Jr Represented By

Julie J Villalobos

Movant(s):

Nationstar Mortgage LLC d/b/a Mr. Represented By

Nichole Glowin

Trustee(s):

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<u>10:00 AM</u>

2:18-23719 John Martin Archer, Jr.

Chapter 13

#28.00

Cont'd hrg re: Motion for relief from stay [RP]

fr. 02/18/20

WILMINGTON SAVINGS FUND SOCIETY

VS

**DEBTOR** 

Docket 35

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

John Martin Archer Jr. Represented By

Stephen Parry

Movant(s):

Wilmington Savings fund society, Represented By

Arnold L Graff

**Trustee(s):** 

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<u>10:00 AM</u>

**2:19-10982** Juana Rangel

Chapter 13

#29.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 3/10/20

THE BANK OF NEW YORK MELLON

VS

**DEBTOR** 

Docket 31

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Juana Rangel Represented By

Andrew Moher

Movant(s):

The Bank of New York Mellon fka Represented By

Kelsey X Luu

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM 2:19-12611

Margarita Dolores Gonzalez

Chapter 13

#30.00

Cont'd hrg re: Motion for relief from stay [RP] fr. 08/06/19, 9/10/19, 10/29/19, 12/10/19, 02/18/20

NATIONSTAR MORTGAGE, LLC

VS

**DEBTOR** 

Docket 29

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

This matter was continued to this date so that, if Debtor were not performing under the LMM trial period (see Order, dkt.42), Movant could bring such non-performance to the attention of this Court (such as by filing and serving a declaration, or raising such non-performance at the hearing). The docket does not reflect any such non-performance, so the tentative ruling is to continue this hearing to 5/5/20 at 10:00 a.m. <u>Appearances are not required</u> on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID-19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

10:00 AM

# **CONT...** Margarita Dolores Gonzalez

Chapter 13

on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 2/18/20:

This matter was continued to this date so that, if Debtor were not performing under the LMM trial period (see Order, dkt.42), Movant bring such non-performance to the attention of this Court (such as by filing and serving a declaration, or raising such non-performance at the hearing). The docket does not reflect any such non-performance, so the tentative ruling is to continue this hearing to 3/31/20 at 10:00 a.m. <u>Appearances are not required</u> on 2/18/20.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 12/10/19 and 10/29/19:

<u>Appearances required</u> but telephonic appearances are encouraged <u>if</u> advance arrangements are made (see www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

There is no tentative ruling, but the parties should be prepared to address whether Debtor is performing under the LMM trial period (*see* Order, dkt.42).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 9/10/19:

Continue to 10/29/19 at 10:00 a.m. in view of Debtor's entry into the LMM

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

# **CONT...** Margarita Dolores Gonzalez

Chapter 13

program (see Order, dkt.42) and Debtor's status report (dkt.41). If Debtor is performing under the LMM trial period, and files a declaration saying so prior to the continued hearing, then this Court anticipates a further continuance of this hearing. Appearances are not required on 9/10/19.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for for 8/6/19:

<u>Appearances required</u>. There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 34).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Margarita Dolores Gonzalez Represented By

Michael E Clark Barry E Borowitz

**Movant(s):** 

Nationstar Mortgage LLC D/B/A

Represented By
Angie M Marth
Jacky Wang

3/31/2020 9:03:24 AM

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**Hearing Room** 

1545

10:00 AM

**CONT...** Margarita Dolores Gonzalez

Chapter 13

**Trustee(s):** 

Kathy A Dockery (TR)

Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:19-17796 William Smith, Jr.

Chapter 13

#31.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 02/18/20

DEUTSCHE BANK NATIONAL TRUST CO

٧S

**DEBTOR** 

Docket 55

### **Tentative Ruling:**

Tentative Ruling for 3/31/20 (same as for 2/18/20, except telephonic procedures):

Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see the debtor's response, dkt. 64).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

Hearing Room 1

1545

10:00 AM

CONT... William Smith, Jr.

Chapter 13

**Debtor(s):** 

William Smith Jr. Represented By

Kevin T Simon

Movant(s):

Deutsche Bank National Trust Represented By

Nancy L Lee

Merdaud Jafarnia

**Trustee(s):** 

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:19-19090 Jose A. Vallejos

Chapter 13

#32.00 Cont'd hrg re: Motion for relief from stay [RP]

fr. 3/3/20

U.S. BANK NATIONAL ASSOC

VS

**DEBTOR** 

Docket 33

\*\*\* VACATED \*\*\* REASON: APO

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Jose A. Vallejos Represented By

Donald E Iwuchuku

Movant(s):

U.S. BANK NATIONAL Represented By

Diane Weifenbach

**Trustee(s):** 

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

<u>10:00 AM</u>

2:19-23718 Marianne Evette Villa

Chapter 7

#33.00 Cont'd hrg re: Motion for relief from stay [PP]

fr. 02/18/20

SCHOOLSFIRST FEDERAL CREDIT UNION

۷S

**DEBTOR** 

Docket 8

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

As set forth in this Court's order (dkt. 11), this matter was continued to this date because Debtor appeared at the hearing on 2/18/20 and represented that she is negotiating a reaffirmation agreement with Movant. The order included provisions that, if Debtor did not make certain adequate protection payments, Movant could file a declaration to that effect and lodge a proposed order terminating the automatic stay. Those things have no happened, so perhaps the parties can work out an adequate protection order, a reaffirmation agreement, or some other solution.

Meanwhile, this Court notes that, from a review of the docket, no reaffirmation was filed prior to entry of Debtor's discharge on 2/24/20 (dkt. 13). On the other hand, the docket might not be fully accurate: after the order discharging Debtor (dkt.13), there is a docket entry (dkt.16) purporting to vacate an "order of dismissal" (emphasis added), although the docket does not reflect any dismissal; and thereafter there is a written order "Setting Aside Closing [sic] and Reopening Estate" (dkt.17), although the docket does not reflect any closing of this case.

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

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1545

10:00 AM

### **CONT...** Marianne Evette Villa

Chapter 7

The parties are directed to address what relief they each want, and whether this Court should vacate any of the orders and docket entries described above.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 2/18/20:

Grant as provided below. Appearances are not required.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

### Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

#### Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

### **CONT...** Marianne Evette Villa

Chapter 7

<u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Marianne Evette Villa Represented By

Brian J Soo-Hoo

Movant(s):

SchoolsFirst Federal Credit Union Represented By

Paul V Reza

**Trustee(s):** 

Rosendo Gonzalez (TR) Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

2:20-13067 Norma Alicia Meraz Sanchez

Chapter 13

#34.00 Hrg re: Motion to vacate dismissal

Docket 17

### **Tentative Ruling:**

Grant, (a) subject to any persuasive opposition at the hearing, and (b) by vacating the dismissal, but without retroactive effect because insufficient legal authority has been presented for this Court's power to grant any retroactive effect, and in addition this Court is not aware of any need for such retroactive relief. Accordingly, the tentative ruling is that the automatic stay will be reimposed as of this hearing date. Appearances required, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

### **Debtor(s):**

Norma Alicia Meraz Sanchez

Represented By A Mina Tran

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

10:00 AM

**CONT...** Norma Alicia Meraz Sanchez

**Chapter 13** 

**Trustee(s):** 

Kathy A Dockery (TR)

Pro Se

Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

11:00 AM

2:19-14137 Zeta Graff

Chapter 7

#1.00 Hrg re: Chapter 7 Trustee's Application for Authority to Employ Rodeo Realty as Real Estate Brokers to Sell Residential Real Property Located at 1704 Stone Canyon Road, Los Angeles, CA 90077 (APN 4370-009-024)

Docket 161

### **Tentative Ruling:**

Grant, except as to any dual agency, as set forth below. <u>Appearances are</u> not required.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

Key documents reviewed (in addition to motion papers): Debtor's opposition (dkt. 163), Pensco Trust Company ("Pensco") response to opposition (dkt. 167), Trustee's reply (dkt. 168) and evidentiary objections (dkt. 169).

#### Reasons:

The tentative ruling is to grant the Trustee's Application To Employ Rodeo Realty (the "Broker Employment Application," dkt. 161) except as to dual agency, overrule Debtor's objection.

(1) Dual agency

In the Broker Employment Aplication the Trustee states that "in the

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

11:00 AM

#### **CONT...** Zeta Graff

Chapter 7

event Rodeo may represent potential purchasers, the Trustee consents to such dual representation." Dkt. 161, p.4:26-27. Judge Bason's standard employment terms, outlined in his posted Pocedures available at cacb.uscourts.gov, provide that no dual agency is permitted. Judge Bason's Procedures, p.10. See also Tentative Ruling for 3/31/20, 11:00 a.m., calendar no.4 (unrelated case involving request for dual agency).

### (2) Evidentiary objections (dkt. 169)

The tentative ruling is to sustain the Trustee's evidentiary objections to Debtor's declaration (dkt. 163, p.8-10), except as to relevance of the 2018 appraisal - it is still inadmissible for the other reasons given by the Trustee, and it is not as persuasive as more recent opinions of value, but it would have some relevance if it were admissible.

#### (3) Debtor's objection (dkt. 163)

## (a) Necessity for employment of a real estate broker

Debtor's objection argues that because the Trustee has failed to "identify any immediate necessity to list the Debtor's Property for sale," the Broker Employment Application should be denied. Dkt. 163, p.3:16-24.

While Debtor is correct that the Broker Employment Application does not identify an immeidate need, the Trustee's reply provides ample support. First, as a general matter, one of the Trustee's primary functions is to "collect and reduce to money the property of the estate." Dkt. 168, p.4:25-26. Employing a broker to market the property is to further that end. Second, because of the uncertainty surrounding coronavirus and how that may affect the market, it is the broker's opinion that it is more prudent to list the property now than spend money to improve the property and perhaps get a higher price. *Id.* at p.6:19-23. Lastly, as pointed out by both Pensco and the Trustee, there is no evidence that Debtor has been making payments to secured creditors, which generally erodes any equity cushion. *See id.* at p.4:3; *see also* dkt. 167, p.2:25-26.

The tentative ruling is that the Trustee has established that the employment of a real estate broker is necessary.

### (b) Alleged value of the property and claims

The objection also argues that "there is no basis for the Trustee to sell the Property at this time" because secured creditors are protected by an adequate equity cushion based on the property being worth \$8.4 million and estimated liens of "well below" \$4.5 million. *Id.* at pp.3:25-4:17.

This Court does not find Debtor's argument persuasive. First, the

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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1545

11:00 AM

### **CONT...** Zeta Graff

Chapter 7

Trustee is not proposing the sell the property via this application, but to employ a real estate broker to list the property. Should the Trustee come forward with a sale motion and a proposed buyer, Debtor may object to the sale of the property at that time. Second, the appraisal on which Debtor is relying to say that the property is worth \$8.4 million is from 2018 (see dkt. 163, Ex. E), which is somewhat outdated evidence of the value of the property. The proposed broker's declaration explains the basis for valuing the property at approximately \$6.2 million includes a 2019 visit to the property and a review of recent sales in the area. Dkt. 168, pp.14:16-15:6. The Court finds the proposed broker's evidence is more probative of the current value of the property than Debtor's 2018 appraisal. Lastly, Debtor's statement that the claims total \$4.5 million is based on the assumption that she will be successful in reducing the amount of several claims. See dkt. 163. pp.4:25-6:14. Until claim objections are filed and this Court has an opportunity to review them, any statements re reducing claim amounts are speculative. In addition, as the Trustee points out, Debtor's figures do not address how she would pay general unsecured claims (dkt. 168, p.8:8-9) or the claim of Ms. Olivia Vaateta should the claim be found to be meritorious. Dkt. 168, p.7:13-14; p.8:8-19; p.9:10-15. It also appears that Debtor may have underestimated the costs of administration. See dkt. 168, pp.9:24-10:15.

The tentative ruling is that the Debtor's objection on this point is unpersuasive.

#### (c) Debtor's attempt to refinance the property

Lastly, Debtor argues that the Broker Employment Application should be denied because Debtor "is diligently trying to refinancing the Property by obtaining a loan with sufficient cash out to pay all allowed claims." DKt. 163, p.4:18-19.

Debtor has had considerable time to attempt a refinance, and she does not explain how the Trustee employing a broker prevents her from continuing her efforts to refinance the property. In addition, as the Trustee points out in the reply and is discussed above, any refinance would have to address unsecured claims and contingent claims.

The tentative ruling is that the Debtor's objection on this point is unpersuasive.

#### (d) Conclusion

For the reasons set forth above, the tentative ruling is to overrule

## United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

**Tuesday, March 31, 2020** 

**Hearing Room** 

1545

11:00 AM

**CONT...** Zeta Graff

Chapter 7

Debtor's objection the the Broker Employment Application.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

### **Debtor(s):**

Zeta Graff Represented By

Michael F Chekian

Trustee(s):

Sam S Leslie (TR)

Represented By

Elissa Miller

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

11:00 AM

2:17-22660 Yuichiro Sakurai and Akemi Sakurai

Chapter 7

#2.00 Hrg re: Motion of chapter 7 trustee for order compelling turnover of real and personal property

Docket 522

### **Tentative Ruling:**

Grant. Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Yuichiro Sakurai Represented By

Nicholas W Gebelt

#### **Joint Debtor(s):**

Akemi Sakurai Represented By
Nicholas W Gebelt

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Tuesday, March 31, 2020

**Hearing Room** 

1545

11:00 AM

CONT... Yuichiro Sakurai and Akemi Sakurai

Chapter 7

**Trustee(s):** 

Rosendo Gonzalez (TR)

Represented By Timothy J Yoo Carmela Pagay

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

11:00 AM

2:19-16732 Rodney Phillip Walker

Chapter 7

#3.00 Hrg re: Chapter 7 trustee's motion to approve compromise Under Rule 9019

Docket 54

### **Tentative Ruling:**

Grant. Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Rodney Phillip Walker

Pro Se

### Trustee(s):

Heide Kurtz (TR)

Represented By

3/31/2020 9:03:24 AM

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# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

Courtroom 1545 Calendar

Tuesday, March 31, 2020

Hearing Room 1545

11:00 AM
CONT... Rodney Phillip Walker

Timothy J Yoo
Carmela Pagay

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

11:00 AM

### 2:18-20704 Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

Chapter 7

#4.00 Hrg re: Motion for Order: (A) Authorizing Sale of Real Property Located at 1518 Waters Avenue, Pomona, California 91766 Outside the Ordinary Course of Business, Free and Clear of Claims, Liens, Encumbrances and Interests; and (B) Approving the Form and Manner of Notice and Bid Process

Docket 253

#### **Tentative Ruling:**

Grant in part and deny in part as set forth below. Appearances required.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. *See* LBR 9021-1(b)(1)(B).

Key documents reviewed (in addition to motion papers): Bank of America, N.A.'s non-opposition (dkt. 268); no opposition from the Debtors is on file.

#### Analysis

The tentative ruling is to grant the sale motion, subject to

- (1) payment in full of Bank of America's lien (dkt. 268),
- (2) any overbids at the hearing,
- (3) the filing of a "good faith" declaration (11 U.S.C. 363(m)) by the winning bidder that substantially complies with Judge Bason's posted procedures (available at www.cacb.uscourts.gov), and

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## CONT... Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

Chapter 7

(4) no dual agency.

On this last issue, the tentative ruling is to deny the request (dkt.253, Notice, p.4:10-17, Motion, p. 5:7-17 at PDF p.16, Temple Decl. para.5, at PDF p.37) to permit other real estate brokers ("Affiliated Brokers") in the same office as the real estate brokers for the Trustee (the "Trustee Brokers") to represent prospective buyers - *i.e.*, to modify the terms of employement. See Order (dkt.236) (copy at dkt.253, Ex.5, at PDF pp.89-91). The asserted negative impact on the sale price is not a sufficient reason to depart from the prohibition on such dual agency, for three alternative reasons.

First, professionals employed by the bankruptcy estate cannot have conflicts of interest. See 11 U.S.C. 101(14) and 327(a) (professionals may not "hold or represent an interest adverse to the estate"); In re Circle K Corp., 279 F.3d 669 (9th Cir. 2002). This Court is not persuaded that it can, or should, depart from the plain meaning of the statute.

Second, dual agency would create a financial incentive to favor sales to persons whom the broker also represents. For example, a 5% (dual agency) commission on a \$500,000 sale is worth more to a broker (\$25,000) than a 2.5% (single agency) commission on a \$650,000 sale (\$16,250), so a broker with a choice between such sales has a financial incentive (\$8,750) to favor the former sale, even though that would depress the price by \$150,000. This is not just a hypothetical concern.

This Court takes judicial notice that dual agency is widely viewed with skepticism because it involves potential or actual conflicts of interest. See, e.g., Horiike v. Coldwell Banker Res. Brokerage Co., 383 P.3d 1094, 1029-32 and 1041 (Cal. S.Ct. 2016) (noting historical lack of dual agency, and "fundamental problem in dual agency relationships — potential and sometimes unavoidable conflicts of interest") (citation and internal quotation marks omitted).

In addition, years after Judge Bason posted his policy of prohibiting dual agency, he experienced first hand the negative effects of dual agency. He made a higher and better offer on a property by the bid deadline (through his broker), but the seller's brokers had a dual agency arrangement with a competing prospective purchaser and Judge Bason never even heard back from the seller.

Of course, this Court does not intend in any way to impugn the integrity of the Trustee Brokers. The point is not that they would <u>actually</u> violate any duties to the bankruptcy estate - this Court presumes they would not. Rather,

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### **CONT...** Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

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the point is that it is inappropriate and unfair to place estate professionals in the position of having conflicting <u>incentives</u>.

Third, the assertion that the prohibition on dual agency results in lost opportunities rests on a premise that, admittedly, is all too real. But that premise is also incomplete.

The all too real part is that any Affiliated Brokers may well fail to let their clients know about the subject property, even if that property would be an attractive property for their clients, because (under this Court's bar on dual agency) the Affiliated Brokers cannot receive a 2.5% commission on that property. The incomplete part is that (a) such Affiliated Brokers risk losing their clients, and their reputation, if those clients find out about the missed opportunity to bid on the subject property (although, admittedly, some brokers are not very concerned about those risks), and (b) such Affiliated Brokers have a "win-win" alternative: they can do right by their client by referring their client, for this one property, to a broker who does not work in the same office, and the broker they choose can be one who has an incentive (i) not to "steal" the client and (ii) to return the favor (e.g., a broker who is retained by bankruptcy trustees, who faces the same prohibition on dual agency, and who therefore has reasons to refer one of their own clients to the Affiliated Broker at a future date). See generally Order (dkt.236) (copy at dkt.253, Ex.5, at PDF pp.89-91) (permitting brokers who are affiliated with the Trustee Brokers, but who do not work out of same office, to represent buyers, subject to otherwise applicable ethical and legal restrictions).

As with the Trustee Brokers, this Court does not intend to impugn the integrity of the Affiliated Brokers. The point is only that, if this Court presumes that the Affiliated Brokers will act with integrity and some creativity, then there should not be any negative impact - or at least none that outweighs the advantages - arising from this Court's prohibition on dual agency. (And if this Court were to presume the contrary - *i.e.*, a lack of integrity - that only reinforces the second alternative reason to deny the request to permit dual agency: the dangers of conflicting incentives for brokers.)

For any and all of these three alternative reasons, the tentative ruling is to deny the request to lift the prohibition on dual agency.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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### **CONT...** Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

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www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

### **Debtor(s):**

Finnian Osakpamwan Ebuehi Represented By

Edwin I Aimufua Joseph Virgilio

**Joint Debtor(s):** 

Elizabeth Olohirere Ebuehi Represented By

Edwin I Aimufua Joseph Virgilio

**Trustee(s):** 

Peter J Mastan (TR) Represented By

Ashleigh A Danker

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11:00 AM

### 2:18-20704 Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

Chapter 7

#5.00 Hrg re: Motion for Order: (A) Authorizing Sale of Real Property Located at 2551 Yorkshire Way, Pomona, California 91767 Outside the Ordinary Course of Business, Free and Clear of Claims., Liens, Encumbrances and Interests; and (B) Approving the Form and Manner of Notice and Bid Process

Docket 256

#### **Tentative Ruling:**

Grant in part and deny in part as set forth below. Appearances required.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. *See* LBR 9021-1(b)(1)(B).

#### Analysis

The tentative ruling is to grant the sale motion, subject to

- (1) any overbids at the hearing,
- (2) the filing of a "good faith" declaration (11 U.S.C. 363(m)) by the winning bidder that substantially complies with Judge Bason's posted procedures (available at www.cacb.uscourts.gov), and
- (3) no dual agency, for the reasons set forth in connection with the motion to sell another property (calendar no. 4, 3/31/20 at 11:00 a.m.).

If appearances are not required at the start of this tentative ruling but you

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### **CONT...** Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

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wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

### **Debtor(s):**

Finnian Osakpamwan Ebuehi Represented By

Edwin I Aimufua Joseph Virgilio

### **Joint Debtor(s):**

Elizabeth Olohirere Ebuehi Represented By

Edwin I Aimufua Joseph Virgilio

#### **Trustee(s):**

Peter J Mastan (TR) Represented By

Ashleigh A Danker

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11:00 AM

### 2:18-20704 Finnian Osakpamwan Ebuehi and Elizabeth Olohirere

Chapter 7

#6.00

Hrg re: Motion for Turnover of Property Notice of Motion and Motion for (1) Order to Compel Turnover of Property of the Bankruptcy Estate and Establishing Procedures for Removal and Disposal of Any Remaining Personal Property, and (2) Writ of Assistance

Docket 263

#### **Tentative Ruling:**

Grant. Appearances are not required.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Finnian Osakpamwan Ebuehi

Represented By Edwin I Aimufua

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CONT... Finnian Osakpamwan Ebuehi and Elizabeth Olohirere Chapter 7

Joseph Virgilio

**Joint Debtor(s):** 

Elizabeth Olohirere Ebuehi Represented By

Edwin I Aimufua Joseph Virgilio

**Trustee(s):** 

Peter J Mastan (TR) Represented By

Ashleigh A Danker

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11:00 AM

2:19-10116 Jose Joel Aguilar

Chapter 13

Adv#: 2:20-01013 Aguilar et al v. OCWEN LOAN SERVICING, LLC et al

#7.00 Hrg re: Defendants' Motion to Dismiss Adversary Proceeding

Docket 4

### **Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 8, 3/31/20 at 1:00 p.m.).

### **Party Information**

**Debtor(s):** 

Jose Joel Aguilar Pro Se

**Defendant(s):** 

OCWEN LOAN SERVICING, LLC Represented By

Sara L Markert

PHH MORTGAGE Represented By

Sara L Markert

SPECIALIZED LOAN Pro Se

Mortgage Electronic Registration Represented By

Sara L Markert

Kathy A Dockery, Chapter 13 Pro Se

Law Office of Les Zieve Pro Se

**Joint Debtor(s):** 

Guillermina Aguilar Pro Se

**Plaintiff(s):** 

Jose Joel Aguilar Pro Se

Guillermina Aguilar Pro Se

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CONT... Jose Joel Aguilar Chapter 13

**Trustee(s):** 

Kathy A Dockery (TR) Pro Se

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11:00 AM

2:19-10116 Jose Joel Aguilar

Chapter 13

Adv#: 2:20-01013 Aguilar et al v. OCWEN LOAN SERVICING, LLC et al

#8.00 Status conference re: Complaint 1. Declaratory judgment; 2. Injunctive relief; 3. Recovery of property; 4. Fraudlent transfer; 5.Removal of claim

Docket 1

### **Tentative Ruling:**

Grant the motion to dismiss (adv. dkt. 4), overrule the opposition (adv.dkt.11) for the reasons stated in the reply (adv.dkt.13), and dismiss this adversary proceeding as to <u>all defendants</u>, without leave to amend, for lack of subject matter jurisdiction because this Court dismissed Debtors' bankruptcy case on 4/22/19 (Main case, 2:19-bk-10116-NB, dkt. 27, *aff'd* dkt. 48). <u>Appearances are not required</u>.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

<u>Proposed order</u>: Movant is directed to lodge a proposed order (a) granting the motion to dismiss <u>as to all defendants</u> and (b) dismissing this proceeding via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling. See LBR 9021-1(b)(1)(B).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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## **CONT...** Jose Joel Aguilar

Chapter 13

<u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

on matters that are appropriate for disposition at this hearing.	
Party Information	
Debtor(s):	
Jose Joel Aguilar	Pro Se
Defendant(s):	
OCWEN LOAN SERVICING, LLC	Pro Se
PHH MORTGAGE	Pro Se
SPECIALIZED LOAN	Pro Se
Mortgage Electronic Registration	Pro Se
Kathy A Dockery, Chapter 13	Pro Se
Law Office of Les Zieve	Pro Se
Joint Debtor(s):	
Guillermina Aguilar	Pro Se
Plaintiff(s):	
Jose Joel Aguilar	Pro Se
Guillermina Aguilar	Pro Se
Trustee(s):	
Kathy A Dockery (TR)	Pro Se

## United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

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11:00 AM

### 2:19-24467 Catalina Sea Ranch, LLC

Chapter 11

Adv#: 2:19-01520 Catalina Sea Ranch, LLC v. Primary Ocean Producers Holdings, LLC

#9.00 Status Conference re: Complaint (1) To Avoid Unauthorized Post-Petition Transfer Of Property; (2) To Preserve Transfer For The Benefit Of The Estate; (3) To Recover Avoided Transfer; (4) For Declaratory Relief To Determine Validity, Priority Or Extent Of Lien And Other Interest In Property; (5) For Declaratory Relief To Determine Violation Of Automatic Stay; And (6) For Disallowance Of Claims [11 U.S.C. §§ 362, 502, 549, 550, and 551]

Docket 1

### **Tentative Ruling:**

Continue as set forth below. <u>Appearances are not required</u> on 3/31/20. If you wish to dispute this tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>telephonic appearances</u> <u>are REQUIRED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

### **Current issues**

### (a) Joint Status Report

The Summons And Notice Of Status Conference (adv. dkt. 2) directed the parties to file a joint status report no later than 14 days before this status conference (3/17/20). As of the drafting of this tentative ruling, no status report has been filed. Why not?

This Court notes, however, that according to a recent status report in the main case (dkt.103, p.2:21-23) the parties are pursuing settlement. Accordingly the tentative ruling is to continue this matter as set forth below, without setting any other deadlines at this time.

This Court also notes that it has reviewed the filed documents and records in this adversary proceeding. The following are Judge Bason's

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### CONT... Catalina Sea Ranch, LLC

Chapter 11

standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

### (1) Venue/jurisdiction/authority.

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. See generally Stern v. Marshall, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); Wellness Int'l Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); In re Bellingham Ins. Agency, Inc., 702 F.3d 553 (9th Cir. 2012) (implied consent), aff'd on other grounds, 134 S. Ct. 2165 (2014); In re Pringle, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); In re Deitz, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). See generally In re AWTR Liquidation, Inc., 548 B.R. 300 (Bankr. C.D. Cal. 2016).

### (2) Mediation. [Intentionally omitted]

(3) <u>Deadlines</u>: This adversary proceeding has been pending since 12/30/19. Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Discovery cutoff (for completion of discovery): N/A

Expert(s) - deadline for reports: N/A

Expert(s) - discovery cutoff (if different from above): N/A

Dispositive motions to be heard no later than: N/A

Joint Status Report: 5/5/20

Continued status conference: 5/19/20 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: N/A

Pretrial conference: N/A

Deliver trial exhibits to other parties and chambers (2 copies to

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1<u>1:00 AM</u>

### CONT... Catalina Sea Ranch, LLC

Chapter 11

chambers), including direct testimony by declaration unless excused: N/A (for the format of exhibits and other trial procedures, please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "Trial Practice")

Trial commencement: N/A

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Catalina Sea Ranch, LLC Represented By

Michael D. Seese Esq. Richard H Golubow

**Defendant(s):** 

Primary Ocean Producers Holdings, Pro Se

**Plaintiff(s):** 

Catalina Sea Ranch, LLC Represented By

Richard H Golubow

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11:00 AM

2:20-10484 The New School of Cooking, Inc.

Chapter 11

Adv#: 2:20-01009 The New School of Cooking, Inc. v. Allen J. Manzano and Barbara C.

#10.00 Status conference re: Complaint 1) For avoidance of preferential transfer; 2) To preserve avoided transfer for benefit of estate; 3) To recover avoided transfer; 4) For avoidance of unperfected security interest; 5) For declaratory relief to determine validity priority or extent of lien; 6) For disallowance of claims

Docket 1

1

### **Tentative Ruling:**

Take this matter off calendar in light of the stipulated judgment entered 3/5/20 (adv. dkt. 11, 12, 13). Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

### **Debtor(s):**

The New School of Cooking, Inc.

