

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:16-10630 Gerald E Klein and Norma L Klein

Chapter 13

#1.00 Motion for relief from stay [RP]

MUFG UNION BANK, N.A.
VS
DEBTOR

fr. 9/11/19; 11/13/19; 12/4/19; 2/5/20 (stip); 4/29/20; 6/17/20; 7/15/20(stip)

Order appr stip to withdraw motion entered 8/25/20

Docket 58

*** VACATED *** REASON: Withdrawn per order (doc # 102)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald E Klein

Represented By
David R Hagen

Joint Debtor(s):

Norma L Klein

Represented By
David R Hagen

Movant(s):

MUFG Union Bank, N.A, fka Union

Represented By
Drew A Callahan
Justin S Moyer
Pietro Vella
Jonathan C Cahill
Gilbert R Yabes
Joseph C Delmotte

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... Gerald E Klein and Norma L Klein

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#2.00 Motion for relief from stay [RP]

U.S. BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

fr. 7/29/20

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

U.S. Bank Trust National

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:17-12701 Teresa Hernandez

Chapter 13

#3.00 Motion for relief from stay [RP]

BAYVIEW LOAN SERVICING, LLC
VS
DEBTOR

fr: 1/8/20; 2/5/20; 3/4/20; 4/29/20; 6/17/20; 7/15/20

Docket 45

*** VACATED *** REASON: Stip entered continuing hearing to 9/23/20 at
9:30 a.m. - jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Hernandez

Represented By
Donald E Iwuchuku

Movant(s):

Bayview Loan Servicing, LLC., as

Represented By
Raymond Jereza

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:19-10383 Mercedes Benitez

Chapter 13

#4.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 6/3/20; 7/15/20(stip)

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mercedes Benitez

Represented By
Matthew D. Resnik

Movant(s):

The Bank of New York Mellon as

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11054 Jose Esquivel Elizalde

Chapter 7

#5.00 Motion for relief from stay [PP]

FORD MOTOR CREDIT COMPANY LLC
VS
DEBTOR

Docket 8

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Jose Esquivel Elizalde

Represented By
Daniel King

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11068 Oksana Gyadu and Emmanuel Gyadu

Chapter 7

#6.00 Motion for relief from stay [PP]
(2017 Toyota Camry Hybrid SE CVT)

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 12

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Oksana Gyadu

Represented By
Alla Tenina

Joint Debtor(s):

Emmanuel Gyadu

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT...

Oksana Gyadu and Emmanuel Gyadu

Alla Tenina

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11068 Oksana Gyadu and Emmanuel Gyadu

Chapter 7

#7.00 Motion for relief from stay [PP]
(2017 Toyota Camry SE Automatic)

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 13

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Oksana Gyadu

Represented By
Alla Tenina

Joint Debtor(s):

Emmanuel Gyadu

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT...

Oksana Gyadu and Emmanuel Gyadu

Alla Tenina

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11220 Eduard Saakyan

Chapter 7

#8.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 11

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Eduard Saakyan

Represented By
Roland H Kedikian

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:18-13032 William North Cleckler

Chapter 7

#9.00 Motion for relief from stay [RP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 29

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

William North Cleckler

Represented By
Ali R Nader

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:19-11527 David Toledo and Shayna Toledo

Chapter 13

#10.00 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

Docket 38

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: The debtors filed a notice of nonopposition [doc. 40]. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

David Toledo

Represented By
Elena Steers

Joint Debtor(s):

Shayna Toledo

Represented By
Elena Steers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

CONT... David Toledo and Shayna Toledo

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:19-12523 John Jairo Barrios

Chapter 13

#11.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 55

Tentative Ruling:

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

John Jairo Barrios

Represented By
Eric Bensamochan

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

9:30 AM

1:20-11369 Mitchell S. Cohen

Chapter 13

#12.00 Motion in individual case for order imposing a stay or continuing the automatic stay as the court deems appropriate

Docket 7

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Mitchell S. Cohen

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:18-10886 Exotic Euro Cars, Inc.

