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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM
**8: -** **Chapter**

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

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

**Video/audio web address:**
https://cacb.zoomgov.com/j/1606940341

**ZoomGov meeting number:** 160 694 0341

**Password:** 042876

**Telephone conference lines:** 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

10:00 AM
**CONT...** **Chapter**

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.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name *(ex. 5, R. Smith, ABC Corp.)* if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- 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.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**CONT...** **Chapter**

**Tentative Ruling:**

- NONE LISTED -

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:12-23407 Joel J Spinosi** **Chapter 11**

**#1.00** Motion by Reorganized Debtor for Entry of Discharge

Docket 236

***** VACATED *** REASON: CONTINUED TO 1-06-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION RE: CONTINUANCE OF HEARING ON MOTION BY REORGANIZED DEBTOR FOR ENTRY OF DISCHARGE ENTERED 11-30-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Joel J Spinosi

Represented By
M. Jonathan Hayes
Roksana D. Moradi-Brovia

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:14-11335 Plaza Healthcare Center LLC** **Chapter 11**

**#2.00** CONT Scheduling and case management conference

[from: 4/25/14, 5/8/14, 6/4/14, 7/2/14, 7/30/14, 9/3/14, 10/22/14,11/20/14, 12/17/14, 2/18/15. 7/8/15, 10/7/15, 12/16/15, 12/23/15, 1/13/16, 2/10/16, 6/22/16, 9/28/16, 11/22/16, 12/7/16, 3/1/17, 6/21/17, 6/28/17, 8/30/17, 9/7/17, 11/1/17, 1/31/18, 3/28/18, 8/1/18, 8/15/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 1

**Tentative Ruling:**

Tentative for 12/2/20:
Why no status report?

---

No appearances necessary. The hearing will be continued to December 2, 2020 at 10:00 a.m.

**Party Information**

**Debtor(s):**

Plaza Healthcare Center LLC — Represented By
Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:14-11335 Plaza Healthcare Center LLC** **Chapter 11**

**#3.00** CONT Motion for entry of final decrees closing Debtors Chapter 11 cases

[fr: 12/13/17, 3/28/18, 8/1/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 2630

***** VACATED *** REASON: CONTINUED TO 6-09-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARING ON MOTION FOR ENTRY OF FINAL DECREE CLOSING DEBTORS' CHAPTER 11 CASES ENTERED 11-30-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Plaza Healthcare Center LLC

Represented By
Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim
Kurt Ramlo
Michelle S Grimberg
Philip A Gasteier
Jacqueline L James
Beth Ann R Young

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:14-11335 Plaza Healthcare Center LLC** **Chapter 11**

**#4.00** CONT Motion to strike by Shlomo Rechnitz

[fr: 8/1/18, 8/15/18, 11/7/18, 3/13/19, 9/11/19, 12/11/19, 6/3/20]

Docket 2652

***** VACATED *** REASON: CONTINUED TO 6-09-21 AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 11-17-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Plaza Healthcare Center LLC

Represented By
Ron Bender
Lindsey L Smith
Krikor J Meshefejian
Monica Y Kim
Kurt Ramlo
Michelle S Grimberg
Philip A Gasteier
Jacqueline L James
Beth Ann R Young

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-12856 1875 N Palm Canyon Partners II, LLC** **Chapter 11**

**#5.00** Status Conferene Re: Chapter 11 Voluntary Petition Non-Individual. LLC

Docket 1

**Tentative Ruling:**

Tentative for 12/2/20:
Why no status report?

**Party Information**

**Debtor(s):**

1875 N Palm Canyon Partners II, Represented By
Edmond Richard McGuire

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-12881 Stonewood Homes LLC** **Chapter 11**

**#6.00** Status Conference Re: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

***** VACATED *** REASON: OFF CALENDAR - THIS CASE HAS BEEN REASSIGNED TO JUDGE ERITHE SMITH ON 10-15-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Stonewood Homes LLC — Represented By
William J King

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:14-12267 Satinder Mohan Uppal** **Chapter 11**

**#7.00** Motion To Avoid Junior Liens And Tax Lien With Federal Deposit Corporation as Successor to La Jolla Bank, FSB, JMD Forever, LLC and the Franchise Tax Board

Docket 207

**Tentative Ruling:**

Tentative for 12/2/20:
Grant.

