

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Thursday, September 2, 2021**

**Hearing Room**

**5B**

10:00 AM

**8:00-000000**

**Chapter**

**#0.00    Hearings on this calendar will be conducted using ZoomGov video and audio.**

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**Video/audio web address:**

<https://cacb.zoomgov.com/j/1603963405>

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**Password:**    494993

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For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

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- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
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**Chapter**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**8:13-11495 Point Center Financial, Inc.**

**Chapter 7**

Adv#: 8:16-01041 Howard Grobstein, as Chapter 7 trustee v. NATIONAL FINANCIAL

**#1.00 STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of  
Fraudulent Transfers or, in the Alternative Avoidance and Recovery of  
Preferential Transfers  
(con't from 2-25-21)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO 12-02-21 AT 10:00 A.M.  
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS  
CONFERENCE ENTERED 8-30-21**

**Tentative Ruling:**

Tentative for 2/25/21:  
Status?

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Tentative for 12/3/20:  
Continue to February 25, 2021 @10:00 a.m.

Appearance: optional.

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Tentative for 2/27/20:  
Status conference continued to May 28, 2020 at 10:00AM. Some of these  
cases appear to be drifting. Continue one last time.

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Tentative for 12/5/19:  
Why no status report?

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See #16.

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**CONT... Point Center Financial, Inc.**

**Chapter 7**

**Party Information**

**Debtor(s):**

Point Center Financial, Inc.

Represented By  
Robert P Goe  
Jeffrey S Benice  
Carlos F Negrete

**Defendant(s):**

NATIONAL FINANCIAL

Pro Se

**Plaintiff(s):**

Howard Grobstein, as Chapter 7

Represented By  
Roye Zur

**Trustee(s):**

Howard B Grobstein (TR)

Pro Se

Howard B Grobstein (TR)

Represented By  
Rodger M Landau  
Roye Zur  
Kathy Bazoian Phelps  
John P Reitman  
Robert G Wilson  
Monica Rieder  
Jon L Dalberg  
Michael G Spector  
Peter J Gurfein

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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**8:18-11154 i.i. Fuels, Inc.**

**Chapter 7**

Adv#: 8:21-01001 Marshack v. American Express National Bank

**#2.00** STATUS CONFERENCE RE: Complaint For: 1) Avoidance of Transfers Pursuant to 11 USC Section 544(b) and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05; 2) Avoidance of Transfers Pursuant to 11 USC Section 548(a)(1)(B); 3) Recovery of Avoided Transfers Pursuant to 11 USC Section 550; and 4) Disallowance of Claims Pursuant to 11 USC Section 502  
**(cont'd from 7-01-21 per order approving stip. to continue status conference entered 6-28-21)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE AND REMOVE STATUS CONFERENCE FROM THE COURT'S CALENDAR ENTERED 8-19-21**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

i.i. Fuels, Inc.

Represented By  
Leonard M Shulman

**Defendant(s):**

American Express National Bank

Pro Se

**Plaintiff(s):**

Richard A. Marshack

Represented By  
Robert P Goe

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe  
Rafael R Garcia-Salgado

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**8:21-10534 Linda Nguyen**

**Chapter 7**

Adv#: 8:21-01033 Bui v. Nguyen

**#3.00** STATUS CONFERENCE RE: Nondischargeability Complaint [11 U.S.C. Section 523(a)(2)(A); Section 523(a)(4), Section 523(a)(6)]; Objection To Discharge  
[11 U.S.C. Section 727]

Docket 1

**\*\*\* VACATED \*\*\* REASON: RE-SCHEDULED TO 9-02-21 AT 11:00  
A.M. PER COURT'S OWN MOTION 8-31-21**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Linda Nguyen

Represented By  
Marc A Goldbach

**Defendant(s):**

Linda Nguyen

Pro Se

**Plaintiff(s):**

Uyen Vi Thi Bui

Represented By  
J Scott Bovitz

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:18-11154 i.i. Fuels, Inc.**

