

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

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:00 AM

**2:13-26021 L Scott Apparel Inc.**

**Chapter 11**

**#1.00** Cont'd status conference re: Post confirmation of plan  
fr. 6/10/20, 6/16/20, 7/14/20

Docket 140

**Tentative Ruling:**

No tentative ruling as of 12/7/20. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**CONT... L Scott Apparel Inc.**

**Chapter 11**

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):**

L Scott Apparel Inc.

Represented By  
David W Levene  
Kurt Ramlo  
Paul J Kurtzhall

**Movant(s):**

L Scott Apparel Inc.

Represented By  
David W Levene  
Kurt Ramlo  
Paul J Kurtzhall

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

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:00 AM

**2:18-10551 Nina Mosby**

**Chapter 11**

**#2.00** Hearing re: Application for payment of final fees and/or expenses for Oaktree Law/Julie J. Villalobos

Docket 139

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. Approve final fee application of general bankruptcy counsel for debtor in possession for the reasons stated in the application and for lack of timely written objection. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**Wednesday, December 9, 2020**

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11:00 AM

**CONT...**

**Nina Mosby**

**Chapter 11**

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.

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

Nina Mosby

Represented By

Julie J Villalobos

Lawrence R Fieselman

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

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:00 AM

**2:18-10551 Nina Mosby**

**Chapter 11**

**#3.00** Cont'd status conference re: Post confirmation of plan  
fr. 4/8/20, 6/10/20, 9/9/20

Docket 77

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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11:00 AM

**CONT... Nina Mosby**

**Chapter 11**

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**Party Information**

**Debtor(s):**

Nina Mosby

Represented By  
Julie J Villalobos

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

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**Hearing Room 1675**

11:00 AM

**2:18-13759 Charles Peters**

**Chapter 11**

**#4.00** Hearing re: Application for payment of final fees and expenses for Michael R Totaro, debtor's attorney

Docket 421

**Tentative Ruling:**

The court is inclined to approve the final fee application of general bankruptcy counsel for debtor in possession Totaro & Shanahan for the reasons stated in the fee application and for lack of timely written objection, but the application may not yet be final because the fees billed in the application are for services through 11/5/20 and applicant has rendered and is rendering services after that date which are probably compensable. Since plan confirmation is contested, the court will defer making a final ruling on the application until a plan is confirmed as LBR 2016-1(c) (3)(A) provides that final fee applications in a Chapter 11 case are normally filed and set for hearing after plan confirmation. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:00 AM

**CONT...**

**Charles Peters**

**Chapter 11**

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.

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

Charles Peters

Represented By  
Frank Edel Blanco  
Michael R Totaro



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

**2:18-13759 Charles Peters**

**Chapter 11**

**#5.00** Hearing re: Fifth and final application for compensation and reimbursement of expenses of Michael Jay Berger

Docket 430

**Tentative Ruling:**

The court is inclined to approve the final fee application of former general bankruptcy counsel for debtor in possession Law Offices of Michael Jay Berger for the reasons stated in the fee application and for lack of timely written objection, except disallow fees in the amount of \$267.50 for 0.7 hour of services on 1/14/20 for preparing motion to withdraw as counsel (Exhibit 3 at 1) and of \$147.50 for 0.3 hour and of \$350.00 for 0.9 hour for review of creditor Regan's objection to applicant's fourth interim fee application and drafting reply thereto on on 1/17/20 and 1/21/20 (Exhibit 5 at 2 and Exhibit 6 respectively) since such services were not necessary and beneficial to the estate and/or in defense of a fee application which is not compensable under Baker Botts, L.L.P. v. ASARCO LLC, 135 S.Ct. 2158 (2015). Since plan confirmation is contested, the court will defer making a final ruling on the application until a plan is confirmed as LBR 2016-1(c) (3)(A) provides that final fee applications in a Chapter 11 case are normally filed and set for hearing after plan confirmation. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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Central District of California  
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**CONT... Charles Peters**