**Party Information**

**Debtor(s):**

Satinder Mohan Uppal

Represented By
Michael G Spector
Vicki L Schennum
Michael G Spector
T Randolph Catanese

10:00 AM
**8:16-11588 Long-Dei Liu** **Chapter 11**

**#8.00** First and Final Application for Allowance of Fees and Costs For Period: 10/18/2018 to 11/11/2020:

**MARSHACK HAYS LLP AS FORMER SPECIAL COUNSEL FOR DISBURSING AGENT:**

**FEE:** **$61,427.00**

**EXPENSES:** **$1,627.01**

Docket 765

**Tentative Ruling:**

Tentative for 12/2/20:

There does not appear to be objection to allowance of the amounts requested. The dispute goes only to payment in view of possible administrative insolvency. This is a case with a confirmed Chapter 11 plan so it does not appear that there is any discrepancy in priority, with all allowed fees of the same priority, i.e. Chapter 11 administrative. The problem arises in that some of the fees awarded to SWE and the Rosenberg firm are on appeal to the Ninth Circuit. Moreover, yet more fees may be incurred in execution of the plan in amounts unknown. Consequently, the fees and costs requested in this application are allowed and the plan agent is authorized to partially disburse as much of the allowed amounts as in his discretion he determines can be prudently and safely paid without resulting in unbalanced payments among all administrative claimants holding allowed claims if/when funds are ultimately exhausted. He may use as a guideline what has previously been actually paid in the course of the case as a percentage of what has been previously allowed (although appealed), and apply that percentage to the newly allowed fees. This is a guideline only and the court relies upon the plan agent to make any adjustments resulting in lower payment as will afford a reasonable cushion against anticipated further allowed fees.

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**CONT... Long-Dei Liu** **Chapter 11**

**Party Information**

**Debtor(s):**

Long-Dei Liu

Represented By
Lei Lei Wang Ekvall
Robert S Marticello
David A Kay
Steven H Zeigen
Michael Simon
Kyra E Andrassy

10:00 AM
**8:18-10486 Ron S Arad** **Chapter 11**

**#9.00** Plan Confirmation Hearing Re:Plan Of Reorganization
**(cont'd from 10-07-20 per order apprvg. stip. to cont. the hrg on confirmation of debtor's ch 11 plan entered 9-18-20)**

Docket 342
***** VACATED *** REASON: CONTINUED TO 3-03-21 AT 10:00 A.M. PER ORDER APPROVING SECOND STIPULATION TO CONTINUE THE HEARING ON CONFIRMATION OF DEBTOR'S CHAPTER 11 ENTERED 11-17-20**

**Tentative Ruling:**

Tentative for 6/24/20:
The U.S. Trustee's objection was not timely, but Debtor still responded. So, the court will assume away the procedural issues. In response to the UST's objection: Debtor filed an amended plan (mistakenly entered as an amended disclosure statement) on June 16. Debtor also filed a separate response directly addressing the concerns identified in the UST's objection. This response includes additional proposed language that, if ultimately adopted into the plan, would likely address the UST's comments. As of this writing on (6/24), the UST has not filed anything further. No other interested party has filed a response of any kind to the DS.

The DS itself is not particularly user friendly as it does not have a table of contents, nor any accompanying brief to make the document easily navigable. Furthermore, while most of the required disclosures can be found in some form in the DS, it seems to be missing background information such as Debtor's financial history and events leading up to filing the petition. The DS has several exhibits: but the exhibits lack explanations of what they are and how they fit into the proposed plan of reorganization.

Debtor states that all disputes have been resolved, aside from the IRS and Citizens Bank Claims, which the newly added language in the proposed plan purports to address. Debtor states that the plan will pay 100% of the allowed creditor claims. When the UST commented on the DS, the court very likely would have found the DS to have inadequate information. The proposed

10:00 AM

**CONT... Ron S Arad** **Chapter 11**

additional language would, if ultimately adopted, likely satisfy the UST's concerns, and the court's.

Although the DS could benefit from additional background information about Debtor's case: it may not be necessary. However, the new proposed language should be integrated into the DS. In sum: Debtor's DS is not an easy document to navigate and has some technical Deficiencies, but likely nothing fatal. The UST's objection has been addressed, though the UST may not have had an opportunity to review the proposed changes. No other party in interest has objected or opposed the DS. If the UST does not comment further before the hearing, the DS can likely be approved.

Conditionally approve.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

**Party Information**

**Debtor(s):**

Ron S Arad — Represented By
William H Brownstein

10:00 AM

**8:18-10486 Ron S Arad** **Chapter 11**

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

**#10.00** STATUS CONFERENCE RE: Complaint - (1) Authority to Sell Co-Owned Properties; (2) Adequate Protection;(3) Fraud While Acting in a Fiduciary Capacity;(4) Turnover; 5) a Permanent Injunction; (6) Equitable Relief;(7) Declaratory Relief; and (8) an Accounting Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))),(11 (Recovery of money/property - 542 turnover of property)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)),(91 (Declaratory judgment))
**(con't from 10-7-2020 per order entered 10-06-20 )**

Docket 1

**Tentative Ruling:**

Tentative for 12/2/20:
Status?

---

Tentative for 6/24/20:
Would the parties prefer this be set for pretrial conference now, or continued as a status conference allowing a second attempt at mediation?

---

Tentative for 2/26/20:
Status? Would ordered mediation help?

