

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:17-23401 Francisco Ramon Franco**

**Chapter 13**

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

U.S. BANK NATIONAL ASSOCIATION  
vs  
DEBTOR

Docket 42

**Tentative Ruling:**

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](http://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 not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Francisco Ramon Franco

Represented By

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Courtroom 1545 Calendar**

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**CONT... Francisco Ramon Franco**

William G Cort

**Chapter 13**

**Movant(s):**

U.S. Bank National Association, as

Represented By  
Merdaud Jafarnia

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:17-19762 Robert E Read**

**Chapter 13**

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

MTGLQ INVESTORS, LP  
vs  
DEBTOR

Docket 95

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

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Robert E Read

Represented By  
Donna R Dishbak

**Movant(s):**

MTGLQ Investors, LP

Represented By  
Merdaud Jafarnia

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:18-18815 Nicole Leesuvat-Anderson**

**Chapter 13**

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

SELECT PORTFOLIO SERVICING INC.  
vs  
DEBTOR

Docket 80

**\*\*\* VACATED \*\*\* REASON: Cont. to 5/12/20 at 10am per stip. (dkt. 85)  
and order thereon**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Nicole Leesuvat-Anderson

Represented By  
Andrew Moher

**Movant(s):**

Select Portfolio Servicing Inc., as

Represented By  
Josephine E Salmon

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Courtroom 1545 Calendar**

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:19-21699 Gerald J Dennis**

**Chapter 13**

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

U.S. BANK NA  
vs  
DEBTOR

Docket 41

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

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Gerald J Dennis

Represented By  
Axel H Richter

**Movant(s):**

U.S. Bank NA, successor trustee to

Represented By  
Merdaud Jafarnia

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:20-12162 Douglas L. Barcon**

**Chapter 13**

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

JOSEF BEGELFER  
vs  
DEBTOR

Docket 24

**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 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](http://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).

The automatic stay does not apply

Grant the motion under 11 U.S.C. 362(c)(3) and (j): there is no automatic stay because (a) Debtor's prior case (# 2:19-bk-24157-NB) was dismissed (on 1/14/20) within one year before this case was filed (on 2/26/20), (b) that dismissal was not under 11 U.S.C. 707(b), and (c) no finding of good faith was timely sought and obtained.

Although Debtor filed a motion under 11 U.S.C. 362(c)(3) (dkt. 8), Debtor did not timely obtain a hearing prior to the expiration of the stay on

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**CONT... Douglas L. Barcon**

**Chapter 13**

3/27/20. As a result, the automatic stay has terminated both as to Debtor *in personam* and as to property of Debtor. See *In re Reswick*, 446 B.R. 362 (9th Cir. BAP 2011); *In re Hernandez*, case no. 2:11-bk-53730-NB, docket # 40 (Memorandum Decision).

In the alternative and in addition, this court grants relief from the automatic stay as follows.

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 not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Douglas L. Barcon

Represented By  
Arthur H Lampel

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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10:00 AM

**CONT... Douglas L. Barcon**

**Chapter 13**

**Movant(s):**

Josef Begelfer, Trustee of the Josef

Represented By  
Edward T Weber

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:19-17669 Rafael Macias and Silvia Jauregui**

**Chapter 13**

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

DEUTSCHE BANK NATIONAL TRUST CO  
vs  
DEBTOR

Docket 42

**Tentative Ruling:**

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

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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, and/or (c) whether they will agree to a forbearance agreement (see the debtor's response, dkt. 44).

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Rafael Macias

Represented By

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
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10:00 AM

**CONT... Rafael Macias and Silvia Jauregui**

**Chapter 13**

Kevin T Simon

**Joint Debtor(s):**

Silvia Jauregui

Represented By  
Kevin T Simon

**Movant(s):**

Deutsche Bank National Trust

Represented By  
Sean C Ferry

**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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**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:18-22168 Virginia B. Barruga**

**Chapter 13**

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

WILMINGTON SAVINGS FUND SOCIETY, FSB  
vs  
DEBTOR

Docket 60

**Tentative Ruling:**

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

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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. 63).

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Virginia B. Barruga

Represented By  
Donald E Iwuchuku

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**CONT... Virginia B. Barruga**

**Chapter 13**

**Movant(s):**

Wilmington Savings Fund Society,

Represented By  
Nichole Glowin  
Arnold L Graff

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:20-11967 Karelia Rodriguez and Hector F Araiza Magana**

**Chapter 7**

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

NISSAN MOTOR ACCEPTANCE CORP  
vs  
DEBTOR

Docket 8

**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.**

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*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).

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
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10:00 AM

**CONT... Karelia Rodriguez and Hector F Araiza Magana**

**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.

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Karelia Rodriguez

Represented By  
Kevin Tang

**Joint Debtor(s):**

Hector F Araiza Magana

Represented By  
Kevin Tang

**Movant(s):**

NISSAN MOTOR ACCEPTANCE

Represented By  
Michael D Vanlochem

**Trustee(s):**

John J Menchaca (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:19-21923 Michael Stavros Damianidis**

**Chapter 13**

**#9.00 [CASE DISMISSED ON 3/27/20]**

Hrg re: Motion for relief from stay [PP]

JPMORGAN CHASE BANK, NA  
vs  
DEBTOR

Docket 31

**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 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](http://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).

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay. See 11 U.S.C. 349(b)(3) & 362(c).

In the alternative and in addition, this court grants relief from the automatic stay as follows.

Termination

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

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
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**Tuesday, April 21, 2020**

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**CONT... Michael Stavros Damianidis**

**Chapter 13**

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 not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Michael Stavros Damianidis

Represented By  
Daniel King

**Movant(s):**

JPMORGAN CHASE BANK, N.A.

Represented By  
Josephine E Salmon

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:20-13254 Jessica Diaz Reed**

**Chapter 13**

**#10.00** Hrg re: Motion in Individual Case for Order  
Imposing a Stay or Continuing the Automatic  
Stay as the Court Deems Appropriate

Docket 9

**Tentative Ruling:**

Grant in part, deny in part, 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.**

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*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 adopting it as this Court's final ruling, subject to any changes ordered at the hearing. See LBR 9021-1(b)(1)(B).

**Analysis**

Debtor seeks an order continuing the automatic stay in this case under 11 U.S.C. 362(c)(3), but relief under that section is not necessary or appropriate because Debtor's prior bankruptcy case (Case No. 2:18-bk-17139-VZ) was dismissed on 12/27/18, which is more than 1-year prior to the 3/25/20 petition date in this case.

In other words, subject subject to any exceptions other than 11 U.S.C. 362(c)(3) (e.g., 11 U.S.C. 362(b) or any orders under 11 U.S.C. 362(d)(4)), the tentative ruling is that the automatic stay is in effect to the full extent provided under 11 U.S.C. 362(a)(1)-(8).

**United States Bankruptcy Court  
Central District of California  
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**CONT... Jessica Diaz Reed**

**Chapter 13**

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Jessica Diaz Reed

Represented By  
Marc A Goldbach

**Movant(s):**

Jessica Diaz Reed

Represented By  
Marc A Goldbach

**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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**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:18-15959 Luis B. Rosales**

**Chapter 13**

**#11.00** Cont'd hrg re: Motion for relief from stay [RP]  
fr. 1/28/20, 3/3/20

DEUTSCHE BANK NATIONAL TRUST, COMPANY  
vs  
DEBTOR

Docket 93

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

**Tentative Ruling:**

<b>Party Information</b>
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**Debtor(s):**

Luis B. Rosales

Represented By  
Lionel E Giron

**Movant(s):**

Deutsche Bank National Trust,

Represented By  
Merdaud Jafarnia  
Nancy L Lee

**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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**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:19-13208 Patricia Ann Oliver**

**Chapter 13**

**#12.00** Cont'd hrg re: Motion for relief from stay [RP]  
fr. 03/31/20

NATIONSTAR MORTGAGE, LLC  
vs  
DEBTOR

Docket 45

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

This matter was continued to this date to allow time for Debtor's sale of the subject property to close. This Court has reviewed Debtor's status report (dkt. 56), which states that escrow is scheduled to close 4/17/20. There is no tentative ruling, but the parties should be prepared to provide an update on whether the sale has closed and Movant's claim has been paid in full.

If appearances are not 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](http://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.

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
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10:00 AM

**CONT... Patricia Ann Oliver**

**Chapter 13**

**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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Patricia Ann Oliver

Represented By  
Hale Andrew Antico

**Movant(s):**

Nationstar Mortgage LLC

Represented By  
Cassandra J Richey

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:19-23754 Clara Lila Gonzales**

**Chapter 13**

**#13.00** Cont'd hrg re: Motion for relief from stay [PP]  
fr. 03/31/20

BRIDGECREST CREDIT COMPANY, LLC  
vs  
DEBTOR

Docket 26

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

This matter was continued to this date for Debtor to make the 3/14/20 payment and 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 whether Movant has received that payment and the status of any settlement discussions.

If appearances are not 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](http://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:**

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**CONT... Clara Lila Gonzales**

**Chapter 13**

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

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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 not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Clara Lila Gonzales

Represented By  
Steven A Alpert

**Movant(s):**

Bridgecrest Credit Company, LLC

Represented By  
Lemuel Bryant Jaquez

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:18-10248 Rosa Candida Perez**

**Chapter 13**

**#14.00** Cont'd hrg re: Motion for relief from stay [RP]  
fr. 03/03/20, 03/31/20

ABS LOAN TRUST VI  
vs  
DEBTOR

Docket 38

**\*\*\* VACATED \*\*\* REASON: Voluntary Dismissal of Motion Filed  
04/20/20 (Dkt. 43)**

**Tentative Ruling:**

**Tentative Ruling for 4/21/20 (same as 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](http://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 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. 40).

If appearances are not 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](http://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.

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**CONT... Rosa Candida Perez**

**Chapter 13**

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

Appearances required. 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. 40).

If appearances are not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rosa Candida Perez

Represented By  
Thomas B Ure

**Movant(s):**

ABS Loan Trust VI

Represented By  
Robert P Zahradka

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:18-19093 Rodney Albert Gabriel, Jr**

**Chapter 13**

**#15.00** Cont'd hrg re: Motion for relief from stay [RP]  
fr. 06/11/19, 07/02/19; 08/06/19, 9/17/19, 10/15/19,  
02/18/20, 03/31/20

NATIONAL MORTGAGE, LLC  
vs  
DEBTOR

Docket 62

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

At the previous hearing, this Court was informed that the parties were close to finalizing an adequate protection order. 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 not 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](http://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

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**CONT... Rodney Albert Gabriel, Jr**

**Chapter 13**

on matters that are appropriate for disposition at this hearing.

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

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](http://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 not 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](http://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 2/18/20 (same as for 10/15/19):**

Appearances required. 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 not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

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

**Chapter 13**

required/are not required," please see Judge Bason's Procedures (posted at [www.cacb.uscourts.gov](http://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 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 not 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](http://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 8/6/19:**

Appearances required. 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 not 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](http://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

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**CONT...**      **Rodney Albert Gabriel, Jr**  
appropriate for disposition at this hearing.

**Chapter 13**

**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 not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rodney Albert Gabriel Jr

Represented By  
Julie J Villalobos

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

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

**Chapter 13**

**Movant(s):**

Nationstar Mortgage LLC d/b/a Mr.

Represented By  
Nichole Glowin

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

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

**Chapter 11**

**#16.00** Cont'd hrg re: Motion for relief from stay [NA]  
fr. 4/7/20

CHRISTOPHER BECKER  
vs  
DEBTOR

Docket 76

**\*\*\* VACATED \*\*\* REASON: This matter is scheduled to be heard at a  
different time. See #5 at 1:00 p.m.**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

The New School of Cooking, Inc.

Represented By  
Crystle Jane Lindsey  
Daniel J Weintraub  
James R Selth

**Movant(s):**

Christopher Becker

Represented By  
Shirlee L Bliss

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

10:00 AM

**2:20-11333 Edmund Lincoln Anderson**

**Chapter 11**

**#17.00** Cont'd hrg re: Motion in Individual Case for Order  
Imposing a Stay or Continuing the Automatic  
Stay as the Court Deems Appropriate  
fr. 3/3/20, 4/7/20

Docket 15

**\*\*\* VACATED \*\*\* REASON: This matter is scheduled to be heard at a  
different time. See #8 at 2:00 p.m.**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Edmund Lincoln Anderson

Represented By  
Stella A Havkin

**Movant(s):**

Edmund Lincoln Anderson

Represented By  
Stella A Havkin

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

11:00 AM

**2:19-23664 Liat Talasazan**

**Chapter 11**

Adv#: 2:20-01027 Talasazan v. Oxygen Funding, Inc. et al

**#1.00** Hrg re: Plaintiff's Motion For Default Judgment

Docket 14

**Tentative Ruling:**

Please see the tentative ruling for the adversary proceeding status conference (Calendar no. 3, 4/21/20 at 11:00 a.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Liat Talasazan

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Oxygen Funding, Inc.

Represented By  
Vonn Christenson

Adam Landis Lomax

Represented By  
Vonn Christenson

**Plaintiff(s):**

Liat Talasazan

Represented By  
Luis A Solorzano  
Giovanni Orantes

**Trustee(s):**

Caroline Renee Djang (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

11:00 AM

**2:19-23664 Liat Talasazan**

**Chapter 11**

Adv#: 2:20-01027 Talasazan v. Oxygen Funding, Inc. et al

**#2.00** Hrg re: Motion to Set Aside the Entry of Default

Docket 11

**Tentative Ruling:**

Grant, with a deadline of 4/24/20 for Defendants to file their proposed answer (adv. dkt. 12, Ex.G).