Chapter 7

Adv#: 1:19-01156 Goldman v. Kumar et al

- #13.00** Pretrial conference re: complaint for:
1. Avoidance of voidable and fraudulent transfers; and
2. Recovery of avoided transfers for the benefit of the bankruptcy estate

fr. 3/4/20; 3/25/20

Stip to continue filed 8/18/20.

Docket 1

***** VACATED *** REASON: Order approving stip entered 8/19/20.
Hearing continued to 11/4/20 at 1:30 p.m. per order (doc # 32)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Exotic Euro Cars, Inc.

Represented By
Kahlil J McAlpin

Defendant(s):

Dr. Kain Kumar

Pro Se

Sharmini Kumar

Pro Se

BWC Associates, Inc.

Pro Se

Plaintiff(s):

Amy Goldman

Represented By
Todd A Frealy

Trustee(s):

Amy L Goldman (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Exotic Euro Cars, Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

- #14.00** Status conference re: complaint for:
- 1) Avoidance and recovery of fraudulent transfers pursuant to Title 11 U.S.C. sec 544(a) and (b), 548 and 550; Title 26 U.S.C. sec 6502(a) and Cal. Civ. Code sec 3439.04 3439.07 and 3439.09;
 - 2) Avoidance and recovery of preferential transfer pursuant to Title 11 U.S.C. sec 547 and 550;
 - 3) Preservation of avoided transfers pursuant to Title 11 U.S.c sec 551;
 - 4) Declaratory relief re alter ego liability; and
 - 5) Turnover of property

fr. 7/29/20

Docket 1

***** VACATED *** REASON: Cont to 11/4/20 at 1:30 p.m. per order (doc # 14)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Pro Se

Agassi Halajyan, an Individual

Pro Se

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Victory Entertainment Inc

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:19-11648 Maryam Sheik

Chapter 11

Adv#: 1:19-01110 Banc of California, N.A. v. Sheik

#15.00 Status conference re: complaint for fraud and nondischargeability of debt [11 USC sec 523(a)(2)(A), (a)(6), (a)(4)]

fr. 12/4/19; 7/8/20; 7/15/20

Docket 1

Tentative Ruling:

On July 13, 2020, the debtor filed a motion to approve a compromise with the plaintiff (the "Compromise Motion") [Bankruptcy Docket, doc. 106]. In the settlement agreement attached to the Compromise Motion, the parties agreed that, upon approval of the Compromise Motion and "timely payments" under the agreement, the plaintiff would dismiss this adversary proceeding with prejudice. On August 4, 2020, the Court entered an order granting the Compromise Motion [Bankruptcy Docket, doc. 113]. The parties have not filed any updates in the docket related to this adversary proceeding.

Do the parties consent to dismissal of this adversary proceeding, subject to vacating the dismissal order if the debtor fails to make timely payments under the settlement agreement?

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Defendant(s):

Maryam Sheik

Pro Se

Plaintiff(s):

Banc of California, N.A.

Represented By

Elmira R Howard

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT...

Maryam Sheik

Vanessa H Widener

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:20-10855 Patricia Esmeralda Rangel

Chapter 7

Adv#: 1:20-01055 Rangel v. Navient Solutions LLC., dba Navient, Navient Solut

#16.00 Status conference re complaint to determine dischargeability
of student loans under 11 U.S.C sec. 523(a)(8)(A)(i)(ii) and (B)

fr. 7/29/20

Docket 1

Tentative Ruling:

The plaintiff did not timely serve the summons on the defendants. The plaintiff must request Another Summons from the Court. The plaintiff can obtain Another Summons by filing form F 7001-1.2.REQUEST.ANOTHER.SUMMONS, located on the Court's website. Upon receiving the filing of the Request that the Clerk Issue Another Summons and Notice of Status Conference, the Clerk will issue Another Summons.