---

Tentative for 12/11/19:
Further status report is needed. For example, IRS is still a defendant.

---

10:00 AM

**CONT... Ron S Arad** **Chapter 11**

Tentative for 9/11/19:
Off calendar? See #9

---

Tentative for 9/4/19:

Does #7 resolve this?

---

Tentative for 3/7/19:
Where's the Joint Pre-Trial Stip and Order? LBR 7016-1(b).

---

Tentative for 11/1/18:
Deadline for completing discovery: March 7, 2019
Last date for filing pre-trial motions: February 28, 2019
Pre-trial conference on: March 7, 2019
Joint pre-trial order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 31, 2019.

Tentative for 8/2/18:
Status conference continued to November 1, 2018 at 10:00 a.m.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by October 15, 2018.

**Party Information**

**Debtor(s):**

Ron S Arad — Represented By
William H Brownstein

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**CONT... Ron S Arad** **Chapter 11**

**Defendant(s):**

| | |
|---|---|
| DEPARTMENT OF THE | Pro Se |
| UNITED STATES OF AMERICA | Represented By<br>Jolene Tanner |

**Plaintiff(s):**

| | |
|---|---|
| Ron S Arad | Pro Se |

10:00 AM
**8:19-14893 Talk Venture Group, Inc.** **Chapter 11**

**#11.00** Motion For Approval Of Chapter 11 Disclosure Statement

Docket 151

**Tentative Ruling:**

Tentative for 12/2/20:

This disclosure statement has major issues and cannot be approved in its current form, and Debtor seems to acknowledge that at least some amendment is required. For example, Debtor concedes that the issues with the descriptions of the classes and Exhibit C's projections as flagged by the UST probably require further attention.

Regarding the absolute priority rule, both the U.S. Trustee and Wells Fargo argue that there is no "new value" being added consistent with factors articulated in the Ninth Circuit. Under the absolute priority rule shareholder participation may be permitted with the cram-down of a non-consenting impaired class to the extent that shareholders supply new value to the Debtor. The new value corollary allows equity holders to retain their interests if they provide value under a plan that is (1) new, (2) substantial, (3) in money or money's worth, (4) necessary for a successful reorganization, and (5) reasonably equivalent to the value or interest received. *Bonner Mall P'ship v. U.S. Bancorp Mortgage Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 908 (1993). Proving the new value corollary is a purely factual determination. *Id.* at 911. The objecting parties argue that in this case, the equity holder's proposed "new value" contribution of waiver of his administrative wage claim of $76,163.08 (DS p. 25 of 78) clearly does not constitute a new value contribution as recognized in this Circuit. By contrast, Debtor asserts that this is a different situation from the cases cited by the objecting parties in that his contribution is the waiver of his administrative claims, rather than any pre-petition claims and so provides "new value" because the contribution is new, substantial (i.e. arguably not de minimis, even though it is less than 1% of the total unsecured claims because unsecured creditors would get nothing in a liquidation), is actual money as the administrative claim is for salary, definitely necessary for the reorganization as it will provide at least something for general unsecured creditors, and is directly equivalent to the value or interest

10:00 AM

**CONT... Talk Venture Group, Inc.** **Chapter 11**

received. In support of the argument debtor only cites to a single case from the 1930s, *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939). This is a major sticking point and it is not clear whether the facts of this case support a finding of "new value." Further, no effort is made to explain how the quantum of new value has been market tested as seems to be required under the Supreme Court's teaching found in *Bank of America NT&SA v. 203 N. La Salle St. Ptsp*. ,526 U.S. 434, 119 S. Ct. 1411 (1999). As Debtor has acknowledged other shortcomings requiring amendment, the "new value" issue should also be briefed in greater length and detail by the Plan proponent and objecting parties.

Wells Fargo notes that the DS is incomplete because it does not provide adequate information as to why its second secured lien is being treated as wholly unsecured whilst claims of other junior creditors are being treated as partially secure. Debtor asserts that this situation exists because of very limited funds available combined with Wells Fargo's stubbornness in reaching a compromise on plan treatment, which in turn caused Debtor to seek compromises with the junior creditors in an effort to create a consenting class. Debtor does not cite any authority suggesting that Wells Fargo's senior lien can be essentially leap frogged in priority, which makes this explanation somewhat dubious.

The other objections common to all of the objecting parties has to do with valuation of assets, including Debtor's potential claims, possible avoidance actions against Debtor's principal, and how Debtor can truly fund the Plan. Debtor asserts that valuations of the Debtor's assets are based on Debtor's schedules as well as the declaration of Debtor's principal. As to sources of funds for the plan, as noted above, Debtor has requested leave to amend this section of the DS.