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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

Analysis

(1) Applicable Standard

Civil Rule 55(c) (Fed. R. Civ. P.), made applicable to these proceedings by Bankruptcy Rule 7055 (Fed. R. Bankr. P.), provides: "The Court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000, *as amended on denial of reh'g* (Nov. 1, 2000)). Because "[t]his tripartite test is disjunctive" the Debtor/Plaintiff is required only to demonstrate that one of the factors applies in order for this Court to deny the motion to vacate default. *Id.* However, "judgment by

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Central District of California  
Los Angeles  
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11:00 AM

**CONT... Liat Talasazan**

**Chapter 11**

default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1098 (9th Cir. 2010).

(a) Debtor has not demonstrated that she would be prejudiced by vacatur of the default

To constitute prejudice, the harm that would result from setting aside the entry of default must be something more than delay or the costs associated with the litigation itself. *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001). Merely "being forced to litigate on the merits" is not considered prejudice. *Id.* "The delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." *Id.*

In this case, the Clerk of the Court entered default on 3/13/20 (adv. dkt. 9, 10) and Defendants timely moved to set aside default on 3/27/20 (adv. dkt. 11). Debtor argues that setting aside the defaults would prejudice her because she would be forced to incur attorneys' fees to litigate the dispute but, as set forth above, increased litigation costs is not a sufficient basis to deny the motion. Debtor also argues that setting aside default would prejudice her creditors because further delay in removing Defendants' liens will prevent her from refinancing the property and paying her creditors. But this argument puts the cart before the horse because there is no guarantee that Debtor will prevail on her claims and, even if she does, Debtor has not established why she would be unable to propose a plan that keeps Defendants' liens in place or obtain financing that primes Defendants' liens. Furthermore, if this were a sufficient basis to deny a request for relief from default, Bankruptcy Courts would almost never find it appropriate to set aside defaults. Therefore, the tentative ruling is that Debtor has not made a sufficient showing that she would be prejudiced by vacatur of the defaults.

This factor weighs in favor of setting aside the defaults.

(b) Defendants have a meritorious defense

A party has a meritorious defense if "there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 513 (9th Cir.

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Los Angeles  
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11:00 AM

**CONT... Liat Talasazan**

**Chapter 11**

1986). The burden of demonstrating a meritorious defense "on a party seeking to vacate a default judgment is not extraordinarily heavy." *Knoebber*, 244 F.3d at 700. "All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense: 'the question whether the factual allegation [i]s true' is not to be determined by the court when it decides the motion to set aside the default. Rather, that question 'would be the subject of the later litigation.'" *Mesle*, 615 F.3d 16 1094.

Defendants have satisfied the meritorious defense requirement by showing that there is, at a minimum, "some possibility" that they will not be found liable on the claims asserted in the Complaint after a full trial. Defendants have attached a proposed answer to the motion which denies certain allegations of the Complaint and contains affirmative defenses (adv. dkt. 12, Ex.G). If Defendants prevail on the disputed factual allegations or have a successful defense, the outcome of the suit would be contrary to the result achieved by default.

While Debtor makes several arguments as to why Defendants purportedly would lose at trial, these are questions of fact that are not appropriately determined in the context of a motion to set aside entry of default.

Therefore, this factor is satisfied in Defendants' favor.

(c) Defendants' failure to timely respond to the Complaint was not culpable

A "defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer . . . Neglectful failure to answer as to which the defendant offers a credible, good faith explanation negating any intention to take advantage of the opposing party, interfere with judicial decision-making, or otherwise manipulate the legal process is not 'intentional' under our default cases, and is therefore not *necessarily* . . . culpable." *Knoebber*, 244 F.3d 691, 697-98 (emphasis in original).

Defendants have offered a good faith explanation for their failure to timely respond to the Complaint and this Court is not persuaded to find that Defendants intentionally failed to answer to gain some kind of tactical advantage over Debtor in this proceeding. As Debtor's counsel should be well aware, sometimes filing deadlines are inadvertently missed and parties should not be penalized by their attorneys' excusable neglect. This factor

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

**CONT...**      **Liat Talasazan**  
weighs in Defendants' favor.

**Chapter 11**

If appearances are not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Liat Talasazan

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Oxygen Funding, Inc.

Represented By  
Vonn Christenson

Adam Landis Lomax

Represented By  
Vonn Christenson

**Plaintiff(s):**

Liat Talasazan

Represented By  
Luis A Solorzano  
Giovanni Orantes

**Trustee(s):**

Caroline Renee Djang (TR)

Pro Se

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

11:00 AM

**2:19-23664 Liat Talasazan**

**Chapter 11**

Adv#: 2:20-01027 Talasazan v. Oxygen Funding, Inc. et al

- #3.00** Status conference re: Complaint for damages, declaratory relief and injunctive relief for 1.) Violation of automatic stay; 2.) Turnover under 11 U.S.C. section 542; 3) Avoidance of transfer under 11 U.S.C. section 544; 4) Avoidance of fraudulent transfer under 11 U.S.C. section 548; 5) Recovery and preservation of avoided transfers pursuant to 11 U.S.C. sections 550(a), 551; 6) Unfair Practices under California Business & Professions code section 17200; and 7) Slander of title

Docket 1

**Tentative Ruling:**

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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

**(A) Current issues**

(1) Debtor/Plaintiff's ex parte motion for retroactive extension to file opposition to defendant's motion to set aside default (adv. dkt. 20), order setting hearing (adv. dkt. 22)

Subject to any opposition at the hearing, the tentative ruling is to grant the motion.

(2) Defendants' motion to set aside entry of default (adv. dkt. 12, the "Relief From Default Motion"), Debtor/plaintiff's opposition (adv. dkt. 19), Defendants' reply (adv. dkt. 25)

Grant, as set forth in the tentative ruling for calendar #2 (4/21/20 at 11:00 a.m.).

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Los Angeles  
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**Hearing Room 1545**

11:00 AM

**CONT... Liat Talasazan**

**Chapter 11**

(3) Debtor/Plaintiff's motion for entry of default judgment (adv. dkt. 14), order suspending briefing deadlines (adv. dkt. 17, "Default Judgment Motion")

If this Court is persuaded to adopt its tentative ruling for the Relief From Default Motion, the tentative ruling is to deny this motion as moot.

(4) Missing status report(s)

As of the preparation of this tentative ruling, none of the parties have filed joint or unilateral status reports. The parties are cautioned that failure to file status reports in future may result in adverse consequences.

(5) Debtor's duties as a trustee for the benefit of creditors

The tentative ruling is that, as a debtor in possession in a Subchapter V case, Debtor still must exercise discretion in managing the bankruptcy estate as a trustee for the benefit of creditors. See 11 U.S.C. 1101(1), 1181(a) (making section 1107 inapplicable), 1187 (making many duties applicable). This Court has previously expressed concerns about Debtor's similar tactics against creditor National Commercial Recovery ("NCR"). See adv.dkt.25, pp.10:1-24 & 14:3-17.

In particular, the tentative ruling is that Debtor must make a cost/benefit assessment in connection with all litigation in this bankruptcy case. Debtor is directed to address how her tactics in this matter are consistent with her duties to creditors.

(a) Why is it cost-effective to pursue this litigation seeking to establish that Defendants lack a secured claim, when Debtor anticipates a 100% dividend to all creditors regardless whether they are secured or unsecured?

(b) Why has Debtor not pursued options that might stop the running of high rates of interest on this and other claims, such as expeditiously seeking confirmation of a plan, or selling or refinancing properties.

In other words, is this litigation a waste of resources and time that would be better spent on other matters?

Proposed orders: Defendants are directed to lodge proposed orders on each of the foregoing motions via LOU within seven 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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**Chapter 11**

**(B) Standard requirements**

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. *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**

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 **5/8/20** 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**

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**CONT... Liat Talasazan**

**Chapter 11**

This adversary proceeding has been pending since 2/10/20.  
[Remainder intentionally omitted.] Continued status conference 9/15/20 at 11:00 a.m., with a joint status report due 9/1/20.

If appearances are not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Liat Talasazan

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Oxygen Funding, Inc.

Pro Se

Adam Landis Lomax

Pro Se

**Plaintiff(s):**

Liat Talasazan

Represented By  
Luis A Solorzano  
Giovanni Orantes

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**2:19-23664 Liat Talasazan**

**Chapter 11**

Adv#: 2:20-01027 Talasazan v. Oxygen Funding, Inc. et al

**#4.00** Hrg re: Ex Parte Motion for Retroactive Extension to File Opposition  
to Defendant's Motion to Set Aside the Default

Docket 20

**Tentative Ruling:**

Please see the tentative ruling for the adversary proceeding status  
conference (Calendar no. 3, 4/21/20 at 11:00 a.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Liat Talasazan

Represented By  
Giovanni Orantes  
Luis A Solorzano

**Defendant(s):**

Oxygen Funding, Inc.

Represented By  
Vonn Christenson

Adam Landis Lomax

Represented By  
Vonn Christenson

**Plaintiff(s):**

Liat Talasazan

Represented By  
Luis A Solorzano  
Giovanni Orantes

**Trustee(s):**

Caroline Renee Djang (TR)

Pro Se

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**2:19-10153 Christian Rossil**

**Chapter 7**

Adv#: 2:19-01138 Rossil v. Ruan Partida et al

**#5.00** Cont'd Status Conference re: Complaint for a Determination  
of the Validity, Priority or Extent of Liens and Security  
Interests  
fr. 07/30/19, 9/24/19, 12/17/19, 02/18/20, 3/3/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

This Court has reviewed the parties' joint status report (adv.dkt. 18) and the other filed documents and records in this adversary proceeding.

**(B) Standard requirements**

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**

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (docket number 18).

**(2) Mediation**

Is there is any reason why this Court should not order the non-settling

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**CONT... Christian Rossil**

**Chapter 7**

parties (i.e. Plaintiff/Trustee and Defendant Salgado) 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 **5/5/20** 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 5/10/19. 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.

Joinder of parties/amendment of pleadings: 7/17/20 deadline.

Discovery cutoff (for completion of discovery): 7/31/20.

Expert(s) - deadline for reports: 8/7/20.

Expert(s) - discovery cutoff (if different from above): 8/14/20.

Dispositive motions to be heard no later than: 9/29/20 at 11:00 a.m.

Joint Status Report: 9/14/20.

Continued status conference: 9/29/20 at 11:00 a.m.

Lodge Joint Proposed Pre-Trial Order: 10/27/20.

Pretrial conference: 11/10/20 at 2:00 p.m.

Deliver trial exhibits to other parties and chambers (2 copies to chambers), including direct testimony by declaration unless excused: 11/10/20 (for the format of exhibits and other trial procedures, please see Judge Bason's Procedures (posted at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)) then search for "Trial Practice")

Trial commencement: 11/17/20 at 9:00 a.m.

If appearances are not 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](http://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.

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**CONT... Christian Rossil**

**Chapter 7**

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Christian Rossil

Represented By  
Todd B Becker

**Defendant(s):**

Daniel Ruan Partida

Represented By  
Lazaro E Fernandez

Sergio Salgado

Pro Se

**Plaintiff(s):**

Christian Rossil

Represented By  
Todd B Becker

**Trustee(s):**

David M Goodrich (TR)

Pro Se

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**2:16-18028 Enrique Peralta and Rosa Estrada**

**Chapter 7**

**#6.00** Cont'd hrg re: Motion for an Order Directing the Chapter 7 Trustee to Abandon the Real Property Located at 10315 Kingerman Ave., South El Monte, California 91733 as it is of Inconsequential Value to the Estate  
fr. 3/3/20

Docket 158

**\*\*\* VACATED \*\*\* REASON: This matter is scheduled to be heard on  
06/16/20 at 11:00 a.m. per parties Stipulation (dkt. 165)**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Enrique Peralta

Represented By  
Thomas B Ure

**Joint Debtor(s):**

Rosa Estrada

Represented By  
Thomas B Ure

**Movant(s):**

Enrique Peralta

Represented By  
Thomas B Ure  
Thomas B Ure

Rosa Estrada

Represented By  
Thomas B Ure

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Tamar Terzian

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**2:20-11489 Birgitta Lauren Knipe**

**Chapter 13**

**#7.00** Order to Show Cause re: Why This Case Should  
Not be Dismissed or Converted to Chapter 7

Docket 34

**Tentative Ruling:**

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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

There is no tentative ruling, but the parties should be prepared to address the issues raised in this Court's orders regarding whether to dismiss this case and whether or not to include a bar (dkt. 34, 43) and the responses filed by American Financial Center, Inc. (dkt. 45, 46, 47, 48, 53).