**Chapter 11**

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

Charles Peters

Represented By  
Frank Edel Blanco  
Michael R Totaro

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

**Wednesday, December 9, 2020**

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11:00 AM

**2:18-13759 Charles Peters**

**Chapter 11**

**#6.00** Hearing re: Application for payment of final fees for Jennifer Min Liu, accountant

Docket 436

**Tentative Ruling:**

The court is inclined to approve the final fee application of former accountant for debtor in possession Jennifer Min Liu for the reasons stated in the fee application and for lack of timely written objection. Since plan confirmation is contested, the court will defer making a final ruling on the application until a plan is confirmed as LBR 2016-1(c) (3)(A) provides that final fee applications in a Chapter 11 case are normally filed and set for hearing after plan confirmation. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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Central District of California  
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**CONT... Charles Peters**

**Chapter 11**

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Prior tentative ruling. For the convenience of the court and the parties, and in accordance with LBR 2016-1(c)(3)(A) providing that final fee applications must be filed and set for hearing as promptly as possible after confirmation of a plan unless otherwise ordered by the court (the court has not ordered otherwise here), the court on its own motion continues the hearing on this final fee application to be heard with other final fee applications in this case set for hearing with the plan confirmation hearing on 12/9/20 at 11:00 a.m. No appearances are required on 12/2/20.

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

Charles Peters

Represented By  
Frank Edel Blanco  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Wednesday, December 9, 2020

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11:00 AM

2:18-13759 Charles Peters

Chapter 11

#7.00 Hearing re: Confirmation of plan  
fr. 8/5/20, 8/18/20, 10/21/20

Docket 257

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. The plan needs to resolve certain issues before it can be confirmed: (1) the objection of secured creditor Deutsche Bank to plan confirmation that the plan cannot modify its lien on debtor's principal residence under 11 U.S.C. 1123(b)(5), the plan does not provide for the full amount of the loan as of the confirmation date and the proposed treatment of paying the secured claim over 30 years with 2% interest does not meet the cramdown "fair and equitable" standards of 11 U.S.C. 1129(b)(2)(A)(i) - unless this dispute is consensually resolved, plan confirmation is a contested proceeding requiring an evidentiary hearing to determine whether the loan term can be stretched out and what the appropriate "cramdown" rate of interest is (i.e., formula v. blended rate, compare *Till v. SCS Credit Corp*, 541 U.S. 465, 478-479 (2004); In re *Sunnyslope Housing Ltd. Partnership*, 859 F.3d 637, 646 (9th Cir. 2017) with In re *Boulders on the River, Inc.*, 164 B.R. 99, 106 (9th Cir. BAP 1994); In re *North Valley Mall, LLC*, 432 B.R. 825, 832 (Bankr. C.D. Cal. 2010)) - the court is not inclined to approve as "fair and equitable" the treatment of the secured claim for purposes of 11 U.S.C. 1129(b) with a stretch-out of an additional 13-14 years on a loan maturing in 16-17 years with 2% interest where the contract rate is a variable APR rate loan between 3 and 6.25%, because of the default risk to the creditor, In re *Fowler*, 903 F.2d 694, 697 (9th Cir. 1990), though the proof of claim lists the current variable rate to be 2%; evidence may have to be taken on the appropriate cramdown interest rate and the valuation of the property and lien, though the issue of loan modification for the subject property under 11 U.S.C. 1123(b)(5) is a legal issue, In re *Wages*, 508 B.R. 161, 165 (9th Cir. BAP 2014) with In re *Scarborough*, 461 F.3d 406, 410-413 (3rd Cir. 2006); (2) the plan does not comply with 11 U.S.C. 1129(a)(9)(C) requiring priority tax claims be paid in full with interest not later than 5 years from the date of the order for relief on 4/3/18, or by 4/3/23, rather than 1/1/26 as proposed in the plan, and debtor must demonstrate feasibility of

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
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Wednesday, December 9, 2020

Hearing Room 1675

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11:00 AM

CONT...

Charles Peters

Chapter 11

paying the total unobjected-to priority tax claims of IRS and Beverly Hills in the approximate amount of \$93,000; (3) debtor needs to demonstrate feasibility by showing that he can pay off administrative expense claims pursuant to 11 U.S.C. 1129(a)(9)(A) since the amounts of these claims as reflected in the final fee applications have run higher than listed in the plan and disclosure statement. Debtor must show that the plan is feasible that he can pay the administrative expense claims and the priority tax claims as proposed in the plan or by the deadline for payment of priority tax claims in April 2023. According to debtor in his plan confirmation brief, since approval of the disclosure statement, he has obtained approval of a refinancing loan for the mobile home park which should demonstrate plan feasibility to pay off administrative expense claims, priority tax claims and other claims, but there is no evidence of this in the record. The plan or plan confirmation order must include the language in LBR 3020-1(b) concerning postconfirmation requirements, including revesting property of the reorganized debtor in a Chapter 7 bankruptcy estate if the case is converted to Chapter 7.

Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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11:00 AM

CONT...

Charles Peters

Chapter 11

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 as of 10/19/20. No tentative ruling on the merits in light of the objection of administrative expense creditor Law Offices of Michael Jay Berger. Debtor should discuss when he would be able to refinance his real property to pay administrative expense claimants since they all have to consent to the proposed treatment of their claims pursuant to 11 U.S.C. 1129(a)(9)A). The plan should incorporate the mandatory language of LBR 3020-1(b) referring to revesting of property of the reorganized debtor in a Chapter 7 estate if the case is converted to Chapter 7 for a postconfirmation default. The plan should correct typographical and spelling errors, such as plan date of "October 7, 2010," or the court being the "Los Angele Division" or the court address of "155 E. Temple St" in the case caption for the plan. Appearances are required on 10/21/20, but counsel and self-represented parties must appear by telephone.

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

Charles Peters

Represented By  
Frank Edel Blanco  
Giovanni Orantes  
Luis A Solorzano

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, December 9, 2020**

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11:00 AM

**2:18-13759 Charles Peters**

**Chapter 11**

**#8.00** Cont'd status conference re: Management of chapter 11 case  
fr. 8/18/20, 9/2/20, 10/21/20

Docket 1

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**CONT... Charles Peters**

**Chapter 11**

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**Party Information**

**Debtor(s):**

Charles Peters

Represented By  
Frank Edel Blanco  
Giovanni Orantes  
Luis A Solorzano

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

**2:18-13759 Charles Peters**

**Chapter 11**

**#8.10** Cont'd hearing re: Application for payment of final fees and/or expenses for Orantes Law Firm, P.C., Debtor's Attorney  
fr. 12/9/20

Docket 425

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. The court is inclined to approve the final fee application of former general bankruptcy counsel for debtor in possession Orantes Law Firm, P.C., for the reasons stated in the fee application and for lack of timely written objection, but disallow fees in the amount of \$367.50 for 0.7 hour of services on 5/21/20 for preparing motion to withdraw as counsel and related application to shorten notice since such services were not necessary and beneficial to the estate. Since plan confirmation is contested, the court will defer making a final ruling on the application until a plan is confirmed as LBR 2016-1(c) (3)(A) provides that final fee applications in a Chapter 11 case are normally filed and set for hearing after plan confirmation. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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CONT...

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Prior tentative ruling. For the convenience of the court and the parties, and in accordance with LBR 2016-1(c)(3)(A) providing that final fee applications must be filed and set for hearing as promptly as possible after confirmation of a plan unless otherwise ordered by the court (the court has not ordered otherwise here), the court on its own motion continues the hearing on this final fee application to be heard with other final fee applications in this case set for hearing with the plan confirmation hearing on 12/9/20 at 11:00 a.m. No appearances are required on 12/2/20.

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

Charles Peters

Represented By  
Frank Edel Blanco  
Michael R Totaro

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, December 9, 2020**

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**2:18-13759 Charles Peters**

**Chapter 11**

**#8.20** Cont'd hearing re: Application for payment of final fees and/or expenses of Jay B. Siegel, Esq.  
fr. 12/2/20

Docket 417

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. The court is inclined to approve the final fee application of former special litigation counsel for debtor in possession Jay B. Siegel for the reasons stated in the fee application and for lack of timely written objection. Since plan confirmation is contested, the court will defer making a final ruling on the application until a plan is confirmed as LBR 2016-1(c) (3)(A) provides that final fee applications in a Chapter 11 case are normally filed and set for hearing after plan confirmation. Appearances are required on 12/9/20, 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

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Courtroom 1675 Calendar**

Wednesday, December 9, 2020

Hearing Room 1675

---

11:00 AM

CONT...

