

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

10:30 AM

2:20-18053 Efrain Hernandez

Chapter 7

#1.00 Hearing re: Motion for relief from stay
(Toyota Motor Credit Corporation VS Debtor)

Docket 12

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the movant's stay relief motion, the court determines that oral argument on the motion is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to granting of the motion, rules on the motion on the papers, and grants relief from stay pursuant to 11 U.S.C. 362(d) (1) and (2) to pursue non-bankruptcy remedies for the reasons stated in the moving papers and for lack of timely written opposition. The 14-day waiting period under FRBP 4001(a)(3) is waived. No appearances are required on 12/8/20. Movant to submit a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Efrain Hernandez

Represented By
Michael R Totaro

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

10:30 AM

2:20-18298 Nereida Celene Sanchez Mancilla

Chapter 7

#2.00 Hearing re: Motion for relief from stay
(Nissan Motor Acceptance Corporation VS Debtor)

Docket 11

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the movant's stay relief motion, the court determines that oral argument on the motion is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to granting of the motion, rules on the motion on the papers, and grants relief from stay pursuant to 11 U.S.C. 362(d) (1) and (2) to pursue non-bankruptcy remedies for the reasons stated in the moving papers and for lack of timely written opposition. The 14-day waiting period under FRBP 4001(a)(3) is waived. No appearances are required on 12/8/20. Movant to submit a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Nereida Celene Sanchez Mancilla

Represented By
James G. Beirne

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Austin P Nagel

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

10:30 AM

2:20-18683 Alexander Sierra Salazar and Sandra Carolina Cordero

Chapter 7

#3.00 Hearing re: Motion for relief from stay
(Toyota Motor Credit Corporation VS Debtors)

Docket 11

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the movant's stay relief motion, the court determines that oral argument on the motion is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to granting of the motion, rules on the motion on the papers, and grants relief from stay pursuant to 11 U.S.C. 362(d) (1) and (2) to pursue non-bankruptcy remedies for the reasons stated in the moving papers and for lack of timely written opposition. The 14-day waiting period under FRBP 4001(a)(3) is waived. No appearances are required on 12/8/20. Movant to submit a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Alexander Sierra Salazar

Represented By
Joe R Correa

Joint Debtor(s):

Sandra Carolina Cordero

Represented By
Joe R Correa

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Kirsten Martinez

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

10:30 AM

CONT... Alexander Sierra Salazar and Sandra Carolina Cordero

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

10:30 AM

2:20-19977 LN Ventures, LLC

Chapter 7

#4.00 Hearing re: Motion for relief from stay
(HOF I Grantor Trust 5 VS Debtor)

Docket 9

***** VACATED *** REASON: Notice of voluntary dismissal filed on
11/24/20-mb.**

Tentative Ruling:

Off calendar. Motion voluntarily dismissed by notice filed on 11/24/20. No appearances are necessary.

Party Information

Debtor(s):

LN Ventures, LLC

Represented By
Omero Banuelos

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

2:18-12119 SOCALDEAL INC

Chapter 7

Adv#: 2:19-01259 Goodrich v. Kabbage, Inc.

#5.00 Cont'd status conference re: Complaint for: (1) Avoidance of preferential transfers pursuant to 11 U.S.C. § 547; (2) Recovery of property pursuant to 11 U.S.C. § 550; (3) Preservation of avoided transfers pursuant to 11 U.S.C. § 551; (4) Disallowance of claims pursuant to 11 U.S.C. § 502(d); and (5) Turnover of property of the estate pursuant to 11 U.S.C. § 542
fr. 6/30/20, 8/4/20, 10/6/20

Docket 1

*** VACATED *** REASON: Notice of voluntary dismissal filed on
12/7/20-mb.

Tentative Ruling:

Revised and updated tentative ruling as of 12/8/20. Off calendar. The status conference is moot because the adversary proceeding has been voluntarily dismissed by notice filed on 12/7/20. No appearances are required on 12/8/20.

Party Information

Debtor(s):

SOCALDEAL INC

Represented By
Fari B Nejadpour

Defendant(s):

Kabbage, Inc.

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Faye C Rasch

Trustee(s):

David M Goodrich (TR)

Represented By
Faye C Rasch
Beth Gaschen
Weiland Golden Goodrich LLP

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT... SOCALDEAL INC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

2:18-12119 SOCALDEAL INC

Chapter 7

Adv#: 2:19-01260 Goodrich v. Marganian

#6.00 Cont'd status conference re: Complaint for: (1) Avoidance of preferential transfers pursuant to 11 U.S.C. § 547; (2) Recovery of property pursuant to 11 U.S.C. § 550; (3) Preservation of avoided transfers pursuant to 11 U.S.C. § 551; (4) Disallowance of claims pursuant to 11 U.S.C. § 502(d); and (5) Turnover of property of the estate pursuant to 11 U.S.C. § 542
fr. 6/30/20, 8/4/20, 10/6/20

Docket 1

***** VACATED *** REASON: Notice of voluntary dismissal of adv. proceeding filed on 11/30/20-mb.**

Tentative Ruling:

Updated tentative ruling as of 12/7/20. Off calendar. Adversary proceeding voluntarily dismissed by notice filed on 11/30/20.