If appearances are not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Birgitta Lauren Knipe

Represented By  
Andrew P Altholz

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**CONT... Birgitta Lauren Knipe**

**Chapter 13**

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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**2:20-11489 Birgitta Lauren Knipe**

**Chapter 13**

**#7.10 Hrg re: Debtor's Motion for Voluntary Dismissal of Chapter 13 Case**

Docket 39

**Tentative Ruling:**

Please see the tentative ruling for calendar no. 7 (4/21/20 at 11:00 a.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Birgitta Lauren Knipe

Represented By  
Andrew P Altholz

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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**2:20-12865 Migan Murray**

**Chapter 13**

**#8.00** Hrg re: Motion to Convert Case From Chapter 13 to Chapter 11

Docket 29

**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 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](http://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 not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Migan Murray

Represented By  
Andrew Moher

**Trustee(s):**

Kathy A Dockery (TR)

Pro Se

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**CONT... Migam Murray**

**Chapter 13**

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

**Chapter 11**

**#1.00** Hrg re: Dos Cabezas Properties, LLC's motion  
to quash, and/or for protective order on debtor's  
2004 examination and document demands

Docket 97

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 3,  
4/21/20 at 1:00 p.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

110 West Properties, LLC

Represented By  
Gregory K Jones

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

**Chapter 11**

**#2.00** Hrg re: Criscione-Meyer Entitlement's Motion to Quash,  
and/or for Protective Order on Debtor's 2004 Examination  
and Document Demands

Docket 98

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 3,  
4/21/20 at 1:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

110 West Properties, LLC

Represented By  
Gregory K Jones

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

**Chapter 11**

**#3.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 12/17/19, 1/28/20, 02/18/20, 3/31/20

Docket 5

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Motion to Quash (dkt.97, 98) filed by Dos Cabezas Properties, LLC & Criscione-Meyer Entitlement, LLC's (collectively, "Cabezas"), Debtor's omnibus opposition (dkt. 104), Cabezas' omnibus reply (dkt. 113)

As a preliminary matter, the posted Procedures of Judge Bason (available at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)), do not permit parties to file written motions to compel or quash discovery, but instead direct parties to call chambers to arrange a telephonic conference, at which time Judge Bason may rule on oral motions and oppositions without the need for such papers (*id.*, Section I.D). But the tentative ruling is to waive compliance with these procedures, with a caution to counsel that failure to review and familiarize themselves with the Procedures in future may result in adverse consequences.

Turning to the merits, the tentative ruling is as follows.

(i) Background

On 1/17/20, Debtor filed a motion for 2004 examination and production

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**CONT... 110 West Properties, LLC**

**Chapter 11**

of documents seeking an order directing the production of documents and appearances at an oral examination by the persons most knowledgeable for Cabezas (dkt. 62, 63, 64, the "2004 Motion"). On 1/24/20, this Court entered an order granting the 2004 Motion (dkt. 69). Cabezas responded by filing separate, but virtually identical Motions to Quash (dkt. 97, 98), and the opposition and reply papers are omnibus. Accordingly, this Court's analysis is the same for both motions.

(ii) Jurisdiction

Cabezas argues that this Court does not have jurisdiction over their specific performance claim because the claim is not "related to" the bankruptcy proceeding and involves purely matters of state law (dkt. 97, 98, p.5:8-14). In support of this argument, Cabezas cites *Vacation Village, Inc. v. Clark County, Nev.*, 497 F.3d 902, 911 (9th Cir. 2007), in which the Court of Appeals for the Ninth Circuit quotes *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995), a Supreme Court decision describing "related to" jurisdiction as "including" certain matters. (Emphasis added.) But *Celotex* does not define the limits of "related to" jurisdiction, and *Celotex* cited with approval the Third Circuit's seminal case of *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), which states:

the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. [citations omitted]. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate. [*Celotex*, 514 U.S. 300, 307 n.5 (emphasis in original)]

Although the Supreme Court did not expressly adopt the *Pacor* test for determining "related to" jurisdiction, the Ninth Circuit has adopted it (see *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) ("We therefore adopt the *Pacor* definition quoted above [and] . . . reject any limitation on this definition"). Cabezas has not cited any authority that the Ninth Circuit has abandoned the *Pacor* test. Therefore, the tentative ruling is that this Court has "related to" jurisdiction because the parties' dispute arises from an alleged breach of contract for the sale of the estate's principal asset.

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**110 West Properties, LLC**

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This Court's determination that it has "related to" jurisdiction is not undermined by this Court's recent tentative ruling (available at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), Calendar no. 26, 3/31/20 at 11:00 a.m.) that mandatory abstention requires this Court to remand the State Court litigation in which Cabezas' claims arose. First, that tentative ruling includes a finding that this Bankruptcy Court has "related to" jurisdiction pursuant to 28 U.S.C. 157(c)(1). Second, whether this Court must abstain from hearing a claim is entirely different from whether this Court has any jurisdiction over the claim in the first instance.

(iii) Service of subpoenas

Cabezas asserts that Debtor's 2004 Motion was not effective because they have not been served with subpoenas (dkt. 97, 98, p.8:24-9:5). Debtor does not address this argument in its opposition, but the tentative ruling is that Cabezas is correct that they must be served with subpoenas (see Local Bankruptcy Rule 2004-1(b)(e) ("If the court approves a Rule 2004 examination of an entity other than the debtor, the attendance of the entity for examination and for the production of documents must be compelled by subpoena issued, and served pursuant to FRBP 9016 and F.R.Civ.P. 45"). But the tentative ruling is that this alone is not a sufficient basis to grant the motion, as opposed to continuing the motion to allow service.

(iv) Scope of discovery, and meeting and conferring

Cabezas argues that the 2004 Motion should be quashed because the requested production and scope of examination are vague and overly broad and because Debtor did not comply with applicable local rules requiring the parties to meet and confer. The tentative ruling is to overrule these objections. There is sufficient evidence of attempts to meet and confer, and the scope of discovery under Rule 2004 is well recognized as very broad.

(v) Local Bankruptcy Rule 2004-1(b)

Cabezas argues that the 2004 Motion should be quashed because Debtor failed to comply with Local Bankruptcy Rule ("LBR") 2004-1(b), which requires, in relevant part, that a motion "explain why the examination cannot proceed under FRBP 7030 or 9014," because there was a pending adversary proceeding in this Bankruptcy Court at the time the 2004 Motion was filed (dkt. 97, 98, p.7:7-18). But LBR 2004-1(b) is subject to this Court's discretion (see LBR 1001-1(d) ("The Local Bankruptcy Rules apply uniformly throughout the district, but are not intended to limit the discretion of the court. The Court may waive the application of any Local Bankruptcy Rule in any case or

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**Chapter 11**

proceeding, or make additional orders as it deems appropriate, in the interest of justice")).

In exercising its discretion, this Court considers two relevant circumstances. First, Rule 2004(a) (Fed. R. Bankr. P.) states that the court "may" order the examination of any entity, not "must," so such discovery is within this Court's discretion. (Emphasis added.) Second, Rule 45(d)(3)(A) (iv) (Fed. R. Civ. P.), provides that this Court "must quash or modify a subpoena that: . . . subjects a person to undue burden," so this Court must assess how much burden is "undue." (Emphasis added.)

The tentative ruling is that this Court is not persuaded to quash the 2004 Motion on this ground because, as Debtor highlights, the adversary proceeding referenced by Cabezas has been dismissed (see 2:20-ap-01008-NB, dkt. 11). This Court recognizes that there is a pending motion to vacate the dismissal order, but at most that warrants continuing the motion to quash, not granting it at this point.

(vi) Interference with State Court litigation

In a more persuasive argument, Cabezas asserts that permitting Debtor to conduct discovery in this Court is fundamentally unfair and inequitable because it would permit Debtor to circumvent state discovery rules (dkt. 97, 98, p.7:19-8-4). The tentative ruling is that it is appropriate to quash the 2004 Motion, both in the exercise of this Court's discretion under Rule 2004 and, alternatively, in assessing how much burden is "undue" under Rule 45.

The tentative ruling is that this Bankruptcy Court should defer to the State Court's management of this discovery, for two reasons. First, it appears appropriate that the same forum that will be deciding the merits of the parties' dispute should also determine the scope of discovery and resolve any discovery disputes.

Second, the same policies that underly the principle of not permitting discovery under Rule 2004 when there is a pending adversary proceeding or contested matter also apply when there is pending state court litigation. See, e.g., *In re Washington Mut., Inc.*, 408 B.R. 45, 50 (Bankr. D. Del. 2009) ("In addition to restricting use of Rule 2004 examinations when proceedings are pending against the examinee in the bankruptcy court, courts have also recognized that Rule 2004 examinations may be inappropriate 'where the party requesting the Rule 2004 examination could benefit their pending litigation outside of the bankruptcy court against the proposed Rule 2004

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examinee."") (internal citations omitted).

In this case, the tentative ruling is that permitting Debtor to proceed with discovery under Rule 2004 when there is a pending state court proceeding would be improper and impose an undue burden on Cabezas because Rule 2004 is broader in scope than the ordinary rules of discovery and does not afford Cabezas the same rights and protections. See 9 Collier on Bankruptcy ¶ 2004.01 (16th 2020); *In re Dinubilo*, 177 B.R. 932, 939-40 (Bankr. E.D. Cal. 1993) ("in a Rule 2004 examination: the witness has no right to be represented by counsel . . . there is only a limited right to object to immaterial or improper questions; there is no general right to cross-examine witnesses; and no right to have issues defined beforehand").

(vii) Conclusion

For the reasons stated above, the tentative ruling is that protective orders are warranted because the discovery sought from Cabezas overlaps with the issues being litigated before the State Court and potentially gives Debtor an unfair advantage in that action. Unless and until Debtor shows otherwise, it appears appropriate to stay all discovery sought from Cabezas absent further order of this Court.

Proposed orders: Cabezas is directed to lodge two proposed orders - one 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).

(b) Monthly Operating Reports ("MORs")

As of the preparation of this tentative ruling, Debtor has not filed its March MOR. The tentative ruling is that delays or failure to file MORs may be grounds for various adverse consequences, potentially including conversion or dismissal of this bankruptcy case. This Court can assess such issues at future status conferences, or upon a motion by the United States Trustee or other parties in interest.

(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

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**110 West Properties, LLC**

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(d) Continued status conference: 5/12/20 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 not 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](http://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:**

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](http://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).

Proposed order: 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).

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(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 status report due 5/19/20.

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

If appearances are not 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](http://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.

**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?

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(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: 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 not 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](http://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:**

Appearances required 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) suggests 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?

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(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 on the calendar. Why not?

(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: 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 not 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](http://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 12/17/19:**

Appearances required 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

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Procedures, available at [cacb.uscourts.gov](http://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) Deadlines/dates. This case was filed on 11/29/19.

(a) Bar date: 3/31/20 (DO NOT SERVE notice yet - court will prepare an order after the status conference).

(b) Procedures order: dkt. 2 (timely served, dkt. 8, 9)

(c) Plan/Disclosure Statement\*: N/a

(d) Continued status conference: 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 not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

110 West Properties, LLC

Represented By  
Gregory K Jones

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

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**#4.00** Hrg re: Motion of MAC LCBNA, LLC for an Order: (1) for Payment of Post-Petition Rent and Lease Charges Under 11 U.S.C. § 365(d)(3); (2) Allowing Post-Petition Rent and Charges as an Administrative Expense Under 11 U.S.C. § 503(b); and (3) Compelling Immediate Payment of such Rent and Charges; or, in the Alternative, for an Order to Show Cause as to Why the Lease Should Not be Deemed Rejected and the Property Returned to the Landlord

Docket 85

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 5.1, 4/21/20 at 1:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

The New School of Cooking, Inc.

Represented By  
Crystle Jane Lindsey  
Daniel J Weintraub  
James R Selth

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**#5.00** Cont'd hrg re: Motion for relief from stay [NA]  
fr. 4/7/20

CHRISTOPHER BECKER  
vs  
DEBTOR

Docket 76

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Grant in part, deny in part, 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

Analysis

(1) Procedural issues

This matter was continued to this date to allow Movant time to address certain service issues identified in this Court's tentative ruling for 4/7/20 (see section 1, below). This Court has reviewed Movant's amended proof of service (dkt. 99) and unauthorized supplemental brief (dkt. 100). As of the preparation of this tentative ruling, no opposition is on file. Therefore, the tentative ruling is to adopt the tentative ruling for 4/7/20 (see sections 2 & 3, below), supplemented as follows.

(2) Limited relief

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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 not 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 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).

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)).

Proposed order: Movant is directed to lodge a proposed order via LOU

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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 not 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](http://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 4/7/20:**

Appearances required. 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

**(1) Service**

The proof of service does not show service on the following parties:

**(a) Top 20 unsecured creditors**

Service is required on the creditors included in the list filed pursuant to Rule 1007(d) (Fed. R. Bankr. P.), pursuant to Rules 4001(a)(1) and 9014(a).

**(b) Both Debtor's counsel and Debtor itself**

Service is required not only (i) on Debtor's counsel but also (ii) on Debtor itself ("double service"), pursuant to Rules 7004(b)(9)&(g) and 9014(a)&(b). In addition, service on Debtor must be addressed to it at its address of record (listed on this Court's docket) and the address must include "Attn: Officer or Managing/General Agent" or the like. See Rule 7004(b)(3) (requiring service "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service

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**Chapter 11**

and the statute so requires, by also mailing a copy to the [debtor]").

The tentative ruling is that this Court has neither the authority nor the inclination to excuse non-compliance with these rules. It is true that this double service requirement is the exact opposite of typical non-bankruptcy practice, in which it is generally impermissible to serve a represented party personally; but there are good reasons for the double service rule in bankruptcy. It helps protect Debtor and the bankruptcy estate (*i.e.*, all parties in interest) from matters "falling through the cracks" given the high volume and speed of matters in typical bankruptcy cases, and the frequent use of service via U.S. mail.

Based on the foregoing, the tentative ruling is to continue this hearing to 4/21/20 at 1:00 p.m., with **corrected service and a filed proof of service required no later than 4/9/20**. The tentative ruling is to shorten time (per Rule 9006) such that, if service is made on that date then the hearing can go forward on the stated date, and with any opposition papers due 4/16/20 and any reply due 4/20/20 at noon.

In the interests of efficiency and completeness, this Court now turns to the tentative ruling on the merits. The following tentative ruling is based solely on the motion papers, and is subject to change in the event of any opposition (after Movant has re-served the motion papers).