Represented By

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**CONT...** The New School of Cooking, Inc.

**Chapter 11** 

Crystle Jane Lindsey

**Defendant(s):** 

Allen J. Manzano and Barbara C.

Pro Se

**Plaintiff(s):** 

The New School of Cooking, Inc.

Represented By James R Selth

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1545

11:00 AM

2:20-10046 Samini Cohen Spanos LLP

Chapter 7

#11.00 Hrg re: Chapter 7 Involuntary Discovery Related Motions

Docket

\*\*\* VACATED \*\*\* REASON: Order for relief entered on 3/13/20

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Samini Cohen Spanos LLP Pro Se

**Trustee(s):** 

Howard M Ehrenberg (TR) Represented By

Daniel A Lev

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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11:00 AM

**2:20-11877** Rose R Ramirez

Chapter 13

#12.00 C

Order to show cause re dismissal due to simultaneous bankruptcy cases

Docket 10

### **Tentative Ruling:**

<u>Appearances required</u>, but pursuant to Judge Bason's COVID-19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but Debtor should be prepared to address the issues raised in this Court's order to show cause (dkt. 10).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Rose R Ramirez Pro Se

Trustee(s):

Kathy A Dockery (TR) Pro Se

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1545

11:00 AM

2:19-19328 Michelle Lee Peterson-Earhart

Chapter 7

Adv#: 2:19-01465 Ortega v. Peterson-Earhart

#13.00 Cont'd Status Conference re: Complaint to Determine

Non-Dischargeability of Debt Under 11U.S.C. § 523(a)(6)

fr. 1/7/20

Docket 1

\*\*\* VACATED \*\*\* REASON: another summons issued; reset to 5/5/20 at

11:00 a.m.

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Michelle Lee Peterson-Earhart Represented By

Daniel King

**Defendant(s):** 

Michelle Lee Peterson-Earhart Pro Se

**Plaintiff(s):** 

Fernando Ortega Represented By

Aldo A Flores

**Trustee(s):** 

Rosendo Gonzalez (TR) Pro Se

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1545

11:00 AM

2:17-19548 Layfield & Barrett, APC

Chapter 11

#14.00 Cont'd Status Conference re: Chapter 11 Case fr. 9/19/17, 10/17/17, 4/17/18, 5/1/18, 7/10/18, 9/18/18, 10/26/18, 12/6/18, 12/18/18, 2/5/19, 03/05/19, 04/02/19 04/30/19, 06/04/19, 7/30/19, 9/10/19, 10/1/19, 10/15/19, 11/12/19, 12/10/19, 12/17/19, 2/18/20, 3/3/20

Docket 323

### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions"). See below for tentative dispositions of various matters, and continuances.

### (1) Current matters

### (a) Combined Status Conference

This Status Conference involves two related bankruptcy cases and associated matters: (a) *In re Layfield & Barrett, APC,* Case No. 2:17-bk-19548-NB ("L&B"); (b) *In re Layfield,* Case No. 2:18-bk-15829-NB ("Lay-Invol."); (c) *Pimentel v. Layfield et al,* Case No. 2:19-ap-01069-NB ("Pimentel Adv.").

(b) L&B, status conference

Continue as set forth in part "(2)" of this tentative ruling, below.

(c) Lay-Invol, status conference

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### **CONT...** Layfield & Barrett, APC

Chapter 11

Continue as set forth in part "(2)" of this tentative ruling, below.

### (d) Pimentel Adv.

#### (i) Status conference

Continue as set forth in part "(2)" of this tentative ruling, below.

### (ii) Substantive motions

As a preliminary matter, as of the preparation of this tentative ruling, no reply papers appear on the docket. Although Mr. Layfield attempted to submit reply briefing via e-mail on 3/25/20 to Judge Bason's Courtroom Deputy (as well as Plaintiff's counsel and other interested parties) and allegedly sent overnight mail copies to the Court, the tentative ruling is that is insufficient.

First, Mr. Layfield's pleadings were not physically received by this Court by the 3/24/20 reply deadline. Second, and more importantly, e-mail transmission does not comply with the filing procedures this Court previously ordered, as an <u>accommodation</u> to Mr. Layfield, permitting him to file his papers using special procedures due to his inability to file papers electronically (because he is unrepresented and disbarred). Among other things, this Court required papers to be filed on a compact disk ("CD"), rather than via other electronic means, so that the proposed papers could be scanned for computer viruses. See, e.g., L&B dkt.362, p.3:14-15; dkt. 367 para."(5)." Therefore, until the papers appear on the docket this Court will not review them.

(A) Defendant/Debtor Mr. Layfield's motion for judgment on the pleadings ("MJOP" adv. dkt. 42), Plaintiff Mr. Pimentel's First Amended Complaint ("FAC," adv. dkt. 20), Order denying Mr. Layfield's motion to dismissal FAC ("Order Denying MTD," adv. dkt. 36), Mr. Layfield's Answer to FAC (adv. dkt. 38), Mr. Pimentel's opposition to motion for judgment on the pleadings (adv. dkt. 47) and request for judicial notice (adv. dkt. 48), no reply is on file

The tentative ruling is to deny the MJOP because Mr. Layfield has not established any basis to reconsider this Court's Order Denying MTD under Rule 60(b) (Fed. R. Civ.P.) and any arguments not made in connection with Debtor's motion to dismiss the FAC were waived and forfeited.

Alternatively, and in addition, as to Plaintiff's first claim for relief

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### **CONT...** Layfield & Barrett, APC

Chapter 11

(declaratory relief, restitution, constructive trust), Mr. Layfield has not cited the standard for preclusion or discussed how each of the requisite elements of preclusion are satisfied. See e.g., Tritz v. U.S. Postal Serv., 721 F.3d 1133, 1141 (9th Cir. 2013) ("Res judicata applies where there is (1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties"). Instead, Mr. Layfield jumps to the incorrect conclusion that because this Court previously granted a motion to dismiss defendant Affeld Grivakes, preclusion principles also bar Plaintiff's claims against him on the same grounds.

Although it may be true that there is no basis to establish a constructive trust at all, this Court does not agree that the analysis this Court applied for Affeld Grivakes necessarily applies to Mr. Layfield. This Court previously ruled that, when there was evidence that Plaintiff's funds were commingled with funds that were converted to services performed in other cases handled by Affeld Grivakes, that led to the recovery of settlement funds in those cases, Plaintiff had not established a constructive trust over those funds. But that is different from whether there could be any constructive trust over any and all funds that might or might not be within Mr. Layfield's custody or control.

Given that Mr. Layfield still has not complied with his duty to file bankruptcy schedules, it is premature to conclude that there is not a pool of assets upon which Plaintiff might be entitled to a constructive trust. To use a hypothetical example, suppose that Mr. Layfiled placed millions of dollars in Swiss bank accounts and labeled one of the accounts "Pimentel settlement funds." In such an instance, it is plausible that Plaintiff could establish a basis to impose a constructive trust over that account.

While this is an extreme hypothetical (and there is nothing presently in the record to suggest that any such account exists), the point is just to illustrate that at this early stage of litigation, Mr. Layfield has not established that there is no basis upon which Plaintiff could establish a constructive trust (against someone other than Affeld Grivakes). Whether a constructive trust could hold up against the bankruptcy estate, or otherwise be enforced, is an entirely separate issue and one that is not suitable for disposition at this time.

(B) Mr. Layfield's motion to disqualify McMurray & Henriks, LLP (the "Firm") and Yana Henriks ("Ms. Henriks") as Mr. Pimentel's counsel ("Disqualification Motion," adv. dkt. 44), The Firm/Ms. Henriks'

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# CONT... Layfield & Barrett, APC

Chapter 11

opposition (adv. dkt. 46), no reply is on file

The tentative ruling is to deny the Disqualification Motion with leave to amend, because the motion is not supported by any evidence in support of Mr. Layfield's allegations and the newly presented evidence attached in support of the untimely and improper reply should have been submitted in the motion and is appropriately ordered striken.

<u>Proposed orders</u>: Mr. Pimentel is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) <u>Deadlines/dates</u>. The L&B case was filed as an involuntary chapter 7 on 8/3/17 and converted to chapter 11 on 8/11/17 (L&B dkt. 25). The Lay-Invol case was filed as an involuntary chapter 7 case on 5/21/18 and an order for relief was entered on 12/12/18 (Lay-Invol dkt. 160, 161).
  - (a) L&B Bar date: 2/5/18 (timely served, L&B dkt. 133, 157)
  - (b) <u>Lay-Invol Bar date</u>: 4/12/19 (timely served, Lay-Invol dkt.180)
  - (c) <u>L&B Plan/Disclosure Statement\*</u>: TBD. Do not file or serve until further order of this court.
  - (d) Continued status conferences (L&B, Lay-Invol., & Pimentel Adv.)
    Continue status conferences to 8/4/20 at 11:00 a.m., to be concurrent with other matters. No written status reports required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# [PRIOR TENTATIVE RULINGS OMITTED]

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CONT... Layfield & Barrett, APC

**Chapter 11** 

**Party Information** 

**Debtor(s):** 

Layfield & Barrett, APC Pro Se

Movant(s):

Layfield & Barrett, APC Pro Se

**Trustee(s):** 

Richard Pachulski (TR) Represented By

Malhar S Pagay James KT Hunter

Los Angeles

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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11:00 AM

2:18-15829 Philip James Layfield

Chapter 7

Adv#: 2:19-01069 Pimentel v. Layfield et al

#15.00 Hrg re: Philip Layfield's Motion for Judgment on the Pleadings

Docket 41

#### **Tentative Ruling:**

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 14 (3/31/20 at 11:00 a.m.).

#### **Party Information**

#### **Debtor(s)**:

Philip James Layfield Represented By

Anthony M Solis

**Defendant(s):** 

Philip J Layfield Pro Se

WESLEY Howard AVERY Pro Se

Affeld Grivakes LLP Represented By

Damion Robinson

**Plaintiff(s):** 

Rodney A Pimentel Represented By

Yana G Henriks

**Trustee(s):** 

Wesley H Avery (TR) Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen Ryan W Beall

Los Angeles

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1545

11:00 AM

2:18-15829 Philip James Layfield

Chapter 7

Adv#: 2:19-01069 Pimentel v. Layfield et al

#16.00 Hrg re: Motion to disqualify McMurray & Henriks, LLP and Yana Henriks as opposing counsel

Docket 44

### **Tentative Ruling:**

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 14 (3/31/20 at 11:00 a.m.).

### **Party Information**

#### **Debtor(s):**

Philip James Layfield Represented By

Anthony M Solis

**Defendant(s):** 

Philip J Layfield Pro Se
WESLEY Howard AVERY Pro Se

Affeld Grivakes LLP Represented By

Damion Robinson

**Plaintiff(s):** 

Rodney A Pimentel Represented By

Yana G Henriks

**Trustee(s):** 

Wesley H Avery (TR)

Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen Ryan W Beall

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11:00 AM

2:18-15829 Philip James Layfield

Chapter 7

Adv#: 2:19-01069 Pimentel v. Layfield et al

## #17.00 [Notice of Dismissal of Deft., Wesley H. Avery, Tr.]

Cont'd Status Conference re: Complaint Against Dischargeability 1) Declaratory Relief and 2) Fraudulent Transfer / Concealment fr. 5/21/19, 06/04/19, 7/30/19, 10/1/19

Docket 1

### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 14 (3/31/20 at 11:00 a.m.).

#### Tentative Ruling for 10/1/19:

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 4 (10/1/19 at 2:00 p.m.).

#### Tentative Ruling for 7/30/19:

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 14 (7/30/19 at 11:00 a.m.).

#### **Party Information**

#### **Debtor(s):**

Philip James Layfield Represented By

Anthony M Solis

**Defendant(s):** 

Philip J Layfield Pro Se

WESLEY Howard AVERY Pro Se

Affeld Grivakes LLP Represented By

Damion Robinson

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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CONT... Philip James Layfield Chapter 7

**Plaintiff(s):** 

Rodney A Pimentel Represented By

Yana G Henriks

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**Trustee(s):** 

Wesley H Avery (TR) Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen Ryan W Beall

## United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

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1545

11:00 AM

2:18-15829 Philip James Layfield

Hickey v. Layfield

Chapter 7

#18.00

Adv#: 2:19-01070

Cont'd Status Conference re: Complaint for: 1) Determination of Dischargeability of Debt [11 U.S.C. Section 523(a)(2)]; 2) Determination of Dischargeability of Debt [11 U.S.C. Section 523(a)(4)]); 3) Determination of Dischargeability of Debt [11 U.S.C. Section 523(a)(6)] fr. 05/21/19, 10/15/19

Docket 1

### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue to 8/4/20 at 11:00 a.m., pending the outcome of Mr. Layfield's criminal proceedings and appeal of this Court's order denying his motion for judgment on the pleadings (adv. dkt. 12, 14). Joint status report due 7/21/20. Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 5/21/19:

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11:00 AM

### **CONT...** Philip James Layfield

Chapter 7

Continue to 11/5/19 at 11:00 a.m. based on the Joint Status Report (dkt. 5). Appearances are not required on 5/21/19.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Philip James Layfield Represented By

Anthony M Solis

**Defendant(s):** 

Philip J Layfield Pro Se

**Plaintiff(s):** 

Fred A. Hickey Represented By

Derrick F Coleman

**Trustee(s):** 

Wesley H Avery (TR) Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen Ryan W Beall

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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11:00 AM

### 2:18-15829 Philip James Layfield

Chapter 7

Adv#: 2:19-01071 Richard M. Pachulski, Chapter 11 Trustee of the Ba v. Layfield

#19.00 Cont'd Status Conference re: Complaint to Determine the Non-Dischargeability of Certain Debts Owed by Philip James Layfield to Richard M. Pachulski, Chapter 11 Trustee of the Bankruptcy Estate of Layfield & Barrett, APC. fr. 05/21/19. 11/5/19

Docket 1

### **Tentative Ruling:**

Continue to 8/4/20 at 11:00 a.m. based on the Joint Status Report (adv. dkt. 27).

Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Tentative Ruling for 5/21/19:**

Continue to 11/5/19 at 11:00 a.m. based on the Joint Status Report (dkt. 5). Appearances are not required on 5/21/19.

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11:00 AM

**CONT...** Philip James Layfield

Chapter 7

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Philip James Layfield Represented By

Anthony M Solis

**Defendant(s):** 

Philip James Layfield Pro Se

**Plaintiff(s):** 

Richard M. Pachulski, Chapter 11 Represented By

James KT Hunter

**Trustee(s):** 

Wesley H Avery (TR) Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen

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1545

11:00 AM

2:18-15829 Philip James Layfield

Chapter 7

#20.00

Cont'd Status Conference re: Chapter 7 Involuntary fr. 07/17/18, 08/14/18, 09/04/18, 09/18/18, 10/26/18, 12/6/18, 12/18/18, 02/05/19, 03/05/19, 04/02/19, 04/30/19, 06/04/19, 7/30/19, 10/1/19, 10/15/19, 11/12/19, 12/10/19, 02/18/20, 3/3/20

Docket 1

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Please see the tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 14 (3/31/20 at 11:00 a.m.).

#### Tentative Ruling for 3/3/20:

Please see tentative ruling for status conference in the *Layfield & Barrett* case, calendar no. 7 (3/3/20 at 1:00 p.m.).

### [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

#### **Debtor(s):**

Philip James Layfield Represented By

Anthony M Solis

**Trustee(s):** 

Wesley H Avery (TR) Represented By

Jeffrey I Golden Faye C Rasch Beth Gaschen Ryan W Beall

## United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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**Hearing Room** 

1545

11:00 AM

2:17-23714 Fargo Trucking Company, Inc.

Chapter 11

Adv#: 2:19-01464 Fargo Trucking Company Inc Post-Confirmation Commi v. OOCL(USA)

#21.00 Cont'd Status Conference re: Complaint for Contribution on Account of Liability as a Partner for All of the Debts of Fargo Trucking Company Inc. fr. 01/07/20, 01/28/20, 3/3/20

Docket 1

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue to 5/5/20 at 11:00 a.m. pending a decision from the District Court on whether to withdraw the reference. See Joint status report, adv. dkt. 14. The parties are directed to file a joint status report by 4/21/20. Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to

dispute the tentative ruling, or further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 3/3/20:

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11:00 AM

### **CONT...** Fargo Trucking Company, Inc.

Chapter 11

Continue to 3/31/20 at 11:00 a.m. pending a decision from the District Court on whether to withdraw the refence. *See* Joint status report, adv. dkt. 13. The parties are directed to file a joint status report by 3/17/20. <u>Appearances are not required</u> on 3/3/20.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to

dispute the tentative ruling, or further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Fargo Trucking Company, Inc. Represented By

Vanessa M Haberbush David R Haberbush Lane K Bogard

**Defendant(s):** 

OOCL(USA) Inc., DBA Orient Represented By

Jeffrey D Cawdrey

**Plaintiff(s):** 

Fargo Trucking Company Inc Post- Represented By

David R Haberbush

Trustee(s):

Timothy J. Yoo Pro Se

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1545

11:00 AM

2:18-24507 Rima Adam Nano

Chapter 7

Adv#: 2:19-01181 Elissa D. Miller, Chapter 7 Trustee v. NANO

#22.00 Cont'd Status Conference re: Complaint for (1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. section 548(a)(1)(A)]; (2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. section 548(a)(1)(B)]; (3) Recovery of Avoided Transfer [11 U.S.C. section 550]; (4) Declaratory Relief; and (5) Turnover [11 U.S.C. section 542] fr. 8/20/19, 10/29/19, 1/28/20

Docket 1

## **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Continue to 6/2/20 at 11:00 a.m. at the request of the parties (see adv. dkt. 9). Appearances are not required on 3/31/20. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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11:00 AM

CONT... Rima Adam Nano Chapter 7

**Debtor(s):** 

Rima Adam Nano Represented By

G Marshall Hann

**Defendant(s):** 

ADMON NANO Represented By

Gary A Starre

**Plaintiff(s):** 

Elissa D. Miller, Chapter 7 Trustee Represented By

Jeremy Faith

Noreen A Madoyan

Anna Landa

**Trustee(s):** 

Elissa Miller (TR) Represented By

Noreen A Madoyan

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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**Hearing Room** 

1545

11:00 AM

2:19-20873 Shih Lin Hsu

Adv#: 2:19-01491 Lee v. Hsu

Chapter 7

#23.00 Cont'd status conference re: Complaint to determine dischargeability of money received by fraud fr. 1/28/20

Docket 1

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

The tentative ruling is to dismiss this adversary proceeding for lack of prosecution. Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing parties of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### Reason:

After the 1/28/20 status conference, this Court issued its Order Directing The Parties To Mediation And Setting A Continued Status Conference (the "Scheduling Order," adv. dkt. 4). The Scheduling Order directed the parties to this adversary proceeding to lodge a proposed mediation order on the local form no later than 2/11/20.

On 2/18/20, this Court held a status conference in the related adversary proceeding of *Yiping Zhu v. Shih Lin Hsu* (2:19-ap-01511-NB, the "Zhu Adversary"). At that status conference, Debtor represented to this Court that the plaintiffs in the related adversary proceedings did not respond to his inquiries re selecting a mediator. After the status conference, this Court issued its Order Directing Parties To Lodge Mediation Order(s) And Continuing Status Conference (the "Zhu Scheduling Order," Zhu Adversary,

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### **CONT...** Shih Lin Hsu

Chapter 7

adv. dkt. 4). The Zhu Scheduling Order was served on Debtor/Defendant, and Plaintiffs Diana Lee, Yiping Zhu, and Ching Chen Kok. The Zhu Scheduling Order reiterated that mediation of the three related adversary proceedings was mandatory, and failure to lodge the required mediation orders by 2/25/20 and attend mediation could "result in sanctions or other remedies." Zhu Adversary, adv. dkt. 4, p.2:12-13.

As of the drafting of this tentative ruling, no mediation orders have been lodged in any of the three related adversary proceedings. The tentative ruling is to dismiss this adversary proceeding for lack of prosecution.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 1/28/20:

Appearances required.

#### Preliminary issues

#### (1) Status report

The summons issued in this case (adv. dkt. 2) directed the parties to file a joint status report by 1/14/20. As of the drafting of this tentative ruling, no status report has been filed. Why not?

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

#### (1) Venue/jurisdiction/authority.

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented.

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11:00 AM

#### **CONT...** Shih Lin Hsu

Chapter 7

See generally Stern v. Marshall, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); Wellness Int'l Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); In re Bellingham Ins. Agency, Inc., 702 F.3d 553 (9th Cir. 2012) (implied consent), aff'd on other grounds, 134 S. Ct. 2165 (2014); In re Pringle, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); In re Deitz, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). See generally In re AWTR Liquidation, Inc., 548 B.R. 300 (Bankr. C.D. Cal. 2016).

- (2) <u>Mediation</u>. Is there is any reason why this Court should not order the parties to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge), and meanwhile set the deadlines set forth below? The tentative ruling is to set a deadline of **2/11/20** for the parties to lodge a proposed mediation order (the parties are directed to use the time between now and that deadline to find a mutually agreeable mediator whose schedule can accommodate the needs of this matter; and if the parties cannot even agree on a mediator they may lodge separate orders and Judge Bason will chose among them, or issue his own order).
- (3) <u>Deadlines</u>: This adversary proceeding has been pending since 11/27/19. Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Discovery cutoff (for completion of discovery): N/A

Expert(s) - deadline for reports: N/A

Expert(s) - discovery cutoff (if different from above): N/A

Dispositive motions to be heard no later than: N/A

Joint Status Report: 3/17/20

Continued status conference: 3/31/20 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: N/A

Pretrial conference: N/A

Deliver trial exhibits to other parties and chambers (2 copies to

chambers), including direct testimony by declaration unless excused: N/A (for

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11:00 AM

#### **CONT...** Shih Lin Hsu

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the format of exhibits and other trial procedures, please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "Trial Practice")

Trial commencement: N/A

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Shih Lin Hsu Represented By

Rajiv Jain

**Defendant(s):** 

Shih Lin Hsu Pro Se

**Plaintiff(s):** 

Diana C Lee Pro Se

**Trustee(s):** 

John P Pringle (TR) Pro Se

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2:19-20873 Shih Lin Hsu

Adv#: 2:19-01499 Kok v. Hsu

Chapter 7

#24.00 Cont'd status conference re: Complaint to determine dischargeability of money received by fraud fr. 1/28/20

Docket 1

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

The tentative ruling is to dismiss this adversary proceeding for lack of prosecution. <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing parties of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### Reason:

After the 1/28/20 status conference, this Court issued its Order Directing The Parties To Mediation And Setting A Continued Status Conference (the "Scheduling Order," adv. dkt. 7). The Scheduling Order directed the parties to this adversary proceeding to lodge a proposed mediation order on the local form no later than 2/11/20.

On 2/18/20, this Court held a status conference in the related adversary proceeding of *Yiping Zhu v. Shih Lin Hsu* (2:19-ap-01511-NB, the "Zhu Adversary"). At that status conference, Debtor represented to this Court that the plaintiffs in the related adversary proceedings did not respond to his inquiries re selecting a mediator. After the status conference, this Court issued its Order Directing Parties To Lodge Mediation Order(s) And Continuing Status Conference (the "Zhu Scheduling Order," Zhu Adversary,

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### **CONT...** Shih Lin Hsu

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adv. dkt. 4). The Zhu Scheduling Order was served on Debtor/Defendant, and Plaintiffs Diana Lee, Yiping Zhu, and Ching Chen Kok. The Zhu Scheduling Order reiterated that mediation of the three related adversary proceedings was mandatory, and failure to lodge the required mediation orders by 2/25/20 and attend mediation could "result in sanctions or other remedies." Zhu Adversary, adv. dkt. 4, p.2:12-13.

As of the drafting of this tentative ruling, no mediation orders have been lodged in any of the three related adversary proceedings. The tentative ruling is to dismiss this adversary proceeding for lack of prosecution.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 1/28/20:

Appearances required.

#### Preliminary issues

#### (1) Status report

The summons issued in this case (adv. dkt. 2) directed the parties to file a joint status report by 1/14/20. As of the drafting of this tentative ruling, no status report has been filed. Why not?

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

#### (1) Venue/jurisdiction/authority.

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented.

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#### **CONT...** Shih Lin Hsu

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See generally Stern v. Marshall, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); Wellness Int'l Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); In re Bellingham Ins. Agency, Inc., 702 F.3d 553 (9th Cir. 2012) (implied consent), aff'd on other grounds, 134 S. Ct. 2165 (2014); In re Pringle, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); In re Deitz, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). See generally In re AWTR Liquidation, Inc., 548 B.R. 300 (Bankr. C.D. Cal. 2016).

- (2) <u>Mediation</u>. Is there is any reason why this Court should not order the parties to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge), and meanwhile set the deadlines set forth below? The tentative ruling is to set a deadline of **2/11/20** for the parties to lodge a proposed mediation order (the parties are directed to use the time between now and that deadline to find a mutually agreeable mediator whose schedule can accommodate the needs of this matter; and if the parties cannot even agree on a mediator they may lodge separate orders and Judge Bason will chose among them, or issue his own order).
- (3) <u>Deadlines</u>: This adversary proceeding has been pending since 11/27/19. Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Discovery cutoff (for completion of discovery): N/A

Expert(s) - deadline for reports: N/A

Expert(s) - discovery cutoff (if different from above): N/A

Dispositive motions to be heard no later than: N/A

Joint Status Report: 3/17/20

Continued status conference: 3/31/20 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: N/A

Pretrial conference: N/A

Deliver trial exhibits to other parties and chambers (2 copies to

chambers), including direct testimony by declaration unless excused: N/A (for

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#### **CONT...** Shih Lin Hsu

Chapter 7

the format of exhibits and other trial procedures, please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "Trial Practice")

Trial commencement: N/A

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

**Debtor(s):** 

Shih Lin Hsu Represented By

Rajiv Jain

**Defendant(s):** 

Shin Lin Hsu Pro Se

**Plaintiff(s):** 

Ching Chen Kok Pro Se

**Trustee(s):** 

John P Pringle (TR) Pro Se

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11:00 AM

2:19-20873 Shih Lin Hsu

Chapter 7

Adv#: 2:19-01511 Zhu v. Hsu

#25.00 Cont'd Status Conference re: Complaint Breach of Contract;

Fraud; Intentional Misrepresentation; Negligent Misrepresentation;

Breach of Fiduciary Duty

fr. 02/18/20

Docket 1

### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

The tentative ruling is to dismiss this adversary proceeding for lack of prosecution. Appearances are not required. If you wish to dispute the tentative ruling you must notify opposing parties of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### Reason:

On 2/18/20, this Court held a status conference in this adversary proceeding. At that status conference, Debtor represented to this Court that the plaintiffs in the related adversary proceedings did not respond to his inquiries re selecting mediator. After the status conference, this Court issued its Order Directing Parties To Lodge Mediation Order(s) And Continuing Status Conference (the "Zhu Scheduling Order," adv. dkt. 4). The Zhu Scheduling Order was served on Debtor/Defendant, and Plaintiffs Diana Lee, Yiping Zhu, and Ching Chen Kok. The Zhu Scheduling Order reiterated that mediation of the three related adversary proceedings was mandatory, and failure to lodge the required mediation orders by 2/25/20 and attend mediation could "result in sanctions or other remedies." Adv. dkt. 4,

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# CONT... Shih Lin Hsu

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p.2:12-13.

As of the drafting of this tentative ruling, no mediation orders have been lodged in any of the three related adversary proceedings. The tentative ruling is to dismiss this adversary proceeding for lack of prosecution.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 2/18/20:

Appearances required.

### (A) <u>Preliminary issues</u>

#### (1) Status report

This Court issued a summons which required the parties to file a joint status report at least 14 days before the hearing, or by 2/4/20. Adv. dkt. 2, p.2. As of the drafting of this tentative ruling, no status report has been filed. Why not?

## (B) Standard issues

#### (1) Venue/jurisdiction/authority

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. See generally Stern v. Marshall, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); Wellness Int'l Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); In re Bellingham Ins. Agency, Inc., 702 F.3d 553 (9th Cir. 2012) (implied consent), aff'd on other grounds, 134 S. Ct. 2165 (2014); In re Pringle, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is

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intentional and indicates consent); *In re Deitz*, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). *See generally In re AWTR Liquidation*, *Inc.*, 548 B.R. 300 (Bankr. C.D. Cal. 2016).