**Chapter 7**

Adv#: 8:20-01089 Marshack v. Supreme Oil Company

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Preferential Transfers; (2) Recovery of Preferential Transfers; (3) Preservation of Preferential Transfers; and (4) Disallowance of Claims  
(set from s/c hrg held on 8-06-20)  
(cont'd from 6-03-21 per order granting stip. to cont. the pre-trial conf entered 5-07-21)**

Docket 1

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER APPROVING  
STIPULATION BETWEEN CHAPTER 7 TRUSTEE AND SUPREME OIL  
COMPANY TO DISMISS CLAIMS AGAINST SUPREME OIL COMPANY  
WITH PREJUDICE ENTERED 6-21-21**

**Tentative Ruling:**

Tentative for 8/6/20:

Deadline for completing discovery: December 30, 2020

Last date for filing pre-trial motions: January 15, 2021

Pre-trial conference on: January 28, 2021 @ 10:00AM

Joint pre-trial order due per local rules.

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

**Debtor(s):**

i.i. Fuels, Inc.

Represented By  
Leonard M Shulman

**Defendant(s):**

Supreme Oil Company

Pro Se

**Plaintiff(s):**

Richard A Marshack

Represented By  
Robert P Goe



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**CONT... i.i. Fuels, Inc.**

**Chapter 7**

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe

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**8:17-11276 Stacey Lynn Schmidt**

**Chapter 7**

Adv#: 8:17-01121 Marx v. Schmidt

**#5.00** Motion to Extend Time to Appeal FRBP 8002 (d)(1)(A)

Docket 189

**Tentative Ruling:**

Tentative for 9/2/21:

Grant. Appearance optional

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

Stacey Lynn Schmidt

Represented By  
Christine A Kingston

**Defendant(s):**

Stacey Lynn Schmidt

Represented By  
Christine A Kingston

**Plaintiff(s):**

Tracy M Marx

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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**8:21-10534 Linda Nguyen**

**Chapter 7**

Adv#: 8:21-01033 Bui v. Nguyen

**#5.10** STATUS CONFERENCE RE: Nondischargeability Complaint [11 U.S.C. Section 523(a)(2)(A); Section 523(a)(4), Section 523(a)(6)]; Objection To Discharge [11 U.S.C. Section 727]

Docket 1

**Tentative Ruling:**

Tentative for 9/2/21:  
Discovery cutoff April 1, 2022. Last date to file pretrial motions April 28, 2022. Pretrial conference May 12, 2022 @ 10:00AM. See #6.

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

Linda Nguyen

Represented By  
Marc A Goldbach

**Defendant(s):**

Linda Nguyen

Pro Se

**Plaintiff(s):**

Uyen Vi Thi Bui

Represented By  
J Scott Bovitz

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se

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**8:21-10534 Linda Nguyen**

**Chapter 7**

Adv#: 8:21-01033 Bui v. Nguyen

**#6.00** Plaintiff's Motion To Strike Defendant's 49 Affirmative Defenses

Docket 8

**Tentative Ruling:**

Tentative for 9/2/21:

This is plaintiff, Uyen Vi Thi Bui's ("Plaintiff") Motion to Strike Defendant's 49 Affirmative Defenses. The motion is opposed by debtor/defendant, Linda Nguyen ("Defendant").

Plaintiff filed her complaint initiating this adversary proceeding on June 14, 2021. The complaint contains four claims for relief:

- 1) Exception to Discharge pursuant to 11 U.S.C. §523(a)(2)(A) for alleged false representations;
- 2) Exception to Discharge pursuant to 11 U.S.C. §523(a)(4) for alleged embezzlement.
- 3) Exception to Discharge pursuant to 11 U.S.C. §523(a)(6) for alleged willful and malicious conversion of Plaintiff's portion of partnership proceeds; and
- 4) Denial of Discharge pursuant to 11 U.S.C. §727(a)(2).