Overall, the DS is not ready to be approved. Beyond its acknowledged shortcomings, it relies on broad readings of caselaw that, based on these facts, might bend the law too far. The recovery for unsecured creditors is also extremely low at less than 1%. Still, even a tiny recovery is likely preferable to a zero recovery, which is what Debtor argues a liquidation in chapter 7 would produce. But, as the plan's viability depends in large part on being able to generate income not consistently seen to date, and confirmation remains

10:00 AM

**CONT... Talk Venture Group, Inc.** **Chapter 11**

unclear given the absolute priority rule, an amended disclosure statement would need to provide more convincing analysis regarding the "new value" issue.

Continue for those purposes, but with the admonition that the problems presented are so fundamental that yet further extensions should not be expected.

**Party Information**

**Debtor(s):**

Talk Venture Group, Inc. Represented By
Michael Jay Berger

10:00 AM
**8:19-14893 Talk Venture Group, Inc.** **Chapter 11**

**#12.00** Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 USC Section 363
**(cont'd from 11-04-20)**

Docket 7

**Tentative Ruling:**

Tentative for 12/2/20:
Continue on same terms to continued disclosure statement hearing.

---

Tentative for 11/4/20:
Continue on same terms until hearing on disclosure 12/2.

---

Tentative for 9/2/20:
Grant on same terms and conditions pending further hearing November 4 @ 10:00a.m. The court expects a plan will be on file shortly?

---

Tentative for 6/30/20:
Status? Continue on same terms another 60 days? When can we see a plan?

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

---

Tenative for 5/13/20:

10:00 AM

**CONT... Talk Venture Group, Inc.** **Chapter 11**

This matter is on calendar because permitted use of cash collateral is set to expire as of the hearing per previous order. Nothing further has been filed as of 5/8. Status? The March MOR shows slightly positive cash flow, so, absent objection, the logical order would seem to be continued authority on same terms and conditions for about 60 days.

---

Tentative for 4/8/20:

Debtor filed an amended motion for use of cash collateral on 4/1/20. Unfortunately, this amended motion is likely untimely because there is nearly no time for any other party to respond before the hearing date on 4/8. In any case, the new amended motion does not appear to address Banc of California's objections to continued use of cash collateral. Therefore, the amended motion should be continued to allow creditors, including Banc of California, adequate time to respond. In the meantime, Debtor should answer Banc of California's allegations of misusing cash collateral.

*Continue for about two weeks on same terms. Debtor to address Banc Of California's points.* Appearance is optional.

---

Tentative for 1/22/20:
Continue same terms until April 8, 2020 at 10:00 a.m.

**Party Information**

**Debtor(s):**

Talk Venture Group, Inc. Represented By
Michael Jay Berger

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-12963 World of Dance Tour Inc.** **Chapter 11**

**#13.00** Motion Of World Of Dance Tour Inc. For Order Authorizing Maintenance Of Existing Bank Accounts And Related Relief

Docket 22

**Tentative Ruling:**

Tentative for 12/2/20:
Grant provided the reported compromise with the UST is observed.

**Party Information**

**Debtor(s):**

World of Dance Tour Inc. — Represented By Fred Neufeld

**Trustee(s):**

Mark M Sharf (TR) — Pro Se

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-10143 Bridgemark Corporation** **Chapter 11**

**#14.00** Status Conference Re: Chapter 11 Voluntary Petition Non-Individual.
**(cont'd from 9-23-20 per stip. to cont. hrgs entered 9-09-20)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ENTERED 11-13-20**

**Tentative Ruling:**

Tentative for 2/26/20:
The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

**Party Information**

**Debtor(s):**

Bridgemark Corporation — Represented By
William N Lobel

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM
**8:20-10143 Bridgemark Corporation** **Chapter 11**

**#15.00** Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM
**(cont'd from 9-23-20 per order approving stip, to cont, hrgs entered 9-09-20)**

PLACENTIAL DEVELOPMENT COMPANY, LLC
Vs.
DEBTOR

Docket 53
***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ENTERED 11-13-20**

**Tentative Ruling:**

Tentative for 2/26/20:
If all that is requested is that both sides be free to complete the state court action, including post trial motions and appeals, to final orders, that is appropriate. Enforcement stes will require further orders of this court.

*Grant as clarified.*

**Party Information**

**Debtor(s):**

Bridgemark Corporation — Represented By
William N Lobel
Erin E Gray

**Movant(s):**

Placentia Development Company, — Represented By
Robert J Pfister

10:00 AM
**8:20-10143 Bridgemark Corporation** **Chapter 11**

**#16.00** Motion To Dismiss Chapter 11 Case Pursuant To 11 U.S.C. § 1112(b)
**(cont'd from 9-23-20 per order apprvg stip. to cont. hrgs, entered 9-09-20)**

Docket 54
***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ENTERED ON 11-13-20**

**Tentative Ruling:**

Tentative for 2/26/20:

This is the motion of Judgment Creditor, Placentia Development Company, LLC ("PDC") to dismiss Bridgemark Corporation, LLC's ("Debtor's") Chapter 11 case pursuant to 11 U.S.C. §1112(b) and/or motion for relief from the automatic stay pursuant to 11 U.S.C. §362 (action in nonbankruptcy forum). The motion is opposed by Debtor. No other party has filed any responsive papers.