### (2) Mediation

Is there is any reason why this Court should not order the parties to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge), and meanwhile set the deadlines set forth below? The tentative ruling is to set a deadline of **2/25/20** for the parties to lodge a proposed mediation order (the parties are directed to use the time between now and that deadline to find a mutually agreeable mediator whose schedule can accommodate the needs of this matter; and if the parties cannot even agree on a mediator they may lodge separate orders and Judge Bason will chose among them, or issue his own order).

### (3) Deadlines

This adversary proceeding has been pending since 12/16/19. Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

<u>Discovery cutoff</u> (for *completion* of discovery): N/A

Expert(s) - deadline for reports: N/A

Expert(s) - discovery cutoff (if different from above): N/A

Dispositive motions to be heard no later than: N/A

Joint Status Report: N/A

Continued status conference: 3/31/20 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: N/A

Pretrial conference: N/A

<u>Deliver trial exhibits to other parties and chambers (2 copies to chambers), including direct testimony by declaration unless excused</u>: N/A (for the format of exhibits and other trial procedures, please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "Trial Practice")

Trial commencement: N/A

If appearances are <u>not</u> required at the start of this tentative ruling but you

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wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

**Debtor(s):** 

Shih Lin Hsu Represented By

Rajiv Jain

**Defendant(s):** 

Shih Lin Hsu Pro Se

**Plaintiff(s):** 

Yiping Zhu Pro Se

Trustee(s):

John P Pringle (TR) Pro Se

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11:00 AM

2:19-24048 110 West Properties, LLC

Chapter 11

Adv#: 2:20-01012 Tarzana Crossing, a Merchant Faire, LLC v. 110 West Properties, LLC et al

#26.00 Status Conference re: Notice of Removal

Docket 1

#### **Tentative Ruling:**

<u>Appearances required</u>, to address whether, prior to remand, this Court should order mandatory mediation. But, pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This Court has reviewed the parties' joint status report (dkt. 11) and the other filed documents and records in this adversary proceeding.

### (1) Current issues

(a) Motion for remand (adv. dkt. 7, "Remand Motion") and supporting declaration (adv. dkt. 8), Plaintiff's opposition (adv. dkt. 10), Movants' reply (adv. dkt. 12)

Defendants Dos Cabezas Properties, LLC, Criscione-Meyer Entitlement, LLC, and Michael Criscione (collectively, the "Movants") seek an order remanding this proceeding and for an award of attorneys fees and costs imposed against plaintiff Tarzana Crossing, a Merchant Faire, LLC ("Plaintiff").

For the reasons set forth below, the tentative ruling is to grant the request to remand this removed action, but perhaps defer the remand until after mediation, and deny the request for attorney fees.

### (i) Jurisdiction

The parties dispute whether this Court has subject matter jurisdiction to hear this proceeding. The tentative ruling is that this Court has "related to"

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### CONT... 110 West Properties, LLC

Chapter 11

jurisdiction pursuant to 28 U.S.C. 157(c)(1), because the parties' dispute arises from an alleged breach of contract for the sale of the estate's principal asset.

#### (ii) Mandatory abstention

The tentative ruling is that mandatory abstention applies as follows. Mandatory abstention under 28 U.S.C. 1334(c)(2) requires seven elements:

(1) a timely motion; (2) a purely state law question; (3) a non-core proceeding under 28 U.S.C. 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists. [*In re Gen. Carriers Corp.*, 258 B.R. 181, 189 (9th Cir. BAP 2001) (internal quotation omitted).]

These elements are satisfied: (1) the motion was timely - the proceeding was removed on 1/22/20 and Movants filed the remand motion just 30 days later, on 2/21/20; (2) the complaint involves purely nonbankruptcy law questions (breach of fiduciary duty etc., adv. dkt. 7, p. 2:17-21) (Movants state that they amended their complaint on 8/30/19, but there is nothing in the record reflecting what was amended (*id.*, p. 2:21), so this Court bases its ruling on the record presented); (3) the proceeding is noncore - the authorities cited by the removing party (dkt.10, pp.14:24-15:14) are distinguishable because they all involved alleged violations of fiduciary duties within the bankruptcy case itself, not prepetition and nonbankruptcy alleged violations; (4) no independent federal jurisdiction has been asserted; (5) the action was commenced prepetition, on 12/14/18, in Los Angeles Superior Court; (6) there is no evidence that the proceeding cannot be timely adjudicated in the State Court; and (7) neither party has contested in this Court the State Court's jurisdiction over the proceeding.

### (iii) Discretionary abstention

Alternatively, and in addition, the tentative ruling is that discretionary abstention is appropriate.

Discretionary abstention under 28 U.S.C. 1334(c)(1) requires consideration of the following twelve factors:

(1) the effect of lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related

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### CONT... 110 West Properties, LLC

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proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Several of the *Tucson* factors weigh in favor of abstention. First, the Complaint involves purely state-law issues. Second, this Court would not have jurisdiction over the Complaint but for the Debtor's bankruptcy petition, because the claims arise under state law and there is no diversity between the parties. Third, the Complaint involves several non-debtor parties who have asserted a right to a jury trial. Fourth, permitting the Complaint to proceed in state court will contribute to the efficient administration of the bankruptcy case because the State Court is the best tribunal to adjudicate the parties' state law claims. Fifth, although the Complaint is related to the main bankruptcy case because it involves claims relating to the primary asset of the estate, deferring to the State Court to adjudicate the parties' claims will not unduly interfere with this Bankruptcy Court's determination of other matters in the bankruptcy case.

(iv) Movants' request for attorneys' fees is denied

The tentative ruling is to deny Movant's request for attorneys' fees because this Court is not persuaded that Plaintiff lacked an objectively reasonable basis for seeking removal of this action because the dispute is related to the primary asset of Debtor's bankruptcy estate.

<u>Proposed order</u>: Movants are directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1) (B).

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## CONT... 110 West Properties, LLC

Chapter 11

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

## (2) Venue/jurisdiction/authority.

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. See generally Stern v. Marshall, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); Wellness Int'l Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); In re Bellingham Ins. Agency, Inc., 702 F.3d 553 (9th Cir. 2012) (implied consent), aff'd on other grounds, 134 S. Ct. 2165 (2014); In re Pringle, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); In re Deitz, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). See generally In re AWTR Liquidation, Inc., 548 B.R. 300 (Bankr. C.D. Cal. 2016).

- (3) Mediation. [Intentionally omitted]
- (4) <u>Deadlines</u>: [Intentionally omitted]

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

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CONT... 110 West Properties, LLC

Chapter 11

**Debtor(s):** 

110 West Properties, LLC Represented By

Gregory K Jones

**Defendant(s):** 

110 West Properties, LLC Pro Se

RU, LLC Pro Se

Dos Cabezas Properties, LLC Pro Se

Criscione-Meyer Entitlement, LLC Pro Se

Michael Criscione Pro Se

FIrst American Title Company Pro Se

Plaintiff(s):

Tarzana Crossing, a Merchant Faire, Represented By

Alan M Feld

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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11:00 AM

2:19-24048 110 West Properties, LLC

Chapter 11

Adv#: 2:20-01012 Tarzana Crossing, a Merchant Faire, LLC v. 110 West Properties, LLC et al

#27.00 Hrg re: Motion of Creditors/Defendants Dos Cabezas Properties, LLC, Criscione-Meyer Entitlement, a Limited Liability Company Cell of Almond Tree Capital Management Co., LLC, Michael Criscione to Remand Tarzana Crossing, A Merchant Faire, LLC's Complaint and Request for Attorney's Fees in the Amount of \$2,800.00

Docket 7

### **Tentative Ruling:**

Please see the tentative ruling for the adversary status conference (Calendar no. 26, 3/31/20 at 11:00 a.m.).

#### **Party Information**

#### **Debtor(s):**

110 West Properties, LLC Represented By

Gregory K Jones

**Defendant(s):** 

110 West Properties, LLC Represented By

Gregory K Jones

RU, LLC Pro Se

Dos Cabezas Properties, LLC Represented By

Thomas F Nowland

Criscione-Meyer Entitlement, LLC Represented By

Thomas F Nowland

Michael Criscione Represented By

Thomas F Nowland

FIrst American Title Company Pro Se

**Plaintiff(s):** 

Tarzana Crossing, a Merchant Faire, Represented By

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Alan M Feld

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2:19-24048 110 West Properties, LLC

Chapter 11

Adv#: 2:20-01008 Dos Cabezas Properties, LLC et al v. 110 West Properties, LLC

#28.00 Hrg re: Defendant's Motion to Dismiss Adversary Proceeding

Docket 3

#### **Tentative Ruling:**

Please see the tentative ruling for the adversary proceeding (Calendar no. 29, 3/31/20 at 11:00 a.m.).

### **Party Information**

#### **Debtor(s)**:

110 West Properties, LLC Represented By

Gregory K Jones

**Defendant(s):** 

110 West Properties, LLC Represented By

Gregory K Jones

Plaintiff(s):

Dos Cabezas Properties, LLC Represented By

Thomas F Nowland

Criscione-Meyer Entitlement, LLC Represented By

Thomas F Nowland

Michael Criscione Represented By

Thomas F Nowland

Michael Meyer Represented By

Thomas F Nowland

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Chapter 11

Adv#: 2:20-01008 Dos Cabezas Properties, LLC et al v. 110 West Properties, LLC

#29.00 Status Conference re: Complaint for 1. Non-Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2)(A); 2. Actual Fraud Pursuant to California Civil Code Section 1572

Docket 1

### **Tentative Ruling:**

<u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing parties of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

This Court has reviewed the parties' joint status report (dkt. 9) and the other filed documents and records in this adversary proceeding.

#### (1) Current issues

(a) <u>Debtor/defendant's motion to dismiss (adv. dkt. 3, "MTD"),</u>

<u>Plaintiffs' opposition (adv. dkt. 7), Debtor/defendant's reply (adv. dkt. 10)</u>

Debtor/defendant seeks dismissal of this proceeding under Rule 12(b)

(6) (Fed. R. Civ. P.) (made applicable by Rule 7012, Fed. R. Bankr. P.).

As to Plaintiffs' first claim for relief under 11 U.S.C. 523(a)(2)(A), the tentative ruling is to grant the motion and dismiss the claim with prejudice for the reasons stated in the MTD. The tentative ruling is also to deny leave to amend because amendment would be futile.

As to Plaintiffs' second claim for relief for fraud under CCCP 1572, the tentative ruling is to agree with the argument in the MTD that because the claim does not fall within one of the categories set forth in Rule 7001 (Fed. R. Bankr. P.) the complaint must be dismissed, without leave to amend, but also

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without prejudice to asserting the same or different claims through the normal claims process in bankruptcy matters (and with all rights of Debtor or other parties with standing to object to any such claim).

### (2) Status conference issues

None.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

110 West Properties, LLC Represented By

Gregory K Jones

**Defendant(s)**:

110 West Properties, LLC Pro Se

Plaintiff(s):

Dos Cabezas Properties, LLC Represented By

Thomas F Nowland

Criscione-Meyer Entitlement, LLC Represented By

Thomas F Nowland

Michael Criscione Represented By

Thomas F Nowland

Michael Meyer Represented By

Thomas F Nowland

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2:19-24048 110 West Properties, LLC

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#30.00 Cont'd Status Conference re: Chapter 11 Case fr. 12/17/19, 1/28/20, 02/18/20

Docket 5

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### (1) Current issues

## (a) Cash Collateral Motion (dkt. 73)

Grant on a final basis, on the same terms and subject to the same modifications set forth in the interim order authorizing use of cash collateral (dkt. 91).

<u>Proposed order</u>: Debtor is directed to lodge a proposed order via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) Deadlines/dates. This case was filed on 11/29/19.
  - (a) Bar date: 3/31/20 (dkt.46, timely served, dkt.49).
  - (b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)
  - (c) Plan/Disclosure Statement\*: N/a
  - (d) Continued status conference: 6/2/20 at 1:00 p.m. *Brief* written

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## CONT... 110 West Properties, LLC

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status report due 5/19/20.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Revised Tentative Ruling for 2/18/20:

Appearances required by counsel for the debtor.

# (1) Current issues

(a) Cash Collateral Motion (dkt. 73)

Grant in part and deny in part. See the tentative ruling for calendar no. 18.10 (2/18/20 at 1:00 p.m.).

(b) Explanation of business

Debtor's proposed budget (dkt.73, Ex.A) lists wildly fluctuating income, from highs of \$45,028 in February 2020 and \$37,114 in March 2020 to lows of \$2,200 in May and June 2020. Why?

This Court recognizes that the same budget lists historical fluctuations for 2019. The net income ranges from a high of \$38,366 in March 2019 to a low of \$0 in July and August of 2019, and only \$2,500 in June 2019 and \$3,300 in May 2019. Again, however, there is no explanation. In addition, Debtor's Statement Of Financial Affairs (dkt.28, line 1) lists gross revenues of approximately \$500,000 per year for 2017, 2018 and 2019. What accounts for (i) the wild fluctuations in net income and (ii) the lack of consistent profit despite substantial and seemingly stable gross annual revenues?

- (2) Deadlines/dates. This case was filed on 11/29/19.
  - (a) <u>Bar date</u>: 3/31/20 (dkt.46, timely served, dkt.49).
  - (b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)
  - (c) Plan/Disclosure Statement\*: N/a
  - (d) Continued status conference: 3/31/20 at 1:00 p.m. No written

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## CONT... 110 West Properties, LLC

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status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 2/18/20:

This Court anticipates posting a tentative ruling at a later time.

# Tentative Ruling for 1/28/20:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

#### (1) Current issues

### (a) Monthly operating reports ("MORs")

Debtor's MORs have been filed late, and they appear to show unauthorized adequate protection payments (see dkt.68, pp.15, 29) and unpaid US Trustee fees (*id.*, p.30). Why?

## (b) Cash collateral

Debtor's initial status report (dkt.27, at PDF pp.3-5) stated that there was no *immediate* need to obtain authorization for use of cash collateral because Debtor has no employees or operations. Debtor's latest status report (dkt.60, p.3:9-20) sugests that productive negotiations have taken place with the creditor holding an interest in cash collateral and that Debtor intends to self-calendar a motion approving the use of cash collateral for 2/4/20. What is the latest status of those matters?

#### (c) Employing broker and filing sale motion

Debtor is directed to address the status of its plans to employ a real estate broker, sell its properties (11 U.S.C. 363(b) & (f)). Those things typically are "first day" motions. But as of this continued status conference it will have been two months after the petition date and those matters are not

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CONT... 110 West Properties, LLC on the calendar. Why not?

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- (2) <u>Deadlines/dates</u>. This case was filed on 11/29/19.
  - (a) Bar date: 3/31/20 (dkt.46, timely served, dkt.49).
  - (b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)
  - (c) Plan/Disclosure Statement\*: N/a
  - (d) <u>Continued status conference</u>: 2/4/20 at 1:00 p.m. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 12/17/19:

<u>Appearances required</u> by counsel for the debtor (*see* dkt. 21, excusing debtor's appearance).

#### (1) Current issues

## (a) Has Debtor ceased all operations?

Debtor's status report gives the impression, but does not quite state, that Debtor is not conducting any business operations at this time (dkt. 27, p. 3). Debtor is directed to confirm this, or disclose if that is not so, at the hearing.

#### (b) Budget motion

Debtor's status report states that a budget motion is not required by the presiding judge's procedures. Dkt. 27, p.5. That is wrong (see posted Procedures, available at cacb.uscourts.gov), but the tentative ruling is to excuse this requirement with a caution to counsel not to mis-state the applicable procedures.

(2) <u>Deadlines/dates</u>. This case was filed on 11/29/19.

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### CONT...

#### 110 West Properties, LLC

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- (a) <u>Bar date</u>: 3/31/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference).
- (b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)
- (c) Plan/Disclosure Statement\*: N/a
- (d) <u>Continued status conference</u>: 1/28/20 at 1:00 p.m., *brief* status report due 1/14/20. Debtor is directed to appear in person, through its designated representative.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## **Party Information**

#### **Debtor(s):**

110 West Properties, LLC

Represented By Gregory K Jones

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11:00 AM

**2:19-24048 110 West Properties, LLC** 

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#31.00 Cont'd hrg re: Debtor's Motion for Order Approving

Stipulation for the Interim Use of Cash Collateral

fr. 02/18/20

Docket 73

## **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (Calendar no. 30, 3/31/20 at 11:00 a.m.).

# [PRIOR TENTATIVE RULING OMITTED]

## **Party Information**

### **Debtor(s):**

110 West Properties, LLC

Represented By Gregory K Jones

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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**Hearing Room** 

1545

<u>1:00 PM</u>

2:20-12531 Custom Fabrications International, LLC

Chapter 11

#1.00 Cont'd status Conference re: Chapter 11 Case fr. 3/17/20

Docket 1

## **Tentative Ruling:**

## **Tentative Ruling for 3/31/20:**

<u>Appearances required</u> by counsel for the debtor and by the debtor's principal(s) themselves, but pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements to appear. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

### (1) Current issues

#### (a) Status report

Per this Court's scheduling order (dkt. 12), Debtor was required to file a status report no later than 14 days before this hearing (3/17/20). As of the drafting of this tentative ruling, no status report has been filed. Why not?

(b) Debtor's emergency cash collateral motion (dkt. 23)

Grant on a final basis, on the same terms and conditions previously ordered (dkt. 33)

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) Deadlines/dates. This case was filed on 3/6/20.
  - (a) <u>Bar date</u>: 5/15/20 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, *see* dkt.11, 18).

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#### <u>1:00 PM</u>

### **CONT...** Custom Fabrications International, LLC

Chapter 11

- (b) Procedures order: dkt.12 (timely served, dkt. 15)
- (c) Plan/Disclosure Statement\*: file by 6/4/20, pursuant to 11 U.S.C. Section 1189(b), using the forms required by Judge Bason (DO NOT SERVE yet, except on the U.S. Trustee this Court will set a deadline and procedures at a later time).
- (d) Continued status conference: 5/12/20 at 1:00 p.m., status report due 4/28/20.
- \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 3/17/20:

Appearances required, but pursuant to Judge Bason's COVID-19 Procedures, telephonic appearances are REQUIRED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

## (1) Current issues

(a) Debtor's emergency cash collateral (dkt. 23)

Grant on an interim basis, subject to (i) resolution of certain preliminary issues and (ii) certain conditions, as set forth in calendar no 1, 3/17/20 at 1:30 p.m.

- (2) <u>Deadlines/dates</u>. This case was filed on 3/6/20.
  - (a) <u>Bar date</u>: 5/15/20 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, *see* dkt.11, 18).

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1:00 PM CONT...

## **Custom Fabrications International, LLC**

Chapter 11

- (b) Procedures order: dkt.12 (timely served, dkt. 15)
- (c) Plan/Disclosure Statement\*: file by 6/4/20, pursuant to 11 U.S.C. Section 1189(b), using the forms required by Judge Bason (DO NOT SERVE yet, except on the U.S. Trustee this Court will set a deadline and procedures at a later time).
- (d) Continued status conference: 3/31/20 at 1:00 p.m., status report due 3/17/20 per order setting initial status conference (dkt. 12) \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## **Party Information**

#### **Debtor(s):**

Custom Fabrications International, Represented By

Kevin Tang

#### **Trustee(s):**

Andrew Wolf Levin (TR) Pro Se

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1:00 PM

2:20-12531 Custom Fabrications International, LLC

Chapter 11

#1.10 Cont'd hrg re: Emergency Motion re Cash Collateral fr. 3/17/20

Docket 23

## **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 1, 3/31/20 at 1:00 p.m.)

# [PRIOR TENTATIVE RULING OMITTED]

# **Party Information**

## **Debtor(s):**

Custom Fabrications International, Represented By

Kevin Tang

**Trustee(s):** 

Andrew W. Levin (TR) Pro Se

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1:00 PM

2:20-12166 Olinda Esperanza Lytle

Chapter 11

#2.00 Hrg re: Motion in individual chapter 11 case for order authorizing use of cash collateral

Docket 12

#### **Tentative Ruling:**

## Revised Tentative Ruling for 3/31/20:

Grant the motion (docket no. 12) on an interim basis, subject to the following clarifications and conditions, with a final hearing on <u>4/21/20</u> at 1:00 p.m., and a deadline of 4/3/20 for the Debtor to file an amended motion and file and serve a notice of the final hearing.

<u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### Current issues

#### (a) Service

Debtor's proof of service does not reflect service on PHH Mortgage Corporation or Specialized Loan Servicing in a manner consistent with Rule 7004 (Fed. R. Bankr. P.). Why not?

The tentative ruling is that by the date stated at the start of this tentative ruling Debtor must give notice of the continued hearing and file a proof of service reflecting service as follows (a) on PHH Mortgage at the address listed in its proof of claim (claim no. 2) (which was filed after the date of the motion, but which appears to be the most recent designated address) (see Rule 2002(g), Fed. R. Bankr. P.), and (b) on Specialized Loan Servicing in a manner consistent with Rule 7004(b)(3).

(b) Deviations may not exceed 10%

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## **CONT...** Olinda Esperanza Lytle

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Debtor checked the box requesting authority to deviate from the line item expenses in the proposed budget(s), but did not fill in the percentage of deviation requested. The tentative ruling is that debtor may not deviate from the line items listed in the motion by more than 10%.

## (c) Property taxes and insurance

The motion is inconsistent about whether debtor pays monthly property taxes and insurance into an impound account (compare dkt. 12, p. 4, para. 5 with p. 5, para. 1). The tentative ruling is to direct debtor to file an amended motion stating the estimated dollar amount for these items by the date for service of notice of the continued hearing (stated at the start of this tentative ruling).

<u>Judge Bason's standard conditions for use of cash collateral and/or postpetition financing (by creditors holding prepetition claims)</u>

# (1) Written order

(a) Form. Use local form

F2081-2.1.ORDER.CASH.COLLATERAL or the equivalent. Attach a copy of this tentative ruling as an exhibit, thereby adopting it as the written ruling of this Court, subject to any changes ordered at the hearing. Do not repeat the terms set forth in the motion or any stipulation. Incorporate those terms by reference (including the docket number of the document), subject to any modification by this Court.

(b) <u>Timing</u>. Lodge the proposed order within 7 days after the hearing. See LBR 9021-1(b)(1)(B).

## (2) Minimum adequate protection

In addition to the postpetition security interests that are automatically provided pursuant to 11 U.S.C. 552 (e.g., in traceable proceeds and profits), and subject to any more comprehensive protection that may be included in the motion or related papers, Debtor shall provide at least the following protection to any creditor with a security interest in the subject property (pursuant to 11 U.S.C. 361-364, as applicable):

(a) <u>Insurance</u>. For all collateral of a type that typically is insured (e.g., real property and improvements), Debtor is directed to maintain insurance in a dollar amount at least equal to Debtor's good faith estimate of the value of such creditor's interest in the collateral, and such insurance shall name such creditor as an additional insured. Debtor is directed to remain

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## **CONT...** Olinda Esperanza Lytle

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current on payments for such insurance.

- (b) <u>Taxes</u>. Debtor is directed to remain current on payments on account of postpetition real estate taxes (to the extent that real estate is part of the collateral).
- (c) <u>Disclosures/access</u>. Debtor is directed to provide, upon such creditor's reasonable request, periodic accountings of the foregoing insurance and tax obligations and payments, as well as postpetition proceeds, products, offspring, or profits from the collateral, including gross revenues and expenses and a calculation of net revenues, including any rents and any fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in lodging properties (as all of the foregoing terms are used in 11 U.S.C. 552). Debtor is directed to provide appropriate documentation of those accountings, and access for purposes of inspection or appraisal.

### (3) Grant of, and limitation on, postpetition liens

The tentative ruling is to grant postpetition liens to any creditors holding secured claims by granting replacement liens, but such liens shall be limited to the same validity, priority, and amount as prepetition liens. As used herein, the "validity, priority, and amount" or any similar phrase that may be used by the parties or this Court is deemed to include the following:

- (a) Extent. Such liens shall be limited to the *type* of collateral in which the creditor held a security interest as of the petition date, unless this order expressly states that the liens granted by this order are intended to attach to different types of collateral from the prepetition collateral. For example, if prepetition liens extended to inventory and accounts receivable but not equipment then postpetition liens are likewise limited (unless otherwise expressly provided by order of this Court). In addition, postpetition liens shall not extend to the proceeds of any avoidance actions, any recoveries under 11 U.S.C. 506(c), or any "carveout" under 11 U.S.C. 552.
- (b) <u>Priority</u>. Such liens shall be limited to the same *priority* as the security interest held by the creditor as of the petition date.
- (c) <u>Dollar amount</u>. Such liens shall be limited to the dollar amount needed to protect the creditor against diminution in the *value* of the secured claims as of the petition date.
- (d) Enforceability. Such liens shall be limited to the extent that the creditor's security interests were duly *perfected* and *valid* as of the petition

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## **CONT...** Olinda Esperanza Lytle

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date, and to the extent that they are unavoidable.

(e) <u>Automatic postpetition perfection</u>. Any *automatic* perfection of such liens shall be subject to any applicable limitations regarding the Court's authority, jurisdiction, or due process.

(4) Automatic disapproval of insufficiently disclosed provisions
Any provision of the type listed in FRBP 4001(c)(1)(B) or in local form
F4001-2 (e.g., cross-collateralization) or any waiver of the "equities of the
case" exception in 11 U.S.C. 552(b)(2) shall be deemed automatically
disapproved and excepted from any order granting the motion,
notwithstanding any other provision of such order, unless either: (a) such
provision is specifically and prominently disclosed in the motion papers in a
checklist (such as local form F4001-2), or alternatively (b) such provision is
specifically identified in any proposed order granting the motion, using
terminology of the type used in FRBP 4001(c)(1)(B) or local form F4001-2
(e.g., any "cross-collateralization" that is not specifically identified as such is
deemed to be disapproved).

#### (5) Disputes

In the event of any disputes regarding the rulings in this order, the parties are directed to meet and confer and, if they cannot resolve their disputes consensually, contact Judge Bason's chambers to arrange a mutually convenient time for either a telephonic or in-person hearing to address such disputes.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

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**Debtor(s):** 

Olinda Esperanza Lytle

Represented By
Onyinye N Anyama

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2:20-12166 Olinda Esperanza Lytle

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#3.00 Status conference re: Chapter 11 case

Docket 1

### **Tentative Ruling:**

## Revised Tentative Ruling for 3/31/20:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves, but pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### (1) Current issues

# (a) Cash collateral motion (dkt. 12)

Grant the motion on an interim basis, subject to the service deadlines and also to Judge Bason's standard conditions for use of cash collateral set forth in the tentative ruling for calendar no. 2 (3/31/20 at 1:00 p.m.), with a continued hearing concurrent with the continued status conference (see part "(2)" of this tentative ruling, below).

# (b) <u>Utilities motion (dkt. 16)</u>, <u>order setting hearing on shortened notice</u> (dkt. 19, "OST"), notice of hearing (dkt. 21), proof of service (dkt. 22)

The first issue that this Court will address is whether to shorten time and why notice could not have been provided sooner.

The second issue that this Court will address is whether, if notice could have been provided sooner, counsel should not charge anything for the Application and related matters.

If this Court is persauded to shorten time, then subject to any opposition at the hearing, the tentative ruling is to grant this motion on an interim basis, with a final hearing concurrent with the continued status

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CONT... Olinda Esperanza Lytle conference (see part "(2)" below).

Chapter 11

# (c) Application to employ Anyama Law Firm (dkt. 11)

Ms. Anyama and Debtor state that Ms. Anyama's firm received an \$8,233 pre-petition retainer payment, which was a gift from Debtor's family (dkt. 11, p.6, para. 3.a.1 & p. 8) (actually, Ms. Anyama's firm received \$10,000 including the filing fee, *id.*, Ex.2, p.2).

The contribution from family members raises certain ethical issues because a third party who funds a retainer for a debtor (a "Funder") may have a variety of motivations for providing the funding such as, for example, being the recipient of an avoidable preference, or otherwise having interests that are adverse to (or at least not fully aligned with) the bankruptcy estate or creditors. For these reasons, although payment of a retainer by a Funder is not outright prohibited, it is fraught with ethical concerns. At the hearing, proposed counsel should be prepared to address the following.