**(2) "Cause" for relief**

The motion papers state that Movant seeks a nondischargeable judgment based on alleged fraud. The tentative ruling is that this is not sufficient cause for relief. Although claims arising from fraud generally are nondischargeable for individual debtors under 11 U.S.C. 523, that section does not apply to non-individual debtors in chapter 11. See 11 U.S.C. 1141(d)(2).

That said, the tentative ruling is that there is still "cause" for relief from the automatic stay within the meaning of 11 U.S.C. 362(d)(1) for two alternative reasons that are apparent from the motion papers. (a) The nonbankruptcy litigation may resolve any disputes regarding the claims and counterclaims. In addition, (b) the nonbankruptcy litigation involves another named defendant, as well as "Doe" defendants.

**(3) Relief notwithstanding future bankruptcy cases**

Deny, without prejudice to any other types of relief granted herein (or

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previously granted), for the following reasons.

The motion requests requests "in rem" relief (*i.e.*, relief applicable notwithstanding *future* bankruptcy cases (under 11 U.S.C. 362(d)(4) - inapplicable in this case - and/or *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017)). The tentative ruling is to deny that request because there is no showing of multiple bankruptcy cases that were part of a scheme to hinder, delay, or defraud creditors, or other sufficient grounds for such relief.

If appearances are not 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](http://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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

The New School of Cooking, Inc.

Represented By  
Crystle Jane Lindsey  
Daniel J Weintraub  
James R Selth

**Movant(s):**

Christopher Becker

Represented By  
Shirlee L Bliss

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**#5.10** Cont'd Status Conference re: Chapter 11 Case  
fr. 1/23/20, 2/4/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

**(1) Current issues**

**(a) Motion of landlord MAC LCBNA, LLC ("Landlord") for immediate payment of post-petition rent and lease obligations as an administrative expense claim (dkt. 85), debtor's notice of sublease rejection (dkt. 89), stipulation for rejection of sublease (dkt. 90) and other thereon (dkt. 92), debtor's opposition (dkt. 95), Landlord's reply (dkt. 104)**

The tentative ruling is to grant the motion in part, deny in part, as follows.

**(i) Rejection of lease**

The tentative ruling is to deny as moot Landlord's request for an order to show cause as to why the lease should not be deemed rejected, in view of the parties' stipulation for rejection of the lease and order thereon (dkt. 90, 92).

**(ii) Landlord is entitled to an administrative claim for postpetition rent and charges (11 U.S.C. 365(d)(3))**

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Landlord seeks an order directing debtor to immediately pay it all outstanding post-petition rent and charges in the amount of \$124,722.12 pursuant to section 365(d)(3) or, alternatively, for allowance of an administrative expense claim under section 503(b)(1). Debtor apparently does not dispute that, mathematically, the amounts payable under the lease amount to that total; but Debtor does appear to assert defenses based on an alleged lack of water pressure at the premises, and/or setoff or recoupment.

First, the parties' factual disputes are not properly presented for decision at this time: they would require further briefing and/or an evidentiary hearing. Meanwhile this Court will address the legal issues.

Second, Debtor does not address Landlord's entitlement to payment under section 365(d)(3), but argues that Landlord has not carried its burden under section 503(b)(1). The tentative ruling is that Landlord is entitled to an order allowing it an administrative priority claim under section 365(d)(3) in the full contractual amount of \$124,722.12, subject to any nonbankruptcy defenses and setoffs/recoupments. See *In re LPM Corp.*, 300 F.3d 1134, 1138 (9th Cir. 2002) ("claims for post-petition rent arising under 365(d)(3) are entitled to administrative priority, even if those claims exceed the reasonable value of the debtor's actual use of the property"). This Court need not address whether Landlord would also be entitled to an administrative claim under section 503(b)(1).

(iii) Landlord is *not* entitled to immediate payment of amounts remaining unpaid at this time

The tentative ruling is that Landlord is not entitled to immediate payment of unpaid postpetition rents and other charges at this time. To be clear, the statute does direct any debtor to make immediate payment. But the statute does not specify the consequences for failing to do so.

Under applicable decisions interpreting the statute, the consequences may include that (x) such non-payment may be grounds for relief from the automatic stay, (y) such non-payment may be grounds for terminating the leasehold interest (which Landlord requested and which Debtor has acceded to and this Court has approved), and (z) such non-payment may give rise to an administrative priority claim. But, in view of the possibility that the estate may be administratively insolvent, the tentative ruling is that Landlord is not entitled to immediate payment of the rent that should have been paid before.

Landlord is not the only administrative claimant, all of whom should be

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paid, but if there is not enough money to pay all administrative claims then Landlord would be receiving a super-priority. In an analogous situation the Court of Appeals for the Ninth Circuit has held that unpaid rent under section 365(d)(3) is entitled to administrative priority, but not a superpriority over chapter 7 administrative expenses. *In re LPM Corp.*, 300 F.3d at 1137-38. The Ninth Circuit did not specifically address whether such rent claims have a superpriority over chapter 11 administrative claims, but the Ninth Circuit's reasoning in *LPM* applies with equal force to chapter 11 administrative expenses.

In addition, among the cases cited by *LPM* with approval is the decision in *In re Tel-Central Communications, Inc.*, 212 B.R. 342, 348 (Bankr. W.D. Missouri 1997), which held that "if a lessor of a Chapter 11 debtor has not been paid post-petition in accordance with the mandate in sections 356(d)(3) and 365(d)(10) prior to the conversion of the case to a Chapter 7 proceeding, the lessor has a Chapter 11 administrative expense claim that cannot be paid until it is determined whether the bankruptcy estate has sufficient funds to pay all of the Chapter 7 and Chapter 11 administrative expenses." (Citation omitted, emphasis added.) The tentative ruling is that the reasoning in *T-Central* is sound.

In sum, Landlord is not entitled to immediate payment at this time.

(iv) Landlord is *not* entitled to an administrative priority for its attorney fees, and the dollar amount will need to be determined in future

Landlord seeks allowance of \$8,500 in attorneys' fees incurred in bringing this motion. Landlord seeks to include these fees within its administrative priority claim.

Debtor did not specifically object to the request for attorney fees. So the tentative ruling is that any arguments as to the allowability of attorneys fees as a matter of contract, or nonbankruptcy law, have been forfeited and waived, with two caveats.

First, like any default, this Court can exercise its discretion to require a "prove up" hearing or comparable procedures to support the dollar amount of attorney fees and costs. The tentative ruling is that, at an appropriate time to be determined at a future status conference, Landlord would need to file a declaration with daily timesheets. Then Debtor could object to whether Landlord's evidence in support of its fee request is sufficient (but, as is typical in prove up hearings, Debtor could not introduce its own evidence).

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**CONT...**

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

**Chapter 11**

Second, Debtor has objected generally to the asserted administrative priority of Landlord's claim, and that includes attorney fees in this more general objection. The tentative ruling is that Landlord has not carried its burden to establish that its attorney fees are entitled to an administrative priority.

It is true that, in some circumstances, attorney fees may be accorded administrative priority under section 365(d)(3), as the Ninth Circuit observed in *In re Cuckierman*, those cases "involved lease agreements under which the delinquent lessee was obligated to pay the lessor's attorney's fees on demand as the fees were incurred." 265 F.3d 846, 852 (9th Cir. 2001) (citations omitted, emphasis added). In this case, the relevant fee provision provides:

The prevailing party shall be awarded all costs and expenses including, without limitation, reasonable attorneys' fees, arising from enforcement of the provisions of this Sublease. The remedies described in this section and the Lease are cumulative and in addition to and without waiver of all remedies allowed Sublandlord by this Sublease, case law, common law or hereafter in effect, and are not mutually exclusive. Subtenant agrees that the rights and remedies granted Sublandlord in this section are commercially reasonable. (dkt. 85, Ex.1, para. 11.5)

The tentative ruling is that this language does not entitle Landlord to immediate payment and, applying the same reasoning in *Cuckierman*, the tentative ruling is also that any obligation of Debtor to pay Landlord's attorneys' fees will have arisen after the lease was rejected and only if this Court adopts its ruling and determines Landlord is the prevailing party. 265 F.3d at 852. At any such point the attorney fee claim will be part of the rejection damages, which are treated as a prepetition claim. See 11 U.S.C. 502(g). See *In re SNTL Corp.*, 571 F.3d 826 (9th Cir. 2009).

In sum, the tentative ruling is that attorney fees are part of Landlord's claim, but Landlord has not established that they are entitled to administrative priority, nor has Landlord provided sufficient evidence to support the precise dollar amount of fees to be awarded as part of its rejection claim. Those things can be determined in future, as discussed below.

(v) Dollar amount of administrative claim, and any nonbankruptcy defense/setoff/recoupment

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The tentative ruling is that it is premature at this time to set any evidentiary hearing as to rent and other charges, or any prove-up hearing or similar procedures as to attorney fees. It is unclear just how much or how little Debtor might have available to pay administrative priority creditors, and whether this case will have to be converted to chapter 7, in view of Debtor's postpetition lack of substantial revenues (see March MOR, dkt.105) and, more recently, the effects of the COVID-19 pandemic.

Therefore, the tentative ruling is to grant the interim relief set forth above and then take this motion off calendar, without prejudice to seeking at any future status conference to have the motion re-calendared and set for an evidentiary hearing, with associated deadlines.

*Proposed order:* Landlord 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).

(b) Christopher Becker's motion for relief from the automatic stay under 11 U.S.C. 362 (action in nonbankruptcy forum) (dkt. 76), Mr. Becker's unauthorized supplemental brief (dkt. 99), amended proof of service (dkt. 100), no opposition is on file

The tentative ruling is to grant in part, deny in part, as set forth in the tentative ruling for calendar no. 5 at 1:00 p.m.

(2) Deadlines/dates. This case was filed on 1/15/20.

(a) Bar date: 4/7/20 (dkt. 52, timely served, dkt. 59).

(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) Continued status conference: 6/2/20 at 1:00 p.m. *Brief* status report due 5/19/20.

\*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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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](http://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:**

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 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](http://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](http://www.cacb.uscourts.gov)).

Proposed order: 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).

(b) Procedures order: dkt. 5 (timely served, dkt. 11, 18).

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(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) Continued status conference: 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 not 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](http://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 2/4/20:**

Appearances required 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) Cash collateral motion (dkt. 19), supporting declarations (dkt. 23, 25, 26, 32, 33), order setting emergency hearing (dkt. 24), interim order (dkt. 39).

There is no tentative ruling, the parties should be prepared to update this Court on whether JPMorgan Chase and Foundation Group will consent to the use of their cash collateral.

(b) Utility motion (dkt. 21), 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.

Proposed orders: 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

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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 all 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) Bar date: 4/7/20 (DO NOT SERVE notice yet - court will prepare an order after the status conference).

(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 not 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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required/are not required," please see Judge Bason's Procedures (posted at [www.cacb.uscourts.gov](http://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**

Appearances required but telephonic appearances are encouraged if advance arrangements are made (see [www.cacb.uscourts.gov](http://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 not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

The New School of Cooking, Inc.

Represented By  
Crystle Jane Lindsey  
Daniel J Weintraub  
James R Selth

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**2:19-17410 South Street Brentwood, LLC**

**Chapter 11**

**#6.00** Hrg re: Second and final application and reimbursement  
of expenses of Michael Jay Berger

Docket 106

**Tentative Ruling:**

Grant the application and allow \$23,291.00 in fees and \$216.73 in expenses, for a total award of \$25,507.73, for the current fee period, and approve first interim fees of \$19,559.00 and costs of \$374.20 on a final basis, for a total final fee award of \$43,440.93. 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

South Street Brentwood, LLC

Represented By  
Michael Jay Berger

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**2:19-14078 Angel Rodriguez Lara and Angelica Soto Calva**

**Chapter 11**

**#7.00** Cont'd hrg re: U.S. Trustee Motion to Dismiss or Convert Case  
fr. 3/10/20

Docket 135

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar no. 8, 4/21/20 at 1:00 p.m.).

**Tentative Ruling for 3/10/20:**

Please see the tentative ruling for the status conference (Calendar no. 4, 3/10/20 at 1:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

Angel Rodriguez Lara

Represented By

Joanne P Sanchez

Anthony Obehi Egbase

**Joint Debtor(s):**

Angelica Soto Calva

Represented By

Joanne P Sanchez

Anthony Obehi Egbase

**Movant(s):**

United States Trustee (LA)

Represented By

Dare Law

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**2:19-14078 Angel Rodriguez Lara and Angelica Soto Calva**

**Chapter 11**

**#8.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 7/30/19, 8/20/19, 9/17/19, 10/1/19, 10/29/19,  
11/5/19, 12/10/19, 1/28/20, 2/18/20, 3/10/20

Docket 42

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances required, but pursuant to Judge Bason's COVID19 Procedures,  
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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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) UST's motion to dismiss case (dkt. 135), Debtors' response (dkt. 147, "MTD") and Stark declaration in support (dkt. 150)

The UST should be prepared to address whether there are any remaining compliance deficiencies.

(b) Amended disclosure statement (dkt. 153, 155) and amended plan of reorganization (dkt. 154)

If this Court is persuaded not to grant the MTD, and if the COVID-19 situation has not changed Debtors' situation enough to warrant deferring any consideration of Debtors' current proposed plan, the tentative ruling is to proceed with Debtor's proposed Plan and Disclosure Statement. The tentative ruling is to direct Debtor to make minor corrections (deleting PDF pp. 9 & 11 of the Plan, which are blank), and set a deadline of 4/28/20 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](http://www.cacb.uscourts.gov)), authorizing the service of a voting package and setting a combined hearing on final

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**CONT... Angel Rodriguez Lara and Angelica Soto Calva**

**Chapter 11**

approval of the Amended Disclosure Statement and confirmation of the Amended Plan for the same time as the continued status conference (see below).