The Another Summons must be served upon the defendants within 7 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004 and Local Bankr. R. 7004-1(b). The plaintiff must attach to the Another Summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

The plaintiff must serve the Department of Education in accordance with Fed. R. Bankr. P. 7004(b)(4) at the following addresses:

Civil Process Clerk
United States Attorney's Office
Federal Building, Room 7516
300 North Los Angeles Street
Los Angeles, CA 90012

Attorney General
United States Department of Justice
Ben Franklin Station
P.O. Box 683

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... **Patricia Esmeralda Rangel**
Washington, DC 20044

Chapter 7

To demonstrate proper service of the Another Summons and the complaint and instructions to be served with that summons, the plaintiff must file a **signed** proof of service indicating that the Another Summons and the documents to be served with that summons were **timely** served on the defendants. **AN ADULT OTHER THAN PLAINTIFF MUST SIGN THE PROOF OF SERVICE.** If the plaintiff can obtain an issued Another Summons from the Court by September 15, 2020, the status conference will be continued to **1:30 p.m. on November 18, 2020.**

No later than **November 4, 2020**, the parties must submit a joint status report in accordance with Local Bankruptcy Rule 7016-1(a).

Party Information

Debtor(s):

Patricia Esmeralda Rangel	Pro Se
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Defendant(s):

Navient Solutions LLC., dba	Pro Se
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U.S. Department of Education	Pro Se
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Plaintiff(s):

Patricia Esmeralda Rangel	Pro Se
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Trustee(s):

David Keith Gottlieb (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:20-10067 Husnutkin K Zairov

Chapter 7

Adv#: 1:20-01034 Ermakov v. Zairov

#16.10 Status Conference re: first amended complaint to determine dischargeability and objection to discharge

fr. 5/13/20; 5/20/20; 6/24/20; 8/19/20

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on October 21, 2020.**

It appears that the plaintiff has not requested entry of default under Local Bankruptcy Rule 7055-1(a). The plaintiff must submit Local Bankruptcy Rule Form F 7055-1.1.Req.Enter.Default, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **September 30, 2020.**

If the plaintiff will be seeking to recover attorneys' fees, the plaintiff must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

The plaintiff's appearance on August 27, 2020 is excused.

Party Information

Debtor(s):

Husnutkin K Zairov

Represented By
Elena Steers

Defendant(s):

Husnutkin K Zairov

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Husnutkin K Zairov

Chapter 7

Plaintiff(s):

Alexander Ermakov

Represented By
Deian Kazachki

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

1:20-11006 Lev Investments, LLC

Chapter 11

Adv#: 1:20-01060 FR LLC v. Lev Investments, LLC et al

#16.20 Status conference of removed proceeding

fr. 7/15/20; 8/19/20

Docket 1

Tentative Ruling:

Contrary to Local Bankruptcy Rule 7016-1(a), the plaintiff did not timely file a status report. In addition, according to the debtor/defendant, the plaintiff has yet to serve the complaint on the defendants.

The Court will issue an Order to Show Cause why this adversary proceeding should not be dismissed for failure to prosecute.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Defendant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

DMITRI LUDKOVSKI

Pro Se

RUVIN FEYGENBERG

Represented By
John Burgee

MICHAEL LEIZEROVITZ

Represented By
John Burgee

SENSIBLE CONSULTING AND

Represented By
John Burgee

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

1:30 PM

CONT... Lev Investments, LLC
DOES 1 through 100, inclusive

Pro Se

Chapter 11

Plaintiff(s):

FR LLC

Represented By
Michael Shemtoub

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

1:18-11342 Victory Entertainment Inc

Chapter 7

Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#17.00 Defendants' amended motion to dismiss complaint

Docket 8

***** VACATED *** REASON: Stipulation resolving motion [doc. 14].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Represented By
David L Oberg

