

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

1:17-10681 Sandra Murray

Chapter 13

#1.00 Motion for relief from stay [RP]

PNC BANK, NATIONAL ASSOCIATION
VS
DEBTOR

fr. 7/21/21(stip); 8/25/21(stip)

Docket 71

*** VACATED *** REASON: Continued by Stip to 10/20/21 at 9:30 am -
jc

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Murray

Represented By
Todd J Roberts

Movant(s):

PNC Bank, National Association

Represented By
Jenelle C Arnold

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, September 22, 2021

Hearing Room 301

9:30 AM

1:20-10971 Benjamin Marsh

Chapter 13

#2.00 Motion for relief from stay [RP]

CIT BANK, N.A.
VS
DEBTOR

fr. 4/14/21(stip); 5/19/21; 6/23/21; 7/28/21

Docket 74

*** VACATED *** REASON: order entered on 9/20/21 doc [123]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin Marsh

Represented By
Natalya Vartapetova

Movant(s):

CIT Bank, N.A.

Represented By
Jenelle C Arnold

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-10564 Nancy Osipo-Peera

Chapter 13

#2.10 Motion for relief from stay [PP]

TOYOTA LEASE TRUST
VS
DEBTOR

fr. 9/15/21

Stip for adequate protection filed 9/21/21.

Docket 29

*** VACATED *** REASON: Order approving stip entered 9/21/21 [Dkt. 38]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Osipo-Peera

Represented By
Aris Artounians

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Austin P Nagel

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11421 Brenda Carolina Posada

Chapter 7

#3.00 Motion for relief from stay [PP]

HONDA LEASE TRUST
VS
DEBTOR

Docket 8

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):

Brenda Carolina Posada

Represented By
Navid Kohan

Movant(s):

HONDA LEASE TRUST

Represented By

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... Brenda Carolina Posada

Vincent V Frounjian

Chapter 7

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11346 Robert Becerra

Chapter 7

#4.00 Motion for relief from stay [PP]

LOS ANGELES FEDERAL CREDIT UNION
VS
DEBTOR

Stip for adequate protection filed 9/1/21

Docket 19

*** VACATED *** REASON: Order approving stip entered 9/7/21. [Dkt. 23]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Becerra

Represented By
Shirlee L Bliss

Movant(s):

Los Angeles Federal Credit Union

Represented By
Bruce P. Needleman

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11194 Steven Wayne Thompson

Chapter 7

#5.00 Motion for relief from stay [PP]

FINANCIAL SERVICES VEHICLE TRUST
VS
DEBTOR

Docket 11

***** VACATED *** REASON: Motion is not in compliance with Local
Bankruptcy Rule 5005-2(d)(1). Motion is OFF CALENDAR.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Wayne Thompson

Represented By
Steven A Alpert

Movant(s):

Financial Services Vehicle Trust

Represented By
Marjorie M Johnson
Cheryl A Skigin

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11452 Candace Thompson

Chapter 13

#6.00 Motion for relief from stay [UD]

ESSEX VALLEY VILLAGE MAGNOLIA LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

The Court will grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1).

The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the property for a period of 180 days from the hearing on this motion upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

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

Any other request for relief is denied.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Essex Valley Village Magnolia LLC must submit an order within seven (7) days.

Party Information

Debtor(s):

Candace Thompson

Pro Se

Movant(s):

Essex Valley Village Magnolia, LLC

Represented By

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... Candace Thompson

David S Hagen

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, September 22, 2021

Hearing Room 301

9:30 AM

1:16-13377 Nahed Talei

Chapter 13

#7.00 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

Docket 117

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 NOT waived.

Movant must include the following provision in the order: "This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

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

Party Information

Debtor(s):

Nahed Talei

Represented By
Michael F Frank
Peggi A Gross

Movant(s):

U.S. Bank National Association, as

Represented By
Daniel K Fujimoto
Caren J Castle

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... Nahed Talei

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, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11450 Roberto C. Hernandez

Chapter 11

#8.00 Motion for relief from stay [AN]

RAFAEL HERNANDEZ
VS
DEBTOR

Docket 13

Tentative Ruling:

Grant.

The Court will grant relief under 11 U.S.C. § 362(d)(1) to allow movant to proceed in the state court litigation with respect to whether the transfers of interests in real property from the debtor to Iliana Hernandez and from Iliana Hernandez to Cocoville, LLC should be set aside and voided ("Avoidance Claims") and whether Iliana Hernandez and Cocoville, LLC should be enjoined against further disposition of those real properties, including from selling, encumbering or disposing of those properties ("Injunctive Relief").