(2) Deadlines/dates. This case was filed on 4/10/19 and converted from chapter 13 on 6/18/19.

- (a) Bar date: 6/19/19, and supplemental bar date of 8/28/19 after conversion to chapter 11, notice timely served (see dkt. 66, 67)
- (b) Procedures order: dkt. 41 (timely served, dkt. 46)
- (c) Amended Plan/Amended Disclosure Statement\*: see above.
- (d) Continued status conference: 6/30/20 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 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](http://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.

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Angel Rodriguez Lara

Represented By

Joanne P Sanchez

Anthony Obehi Egbase

**Joint Debtor(s):**

Angelica Soto Calva

Represented By

Joanne P Sanchez

Anthony Obehi Egbase

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**2:19-23440 Toya Emealda Johnson**

**Chapter 7**

**#9.00** Cont'd Order to Show Cause re: Why  
This Court Should Not Impose Sanctions  
fr. 02/18/20

Docket 22

**\*\*\* VACATED \*\*\* REASON: Order Granting Motion to Cont'd hrg to  
6/30/20 at 11:00 a.m. (Dkt. 29)**

**Tentative Ruling:**

<b>Party Information</b>
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**Debtor(s):**

Toya Emealda Johnson

Pro Se

**Trustee(s):**

Carolyn A Dye (TR)

Pro Se

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**2:19-19999 Kim Gordon McNulty and Melissa Amanda McNulty**

**Chapter 11**

**#10.00** Combined hrg re: Approval of Disclosure  
statement and plan

Docket 41

**\*\*\* VACATED \*\*\* REASON: Cont. to 6/2/20 at 1pm per stipulation (dkt.  
81) and order thereon**

**Tentative Ruling:**

<b>Party Information</b>
--------------------------

**Debtor(s):**

Kim Gordon McNulty

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Joint Debtor(s):**

Melissa Amanda McNulty

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia

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**2:19-19999 Kim Gordon McNulty and Melissa Amanda McNulty**

**Chapter 11**

**#11.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 9/24/19, 11/12/19, 1/14/20, 3/10/20

Docket 1

**\*\*\* VACATED \*\*\* REASON: Cont. to 6/2/20 at 1pm per stipulation (dkt. 81) and order thereon**

**Tentative Ruling:**

<b>Party Information</b>
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**Debtor(s):**

Kim Gordon McNulty

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**Joint Debtor(s):**

Melissa Amanda McNulty

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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**2:20-11409 Anthony Chan**

**Chapter 11**

**#12.00** Hrg re: Motion in individual Ch 11 Case for Order approving a budget for the use of the debtor's cash and postpetition income

Docket 44

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 13, 4/21/20 at 1:00 p.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anthony Chan

Represented By  
Jeffrey I Golden  
Beth Gaschen  
Faye C Rasch

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**2:20-11409 Anthony Chan**

**Chapter 11**

**#13.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 03/03/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

**(1) Current issues**

**(a) Combined status conferences**

Three cases are jointly administered: *In re Anthony Chan* (Case No. 2:20-bk-11409-NB); *In re A Touch of Brass, Inc.* (Case No. 2:20-bk-11555-NB) ("Brass"); and *A.C. Yu Chan Holding, Inc.* (Case No. 2:20-bk-11476-NB). This status conference addresses all three cases.

**(b) Chan Budget motion (2:20-bk-11409-NB, dkt. 44)**

There is no tentative ruling. This Court is not persuaded that it is appropriate to approve Debtor's proposed budget, which lists a negative net monthly income: (\$2,684.80). Debtor should be prepared to address whether he anticipates either an increase in income or decrease in expenses in the near future.

**(c) Monthly operating reports ("MORs") for Debtor Anthony Chan**

Debtor Anthony Chan's Amended February MOR (Case No. 2:20-bk-11409-NB, dkt.53, p.4) lists the number of postpetition payments not made to Bank of America at \$0 but lists a very large dollar amount in the column for

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**Anthony Chan**

**Chapter 11**

"Total Due" (presumably Debtor's estimate of the entire balance owed). This Court's understanding of the form is that Debtor should be listing the total postpetition payments that are due and unpaid, not the total balance. The United States Trustee ("UST") is requested to clarify this issue at the hearing, and state whether Debtor needs to file a further amended MOR.

In addition, the same MOR lists only a single entry for "food" (\$983.15). The UST is requested to clarify whether food entries should be broken down into single items (each grocery bill, each meal at a restaurant, etc.).

In addition, although the MOR lists a single deposit and various expenses in an exactly equal total amount, the expenses are not reflected in the bank statement or any cash ledger or anywhere else. Is that because (i) Mr. Chan arranges for his employment compensation to equal his expenses exactly and (ii) the checks are either (x) drawn on the bank account of Mr. Chan's employer (his company and co-debtor A Touch of Brass, Inc.), or (y) the checks are drawn on his own bank account but have not yet cleared as of the end of the MOR's period, or (z) some other explanation?

The tentative ruling is to set a deadline of 4/28/20 for Debtor to file and corrected MOR.

(d) Monthly operating reports ("MORs") for Debtor A Touch of Brass, Inc.

Debtor A Touch of Brass, Inc.'s Amended February MOR (Case No. 2:20-bk-11555-NB, dkt. 71, p.11) has a similar issue regarding postpetition payments. It removes the figures in the "Post-Petition payments not made (Number)" column, but there was no corresponding change to the "Total Due" column, so Debtor still reflects missed postpetition payments to "CNC Associates" and "Toyota Financial Services" in an amount totaling \$26,018.86.

Debtor is directed to address whether a further amended MOR should address this issue. In any event, Debtor is directed to address (i) what Debtor's financial viability is, (ii) what is the nature of the missed postpetition payments, and (iii) how does its inability to pay these debts impact its ability to reorganize?

Additionally, Debtor did not attach copies of bank statements to this amended MOR. The tentative ruling is to waive that omission in this instance, since those documents are attached to the original February MOR (dkt. 68), but caution Debtor that future MORs should attach bank statements.

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**Anthony Chan**

**Chapter 11**

The tentative ruling is to set a deadline of 4/28/20 for Debtor to file and corrected MOR.

(2) Deadlines/dates. This case was filed on 2/7/20.

(a) Bar date: 5/5/20 (dkt. 26; timely served, dkt. 27)

(b) Procedures order: dkt.3 (timely served, dkt. 5)

(c) Plan/Disclosure Statement\*: TBD

(d) Continued status conference: 6/2/20 at 1:00 p.m. *Brief* written status report due 5/19/20.

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

If appearances are not 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](http://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.

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
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**Debtor(s):**

Anthony Chan

Represented By  
Jeffrey I Golden

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:20-11476 AC YU CHAN HOLDING, LLC**

**Chapter 11**

**#14.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 03/03/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 in future (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)

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
--------------------------

**Debtor(s):**

AC YU CHAN HOLDING, LLC

Represented By  
Jeffrey I Golden

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:20-11555 A Touch of Brass, Inc.**

**Chapter 11**

**#15.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 02/18/20, 3/3/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances 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 in future (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)

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
--------------------------

**Debtor(s):**

A Touch of Brass, Inc.

Represented By  
Jeffrey S Shinbrot

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:19-21521 Tatung Company of America, Inc.**

**Chapter 11**

**#16.00** Hrg re: Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Notice of Motion and Motion For Order Extending Debtors Exclusive Periods To File Plan of Reorganization and Obtain Acceptances Thereof

Docket 216

**\*\*\* VACATED \*\*\* REASON: Continued to 6/16/20 at 1pm per stipulation (dkt. 222) and order thereon"**

**Tentative Ruling:**

<b>Party Information</b>
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**Debtor(s):**

Tatung Company of America, Inc.

Represented By  
Ron Bender  
Lindsey L Smith  
Juliet Y Oh

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

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**2:19-21521 Tatung Company of America, Inc.**

**Chapter 11**

**#17.00** Cont'd hrg re: Debtor's Emergency Motion for Entry of an Interim Order, Pending a Final Hearing Authorizing the Debtor to Use Cash Collateral  
fr. 10/2/19, 10/15/19, 10/29/19, 12/10/19, 1/7/20, 02/18/20

Docket 5

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 18, 4/21/20 at 1:00 p.m.)

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

Please see the tentative ruling for the status conference (calendar no. 14, 2/18/20 at 1:00 p.m.)

**Tentative Ruling for 1/7/20:**

Please see the tentative ruling for the status conference (calendar no. 4, 1/7/20 at 2:00 p.m.)

**Tentative Ruling for 12/10/19:**

Please see the tentative ruling for the status conference (calendar no. 10, 12/10/19 at 1:00 p.m.)

**Tentative Ruling for 10/29/19:**

Please see the tentative ruling for the status conference (calendar no. 21, 10/29/19 at 2:00 p.m.)

**Tentative Ruling for 10/15/19:**

Please see the tentative ruling for the status conference (calendar no. 4, 10/15/19 at 2:00 p.m.)

**[PRIOR TENTATIVE RULING OMITTED]**

<b>Party Information</b>
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**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
Courtroom 1545 Calendar**

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**CONT... Tatung Company of America, Inc.**

**Chapter 11**

**Debtor(s):**

Tatung Company of America, Inc.

Represented By  
Ron Bender  
Lindsey L Smith  
Juliet Y Oh

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

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**2:19-21521 Tatung Company of America, Inc.**

**Chapter 11**

**#18.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 10/2/19, 10/15/19, 10/29/19, 11/5/19, 12/10/19,  
12/17/19, 01/07/20, 1/14/20, 02/18/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances are not required on 4/21/20. 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Cash collateral motion (dkt. 5, as supplemented, dkt. 218)

Grant on a further interim basis, on the same terms and conditions as previously ordered (dkt. 212), except for the revised budget (dkt. 218, Ex.A), through the conclusion of a continued hearing concurrent with the continued status conference (see below).

*Proposed order:* Debtor 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 9/30/19.

(a) Bar date: 1/17/20 (Order dkt. 97, timely served, dkt.101).

(b) Procedures order: dkt.18 (timely served, dkt. 25)

(c) Plan/Disclosure Statement\*: TBD (Debtor must use the forms required by Judge Bason, absent an order excusing the use of such forms) (DO NOT SERVE yet, except on the U.S. Trustee -

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**Tatung Company of America, Inc.**

**Chapter 11**

          this Court will set a deadline and procedures at a later time).  
(d) Continued status conference: 6/30/20 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  
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](http://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.

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
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**Debtor(s):**

Tatung Company of America, Inc.

Represented By

Ron Bender

Lindsey L Smith

Juliet Y Oh

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:20-12166 Olinda Esperanza Lytle**

**Chapter 11**

**#19.00** Hrg re: Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel [11 U.S.C. Section 327(a), LBR 2014-1]; and to File Interim Fee Applications Using Procedure in LBR 9013-1(o)

Docket 11

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 23, 4/21/20 at 1:00 p.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Olinda Esperanza Lytle

Represented By  
Onyinye N Anyama

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:20-12166 Olinda Esperanza Lytle**

**Chapter 11**

**#20.00** Hrg re: Motion in Individual Chapter 11 Case for Order Approving a Budget for the Use of the Debtor's Cash and Postpetition Income

Docket 27

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 23, 4/21/20 at 1:00 p.m.).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Olinda Esperanza Lytle

Represented By  
Onyinye N Anyama

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

1:00 PM

**2:20-12166 Olinda Esperanza Lytle**

**Chapter 11**

**#21.00** Cont'd hrg re: Motion in Individual Chapter 11 Case for Order  
Authorizing Use of Cash Collateral  
fr. 03/31/20

Docket 12

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar no. 23, 4/21/20 at 1:00 p.m.).

**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 4/21/20 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.

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](http://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

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**Olinda Esperanza Lytle**

**Chapter 11**

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%

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).

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

(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) Timing. 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):

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**Olinda Esperanza Lytle**

**Chapter 11**

(a) Insurance. 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 current on payments for such insurance.

(b) Taxes. 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) Disclosures/access. 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) Priority. Such liens shall be limited to the same *priority* as the security interest held by the creditor as of the petition date.

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**Olinda Esperanza Lytle**

**Chapter 11**

(c) Dollar amount. 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 date, and to the extent that they are *unavoidable*.

(e) Automatic postpetition perfection. 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 not 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](http://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.

**United States Bankruptcy Court  
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Los Angeles  
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**CONT... Olinda Esperanza Lytle**

**Chapter 11**

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

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

<b>Party Information</b>
--------------------------

**Debtor(s):**

Olinda Esperanza Lytle

Represented By  
Onyinye N Anyama

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

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**2:20-12166 Olinda Esperanza Lytle**

**Chapter 11**

**#22.00** Cont'd hrg re: Motion for Continuation of Utility Service and Approval  
of Adequate Assurance of Payment to Utility Company  
fr. 3/31/20

Docket 16

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar no. 23,  
4/21/20 at 1:00 p.m.).

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

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

<b>Party Information</b>
--------------------------

**Debtor(s):**

Olinda Esperanza Lytle

Represented By  
Onyinye N Anyama

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

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1:00 PM

**2:20-12166 Olinda Esperanza Lytle**

**Chapter 11**

**#23.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances required by counsel for the debtor, 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Cash collateral motion (dkt. 12), amended cash collateral motion (dkt. 25), notice of continued hearing (dkt. 26), interim cash collateral order (dkt. 50), no opposition is on file

Grant the motion on final basis, on the same terms as stated in the order (dkt. 50) granting the motion on an interim basis.