- (i) <u>Connections</u>. What are <u>all</u> of the connections between the Funder, on the one hand, and Debtor, Debtor's proposed counsel, and any of the other types of persons listed in FRBP 2014, on the other hand -- *e.g.*, have there been any economic or business or personal connections between the Funder and Debtor, *beyond* the fact of being a family member, or between the Funder and proposed counsel, or any creditor or other party in interest, or their respective attorneys or accountants? These questions may be answered, if appropriate, by referring to *specific* disclosures already on file, *e.g.*, the bankruptcy schedules.
- (ii) <u>Terms</u>. The Application and Debtor's declaration assert that the funds were to be treated as a gift, but there is no *evidence* to support that assertion (e.g., declaration(s) from the Funder).
- (iii) Informed consent of Funder. Has the Funder been advised regarding actual and potential conflicts of interest, and taht the sole attorney-client relationship and duty of loyalty is with Debtor, not the Funder? Who provided such advice: independent counsel, or Debtor's proposed counsel (and if the latter, was each Funder given the opportunity to obtain independent counsel)? Has the Funder given informed consent? Are these things in writing?
- (iv) <u>Informed consent of debtor</u>. Has the debtor likewise been fully advised and given informed consent? Who provided such advice? Are these things in writing?

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## **CONT...** Olinda Esperanza Lytle

Chapter 11

(v) Other considerations. Has proposed counsel demonstrated to the Court the absence of an actual or potential conflict, a lack of disinterestedness, or any other basis for disqualification? See In re Kelton Motors, Inc., 116 B.R. 208, 219 (Bankr. C.D. Cal. 1990); In re Park-Helena Corp., 63 F.3d 877 (9th Cir. 1995).

Ms. Anyama seeks authority to charge \$150/hour for paralegal services, but the application is not supported by a resume or any other qualifications from her paralegal to justify that hourly rate.

The tentative ruling is to set a deadline of 4/3/20 for Debtor to file supplemental declarations addressing the issues set forth above, and to continue this matter to be concurrent with the continued status conference (see part "(2)" below).

# (d) Schedules I and J are deficient

Debtor's status report (dkt. 15, p. 5, para.1) states that she intends to assume a residential lease of her rental property, but Debtor's Schedule I (line 8a and *passim*) does not reflect any rental income or attach a separate statement showing gross receipts, ordinary and necessary business expenses, and the total monthly net income. Additionally, Debtor's Schedule J does not reflect the first and second mortgage payments for the rental property or any other expenses such as real property taxes, insurance, and maintenance.

The tentative ruling is that Debtor is directed to file amended schedules by 4/3/20.

#### (e) Budget motion

Debtor's status report (dkt. 15) states that she "will file a budget motion on or before" [presumably the status conference]. As of the preparation of this tentative ruling, no budget motion is on file. Judge Bason's posted procedures (available at www.cacb.uscourts.gov) Section VII.G provide that budget motions are mandatory in all chapter 11 cases. The tentative ruling is to set a deadline of 4/3/20 to file and serve a budget motion with a hearing set on shortened time to be concurrent with the continued status conference (see part "(2)" below), oppositions due 4/14/20, and replies at the hearing.

## (f) Service of order setting principal status conference

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## **CONT...** Olinda Esperanza Lytle

Chapter 11

This Court's order setting principal status conference (dkt. 5, "Procedures Order") required Debtor to serve this order on all parties in interest by 2/29/20 and file a proof of service at least 14 days before the principal status conference. On 3/18/20 debtor's counsel belatedly filed a declaration (dkt. 18) stating that she served the order, but does not state when service occurred or why she could not file her declaration by the 3/17/20 filing deadline. Was the procedures order timely served? The tentative ruling is to set a deadline of 4/3/20 for Debtor to file an amended proof of service.

## (g) Monthly operating reports ("MORs")

As of the preparation of this tentative ruling, Debtor's February MOR was overdue. When will the MOR be filed? The tentative ruling is to set a deadline of 4/3/20 to do so.

#### (h) Should this case remain in chapter 11?

Debtor's status report (dkt. 15) states that she filed this case to address pre-petition arrears on a rental property. Debtor should be prepared to address why this case was filed as a chapter 11 case rather than a chapter 13 case.

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) Deadlines/dates. This case was filed on 2/26/20.
  - (a) <u>Bar date</u>: 6/3/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference).
  - (b) Procedures order: dkt. 5 (see section 1(f), above)
  - (c) Plan/Disclosure Statement\*: file by 6/24/20 using the forms required by Judge Bason (DO NOT SERVE yet, except on the U.S.

    Trustee this Court will set a deadline and procedures at a later time).
  - (d) <u>Continued status conference</u>: 4/21/20 at 1:00 p.m. No written status report is required.

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## **CONT...** Olinda Esperanza Lytle

Chapter 11

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### **Party Information**

#### **Debtor(s):**

Olinda Esperanza Lytle

Represented By
Onyinye N Anyama

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2:20-12166 Olinda Esperanza Lytle

Chapter 11

#3.10 Hrg re: Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company

Docket 16

## **Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 3, 3/31/20 at 1:00 p.m.).

## **Party Information**

### **Debtor(s):**

Olinda Esperanza Lytle

Represented By Onyinye N Anyama

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<u>1:00 PM</u>

2:19-23664 Liat Talasazan

Chapter 11

#4.00

Hrg re: Motion for Order Declaring That The Judgment Liens Recorded on October 17, 2019 Violated the Automatic Stay and Are Therefore Invalid, Void and Must Be Rescinded and Awarding Sanctions

Docket 122

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue to 4/7/20 at 1:00 p.m., concurrent with other matters. Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Liat Talasazan

Represented By Giovanni Orantes Luis A Solorzano

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**CONT...** Liat Talasazan

**Chapter 11** 

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**2:19-23664** Liat Talasazan

Chapter 11

#5.00 Cont'd Status Conference re: Chapter 11 Case fr. 1/28/20, 2/18/20, 3/3/20, 3/10/20

Docket 49

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue to 4/7/20 at 1:00 p.m., concurrent with other matters. <u>Appearances</u> are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Revised Tentative Ruling for 3/10/20:

Appearances required.

#### (1) Current issues

(a) <u>Debtor's amendment of bankruptcy petition to elect Subchapter V</u> (dkt. 128)

On 3/2/20, Debtor amended her petition to elect Subchapter V. The

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### **CONT...** Liat Talasazan

Chapter 11

parties should be prepared to discuss the effect of that amendment, including any appropriate dates and deadlines for such matters as the appointment of a Subchapter V trustee, the filing of an amended plan, and any other applicable procedures that this Court may need to set at this time.

## (b) No discernable progress since last hearing

The docket does not reflect any motion to sell or refiance any property, or other evidence of adequate prosecution of this case. Given the short time since the last hearing, the tentative ruling is that this Court will not take any action based on that lack of discernable progress, but to remind Debtor to be cognizant of the warnings that this Court set forth on the record at the last hearing.

## (c) No corrected MOR

Debtor has not corrected the monthly operating report, which was not filed on the required form. See tentative ruling for 3/3/20 (reproduced below), item "(1)" "(b)". Why not?

### (d) No statement reflecting apparent increase in income?

Despite two reminders, Debtor <u>still</u> has not filed a declaration of current/postpetition income and expenses. See Revised Tentative Rulings for 3/10/20 and 2/18/20 (reproduced below). Why not?

# (e) <u>Budget Motion (dkt. 85, 90), East West Bank's opposition (dkt. 94), Debtor's reply (dkt. 134), interim order (dkt.113)</u>

Although this Court has concerns about whether Debtor's financial disclosures are accurate and complete (as set forth in various portions of this tentative ruling and prior tentative rulings), the proposed use of funds in the budget motion appears to be appopriate. Accordingly, the tentative ruling is to grant the motion on a final basis, subject to the following.

First, any approval is subject possible reconsideration once Debtor finally files her statement of postpetition income and expenses, and files the other documents directed by this Court (see dkt.133), or as other facts may come to light. Second, the budget must be adjusted to accommodate the request of East West Bank for Debtor to increase her proposed monthly mortgage payment to \$5,643.86, which Debtor has agreed to do (dkt. 134). Third, any approval is subject to the parties' rights to seek further relief,

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### **CONT...** Liat Talasazan

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including approval of any stipulation for adequate protection.

## (f) Cash Collateral Motion (dkt. 86, 90)

Grant the motion on a final basis, on the same terms as stated in the order (dkt.114) granting the motion on an interim basis, and subject to the same caveats and conditions as set forth above regarding the budget motion.

(g) Application to employ The Orantes Law Firm (the "Firm") (dkt. 72); statement of disinterestedness (dkt. 73); amended statement of disinterestedness (dkt. 82); Dec re non-opp (dkt. 98); order setting matter for hearing (dkt. 101)

The tentative ruling is to grant the application in part and deny it in part as follows.

Debtor seeks to employ the Firm pursuant to 11 U.S.C. 327, with compensation pursuant to 11 U.S.C. 330 at the following hourly rates for the Firm's attorneys: Giovanni Orantes: \$695 and Luis A. Solorzano: \$350 (dkt. 72, p.16). In determining the reasonableness of the proposed billing rates, 11 USC 330(a)(3)(B), (E) and (F) require this Court to consider, among other things, proposed counsel's hourly rates, any board certification or other demonstrated skill and experience in the bankruptcy field, and "the customary compensation charged by comparably skilled practitioners ...."

Based on a review of rates charged by other bankruptcy professionals practicing before this Court as well as this Court's familiarity with proposed counsel's skills and performance in pending and past cases before it, the tentative ruling is to approve the Firm's employment, subject to Judge Bason's standard employment terms (available at www.cacb.uscourts.gov), but reduce the hourly rates that the Firm may charge to the following maximum dollar amounts, without in any way limiting the requirement that any rates charged and time spent still must be fully justified: Giovanni Orantes: \$475/hour and Luis A. Solorzano: \$250/hour.

In addition, the tentative ruling is that any waiver of conflicts of interest is ineffective as against the bankruptcy estate. (A "debtor in possession," acting as a trustee for the benefit of creditors, cannot waive conflicts on behalf of those creditors.)

(h) Motion for relief from stay (as amended, dkt. 93), debtor supplemental declaration (dkt.129), previously-filed papers (see tentative

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### **CONT...** Liat Talasazan

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ruling for 3/3/20, reproduced at calendar no.13, 3/10/20 at 1:00 p.m.)

The tentative ruling is to continue this matter again, to be concurrent with the continued status conference (see below), so as to be able to assess (i) whether Debtor has adequately prosecuted this case, including selling or refinancing one or more properties (if that is realistic) or otherwise demonstrating progress that has been sorely lacking to date, and (ii) Debtor's papers regarding her non-debtor husband's finances, which are due 3/18/20. See Order (dkt.133).

Meanwhile, the parties should be prepared to address whether they have agreed upon procedures for valuing the property and whether further briefing is necessary regarding any issues of debtor's alleged bad faith. See dkt.132, 138.

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) <u>Deadlines/dates</u>. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.
  - (a) <u>Bar date</u>: 5/1/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference)
  - (b) Procedures order: dkt. 50 (timely served, dkt. 58)
  - (c) Plan/Disclosure Statement\*: n/a
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m., concurrent with other matters on calendar. No written status report required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

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## **Tentative Ruling for 3/10/20:**

This Court anticipates posting a tentative ruling at a later time.

## Tentative Ruling for 3/3/20:

Appearances required.

## (1) Current issues

(a) Motion for relief from stay (as amended, dkt. 93)

Grant, as set forth in the tentative ruling for calendar no. 15 (3/3/20 at 1:00 p.m.).

(b) Monthly operating report ("MOR") #1 (for Jan, 2020, dkt.103)

Debtor's MOR is not on the form that is familiar to this Court. Has the Office of the United States Trustee changed its form? Debtor reports \$0 income for the month of January. Were rents paid prior to conversion to chapter 11 (*i.e.*, prior to 1/2/20), and if so, how much rental income did Debtor receive for January, and when?

#### (c) Income and expenses

Debtor still has not filed a declaration of current/postpetition income and expenses. See Revised Tentative Ruling for 2/18/20 (reproduced below). Why not?

Debtor's Bankruptcy Schedules I and J provide very little information about Debtor's rental income. They list only gross rents per building instead of, *e.g.*, a rent roll listing each tenant and their rental rate and information about whether those rents are reliable, such as a rental history. Nor does Debtor provide any breakdown of expenses, beyond what appears to be Debtor's rough estimate of \$6,000 per month in mortgage payments, which appears to omit any payments to liens that Debtor is disputing. Nothing appears to be allocated for rental property maintenance, repairs, utilities, gardening, etc.

In addition, creditor Tremblay has questioned whether Debtor is omitting community property income of her non-debtor spouse, Mr. Behzad Beroukhai. See dkt.119, p.2:17-28. As Tremblay notes, Mr. Beroukhai allegedly pays all expenses related to certain real property, but Debtor has not disclosed and accounted for such past and ongoing funds. This Court also notes that Mr. Beroukhai is not listed as a codebtor on any debts. See Bankruptcy Schedule H (dkt.10 at PDF p.30, line 1). What is the true

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### **CONT...** Liat Talasazan

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situation, and are Debtor's disclosures accurate?

The tentative ruling is to set a deadline of 3/6/20 for Debtor to file and serve amended Schedules I and J, an amended SOFA, and any other documents that may be necessary or appropriate to provide much more comprehensive information about her income, expenses, assets, liabilities, and other aspects of her finances.

- (2) <u>Deadlines/dates</u>. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.
  - (a) <u>Bar date</u>: 4/3/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference)
  - (b) Procedures order: dkt. 50 (timely served, dkt. 58)
  - (c) Plan/Disclosure Statement\*: n/a
  - (d) Continued status conference: 3/10/20 at 1:00 p.m., concurrent with other matters in this case. No written status report required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Revised Tentative Ruling for 2/18/20:

<u>Appearances required</u> by counsel for the debtor but telephonic appearances are encouraged <u>if</u> advance arrangements are made (*see* www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

### (1) Current issues

(a) Budget Motion (dkt. 85, 90), East West Bank's opposition (dkt. 94)

The tentative ruling is to grant in part and deny in part the budget motion, on an interim basis, such that Debtor is authorized to make the expenditures in her proposed budget but must provide additional adequate protection payments to East West Bank to bring the total payment from

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\$4,619.32 to \$5,140.78, without prejudice to Debtor and East West Bank establishing an evidentiary basis for a lesser or greater dollar amount either (i) for adequate protection payments, (ii) for purposes of any chapter 11 plan, or (iii) for any other reason. The tentative ruling is to set a **deadline of**2/25/20 for East West Bank to file a declaration with a copy of advance notice to Debtor regarding the increased monthly mortgage payments, a **deadline of**3/4/20 for any response by Debtor, and any reply by East West Bank permitted at the continued hearing, to be held contemporaneous with the continued status conference (see below).

Debtor states (dkt.85, Ex.1, at PDF p.7, 1st footnote) that she recently had an increase income. But, as of the preparation of this tentative ruling, Debtor has not filed a declaration of current/postpetition income and expenses. Why not?

## (b) Cash Collateral Motion (dkt. 86, 90)

Grant the motion on an interim basis, subject to Judge Bason's standard conditions for use of cash collateral set forth in the tentative ruling for calendar no. 17.20 (2/18/20 at 1:00 p.m.).

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (2) <u>Deadlines/dates</u>. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.
  - (a) <u>Bar date</u>: 4/3/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference)
  - (b) Procedures order: dkt. 50 (timely served, dkt. 58)
  - (c) Plan/Disclosure Statement\*: n/a
  - (d) <u>Continued status conference</u>: 3/10/20 at 1:00 p.m., concurrent with other matters in this case. No written status report required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you

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wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 2/18/20:

This Court anticipates posting a tentative ruling at a later time.

## **Tentative Ruling for 1/28/20:**

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

#### (1) Current issues

#### (a) Lack of progress

Debtor has only very belatedly filed a status report (dkt.65) (one week after it was required by this Court's order, dkt. 50). Worse, long after this case was converted to chapter 11 (11/20/19) she has only now filed an application to employ counsel and a budget motion, and she admits (dkt. 65, p.2) that she has not filed her list of 20 largest unsecured creditors. In addition, she admits that she has not filed any cash collateral motion(s) (id., p.3), which apparently means that either she has been using cash without authority or she has been failing to use cash for ordinary and necessary expenses, both of which are bad.

What remedies should this Court impose on Debtor and/or her counsel for this pervasive failure to comply with her obligations under the Bankruptcy Code? What assurances can they provide this Court that similar problems will not happen in future?

- (2) <u>Deadlines/dates</u>. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.
  - (a) <u>Bar date</u>: 4/3/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference)
  - (b) Procedures order: dkt. 50 (timely served, dkt. 58)
  - (c) Plan/Disclosure Statement\*: n/a
  - (d) Continued status conference: 2/18/20 at 1:00 p.m., concurrent with

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**CONT...** Liat Talasazan

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other matters in this case. No written status report required. \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### **Party Information**

#### **Debtor(s):**

Liat Talasazan

Represented By Giovanni Orantes Luis A Solorzano

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2:20-10484 The New School of Cooking, Inc.

Chapter 11

#6.00

Hrg re: Application of Chapter 11 Debtor and Debtor in Possession to Employ Weintraub & Selth, APC, as General Bankruptcy Counsel Effective January 15, 2020

Docket 12

### **Tentative Ruling:**

Please see the tentative ruling for the status conferenc (Calendar no. 7, 3/31/20 at 1:00 p.m.).

# **Party Information**

## **Debtor(s):**

The New School of Cooking, Inc.

Represented By

Crystle Jane Lindsey Daniel J Weintraub James R Selth

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

1:00 PM

2:20-10484 The New School of Cooking, Inc.

Chapter 11

#7.00 Cont'd Status Conference re: Chapter 11 Case fr. 1/23/20, 2/4/20

Docket 1

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Continue as set forth below. <u>Appearances are not required</u> on 3/31/20. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

### (1) Current issues

(a) Application to employ Weintraub & Selth, APC (the "Firm," dkt. 12), statement of disinterestedness (dkt. 53), order setting hearing and requiring supplemental disclosures (dkt. 61), declarations of Daniel J. Weintraub, Eric Ashenberg, and Linda He (dkt. 74), UST's response (dkt. 75)

Based on this Court's review of the supplemental declarations, the tentative ruling is to grant the motion and authorize the Firm's employment, subject to Judge Bason's standard employment provisions (see www.cacb.uscourts.gov).

<u>Proposed order</u>: Applicant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

- (2) Deadlines/dates. This case was filed on 1/15/20.
  - (a) Bar date: 4/7/20 (dkt. 52, timely served, dkt. 59).

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### **CONT...** The New School of Cooking, Inc.

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- (b) Procedures order: dkt. 5 (timely served, dkt. 11, 18).
- (c) Plan/Disclosure Statement\*: The 5/15/20 deadline previously set at the last status conference is vacated based on Debtor's representation in its status report that it will pursue a sale of all or substantially all of its assets (dkt. 80).
- (d) <u>Continued status conference</u>: 4/21/20 at 1:00 p.m., concurrent with other matters. No written status report required.
- \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## Tentative Ruling for 2/4/20:

<u>Appearances required</u> by counsel for Debtor (as orally ruled at the last status conference, Debtor's principals need not appear because they appeared at that status conference).

## (1) Current issues

(a) <u>Cash collateral motion (dkt. 19), supporting declarations (dkt. 23, 25, 26, 32, 33), order setting emergency hearing (dkt. 24), interim order (dkt. 39).</u>

There is no tentative ruling, the parties should be prepared to update this Court on whether JPMorgan Chase and Fundation Group will consent to the use of their cash collateral.

(b) <u>Utility motion (dkt. 21)</u>, supporting declarations (dkt. 23, 25, 26, 32, 33), order setting emergency hearing (dkt. 24),no opposition is on file. Grant the utility motion on a final basis.

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the

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## **CONT...** The New School of Cooking, Inc.

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hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

(c) Service of order setting principal status conference

This Court's order setting principal status conference and setting various procedures (the "Procedures Order," dkt. 5) required Debtor to serve that order on <u>all</u> parties in interest and file a proof of service at least 14 days before the principal status conference. Debtor's proof of service states that the Procedures Order was only served on the UST, secured creditors and the twenty largest unsecured creditors (dkt. 11).

The tentative ruling is to set a deadline of 2/7/20 for Debtor to file and serve a Notice, with a copy of the Procedures Order attached as an exhibit, informing all parties in interest that "Debtor failed to serve the Procedures Order on all parties in interest as directed by the Bankruptcy Court, which may have prejudiced some parties. The Bankruptcy Court has directed Debtor to serve this Notice, with a copy of the Procedures Order, on all parties in interest, both to inform all parties of the procedures in the Procedures Order and so that any party who was prejudiced by the lack of earlier service has an opportunity to seek any appropriate relief."

In addition, Debtor is cautioned that failure to comply with this Court's orders may result in adverse consequences.

- (2) Deadlines/dates. This case was filed on 1/15/20.
  - (a) <u>Bar date</u>: 4/7/20 (DO NOT SERVE notice yet <u>court will prepare</u> <u>an order after the status conference</u>).
  - (b) Procedures order: dkt. 5 (see section "(1)(c)" above).
  - (c) Plan/Disclosure Statement\*: file by 5/15/20 using the forms required by Judge Bason (DO NOT SERVE yet, except on the U.S.

    Trustee this Court will set a deadline and procedures at a later time).
  - (d) Continued status conference: 3/31/20 at 1:00 p.m., *brief* status report due 3/17/20.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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#### **CONT...** The New School of Cooking, Inc.

Chapter 11

wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 1/23/20

<u>Appearances required</u> but telephonic appearances are encouraged <u>if</u> advance arrangements are made (see www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures"). There is no tentative ruling, but the parties should be prepared to address whether this Court should grant the relief requested in Debtor's emergency first-day motions (dkt. 19, 20, 21, 23, 25 & 26) and this Court's "Order Granting Oral Request for Emergency Hearing Pursuant to Local Bankruptcy Rule 9075-1(a) and Setting Hearing on Shortened Notice" (dkt. 24).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Selth

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<u>1:00 PM</u>

2:20-11409 Anthony Chan

Chapter 11

#8.00 Hrg re: Motion for relief from stay [NA]

LE ELEGANT BATH, INC.

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**DEBTOR** 

Docket 33

# **Tentative Ruling:**

Grant as set forth below, subject to jointly administered debtors' limited non-opposition (dkt. 38). <u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, <u>ONLY TELEPHONIC</u> <u>APPEARANCES WILL BE PERMITTED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

Key documents reviewed (in addition to motion papers): Jointly administered debtors' limited non-opposition (dkt. 38). As of the preparation of this tentative ruling, no reply is on file

# (1) Requested relief

Debtors' non-opposition consents to the relief requested in the motion, which includes (i) relief in this case to continue their litigation in the State

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# **CONT...** Anthony Chan

Chapter 11

Courts, and (ii) that such relief continue for 180 days notwithstanding any future bankruptcy filing by any person or entity. Debtors request (a) that their review and approval/consent as to the form of order be obtained, (b) that entry of the order not prejudice their lien avoidance rights, and (c) that their consent not be deemed as an admission of any of the allegations of bad faith contained in the motion.

The tentative ruling is to grant each of Debtors' requested conditions (provided that, if they do not consent to the form of order, then both Movant and Debtors must file their own proposed form of order and may (if necessary) file a short declaration and/or brief explaining why they did not agree to one another's proposed form of order.

# (2) Limitations on relief in this case

- (a) <u>Limited relief</u>. Modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to the following limitations (Judge Bason's standard limitations).
- (i) No enforcement against property of the bankruptcy estate. The stay remains in effect with respect to enforcement of any judgment against property of the debtors' bankruptcy estates any such property shall be distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtors as to any property that is not property of the respective bankruptcy estates. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).
- (ii) <u>Claim allowance</u>, <u>priority</u>, <u>and discharge issues</u>. Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.
- (iii) No relief in *other* bankruptcy cases. To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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#### **CONT...** Anthony Chan

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bankruptcy cases beyond these three jointly administered cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

In limiting the nonbankruptcy litigation as set forth above, this Bankruptcy Court emphasizes that it does not seek in any way to impinge on the authority of the Nonbankruptcy Courts presiding over the nonbankruptcy action. Rather, this Bankruptcy Court takes seriously its obligations, as a subordinate unit of the District Court, to manage this bankruptcy case. Those obligations include taking into consideration the interests of creditors (who are not parties to the underlying nonbankruptcy litigation), and preserving the bankruptcy estate by placing limits on any relief from the automatic stay that Congress has mandated (11 U.S.C. 362(a) & (d)).

# (b) Relief notwithstanding *future* bankruptcy cases: 180 day *in rem* relief

Because this type of relief potentially affects third parties - not just Debtors who have filed their consent - the tentative ruling is to grant such relief pursuant to the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017) regarding the grounds for relief beyond 11 U.C.S. 362(d)(4), provided that, with respect to any property owned in whole or in part by any of Debtors, such *in rem* relief in only effective if the order is recorded, as follows:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in any item of property of the bankruptcy estate, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within 180 days after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

#### (c) Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

(3).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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#### **CONT...** Anthony Chan

Chapter 11

<u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### **Party Information**

**Debtor(s):** 

Anthony Chan Represented By

Jeffrey I Golden Beth Gaschen

Movant(s):

Le Elegant Bath, Inc. Represented By

D Edward Hays

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<u>1:00 PM</u>

2:20-11409 Anthony Chan

Chapter 11

#9.00 Cont'd Status Conference re: Chapter 11 Case fr. 3/3/20

Docket 1

#### **Tentative Ruling:**

# Revised Tentative Ruling for 3/31/20:

<u>Appearances are not required</u> on 3/31/20. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID19 Procedures, <u>telephonic appearances</u> <u>are REQUIRED</u> until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Current issues

#### (a) Budget motion(s)

Debtor Anthony Chan's status report (dkt. 39) states that a budget motion is forthcoming, but as of the preparation of this tentative ruling no motion is on file for any of the jointly administered Debtors. Judge Bason's posted procedures (available at www.cacb.uscourts.gov) Section VII.G provide that budget motions are mandatory in all chapter 11 cases.

The tentative ruling is to set a deadline of 4/7/20 to file and serve budget motion(s) for all Debtors who currently have or anticipate any cash flow, with a hearing set on shortened time concurrent with the continued status conference (see part "(2)" of this tentative ruling, below), oppositions due 4/14/20, and replies at the hearing.

#### (b) Monthly operating reports ("MORs")

Debtor Anthony Chan's February MOR reflects only a single deposit of \$2,634.57 for a period covering 2/7/20 - 2/29/20. Is Debtor not paying his debts as they come due? How is Debtor paying ordinary and necessary

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#### **CONT...** Anthony Chan

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expenses such as for groceries, transportation, or his mortgage?

Debtor A Touch of Brass, Inc.'s February MOR (Case No. 2:20-bk-11555-NB, dkt. 68, p.11) appears to show a negative balance in Debtor's general account (*id.*, p.1) and reveals that Debtor has not made postpetition payments to "CNC Associates" or "Toyota Financial Services" in an amount totaling \$26,018.86. What is Debtor's financial viability, what is the nature of the missed postpetition payments, and how does its inability to pay these debts impact its ability to reorganize? Why is Debtor mailing its MOR to all creditors (presumably at the estate's expense)?

The tentative ruling is to set a deadline of 4/7/20 for Debtor to file (not serve) amended February MORs and/or delcaration(s) that address these issues.

# (c) Order assigning matter to mediation

Debtor's status report states that the jointly administered debtors and Elegant scheduled a mediation for 4/7/20, but anticipate seeking to extend that date by 45 days (dkt. 39). The tentative ruling is to grant that extension, or any extension of approximately that duration if stipulated to by the parties.

Meanwhile, however, at the last status conference this Court set a deadline of 3/17/20 for Debtor to lodge a proposed order assigning the matter to mediation. As of the preparation of this tentative ruling, no order has been lodged.

The tentative ruling is to excuse that omission, on a one-time basis, but to direct Debtors and all other parties that they must lodge proposed mediation order(s) no later than 4/7/20 or else face possible sanctions or other remedies for noncompliance.

- (2) Deadlines/dates. This case was filed on 2/7/20.
  - (a) <u>Bar date</u>: 5/5/20 (dkt. 26; timely served, dkt. 27)
  - (b) Procedures order: dkt.3 (timely served, dkt. 5)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 4/21/20 at 1:00 p.m. No written status report required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you

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#### **CONT...** Anthony Chan

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wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 3/3/20:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

# (1) Current issues

#### (a) Lack of activity on the docket

This case was filed on 2/7/20 and as of the preparation of this tentative ruling there is very little activity on the docket. There are no "first day" motions such as the cash collateral motion, a budget motion, and the application to employ counsel that Debtor anticipated filing (see Status Report, dkt.18, p.3). Apparently Debtor has either been using cash without authority, or failing to use cash for ordinary and necessary expenses, both of which are bad.