The *Curtis* factors weigh in favor of granting relief to determine whether transfers among Debtor, Debtor's wife, and Cocoville, LLC are voidable and are to be set aside. Allowing movant to proceed with the state court trial set for October 4, 2021 is expeditious and economical. Moreover, the trial will resolve the issues surrounding the propriety of these transfers. *See Complaint for Violation of Uniform Voidable Transactions Act* and Exhibits 1, 2, 3, 4, 5, 6, 7 and 8 thereto [doc. 13].

To date, title to these properties has not been transferred such that legal title to the properties is consistent with the way that the debtor held legal title before he transferred his legal interests in these properties on January 11, 2019. *Id.*

Movant may proceed under applicable nonbankruptcy law to final judgment regarding the Avoidance Claims and Injunctive Relief.

Any other request for relief is denied.

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... Roberto C. Hernandez

Chapter 11

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

Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

Movant(s):

Rafael Hernandez

Represented By
Craig B. Forry

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11407 JANA, LLC

Chapter 11

#9.00 Motion for relief from stay [RP]

PS FUNDING, INC.
VS
DEBTOR

Docket 12

Tentative Ruling:

The Court will grant relief from the automatic stay under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.

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

Any other request for relief is denied.

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

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... JANA, LLC

Chapter 11

Debtor(s):

JANA, LLC

Represented By
Matthew Abbasi

Movant(s):

PS Funding, Inc.

Represented By
Eric S Pezold
Andrew Still

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

1:21-10809 RT Development, LLC

Chapter 11

#10.00 Motion for relief from stay [RP]

VICTORIA CAPITAL TRUST
VS
DEBTOR

fr. 6/16/21; 8/18/21(stip)

Docket 28

Tentative Ruling:

The Court will grant relief under 11 U.S.C. § 362(d)(1) and (2). The Court will deny relief under 11 U.S.C. § 362(d)(4).

The Court will sustain movant's evidentiary objection that the appraisals submitted by the debtor constitute improper expert opinion pursuant to Fed. R. Evid. 701-702. Unlike movant's appraiser, who is a Certified General Real Estate Appraiser in the State of California [doc. 89, p. 3], the debtor's appraiser is not. Consequently, the debtor's appraiser is not qualified to appraise residential real properties, like the debtor's real properties, with a value exceeding \$1 million. *Supplemental Declaration of Appraiser in Response to Appraisal Filed By Debtor* ("Suppl. Amarto Declaration") [doc. 92], para. 4 and *Evidentiary Objections to Declarations of Brett P. Miles and Exhibits Thereto* [doc. 91].

Based on movant's appraisals submitted on September 3, 2021, the debtor's single family residence and real property located at 2279 Laurel Canyon Boulevard in Los Angeles, California (the "2279 Property") has a fair market value, as of August 8, 2021, of \$1.5 million, and the debtor's single family residence and real property located at 2301 Laurel Canyon Boulevard, in Los Angeles, California (the "2301 Property") has a fair market value, as of August 8, 2021, of \$2.4 million.

Based on the debtor's schedules, both the 2279 Property and the 2301 Property (together, the "Properties") are encumbered by a Los Angeles County property tax lien in the approximate amount of \$89,000. Movant is the beneficiary of a first deed of

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... RT Development, LLC

Chapter 11

trust against each of the Properties, based on a loan with a principal outstanding balance of \$2.925 million. Movant's loan matured on July 31, 2019. As of May 14, 2021, movant's claim, secured by each of the Properties, is in excess of \$4.1 million. Based on the debtor's schedule D, the Properties are encumbered by six additional deeds of trust securing claims in the aggregate amount of \$1,267,813.99.

Because of nonpayment, the debtor's secured debt for prepetition property taxes is increasing. Any equity cushion of movant is deteriorating from the accrual of interest on unpaid pre-petition property taxes. Moreover, the debtor has no funds to pay post-petition property taxes.

Even if the debtor's appraiser, Anastacio T. Pacheco, were competent to testify as to the fair market value of the 2301 Property, for the reasons set forth in the Suppl. Amarto Decl. [doc. 92, paras. 3-10], the debtor's submitted appraisal of the 2301 Property is not credible.