Defendant filed her answer on July 14, 2021. Defendant's answer does not contain any factual background, but only references paragraphs from the Complaint. The responses mainly contain denials and assertions that the allegations in the Complaint are merely conclusory in nature and do not require substantive responses. Then there are the 49 asserted affirmative defenses. As argued in the motion, the affirmative defenses are little more than threadbare and conclusory assertions of the general defense. For example, Affirmative Defense No. 28 ("Speculative Damages and/or Penalties") (chosen randomly) states:

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"Plaintiff is precluded from recovering the damages alleged in the complaint because those damages and/or penalties are too vague, ambiguous, excessive, unreasonable, uncertain, and speculative to permit recovery."

Each affirmative defense put forth by Defendant is supported by roughly the same amount of analysis. The question is, does this suffice?

Under Fed. R. Civ. P. 12(f), "the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Motions to strike "are generally disfavored by courts because the motions may be used as delaying tactics and because of the strong policy favoring resolution on the merits." *Barnes v. AT & T Pension Ben. Plan-Nonbargained Program*, 718 F. Supp. 2d 1167, 1170 (N.D. Cal. 2010) (citation omitted). Plaintiff asserts that there is a split of authority as to the standard affirmative defenses should be held. Plaintiff notes some courts have held that affirmative defenses should be required to meet the *Iqbal/Twombly* standard. See *Adams v. JP Morgan Chase Bank, N.A.*, 2011 WL 2938467, at \*2 (M.D.Fla. July 21, 2011) ("[M]any district courts within this circuit have addressed the issue and the majority have held that the *Iqbal* and *Twombly* standard does apply to affirmative defenses.")

Still, other courts have maintained a less stringent approach when it comes to the sufficiency of affirmative defenses. For example, in *Mician v. Catanzaro*, 2018 WL 11239207, at \*3 (E.D. Va. Nov. 7, 2018), the court indicated its awareness of the split authority and explicitly declined to apply the *Iqbal/Twombly* standard, instead holding that affirmative defenses need only provide "fair notice" to the plaintiff, be "contextually comprehensible," and "possibly related to the controversy." *Id.*

The Ninth Circuit has not opined on the appropriate standard regarding the sufficiency of affirmative defenses asserted in an answer. Defendant would have this court follow the more lenient "fair notice" approach as articulated in *Wyshak v. City National Bank*, 607 F.2d 824, 827 (9th Cir. 1979), which pre-dates *Iqbal* and *Twombly*. From the court's research, there is no universal agreement among the California district courts about the correct standard, but the more prevalent view seems to apply the heightened

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pleading standard consistent with *Iqbal* and *Twombly*. The court is aware of at least some courts in the Central District that still apparently apply the older *Wyshak* standard because it has not been expressly overruled. See *Cooksey v. Ocean*, 2017 U.S. Dist. LEXIS 220428 (C.D. Cal. July 7, 2017) ("Until the Ninth Circuit overturns its previous decision or otherwise provides clear guidance on the issue, this Court will continue to follow *Wyshak*."); *Grasshopper House, LLC v. Clean & Sober Media LLC*, 2018 WL 11309934 at \*1 (C.D. Cal. Oct. 18, 2018) ("even though some district courts apply the heightened pleading standards articulated by the Supreme Court to affirmative defenses, the Court will continue to follow binding Ninth Circuit precedent and hold that only "fair notice" of an affirmative defense is required.")

However, other courts in the Central District have decided to apply the heightened pleading standard as courts in other California districts have done. See e.g. *Dairy Emples. Union Local No. 17 Christian Labor Ass'n of the United States Pension Trust v. Henry Vander Poel & Son Dairy*, 2013 WL 12404189 at \*3 (C.D. Cal. Aug. 2, 2013) ("Absent further direction from the Supreme Court or Ninth Circuit, the court is convinced that the heightened pleading standard applies to affirmative defenses.") See also *Seville Classics, Inc. v. Neatfreak Grp., Inc.*, 2017 U.S. Dist. LEXIS 183029 at \*4 (C.D. Cal. Feb. 14, 2017) ("Indeed, the Court agrees with a number of other district courts that the Ninth Circuit's decision in *Wyshak v. City National Bank*...no longer provides the controlling standard in light of *Twombly*, *Iqbal*, and their progeny.")