**1. Basic Background Facts**

Debtor filed its Petition on January 14, 2020. PDC is the primary creditor owed approximately $42.5 million on account of a state court judgment entered after years of litigation over Debtor's unauthorized use of PDC's land for purposes of extracting oil. Debtor's principal, Robert J. Hall, testified under oath that the company does not have the ability to pay the judgment debt because Debtor's business involves a finite resource of constantly diminishing value. Debtor's second largest non-insider creditor is owed less than $25,000, and all of Debtor's other debts combined add up, at most, to a few hundred thousand. PDC reports that it is offering to acquire all such legitimate, non-insider debts at par. In other words, the judgment owed to PDC accounts for approximately 99.8% of the estate's debt. There do not appear to be any other debts listed as disputed, contingent, or unliquidated. The authorizing resolution appended to Debtor's Petition admits that the purpose of this chapter 11 filing is to allow Debtor a stay pending appeal

because the Debtor (and one presumes, its principals) cannot afford a supersedeas bond. During the punitive damages portion of the state court trial this testimony was elicited:

> "We cannot pay the 27 million …. We have no ability to pay any of this. … I don't care how you do it. There's just no way around that. We don't have the ability to pay it and operate a business. It's done." Trial Tr. (Ex. B to Kibler Declaration) at 3125:9-13."

Mr. Hall also testified that at best, Bridgemark might theoretically be able to pay the $27 million in compensatory damages at $1 million per year, interest-free, over 27 years. See *Id*. at 3156:20-23 ["We can't pay it. … If they would let us pay a million dollars a year for 27 years with no interest, we might be able to work it out."] But as Mr. Hall also testified, Bridgemark is built on "an asset that's declining in value every year.… It just goes down and down and down." *Id*. at 3113:8-12.

By prior motion the court was informed that Debtor will attempt post judgment motions to reduce the judgment and/or obtain a new trial. No information is provided as to the status of any of those.

The court is also informed that PDC has filed a state court lawsuit against members of the Hall family, who are 100% equity holders of Debtor, alleging, among other things, that the Halls used Debtor as a vehicle to pay hundreds of thousands of dollars to affiliated entities in the form of "management fees" or "consulting fees," which the affiliated entities then – through non-arms' length "loans" to the Halls – used to purchase multi-million-dollar homes, extravagant cars and furnishings, valuable pieces of art, and luxury yachts for personal use and benefit.

**2. Motion to Dismiss & Relief from Stay Standards**

Section 1112(b) of the Bankruptcy Code provides:

> "[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The statute includes a non-exhaustive list of certain types of "cause," including "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation," *Id*. § 1112(b)(4)(A), and "gross mismanagement of the estate," Id. § 1112(b)(4)(B).

Similarly, section 362(d) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section … for cause," and also provides the non-exhaustive example of "lack of adequate protection."

Given the non-exhaustive nature of "cause" referenced in both sections of the Code, courts have read the term "cause" to include bankruptcy filings that are not appropriate invocations of federal bankruptcy jurisdiction – such as filings in which the avowed purpose of the bankruptcy petition is to avoid posting an appellate bond, or where the petition seeks merely to move what is essentially a two-party dispute from a state court to a federal bankruptcy court. As a matter of shorthand, the case law interpreting §§362(d)(1) and 1112(b) often refer to these types of cause as dismissals for "bad faith" or for lack of "good faith." See generally *Marsch v. Marsch (In re Marsch),* 36 F.3d 825, 828 (9th Cir. 1994) [employing this terminology, but cautioning that it is misleading: "While the case law refers to these dismissals as dismissals for 'bad faith' filing, it is probably more accurate in light of the precise language of section 1112(b) to call them dismissals 'for cause.'"]. Thus, the shorthand phrase "good faith" (which does not appear in the statute) does not turn on an inquiry into subjective motivations, thoughts, or

feelings. Instead, the question is whether a particular bankruptcy filing transgresses "several, distinct equitable limitations that courts have placed on Chapter 11 filings" in order to "deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws." *Id*.