As set forth in the debtor's response to the motion [doc. 40, at p. 2], the debtor's intention is to "demolish the current structures and develop two luxury [p]roperties to sell." The debtor "anticipates receiving the building permits within the next four to six months to begin the construction." *Id.* The debtor is seeking "12 months to be able to obtain the necessary permits and a construction loan and/or a post-petition financing to satisfy" movant's secured claim. *Id.*, at pp. 2-3. In response to the motion, the debtor has not submitted any evidence supporting the debtor's ability to redevelop the Properties.

Based on its schedules, the debtor generates no cash flow and has no cash. Moreover, the debtor has not submitted any credible evidence of its ability "to obtain the necessary permits and a construction loan and/or a post-petition financing," in order for the debtor to be able to redevelop the Properties.

Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay. Movant's interests in the Properties are not protected by an adequate equity cushion.

Pursuant to 11 U.S.C. § 362(d)(2), with aggregate debts secured by the Properties in the amount of more than \$5.4 million, the debtor has no equity in the Properties, and pursuant to § 362(d)(2)(B), the Properties are not necessary to an effective

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

CONT... RT Development, LLC

Chapter 11

reorganization. The debtor, which generates no cash flow, and has no cash or other assets to fund the development of the Properties, has not demonstrated that the Properties are essential for a effective reorganization that is in prospect.

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.

Party Information

Debtor(s):

RT Development, LLC

Represented By
Michael Jay Berger

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

Wednesday, September 22, 2021

Hearing Room 301

9:30 AM

1:21-11450 Roberto C. Hernandez

Chapter 11

#10.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 26

Tentative Ruling:

Grant, except as otherwise provided in calendar no. 8.

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

Party Information

Debtor(s):

Roberto C. Hernandez

Represented By
Raymond H. Aver

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01072 Adri v. Adri

#11.00 Status conference re: complaint to deny debtor's discharge

fr. 8/21/19; 10/2/19; 11/6/19; 1/15/20; 11/18/20; 4/21/21; 5/19/21;
7/14/21

Docket 1

Tentative Ruling:

Contrary to the Court's scheduling order [doc. 30] and Local Bankruptcy Rule 7016-1(b), the parties did not timely file a joint pretrial stipulation; alternatively, the plaintiff did not timely file a unilateral pretrial statement. Consequently, the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the Order.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Gary R Wallace

Defendant(s):

Deborah Adri

Pro Se

Plaintiff(s):

Moshe Adri

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

1:18-10417 Deborah Lois Adri

Chapter 7

Adv#: 1:19-01088 Elissa D. Miler, chapter 7 trustee for the estate v. Adri

#12.00 Status conference re: complaint to deny discharge

fr. 10/2/19; 11/6/19; 1/15/20; 10/14/20;11/18/20; 4/21/21
5/19/21; 7/14/21

Docket 1

Tentative Ruling:

In light of the motion to approve a compromise between the parties [Bankruptcy Docket, doc. 418], set for hearing on September 23, 2021, the Court will continue this status conference to **1:30 p.m. on October 20, 2021**. If, prior to that date, the Court approves the settlement agreement and the plaintiff submits an order dismissing this adversary proceeding in accordance with the terms of the settlement agreement, the Court will vacate the continued status conference.

Appearances on September 22, 2021 are excused.

Party Information

Debtor(s):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Defendant(s):

Deborah Lois Adri

Pro Se

Plaintiff(s):

Elissa D. Miler, chapter 7 trustee for

Pro Se

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

CONT...

Deborah Lois Adri

Larry W Gabriel

Chapter 7

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

1:19-12677 John Stephen Travers

Chapter 7

Adv#: 1:20-01010 Ace Industrial Supply, Inc. v. Travers

#13.00 Pre-trial conference re: complaint to determine dischargeability

fr. 3/25/20; 5/6/20; 6/10/20; 12/9/20; 2/10/21, 5/5/21; 8/4/21

STIP TO CONTINUE FILED 6/16/21 - jc

Docket 1

*** VACATED *** REASON: Order approving stip entered 6/17/21.
Hearing continued to 10/20/21 at 1:30 PM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Stephen Travers

Represented By
Robert M Aronson

Defendant(s):

John Stephen Travers

Pro Se

Plaintiff(s):

Ace Industrial Supply, Inc.