Party Information

Debtor(s):

SOCALDEAL INC

Represented By
Fari B Nejadpour

Defendant(s):

Shahram Marganian

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Faye C Rasch

Trustee(s):

David M Goodrich (TR)

Represented By
Faye C Rasch
Beth Gaschen
Weiland Golden Goodrich LLP

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

2:18-12119 SOCALDEAL INC

Chapter 7

Adv#: 2:19-01280 Goodrich v. Shemtov et al

- #7.00** Cont'd hearing re: Motion for entry of default judgement against defendant Simon Yaftadonay Pursuant to Federal Rule of Civil Procedure 55 as incorporated by Federal Rule of Bankruptcy Procedure 7055 and Local bankruptcy Rule 7055-1 fr. 10/13/20

Docket 21

Tentative Ruling:

Updated tentative ruling as of 12/4/20. In support of the motion for default judgment, plaintiff filed the declaration of Marianna Falco, staff accountant at LEA Accountancy, trustee's accountants, on 11/18/20. In the court's view, plaintiff still has not made a prima facie showing of its preferential transfer claims by providing competent evidence of transfers to defendant. See *Lu v. Liu* (In re Liu), 282 B.R. 904, 907-908 (Bankr. C.D. Cal. 2002) (bankruptcy court has discretion to require plaintiff to make prima facie case for entry of default judgment). The Falco declaration is deficient because it describes the forensic accounting work of a former accountant no longer with the firm, Michael Krasnowski, and not her work, she does not have personal knowledge of the analysis because she did not do forensic accounting analysis and she cannot competently testify as to what he did because she has no personal knowledge of the analysis as required by Federal Rule of Evidence 602. If she did the work and confirmed Krasnowski's analysis, that would be a different story, but she just refers to what he did without any description of what she did to confirm that his work was correct. Moreover, she refers to the "Debtor's Ledger" as the basis for Krasnowski's analysis, but there is no proper authentication of the ledger as "Debtor's Ledger." There is no showing that she is the custodian of records of Debtor's records to authenticate the ledger as required by Federal Rules of Evidence 901 et seq. The "Debtor's Ledger" is secondary evidence of alleged transfers as it is not primary source evidence of transfers as would be shown by Debtor's bank account records, such as bank statements, cancelled checks and wire transfer receipts. She also refers to two transfers made to other parties, the FTB and U.S. Treasury, but there is no explanation of why such transfers are attributable to defendant. The court is inclined to deny the motion based on

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT... SOCALDEAL INC

Chapter 7

this record. Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Prior tentative ruling. The court on its own motion continues this hearing to 12/8/20 at 1:30 p.m. At the status conference in this matter on 10/6/20, counsel for plaintiff represented that plaintiff will be filing a supplemental declaration of plaintiff's accountant to further support the motion for default

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT... SOCALDEAL INC

Chapter 7

judgment and needed additional time for this. No appearances are required on 10/13/20.

Party Information

Debtor(s):

SOCALDEAL INC

Represented By
Fari B Nejadpour
Keith F Rouse

Defendant(s):

Simon Shemtov

Pro Se

Simon Yaftadonay

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Faye C Rasch

Trustee(s):

David M Goodrich (TR)

Represented By
Faye C Rasch
Beth Gaschen
Weiland Golden Goodrich LLP

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

2:18-12119 SOCALDEAL INC

Chapter 7

Adv#: 2:19-01280 Goodrich v. Shemtov

#8.00 Cont'd status conference re: Complaint for: (1) Avoidance of Preferential Transfers Pursuant to 11 U.S.C. § 547; (2) Recovery of Property Pursuant to 11 U.S.C. § 550; (3) Preservation of Avoided Transfers Pursuant to 11 U.S.C. § 551; (4) Disallowance of Claims Pursuant to 11 U.S.C. § 502(d); and (5) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542
fr. 6/30/20, 8/4/20, 10/6/20

Docket 1

Tentative Ruling:

No tentative ruling as of 12/4/20. Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT... SOCALDEAL INC

Chapter 7

call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

SOCALDEAL INC

Represented By
Fari B Nejadpour

Defendant(s):