In this context, whether there is "cause" for dismissal or relief from stay "depends on an amalgam of factors and not upon a specific fact." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Four pertinent factors include whether the debtor has unsecured creditors, cash flow, or sources of income to sustain a feasible plan of reorganization, and whether the case is "essentially a two-party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. P'ship*, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Courts are particularly suspicious of filings in which the express purpose of the chapter 11 petition is to stay execution of a judgment without an appellate bond. *See e.g.*, *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004) ("[I]f there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay to avoid posting an appeal bond in another court."). In such cases, courts consider some or all of the following factors to determine whether bankruptcy jurisdiction is being properly invoked:

- "Whether the debtor had financial problems on the petition date, other than the adverse judgment";
- "Whether the debtor has relatively few unsecured creditors, other than the holder of the adverse judgment";
- "Whether the debtor intends to pursue an effective reorganization within a reasonable period of time, or whether the debtor is unwilling or unable to propose a meaningful plan until the conclusion of the litigation"; and
- "Whether assets of the estate are being diminished by the combined ongoing expenses of the debtor, the chapter 11 proceedings, and

prosecution of the appeal." *In re Mense*, 509 B.R. at 280 (footnotes and citations omitted).

"The bankruptcy court is not required to find that each factor is satisfied or even to weigh each factor equally. Rather, the ... factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *In re Prometheus Health Imaging, Inc*., 2015 WL 6719804, at *4 (9th Cir. BAP Nov. 2, 2015) (citations, internal quotation marks, and brackets omitted). Indeed, "[a] bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Greenberg*, 2017 WL 3816042, at *5 (9th Cir. BAP Aug. 31, 2017) (citing *Mahmood v. Khatib (In re Mahmood),* 2017 WL 1032569, at *4 (9th Cir. BAP Mar. 17, 2017)).

**3. Was Debtor's Petition Filed for a Proper Purpose?**

PDC argues that Debtor's petition is a textbook bad faith filing. In support PDC cites *In re Integrated Telecom Express*, 384 F.3d 108, 128 (3d Cir. 2004), where the court stated bluntly: "if there is a 'classic' bad faith petition, it may be one in which the petitioner's only goal is to use the automatic stay provision to avoid posting an appeal bond in another court." PDC also cites *In re Casey*, 198 B.R. 910, 917–18 (Bankr. S.D. Cal. 1996) for the proposition that the "use [of] bankruptcy to defeat the state law appeal bond requirement" is not a "legitimate bankruptcy purpose."

In response Debtor argues that at least some courts have held that a chapter 11 filing can properly substitute for posting an appeal bond. For example, Debtor cites *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013) where the court found:

> Here, unlike in *Marsch* and *Boynton*, the record suggests that Howard and Ilene's liquid assets were probably insufficient to satisfy the

10:00 AM
**CONT... Bridgemark Corporation** **Chapter 11**

judgment or cover the cost of a supersedeas bond. The bankruptcy court found that the Fraud Judgment amounted to over $12 million plus interest, that the "custom" in Texas was to set appeal bonds at 150% of the judgment, and that Howard did not have sufficient liquid assets to post a bond of that size. Although the record does not invariably indicate that the Debtors could not finance a supersedeas bond, we cannot say that the bankruptcy court's determination was clearly erroneous. Moreover, notwithstanding their ability to finance a bond, Howard and Ilene's inclusion of the Fraud Judgment in their initial Plan suggests that they filed their bankruptcy petition for the proper purpose of reorganization, not as a mere ploy to avoid posting the bond.

Debtor argues that the language quoted above, and others expressing similar sentiment, is applicable to our case. Debtor also points out that it is not attempting to avoid posting an appeal bond, it simply cannot do so, which Debtor argues is a critical distinction.

PDC argues that the cases cited by Defendant must be viewed according to their unique factual context, rather than relying solely on the ultimate result. For example, PDC points out that in *Marshall*, the judgment creditor who moved to dismiss the case as a bad faith filing had already missed the claims bar date (which was November 15, 2002) when he filed the motion to dismiss (on December 13, 2002). See *In re Marshall*, 298 B.R. 670, 674 (Bankr. C.D. Cal. 2003). At the time the motion to dismiss was filed, the debtors had already proposed a plan that would pay every other creditor with timely claims in full. *Id*. It was in this context that the Circuit court held that the bankruptcy court had not abused its discretion in denying the motion to dismiss for bad faith. Indeed, the *Marshall* Circuit court stated, "we agree with the bankruptcy court that '[p]erhaps the most compelling grounds for denying a motion to dismiss grounded on bad faith is the determination that a reorganization plan qualifies for confirmation.'" *Marshall*, 721 F.3d at 1048 (quoting 298 B.R. at 681)). PDC persuasively argues that it would inappropriate to infer a broader rule from *Marshall*. PDC argues with some

persuasion that the other cases cited by Debtor were ones in which the courts based their holdings on the unique circumstances before them and did not articulate rules of general applicability.

Similarly, on the relief of stay question, Debtor's citation to *In re Badax, LLC*, 608 B.R. 730 (Bankr. C.D. Cal. 2019), also appears to be misplaced. Debtor takes a small section of the opinion where the court stated that the conclusion of bad faith was not based solely on the debtor's failure to obtain a bond, but rather based on a totality of the circumstances. *Id*. at 741. However, PDC points out that the *Badax* court specifically held that relief from stay was granted because the case had been filed in an attempt to delay execution on an adverse judgment and also because "there [was] no basis to conclude that a speedy, efficient and feasible reorganization [was] realistic." *Id*.