Charles Peters

Chapter 11

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. For the convenience of the court and the parties, and in accordance with LBR 2016-1(c)(3)(A) providing that final fee applications must be filed and set for hearing as promptly as possible after confirmation of a plan unless otherwise ordered by the court (the court has not ordered otherwise here), the court on its own motion continues the hearing on this final fee application to be heard with other final fee applications in this case set for hearing with the plan confirmation hearing on 12/9/20 at 11:00 a.m. No appearances are required on 12/2/20.

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

**Debtor(s):**

Charles Peters

Represented By  
Frank Edel Blanco  
Michael R Totaro

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

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:00 AM

**2:18-23361 Zacky & Sons Poultry, LLC**

**Chapter 11**

**#9.00** Cont'd status conference re: Management of chapter 11 case  
fr. 3/25/20, 6/3/20, 8/5/20

Docket 1

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**Wednesday, December 9, 2020**

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11:00 AM

**CONT... Zacky & Sons Poultry, LLC**

**Chapter 11**

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.

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

Zacky & Sons Poultry, LLC

Represented By  
Ron Bender  
Juliet Y Oh  
Todd M Arnold  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Courtroom 1675 Calendar**

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:30 AM

**2:15-24071 Francisco O Lopez**

**Chapter 11**

**#10.00** Cont'd order to show cause why debtor's counsel of record, Jaurigue Law Group, and debtor Francisco Lopez should not be sanctioned for failure to appear at the September 9, 2020 status conference  
fr. 10/7/20

Docket 167

**Tentative Ruling:**

No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:30 AM

**CONT... Francisco O Lopez**

**Chapter 11**

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.

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

**Debtor(s):**

Francisco O Lopez

Represented By  
Nam H. Le  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:30 AM

**2:15-24071 Francisco O Lopez**

**Chapter 11**

**#11.00** Cont'd hearing re: Motion under 11 U.S.C. § 1112(b)(1) to convert, dismiss or appoint a chapter 11 trustee fr. 10/7/20

Docket 170

**Tentative Ruling:**

No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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11:30 AM

**CONT... Francisco O Lopez**

**Chapter 11**

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.

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

**Debtor(s):**

Francisco O Lopez

Represented By  
Nam H. Le  
Ryan A. Stubbe

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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Courtroom 1675 Calendar**

**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:30 AM

**2:15-24071 Francisco O Lopez**

**Chapter 11**

**#12.00** Cont'd status conference re: Post confirmation of plan  
fr. RN, 7/1/20, 9/9/20, 10/7/20

Docket 1

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, but counsel and self-represented parties must appear by telephone.

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

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**Wednesday, December 9, 2020**

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11:30 AM

**CONT... Francisco O Lopez**

**Chapter 11**

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):**

Francisco O Lopez

Represented By  
Nam H. Le

**United States Bankruptcy Court  
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**Wednesday, December 9, 2020**

**Hearing Room 1675**

11:30 AM

**2:18-10290 People Who Care Youth Center, Inc.**

**Chapter 11**

**#13.00** Cont'd status conference re: Post confirmation of plan  
fr. 11/10/20, 11/18/20, 12/2/20

Docket 119

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, 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.

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11:30 AM

**CONT... People Who Care Youth Center, Inc.**

**Chapter 11**

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.

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

People Who Care Youth Center, Inc.

Represented By  
John-Patrick M Fritz  
David B Golubchik

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
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**Wednesday, December 9, 2020**

**Hearing Room 1675**

2:00 PM

**2:13-14135 Art and Architecture Books of the 21st Century Chapter 11**  
Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

**#14.00** Cont'd hearing re: Motion to compel discovery  
fr. 10/28/20, 11/18/20, 12/2/20

Docket 763

**Tentative Ruling:**

Updated tentative ruling as of 12/7/20. No tentative ruling on the merits. Appearances are required on 12/9/20, 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.

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2:00 PM

CONT...

**Art and Architecture Books of the 21st Century**

**Chapter 11**

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.

Updated tentative ruling as of 11/30/20. Off calendar. The court on its own motion continues the hearing on the pending motion to 12/9/20 at 2:00 p.m. in light of the recent voluminous filing of the parties on 11/30/20, two days before the scheduled hearing, consisting of a 44 page discovery dispute stipulation and two packets of exhibits totaling over 600 pages. Given the short time before the hearing that these documents were filed, the court will need some reasonable time to review the documents for the hearing. No appearances are required on 12/2/20.