Simon Shemtov

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Faye C Rasch

Trustee(s):

David M Goodrich (TR)

Represented By
Faye C Rasch
Beth Gaschen
Weiland Golden Goodrich LLP

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

2:20-11519 Ki Hyong Kim

Chapter 7

Adv#: 2:20-01181 Avery v. Yu et al

#9.00 Cont'd status conference re: Complaint to: (1.) AVOID CONSTRUCTIVE FRAUDULENT TRANSFER - 11 U.S.C. §544(b) AND CAL. CIV. CODE §§3439.05 AND 3439.07-09 (2.) AVOID CONSTRUCTIVE FRAUDULENT TRANSFER - 11 U.S.C. §544(b), CAL. CIV. CODE §§3439.04(a)(2)(A) and 3439.07-09; (3.) AVOID CONSTRUCTIVE FRAUDULENT TRANSFER - 11 U.S.C. §544(b), CAL. CIV. CODE §§3439.04(a)(2)(B) AND 3439.07-09; (4.) AVOID ACTUAL FRAUDULENT TRANSFER - 11 U.S.C. § 544(b), CAL. CIV. CODE §§3439.04(a)(1) AND 3439.07-09; (5.) AVOID TRANSFER - 11 U.S.C. § 544(b), FED. DEBT COLLECTION PROC. ACT OF 1990 (FDCPA), 28 U.S.C. §§ 3001 *ET SEQ.*; (6.) TURNOVER OF PROPERTY - 11 U.S.C. §542(a); (7.) RECOVER AVOIDED TRANSFER AND ASSIGNMENT TO TRUSTEE - 11 U.S.C. §§550 AND 551; (8.) QUIET TITLE - CCP §760.010 *ET SEQ.*; (9.) REMOVE CLOUD ON TITLE - CAL. CIV. CODE §3412; (10.) DECLARATORY RELIEF- 11 U.S.C §541(a)(1) AND 22 U.S.C. §2201; (11.) INJUNCTION - 11 U.S.C. §105(a); AND (12.) BAR RECOVERY OF AVOIDED TRANSFER - 11 U.S.C. §522(g)
fr. 10/20/20

Docket 1

Tentative Ruling:

The court has reviewed the joint status report. Set a discovery cutoff date of 1/31/21 and a post-discovery status conference for 2/16/21 at 1:30 p.m. A joint status report must be filed by 2/9/21. Alternatively, the court could set a pretrial conference instead of the post-discovery status conference. Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT...

Ki Hyong Kim

Chapter 7

person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Ki Hyong Kim

Represented By

Andrew Edward Smyth

Defendant(s):

Kyungmin Yu

Pro Se

Ki Hyong Kim

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

1:30 PM

CONT... Ki Hyong Kim

Chapter 7

Plaintiff(s):

Wesley H. Avery

Represented By
Brett B Curlee

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:00 PM

2:17-21018 Prototype Engineering & Manufacturing, Inc.

Chapter 7

Adv#: 2:19-01332 Avery v. Leya Technologies, LLC et al

- #10.00** Cont'd status conference re: Plaintiff's complaint for: (1) avoidance of actual fraudulent transfers; (2) avoidance of constructive fraudulent transfers; (3) recovery of avoided transfers; (4) breach of fiduciary duty; (5) recovery of prohibited distributions; (6) unjust enrichment; (7) aiding and abetting breach of fiduciary duty; and (8) substantive consolidation of certain defendants with the debtor's estate
fr. 10/13/20, 10/27/20, 11/17/20

Docket 1

Tentative Ruling:

Updated tentative ruling as of 12/4/20. No tentative ruling on the merits. Appearances are required on 12/8/20 to discuss the status of documentation of pending settlement between the parties, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through September 30, 2020, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:00 PM

CONT... **Prototype Engineering & Manufacturing, Inc.** Chapter 7

the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Prototype Engineering &

Represented By
Carol Chow

Defendant(s):

Leya Technologies, LLC

Pro Se

Bahram Bordbar

Pro Se

Malahat Bordbar

Pro Se

Sara Bordbar

Pro Se

Plaintiff(s):

Wesley H Avery

Represented By
Carmela Pagay

Trustee(s):

Wesley H Avery (TR)

Represented By
Timothy J Yoo
Carmela Pagay
Lindsey L Smith
Irving M Gross

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#11.00 Hearing re: Trustee's final report and account;
Application for fees and expenses
[Richard K. Diamond, Chapter 7 Trustee]

Docket 698

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final report and fee application of the Chapter 7 trustee, the court determines that oral argument on the final report and fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final report and fee application, rules on the final report and fee application on the papers, and approves the final report and fee application for the reasons stated in the final report and fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#12.00 Hearing re: Application for fees and expenses
[Danning, Gill, Israel & Krasnoff, LLP, Attorney for Chapter 7 Trustee]