What assurances can Debtor and Debtor's counsel provide parties in interest and this Court that this case will be adequately prosecuted?

# (b) <u>Debtor's ex parte motion for joint administration (dkt. 19);</u> oppositions by Le Elegant Bath, Inc. ("Elegant") (dkt. 23) and United States <u>Trustee ("UST") (dkt.27)</u>

Debtor filed an *ex parte* request for this Court to jointly administer his case with two related cases: A Touch of Brass ("Brass") (2:20-bk-11555-NB) and AC YU Chan Holdings LLC ("Holdings") (2:20-bk-11476-NB). Elegant opposes joint administration to the extent Debtor seeks relief greater than consolidating filings onto one docket and the UST similarly objects to any financial reporting that does not keep the estates separate, as well as any consolidated billing for professional fees and costs. The parties are directed to address whether this Court should set this matter for hearing or,

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#### **CONT...** Anthony Chan

Chapter 11

alternatively, grant joint administration but without combining any financial reporting or professional billing.

#### (c) Mediation

The tentative ruling is to order Debtor, Elegant, and related debtors Brass and Holdings to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge) and set a deadline of 3/17/20 for Debtor to lodge a proposed mediation order (the parties are directed to use the time between now and that deadline to find a mutually agreeable mediator whose schedule can accommodate the needs of this matter; and if the parties cannot even agree on a mediator they may lodge separate orders and Judge Bason will chose among them, or issue his own order).

- (2) Deadlines/dates. This case was filed on 2/7/20.
  - (a) <u>Bar date</u>: 5/5/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference).
  - (b) Procedures order: dkt.3 (timely served, dkt. 5)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) Continued status conference: 3/31/20 at 1:00 p.m., brief status report due 3/17/20.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Anthony Chan

Represented By Jeffrey I Golden

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2:20-11476 AC YU CHAN HOLDING, LLC

Chapter 11

#10.00 Cont'd status conference re: Chapter 11 Case fr. 3/3/20

Docket 1

#### **Tentative Ruling:**

#### Revised Tentative Ruling for 3/31/20:

Appearances are not required.

# (1) Current issues

This case is being jointly administered with *In re Anthony Chan* (Case No. 2:20-bk-11409-NB), so the tentative ruling is not to hold any separate status conferences in this case unless and until further ordered by this Court.

#### (2) Deadlines/dates

This case was filed on 2/10/20.

- (a) Bar date: 5/5/20 (dkt. 16; timely served, dkt. 17)
- (b) Procedures order: dkt.7 (timely served, dkt. 9)

#### Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 3/3/20:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

#### (1) Current issues

#### (a) Lack of progress

This case was filed on 2/10/20 and as of the preparation of this tentative ruling there is very little activity on the docket. There are no "first day" motions such as the cash collateral motion, a budget motion, and the application to employ counsel that Debtor anticipated filing (see Status Report, dkt.14, p.3). Apparently Debtor has either been using cash without authority, or failing to use cash for ordinary and necessary expenses, both of which are bad.

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding

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#### CONT... AC YU CHAN HOLDING, LLC

Chapter 11

What assurances can Debtor and Debtor's counsel provide parties in interest and this Court that this case will be adequately prosecuted?

#### (b) Mediation

The tentative ruling is to order debtor to attend mediation as set forth in more detail in the status conference for related debtor, Anthony Chan (Calendar no. 1, 3/3/20 at 1:00 p.m.).

- (2) Deadlines/dates. This case was filed on 2/10/20.
  - (a) <u>Bar date</u>: 5/5/20 (DO NOT SERVE notice yet <u>court will prepare</u> an order after the status conference).
  - (b) <u>Procedures order</u>: dkt.7 (timely served, dkt. 9)
  - (c) Plan/Disclosure Statement\*: TBD.
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m., *brief* status report due 3/17/20.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

AC YU CHAN HOLDING, LLC

Represented By Jeffrey I Golden

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2:20-11555 A Touch of Brass, Inc.

Chapter 11

#11.00 Cont'd status conference re: Chapter 11 Case fr. 02/18/20, 3/3/20

Docket 1

#### **Tentative Ruling:**

#### Revised Tentative Ruling for 3/31/20:

Appearances are not required.

# (1) Current issues

This case is being jointly administered with *In re Anthony Chan* (Case No. 2:20-bk-11409-NB), so the tentative ruling is not to hold any separate status conferences in this case unless and until further ordered by this Court.

#### (2) Deadlines/dates

This case was filed on 2/10/20.

- (a) Bar date: 5/5/20 5/5/20 (dkt. 50; timely served, dkt. 60)
- (b) Procedures order: dkt.3 (timely served, dkt. 5)

#### Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 3/3/20:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

#### (1) Current issues

- (a) <u>Debtor's Utility Motion (dkt. 10)</u>, no opposition is on file Grant on a final basis, on the same terms as the interim order (dkt.38).
- (b) <u>Debtor's Cash Collateral Motion (dkt. 11, 19), opposition of Le Elegant Bath, Inc. ("Elegant") (dkt. 47), Debtor's reply (dkt. 49)</u>

This Court is mindful of the concerns raised by Elegant, including the findings of fact and conclusions of law by the State Court including on alter ego liability, and bearing on the related Debtors' alleged transfers of assets,

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#### **CONT...** A Touch of Brass, Inc.

Chapter 11

lack of truthfulness, and delay. The tentative ruling is that those things are part of the totality of the circumstances that this Court may consider in various possible future contexts, but that for present purposes they are not sufficient to warrant denial of further interim relief regarding the use of cash collateral.

Grant on a further interim basis, on the same conditions set forth in the first interim order authorizing debtor's use of cash collateral (dkt. 37), with the requested 15% variances (dkt.49, p.2:4-8), through the conclusion of a continued hearing commencing on 6/2/20 at 1:00 p.m. The last two days of this period extend beyond Debtor's proposed cash collateral budget (dkt.11, Ex.2, at PDF pp.50-58), so the tentative ruling is to authorize expenditures for the week of 5/31/20 through 6/6/20 identical to the authorized expenditures covering the first day of the previous month (4/26/20 through 5/2/20). *Id.* at PDF pp.55-56.

# (c) Mediation

The tentative ruling is to order debtor to attend mediation as set forth in more detail in the status conference for related debtor, Anthony Chan (Calendar no. 1, 3/3/20 at 1:00 p.m.).

Proposed orders: Debtor is directed to lodge proposed orders on the above matters (2)-(4), via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

- (2) <u>Deadlines/dates</u>. This case was filed on 2/10/20.
  - (a) <u>Bar date</u>: 5/5/20 (DO NOT SERVE notice yet <u>court will prepare</u> <u>an order after the status conference</u>).
  - (b) Procedures order: dkt.20 (timely served, dkt. 22)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m., *brief* status report due 3/17/20.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances

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#### **CONT...** A Touch of Brass, Inc.

Chapter 11

<u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Revised Tentative Ruling for 2/18/20:

Appearances required.

#### Current issues

# (1) Proofs of service re orders shortening time

This Court's orders shortening time (dkt. 13-15) directed Debtor to file a proof of service evidencing service of those orders no later than 2/13/20 at 5:00 p.m. As of the drafting of this tenative ruling, no such proofs of service have been filed.

Debtor is directed to address whether the three motions discussed below were timely served.

#### (2) Debtor's Utility Motion (dkt. 10)

Grant, subject to any opposition at the hearing and to resolution of the service issues described above.

#### (3) Debtor's Cash Collateral Motion (dkt. 11, 19)

Grant on an interim basis, on the conditions set forth in calendar no. 27, 2/18/20 at 1:00 p.m., subject to any opposition at the hearing, and subject to resolution of the service issues described above. A continued hearing will be held contemporaneous with the continued status conference (see below).

#### (4) Debtor's Wage Motion (dkt. 12)

Grant, subject to any opposition at the hearing, and subject to resolution of the service issues described above.

#### (5) Continued status conference

As set forth in this Court's Order Setting (A) Principal Status Conference And (B) Procedures, a continued status conference, which will be the principal status conferece, will taken place on 3/3/20 at 1:00 p.m.

Proposed orders: Movant is directed to lodge proposed orders on the above matters (2)-(4), via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances"

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#### **CONT...** A Touch of Brass, Inc.

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required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Tentative Ruling for 2/18/20:**

This Court anticipates posting a tentative ruling at a later time.

#### **Party Information**

#### **Debtor(s):**

A Touch of Brass, Inc.

Represented By Jeffrey S Shinbrot

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2:19-10762 Koi Design LLC

Chapter 11

#12.00 Cont'd Hrg re: Motion to Disallow Proof of Claim No. 15 Filed by

Reina Palacios Vasquez and All Similarly Situated Employees

fr. 03/03/20

Docket 247

#### **Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 13, 3/31/20 at 1:00 p.m.).

# **Party Information**

### **Debtor(s):**

Koi Design LLC Represented By

Susan K Seflin Jessica L Bagdanov

**Movant(s):** 

Koi Design LLC Represented By

Susan K Seflin

Jessica L Bagdanov

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2:19-10762 Koi Design LLC

Chapter 11

#13.00 Cont'd status conference re: Post confirmation fr. 01/30/19, 02/13/19, 03/05/19, 3/26/19, 4/9/19, 4/22/19, 5/14/19, 6/11/19, 7/30/19, 9/24/19, 10/15/19, 11/12/19, 12/17/19, 2/4/20, 3/3/20

Docket 1

#### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Continue as set forth below. Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### (1) Current issues

(a) Reorganized debtor's motion to disallow proof of claim 15 (dkt. 247), amended proof of service (dkt. 262), no opposition is on file

The tentative ruling is to grant the motion and disallow Claim 15 in full.

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(2) <u>Deadlines/dates</u>. This case was filed on 1/25/19. A Plan (dkt. 208) was confirmed 12/17/19 (dkt. 232). A continued post-confirmation status conference is set for 9/29/20 at 1:00 p.m. *Brief* status report due 9/15/20.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances

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#### CONT... Koi Design LLC

Chapter 11

required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Tentative Ruling for 3/3/20:**

Continue as set forth below. Appearances are not required on 3/3/20.

#### (1) Current issues

This Court has nothing to raise sua sponte.

(2) <u>Deadlines/dates</u>. This case was filed on 1/25/19. A Plan (dkt. 208) was confirmed 12/17/19 (dkt. 232). A continued post-confirmation status conference is set for 3/31/20 at 1:00 p.m., to be concurrent with other matters. No written status report required. Note: If the other matters on 3/31/20 are continued, this Court likely will order a further continuance of this status conference, based on part on Debtor's request for a continuance of at least six months. See Status Report (dkt.258).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

#### **Debtor(s):**

Koi Design LLC

Represented By Susan K Seflin Jessica L Bagdanov

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2:19-18900 FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

#14.00 Cont'd hrg re: Motion to Use Cash Collateral

fr. 10/29/19, 11/5/19, 12/17/19, 1/28/20

Docket 51

#### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 15, 3/31/20 at 1:00 p.m.).

# [PRIOR TENTATIVE RULINGS OMITTED]

# Party Information

#### **Debtor(s):**

FAME Assistance Corporation, a Represented By

Peter T Steinberg

Movant(s):

FAME Assistance Corporation, a Represented By

Peter T Steinberg

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2:19-18900 FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

#15.00

Cont'd Status Conference re: Chapter 11 case fr. 8/20/19, 9/24/19,10/29/19, 11/5/19, 12/17/19, 1/28/20

Docket 1

#### **Tentative Ruling:**

#### Revised Tentative Ruling for 3/31/20:

<u>Appearances required</u> by counsel for the debtor, but pursuant to Judge Bason's COVID19 Procedures, <u>telephonic appearances are REQUIRED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Current issues

(a) Continued hearing on interim collateral motion (dkt. 51) and stipulation (dkt.61, Ex.A), Debtor's supplemental decl (dkt. 88), interim orders authorizing use of cash collateral (dkt. 80, 100, 113), Hanmi's supplemental statement (dkt. 104)

There is no tentative ruling. The parties should be prepared to address whether Hanmi will consent to further use of its cash collateral.

#### (b) Untimely status report

At the last hearing, this Court set a 3/20/20 deadline for Debtor to file a status report. Debtor did not file its status report until 3/25/20 and did not provide any explanation for the delay (dkt. 117).

This Court presumes that the delay might have been caused by early disruptions attributable to the very unfortunate COVID-19 situation. That situation cuts both ways. On the one hand, the present situation <u>might</u> be a valid excuse for Debtor being late. On the other hand, it is all the more

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#### **CONT...** FAME Assistance Corporation, a Non Profit Corp.

Chapter 11

difficult for parties in interest and this Court to perform their functions when any party misses its deadlines.

This Court reminds all parties of the inconvenience to others when deadlines are not met, and the requirement to explain any failure to do so. Most of all, of course, this Court fervently wishes the best for all parties.

- (2) Deadlines/dates. This case was filed on 7/31/19.
  - (a) <u>Bar date</u>: 10/25/19 (dkt. 24; timely served, dkt. 26). *Exception:* the bar date for creditors Apex Realty, Inc. and BRG Adams, LLC is 8/14/20 (dkt. 78)
  - (b) Procedures order: dkt. 2 (timely served, dkt.23).
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 5/2/20 at 1:00 p.m., *Brief* written status report due 4/19/20.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

#### **Debtor(s):**

FAME Assistance Corporation, a

Represented By Peter T Steinberg

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<u>1:00 PM</u>

2:19-20000 9469 BEVERLY CREST LLC

Chapter 11

#16.00

Cont'd Status Conference re: Chapter 11 Case fr. 9/24/19, 11/5/19, 12/10/19, 1/28/20

Docket 1

#### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Continue to 4/7/20 at 1:00 p.m., concurrent with other matters, with a further status conference likely to be scheduled for 6/2/20 at 1:00 p.m., based on this Court's review of Debtor's status report (dkt. 90). Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

#### **Debtor(s):**

9469 BEVERLY CREST LLC

Represented By

3/31/2020 9:03:24 AM

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CONT... 9469 BEVERLY CREST LLC

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John N Tedford IV George E Schulman

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2:19-23303 Candelario Lora

Chapter 11

#17.00 Cont'd hrg re: Motion in Individual Chapter 11 Case for Order

Authorizing Use of Cash Collateral 11 U.S.C. Section 363

fr. 02/18/20

Docket 55

#### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 18, 3/31/20 at 1:00 p.m.)

#### Tentative Ruling for 2/18/20:

Please see the tentative ruling for the status conference (calendar no. 9, 2/18/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

Candelario Lora

Represented By
Onyinye N Anyama

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2:19-23303 Candelario Lora

Chapter 11

#18.00 Cont'd Status Conference re: Chapter 11 Case fr. 12/17/19, 1/14/20, 02/18/20

Docket 1

#### **Tentative Ruling:**

#### Revised Tentative Ruling for 3/31/20:

<u>Appearances required</u> by counsel for the debtor, but pursuant to Judge Bason's COVID-19 Procedures, <u>telephonic appearances are REQUIRED</u> <u>until further notice</u>.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Current issues

Despite repeated inquiries from this Court, the docket does not appear to reflect adequate prosecution of this case. To the contrary, the docket and records of this Court appear to reflect considerable mismanagement, lack of disclosure, and other problems set forth below.

#### (a) Rental income, and disposition or use of various properties

At the hearing on 2/18/20 Debtor belatedly clarified that the second cash collateral motion (dkt.55) was meant to amend the first such motion, and that only one property currently is generating rents - the 69th Way property - although perhaps a second property generates some rents that are not anyone's cash collateral (as noted below). As for Debtor's properties other than 69th Way, Debtor apparently intends to sell the Shadow Ln. property (dkt.89), and it is unclear what Debtor intends to do with the 68th Way property, the Anderson St. property, and the 132d St. property, which appear to be generating minimal if any rental income. See, e.g., Status Report (dkt.69) (listing properties, but not addressing Debtor's intent regarding any of

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# **CONT...** Candelario Lora

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them).

The latest MOR (#4, for Feb. 2020) is unclear about which rental account relates to which property. But it appears that, apart from 69th Way, only one other property has an ending balance above \$0, and that is minimal (this unspecified property is the other one that appears to generate some rent, that apparently is not anyone's cash collateral, although that is unclear). See dkt.85, p.18.

In addition, it appears that Debtor's actual rent rolls might differ from what has been disclosed to date. See dkt.86, p.5:11-15, and supporting decl.

With this background, this Court's primary concern is why the docket does not reflect steps to surrender, rent, sell, rehabilitate, or otherwise deal with Debtor's properties (other than Shadow Ln.)? This Court's secondary concern is to obtain much more complete and clear information and explanations regarding Debtor's various properties.

Debtor's lack of disclosure to date only encourages this Court to impose more comprehensive disclosure requirements, or possibly other remedies. If Debtor remains a debtor in possession (see part "(1)(e)" of this tentative ruling, below) the tentative ruling is to set a **deadline of 4/7/20** for Debtor to file and serve on Aztec and the United States Trustee ("UST") a declaration specifying:

- (i) exactly what is the current condition of each property;
- (ii) how much each apartment or room in that property (a "Unit") has been rented for at all prepetition times back to 1/1/17;
- (iii) how much each Unit has been rented for at <u>all</u> postpetition times, and whether each Unit has been used or occupied by any relative or other affiliate of Debtor at any times postpetition;
- (iv) Debtor's projections for each Unit, including the timing and dollar amount of all future rents;
  - (v) Debtor's proposed disposition of each property;
- (vi) all steps that Debtor has taken since the commencement of this case to accomplish that disposition; and
  - (vii) the projected timeline for such disposition.
- (b) <u>Debtor's amended cash collateral motion (dkt. 55), opposition of Rehabbers Financial, Inc. dba Aztec Financial ("Aztec") (dkt. 70, 86 & 88), and Debtor's reply (dkt. 90)</u>

Aztec values the property at \$860,000 "as is" as of 2/23/20. Dkt. 88,

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#### **CONT...** Candelario Lora

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p.2:2-3, dkt.91. Debtor requests time to obtain a competing appraisal. Dkt. 90, p.2:13. Why did Debtor not do this already?

If there is a satisfactory answer, and if Debtor remains a debtor in possession (see part "(1)(e)" of this tentative ruling, below), the tentative ruling is to grant the cash collateral motion on a further interim basis, on the same terms as this Court's previous interim order (dkt. 80), and to set a continued hearing for the same date and time as the continued status conference as set forth below with a **deadline of 4/25/20** for Debtor's appraisal to be filed and served on Aztec.

At the continued hearing the parties should address how they propose to resolve their dispute regarding the value of the property - e.g., (i) with an evidentiary hearing; (ii) with a ruling of this Court based solely on the written record (to save costs, if all parties consent), (iii) through mediation, or (iv) through appointment of an appraiser (jointly selected by the parties/their appraisers) as this Court's own expert under FRE 706.

# (c) February MOR (dkt. 85)

(i) <u>Insurance</u>

This MOR (dkt. 85, p.17) shows general liability insurance is due to expire/only paid through 1/25/20. Has that insurance been extended?

This is the same problem that occurred and has been pointed out before. Why is this problem continuing?

This Court fully understands that the insurance is month-to-month, according to Debtor's counsel. But that is no excuse. By the due date of each MOR is should be apparent whether the insurance has or has not been continued, so why do the MORs continue to suggest - apparently inaccurately - that the insurance has expired? Alternatively, if the insurance really has expired, what consequence should follow?

Even if Debtor is (barely) current on insurance, this Court questions whether there is a danger every month that the insurance will expire, if the insurance is only month-to-month. How is Aztec, the bankruptcy estate, or the public adequately protected?

If Debtor remains a debtor in possession (see part "(1)(e)" of this tentative ruling, below), the tentative ruling is to set a **deadline of 4/7/20** for Debtor to file, and serve on Aztec and the UST, a declaration fully addressing the foregoing insurance issues.

(ii) No blocked account

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#### **CONT...** Candelario Lora

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Aztec's supplemental opposition (dkt. 86, p.9:1-9) states that Debtor's MOR appears to reflect that there is no separate blocked account for Aztec's cash collateral, as was required by this Court's interim order (see dkt. 80, p.3). The rental DIP account ending in 2707 appears to be related to Aztec's property based on the \$5,390.00 of receipts for February (dkt. 85, p.5), and Debtor's representation at the last hearing that the 69th Way property is the only property generating rents at this time. Debtor's reply states that he has complied with this Court's order "by setting aside one of debtor in possession accounts as an escrow account for the remaining portion of the rents." Dkt. 90, 4:1-2.

One problem, as noted above, is that it is not clear which account Debtor is referring to (the one ending in 2707?). Another problem is that the MOR appears to show rental income going into that account but does not appear to show payments of "real estate taxes," "utilities," and "essential repairs" out of that account (only insurance appears to have been paid out of that account). See dkt.85, p.6. It appears that utilities, for example, have been paid from the general account. See dkt.85, pp.1-3. This creates a falsely inflated balance in that account.

More importantly, Debtor appears to misunderstand the nature of a "blocked account." In common usage, and as used by this Court, it means an account from which funds cannot be released without either (i) consent of the other party asserting an interest in the account (Aztec) or (ii) an order of this Court. See, e.g., In re Estrada, 224 B.R. 132, 134 (Bankr. S.D. Cal. 1988) (referring to a "blocked account, requiring both the [chapter 7] trustee's and the Debtor's signature for any disbursements").

If Debtor remains a debtor in possession (see part "(1)(e)" of this tentative ruling, below) then, **no later than 4/7/20**, Debtor is directed to accomplish all of the following:

- (A) coordinate with Aztec and Debtor's bank to determine the mechanics of how checks will be signed by both Debtor and Aztec so as to pay utilities etc. (or whether automatic payments will be set up);
- (B) actually set up the blocked account and implement those procedures; and
- (C) file and serve on Aztec and the UST a declaration confirming that the blocked account has been established and those procedures have been implemented.

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#### **CONT...** Candelario Lora

Chapter 11

(d) <u>Belated application to employ special counsel (dkt. 57, filed 1/17/20)</u>, who has not been approved but has already filed an adversary proceeding (*Lora v. Rehabbers Fin., Inc. dba Aztec Fin., et al.*, Adv. No. 2:20-ap-01067-NB)

The bankruptcy petition was filed on 11/11/19. Over two months later, on 1/17/20, Debtor belatedly filed an application to employ special counsel.

That proposed special counsel apparently represented Debtor in prepetition litigation in State Court (LA Superior Court, Case No. 19LBCV00600, for fraud, quiet title, etc.). Dkt.57, p.5. There is no meaningful description of that litigation in the application, nor does the application say anything about commencing a separate adversary proceeding in this bankruptcy case, as the (still unauthorized) special counsel has done on 3/20/20 (dkt.87).

As set forth in prior tentative rulings, reproduced below (for 2/18/20, item "(1)(c)," and 1/14/20, item "(1)(c)"), this Court is very concerned that Debtor is gambling any possible recovery for creditors on the possibility of prevailing in litigation against Aztec. That litigation should have been fully described in Debtor's initial status report and any later reports (dkt. 30, 69), and also should have been fully described in the (very belated) application to employ proposed special counsel (dkt.57). Instead, the nature of that litigation has only been incompletely and belatedly disclosed in those documents (see, e.g., dkt.30 at PDF p.3, and dkt.57, p.5), and orally at prior status conferences.

As near as this Court can tell, based on those sources and this Court's review of the Complaint (Adv. dkt. 1), Debtor's claims are as follows. Debtor apparently is attempting to reduce or eliminate the principal and/or interest, including default interest, on Aztec's secured claim collateralized by the 69th Way and Shadow Ln. properties. Although Debtor admits receiving the loan proceeds, and using some or all of the proceeds to purchase the Shadow Ln property, Debtor allegedly attempted to cancel both the purchase and the loan on or about 6/8/18. *Id.*, para.16 & Ex.C at PDF pp.4 & 107-08. But then on or about 6/11/18 Debtor and his wife allegedly were pressured and intimidated into executing various documents that they did not understand that reauthorized the transaction, including cross-collateralization (*id.*, para.17), and their signatures allegedly were forged on a closing statement listing various high transaction costs (*id.*, para.18, 26). Debtor's Complaint appears to assert claims for fraud, usury, a determination that some or all of

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#### **CONT...** Candelario Lora

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these transactions are void and unenforceable, and damages of an unspecified nature up to or in excess of \$1 million. It is unclear how much this adversary proceeding duplicates or is different from the State Court litigation.

This Court expresses no view on the merits of these two actions (in State Court, and in the adversary proceeding in this Bankruptcy Court). The point is only that pursuing such litigation is all very well for this bankruptcy estate if Debtor prevails, but Debtor has a duty, as a debtor in possession acting as a trustee for the benefit of creditors (11 U.S.C. 1101(1), 1106, 1107), to consider a cost/benefit analysis of the litigation, and how to minimize the "down side" risk if Debtor does not prevail.

As this Court has noted previously, the default rate of interest (and even the non-default rate) are large enough that they may eat up any assets of this estate if they continue to accrue and are not disallowed. This Court previously has questioned why Debtor has not been pursuing avenues that might possibly stop the accrual of such interest.

Such avenues conceivably could include such tactics as:

- (i) selling the 69th Way and/or Shadow Ln. properties free and clear of liens with Aztec's liens to attach to the proceeds of sale (11 U.S.C. 363(b)&(f));
- (ii) selling those properties with the net proceeds being paid over to Aztec subject to claims to recover those proceeds;
- (iii) pursuing confirmation of a chapter 11 plan that pays Aztec over time with a new (much reduced) interest rate; or
  - (iv) some other tactic.

To be clear, this Court expresses no view whether those things actually would work to stop the running of default interest - this Court is not prejudging any legal or factual issues. The point is only that only last week, on 3/23/20, did Debtor finally appear to take some preliminary steps to possibly addressing this issue, by filing an application (dkt.89) to employ a real estate broker to sell the Shadow Ln. property. Now, with the possible effects of the COVID-19 pandemic on the real estate market, it appears that this is too little, too late.

Meanwhile, Debtor does not appear to have taken any steps to obtain approval for the employment of special counsel, such as setting the matter for hearing or lodging a proposed order. It is also unclear what, if anything, is happening in the pending State Court litigation - is Debtor taking whatever

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#### **CONT...** Candelario Lora

Chapter 11

steps are necessary to preserve whatever value that litigation has for the estate?

If Debtor remains a debtor in possession (see part "(1)(e)" of this tentative ruling, below), the tentative ruling is to set the employment application for hearing concurrent with the continued status conference (see part "(2)" of this tentative ruling, below) with a **deadline of 4/7/20** for Debtor to serve all parties in interest with a notice of that hearing, with a deadline of 4/21/20 for any opposition, and 4/28/20 for any reply, and with a copy of this part "(1)(d)" of this tentative ruling for 3/31/20 attached to that notice, and with declaration(s) attached to that notice addressing the issues set forth above.

(e) Whether this case should be converted or dismissed, or whether a trustee should be appointed, or other relief

Based on the matters described above, and the history of this case as described in the prior tentative rulings reproduced below, this Court questions:

- (i) whether Debtor is grossly mismanaging this bankruptcy estate (sub-paragraph "(B)" of 11 U.S.C. 1104(a)(1), 1112(b)(4)) by:
- (A) <u>not taking appropriate steps to surrender, rent, sell, rehabilitate, or otherwise deal with Debtor's properties;</u>
- (B) not adequately disclosing the past, present, and projected <u>condition</u>, <u>rents</u>, <u>and proposed disposition</u> of those properties;
  - (C) not maintaining and/or timely disclosing adequate

insurance;

- (D) not maintaining a <u>blocked account</u> for cash collateral as order by this Court;
- (E) not seeking authorization for the <u>employment of</u> <u>special counsel</u> to prosecute litigation against secured creditor Aztec until over two months after the commencement of this case;
- (F) not requesting <u>adequate authorization</u> for that proposed special counsel: the application seeks authorization for him to prosecute the State Court litigation against Aztec, but not any litigation in this Bankruptcy Court with Aztec;
- (G) <u>failing to monitor and coordinate with such special counsel</u>, as illustrated by (x) such proposed counsel's filing of an adversary proceeding against Aztec on behalf of this bankruptcy estate before such special counsel is authorized to represent this estate, and (y) the apparent

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#### **CONT...** Candelario Lora

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lack of attention to the State Court litigation against Aztec; and

(H) perhaps most importantly, not taking any steps to

stop the running of the high rates of Aztec's claimed interest, despite
repeated questioning by this Court why no such steps have been taken, until
the application to employ a real estate broker on 3/23/20, which appears to
be too little, too late:

- (ii) whether Debtor is failing to maintain appropriate insurance that posses a risk to the state or to the public (sub-paragraph "(C)" of section 1112(b)(4));
- (iii) whether Debtor has engaged in the unauthorized use of cash collateral substantially harmful to Aztec, or has failed to comply with this Court's order regarding the use of cash collateral and establishment of a blocked account (*id.*, sub-paragraphs "(D)" and "(E)");
- (iv) whether Debtor is failing, without excuse, to satisfy timely the filing or reporting requirements established by the Bankruptcy Code and Rules or reasonably requested by the United States Trustee regarding the filing of MORs and maintenance of insurance (*id.*, sub-paragraphs "(F)" & "(H)"); or
- (v) whether there is other "cause" for conversion, dismissal, or appointment of a chapter 11 trustee (11 U.S.C. 1104(a), 1112(b)(1)), or any other remedy for the foregoing deficiencies.