In contrast PDC argues that the instant case is more similar in substance to several other cases including *Windscheffel v. Montebello Unified School District (In re Windscheffel*), 2017 WL 1371294 (9th Cir. BAP Apr. 3, 2017). In *Windscheffel*, the debtor filed an appeal of an approximately $3 million state court judgment, but "claimed that he was unable to post the required supersedeas bond to stay enforcement of the judgment." *Id*. at *1. "He filed bankruptcy to avoid posting the bond and to stay [the judgment creditor's] collection efforts." *Id.* The debtor had, at most, four unsecured creditors (including the judgment creditor). The debtor filed a proposed chapter 11 plan that was "a thinly veiled attempt to avoid the state court's award of punitive damages, attorneys' fees, and interest because it proposed to pay 49.22 percent of [the judgment creditor's] claim, which was (not coincidentally) the approximate amount of the state court judgment without punitive damages, attorneys' fees, and interest." *Id*. The debtor later amended his plan to provide that if the judgment were upheld on appeal, he would liquidate his assets and give the proceeds to the judgment creditor. *Id*. The Ninth Circuit BAP affirmed the bankruptcy court's holding that the "totality of the circumstances" warranted dismissal of the case for cause. *Id*. at *4.

10:00 AM

**CONT... Bridgemark Corporation** **Chapter 11**

PDC argues that Debtor has admitted in the authorizing resolution attached to its Petition that this case was filed to circumvent the requirement to post a supersedeas bond: "Since the Company lacks the financial resources to post a bond, the only way to protect the interests of all stakeholders [i.e., the Hall family] is to commence a case under chapter 11 …." Docket No. 1 at PDF page 5 of 101. PDC also points to the First Day Declaration, and specifically the section entitled "Events Leading to the Bankruptcy" which only mentions the judgment debt, and really nothing else, as the major cause of the bankruptcy filing. Therefore, PDC argues with some persuasion that it is obvious that the only purpose served by filing the Chapter 11 petition was to attempt to avoid the posting of an appeal bond. Afterall, Debtor's entire business model as amplified in Mr. Hall's testimony is built upon extracting a finite and irreplaceable resource, which might be said to makes a reorganization over time inherently less feasible than other businesses.

PDC next argues that because the dispute is solely between PDC and Debtor, for purposes of a finding of bad faith, this case is fundamentally a two-party dispute, which is continuing even now. PDC cites *In re Murray*, 543 B.R. 484, 494–95 (Bankr. S.D.N.Y. 2016), aff'd, 565 B.R. 527 (S.D.N.Y. 2017), aff'd, 900 F.3d 53 (2d Cir. 2018), for the proposition that, "Bankruptcy is a collective remedy, with the original purpose – which continues to this day – to address the needs and concerns of creditors with competing demands to debtors' limited assets …." As such, PDC argues, "[a] chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." *Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at Wild Horse Ranch*, LLC), 2011 WL 4502102, at *10 (B.A.P. 9th Cir. Aug. 26, 2011).

PDC argues that there is no need for the "collective remedy" of bankruptcy as articulated above because there are no other creditors with competing demands to Debtor's assets. All other claims against Debtor are

*de minimis* relative to the Judgment, and also appear to be undisputed. Cf. *In re Mense*, 509 B.R. at 281 (dismissing chapter 11 case where debtors had "few unsecured creditors" other than judgment creditor); *In re Windscheffel*, 2017 WL 1371294, at *5 (affirming dismissal of case where claims of other unsecured creditors were "negligible" compared to judgment creditor's claim). In fact, if the judgment debt did not exist, it appears Debtor would have more than sufficient cash on hand to pay any other outstanding debts without difficulty. See First Day Decl. ¶¶ 22 (stating that Debtor has unrestricted cash of approximately $4.2 million) & 28–30 (describing secured car loans, royalty obligations, and accounts payable totaling less than $700,000). PDC reminds the court that it also offers to acquire all legitimate, non-insider claims at par value, leaving no reason that such creditors cannot be paid in full.

Finally, PDC argues, citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000) that for purposes of a finding of bad faith, Debtor's prepetition improper conduct provides additional support for dismissing the case outright or granting relief of stay. Thus, use of a debtor's assets to fund the expenses of its principals is one factor indicative of bad faith. See, e.g., *In re Mense*, 509 B.R. at 281 n.26. PDC argues that Debtor's alleged tortious prepetition conduct, which precipitated the underlying lawsuit that ultimately led to the judgment (which included punitive damages), should be considered by the court. The court should also consider the allegations contained in the litigation PDC has pending against the Hall family, which alleges that family members essentially used Debtor as a piggy bank to mask income from Debtor.