Docket 693

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of general bankruptcy counsel for the Chapter 7 trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application, rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#13.00 Hearing re: Application for fees and expenses
[Danning, Gill, Israel & Krasnoff, LLP, Attorney for Chapter 11 Trustee]

Docket 692

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of general bankruptcy counsel for the Chapter 11 trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application, rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#14.00 Hearing re: Application for fees and expenses
[Max P. Liphart, Field Representative for Chapter 7 Trustee]

Docket 684

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of field representative for the Chapter 7 trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application, rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#15.00 Hearing re: Application for fees and expenses
[Grobstein Teeple LLP, Accountants for Chapter 7 Trustee]

Docket 687

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of accountant for the Chapter 7 trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application, rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:13-28497 Corona Care Convalescent Corporation and Dietitians of

Chapter 7

#16.00 Hearing re: Application for fees and expenses
[Alston & Bird, LLP, Special Counsel for Chapter 7 Trustee]

Docket 689

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of special counsel to the Chapter 7 (and 11) trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application, rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 12/8/20. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Corona Care Convalescent

Represented By
M. Jonathan Hayes
Michael Jay Berger

Trustee(s):

Richard K Diamond (TR)

Represented By
Steven J Schwartz
Howard Kollitz
Walter K Oetzell
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:14-29611 Nikolay Machevsky

Chapter 7

#17.00 Hearing re: Objection to claim no. 1 filed by Data Leverage, LLC

Docket 97

Tentative Ruling:

Updated tentative ruling as of 12/7/20. Sustain the trustee's objection to the proof of claim of Data Leverage, LLC, as procedurally defective because creditor did not follow the proper procedure in filing a request for allowance and payment of an administrative expense claim under 11 U.S.C. 503. Trustee objects to the claim as not allowable as a prepetition claim under 11 U.S.C. 502, and claimant concedes that its claim is postpetition, not prepetition, and the court agrees that if claimant has a claim, it can be only allowed as a postpetition administrative expense claim under 11 U.S.C. 503. The court notes that the first page of the official proof of claim form instructs parties not to use the form to make a request for payment of an administrative expense and to make such a request according to 11 U.S.C. 503. However, sustaining the objection does not bar claimant from filing of a motion for allowance and payment of an administrative expense claim, which it now has done and which is not time-barred as no deadline has been set for requests for allowance of administrative expense claims.

Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Nikolay Machevsky

Chapter 7

telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Nikolay Machevsky

Represented By
Benjamin Nachimson

Movant(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:14-29611 Nikolay Machevsky

Chapter 7

#17.10 Hearing re: Motion to allow supplemental administrative expense claim of Data Leverage, LLC

Docket 121

Tentative Ruling:

Revised tentative ruling as of 12/7/20. The court will treat the motion of Data Leverage, LLC, to allow its supplemental administrative expense claim as a contested matter pursuant to FRBP 9014. Although it is an open question in the Ninth Circuit, the court is inclined to agree with movant that its claim is not precluded by the fact that this is a Chapter 7 bankruptcy case to claim actual, necessary costs of preserving the estate or actual, necessary expenses incurred by a creditor in making a substantial contribution to the estate pursuant to 11 U.S.C. 503(b)(1)(A) and/or (b)(3)(D) based on the word "including" in 11 U.S.C. 503(b) based on the weight of the case law. In re Mark Anthony Construction, Inc., 886 F.2d 1101, 1106-1107 (9th Cir. 1989), citing inter alia, 11 U.S.C. 102(3) ("includes" and "including" are not limiting"); Mediofactoring v. McDermott (In re McDermott), 802 F.3d 810, 816 (6th Cir. 2015); In re Maqsoudi, 566 B.R. 40, 44 (Bankr. C.D. Cal. 2017); In re Maust Transportation, Inc., 589 B.R. 887 (Bankr. W.D. Wash. 2018); but see, In re United Education and Software, BAP No. CC-05-1067 MaMeP, 2005 WL 696037 at *7 (9th Cir. BAP October 7, 2005)(holding that the five examples of 11 U.S.C. 503(b)(3) are limited). However, whether movant has substantiated its claim of actual, necessary costs of preserving the estate or actual, necessary expenses incurred by it in making a substantial contribution to the estate. In this regard, the court agrees with the trustee and most of his evidentiary objections to the Linton declaration in support of the motion that the evidentiary support of movant's claims lack foundation. The admissible evidence to substantiate the alleged liens, debt service payments and tax obligations which movant allegedly paid off is lacking authenticity and testimony based on personal knowledge as well as evidence that the payments were actually made (no corroborative evidence of payments being made, such as bank statements, cancelled checks, wire transfer receipts,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