Thus, this court will take the view that *Wyshak* is no longer the operative standard. As such, Defendant's answer falls woefully short of compliance with FRCP 8(b) and 8(c). There is nearly no attempt to connect the asserted affirmative defenses to any facts of the case or to any of Plaintiff's asserted causes of action. This makes the task of connecting the operative facts to the asserted defenses more confusing and burdensome than it should be, especially given how many defenses are raised. Also, just as an observation, some of the "affirmative defenses" such as, for example, the first affirmative defense of failure to state a claim, is not actually an affirmative defense. See *Thorium Cyber Sec., LLC v. Nurmi*, 2020 WL

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**Linda Nguyen**

**Chapter 7**

7260507, at \*8 (N.D. Cal. Dec. 10, 2020) ("A 12(b)(6) defense is not an affirmative defense because it seeks to show a defect in the plaintiff's prima facie case"). The same could said of Defendant's eighteenth asserted affirmative defense of "no damage." See *Vogel v. Huntington Oaks Delaware Partners, LLC*, 291 F.R.D. 438, \*442 (C.D. Cal. 2013) (finding that "no damage or injury" was not an affirmative defense "because it merely points to a defect in [plaintiff's] case"). However, mislabeling a defense is not grounds for striking. See *Tattersalls Ltd. v. Wiener*, 2019 WL 669640, at \*3 (S.D. Cal. Feb. 19, 2019) ("Absent a showing of prejudice, classification of a defense as "affirmative" or "negative" does not necessitate that the offending answer be stricken.")

Given the uncertainty surrounding the correct pleading standard that Defendant's asserted affirmative defenses must meet, the court should allow Defendant the opportunity to amend her answer. There does not appear to be any obvious prejudice that would accrue to Plaintiff in allowing Defendant to file a first amended answer to the Complaint. Defendant should be warned that further failure to comply with the heightened requirements for affirmative defenses will not be met as charitably. Some effort to make them "contextually comprehensible" is needed. This could be done by insertion of a brief parenthetical addressing that portion of the complaint most relevant so that we all can make some sense of the defense. Defendant should also amend her answer to properly classify her defenses where applicable, and to eliminate those, such as "fails to state a claim" which are in fact not affirmative defenses.

*Grant with thirty days to amend*

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

Linda Nguyen

Represented By  
Marc A Goldbach

**Defendant(s):**

Linda Nguyen

Represented By  
Marc A Goldbach

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**CONT... Linda Nguyen**

**Chapter 7**

**Movant(s):**

Uyen Vi Thi Bui

Represented By  
J Scott Bovitz

**Plaintiff(s):**

Uyen Vi Thi Bui

Represented By  
J Scott Bovitz

**Trustee(s):**

Jeffrey I Golden (TR)

Pro Se



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**8:20-11631 Hoan Dang**

**Chapter 7**

Adv#: 8:20-01131 OneSource Distributors, LLC v. Dang et al

**#7.00** Motion to Enter Judgment on Settlement Agreement

Docket 37

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON JOINT  
STIPULATION TO VACATE HEARING ON MOTION TO ENTER  
JUDGMENT ON SETTLEMENT AGREEMENT ENTERED 8-30-21**

**Tentative Ruling:**

- NONE LISTED -

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

Hoan Dang

Represented By  
James C Bastian Jr

**Defendant(s):**

Hoan Dang

Represented By  
James C Bastian Jr

Diana Hongkham Dang

Represented By  
James C Bastian Jr

**Joint Debtor(s):**

Diana Hongkham Dang

Represented By  
James C Bastian Jr

**Plaintiff(s):**

OneSource Distributors, LLC

Represented By  
Pamela J Scholefield

**Trustee(s):**

Karen S Naylor (TR)

Represented By  
Nathan F Smith  
Arturo Cisneros

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**Hoan Dang**

James C Bastian Jr

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