Debtor is directed to address these issues at this status conference. See Procedures Order (dkt.8, 29) (notice and order that this Court may consider case-dispositve matters at any status conference).

If this Court is persuaded not to convert or dismiss this case or impose other remedies at this hearing, the tentative ruling is to issue an oral Order to Show Cause ("OSC") why this case should not be converted or dismissed, or why a trustee should not be appointed, or other remedies imposed, and set that OSC for hearing concurrent with the continued status conference (see part "(2)" of this tentative ruling, below) with a **deadline of 4/7/20** for Debtor to serve all parties in interest with a notice of that hearing, with a deadline of 4/21/20 for any opposition, and 4/28/20 for any reply, and with a copy of this part "(1)(e)" of this tentative ruling for 3/31/20 attached to that notice, and with declaration(s) attached to that notice addressing the issues set forth above.

(2) <u>Deadlines/dates</u>. This case was filed on 11/11/19.

(a) Bar date: 3/16/20 (order, dkt. 39, timely served, dkt.42).

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#### **CONT...** Candelario Lora

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- (b) Procedures order: dkt. 8 (timely served, dkt. 29)
- (c) Plan/Disclosure Statement\*: N/A
- (d) <u>Continued status conference</u>: 5/5/20 at 1:00 p.m. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

## Revised Tentative Ruling for 2/18/20:

<u>Appearances required</u> by counsel for the debtor but telephonic appearances are encouraged <u>if</u> advance arrangements are made (*see* www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

#### (1) Current issues

(a) <u>First cash collateral motion (dkt.31&32) and second cash collateral motion (dkt. 55&56)</u>

#### (i) Applicable motion(s)?

At the 1/14/20 hearing, Debtor was directed to re-serve the first cash collateral motion no later than 1/16/20 (see also Tentative Ruling for 1/14/20, reproduced below). Instead, Debtor filed and served the second cash collateral motion, which differs materially from the first cash collateral motion.

It appears that Debtor still may be seeking authorization under the first motion as to two properties (68th Way and Shadow Ln) and authorization under the second motion as to a third property (69th Way). Is that accurate? If not, what is Debtor attempting to do?

#### (ii) Service issues

At the 1/14/20 hearing, this Court noted that the first cash collateral

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#### **CONT...** Candelario Lora

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motion was not served in compliance with Rule 7004 (Fed. R. Bankr. P.), and Debtor was directed to reserve that motion no later than 1/16/20. Debtor served the second cash collateral motion instead, and did so on 1/17/20. Dkt. 56.

It appears that Debtor has still not complied with Rule 7004. First, Nationstar Mortgage, LLC dba Mr. Cooper was not served at the address listed on POC No. 4 for notices. Second, CitiMortgage, Inc. filed POC No. 5 alleging a security interest in the 68th Way property, and it was not served with either cash collateral motion.

#### (iii) Allegedly fraudulent liens

As noted in Debtor's status report, Debtor is (belatedly) seeking authorization for the postpetition employment of special counsel to pursue an action in state court for fraud and quiet title with respect to allegedly fraudulent liens encumbering the 69th Way and Shadow Lane properties. Dkt. 57 & 69, p.3:2-4. Debtor has stated an intention to sell the Shadow Lane property but not the 69th Way property. What cost/benefit analysis have Debtor and Debtor's bankruptcy counsel done regarding this litigation?

The holder of the alleged liens appears to be asserting 21% default interest (and a non-default rate of just under 10%) (see dkt.70, p.5:1-6). Of course, all rights are preserved to argue regarding interest rates, but Debtor appears to be gambling on winning the litigation and avoiding the liens and the default interest entirely. In other words, if Debtor is not 100% successful, there appears to be a substantial danger of wiping out any recovery for other creditors and Debtor. Why is Debtor not proposing a course of action that might stop the running of such high rates of interest?

For example, solely for purposes of this tentative ruling this Court presumes (without deciding) that selling the 69th Way property free and clear of the disputed liens, with such liens to attach the proceeds, might stop the running of such interest rates. Alternatively, Debtor might propose a chapter 11 plan that could include alternative treatments of this claim depending on whether the ligitation were or were not successful, and restructuring any secured claims to have a lower interest rate. These are only hypotheticals: again, all rights are preserved to argue whether any such possible solutions would or would not stop the running of these high interest rates, but the point is that Debtor is directed to address why the status report and the docket do not appear to reflect any exploration of methods to avoid what appear to be the large risks of staking everything on Debtor's litigation.

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#### **CONT...** Candelario Lora

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(iv) Rehabbers Financial, Inc. dba Aztec Financial ("Aztec") opposition to second cash collateral motion (dkt. 70)

Aztec's opposition notes that Debtor's second cash collateral motion proposes to pay Aztec \$2,000/month of the \$5,465/month generated by the property, and allocates \$1,058.20 to taxes, insurance, and maintenance, but Debtor does not explain what the remaining \$2,379.80/month will be used for. Dkt. 70, p.4:24-27. Aztec also disputes Debtor's valuation of the property, and states that Debtor should at least be making the non-default, pre-maturity contractual payment of \$4,535.67/month. *Id.* at p.5:17-28. While the second cash collateral motion states that Debtor's basis for the valuation of the property is Debtor's declaration, Debtor's declaration does not address the value of the property. Dkt. 55, p.11. Lastly, Aztec states that it has requested access to the property to arrange its own appraisal. *Id.* at p.5:21-23.

#### (v) Tentative ruling on both cash collateral motions

The tentative ruling is to order Debtor to segregate 100% of any rents and profits from each rental property (the 69th Way, Shadow Lane, and 68th Way properties), and hold all such funds - after payment of real estate taxes, insurance, utilities, and essential repairs - in separate blocked accounts until further order of this Court, so as to provide an interim form of adequate protection to Aztec and to other lienholders. In addition, the tentative ruling is to direct Debtor no later than 2/25/20 to serve all lienholders with notice of a continued hearing on the cash collateral motions, concurrent with the continued status conference set forth below. In addition, the tentative ruling is to direct Debtor no later than 2/25/20 to provide Aztec and all other lienholders with access to the properties for any inspection/appraisal they wish to conduct (or, alternatively, to schedule by 2/25/20 an inspection/appraisal after 2/25/20 at a time that is convenient for the lienholders).

#### (b) January MOR (dkt. 73)

This MOR (dkt.73, p.17) shows general liability insurance due to expire/only paid through 1/25/20. Has that insurance been extended? Are the MORs up to date?

#### (c) Prosecution of this case

As set forth above, Debtor's prosecution of this case appears to be

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#### **CONT...** Candelario Lora

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inadequate. Cash collateral motions are known as "first day" motions; but Debtor's cash collateral motions have been filed belatedly, served incorrectly (despite this Court's prior direction), and presented in a confusing manner (it is ambiguous whether the second motion supersedes or is in addition to the first motion). Similarly troubling, Debtor's application to employ special counsel has been filed belatedly, and neither that application nor Debtor's status report adequately address the cost/benefit analysis about pursuing that litigation and selling the 69th Way property or otherwise addressing possible methods to stop the running of high interest rates that could wipe out any value in this bankruptcy estate. What assurances can Debtor and Debtor's counsel provide parties in interest and this Court that this case will be adequately prosecuted?

- (2) Deadlines/dates. This case was filed on 11/11/19.
  - (a) Bar date: 3/16/20 (order, dkt. 39, timely served, dkt.42).
  - (b) Procedures order: dkt. 8 (timely served, dkt. 29)
  - (c) Plan/Disclosure Statement\*: N/A
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# **Tentative Ruling for 2/18/20:**

This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 1/14/20:

<u>Appearances required</u> by counsel for the debtor but telephonic appearances are encouraged <u>if</u> advance arrangements are made (see www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

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#### **CONT...** Candelario Lora

Chapter 11

### (1) Current issues

# (a) Cash collateral motion (dkt.31&32)

Grant in part and deny in part on an interim basis, as set forth in calendar no. 2, 1/14/20 at 1:00 p.m.

### (b) Status report

At the hearing on 12/17/19 this Court orally directed Debtor's counsel to file a status report no later than 12/31/19. As of the drafting of this tentative ruling, no status report has been filed. Why not?

(c) Amended November Monthly Operating Report ("MOR," dkt. 43)

# (i) State court suit

The MOR reflects a \$5,000 payment to James A. Judge, Esq. related to a civil law suit. Dkt. 43, p.9. Debtor also states that "a civil law suite against Aztec Financial (Secured Creditor) is pending." *Id.* at p.30.

The docket does not reflect any application to employ Mr. Judge as special counsel. In addition, there is no disclosure whether this payment was on account of prepetition or postpetition fees/costs/other charges. Should this Court issue an order directing Mr. Judge to show cause why he should not disgorge that payment and/or why he, Debtor, and/or Debtor's bankruptcy counsel should not have a remedy imposed for expending assets of this bankruptcy estate in violation of the Bankruptcy Code?

#### (ii) Car insurance

The MOR reflects that Debtor's car insurance is due to expire on 12/31/19. *Id.* at p.26. Has Debtor obtained replacement insurance?

- (2) Deadlines/dates. This case was filed on 11/11/19.
  - (a) Bar date: 3/16/20 (order, dkt. 39, timely served, dkt.42).
  - (b) Procedures order: dkt. 8 (timely served, dkt. 29)
  - (c) Plan/Disclosure Statement\*: N/A
  - (d) Continued status conference: 2/18/20 at 1:00 p.m., *brief* status report due 2/4/20.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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#### **CONT...** Candelario Lora

Chapter 11

www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 12/17/19:

<u>Appearances required</u> by counsel for the debtor and by the debtor(s) themselves.

### (1) Current issues

(a) Cash collateral motion (dkt.31-33)

Debtor has self-calendared this motion for 1/14/20 at 1:00 p.m. That is over a month after the petition date.

What is Debtor doing with the cash meanwhile? There may be no good answer: either Debtor is using the cash, in violation of 11 U.S.C. 363(c), or Debtor is not using the cash to pay essential expenses, in violation of Debtor's duties to manage the estate and pay utility bills and other ordinary and necessary expenses in a timely manner (see 11 U.S.C. 1107-08 and 28 U.S.C. 959(b).

Why did Debtor not use the posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) to have this matter heard on 14 days' notice, or alternatively apply for an order shortening time if the matter needed to be heard before that 14 day period?

- (2) <u>Deadlines/dates</u>. This case was filed on 11/11/19.
  - (a) <u>Bar date</u>: 3/16/20 (DO NOT SERVE notice yet <u>court will prepare</u> <u>an order after the status conference</u>).
  - (b) Procedures order: dkt. 8 (timely served, dkt. 29)
  - (c) Plan/Disclosure Statement\*: N/A
  - (d) <u>Continued status conference</u>: 1/14/20 at 1:00 p.m., *brief* status report due 12/31/19.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at

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### **CONT...** Candelario Lora

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www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# **Party Information**

### **Debtor(s):**

Candelario Lora

Represented By Onyinye N Anyama

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2:19-17410 South Street Brentwood, LLC

Chapter 11

#19.00

Cont'd hrg re: Motion for relief from stay [RP] fr. 9/17/19, 11/5/19, 12/2/19, 12/17/19, 1/28/20

**GOLDMAN SACHS BANK USA** 

VS

**DEBTOR** 

Docket 25

# **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Please see tentative ruling for status conference (calendar no. 20, 3/31/20 at 1:00 p.m.).

# **Party Information**

### **Debtor(s):**

South Street Brentwood, LLC Represented By

Michael Jay Berger

Movant(s):

Goldman Sachs Bank USA Represented By

Daniel H Slate

Anthony J Napolitano

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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2:19-17410 South Street Brentwood, LLC

Chapter 11

#20.00

Cont'd Status Conference re: Chapter 11 Case fr. 7/30/19, 10/29/19, 11/5/19, 12/2/19, 12/17/19, 1/28/20

Docket 4

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Take this matter off calendar in view of stipulated dismissal order (dkt. 101). Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

### (1) Current issues

(a) Goldman Sachs' Motion for relief from stay (dkt. 25-28, the "R/S Motion"), Debtor's opposition (dkt. 31), Goldman Sachs' reply (dkt. 32, 33), adequate protection order (dkt. 39), Debtor's supplemental briefs (dkt. 47,57), Goldman Sachs' supplemental briefs (dkt. 49-51, 67-68), orders (dkt. 72, 79), status report (dkt.83), order granting R/S Motion (dkt. 95, ("R/S Order")

It appears this matter is mooted by the dismissal of this case. The tentative ruling is not to issue any further relief on this matter.

- (2) Deadlines/dates. This case was filed on 6/25/19.
  - (a) Bar date: 10/15/19 (dkt. 21; timely served, dkt. 23)
  - (b) Procedures order: dkt. 3 (timely served, dkt. 11)
  - (c) Plan/Disclosure Statement\*: N/A

# United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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### **CONT...** South Street Brentwood, LLC

Chapter 11

(d) Continued status conference: N/A

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# [PRIOR TENTATIVE RULINGS OMITTED]

#### **Party Information**

#### **Debtor(s):**

South Street Brentwood, LLC

Represented By Michael Jay Berger

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<u>1:00 PM</u>

**2:16-12679** Michael R Totaro

Chapter 7

#21.00

Cont'd Status Conference re: Post Confirmation fr. 4/12/16, 04/26/16, 05/17/16, 8/2/16, 9/6/16, 11/8/16, 11/29/16, 1/17/17, 1/31/17, 03/21/17, 4/11/17, 06/13/17, 9/19/17, 11/14/17, 02/13/18, 7/10/18, 9/18/18, 12/18/18, 6/11/19, 10/15/19, 12/10/19

Docket 271

\*\*\* VACATED \*\*\* REASON: Case converted to chapter 7 (dkt. 353)

**Tentative Ruling:** 

**Party Information** 

**Debtor(s):** 

Michael R Totaro Represented By

Martina A Slocomb Candice Candice Bryner

Trustee(s):

Brad D Krasnoff (TR) Pro Se

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2:19-18316 Ashley Susan Aarons

Chapter 11

#22.00 Hrg re: Motion to Allow Late Filed Claim or, in the Alternative

to Reclassify and Allow Scheduled Claim 31

Docket 152

\*\*\* VACATED \*\*\* REASON: Cont'd to 4/7/20 [dkt. 189]

**Tentative Ruling:** 

- NONE LISTED -

# **Party Information**

**Debtor(s):** 

Ashley Susan Aarons

Represented By Michael R Totaro

Judge Neil Bason, Presiding Courtroom 1545 Calendar

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1:00 PM

2:19-18316 Ashley Susan Aarons

Chapter 11

#23.00 Hrg re: Motion to Allow Late Filed Claim or, in the Alternative

to Reclassify and Allow Scheduled Claim 29

Docket 150

# **Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 26, 3/31/20 at 1:00 p.m.).

# **Party Information**

### **Debtor(s):**

Ashley Susan Aarons

Represented By Michael R Totaro

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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2:19-18316 Ashley Susan Aarons

Chapter 11

#24.00 Cont'd hrg re: U.S. Trustee's Motion to Dismiss or Convert Case fr. 10/15/19, 10/29/19, 12/10/19, 1/14/20

Docket 65

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (Calendar no. 26, 3/31/20 at 1:00 p.m.).

### Tentative Ruling for 1/14/20:

Please see the tentative ruling in the status conference (cal. no. 4, 1/14/20 at 1:00 p.m.).

### Tentative Ruling for 12/10/19:

Please see the tentative ruling in the status conference (cal. no. 19, 12/10/19 at 1:00 p.m.).

### Tentative Ruling for 10/29/19:

Please see the tentative ruling in the status conference (cal. no. 10, 10/29/19 at 1:00 p.m.).

# Tentative Ruling for 10/15/19:

Please see the tentative ruling in the status conference (cal. no. 3, 10/15/19 at 1:00 p.m.).

# **Party Information**

#### **Debtor(s):**

Ashley Susan Aarons Represented By

Michael R Totaro

# Movant(s):

3/31/2020 9:03:24 AM

United States Trustee (LA)

Represented By

Dare Law

Alvin Mar

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**CONT...** Ashley Susan Aarons

**Chapter 11** 

Ron Maroko

Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

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2:19-18316 Ashley Susan Aarons

Chapter 11

#25.00

Cont'd hrg re: Motion to Determine the Validity and Enforceability of Provisions of Promissory Note and Deed of Trust Held by Secured Creditor Patch of Land fr. 12/10/19, 1/14/20, 2/18/20

Docket 125

\*\*\* VACATED \*\*\* REASON: Cont'd to May 5, 2020 at 1:00 p.m. [dkt.

164]

**Tentative Ruling:** 

- NONE LISTED -

# **Party Information**

**Debtor(s):** 

Ashley Susan Aarons

Represented By Michael R Totaro

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2:19-18316 Ashley Susan Aarons

Chapter 11

#26.00 Cont'd Status Conference re: Chapter 11 Case fr. 8/20/19, 9/24/19, 10/4/19, 10/15/19, 10/29/19, 11/12/19, 12/10/19, 1/14/20

Docket 1

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Continue to 4/7/20 at 1:00 p.m., concurrent with other matters. <u>Appearances</u> are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Current issues

(a) Motion of the U.S. Trustee ("UST") to dismiss (dkt. 65, "MTD"), debtor's opposition (dkt. 86), UST's reply (dkt. 168, 170), debtor's response (dkt. 179), debtor's status report (dkt. 180)

Continue to the same date and time as the continued status conference (see below), with a deadline of 4/6/20 at noon for Debtor to file amended bankruptcy schedules I & J, including all continuation sheets for line 8.a of schedule I.

At the continued status conference, the parties should be prepared to address whether this Court should appoint a chapter 11 trustee, convert this case, dismiss this case, or order other relief based on the UST's MTD and any argument at the hearing, based on the matters addressed in the MTD and supplement, Debtor's lack of progress noted in the relief from stay orders (dkt. 173, 174), Debtor's hiring of a claims adjuster on or about 1/7/20 (dkt.

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#### **CONT...** Ashley Susan Aarons

Chapter 11

167, p.3, para. 11) without authorization of this Court, and Debtor's apparent arrangement for the claims adjuster to hire counsel to represent the bankruptcy estate without authorization of this Court.

(b) Motion to allow Claim 29 filed by Shiv Raj Gupta and Saroj Gupta ("Claimants") (dkt. 150), debtor's opposition (dkt. 178), claimants' reply (dkt. 188)

Continue to the same date and time as the continued status conference (see below). The tentative ruling is to grant the motion on the terms set forth in Claimants' reply (dkt. 188): namely, that the late-filed claim is allowed as a general unsecured claim in the amount of \$284,664.66 without prejudice to Debtor's right of object to any dollar amount that exceeds Debtor's admitted (scheduled) amount of \$250,000.

- (2) <u>Deadlines/dates</u>. This case was filed on 7/17/19.
  - (a) Bar date: 12/20/19, dkt. 116 (timely served, dkt. 120)
  - (b) Procedures order: dkt.9 (timely served, dkt.18)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 4/7/20 at 1:00 p.m., concurrent with other matters. No status report is required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# **Tentative Ruling for 1/14/20:**

Continue all matters in this case that are on calendar today to the same date and time as the continued status conference (see below), based on Debtor's status report (dkt.142) and the other filed documents and records in this case. <u>Appearances are not required</u> on 1/14/20.

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# **CONT...** Ashley Susan Aarons

Chapter 11

(1) Current issues

This Court has no issues to raise sua sponte at this time.

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: 12/20/19, dkt. 116 (timely served, dkt. 120)
  - (b) Procedures order: dkt.9 (timely served, dkt.18)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m., *brief* status report due 3/17/20
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 12/10/19:

Appearances are not required on 12/10/19.

# (1) Current issues

(a) <u>Totaro & Shanahan's (the "Firm") 1st interim fee application (dkt. 111) (the "Fee Application"); UST's objection (dkt. 114); Patch of Land Lending, LLC's ("Patch") limited objection (dkt. 115); the Firm's reply (dkt. 121), Firm's supplemental declaration (dkt. 128)</u>

In view of the Firm's supplemental declaration and the absence of any supplemental responses from the UST or Patch, the tentative ruling is to approve fees of \$54,010 and expenses of \$0.00 on an interim basis, for a total award of \$54,010, but no payment may be made absent further order of this Court.

<u>Proposed order</u>: The Firm is directed to lodge a proposed order via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

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### **CONT...** Ashley Susan Aarons

Chapter 11

(b) Motion of the U.S. Trustee ("UST") to dismiss (dkt. 65), debtor's opposition (dkt. 86), no reply is on file

Continue to be concurrent with the continued status conference (see below).

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: 12/20/19, dkt. 116 (timely served, dkt. 120)
  - (b) Procedures order: dkt.9 (timely served, dkt.18)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) Continued status conference: 1/14/20 at 1:00 p.m.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 11/12/19:

Appearances are not required on 11/12/19.

#### (1) Current issues

(a) <u>Totaro & Shanahan's (the "Firm") 1st interim fee application (dkt. 111) (the "Fee Application"); UST's objection (dkt. 114); Patch of Land Lending, LLC's ("Patch") limited objection (dkt. 115); the Firm's reply (dkt. 121)</u>

Continue to the same date and time as the continued status conference stated below. Set **11/19/19** as the deadline for the Firm to submit any supplement in support of the Application and **11/26/19** as the deadline for any supplemental responses from the UST and Patch.

(2) Deadlines/dates. This case was filed on 7/17/19.

(a) Bar date: 12/20/19, dkt. 116 (timely served, dkt. 120)

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### CONT...

#### **Ashley Susan Aarons**

Chapter 11

- (b) <u>Procedures order</u>: dkt.9 (timely served, dkt.18)
- (c) Plan/Disclosure Statement\*: TBD
- (d) <u>Continued status conference</u>: 12/10/19 at 1:00 p.m.; *brief* status report due 11/22/19

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 10/29/19:

<u>Appearances required</u> but telephonic appearances are encouraged <u>if</u> advance arrangements are made (*see* www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

#### (1) Current issues

(a) Motion of the U.S. Trustee ("UST") to dismiss (dkt. 65), debtor's opposition (dkt. 86), no reply is on file

There is no tentative ruling, but Debtor is directed to address the thousands of dollars of unauthorized payments to "Independent Contractor[s]" Ofir Engel and L. Napolitano, "McCarthy Construction," and cash withdrawals, as well as the other issues raised by the UST. Debtor is also directed to address what progress, if any, has been made on insurance claims, AirBnB arrangements, refinancing or selling the Bel Air and Sweetzer properties, and other aspects of this bankruptcy case.

(b) Application to employ Totaro & Shanahan (the "Firm") (dkt. 63) (the "Employment Application"), Statement of disinterestedness (dkt. 100), UST Objection (dkt. 90), the Firm's errata (dkt. 97)

The tentative ruling is to grant the Employment Application, subject to any objection from the UST.

<u>Proposed orders</u>: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and

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### **CONT...** Ashley Susan Aarons

Chapter 11

attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1) (B).

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: TBD
  - (b) Procedures order: dkt.9 (timely served, dkt.18)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 12/10/19 at 1:00 p.m.; no written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 10/15/19:

<u>Appearances required</u> but telephonic appearances are encouraged <u>if</u> advance arrangements are made (*see* www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

### (1) Current issues

(a) <u>UST's motion to dismiss (dkt. 65)</u>, <u>debtor's opposition (dkt. 86)</u>, <u>no</u> reply is on file

There is no tentative ruling. The parties should be prepared to address whether debtor has cured all outstanding compliance issues, and whether Debtor's second corrected opposition continues to have error(s) in calculating projected cash flow. That opposition lists net income before personal expenses for "Oct-19" and "Nov-19" as -5,850.00, but then after personal expenses of \$1,751.00 for each month it lists "excess income" of \$34,900.00. Dkt.94, Ex.1, at PDF pp.8-9. If the spreadsheet is wrong about those numbers, can creditors and this Court rely on the rest of Debtor's projections?

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### **CONT...** Ashley Susan Aarons

Chapter 11

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: TBD
  - (b) Plan/Disclosure Statement\*: TBD
  - (c) <u>Continued status conference</u>: 12/10/19 at 1:00 p.m.; no written status report required.
  - \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 10/4/19:

Appearances required.

### (1) Current issues

(a) Motion for authority to obtain post-petition financing (dkt. 75, 76, 77, 80, 81, 82, 83, 84) (the "Finance Motion"); Alliance Portfolio/Private Equity Finance, Inc.'s Opposition (dkt. 91)

There is no tentative ruling. It appears no reply deadline was set, so debtor's reply will be allowed orally at the hearing.

(b) Motion of Alliance for Relief From Automatic Stay (dkt. 40)

There is no tentative ruling. The outcome of this motion is subject to this Court's decision whether to grant or deny the Finance Motion.

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: TBD
  - (b) Plan/Disclosure Statement\*: TBD
  - (c) Continued status conference: 10/15/19 at 1:00 p.m to be heard concurrently with other matters on calendar. No written status report required.

\*Warning: special procedures apply (see order setting initial status

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CONT... Ashley Susan Aarons conference).

Chapter 11

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

### Tentative Ruling for 9/24/19:

<u>Appearances required</u>. The Court has reviewed the Debtor's status report (dkt. 69).

#### (1) Current issues

In addition to addressing the general status of this case, the following issues will be addressed.

#### (a) Motion of Alliance for Relief From Automatic Stay (dkt. 40)

There is no tentative ruling. The parties should be prepared to advise this Court on whether they will agree to an adequate protection order and the proposed \$50,000 loan from Complete Business Solutions Group ("Complete") (dkt.69, p.2:21-25). The parties also should be prepared to address whether shortened time or other special procedures are requested regarding any proposed lending. See 11 U.S.C. 364; Rules 4001(c) & 9006(c)(2) (Fed. R. Bankr. P.).

# (b) <u>Contemplated contract with Majestic Ventures LLC dba</u> VacationHomes365.com ("Consultant") re marketing (Airbnb etc.)

Debtor is contemplating a contract with Consultant for marketing services. Dkt.69, Ex.2. As that contract points out (*id.*, sec.7.2, p.44), Debtor is responsible for complying with legal obligations regarding short term rentals, and associated costs, including local taxes.

The parties should be prepared to address whether Consultant is a "professional" within the meaning of 11 U.S.C. 327; whether approval of the contract with Consultant is required under that section or section 363(b); and whether shortened time or other special procedures are requested regarding any proposed agreement with Consultant. See 11 U.S.C. 327, 363(b); Rules 2002(a)(2) & 9006(c)(2) (Fed. R. Bankr. P.).

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### **CONT...** Ashley Susan Aarons

Chapter 11

(c) Termination of prior real estate agent

Debtor reports (dkt. 69, para.3) that the previously authorized real estate agent has agreed to cancel the listing. Is that in writing? Will Debtor need any order related to that cancellation/termination? What assurance is there that this prior agent will not seek some sort of compensation?

- (2) Deadlines/dates. This case was filed on 7/17/19.
  - (a) Bar date: TBD
  - (b) Plan/Disclosure Statement\*: TBD
  - (c) <u>Continued status conference</u>: 10/15/19 at 1:00 p.m to be heard concurrently with other matters on calendar. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# **Tentative Ruling for 9/10/19:**

Appearances required.

#### (1) Current issues

In addition to addressing the general status of this case, the following issues will be addressed.

- (a) Motion of Alliance for Relief From Automatic Stay (dkt. 40)
- Grant, as set forth in calendar no. 3 (9/10/19 at 1:00 p.m.).
- (b) Employment Motion for The Turoci Firm (dkt. 23, 28)

Deny, as set forth in calendar no. 4 (9/10/19 at 1:00 p.m.). The parties should be prepared to address whether Debtor has arranged for alternate counsel.