(b) Utilities motion (dkt. 16), order setting hearing on shortened notice (dkt. 19, "OST"), notice of hearing (dkt. 21), proof of service (dkt. 22), notice of continued hearing (dkt. 42), interim utility order (dkt. 49), no opposition is on file

Grant the motion on a final basis.

(c) Application to employ Anyama Law Firm (dkt. 11), notice of hearing (dkt. 37), supplemental Anyama declaration (dkt. 38), declarations of Ms. Anyama and Daisy Parada (dkt. 54), no opposition is on file

This Court has reviewed the declarations of Ms. Anyama and Ms.

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**Olinda Esperanza Lytle**

**Chapter 11**

Parada (dkt. 54). The tentative ruling is to grant the application and authorize employment, effective 2/26/20, subject to Judge Bason's standard employment provisions (available at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)).

(d) Budget motion (dkt. 41), Amended Schedule J (dkt. 28) no opposition is on file

Grant on a further interim basis, subject to Debtor addressing the following issues in an amended budget and/or declaration filed by 4/28/20, with a continued hearing concurrent with the continued status conference (see part "(2)" of this tentative ruling, below).

(i) HOA fees: Amended Schedule J, paragraph 4d reflects a \$79 monthly payment for "Homeowner's association or condominium dues," but the proposed budget does not include this as a line-item expense. Why not?

(ii) Car payment: Debtor's budget proposes to stop making a \$369 monthly car payment beginning April 2020, but does not explain why. Was March 2020 the final payment under a vehicle purchase agreement? Is Debtor surrendering this vehicle? If so, will Debtor be able to get to/from work? Should the budget be further amended to eliminate the need for car insurance? Why was this decrease not addressed in paragraph 24 on Schedule J which prompted Debtor to state whether she expected any decreases in her expenses within the year after the form was filed?

(e) Amended Schedule I (dkt. 28) remains deficient

This Court's 3/31/20 tentative ruling (see below) directed Debtor to file an amended Schedule I that attaches a separate statement showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.

Debtor's Amended Schedule I still puts rental income in line 8h, rather than in line 8a, and Debtor has still not filed a separate statement as required by that form and this Court's prior ruling.

The tentative ruling is that Debtor is directed to file a further amended schedule I by 4/28/20 that cures both of these issues.

(f) Monthly operating reports ("MORs")

As of the preparation of this tentative ruling, Debtor has not filed an MOR for March. Why not?

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**Olinda Esperanza Lytle**

**Chapter 11**

Proposed orders: 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) Bar date: 6/3/20 (dkt. 30; timely served, dkt. 35)
  - (b) Procedures order: dkt. 5 (not timely served, but eventually served which gives notice of matters therein, dkt. 34)
  - (c) Plan/Disclosure Statement\*: TBD
  - (d) Continued status conference: 6/2/20 at 1:00 p.m. No written status report is 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 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](http://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.

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

Appearances required 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

- (1) Current issues

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**Olinda Esperanza Lytle**

**Chapter 11**

(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) Utilities motion (dkt. 16), order setting hearing on shortened notice (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 persuaded 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 conference (see part "(2)" below).

(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) Connections. What are all 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

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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) Terms. 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) Informed consent of debtor. Has the debtor likewise been fully advised and given informed consent? Who provided such advice? Are these things in writing?

(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

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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](http://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

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.

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Proposed orders: 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) Bar date: 6/3/20 (DO NOT SERVE notice yet - court will prepare 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) Continued status conference: 4/21/20 at 1:00 p.m. No written status report is 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 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Olinda Esperanza Lytle

Represented By  
Onyinye N Anyama

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**2:19-11809 Schaefer Ambulance Service, Inc**

**Chapter 11**

**#24.00** Hrg re: Motion to Approve Compromise Under Rule 9019  
Motion for Order Approving Settlement Agreement Between  
Debtor and TCF National Bank

Docket 573

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 28,  
4/21/20 at 1:00 p.m.)

<b>Party Information</b>
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**Debtor(s):**

Schaefer Ambulance Service, Inc

Represented By  
Craig G Margulies  
Monserrat Morales

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**Chapter 11**

**#25.00** Cont'd hrg re: TCF Equipment Finance, Inc's Motion for Allowance and Payment of \$22,000 Administrative Expense Claim fr. 1/28/20, 03/31/20

Docket 475

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 28, 4/21/20 at 1:00 p.m.)

**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.)

<b>Party Information</b>
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**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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**#26.00** 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, 03/31/20

Docket 486

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 28,  
4/21/20 at 1:00 p.m.)

**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.)

<b>Party Information</b>
--------------------------

**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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**Chapter 11**

**#27.00** Combined hrg re: Approval of Disclosure Statement and Plan Confirmation

Docket 532

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 28, 4/21/20 at 1:00 p.m.)

<b>Party Information</b>
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**Debtor(s):**

Schaefer Ambulance Service, Inc

Represented By  
Craig G Margulies  
Monserrat Morales

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**#28.00** 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, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances required by counsel for the debtor, 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

**(1) Current issues**

**(a) Motion For Order Approving Settlement Agreement Between Debtor And TCF National Bank (the "Settlement Motion," dkt. 573)**

The tentative ruling is to grant the Settlement Motion.

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

**(b) TCF Equipment Finance, Inc.'s Motion For Allowance And Payment Of Administrative Expense Claim (dkt. 475) and Debtor's Amended Motion For Order Authorizing Surcharge Of Collateral (dkt. 486)**

The tentative ruling is to continue both motions to the same date and time as the continued status conference, to ensure that an order approving the parties' Settlement Motion is lodged and entered, with the understanding that the motions will come off calendar if the order on the Settlement Motion

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is issued prior to the continued hearing.

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(c) Debtor's Second Amended Plan (the "Plan," dkt. 562), Second Amended Disclosure Statement (the "Disclosure Statement," dkt. 563), first Supplement (the "1st Supplement," dkt. 578), Cathay Bank's Response to the Plan (the "Cathay Response," dkt. 581), Objections Of The City Of Monrovia ("City") to the Plan (dkt. 583), second Supplement (the "2d Supplement," dkt. 596), Debtor's reply (dkt. 598, 599, 601), City's response to 2d Supplement (dkt.602), City's response to Debtor's reply (dkt.603)

The tentative ruling is to accept City's latest reponses in view of the fact that the 2d Supplement was only recently filed. In addition, the tentative ruling is (x) to sustain City's objections in part and overrule them in part, and (y) continue this confirmation hearing to the same date as the continued status conference, for the reasons set forth below.

(i) The tentative ruling is that City has not established that Debtor is holding its alleged funds in trust

City argues that the Plan should not be confirmed because Debtor holds approximately \$400,000 in trust for City (the "City Funds"), based on the parties' contractual agreement for advanced life support services, but the Plan treats those funds as part of the estate and City's claim as an unsecured claim. Dkt. 583, pp.2-5. Debtor's reply argues that the language from the parties' agreement is insufficient to create an express trust under California law (dkt. 598, p.1:9-14), that there was no meeting on minds or performance consistent with any such trust (*id.* at p.2:3-28), and that City is barred by waiver or laches. *Id.* at pp.4:17-7:8. The tentative ruling is not to reach those issues because the following issue is dispositive of this particular objection.

Debtor provides evidence that City's alleged funds were commingled with the funds that were collected for other localities and therefore, debtor argues, even if the parties' intent was to create a trust fund, City has not met its burden of establishing any actual trust fund, including any tracing of the funds at issue. Dkt.598, pp.3:3-4:14. City has not presented any contrary evidence, or any authority establishing that it can assert a trust absent segregated funds. The tentative ruling is that Debtor is correct.

In sum, the City has not established any actual trust fund that would let it come ahead of other creditors, and be paid 100% of what it is owed while other creditors, whose own situations are also empathetic, receive little or nothing. Therefore the tentative ruling is to overrule this objection to

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confirmation.

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(ii) The tentative ruling is that more notice and possible re-balloting and/or amendment of proposed releases and other terms are required

City's objection argues that the Plan should not be confirmed because it has not been proposed in good faith as required by Section 1129(a)(3). Dkt. 583, p.5:20-23. City puts forth various arguments for why "Debtor's bad faith is evident," but one of those arguments essentially repeats the "trust fund" issue addressed above so it will not be separately addressed. For the same reasons, City argues that certain releases should not apply, either generally or as against City. See dkt. 583, p.5:14-15.

(A) The Plan is incomplete

City argues that as of the deadline for objecting to the Plan it was incomplete. Dkt. 583, p.5:24. That is accurate. Section 4.1 of the Plan provides for the establishment of a Creditor Trust to administer Debtor's assets, but the Plan does not include a copy of the Creditor Trust Agreement. See dkt. 562, p.18, para. 4.1; dkt. 562, p.24, Ex. 1; dkt. 583 p.6:2-9.

The tentative ruling is that, now that the 2d Supplement has been filed (on 4/14/20, dkt.596) and now that this Court can assess its provisions, those provisions require additional disclosure - a supplement to the Disclosure Statement. In addition, the tentative ruling is that the terms of the 2d Supplement require re-balloting, an opportunity to object, and/or withdrawal of those provisions.

(B) Leslie McNeal as trustee of the Creditor Trust

City argues that the Plan has been proposed in bad faith because it entrusts the Creditor Trust to Leslie McNeal, an insider of the Debtor who previously failed to fulfill fiduciary trust obligations. Dkt. 583, p.5:24-27; p.6:20-26. Debtor responds Leslie McNeal is Debtor's officer and principal with the most experience and knowledge about Debtor's billing and collections, and so it is necessary and appropriate that Leslie McNeal serve as trustee for the Creditor Trust. Dkt. 598, p.8:3-7.

The tentative ruling is that making Leslie McNeal trustee, with little or no opportunity for oversight or removal by creditor/beneficiaries, is not sufficiently justified. Accordingly, absent more control by creditor/beneficiaries, the tentative ruling is to sustain the objection. But the tentative ruling is to provide an opportunity for Debtor to amend the trust

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agreement to address this issue.

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(C) Treatment of the Schaefer Trust

City argues that the Plan unfairly advantages the Schaefer Trust loans over other claims. Dkt. 583, pp.5:28-6:1; p.7:2-14. City argues that given that Debtor obtained the secured loans from the Schaefer Trust weeks before filing the bankruptcy petition, and now Debtor proposes to pay the Schaefer Trust ahead of City, this Court should at a minimum disregard acceptance of the Plan by the Schaefer Trust, or subordinate or recharacterize the secured claims to Class 4 unsecured creditors. Dkt. 583, p.7:2-22. Debtor's reply argues that the treatment of the Schaefer Trust is fair in light of the considerable funds loaned to Debtor, and the concessions the Schaefer Trust made to allow Debtor to propose a feasible plan. Dkt. 598, pp.6:10-p.7:23.

The tentative ruling is that City's objection is not persuasive on the issue of paying the Schaefer Trust ahead of City. As described above, as City has not established that Debtor was holding any of its funds in trust, and City has not established that is entitled to treatment other than as an unsecured creditor. Therefore it is reasonable, and in fact required by the Bankruptcy Code, that Debtor to propose to pay a secured claim ahead of City's unsecured claim.

But, to the extent that City is arguing that the broad releases provided to the Schaefer Trust are inappropriate, this Court requires more information as set forth below.

(D) Broad releases

As pointed out in City's objection, the Plan provides for broad releases. Dkt. 583, p.4:23. In its reply, Debtor argues that the releases provided to the Schaefer Trust were "an important factor and consideration for its agreement to subordinate its claims" and to "provide any funds necessary to ensure payment in full to administrative and priority claimants." Dkt. 598, p.7:17-22.

Section 8.2(a)(ii) of the Plan provides in relevant part

... all parties in interest in this Chapter 11 Case shall be deemed to have released all of the Released Claims against the following Entities: the Debtor, the Creditor Trust and the Professionals, and against each and every one of their present and former directors, officers, employees, professionals, agents, equity holders, shareholders, members, trustees, beneficiaries, representatives, attorneys, advisors, successors and assigns.  
[Dkt. 562, p.26:3-8 (emphasis added)]

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Section 1.65 of the Plan defines "Released Claims" as follows

Released Claims means, except as otherwise provided herein, all Claims, debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, promises, damages, claims and liabilities whatsoever, known or unknown, associated with the Debtor, the Estate, or the Chapter 11 Case, existing on the Confirmation Date or which thereafter could arise based on any act, fact, transaction, cause, matter, or thing that occurred prior to the Confirmation Date, with the exception of the following ... (iii) Claims arising from the fraud, willful misconduct, or gross negligence of any Person ... [Dkt. 562, p.8:15-23 (emphasis added)]

Section 8.2(a)(i) of the Plan largely mirrors the release language from Section 8.2(a)(ii) quoted above, but instead it is the Debtor and the Estate who are deemed to release all Released Claims with some exceptions. See *dk. 562*, p.25:25-28. While the releases provided in Section 8.2(a)(i) might be permissible, Section 8.2(a)(ii) appears to provide for third party releases which is not permissible under Ninth Circuit case law. See *In re Lowenschuss*, 67 F.3d 1394, 1401-02 (9th Cir. 1995) ("This court has repeatedly held, without exception, that [Section] 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors. ... In *American Hardwoods*, 885 F.2d at 625-26, we explicitly rejected the argument ... that the general equitable powers bestowed upon the bankruptcy court by 11 U.S.C. [Section] 105(a) permit the bankruptcy court to discharge the liabilities of non-debtors."); see also *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016) (reiterating *Lowenschuss* principles).