Agassi Halajyan, an Individual

Represented By
David L Oberg

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#18.00 Defendant's motion for order dismissing complaint and to non-timely filing and for failure to state a cause of action

Docket 4

Tentative Ruling:

I. BACKGROUND

On July 30, 2019, Breann Castillo ("Debtor") filed a voluntary chapter 7 petition. The deadline to file a complaint requesting nondischargeability of a debt under 11 U.S.C. § 523 expired on November 5, 2019. In her schedules and statements, Debtor did not identify Andrew Campolong ("Plaintiff") as a creditor of the estate. Based on a review of Debtor's bankruptcy docket, it does not appear Mr. Campolong was served with the petition or any other documents filed in Debtor's bankruptcy case.

On May 29, 2020, over six months after expiration of the deadline to file a nondischargeability complaint, Plaintiff filed a complaint requesting nondischargeability of the debt owed to him pursuant to 11 U.S.C. § 523(a)(2), (a)(4) and (a)(6) and revocation of Defendant's discharge under 11 U.S.C. § 727(d)(1) (the "Complaint"). In the Complaint, Plaintiff alleged that Debtor did not schedule a debt owed to Plaintiff, and that Plaintiff was not on any mailing list filed in Debtor's bankruptcy case. Plaintiff otherwise alleges—

Prepetition, Plaintiff gave Debtor, his ex-wife, three credit cards for Plaintiff to use to pay basic living expenses. Instead, Plaintiff used the credit cards to pay off other debts and finance an extravagant lifestyle. After Plaintiff grew upset at the expenses, Debtor signed a repayment agreement, one month before the petition date, agreeing to pay Plaintiff \$35,000 for use of his credit cards. Debtor never intended to repay Plaintiff for use of his credit cards, and never intended to use the credit cards solely for basic living expenses.

In addition, despite signing the repayment agreement only one month

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

before filing for bankruptcy, Debtor did not schedule Plaintiff as a creditor. During her bankruptcy case, Debtor placated Plaintiff by making minimal payments. Upon receiving her discharge, Debtor stopped paying Plaintiff.

On June 8, 2020, Debtor filed a motion to dismiss the Complaint (the "Motion") [doc. 4]. In the Motion, Debtor asserts that, prior to expiration of the deadline to file a nondischargeability complaint, Plaintiff had actual knowledge of Debtor's bankruptcy case. To this end, Debtor attaches emails and text messages between Debtor and Plaintiff, ranging from July 30, 2019 through August 26, 2019, in which the parties discuss Debtor's bankruptcy case. Declaration of Breann Castillo, ¶¶ 4-6, Exhibits 1-3. Specifically, the attachments reflect the following—

- (A) In an email dated July 30, 2019, the petition date, Plaintiff stated, "Let me know how the BK thing is going and if there is anything I should know or do to assist."
- (B) In an email dated August 26, 2019, months before expiration of the deadline to file a nondischargeability complaint, Plaintiff asked, "Hows [sic] the BK going?"
- (C) On the same day, and in response to Plaintiff's email, Debtor responded, "BK meeting is next Friday in court. Then every creditor has 2 months to challenge. So we'll see."

Id. In light of the above, Debtor argues that the Complaint is untimely. In addition, Debtor contends that Plaintiff failed to state a claim for relief.

On July 2, 2020, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 6]. In the Opposition, Plaintiff does not address the attached emails or Debtor's contention that Plaintiff possessed actual knowledge of the bankruptcy case. Instead, Plaintiff reiterates that he was not scheduled as a creditor, and states he did not receive "written notice" of the bankruptcy case.

II. ANALYSIS

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

A. General Federal Rule of Civil Procedure ("Rule") 12(b)(6) Standard

A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.

We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the non-moving party. Although factual allegations are taken as true, we do not assume the truth of legal conclusions merely because they are cast in the form of factual allegations. Therefore, conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.

Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted); citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

"A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... Breann Castillo

Chapter 7

take into account documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.*, quoting *United States v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. See *McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases); and *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Dismissal without leave to amend is appropriate when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

B. Plaintiff's Claims under 11 U.S.C. § 523

Pursuant to 11 U.S.C. § 523(a)(3)(B), a debt is nondischargeable if it is—

...neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit... if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice *or actual knowledge of the case* in time for such timely filing and request....

(emphasis added). "It is well established that a creditor who learns of a bankruptcy filing has a duty to inquire into the relevant deadlines." *In re Dewalt*, 961 F.2d 848, 851 n.3 (9th Cir. 1992) (citing *In re Price*, 871 F.2d 97, 99 (9th Cir. 1989)). As explained by the Ninth Circuit Court of Appeals—

Counsel for the appellant in the present appeal was given actual notice

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

of the bankruptcy proceedings in time to file a complaint, or at least to file a timely motion for an extension of time.

...

The fact that [the debtor] failed to list [the creditor] as a creditor did not relieve [the creditor] of his obligation to take timely action to protect his claim. *See In re Alton*, 837 F.2d 457, 460 (11th Cir.1988) ("The statutory language [of section 523(a)(3)(B)] clearly contemplates that mere knowledge of a pending bankruptcy proceeding is sufficient to bar the claim of a creditor who took no action, whether or not that creditor received official notice from the court of various pertinent dates.")....

Price, 871 F.2d at 99. "[T]he 30-day notice provision of Rule 4007(c) provides a guide to the minimum time within which it is reasonable to expect a creditor to act at penalty of default." *Dewalt*, 961 F.2d at 851.

Here, Debtor has provided evidence that, prior to expiration of the deadline to file a nondischargeability complaint, Plaintiff had actual knowledge about Debtor's bankruptcy case. Although the Court may not consider this type of extraneous evidence in connection with a motion to dismiss under Rule 12(b)(6), the Court may convert the Motion to a motion for summary judgment. Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.").

Debtor's evidence, if admitted and uncontroverted, would establish that Plaintiff had actual knowledge of Debtor's bankruptcy case. Because the emails are dated between the petition date and August 26, 2019, the emails also would demonstrate that Plaintiff had notice well before 30 days prior to expiration of the deadline. *See Dewalt*, 961 F.2d at 851. As a result, Plaintiff's claims under § 523 would be untimely, and the Court would dismiss the claims with prejudice.

C. Plaintiff's Claim under 11 U.S.C. § 727(d)(1)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... **Breann Castillo**

Chapter 7

Pursuant to 11 U.S.C. § 727(d)—

"On request of a trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge...."

See also In re Guadarrama, 284 B.R. 463, 469 (C.D. Cal. 2002). "[R]evocation is an extraordinary remedy." *In re Bowman*, 173 B.R. 922, 924 (B.A.P. 9th Cir. 1994). Consequently, "[§] 727's [revocation] of discharge is construed liberally in favor of the debtor and strictly against those objecting to discharge." *Guadarrama*, 284 B.R. at 469 (quoting *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986)).

"To succeed on its claim under § 727(d)(1), [the plaintiff is] required to prove by a preponderance of the evidence: (1) that [the debtor] obtained a discharge through fraud, and (2) that the [plaintiff] was unaware of the alleged fraud prior to discharge. *Guadarrama*, 284 B.R. at 469. As to the first element, the plaintiff must prove that the debtor "committed fraud in fact, that the fraud occurred in or in connection with her procurement of a discharge, and that 'sufficient grounds... existed which would have prevented the discharge.'" *Id.* (quoting *Bowman*, 173 B.R. at 924).