(2) <u>Deadlines/dates</u>. This case was filed on 7/17/19.

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Los Angeles Judge Neil Bason, Presiding

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# Ashley Susan Aarons

Chapter 11

- (a) Bar date: TBD
- (b) Plan/Disclosure Statement\*: TBD
- (c) <u>Continued status conference</u>: 9/24/19 at 1:00 p.m. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 8/20/19:

Appearances required by counsel for the debtor and by debtor herself.

### (1) Current issues

#### (a) Airbnb

Debtor's budget motion (dkt. 37, Ex.A, p.2) reveals that, althoug the Sweetzer property is "listed to be sold," meanwhile "Debtor intends to rent [that property] as an Airbnb." The tentative ruling is that this is a transaction out of the ordinary course, which requires notice, an opportunity for a hearing, and approval by this Court. 11 U.S.C. 363(b). Has Debtor already acted on this intent, without such approval?

In addition, this Court is concerned about (i) whether Airbnb rental would be in compliance with any local permitting and zoning requirements and is otherwise permissible, (ii) whether that proposed use might expose the bankruptcy estate to liabilities, (iii) whether there is adequate insurance for that use of the property, and (iv) whether the proposed sale of the property is consistent with any agreement with Airbnb.

#### (b) Real estate agent.

The employment application (dkt. 26, p.4:1-4) states that Agent has agreed to disclose to Debtor [*i.e.*, only to Debtor? how about disclosure to creditors, the US Trustee, and this Court?] any agency relationship Agent has with other parties ("Third Parties")

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### **CONT...** Ashley Susan Aarons

Chapter 11

that may be part of a real estate transaction for the sale of the Real Property [*i.e.*, dual agency? that is prohibited by the posted Procedures of Judge Bason (available at www.cacb.uscourts.gov)] as well as the amount of any compensation Agent receives from Agent's relationship with any Third Parties [*i.e.*, splitting the commission with a cooperating agent from a different real estate agency? or something else?].

What does the quoted text mean? This Court's questions are set forth in the emphasized, bracketed text above.

- (2) <u>Deadlines/dates</u>. This case was filed on 7/17/19.
  - (a) Bar date: TBD
  - (b) Plan/Disclosure Statement\*: TBD
  - (c) Continued status conference: 9/24/19 at 1:00 p.m., *brief* status report due 9/17/19.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Ashley Susan Aarons

Represented By
Michael R Totaro

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1:00 PM

2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#27.00

Hrg re: Application for Compensation and Reimbursement of Expenses of Grobstein Teeple LLP as Accountants for the Chapter 11 Debtor

Docket 545

# **Tentative Ruling:**

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

# **Party Information**

# **Debtor(s):**

Schaefer Ambulance Service, Inc

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<u>1:00 PM</u>

2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#28.00

Hrg re: Application for Payment for Interim Fees of Ballard, Rosenberg, Golper & Savitt, LLP for Ballard Rosenberg Golper & Savitt, Special Counsel

Docket 548

### **Tentative Ruling:**

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

# **Party Information**

# **Debtor(s):**

Schaefer Ambulance Service, Inc

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1:00 PM

2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#29.00

Hrg re: Third Application of Margulies Faith LLP, Bankruptcy Counsel for Debtor and Debtor-In-Possession, for Interim Allowance and Payment of Compensation and Reimbursement of Expenses for Period September 1, 2019 through February 29, 2020

Docket 549

# **Tentative Ruling:**

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

### **Party Information**

#### **Debtor(s):**

Schaefer Ambulance Service, Inc

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1:00 PM

2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#30.00

Hrg re: First and Final Application by Patient Care Ombudsman for Allowance of Fees for the Period April 12, 2019 through June 8, 2019

Docket 413

### **Tentative Ruling:**

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

# **Party Information**

# **Debtor(s):**

Schaefer Ambulance Service, Inc

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2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#31.00 Cont'd hrg re: Amended Motion for Order Authorizing Surcharge

of Collateral of TCF Equipment Finance and Directing

Payment to Debtor

fr. 1/28/20

Docket 486

### **Tentative Ruling:**

# Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

# **Tentative Ruling for 1/28/20:**

Please see the tentative ruling for the status conference (calendar no. 21, 1/28/20 at 1:00 p.m.)

# **Party Information**

### **Debtor(s):**

Schaefer Ambulance Service, Inc Represented By

Craig G Margulies Monserrat Morales

#### Movant(s):

Schaefer Ambulance Service, Inc Represented By

Craig G Margulies Craig G Margulies Craig G Margulies Monserrat Morales Monserrat Morales Monserrat Morales

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2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#32.00 Cont'd hrg re: TCF Equipment Finance, Inc's Motion for Allowance

and Payment of \$22,000 Administrative Expense Claim

fr. 1/28/20

Docket 475

### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 33, 3/31/20 at 1:00 p.m.)

# Tentative Ruling for 1/28/20:

Please see the tentative ruling for the status conference (calendar no. 21, 1/28/20 at 1:00 p.m.)

# **Party Information**

#### **Debtor(s):**

Schaefer Ambulance Service, Inc Represented By

Craig G Margulies Monserrat Morales

### Movant(s):

TCF EQUIPMENT FINANCE, a Represented By

Raffi Khatchadourian Christopher D Crowell

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2:19-11809 Schaefer Ambulance Service, Inc

Chapter 11

#33.00 Cont'd Status Conference re: Chapter 11 Case fr. 02/28/19, 03/12/19, 03/26/19, 04/09/19, 5/21/19, 05/21/19, 06/04/19, 6/18/19, 7/30/19; 08/06/19, 8/20/19, 9/24/19, 10/15/19, 11/5/19, 12/10/19, 12/17/19, 1/14/20, 1/28/20, 02/18/20, 3/10/20

Docket 1

# **Tentative Ruling:**

# Revised Tentative Ruling for 3/31/20:

<u>Appearances are not required</u>. If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically.

Pursuant to Judge Bason's COVID-19 Procedures, <u>ONLY TELEPHONIC</u>

<u>APPEARANCES WILL BE PERMITTED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements for any appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Current issues

(a) <u>TCF Equipment Finance, Inc.'s Motion For Allowance And Payment Of Administrative Expense Claim (dkt. 475), Debtor's Amended Motion For Order Authorizing Surcharge Of Collateral (dkt. 486), and Joint Status Report (dkt. 567)</u>

The tentative ruling is to continue both motions to the same date and time as the continued status conference as set forth below, as requested by the parties (see dkt. 567, p.3:9-12), to ensure that the parties document and file their agreement with this Court, with the understanding that the motions will come off calendar if an order resolving the motions is issued prior to the continued hearing.

(b) Dr. Timonth J. Stacy DNP, ACNP-BC First and Final Fee

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### **CONT...** Schaefer Ambulance Service, Inc

Chapter 11

Application (dkt. 413), Notice of Hearing (dkt. 550), and Leslie McNeal's declaration in support (dkt. 556)

Allow Dr. Stacy \$7,787.50 in fees, but authorize payment of \$6,000.00 in fees, per the Stipulation For Order Directing The Appointment Of A Patient Care Ombudsman (dkt. 147, order dkt. 149).

*Proposed order:* Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(c) <u>Grobstein Teeple, LLP Amended Second Interim Fee Application</u> (dkt. 545), Notice of Hearing (dkt. 550), and Leslie McNeal's declaration in support (dkt. 556)

Allow Grobstein Teeple, LLP \$82,498.50 in fees, and \$63.43 in expenses, for a total of \$82,561.93.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(d) <u>Ballard</u>, <u>Rosenberg</u>, <u>Golpert & Savitt</u>, <u>LLP Interim Fee Application</u> (dkt. 548, amended dkt.569), <u>Notice of Hearing (dkt. 550, amended dkt.571)</u>, and <u>Leslie McNeal's declaration in support (dkt. 556, amended dkt.570)</u>

Allow Ballard, Rosenberg, Golpert & Savitt, LLP \$8,497.00 in fees, and authorize payment of \$2,460.00 from the retainer and the unpaid balance of \$6,037.00 from the estate.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

(e) Margulies Faith, LLP Third Interim Fee Application (dkt. 549), Notice of Hearing (dkt. 550), Errata Re Third Interim Fee Application (dkt. 554), and Leslie McNeal's declaration in support (dkt. 556)

Allow Margulies Faith, LLP \$395,042.00 in fees, and \$5,946.80 in expenses, for a total of \$400,988.80.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date. See LBR 9021-1(b)(1)(B).

- (2) <u>Deadlines/dates</u>. This case was filed on 2/20/19.
  - (a) Bar date: 6/17/19 (timely served, dkt. 129).
  - (b) Plan/Disclosure Statement (dkt. 562, 563)\*: combined hearing on plan and disclosure statement set for 4/21/20 at 1:00 p.m. (see

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# **CONT...** Schaefer Ambulance Service, Inc

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dkt. 559).

- (c) <u>Continued status conference</u>: 4/21/20 at 1:00 p.m. No written status report required.
- \*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 3/10/20:

Appearances are not required on 3/10/20.

### (1) Current issues

(a) <u>Debtor's Amended Plan (dkt. 532) and Amended Disclosure</u> Statement (dkt. 533)

The tentative ruling is to approve the disclosure statement on an interim basis and direct Debtor no later than 3/12/20 to lodge a proposed order, substantially in the form of the order posted on Judge Bason's portion of the Court's website (www.cacb.uscourts.gov), authorizing the service of the voting package and setting a combined hearing on final approval of the Disclosure Statement and confirmation of the Plan for 4/21/20 at 1:00 p.m.

- (2) Deadlines/dates. This case was filed on 2/20/19.
  - (a) <u>Bar date</u>: 6/17/19 (timely served, dkt. 129).
  - (b) Plan/Disclosure Statement\*: See above
  - (c) Continued status conference: 3/31/20 at 1:00 pm. No written status report required.

\*Warning: special procedures apply (see order setting initial status conference).

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If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

# [PRIOR TENTATIVE RULINGS OMITTED]

# **Party Information**

### **Debtor(s):**

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# 2:20-11675 Korean Western Presbyterian Church of Los Angeles

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#34.00 Hrg re: Motion for relief from stay [NA]

NATHANAEL YUN AND JONG SUK CHOI

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**DEBTOR** 

Docket 79

# **Tentative Ruling:**

# Revised Tentative Ruling for 3/31/20:

Grant in part, as set forth below. <u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, <u>telephonic appearances are REQUIRED until further notice</u>.

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

# (1) Terminology, and scope of discussion

One terminology issue has to do with Debtor's corporate structure. Debtor is a California nonprofit religious corporation. This Court understands that Debtor has no "equity interest holders" per se. But in discussing the scope of the automatic stay it is helpful to distinguish between persons who might be in a debtor-creditor relationship with Debtor (e.g., arising from LA Open Door's lease of Debtor's property) and persons who assert the sort of control typically exercised by equity interest holders. The following discussion sometimes refers to the latter as "equity."

Another issue of terminology is the distinction between Debtor as an entity and the factions that seek to control Debtor and its property. There appear to be essentially two factions in the present disputes: one led by Rev. Joo Mo Ko (the "Ko Faction") and another consisting of Rev. Jong Suk Choi aka Olaf Choi, the LA Open Door Presbyterian Church ("LA Open Door"), and

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The Western Presbytery of the Hapdong ("Hapdong") (collectively, the "Choi Faction"). This tentative ruling will attempt to distinguish among each of these two factions and Debtor itself.

On a related issue, the factions' governance dispute appears to include not just control of Debtor itself but also which church organization governs Debtor's structure. These disputes include whether Debtor and LA Open Door did or did not merge, and whether the local church (*i.e.*, Debtor, either as a separate entity or merged with LA Open Door) is affiliated with/part of the LA Presbytery of the World Korean Presbyteryan Church ("World Church") or Hapdong or both. *See* dkt.71, pp.3:13-4:4, 4:25-5:16, 6:13-9:24.

One more preliminary issue is that this tentative ruling covers two motions at once. Both motions deal with the applicability of, and relief from, the automatic stay of 11 U.S.C. 362(a). The Ko Faction seeks an order stating that the automatic stay applies to the State Court litigation (dkt. 71, the "Stay Motion"). Conversely, the Choi Faction disputes that any stay applies but, to the extent this Court determines that the automatic stay does apply, requests that this Court grant them relief from the automatic stay to continue with that litigation (dkt. 79, 80, 81, the "R/S Motion").

# (2) Notice

It is unclear whether service has been accomplished in accordance with Rules 4001(a)(1) (Fed. R. Bankr. P.), or if there are sufficient grounds for *ex parte* relief under Rule 4001(a)(2). The parties are directed to address those issues. Presuming for purposes of discussion that those issues are adequately resolved, the tentative ruling on the other issues is as follows.

#### (3) The automatic stay does apply

This is a more thorny issue than first appears. And arguably it is not necessary to determine whether the automatic stay applies, because as set forth below the tentative ruling is that there is "cause" (11 U.S.C. 362(d)(1)) to grant relief from any stay that does exist.

But, as set forth later in this discussion, the tentative ruling is to modify but <u>not terminate</u> the automatic stay, so it makes a difference if there is or is not any automatic stay to begin with. The tentative ruling is that, although several aspects of the automatic stay do not apply, one does apply.

(a) 362(a)(1)

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Section 362(a)(1) operates as a stay of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding <u>against</u> the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim <u>against</u> the debtor that arose before the commencement of the case under this title." 11 U.S.C. 362(d)(1) (emphasis added). No stay exists under section 362(a)(1) because the subject litigation does not include any claims, counterclaims, or other legal actions <u>against</u> Debtor. See Parker v. Bain, 68 F.3d 1131 (9th Cir. 1995).

The Ko Faction asserts that section 362(a)(1) applies because the claims by Debtor (or, more precisely, by the Ko Faction purporting to act for Debtor) "have the same effect as if they had been brought by the Defendants instead" (*i.e.*, by the Choi Faction) and therefore should be characterized as "effectively causes of action against the Debtor." Dkt.93, p.10:9-10 (emphasis added). There is no authority cited for that proposition. To the contrary, it is well established that the act of defending against claims brought in the name of a debtor is not stayed. See, e.g., In re Merrick, 175 B.R 333, 338 (9th Cir. BAP 1994). The tentative ruling is that the automatic stay of section 362(a)(1) does not apply.

# (b) 362(a)(3)

Section 362(a)(3) operates as a stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(d)(3).

# (i) Property "of" or "from" the estate

Although claims held <u>by</u> a debtor are property of the bankruptcy estate, claims about who <u>controls</u> a debtor are not "property of the estate." Any "possession" of property that Debtor owned as of the petition date stays with Debtor, regardless who controls Debtor. The Ko Faction's arguments to the contrary (*e.g.*, dkt.93, pp.10:25-6:12) are not persuasive.

#### (ii) Acts to exercise "control" over property of the estate

The Ko Faction's alternative argument is more persuasive. In this case the gravamen of the parties' disputes is who has control over Debtor's real property, alleged to be worth roughly \$17 to \$25 million or more (dkt.71, p.4:9; dkt.84, p.5:19-21). There are interrelated disputes about whether each faction is entitled to control Debtor or is merely a creditor or other type of interested party - *e.g.*, whether LA Open Door is merely a lessee, which is or

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is not current on rent, or if LA Open Door merged with Debtor and the Choi Faction now controls Debtor.

The issues involve not merely theoretical or future control. The issues include who has current control over physical access to the real property for church services, who can examine books and records, who can use Debtor's name, who can speak for Debtor, who can make agreements for Debtor, who has signing authority over its bank accounts, etc.

In this situation the tentative ruling is that the stay does apply, because the disputes over governance are so intertwined with the control of Debtor's property that they constitute acts "to exercise control over property of the estate" within the meaning of 11 U.S.C. 362(a)(3) (emphasis added). See, e.g., dkt.71, p.16:20-26; Allentown Ambassadors, 361 B.R. 422, 435-40 & nn.34-40 (Bankr. E.D. Pa. 2007) (extensive review of cases, concluding that whether section 362(a)(3) applies depends on "(1) the nexus between the conduct at issue and the property interests of the bankruptcy estate, (2) the degree of impact on the bankruptcy estate, and (3) the competing legal interests of the non-debtor parties") (footnotes omitted).

As the Ko Faction explains:

The Complaint [in the State Court action that is the main subject of the motions regarding the automatic stay] thus alleges that the current state of affairs is that the Defendants are exerting control over the Property, to the exclusion of the Debtor. The Debtor seeks a declaration by the Court as to the respective rights of the parties. The relief sought in the Complaint is thus a zero sum game; if the Debtor fails to obtain this relief, Defendants will continue to exert control over the Property to the exclusion of the Debtor. If the Debtor prevails, the opposite result will occur. [Dkt.71, p.8:17-22 (emphasis added)]

The same exclusive control applies not just to Debtor's real property but also to every other type of property: Debtor's name, bank account, goodwill, etc.

The Choi Faction cites authority that, at least as a general proposition, governance disputes are not stayed by section 362(a)(3). Dkt.84, pp.18:26-20:10. But the tentative ruling is that the cited authorities are distinguishable.

The decision on which the Choi Faction principally relies is *In re Am. Media Distribs.*, LLC, 216 B.R. 486 (Bankr. E.D. N.Y. 1998). But that decision

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notes that there was "little or no explanation as to why the automatic stay would apply" and the principal focus was only on the "distraction" that the dispute would cause. *Id.* at 489.

Another decision cited by the Choi Faction did not involve the automatic stay - it never even cites section 362. Rather, it involved whether to enjoin stockholders from exercising their regular voting rights to elect directors, which is not at issue in this case. See In re Johns-Manville Corp., 801 F.2d 60, 64-69 (2d Cir. 1986).

The last decision cited by the Choi Faction involved the voting of pledged shares, but there is no indication that such voting was anything beyond the conventional application of nonbankruptcy contract and voting rights. *In re Marvel Ent. Group,* 209 B.R. 832, 838-40 (D. Del. 1997). In fact, *Marvel* distinguishes contrary authorities as involving creditor/shareholders exercising extraordinary remedies, in contrast to "the conventional case of a shareholder seeking to invoke its corporate governance rights" and "matters of corporate governance in the orthodox sense." *Id.* at 839 (citations and internal quotation marks omitted, emphasis added).

Unlike *Marvel*, this case involves disputes by the Ko Faction and the Choi Faction that are anything but a "conventional" or "orthodox" exercise of equity holders' voting rights. Instead, both factions allegedly have a mix of roles that appear to include both "claims" (in the broad bankruptcy sense) and the excerise of "equity control," and both factions assert the right to control the disposition of Debtor's real property and other assets. It is difficult to see how the factions' acts to wrest control of Debtor and all its property from one another are not acts to "exercise control over property of the estate." 11 U.S.C. 362(a)(3).

This is illustrated by the fact that the Ko Faction has filed a motion to appoint a real estate agent to <u>sell</u> the real property. Similarly, the Choi Faction has filed a motion to dismiss this bankruptcy case, which would have the effect of terminating the automatic stay and other provisions of the Bankruptcy Code that <u>protect</u> the estate's real property and its rights to whatever rents are or are not being paid. *See, e.g.,* 11 U.S.C. 362(a)(3)&(c) (2)(B), *and* 549.

In other words, the papers filed in this Bankruptcy Court reflect that the factions' litigation in State Court is not just a conventional stockholder dispute but is a fight among parties whose roles as equity, or creditors, or something else is far from clear, and is a fight over "control" of Debtor's property as

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much as it is a fight over control of Debtor itself.

In these circumstances, the tentative ruling is that the automatic stay of section 362(a)(3) applies.

## (c) Conclusion regarding application of the automatic stay

For the foregoing reasons the tentative ruling is that the automatic stay does apply. But, as set forth below, the tentative ruling is to modify the automatic stay to permit the parties to continue their State Court litigation.

Alternatively, even if the automatic stay were inapplicable to the State Court litigation, the stay still would apply in other respects. For example, the stay would prevent any party from enforcing any future judgment for money damages by collecting out of property of the bankruptcy estate. See 11 U.S.C. 362(a)(1), (3), (4), (6) and (7). Therefore, it is still important to determine how much relief to grant, even if the stay does not apply to the governance/control aspects of the State Court litigation.

# (4) There is "cause" to grant relief from the automatic stay (if it applies)

#### (a) Legal standards

The Bankruptcy Court "shall grant relief from the stay" upon a showing of "cause." 11 U.S.C. 362(d)(1). Such relief need not take the form of a complete termination of the automatic stay, but instead may include "modifying or conditioning such stay." *Id.* 

"'Cause' is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.1990). In determining whether "cause" exists to grant relief from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). *See In re Kronemeyer*, 405 B.R. 915 (9th Cir. BAP 2009); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559–60 (Bankr. C.D. Cal.2004).

Those factors are: (1) Whether the relief will result in a partial or complete resolution of the issues; (2) The lack of any connection with or interference with the bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary; (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6)

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Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) The impact of the stay on the parties and the "balance of hurt." *Plumberex*, 311 B.R. at 559. "[W]hile the *Curtis* factors are widely used to determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*, 2011 WL 6826253 at \*4 (C.D. Cal. Dec. 9, 2011).

## (b) Application of the legal standards

Based on the present record, the tentative ruling is that these factors weigh in favor of modifying the automatic stay to permit the parties to continue their State Court litigation.

As to the first *Curtis* factor (would relief result in partial or complete resolution of the issues), the tentative ruling is that granting relief would result in complete resolution of the issues. The State Court appears to have all the parties before it, and to be addressing the same governance/control issues that this Bankruptcy Court would have to address, so it can completely resolve these issues.

True, governance issues are also a critical threshold issue for bankruptcy purposes. As the State Court put it, "it's hard for me to believe that the Bankruptcy Court doesn't, as a threshold matter, decide who's in charge." Tr. 2/21/20, p.12:7-9 (dkt.71, Ex.10, at PDF p.139). But, as the State Court also observed, the issues are the same in both *fora*. See Tr. 2/21/20, p.14:11-13 (dkt.71, Ex.10, at PDF p.141) ("the threshold issue is I suspect the Bankruptcy Court does decide who's in charge just like I'm trying to do for this preliminary injunction") (emphasis added).

As to the second *Curtis* factor (connection with or interference with the bankruptcy case) and the seventh *Curtis* factor (prejudice to other creditors/interested parties) the tentative ruling is that, far from interfering with

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this bankruptcy case or causing prejudice, resolution of the issues that are already well underway in the State Court is essential to determine the bankruptcy issues: *e.g.*, whether Debtor's bankruptcy petition was even authorized; who is authorized to determine the disposition of property of the bankruptcy estate; who has authority to decide what litigation to pursue on Debtor's behalf: etc.

As interesting as these issues would be for this Bankruptcy Court to delve into, the roughly 2000 pages of documents attached to the Choi Faction's motion papers (dkt. 79) show that this Bankruptcy Court would be reinventing the wheel. Starting over and re-litigating the issues would be prejudicial to all parties in interest, and it appears that resolving these issues in State Court is the most expeditious and efficient way to address these issues.

As to the fourth *Curtis* factor (whether a specialized tribunal has been established to hear the action) and the eleventh *Curtis* factor (whether the proceedings have progressed to the point where the parties are prepared for trial), the tentative ruling is that, (i) although the State Court is not specialized in the sense of limiting itself to corporate/religious governance/control issues, the same is true for this Bankruptcy Court, so this factor is neutral, and (ii) although the proceedings in State Court appear to be far from any trial, the roughly 2000 pages show that those proceedings are well underway.

As to the tenth *Curtis* factor (interest of judicial economy) the tentative ruling is that forcing the parties to start anew in this Court would result in a duplication of efforts and would be a waste of judicial resources.

As to the twelfth *Curtis* factor (the impact of the stay on the parties and the "balance of hurt"), the tentative ruling is that the bankruptcy petition has already delayed adjudication of the issues before the State Court, and caused considerable expense and disruption, and that these things fall more heavily on the Choi Faction than the Ko Faction. Among other things, the Choi Faction was not given adequate notice by the Ko Faction of the extraordinary "emergency" relief that the latter sought in this Bankruptcy Court, and it turns out that, so far as this Court can discern, there is no emergency.

To be clear, this Court is not saying that there is no legitimate need for bankruptcy protection. True, it is not apparent that Debtor is insolvent. But the automatic stay and 11 U.S.C. 549 may provide broader protection than what is available in other fora to protect against <u>unauthorized</u> transfers of property. For example, a typical injunction only applies to specified parties

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and specified property, and it does not necessarily render acts in violation of the injunction void *ab initio*. In contrast, the automatic stay applies even to unknown parties and unknown property and acts in violation of the stay are void *ab initio*. See, e.g., In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992).

But there is no reason known to this Court why the Ko Faction could not have gained the legitimate protections of the automatic stay and section 549 and then stipulated to relief from the automatic stay to conclude the State Court litigation. Instead, as noted above, the Ko Faction sought "emergency" relief with inadequate notice, in what appears to be an attempted end-run around the State Court proceedings.

For all of these reasons, the tentative ruling is that any continued stay of the State Court proceedings has greater cognizable impact on the Choi Faction than the Ko Faction, and that the "balance of hurt" also favors granting relief from the stay.

In addition to the precise factors outlined in *Curtis*, this Court is considering all the other facts and circumstances. In the interest of comity and to discourage forum shopping, the tentative ruling is that it is appropriate for the litigation to continue in the State Court. That is the initial forum that the Ko Faction selected, and it is the forum that the Choi Faction favors retaining.

For all of the foregoing reasons, the tentative ruling is that under the *Curtis* factors and analysis there is "cause" (11 U.S.C. 362(d)(1)) to grant relief from the automatic stay as set forth below. This Court considers below whether there is an alternative basis on which relief from the automatic stay must be granted.

#### (5) Mandatory abstention does not apply

An alternative ground for relief from the automatic stay would be if mandatory abstention applies. ("Relief" from the stay does not necessarily mean immediate <u>termination</u> of the stay - it might be appropriate to modify but not terminate the stay, or to leave it fully in place for some period of time, to give Debtor a "breathing spell" - but the point is that, if mandatory abstention were to apply, that would be an alternative basis for some form of relief from the automatic stay.)

Mandatory abstention is governed by statute:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title

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11 [i.e., the Bankruptcy Code] but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court [and the bankruptcy court as a unit thereof] shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. [28 U.S.C. 1334(c)(2) (emphasis added).]

The emphasized terms "related to," on the one hand, and "arising under" or "arising in," on the other hand, are terms of art. The Supreme Court has held that the latter are equivalent to the statutory term "core" under 28 U.S.C. 157(b)(1). *Stern v. Marshall*, 564 U.S. 462 (2011).

A non-exclusive list of matters defined as "core" proceedings is set forth in 28 U.S.C. 157(b)(2). The tentative ruling is that who has authority to file a bankruptcy petition, make decisions for a debtor in possession, and control its property is a "core" proceeding, as a matter of statutory construction (28 U.S.C. 157(b)(2)(A) & (O)). See e.g. In re Fisher Island Invs., Inc., 778 F.3d 1172 (11th Cir. 2015) (confirming bankruptcy court had statutory authority over ownership dispute under 28 U.S.C. 157(b)(2)(A), (O), because "ownership issue is a core matter that clearly 'arises under' or 'arises in a case under' chapter 11. Resolution of threshold ownership issue was critical to the administration of the Alleged Debtors' estates ....").

Turning to Constitutional limitations, a determination of who controls Debtor and its property is sufficiently central to the administration of the bankruptcy estate that it has been held to be what is sometimes called "Constitutionally core." *See e.g., In re Fisher Island Invs. Inc.*, 778 F.3d at 1192 (affirming bankruptcy court's determination that it had constitutional authority over ownership dispute because "[t]he ownership issue does not simply have 'some bearing' on the bankruptcy proceedings ... the bankruptcy court could not undertake the bankruptcy proceedings without first determining who owned the Alleged Debtor, and thus who represented them ...."); *In re First Korean Christian Church of San Jose*, 567 B.R. 575, 578-578 (Bankr. N. D. Cal. 2017) (rejecting argument that bankruptcy court lacked jurisdiction to determine who controlled Debtor and noting that although bankruptcy court must defer to church hierarchy for resolution of religious issues, bankruptcy court could "apply 'neutral principals of law' such as corporate governance in settling disputes as to ownership of church

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True, the governance of Debtor depends entirely on nonbankruptcy issues: (i) interpretation and application of nonbankruptcy law and (ii) interpretation and application of nonbankruptcy agreements and principles of the local church and any national or international church organizations. But it is difficult to conceive of anything more central to the administration of a bankruptcy case than determining who has authority to file the bankruptcy petition, or to hire professionals for the debtor in possession, or to sell a debtor's assets or otherwise manage the bankruptcy estate as a trustee for the benefit of creditors.