etc.). The admissible evidence to substantiate the alleged legal fees incurred by movant to allegedly preserve the estate property is lacking authenticity and testimony based on personal knowledge as well as evidence that the services were rendered for the purposes to preserve estate property as movant alleges is lacking. Given the large dollar amounts that were allegedly spent (i.e., \$293,694.87 on the proof of claim filed with the court attached as Exhibit D to movant's request for judicial notice) to preserve estate property or make a substantial contribution to the estate and the assertions in the moving papers indicate that movant may have a colorable claim under 11 U.S.C. 503(b)(1)(A) or (b)(3)(D), the court is inclined to give an opportunity to meet its burden of proving up its administrative expense claim under 11 U.S.C. 503 with admissible evidence, which may mean an evidentiary hearing. However, the trustee may have defenses on policy grounds that this is not the rare case where substantial contribution should be allowed if movant acted with knowledge of debtor's bankruptcy case or failed to conduct appropriate due diligence to learn of the bankruptcy case as alleged by trustee. The court expects to set a schedule of pretrial proceedings for movant to prove up its claim with admissible evidence.

Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Nikolay Machevsky

Represented By

Benjamin Nachimson

Trustee(s):

Wesley H Avery (TR)

Represented By

Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:14-29611 Nikolay Machevsky

Chapter 7

#17.20 Cont'd hearing re: Motion under F.R.C.P. Rule 60(b)(1), (3) and (6) to set aside one portion of entered order (1) Approving Compromise; (2) Authorizing Trustee to Transfer Real Property Free and Clear of Liens and Interests; (3) Requiring Debtor to Turn over Real Property of the Estate; and (4) Authorizing Trustee to Utilize U.S. Marshal and Other Law Enforcement
fr. 11/4/20, 11/10/20, 11/19/20

Docket 73

Tentative Ruling:

Revised tentative ruling as of 12/8/20 at 1:10 p.m. In considering whether the court should exercise its equitable discretion to grant relief from judgment under FRCP 60(b), the court determines that this situation falls under excusable neglect under FRCP 60(b)(1) in that movant failed to respond timely to the trustee's compromise/sale motion due to excusable neglect. In considering relief from judgment, the court should take account of all relevant circumstances surrounding the party's omission. See *Pioneer Investment Services Co. v. Brunswick Associates, Ltd.*, 507 U.S. 380, 395 (1993). The court should consider factors including the danger of prejudice to the estate, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith. *Id.* Having conducted an evidentiary hearing regarding alleged service of the trustee's motion and the alleged lack of receipt by movant through counsel, the court finds that the factors support relief to allow movant to be heard on the merits of the trustee's compromise/sale motion with the Binafard party, who had a specific performance claim against debtor's mother to whom debtor had transferred the subject property. The court finds the testimony of movant's former counsel, Sment, and its representative, Linton, sincere and credible that they did not receive copies of the trustee's motion before mid-September when the court entered the order granting the trustee's motion, and thus, movant was not able to timely respond to the motion. Sment was the notice party for movant as reflected on its proof of claim filed in this case, and Linton was the client representative for movant which is interested in buying the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

subject property. There is no reason why movant by Linton would not have responded to the motion if she had known about the motion when it was being considered by the court in August and September. It is possible that Sment did not get the mailed motion because he did not go into his office which was the address for movant on the proof of claim in light of the pandemic or because his suite mate might have picked it up by mistake or the postal service failed to deliver it. It is more plausible is that it was not properly served. As indicated on the original proof of service of the trustee's motion, movant was not listed, which indicates lack of service. When movant notified trustee's counsel that it did not receive the motion and it was not on the service list for the motion, trustee's counsel filed a "corrected proof of service" not under declaration of penalty of perjury that the wrong service list was attached and that it was served along with the related compromise motion with the Kleemoff bankruptcy estate. The court heard the testimony of trustee's counsel, Zamora, and her legal assistant, Casas, who testified at the hearing that they discovered their mistake in attaching an incorrect service list, that the correct service list including movant was attached to the related Kleemoff estate compromise motion and that both motions were served in one envelope using mailing labels printed off the correct list. The court found the testimony of Zamora and Casas also to be sincere and credible, but the circumstances here indicates that they may have made an honest mistake in serving the trustee's compromise/sale motion with Binafard with the other motion in the same envelope, but using the wrong list to print out the mailing labels. The circumstances here support such a finding that: (1) movant was not on the original service of the trustee's compromise/sale motion with Binafard; (2) the trustee's two motions served together had two different service lists in their proofs of service, one of which was used to generate mailing labels for the service; and (3) Sment as movant's notice party did not receive it. The court does not see anything nefarious about service of the trustee's compromise/sale motion with Binafard and the preparation of a "corrected proof of service" seven weeks after service, and the circumstances indicate just an honest mistaken belief in proper service.