In addition, even for those releases that would be permissible under Ninth Circuit law - e.g., releases by Debtor and the bankruptcy estate - the tentative ruling is that Debtor must support its proposed releases just as it would for any other settlement. In other words, Debtor must show that the usual factors support granting the releases. See *In re A&C Prop's*, 784 F.2d 1377, 1381 (9th Cir. 1986).

The tentative ruling is to sustain City's objection insofar as denying confirmation if the proposed releases are included. But the tentative ruling is to provide Debtor with an opportunity to craft more limited release language.

(iii) Conclusion

The tentative ruling is that for the reasons set forth above, Debtor's

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plan cannot be confirmed today, and this confirmation hearing should be continued to the same date and time as the continued status conference. The tentative ruling is that Debtor must file and serve on all creditors appropriate briefs and/or declarations including revised language of the Plan and trust documents by no later than two weeks prior to that hearing, with any response by City or any other party in interest due no later than one week prior to that hearing.

(2) Deadlines/dates. 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)\*: See above.

(c) Continued status conference: 5/19/20 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 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](http://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.

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
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**Debtor(s):**

Schaefer Ambulance Service, Inc

Represented By  
Craig G Margulies  
Monserrat Morales

**United States Bankruptcy Court  
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**#29.00** 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, 03/31/20, 4/7/20

Docket 65

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar no. 31, 4/21/20 at 1:00p.m.).

**Tentative Ruling for 4/7/20:**

Please see the tentative ruling for the status conference (Calendar no. 5, 4/7/20 at 1:00 p.m.).

**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.).

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**Debtor(s):**

Ashley Susan Aarons

Represented By  
Michael R Totaro

**Movant(s):**

United States Trustee (LA)

Represented By  
Dare Law  
Alvin Mar  
Ron Maroko

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**#30.00** Cont'd hrg re: Application to Employ Asset Recovery Association  
dba CLaimX as Public Adjuster representing debtor and  
debtor in possession on insurance claims related to damage  
to her Bel Air Rd property  
fr. 4/7/20

Docket 167

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar No. 31,  
4/21/20 at 1:00 p.m.).

**Tentative Ruling for 4/7/20:**

Please see the tentative ruling for the status conference (Calendar No. 5,  
4/7/20 at 1:00 p.m.).

<b>Party Information</b>
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**Debtor(s):**

Ashley Susan Aarons

Represented By  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
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**Hearing Room 1545**

1:00 PM

**2:19-18316 Ashley Susan Aarons**

**Chapter 11**

**#31.00** 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, 03/31/20, 4/7/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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 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](http://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)

The tentative ruling is to appoint a chapter 11 trustee based on the long history of this case without progress and with many mis-steps by Debtor (as set forth in this tentative ruling and the extensive prior tentative rulings reproduced below). In addition, the UST should be prepared to address whether Debtor's March MOR (dkt. 208) sufficiently addresses the issues previously identified.

(b) Application to employ public adjuster Asset Recovery Association dba ClaimsXP (dkt. 167, "Application"); opposition of Wilmington Savings Fund Society ("Wilmington") (dkt. 181, 182); notice of hearing (dkt. 184); Debtor's reply (dkt. 192)

There is no tentative ruling. At the last hearing, this Court ordered Debtor to file a declaration(s) with an update on the projected repair costs

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and a statement of disinterestedness. As of the preparation of this tentative ruling, Debtor has not complied. Why not?

(c) Motion to approve settlement with Wilmington Savings Fund ("Wilmington")

At the last hearing, this Court orally shortened time for Debtor to file a motion to approve a settlement with Wilmington that would resolve the parties' default interest, late fees, and other charges dispute, but set a deadline of 4/14/20 for Debtor to file and serve the motion. On 4/13/20, Debtor filed an ex parte application requesting modification of the filing and service deadlines (dkt. 203), which this Court treated as an application for hearing on shortened time and granted the application (dkt. 204). As of the preparation of this tentative ruling, no motion is on file.

(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: 5/19/20 at 1:00 p.m., concurrent with other matters. *Brief* status report due 5/2/20.

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

If appearances are not 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](http://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 4/7/20:**

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

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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](http://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)**

There is no tentative ruling. 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:

- (i) the UST's MTD and related papers,
- (ii) Debtor's lack of progress noted in the relief from stay orders (dkt. 173, 174),
- (iii) Debtor's apparent history of mis-starts and poor management of this estate, including a long history of missed projections about how this case would progress, an abandoned attempt to retain a professional to rent out property as an Air-bnb, the belated and unsuccessful attempts to explore a sale or refinancing of the Bel Air property, and transfers of funds without adequate explanation (as referenced in this Court's prior tentative rulings for 10/29/19, 10/15/19, and 9/24/19, reproduced below).

**(b) Inadequate attempts to stop the running of default interest**

An additional concern, which may bear on the MTD, is whether Debtor has made adequate attempts to stop the running of postpetition default interest payable to Patch of Land Lending, LLC ("Patch"). The tentative ruling is that she has not.

From the inception of this bankruptcy case this Court has raised concerns that default interest, late fees, and other charges are consuming any equity in the Bel Air property at a rapid rate. On 8/13/19 this Court issued an order conditionally continuing the automatic stay under 11 U.S.C. 362(c) (3) and setting a deadline of 11/12/19 for Debtor to "file a motion to refinance the Bel Air Road property, or file a realistic plan of reorganization, or otherwise file appropriate papers aimed at stopping the running of postpetition default interest owed to Patch [of Land Lending]." Dkt. 31, Ex.1, p.1, item "(ii)" (emphasis added). Debtor filed a motion challenging the

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validity of Patch's assertion that it is entitled to default interest and late fees under 11 U.S.C. 506(b) (the "Default Interest Motion," dkt. 123). That is insufficient, for two reasons.

First, it is not enough to file the Default Interest Motion without prosecuting it. The hearing on that motion has been continued several times (dkt. 129, 133, 141) with the current hearing set to be heard 5/5/20 at 1:00 p.m. (dkt. 164).

Second, the Default Interest Motion has the effect of gambling that Debtor will prevail in her attempt to establish that no default interest is owed - an uphill battle that might well fail - rather than stopping the running of whatever interest turns out to be owed. See, e.g., *East West Bank v. Altadena Lincoln Crossing, LLC*, 598 B.R. 633 (C.D. Cal. 2019) (allowing default interest). This distinction is further explained below.

As a preliminary matter, it is helpful to recognize the different periods in which default interest may accrue:

Three categories of interest exist in bankruptcy cases: (1) interest accrued prior to the filing of the bankruptcy petition (prepetition interest); (2) interest accrued after the filing of a petition but prior to the effective date of a reorganization plan (pendency interest); and (3) interest to accrue under the terms of a reorganization plan (plan interest). ...

Generally, the Code does not provide for pendency interest to creditors, because the filing of the petition usually stops interest from accruing. Section 506(b), however, provides an exception for oversecured creditors:

To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose. [11 U.S.C. 506(b) (emphasis added).]

Thus, an oversecured creditor can recover pendency interest as part of its allowed claim, at least to the extent it is oversecured. Any accumulated pendency interest determined under § 506(b) is added to the allowed claim of an oversecured creditor and then

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paid pursuant to the terms of the confirmed plan with plan interest determined under § 1129(b)(2)(A)(i)(II). [*In re Beltway One Dev. Group, LLC*, 547 B.R. 819, 826 (9th Cir. BAP 2016) (emphasis added, citations omitted).]

There are only three ways that occur to this Court to stop the running of pendency default interest.

(i) A sale under section 363

Debtor could sell the Bel Air property under 11 U.S.C. 363. That is only a partial remedy because it does not stop the running of pendency default interest before the proceeds are distributed. *GECC v. Future Media*, 547 F.3d 956 (9th Cir. 2008). But at least from that point forward it would stop the ongoing accrual of pendency default interest.

Unfortunately, a section 363 sale appears to be precluded because Debtor reports that any sale of the Bel Air property would result in capital gains taxes estimated at roughly \$1 million. Dkt.159, p.17:1-4. In other words, the cure might be worse than the disease.

(ii) Refinancing the debt

Debtor attempted to refinance Patch's debt, but not fully. Patch objected, and this Court denied Debtor's refinancing motion. Debtor has not presented any alternative refinancing proposal. So this alternative appears to be unavailable.

(iii) Plan confirmation

The last way known to this Court to stop the running of pendency default interest is to confirm a plan that restructures the debt to Patch and reduces the interest rate. As with the other alternatives, this is only a partial remedy because it does not stop the running of pendency interest before the effective date of the plan. But at least it stops the accrual of default interest going forward.

An added benefit of confirming a plan used to be available under some decisions in the Ninth Circuit: retroactively eliminating all pendency default interest. See *Beltway One*, 547 B.R. 819, 826-28 (discussing *In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988), and subsequent lower court decisions). But more recent guidance from the Court of Appeals has been interpreted to mean that pendency interest is not eliminated unless the claim is left unimpaired - *i.e.*, unless all defaults in un-matured long-term debt are cured, or matured debt is paid in full on the effective date. See *Beltway One*, 547 B.R. 819, 826-28 (interpreting *Future Media*, 547 F.3d

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956).

This Court expresses no opinion on these issues except to note that they exist. The point is that, at the very least, it appears that confirmation of a plan would provide a partial remedy because it would stop the ongoing running of pendency default interest, and replace it with plan interest going forward.

(iv) Conclusion as to default interest

Why has Debtor not attempted to move forward with a plan of reorganization to address the default interest?

(c) Application to employ public adjuster Asset Recovery Association dba ClaimsXP (dkt. 167, "Application"); opposition of Wilmington Savings Fund Society ("Wilmington") (dkt. 181, 182); notice of hearing (dkt. 184); Debtor's reply (dkt. 192)

There is no tentative ruling. Debtor should be prepared to provide this Court with an update on the 4/1/20 AIG inspection (dkt. 192, Bordon decl., para. 7) and AIG's response, if any, to the adjusted insurance claim of \$454,717.11 (*id.*, para.6). Wilmington should be prepared to address under what conditions it would support employment of ClaimsXP (or any other adjuster).

If this Court is persuaded to grant the Application and authorize some form of employment of ClaimsXP retroactively to 1/7/20, employment will be subject to Judge Bason's standard employment terms (available at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)). Additionally, any employment will be subject to the filing of a satisfactory statement of disinterestedness as required by the posted Procedures of Judge Bason (*id.*) **by 4/10/20**.

(d) 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)

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 to object to any dollar amount that exceeds Debtor's admitted (scheduled) amount of \$250,000.

(e) Motion to allow Claim 31 filed by Deanna D'Egidio ("Claimant") (dkt.

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152), debtor's motion to extend opposition deadline (dkt. 186) and order thereon (dkt. 189), debtor's opposition (dkt. 187), claimant's reply (dkt. 193)

The tentative ruling is to grant the motion on the terms set forth in Debtor's opposition (dkt. 187) and Claimant's reply (dkt. 193): namely, that the late-filed claim is allowed as a general unsecured claim in the amount of \$44,500.00.

Proposed orders: Movants are 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 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: 5/5/20 at 1:00 p.m., concurrent with other matters. *Brief* status report due 4/21/20.

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

If appearances are not 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](http://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:**

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**

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**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](http://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. 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 to object to any dollar amount that exceeds Debtor's admitted (scheduled) amount of \$250,000.

(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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(b) Procedures order: dkt.9 (timely served, dkt.18)

(c) Plan/Disclosure Statement\*: TBD

(d) Continued status conference: 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 not 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](http://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 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. Appearances are not required on 1/14/20.

(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) 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 not 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](http://www.cacb.uscourts.gov)) then search for "tentative rulings." If appearances

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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 12/10/19:**

Appearances are not required on 12/10/19.

(1) Current issues

(a) 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)

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.

Proposed order: 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).

(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 not 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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required/are not required," please see Judge Bason's Procedures (posted at [www.cacb.uscourts.gov](http://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 11/12/19:**

Appearances are not required on 11/12/19.

**(1) Current issues**

(a) 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)

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)

(b) Procedures order: dkt.9 (timely served, dkt.18)

(c) Plan/Disclosure Statement\*: TBD

(d) Continued status conference: 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 not 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](http://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 10/29/19:**

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Appearances required but telephonic appearances are encouraged if advance arrangements are made (see [www.cacb.uscourts.gov](http://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.

Proposed orders: 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 7/17/19.**

(a) Bar date: TBD

(b) Procedures order: dkt.9 (timely served, dkt.18)

(c) Plan/Disclosure Statement\*: TBD

(d) Continued status conference: 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 not 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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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 10/15/19:**

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

**(1) Current issues**

(a) UST's motion to dismiss (dkt. 65), debtor's opposition (dkt. 86), no 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?

**(2) Deadlines/dates. This case was filed on 7/17/19.**

(a) Bar date: TBD

(b) Plan/Disclosure Statement\*: TBD

(c) Continued status conference: 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 not 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 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 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 conference).

If appearances are not 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](http://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 9/24/19:**

Appearances required. 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

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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) Contemplated contract with Majestic Ventures LLC dba 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.).

(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) 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 conference).

If appearances are not 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](http://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 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) Deadlines/dates. 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. 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 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](http://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 8/20/19:**

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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, although 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") 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](http://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) Deadlines/dates. 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

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conference).