Therefore, the tentative ruling is that any determination of who controls Debtor comes within this Bankruptcy Court's "arising in" jurisdiction and is both statutorily and constitutionally core. In other words, the tentative ruling is that mandatory abstention does not apply, so this is not a ground on which this Court will grant relief from the automatic stay.

## (6) Scope of relief

Under Section 362(d) this Court "shall" grant relief if the statutory criteria for such relief are established. But such relief need not take the form of "terminating" the stay. The statute states: "relief ... such as by terminating, annulling, modifying, or conditioning such stay ...." 11 U.S.C. 362(d) (emphasis added).

The tentative ruling is to modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to the following limitations (Judge Bason's standard limitations).

#### (a) No enforcement against property of the bankruptcy estate

The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate - any such property shall be distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is <u>not</u> property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

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### (b) Claim allowance, priority, and discharge issues

Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.

## (c) No relief in other bankruptcy cases

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See In re Ervin (Case No. 14-bk-18204-NB, docket no. 311).

#### (d) Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

#### (7) Comity with State Court

The State Court Judges stayed their proceedings pending this Bankruptcy Court's ruling on today's motions. This Bankruptcy Court appreciates the State Court's careful approach to the possible existence of the automatic stay, which turned out to be a complex issue as discussed above.

This Bankruptcy Court also seeks to preclude any undue delays or potential gamesmanship in future by parties who might seek to invoke the automatic stay when it does not apply (either because of this Bankruptcy Court's order(s) granting relief from the automatic stay, or because of the inherent limits of section 362(a)). To that end, this Bankruptcy Court offers the following.

First and foremost, this Bankruptcy Court is available to make rulings on the applicability of the automatic stay, and to grant any appropriate relief. The Local Bankruptcy Rules and this Court's posted procedures permit expedited relief, including speedy telephonic hearings if warranted. Even during this COVID-19 situation, this Bankruptcy Court's law clerks and the Clerk's Office staff are constantly monitoring voicemails, processing orders, setting up telephonic hearings, etc.

Second, recognizing that even speedy relief might not be speedy enough, this Bankruptcy Court reiterates that, contrary to the Choi Faction's arguments (dkt.71, pp.21:25-23:7), the State Court has concurrent

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jurisdiction. The State Court can interpret (a) the automatic stay (which is deemed to be an order of this Bankruptcy Court), and (b) any other order of this Court, such as an order modifying the stay. This is no different from the State Court interpreting the orders of any other court, as it does all the time.

In other words, the State Court need not halt its proceedings every time any litigant asserts that the automatic stay might apply. See 28 U.S.C. 1334(b) (federal District Courts, and the Bankruptcy Courts as a unit thereof, have "original but <u>not exclusive</u> jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11") (emphasis added), *In re Gruntz*, 202 F.3d 1074, 1083-84 (9th Cir. 2000) (distinguishing State Court orders "modifying the automatic stay" from those "merely interpreting federal law").

Of course, it is up to the State Court, in the exercise of its judgment, to assess whether the risks of proceeding are outweighed by the benefits. See *Gruntz*, 202 F.3d 1074, 1087 (if State Court proceeds without order of Bankruptcy Court, the former "risks having its final judgment declared void"). Meanwhile, again, this Bankruptcy Court will make every effort to grant speedy rulings on any issue that might arise involving the automatic stay.

#### (8) Conclusion

Assuming for that sufficient notice notice has been provided under Rule 4001(a) for this Court to rule on the motions related to the automatic stay, the tentative ruling is as follows. The automatic stay applies under 11 U.S.C. 362(a)(3), but there is "cause" for relief from the automatic stay under 11 U.S.C. 362(d)(1). The tentative ruling is that such relief should take the form of modifying the automatic stay as set forth above.

As set forth in more detail above, the tentative ruling is that the parties can proceed with their State Court litigation to final judgments or orders. But the automatic stay remains in place to prevent collection of any monetary judgment out of the bankruptcy estate or disposition of estate property, absent further order of this Bankruptcy Court.

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately

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resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### Tentative Ruling for 3/31/20:

This Court anticipates posting a tentative ruling at a later time.

#### **Party Information**

#### **Debtor(s):**

Korean Western Presbyterian Church Represented By

Victor A Sahn Steven Werth

Movant(s):

Jong Suk Choi Represented By

Monica Y Kim

Nathanael Yun Represented By

Monica Y Kim

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#35.00 Hrg re: Motion For Order Stating Automatic

Stay Applies In State Court Proceeding

Docket 71

#### **Tentative Ruling:**

### Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 40, 3/31/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

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#### 2:20-11675 Korean Western Presbyterian Church of Los Angeles

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#36.00

Cont'd hrg re: Debtor's First Day Motion for Order Approving Procedures for the Submission of the Debtor's Chapter 11 Plan and Disclosure Statement and for a Combined Hearing on Disclosure Statement Approval and Confirmation of the Debtor's Plan fr. 2/28/20

Docket 16

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 40, 3/31/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

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#37.00

Cont'd hrg re: Debtor's Application for Order Authorizing employment of Broadway Advisors, LLC as Financial Advisor and Chief Restructuring Officer fr. 2/28/20

Docket 15

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 40, 3/31/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

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#38.00

Cont'd hrg re: Emergency Motion To Dismiss Chapter 11 Case Or, Alternatively, Appoint A Chapter 11 Trustee, Deny First Day Motions, And Confirm That The Automatic Stay Does Not Apply To The State Court Action fr. 2/28/20

Docket 29

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 40, 3/31/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

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#39.00 Cont'd hrg re: Debtor's Application for Order Authorizing Employment

if Jones Lang Lasalle Brokerage, Inc. as Real Estate Broker

fr. 2/28/20

Docket 25

#### **Tentative Ruling:**

#### Tentative Ruling for 3/31/20:

Please see the tentative ruling for the status conference (calendar no. 40, 3/31/20 at 1:00 p.m.)

#### **Party Information**

#### **Debtor(s):**

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#40.00 Cont'd Status Conference re: Chapter 11 Case

fr. 2/28/20

Docket 1

#### **Tentative Ruling:**

## Revised Tentative Ruling for 3/31/20:

<u>Appearances required</u>, but pursuant to Judge Bason's COVID19 Procedures, telephonic appearances are REQUIRED until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### (1) Current issues

(a) Motion of Nathanael Yun and Jung Suk Choi to Dismiss this case as a bad faith filing, and supporting papers ("MTD," dkt. 29, 30, 31, 32, 35, 36, 38), debtor's opposition (dkt. 53, 54, 55) and evidentiary objections (dkt. 48, 49, 50, 52, 56), declaration of Mr. Yun in support of MTD (dkt. 57, "Yun Decl."), debtor's motion to strike Yun decl (dkt. 58), declaration of Barry Florence in support of MTD (dkt. 61), notice of continued hearing (dkt. 73, 74), Yun/Choi reply (dkt. 91)

The tentative ruling is that it is premature to make any final determination, before it is even apparent to this Court who is responsible for the lack of information to prepare bankruptcy schedules and other information. But on the present record this Court is not persuaded that there is no legitimate purpose for this bankruptcy case or other grounds sufficient to dismiss this case. As set forth in the tentative rulings on certain automatic-stay related motions (calendar no. 34, 3/31/20 at 1:00 p.m.), there appears to be a legitimate need for the protections of the automatic stay and 11 U.S.C. 549. But the tentative ruling is also to grant the alternative relief of modifying the automatic stay.

In addition, the parties should be prepared to address how this estate

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should be managed pending final rulings in the State Court litigation and whether this Court should appoint a Chapter 11 Trustee in view of (i) the parties' governance dispute, (ii) the existing authority conferred upon a receiver who has been appointed in one of the actions in State Court, and (iii) 11 U.S.C. 543(b)(1)&(2) requiring turnover and an accounting.

- (b) Debtor's motion for order confirming stay applies in state court action ("Stay Motion," dkt. 71), opposition (dkt. 84), debtor's reply (dkt. 93)

  Please see the tentative ruling for the R/S Motion (Calendar No. 34, 3/31/20 at 1:00 p.m.).
- (c) Messrs. Yun and Choi's motion for relief from the automatic stay ("R/S Motion," dkt. 79), memorandum of points and authorities (dkt. 80), request for judicial notice (dkt. 81), debtor's opposition (dkt. 86) and supporting declaration (dkt. 87), reply (dkt. 92)

The tentative ruling is to grant this motion and modify the stay on the terms set forth in the tentative ruling for the R/S Motion (Calendar no. 34, 3/31/20 at 1:00 p.m.).

(d) Plan Procedures Motion (dkt. 16), Yun/Choi opposition (dkt. 85), debtor's reply (dkt. 94)

The tentative ruling is to deny this motion without prejudice, for the reasons stated in the tentative ruling for the R/S Motion.

(e) <u>Debtor's application to employ chief restructuring officer (dkt. 15), UST's objection (dkt. 37), notice of continued hearing (dkt. 77), Yun/Choi opposition (dkt. 85), debtor's reply (dkt. 94)</u>

The tentative ruling is to deny this motion without prejudice, for the reasons stated in the oppositions to the motion and in the tentative ruling for the R/S Motion.

(f) <u>Debtor's application to employ real estate broker (dkt. 25), notice of continued hearing (dkt. 76), Yun/Choi opposition (dkt. 85), debtor's reply (dkt. 94)</u>

The tentative ruling is to deny this motion without prejudice, for the reasons stated in the tentative ruling for the R/S Motion.

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<u>Proposed orders</u>: If this Court is persuaded to adopt the foregoing tentative rulings, in whole or in part, then the Choi Faction (as defined in the tentative ruling on the R/S Motion) is directed to lodge proposed orders on all motions via LOU within 7 days after the hearing date. The tentative ruling is that after the hearing this Court will issue a "Memorialization Of Tentative Rulings" or similar document, and all lodged order should incorporate that document by reference, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

## (g) Other matters

The parties are directed to address the status of efforts to assemble information and prepare a reliable creditor matrix, bankruptcy schedules, and other documents. More generally, the parties are directed to address any other issues relevant to the status of this case, and whether this Court should exercise its discretion to set briefing schedules on any upcoming issues, remand removed actions to State Court, suspend all proceedings in this bankruptcy case (while leaving in place the automatic stay and other protections) (11 U.S.C. 305), or take any other acts to manage this case and this Court's docket.

- (2) <u>Deadlines/dates</u>. This case was filed on 2/14/20.
  - (a) Bar date: TBD
  - (b) Procedures order: dkt.5. (no proof of service)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 5/19/20 at 1:00 p.m. Status report on this Court's local form due 5/5/20.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

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This Court anticipates posting a tentative ruling at a later time.

#### Tentative Ruling for 2/28/20:

<u>Appearances required</u> but telephonic appearances are encouraged <u>if</u> advance arrangements are made (see www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

#### Current issues

The following tentative rulings are subject to any opposition and other persuasive argument at the hearing:

## (1) <u>Background: church solvency, and governance disputes</u>

Debtor appears to be very solvent, but alleges cash flow problems. Those problems appear to be intertwined with governance disputes.

#### (a) Solvency

Debtor's bankruptcy petition and list of 20 largest general unsecured creditors ("GUCs") (dkt. 1, 11) list very few GUCs, with total claims of under \$896,000. Debtor's "first day" motions allege that it owns 1218 South Fairfax Ave., Los Angeles, California (the "Property"), which Debtor estimates is worth between \$17 and \$18 million and is only encumbered by a first deed of trust lien of approximately \$630,000 in favor of Commonwealth Business Bank (the "Bank").

Debtor alleges that its cash flow problems arise from a prepetition dispute with LA Open Door Presbyterian Church ("LA Open Door"), which was a lessee from Debtor under a lease that Debtor alleges was terminated prepetition after months of non-payment. LA Open Door is also subject to a final judgment of approximately \$3 million in favor of Evangelical Christian Credit Union ("Evangelical CU"). Debtor reports that Evangelical CU obtained appointment of a receiver over LA Open Door, Thomas Seaman (the "Receiver"), but that LA Open Door has been uncooperative with the Receiver. All of this allegedly has exacerbated Debtor's cash flow problems.

#### (b) Governance issues

Debtor has no board of directors, but asserts that it is governed by certain elders known as the "Session," which Debtor alleges is analogous to a corporate board of directors. See dkt.16 (the "Plan Procedures Motion"), p.4:1-3. Debtor acknowledges that there is a governance dispute among, on

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the one side, Debtor's Session and religious leaders associated with the Session and, on the other side LA Open Door, The Western Presbytery of the Hapdong in USA ("Hapdong"), and their associated religious leaders.

Debtor proposes to sell the Property, pay all creditors in full, and have the surplus available "for distribution to the litigating parties who claim to be the true spokespersons of the Debtor, with such funds to be held by a professional third party fiduciary until such litigation has either concluded or the parties resolve their differences." Dkt.16, p.11:1-6. That approach (selling property now, and arguing about the proceeds later) is a common and effective tool in bankruptcy cases. But the twist in this case is that it is unclear who has legal title to the Property and who has authority to authorize the sale of the Property.

In terms of legal title, this Court takes judicial notice that in bankruptcy cases filed by churches of other religions/denominations there have been disputes about whether "church" property is owned by the worshipers, the leadership of a local church, a single church official in the capacity of a "corporation sole," or some other form. Debtor's papers do not address that issue.

In terms of who has authority to authorize a sale of the Property, Debtor alleges that it had discussions with LA Open Door about a possible merger but called off those discussions in August of 2019. Debtor acknowledges, however, that "LA [Open Door] asserted that the Debtor and LA [Open Door] were already 'one' church under LA [Open Door's] leadership." Dkt.15, p.2:21-24 (emphasis added). In addition, Debtor acknowledges that, although LA Open Door allegedly was supposed to occupy only 60% of the Property under the terms of the lease, instead it had been occupying 100%, and has attempted to become the "de facto owner" of the Property. Dkt.16, p.2, n.1 (emphasis added).

In other words, at least in the past, it was hotly disputed who properly controls both Debtor and the Property. The leadership of LA Open Door apparently claimed to control both, and perhaps Hapdong asserted some control, although its role is not described in Debtor's papers.

Nor is it clear what role, if any, is played by the worshipers at the various church organizations. Do Debtor's worshipers have the power to control the disposition of the Property and/or to replace Debtor's Session and/or its individual leaders? Would Debtor's worshipers oppose a sale of the Property, and prefer to lease it or some other approach, based on capital

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gains taxes or other considerations? Do LA Open Door's and Hapdong's worshipers have any interests at stake? Is it even clear whether a given worshiper belongs to Debtor's congregation or to LA Open Door's and/or Hapdong's?

Perhaps these governance issues have been partially or fully resolved in the nonbankruptcy courts. Debtor reports that on 11/6/19 it commenced an action against LA Open Door entitled *Korean Western Presbyterian Church of Los Angeles v. Jong Suk Choi et al.* (LA Superior Ct., Case No. 19STCV40062) (the "LA Open Door Litigation"). Debtor reports that the Superior Court has enjoined LA Open Door and others from interfering with Debtor's use of the Property as set forth in its lease with LA Open Door. *See* dkt.16, p.10:7-14. But, again, Debtor does not describe the situation with Hapdong, and it is unclear whether Debtor's worshipers have any say in these matters.

Based on (i) all of the above-described property ownership and governance issues and (ii) possible assertions that LA Open Door and Debtor have merged or otherwise might be liable for one another's debts, all parties are directed to address whether notice of all of the matters on today's calendar must be provided to various types of persons who have not already been served. In the broadest scenario, perhaps notice should be provided to all worshipers and all creditors of (i) Debtor and also (ii) LA Open Door and Hapdong. The parties are directed to address the scope of notice that may be necessary or appropriate.

(c) <u>Possible difficulties identifying creditors or worshipers, and possible</u> limits on the need for such notice

This Court recognizes that providing notice to a wide range of parties in interest might be difficult, and also might be legally unnecessary. For example, the Receiver for LA Open Door might have supplanted the leaders of that entity, and even its worshipers, on a wide range of governance issues.

But the Receiver's control appears to be limited to collection of revenues, obtaining financial information, and related matters, not sale or other disposition of the Property. In addition, if the Receiver has any potential role in these proceedings, it is unclear if the Receiver would need to apply to the Superior Court for directions, and how principles of comity and respect for the Superior Court's jurisdiction should be applied in this situation.

As for identifying creditors and worshipers, the Receiver's Report regarding LA Open Door (dkt.16, Ex.4, p.2:7-10, at PDF p.33) alleges that the

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Receiver provided notice to various banks and an "internet giving portal" for LA Open Door. The Receiver reports that in response to requests to turn over funds he received only a single check, from Hanin Federal Credit Union ("Hanin CU") (dkt.16, Ex.4, p.2:10-13, at PDF p.33), and that he received little to no cooperation from the leadership of LA Open Door or its worshipers. According to the Receiver, at the end of various LA Open Door services that he attended its worshipers gave hardly anything to that entity, despite having given generously in the past.

In sum, based on the Receiver's report and Debtor's papers, it may be difficult to identify names and addresses for worshipers or creditors. But the parties are directed to address whether it is necessary or appropriate to direct Debtor to attempt to do so, including but not limited to (i) attempting to communicate to worshipers through the "internet giving portals" for Debtor, LA Open Door, and/or Hapdong, and (ii) attempting to identify creditors through discovery or other mechanisms.

#### (d) Conclusion as to governance issues

Debtor has served the motions that are the subject of this hearing in accordance with this Court's order shortening time ("OST," dkt. 19), except for one creditor served within a couple of hours after the time directed in the OST, and the tentative ruling to that this is sufficient. See dkt.26, 28. Nevertheless, before this Court can authorize the sale of the Property, and retention of professionals by Debtor in furtherance of any such sale, it is important to consider whether Debtor's present leadership is authorized to seek those things, and whether other persons might be entitled to oppose or support those things, and therefore whether they should receive notice.

Because of these concerns, all of the tentative rulings set forth below are subject to the possibility that, before this Court authorizes anything, more notice must be given.

# (2) <u>Debtor's application to employ bankruptcy counsel (dkt. 13); statement of disinterestedness (dkt. 14)</u>

Debtor seeks to employ SulmeyerKupetz, a Professional Corporation ("Attorneys") as its general bankruptcy counsel. The tentative ruling is to grant the application and authorize Attorneys' employment, subject to the caveats stated above, including any arguments and evidence presented at the hearing, and the possibility of not adopting this tentative ruling at this time but instead continuing this hearing to provide more notice.

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#### (3) Debtor's application to employ chief restructuring officer (dkt. 15)

Debtor seeks to employ Broadway Advisors, LLC ("Broadway"), and its principal Alfred M. Masse, as its financial advisor and Chief Restructuring Officer ("CRO"). Debtor seeks to provide Broadway with "sole decision-making authority with respect to the sale of the Property." Dkt.16, p.10:3-4.

The tentative ruling is that Broadway cannot be its own supervisor, and that provisions in its proposed employment agreement that appear to be to the contrary will be disapproved. For example, the proposed agreement with Broadway requires that it be indemnified as both a director and an officer. See dkt.15, Ex.1, p.3, para. 9 (at PDF p.19)). Debtor and Broadway should be prepared to provide more information on the decision-making and oversight being proposed.

Subject to the caveats above (again, considering any arguments and evidence presented at the hearing, and possibly providing more notice before making any final decision), the tentative ruling is to authorize Broadway to act as CRO, subject to the posted Procedures of Judge Bason regarding terms of employment (e.g., notwithstanding any arbitration provision, this Court will retain jurisdiction in the first instance over any employment/compensation issues).

The tentative ruling is that the authorization for Broadway to act as CRO should include sole decision-making authority with respect to the sale of the Property, except that any proposed sale must be subject to notice and a hearing, with an opportunity for Debtor's leadership and any other parties in interest to object.

## (4) Debtor's application to employ real estate broker (dkt. 25)

Debtor proposes to employ Jones Lang Lasalle ("Broker") as its real estate broker to sell the Property. Debtor states that it has consented to Broker representing potential purchasers (dkt. 25, p. 2: 14-15).

Subject to the caveats above (again, considering any arguments and evidence presented at the hearing, and possibly providing more notice before making any final decision), the tentative ruling is to grant the motion, with the following additional caveat. Notwithstanding any provision in the employment application or proposed agreement to the contrary, the tentative ruling is that Judge Bason's standard terms apply (unless struck through) as follows:

(a) employment is per 11 U.S.C. § 327 not § 328; (b) payment only

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per 11 U.S.C. § 330(a) – no lien or superpriority claim is allowed (except as explicitly allowed – e.g., realtor commissions on courtapproved sales); (c) maximum 2 hours per day of non-working time (e.g., travel, or waiting for matter to be called) absent an adequate explanation; (d) **no buyers' premium** for auctioneers; (e) **no dual agency**; (f) all matters relating to the professional's engagement, compensation and costs shall be resolved in this court, notwithstanding any provisions for arbitration, choice of venue, or the like, and (g) any indemnification, limitation of damages or the like is ineffective. See generally In re Circle K Corp., 279 F.3d 669 (9th Cir. 2002) and 11 U.S.C. § 327(a) (professionals may not "hold or represent an interest adverse to the estate").

#### (5) Plan Procedures Motion (dkt. 16)

Before these hearings commence, Debtor hopes to file certain planrelated documents. As of the preparation of this tentative ruling, those documents have not been filed.

Debtor requests that it be excused from using the local forms of Plan and Disclosure Statement, and instead that it be authorized to file and serve a combined disclosure statement and plan (collectively, the "Plan"). Debtor requests authority to serve a two-page "Executive Summary" in Korean and English in lieu of serving a full copy of the Plan (but with the Plan available upon request). Debtor also requests that this Court set a combined hearing on (i) final approval of the disclosures in the Plan and (ii) confirmation of the Plan. In addition, Debtor seeks such a hearing on approximately 30 days' notice.

In sum, Debtor and requests (a) streamlined procedures and (b) expedited procedures. The tentative ruling is that the former is justified, but on the present record the latter has not been sufficiently justified.

## (a) Streamlined procedures

The tentative ruling is to excuse Debtor from using the local forms, authorize Debtor to file a combined document (the Plan), set a combined hearing on final approval of the disclosures in the Plan and confirmation of the Plan, and authorize service of the Executive Summary in lieu of the Plan but with a copy of the Plan readily available. On this last issue, the tentative ruling is that all parties in interest will actually receive greater disclosure when, instead of stacks of papers filled with dense legal language, they

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receive a short summary in "plain English" - or "plain Korean" - with easily an exercised option to review the full Plan either online or via email or U.S. mail, at the recipient's option. See 11 U.S.C. 105(d)(2)(B)(vi) (authorizing combined hearing on Plan and disclosures); 1125(b) & (c) (authorizing service of "court-approved summary" in lieu of full Plan, and disclosures "differing in amount, detail, or kind of information, as between classes"); and Rule 3017(d) (1) (Fed. R. Bankr. P.) (reiterating option for "court-approved summary," provided that documents are made available at plan proponent's expense).

#### (b) Request for a hearing on 30 days' notice

The tentative ruling is that Debtor has not provided sufficient justification for a hearing on 30 days' notice. First, the same caveats apply as with other motions: this tentative ruling is subject to any opposition at this hearing and the possible need for more notice.

Second, until the proposed documents are filed it is premature to determine whether they can be served in their proposed form, or if they need amendments (or replacements with entirely new forms).

Third, it may be problematic to confirm any Plan until the bar date for filing proofs of claim has passed, including the special bar date for governmental entities. The parties are directed to address what bar date this Court should set.

Fourth, although Debtor explains why there is some urgency - its professionals need assurance that their employment is authorized before they can be expected to devote the substantial time and effort needed to market and sell the Property - it is unclear why the Property must be sold so quickly. Presumably that has to do with cash flow issues, but those issues have not been fully explained.

For example, why is it not possible for Debtor to use funds provided by its worshipers (either regular collections or a special collection) to tide Debtor over until the Property can be sold, or some other solution can be explored, on a less expedited basis? Alternatively, why is it not possible to obtain loans (11 U.S.C. 364) or perhaps other funding mechanisms to tide Debtor over?

Subject to all of the foregoing, the tentative ruling is to grant the Plan Procedures Motion, with the date of the combined hearing on disclosures and confirmation to be determined. Deadlines for service of the voting package, filing and service of any opposition, and any other relevant matters also will need to be determined.

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## **CONT...** Korean Western Presbyterian Church of Los Angeles

Chapter 11

<u>Proposed orders</u>: If this Court is persuaded at the hearing not to require additional notice, and instead to adopt the foregoing tentative rulings in whole or in part, then Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date. The tentative ruling is that this Court will issue a "Memorialization Of Tentative Rulings" or similar document, and all lodged order should incorporate that document by reference, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

- (6) Deadlines/dates. This case was filed on 2/14/20.
  - (a) <u>Bar date</u>: see part "(5)(b)" above (DO NOT SERVE notice yet <u>court will prepare an order after the status conference</u>).
  - (b) <u>Procedures order</u>: dkt.5. This order directed Debtor to serve a copy of the order on all parties in interest. The docket does not reflect any proof of service. Why not?
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) <u>Continued status conference</u>: 3/31/20 at 1:00 p.m., concurrent with other matters. Status report on this Court's local form due 3/17/20.

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

#### **Party Information**

#### **Debtor(s):**

Korean Western Presbyterian Church

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

2:00 PM

2:18-24571 Jackies Cookie Connection LLC

Chapter 11

#1.00 Cont'd Status Conference re: Chapter 11 Case fr. 01/08/19, 1/15/19, 1/29/19, 2/26/19, 3/26/19; 04/30/2019, 5/7/19, 05/21/19, 6/18/19, 7/30/19, 8/20/19, 9/17/19, 10/15/19, 10/29/19, 12/10/19, 1/28/20

Docket 5

#### **Tentative Ruling:**

## Tentative Ruling for 3/31/20:

<u>Appearances required</u> by counsel for the debtor, but pursuant to Judge Bason's COVID-19 Procedures, <u>telephonic appearances are REQUIRED</u> until further notice.

Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

#### (1) Current issues

(a) Motion of the United States Trustee ("UST") to convert, dismiss, or appoint a Chapter 11 trustee (the "UST Motion", dkt. 76)

Debtor's counsel is directed to address (i) the status of his efforts re determining the amount of tax claims and (ii) whether Debtor intends to proceeds with a structured dismissal as contemplated by this Court at the 12/10/19 and 1/28/20 hearings.

- (2) Deadlines/dates. This case was filed on 12/17/18.
  - (a) Bar date: 7/24/19 (not timely served but excused, dkt. 120)
  - (b) Plan/Disclosure Statement\*: N/A
  - (c) Continued status conference: if this case is not dismissed by then, or a continued status conference is not otherwise mooted, set a continued status conference for 5/19/20 at 2:00 p.m., with no written status report required.

## United States Bankruptcy Court Central District of California Los Angeles Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

2:00 PM

**CONT...** Jackies Cookie Connection LLC

Chapter 11

\*Warning: special procedures apply (see order setting initial status conference).

If appearances are <u>not</u> required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances <u>are</u> required, and you fail to appear telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

## [Prior Tentative Rulings omitted]

#### **Party Information**

#### **Debtor(s):**

Jackies Cookie Connection LLC

Represented By
Derrick Talerico
Marlee E Sherman
Michael S Kogan
David B Zolkin

Los Angeles

Judge Neil Bason, Presiding Courtroom 1545 Calendar

Tuesday, March 31, 2020

**Hearing Room** 

1545

2:00 PM

**2:19-24048 110 West Properties, LLC** 

Chapter 11

Adv#: 2:20-01008 Dos Cabezas Properties, LLC et al v. 110 West Properties, LLC

#2.00 Hrg re: Motion to Dismiss Adversary Proceeding

Docket 3

\*\*\* VACATED \*\*\* REASON: This matter is scheduled to be heard at a different time. See #28 at 11:00 a.m.

#### **Tentative Ruling:**

- NONE LISTED -

#### **Party Information**

#### **Debtor(s):**

110 West Properties, LLC Represented By

Gregory K Jones

**Defendant(s):** 

110 West Properties, LLC Represented By

Gregory K Jones

**Plaintiff(s):** 

Dos Cabezas Properties, LLC Represented By

Thomas F Nowland

Criscione-Meyer Entitlement, LLC Represented By

Thomas F Nowland

Michael Criscione Represented By

Thomas F Nowland

Michael Meyer Represented By

Thomas F Nowland