The factors of the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith, support a finding of excusable neglect because the reason for the delay was

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

the lack of receipt of the motion in question in order to timely respond, which is not within the reasonable control of movant and indicates that it acted in good faith in seeking reconsideration. Considering the other factors of the danger of prejudice to the estate and the length of the delay and its potential impact on judicial proceedings, the court determines that there is no danger of prejudice to the estate to allow movant to be heard on the merits of the trustee's compromise/sale motion, but that the length of delay is also not a risk factor because movant acted relatively promptly in filing the motion in October, six weeks after the order approving the trustee's compromise/sale motion was entered because escrow from the approved sale is still pending. The counterparty, Binafard, is willing to wait awhile to consummate the compromise/sale, having waited four or five years to resolve its specific performance claim regarding the subject property. However, continued delay would potentially prejudice the estate because the property may be lost to the estate based on imminent foreclosure of liens held by debtor's homeowners' association which has a secured claim of \$250,000 on the property, having been granted stay relief to proceed with foreclosure, but willing to wait a short period of time to be paid through the pending sale through the estate's compromise with Binafard. Based on these circumstances, relief from judgment under FRCP 60(b)(1) should be granted to the limited extent that movant's opposition to the trustee's compromise/sale motion with Binafard may be heard and considered on the merits.

Because the court determines that relief is appropriate under FRCP 60(b)(1), there is no need to address movant's claims under FRCP 60(b)(3) or (6), and in any event, there is no fraud or misconduct by the opposing party to warrant the application of FRCP 60(b)(3).

Movant seeks reconsideration of the court's order approving the trustee's motion to compromise a dispute with Binafard regarding his claim to the property and to allow the sale of the property to him without overbidding. Movant wishes to modify the court's order to allow it to overbid on the property to acquire it through a public sale. The trustee has argued that overbidding is not required to approve the compromise with Binafard because the sale is integral with the compromise. The court granted the trustee's motion for the reasons stated in the moving papers and for lack of timely written opposition.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

In order for the court to approve a compromise by the trustee with Binafard pursuant to FRBP 901, it must find that the trustee has met his burden of proving that the compromise is fair and equitable and should be approved. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The factors that the court must consider whether a compromise is fair and equitable are: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense; and (4) the paramount interest of creditors and a proper deference to their reasonable views in the premises. *Id.* These factors are known as the A & C factors.

With respect to the paramount interest of creditors in the case, the court notes that the creditors are: (1) Crown Towers Homeowners Association, filing a proof of claim for a secured claim of \$214,115.06, which is now estimated to be currently \$250,000 due to postpetition accruals; (2) Kleemoff bankruptcy estate with a secured claim of \$20,000 and a general unsecured claim of \$66,000 as determined by the court in an order approving a compromise between the estate and that creditor; (3) Los Angeles County Tax Collector, filing a proof of claim for a secured claim of \$76,936.06 relating to property taxes on the subject property, which is probably higher due to postpetition accruals; and (4) Data Leverage, LLC, filing a proof of claim for secured and priority claims totaling \$293,694.87, now characterized as an administrative expense claim, which is disputed by the trustee.

The court had granted the trustee's motion to approve compromise and sale of the property to Binafard since the motion indicated litigation risks to the estate based on Binafard's specific performance claim in state court regarding the property and the motion was not then opposed. As discussed above, Data Leverage has requested reconsideration under FRCP 60(b), which the court is inclined to grant in part to allow it to argue against the approval of the compromise and sale to Binafard without overbidding.

Based on the papers filed so far, the court believes that the trustee has made a prima facie showing of the A & C factors: (1) the probability of success in the litigation – the estate's asset is the subject property, the two condominium units, and the estate's title is based on the validity of debtor's default judgment in state court as res judicata and collateral estoppel against Binafard's specific