Though perhaps not always perfect analogues, it appears that PDC's characterization of Ninth Circuit jurisprudence is more in line with the current case than those cases cited by Debtor. To be clear, the court is less concerned with Debtor's heated rhetoric impugning PDC's motivation in pursuing this motion (and PDC's allegations of post-petition misconduct by the Debtor and the Hall family) than it is with PDC's arguments that a reorganization is likely not feasible due to the enormous judgment debt and

10:00 AM

**CONT... Bridgemark Corporation** **Chapter 11**

Debtor's ever diminishing product source. The court is also not impressed with Debtor's assertion that allowing PDC to collect on its judgment would amount necessarily to a business fatality. First, it is far from clear that PDC wants to "kill" the Debtor as it would seem far more logical to continue operations, at least until the judgment is paid. Perhaps not so clear is why the Hall family should get to stay in authority. Debtor's principals, as the trial court found, are responsible for this misfortune as indicated by the addition of punitive damages to the judgment.

The court also disagrees with Debtor's premise that simply because Debtor is currently operating a viable business, a successful reorganization is realistic. Even Debtor's authorities suggesting a Chapter 11 to avoid an appeal bond may serve a legitimate purpose do so largely because a reorganization benefitting an array of creditors with divergent interests seemed possible or even likely. See e.g. *Marshall*, 721 F.3d at 1048-49 (quoting 298 B.R. at 681), citing *Marsch*, 36 F. 3d at 828 and *In re Boynton*, 184 B.R. 580, 581, 583 (Bankr. S.D. Cal. 1995). But little or no effort is made here to show how this Debtor can possibly confirm a non-consensual plan under these circumstances, where 99+% of the debt is in hostile hands. This must particularly be so where PDC has offered to make all other creditors whole either by buying the claims or by filing a competing plan. How does Debtor get away with claiming an impaired consenting class in those circumstances, even if separate classification maneuvers could succeed? Adding to this problem is Mr. Hall's admission that the assets are a diminishing resource, thus calling into question the feasibility of a long-term payout. Debtor may cite to 11 U.S.C. §1129 (c) which requires the court, when two plans are confirmable, to consider the interests of equity. But this assumes that Debtor's plan could in any event be confirmable, a somewhat dubious proposition. A plan that proposes nothing more than delay while the appeals are resolved should be regarded as "dead on arrival."

But the court is willing to give the Debtor a short but reasonable extension to answer these questions about just how probable a

10:00 AM

**CONT... Bridgemark Corporation** **Chapter 11**

reorganization is or can be despite these obstacles. In this the court is uninterested in platitudes; rather, a point by point, connect the dots proposal to reorganization that could be plausibly crammed down is what is needed. Further, PDC may also amplify the record with a more complete evidentiary showing which might support a charge of prepetition fraud or mismanagement as discussed at §§1104(a)(1) (or implicated in 1112) thereby strengthening the argument that there is no legitimate reason for maintaining management. Debtor should not expect an extension of exclusivity, however, which will run out on or about May 14, 2020.

*Continue hearing about 60 days to allow Debtor to explain how reorganization is feasible in these circumstances.*

**Party Information**

**Debtor(s):**

Bridgemark Corporation — Represented By
William N Lobel
Erin E Gray

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-10143 Bridgemark Corporation** **Chapter 11**

**#17.00** Objection Of Placentia Deveopment Company, LLC To Amended Notice Of Setting/Increasing Insider Compensation Of Kevin Mugavero
**(con't from 9-23-20 per order apprvng stip. to cont. hrgs entered 9-09-20)**

Docket 93

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE HEARINGS ENTERED 11-13-20**

**Tentative Ruling:**

Tentative for 3/25/20:
Stipulation to continue to 4/29/20 expected per phone message. Status?

**Party Information**

**Debtor(s):**

Bridgemark Corporation — Represented By
William N Lobel
Erin E Gray

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

**Wednesday, December 2, 2020** **Hearing Room 5B**

10:00 AM

**8:20-10143 Bridgemark Corporation** **Chapter 11**

Adv#: 8:20-01011 Bridgemark Corporation v. Placentia Development Company LLC

**#18.00** STATUS CONFERENCE RE: Complaint for Avoidance and Recovery of Preferential Transfers

**(cont'd from 9-23-2020 per order on stip to further cont s/c entered 9-9-2020**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-17-20 AT 10:00 A.M. PER ORDER ON STIPULATION TO FURTHER CONTINUE HEARING ON INITIAL STATUS CONFERENCE ENTERED 11-13-20**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Bridgemark Corporation | Represented By<br>William N Lobel<br>Erin E Gray |

**Defendant(s):**

| | |
|---|---|
| Placentia Development Company | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Bridgemark Corporation | Represented By<br>Erin E Gray<br>James KT Hunter<br>William N Lobel |