Prior tentative ruling as of 11/16/20. Off calendar. Continued by stipulation and order to 12/2/20 at 2:30 p.m. No appearances are required on 11/18/20.

Prior tentative ruling as of 10/27/20. Off calendar. Continued by stipulation and order to 11/18/20 at 2:30 p.m. No appearances are required on 10/28/20.

Prior tentative ruling as of 10/26/20. The court is not inclined to rule on the motion to compel discovery at this time because the motion is not ripe for adjudication as compliance with LBR 7026-1(c) requiring a joint discovery dispute stipulation is lacking. Also, apparently, the parties have not had a discovery dispute conference pursuant to LBR 7026-1(c). Preliminarily, the same concerns regarding movant's FRBP 2004 examination of the plan agent and the reorganized debtor are probably applicable here either based on issue preclusion or the law of the case doctrine. Otherwise, no tentative ruling on the merits, and the court is inclined to continue or vacate the hearing so that the parties may comply with LBR 7026-1(c). Appearances are required on 10/28/20, but counsel and self-represented parties must appear by telephone.

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

**Debtor(s):**

Art and Architecture Books of the

Represented By

Thomas M Geher

**United States Bankruptcy Court  
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Los Angeles  
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Wednesday, December 9, 2020

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2:00 PM

CONT...

**Art and Architecture Books of the 21st Century**

**Chapter 11**

David W. Meadows  
Jerome S Cohen  
Carolyn A Dye  
Alan I Nahmias

**Defendant(s):**

Ace Gallery New York Corporation,

Represented By  
Alan W Forsley

Douglas Christmas

Represented By  
Alan W Forsley

Ace Gallery New York, Inc., a

Represented By  
Alan W Forsley

ACE MUSEUM, a California

Represented By  
Alan W Forsley

400 S La Brea, LLC a California

Represented By  
Michael W Vivoli  
Ronald Rus  
Fahim Farivar  
Brian L Davidoff  
Keith Patrick Banner

Jennifer Kellen

Represented By  
J. Bennett Friedman

Michael D. Smith

Represented By  
Brian L Davidoff

Kamran Gharibian

Represented By  
Brian L Davidoff

Daryoush Dayan

Represented By  
Brian L Davidoff

Cathay Bank, a California

Represented By  
Ekwan E Rhow  
Elliot C Harvey Schatmeier

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2:00 PM

**CONT... Art and Architecture Books of the 21st Century Chapter 11**

Jennifer Kellen

Represented By  
Michael D Sobkowiak

**Plaintiff(s):**

THE OFFICIAL COMMITTEE OF

Represented By  
Victor A Sahn  
Daniel A Lev  
David J Richardson  
Asa S Hami  
Jessica Vogel

Official Committee Of Unsecured

Represented By  
David J Richardson  
Victor A Sahn

Sam Leslie

Represented By  
Victor A Sahn  
Carolyn A Dye  
David J Richardson  
Jason Balitzer  
Steven Thomas  
Stephen Sorensen

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
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**Wednesday, December 9, 2020**

**Hearing Room 1675**

3:30 PM

**2:14-29611 Nikolay Machevsky**

**Chapter 7**

**#15.00** 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. 11/10/20, 11/19/20, 12/8/20

Docket 73

**Tentative Ruling:**

No updated tentative ruling for 12/9/20. Appearances are required on 12/9/20, but counsel and self-represented parties should appear by telephone per instructions stated in the tentative ruling posted on 12/8/20.

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

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CONT...

**Nikolay Machevsky**

**Chapter 7**

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 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

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3:30 PM

CONT... Nikolay Machevsky

Chapter 7

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 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

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**Nikolay Machevsky**

**Chapter 7**

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.

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 (9<sup>th</sup> 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.

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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 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.4<sup>th</sup> 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



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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 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 (9<sup>th</sup> Cir. 2016); In re Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 422 and n. 7 (9<sup>th</sup> 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

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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 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

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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 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

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- 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

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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

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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 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.

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

Nikolay Machevsky

Pro Se

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Nancy H Zamora