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

performance claim in another lawsuit in state court, and while the trustee believes he would prevail against Binafard as to the property, *Miller v. Dyer*, 20 Cal.2d 526, 528-529 (1942), there are substantial risks that the default judgment is valid due to Binafard's arguments as stated in his papers filed in this case that the default judgment is not effective as to him because he was not named as a party in debtor's lawsuit, but was an indispensable party in debtor's lawsuit over the property as debtor was a defendant in Binafard's specific performance lawsuit filed before debtor's lawsuit, both having the same subject matter and the same transaction or occurrence, and debtor's default judgment may be void because he did not comply with the requirements of California Government Code 68634(g) 411.2 in timely making good payment of filing fees for his complaint on which he got default judgment after denial of his request for fee waiver, see *Hu v. Silgan Containers Corp.*, 70 Cal.App.4th 1261 (1999) (interpreting similar provision under California Code of Civil Procedure 411.2); these issues present substantial litigation risks to the estate as if Binafard prevailed, the estate would not have ownership of the property; (2) the difficulties, if any, to be encountered in the matter of collection – the estate may not be able to sell the property if title is not clear based on Binafard's claim to the property; (3) the complexity of the litigation involved, and the expense – the litigation of title involving the validity of debtor's default judgment and the determination of Binafard's specific performance claim in state court, and the application of doctrines of *res judicata* and/or collateral estoppel would be complex and expensive, and time-consuming, and the estate would be at severe risk of loss of the property through foreclosure of the HOA liens of Crown Towers Homeowners Association, which has obtained relief from the automatic stay to foreclose on its liens, but has not done so if there would be a prompt sale to pay off its liens, or foreclosure of the property tax liens held by the county; and (4) the paramount interest of creditors and a proper deference to their reasonable views in the premises - the creditor body is generally in favor of the compromise, specifically, Crown Towers and the Kleemoff bankruptcy estate, and presumably, the county, since the compromise and sale to Binafard would pay off all these claims as well as other administrative claims of the estate, including the fees of trustee and his professionals, but Data Leverage opposes the compromise and sale to Binafard because it seeks to purchase

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Nikolay Machevsky

Chapter 7

the property for itself, though its claim would be paid off through the compromise and sale.

The trustee argues that the sale to Binafard may be approved as part of the compromise without overbidding because the sale is integral to the compromise. The court determines that the trustee has made a prima facie showing that the compromise with sale to Binafard does not require overbidding. Despite the argument of several parties that a compromise with a sale of assets always requires overbidding, that argument is not correct as the court has discretion to determine whether to apply the sales procedures of 11 U.S.C. 363 to a motion to approve compromise under FRBP 9019. In re Berkeley Delaware Court, LLC, 834 F.3d 1036, 1039-1041 (9th Cir. 2016); In re Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 422 and n. 7 (9th Cir. BAP 2003) ("Whether to impose formal sales procedures is ultimately a matter of discretion that depends upon the dynamics of the particular situation."); In re Douglas J. Roger, M.D., Inc., APC, 383 F.Supp.3d 940 (C.D. Cal. 2019). The litigation risks are so substantial here with respect to the estate having to litigate the Binafard specific performance claim in state court, which will involve great expense and delay as well as risk of loss. It seems to the court that Binafard has a substantial case to argue that the debtor's default judgment should not stand because Binafard should have been named as an indispensable party in debtor's lawsuit because debtor was aware of the Binafard suit having been sued as a party and the lawsuit involves the same subject matter as the title to the property. Moreover, having to litigate title to the property in the Binafard suit would involve delay of any sale or disposition of the property, which involves immediate risk to the estate because of the threatened foreclosure by the HOA which has been granted stay relief. Compromise with Binafard including the sale to him is the only way of eliminating such litigation risk to the estate and allows it to sell the property now. Allowing overbidding and a sale to another party without the compromise with Binafard (i.e., the modifications in the order approving compromise requested in movant's motion for reconsideration negate the compromise with Binafard in total) does not avoid the litigation of title to the property with Binafard, which is a risk to the estate as to whether it can sell the property without resolving the title issue. One of the arguments that movant makes against the compromise and sale is that the court should not

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Nikolay Machevsky

Chapter 7

engage in a de facto state court appeal in considering the dispute between debtor and Binafard, and the court rejects this argument because the court would not be engaging in any litigation of the appeal, but simply evaluating the risks posed by such litigation as A & C Properties directs.

Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Nikolay Machevsky
894-3385.

Chapter 7

Prior tentative ruling.

The Court hereby provides notice to the parties to the contested matter of the motion of Creditor Data Leverage, LLC, for reconsideration of the order granting the motion of Chapter 7 Trustee for order approving compromise and authorizing trustee to transfer real property free and clear of liens and interests that the Court will hold the evidentiary hearing on the reconsideration motion on **November 19, 2020 at 9:00 a.m.**, which will be conducted via Zoom for Government. Participants will be connected to the courtroom using Zoom for Government but will not be physically present in the courtroom. Participants must connect to the Zoom for Government courtroom no later than 8:50 a.m. and check in with the law clerk/DECRO. If a trial participant is having problems connecting to the trial, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Evidentiary Hearing: November 19, 2020 at 9:00 a.m.

a. Video. Utilize the following link:

<https://cacb.zoomgov.com/j/1606187779>
and insert **Meeting ID:** 160 618 7779 and **Password:** 4C%.jz

b. Audio only. Audio-only participants must call into Zoom for

Government by calling: +1 669 254 5252, or +1 646 828 7666;
and insert **Meeting ID:** 160 618 7779 and **Password:** 806754

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Nikolay Machevsky

Chapter 7

Prior tentative ruling as of 11/9/20. No tentative ruling on the merits. Appearances are required on 11/10/20, but counsel and self-represented parties must appear by telephone.