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If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Ashley Susan Aarons

Represented By  
Michael R Totaro

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**2:19-18316 Ashley Susan Aarons**

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**#32.00** Ex parte application for either 1) The court to further shorten the time for debtor to file a motion to compromise as represented to the court and related dates, or alternatively, 2) To briefly continue the scheduled hearing to allow for debtor a few additional days to file the motion to compromise in order to give the parties additional time to complete the procedural matters needed to finalize an agreement and the related rule 9019 motion with joinder by secured creditor Wilmington Savings Society Fund, FSB not in its individual capacity but solely in its capacity as trustee

Docket 203

**Tentative Ruling:**

Please see the tentative ruling for the status conference (Calendar no. 31, 4/21/20 at 1:00p.m.).

<b>Party Information</b>
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**Debtor(s):**

Ashley Susan Aarons

Represented By  
Michael R Totaro

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**2:19-23303 Candelario Lora**

**Chapter 11**

**#33.00** Hrg re: Motion in Individual Chapter 11 Case for Order Employing  
Professional Hector Michael Perez as Appraiser

Docket 109

**Tentative Ruling:**

Please see the tentative ruling for the status conference (calendar no. 34,  
4/21/20 at 1:00 p.m.)

<b>Party Information</b>
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**Debtor(s):**

Candelario Lora

Represented By  
Onyinye N Anyama

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**2:19-23303 Candelario Lora**

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**#34.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 12/17/19, 1/14/20, 02/18/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Appearances required by counsel for the debtor, 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Debtor's Motion In Individual Case For Order Authorizing Debtor In Possession To Employ Profession (Other Than General Bankruptcy Counsel) (the "Appraiser Employment Motion," dkt. 109)

Debtor should be prepared to address the issues raised in this Court's Order Provisionally Granting Application And Setting Hearing On Shortened Notice (dkt. 113).

(b) Other issues

This Court's concerns raised prior to and at the hearing on 3/31/20 continue to be seriously troubling, but those issues will be addressed at future hearings.

(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

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(d) Continued status conference: 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 not 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](http://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.

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

Appearances required by counsel for the debtor, 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 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](http://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

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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 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 all 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.

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(b) 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)

Aztec values the property at \$860,000 "as is" as of 2/23/20. Dkt. 88, 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) Insurance

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?

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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

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

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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.

(d) Belated application to employ special counsel (dkt. 57, filed 1/17/20), 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

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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 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 pre-judging 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,

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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 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) not taking appropriate steps to surrender, rent, sell, rehabilitate, or otherwise deal with Debtor's properties;

(B) not adequately disclosing the past, present, and projected condition, rents, and proposed disposition of those properties;

(C) not maintaining and/or timely disclosing adequate insurance;

(D) not maintaining a blocked account for cash collateral as order by this Court;

(E) not seeking authorization for the employment of special counsel to prosecute litigation against secured creditor Aztec until over two months after the commencement of this case;

(F) not requesting adequate authorization 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

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*Bankruptcy Court with Aztec;*

*(G) failing to monitor and coordinate with such special counsel, 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 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 poses 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-dispositive 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

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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) 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: 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 not 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](http://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.

**Revised Tentative Ruling for 2/18/20:**

Appearances required by counsel for the debtor but telephonic appearances are encouraged if advance arrangements are made (see [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), "Judges," "Bason, N.", "Instructions/Procedures").

(1) Current issues

(a) First cash collateral motion (dkt.31&32) and second cash collateral motion (dkt. 55&56)

(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

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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 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 litigation were or were not successful, and restructuring any secured claims to have a lower interest rate. These are only hypotheticals:

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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.

(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

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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 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) Continued status conference: 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 not 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](http://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.

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**Tentative Ruling for 1/14/20:**

Appearances required by counsel for the debtor but telephonic appearances are encouraged if advance arrangements are made (see [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov), "Judges," "Bason, N.", "Instructions/Procedures").

**(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**

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**Tentative Ruling for 12/17/19:**

Appearances required 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](http://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) Deadlines/dates. This case was filed on 11/11/19.

(a) Bar date: 3/16/20 (DO NOT SERVE notice yet - court will prepare an order after the status conference).

(b) Procedures order: dkt. 8 (timely served, dkt. 29)

(c) Plan/Disclosure Statement\*: N/A

(d) Continued status conference: 1/14/20 at 1:00 p.m., *brief* status report due 12/31/19.

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

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If appearances are not 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](http://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.

<b>Party Information</b>
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**Debtor(s):**

Candelario Lora

Represented By  
Onyinye N Anyama

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**#1.00** Cont'd hrg re: Motion for relief from stay [NA]  
fr. 03/31/20

NATHANAEL YUN AND JONG SUK CHOI  
vs  
DEBTOR

Docket 79

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (Calendar no. 7, 4/21/20 at 1:00 p.m.).

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

Grant in part, as set forth below. 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](http://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."

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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 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 *dk.*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 (*dk.* 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 (*dk.* 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

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but not terminate 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)**

Section 362(a)(1) operates as a stay of "the commencement or continuation . . . 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." 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 against 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 by a debtor are property of the bankruptcy estate, claims about who controls 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

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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 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,

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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 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 exercise 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 sell 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 protect 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)

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(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 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 Kronmeyer*, 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

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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).

(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

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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 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.

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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 unauthorized transfers of property. For example, a typical injunction only applies to specified parties 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 termination 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

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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 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,

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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 property ...").

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,

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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 not 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 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) (3).

(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

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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 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 not exclusive 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 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.

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If appearances are not 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](http://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.

<b>Party Information</b>
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**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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**2:20-11675 Korean Western Presbyterian Church of Los Angeles**

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**#2.00** Cont'd hrg re: Motion For Order Stating Automatic  
Stay Applies in State Court Proceeding  
fr. 3/31/20

Docket 71

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 7,  
4/21/20 at 2:00 p.m.).

**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.).

<b>Party Information</b>
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**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**2:20-11675 Korean Western Presbyterian Church of Los Angeles**

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**#3.00** 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, 03/31/20

Docket 16

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 7, 4/21/20 at 2:00 p.m.).

**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.)

<b>Party Information</b>
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**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**#4.00** 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, 03/31/20

Docket 15

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 7,  
4/21/20 at 2:00 p.m.).

**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.)

<b>Party Information</b>
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**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**Chapter 11**

**#5.00** 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, 03/31/20

Docket 29

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 7,  
4/21/20 at 2:00 p.m.).

**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.)

<b>Party Information</b>
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**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**#6.00** 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, 03/31/20

Docket 25

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Please see the tentative ruling for the status conference (calendar no. 7,  
4/21/20 at 2:00 p.m.).

**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.)

<b>Party Information</b>
--------------------------

**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**#7.00** Cont'd Status Conference re: Chapter 11 Case  
fr. 2/28/20, 03/31/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

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

<b>Party Information</b>
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**Debtor(s):**

Korean Western Presbyterian Church

Represented By  
Victor A Sahn  
Steven Werth

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**2:20-11333 Edmund Lincoln Anderson**

**Chapter 11**

**#8.00** Cont'd hrg re: Motion in Individual Case for Order  
Imposing a Stay or Continuing the Automatic  
Stay as the Court Deems Appropriate  
fr. 3/3/20, 4/7/20

Docket 15

**Tentative Ruling:**

**Tentative Ruling for 4/21/20:**

Grant in full, as to all property of Debtor's bankruptcy estate (see dkt. 54), including the 3775 Ruthelen Street property, subject to the following conditions. 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

After the hearing date this Court will prepare an order and the tentative ruling is to include the following language in that order:

The stay of 11 U.S.C. 362(a) applies subject to the following modifications and conditions:

(1) Service and reconsideration. Any party in interest who was not timely served in accordance with FRBP 7004 (incorporated by FRBP 9014(b)) is hereby granted through 14 days after proper service to seek reconsideration, including retroactive relief (under FRBP 9023 and/or 9024). Any such person (a) may set a hearing on 14 days' notice, (b) may appear by telephone (if arrangements are made per Judge Bason's posted procedures), and (c) may present all arguments orally at the hearing (*i.e.*, no written argument

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is required). If written arguments appear necessary then this court will set a briefing schedule at the hearing.

(2) Reasons. (a) It appears appropriate to impose the automatic stay, and to impose it as to all persons rather than just as to selected persons, because one purpose of the automatic stay is to preventing a "race to collect" that could unfairly advantage some creditors at the expense of others. (b) To prevent possible abuse, this Court provides the foregoing simple process for reconsideration.

(3) Very limited ruling. This Court's tentative ruling to grant the foregoing relief is solely for purposes of this motion, and is not intended to have any binding effect with respect to any future assertions by any party in interest regarding the existence or lack of existence of good faith in any other context.

If appearances are not 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](http://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 4/7/20:**

Grant in part, on the same conditions as in this Court's prior interim order (dkt.54), and continue to 4/21/20 at 10:00 a.m., for the reasons 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

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*Key documents reviewed (other than the motion and opposition papers):*  
Jacob and Maryam Haiavy Motion To Approve Stipulation For Adequate Protection, Use Of Cash Collateral And Relief From Stay On Second Lien Secured By Real Property Located At 3775 Ruthelen Street, Los Angeles, CA 90018 (the "Proposed Stipulation," dkt. 81).

The tentative ruling is to temporarily continue the automatic stay as to the 3775 Ruthelen Street property, through the continued hearing on 4/21/20 at 10:00 a.m., to (i) determine whether any oppositions or a request for a hearing will be filed as to the Proposed Stipulation (dkt. 81), and (ii) should no opposition or request for a hearing be filed, and if this Court finds no issues with the Proposed Stipulation, to permit time for an order to be lodged and issued on the Proposed Stipulation.

If appearances are not 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](http://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:**

Grant in part, and continue in part to 4/7/20 at 10:00 a.m., subject to the following conditions. Appearances are not required.

The tentative ruling is (1) temporarily to continue the automatic stay as to the 3775 Ruthelen Street property, through the continued hearing on 4/7/20 at 10:00 a.m., to permit the parties time to obtain an appraisal of the property (see dkt. 35, pp.2-3, *and* dkt. 36), and assess Debtor's progress in this case, and meanwhile (2) to grant the motion as to all remaining property of the Debtor's bankruptcy estate, such that the automatic stay applies to all such property.

After the hearing date this Court will prepare an order and the tentative ruling is to include the following language in that order:

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

**Tuesday, April 21, 2020**

**Hearing Room 1545**

2:00 PM

**CONT...**

**Edmund Lincoln Anderson**

**Chapter 11**

The stay of 11 U.S.C. 362(a) applies subject to the following modifications and conditions:

(1) Service and reconsideration. Any party in interest who was not timely served in accordance with FRBP 7004 (incorporated by FRBP 9014(b)) is hereby granted through 14 days after proper service to seek reconsideration, including retroactive relief (under FRBP 9023 and/or 9024). Any such person (a) may set a hearing on 14 days' notice, (b) may appear by telephone (if arrangements are made per Judge Bason's posted procedures), and (c) may present all arguments orally at the hearing (*i.e.*, no written argument is required). If written arguments appear necessary then this court will set a briefing schedule at the hearing.

(2) Reasons. (a) It appears appropriate to impose the automatic stay, and to impose it as to all persons rather than just as to selected persons, because one purpose of the automatic stay is to preventing a "race to collect" that could unfairly advantage some creditors at the expense of others. (b) To prevent possible abuse, this Court provides the foregoing simple process for reconsideration.

(3) Very limited rulings. This Court's tentative ruling is that any finding of "good faith" is (a) solely for purposes of this motion and (b) as to the 3775 Ruthelen Street property, solely on the limited basis set forth at the start of this tentative ruling. In other words, any good faith finding by this Court is not intended to have any binding effect with respect to the existence or lack of existence of good faith beyond the foregoing very limited rulings.

If appearances are not 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](http://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.

<b>Party Information</b>
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**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Neil Bason, Presiding  
Courtroom 1545 Calendar**

**Tuesday, April 21, 2020**

**Hearing Room 1545**

2:00 PM

**CONT... Edmund Lincoln Anderson**

**Chapter 11**

**Debtor(s):**

Edmund Lincoln Anderson

Represented By  
Stella A Havkin

**Movant(s):**

Edmund Lincoln Anderson

Represented By  
Stella A Havkin

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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2:00 PM

**2:20-11333 Edmund Lincoln Anderson**

**Chapter 11**

**#9.00** Cont'd status Conference re: Chapter 11 Case  
fr. 3/3/20, 3/10/20, 4/7/20

Docket 1

**Tentative Ruling:**

**Tentative Ruling for 4/21/20.**

Continue as set forth below. Appearances are not required on 4/21/20. 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 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](http://www.cacb.uscourts.gov), "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Debtor's motion to impose or continue the automatic stay (dkt. 15)  
Grant as set forth in calendar no. 8, 4/21/20 at 2:00 p.m.

(2) Deadlines/dates. This case was filed on 2/6/20.

- (a) Bar date: 5/1/20 (dkt. 50; timely served, dkt. 55).
- (b) Procedures order: dkt. 7 (timely served, dkt.8)
- (c) Plan/Disclosure Statement\*: TBD
- (d) Continued status conference: 6/2/20 at 2:00 p.m. No 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 wish to dispute the tentative ruling, or for further explanation of "appearances

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**CONT... Edmund Lincoln Anderson**

**Chapter 11**

required/are not required," please see Judge Bason's Procedures (posted at [www.cacb.uscourts.gov](http://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.

**[PRIOR TENTATIVE RULINGS OMITTED]**

<b>Party Information</b>
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**Debtor(s):**

Edmund Lincoln Anderson

Represented By  
Stella A Havkin