"The grounds for a denial of discharge are enumerated in 11 U.S.C. § 727(a)...." *Id.* "Thus, to secure revocation of [the debtor's] discharge, the [plaintiff is] required to show that the fraud in which [the debtor] engaged would have caused the bankruptcy court to deny her a discharge" under § 727(a). *Id.*; *see also In re Bors*, 2012 WL 6575171, at *9 (B.A.P. 9th Cir. Dec. 17, 2012), *aff'd*, 672 F. App'x 696 (9th Cir. 2016) ("A finding of fraud in the procurement requires evidence of some conduct that under § 727(a) would have been sufficient grounds to deny debtor's discharge...."). As explained in *Bors*—

More importantly, [the plaintiff] failed to allege that but-for these intentional misrepresentations and/or omissions, Debtor would have been denied his discharge. As to [the plaintiff's] assertion that Debtor

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT...

Breann Castillo

Chapter 7

intentionally failed to notify the Orange County Court and all parties to the State Court Action about the bankruptcy case, all she alleged was that his failure to timely notify prevented her from bringing an action to except *her* debt from discharge under § 523, not that but-for Debtor's failure to notify he would have been denied a discharge of all of his debts under § 727(a).

...

Even if [the plaintiff] were seeking to revoke [the debtor's] entire discharge, the FAC, at best, asserts only a claim that Debtor fraudulently obtained a discharge of *her* debt. In general, it is not enough that a debtor's fraud rendered one particular debt nondischargeable. For an action under § 727(d)(1), a creditor must allege that the debtor's discharge would not have been granted but-for the debtor's fraud.

Bors, 2012 WL 6575171 at *10.

To the extent Plaintiff is alleging he lacked notice of Debtor's bankruptcy case, and Debtor's failure to list Plaintiff as a creditor would have resulted in denial of her discharge, evidence of Plaintiff's actual knowledge also will defeat Plaintiff's claim under § 727(d)(1). To the extent Plaintiff is alleging that he *did* have notice of Debtor's bankruptcy case, but Debtor fraudulently misrepresented that she would continue paying Plaintiff post-discharge, the Court will provide Plaintiff leave to amend the Complaint to adequately allege such a theory. As noted above, Plaintiff must allege how such conduct would have prevent Debtor from obtaining a discharge under 11 U.S.C. § 727(a), and not merely that the conduct would except *Plaintiff's* debt from discharge.

III. CONCLUSION

As to Plaintiff's claims under 11 U.S.C. § 523, the Court will convert the Motion to a motion for summary judgment and continue this hearing to **2:30 p.m. on October 14, 2020**. As to Plaintiff's claim under 11 U.S.C. § 727(d)(1), the Court will provide Plaintiff leave to amend the claim. The Court will set a deadline for Plaintiff to amend the claim under § 727(d)(1) at the continued hearing on October 14, 2020.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

CONT... Breann Castillo

Chapter 7

No later than **September 2, 2020**, Debtor must file and serve a statement of uncontroverted facts and conclusions of law, any additional briefing Debtor may have and any additional evidence Debtor would like admitted into the record. No later than **September 23, 2020**, Plaintiff must file and serve his responsive brief, a statement of genuine issues and any evidence Plaintiff would like admitted into the record. No later than **September 30, 2020**, Debtor may file and serve a reply to these documents. Prior to the continued hearing, if the parties reach an agreement regarding resolution of this matter, the parties should file a joint stipulation and notify chambers about any such resolution.

Debtor must submit a scheduling order within seven (7) days.

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Represented By
David S Hagen

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, August 26, 2020

Hearing Room 301

2:30 PM

1:19-11921 Breann Castillo

Chapter 7

Adv#: 1:20-01058 Campolong v. Castillo

#19.00 Status conference re: complaint to determine dischargeability of debt pursuant to code sections 523(a)(2), (a)(4), (a)(6) and also to revoke discharge per code section 727(d)(1)

fr. 7/29/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Breann Castillo

Represented By
David S Hagen

Defendant(s):

Breann Castillo

Pro Se

Plaintiff(s):

Andrew Campolong

Represented By
Michael F Chekian

Trustee(s):

David Keith Gottlieb (TR)

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