Revised and updated tentative ruling as of 11/4/20. At the continued hearing on 11/4/20, the court expects to call upon the United States Trustee for a report on his investigation. After this report, the court may ask the parties to address the following questions: (1) as movant is requesting that the court set aside the order approving the Binafard compromise/sale motion pursuant to FRCP 60(b)(1) and (3), In re Ex-Cel Concrete Co., Inc., 178 B.R. 198 (9th Cir. BAP 1995) (bankruptcy court abused its discretion to deny FRCP 60(b) motion when no notice given to secured creditor of motion to sell free and clear as sale order was void for lack of due process), based on a finding that the trustee failed to serve it as a creditor with the Binafard compromise motion as required by FRBP 2002(a)(2) and/or (3), does the evidence in the record consisting of the original and amended proofs of service, the declarations of the legal assistant for trustee's counsel, Casas, and movant's former counsel, Sment, conflict, require credibility determinations that necessitate an evidentiary hearing for the court to make findings to resolve disputed issues of material fact, FRBP 9014(d) and (e); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 635-636 (9th Cir. BAP 2010); (2) were the terms of the Binafard compromise/sale motion fair and equitable under FRBP 9019 and do the circumstances of the compromise for sale of the real property warrant the court's discretion to apply the sale procedures of 11 U.S.C. 363, including overbidding, In re Berkeley Delaware Court, LLC, 834 F.3d 1036, 1040 (9th Cir. 2016) (the bankruptcy court has discretion to apply 11 U.S.C. 363 procedures to a sale of claims pursuant to a settlement approved under FRBP 9019); In re Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 421-422 and n. 7 (9th Cir. BAP 2003)(the bankruptcy court has discretion to impose formal sales procedures of 11 U.S.C. depending "upon the dynamics of the particular situation", and it was an abuse of discretion under the circumstances not to apply sales procedures where compromise was in effect just a sale); In re Douglas J. Roger, M.D., Inc., 393 F.Supp.3d 940 (C.D. Cal. 2019) (the bankruptcy court abused its discretion by overriding the trustee's business judgment seeking court approval for a compromise involving sale of claims before considering whether the compromise was fair and equitable

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT...

Nikolay Machevsky

Chapter 7

under FRBP 9019 and whether overbidding under 11 U.S.C. 363 provided additional benefits to the estate); (3) is the evidence of contact between movant's representative, Linton, and trustee's counsel, Zamora, sufficient to put the trustee on notice of movant as a potential overbidder (i.e., the email correspondence of July 2, 2019 between Linton and Zamora, Exhibit D to the trustee's opposition to the reconsideration motion) to trigger the application of Local Bankruptcy Rule 6004-1(c) (1)(B) requiring a hearing on the Binafard compromise/sale motion pursuant to Local Bankruptcy Rule 9013-1(d) before a ruling on the motion.

Appearances are required on 11/4/20, but counsel and self-represented parties must appear by telephone.

Party Information

Debtor(s):

Nikolay Machevsky

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:19-20416 Susie L Wong

Chapter 7

#18.00 Cont'd hearing re: Motion to withdraw as counsel for debtor
fr. 11/17/20

Docket 86

***** VACATED *** REASON: Granted per order entered on 11/19/20- mb.**

Tentative Ruling:

Updated tentative ruling as of 12/7/20. Off calendar. Motion granted by order entered on 11/19/20 based on supplemental declarations filed by movant and lack of timely opposition. No appearances are required on 12/8/20.

Party Information

Debtor(s):

Susie L Wong

Represented By
Chi L Ip

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

2:20-20031 Kristi Suzanne Morrow

Chapter 7

#19.00 Hearing re: Motion for denial of discharge pursuant to 11 U.S.C. § 727(a)(8)

Docket 14

Tentative Ruling:

Grant motion of United States Trustee for denial of discharge under 11 U.S.C. 727(a)(8) for the reasons stated in the moving papers and for lack of timely written opposition. Appearances are required on 12/8/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, December 8, 2020

Hearing Room 1675

2:30 PM

CONT... Kristi Suzanne Morrow

Chapter 7

operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Kristi Suzanne Morrow

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se