Represented By
Jeffery J Daar

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

1:20-10346 Alan Gene Lau

Chapter 7

Adv#: 1:20-01053 Prior et al v. Lau et al

#14.00 Pretrial conference re complaint to determine the dischargeability of debt pursuant to 11 U.S.C. sec 523(a)(2)

fr. 7/29/20; 3/10/21; 3/24/21; 6/2/21; 7/28/21

Docket 1

Tentative Ruling:

Contrary to Local Bankruptcy Rule 7016-1(b), the parties did not timely submit a joint pretrial stipulation; alternatively, the plaintiff did not timely file a unilateral pretrial statement. Consequently, the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the Order.

Party Information

Debtor(s):

Alan Gene Lau

Represented By
Kevin T Simon

Defendant(s):

Alan Gene Lau

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Amber Ann Waddell Lau

Represented By
Kevin T Simon

Plaintiff(s):

Russell Prior

Represented By
Alana B Anaya

Cheryl Prior

Represented By

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

CONT...

Alan Gene Lau

Alana B Anaya

Chapter 7

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, September 22, 2021

Hearing Room 301

1:30 PM

1:21-10844 Michael Chulak

Chapter 7

Adv#: 1:21-01046 Smith et al v. Chulak

#15.00 Status conference re: complaint objecting to discharge pursuant to 11 U.S.C. § 727

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 1/14/22.

Deadline to complete one day of mediation: 1/31/22.

Deadline to file pretrial motions: 2/16/22.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 3/9/22.

Pretrial: 3/23/22 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiffs must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

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

Wednesday, September 22, 2021

Hearing Room 301

1:30 PM

CONT... Michael Chulak

Chapter 7

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro

Defendant(s):

Michael Chulak

Pro Se

Plaintiff(s):

Robert Smith

Represented By
Stephen M Sanders
Scott T Green

Hillary Smith

Represented By
Stephen M Sanders
Scott T Green

Natalie Smith

Represented By
Stephen M Sanders
Scott T Green

Trustee(s):

David Seror (TR)

Pro Se

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#16.00 Defendant's Motion to withdraw and amend deemed admissions or in the alternative for extension of time to respond to plaintiff's first set of request for admissions

fr. 8/25/21

Docket 25

Tentative Ruling:

Grant.

I. BACKGROUND

On October 29, 2020, Michael A. Di Bacco ("Debtor") filed a voluntary chapter 7 petition. On February 4, 2021, Michael Kline ("Plaintiff") filed a complaint against Debtor, requesting nondischargeability of the debt owed to him and objecting to Debtor's discharge. On June 2, 2021, the Court held a status conference. At that time, the Court set November 19, 2021 as the discovery cutoff date. [FN1].

On June 3, 2021, Debtor, previously in pro per, filed a Substitution of Attorney [doc. 20], substituting counsel in his place. On July 14, 2021, Debtor filed a motion to withdraw and amend deemed admissions (the "Motion") [doc. 25]. In the Motion, Debtor contends that, while representing himself, Debtor failed to respond timely to Plaintiff's requests for admissions, which may result in the requests being deemed admitted under Federal Rule of Civil Procedure ("Rule") 36(b). The Motion is not supported by a declaration.

On August 9, 2021, Plaintiff filed an opposition to the Motion (the "Opposition") [doc. 30]. In the Opposition, Plaintiff asserts that Debtor: (A) did not meet his burden of proof under Rule 36(b); (B) has not shown excusable neglect under Federal Rule of Bankruptcy Procedure ("FRBP") 9006(b); and (C) did not submit evidence in support of the Motion. Plaintiff also requests attorneys' fees and costs incurred opposing the Motion.

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

CONT... Michael A Di Bacco

Chapter 7

On August 23, 2021, Debtor filed an untimely reply to the Opposition (the "Reply") [doc. 33]. Debtor supported the Reply with declarations. On August 25, 2021, the Court held a hearing on the Motion. At that time, the Court continued the hearing to give Plaintiff an opportunity to respond to the untimely Reply and the declarations filed with it.

On September 5, 2021, Plaintiff filed a response to the Reply (the "Response") [doc. 37]. In the Response, Plaintiff mostly argues that the Reply did not adequately address the arguments in the Opposition. Plaintiff also notes inaccuracies in the declarations in support of the Reply.

II. ANALYSIS

Pursuant to Rule 36(b)—

Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

"The rule permits the district court to exercise its discretion to grant relief from an admission made under Rule 36(a) only when (1) 'the presentation of the merits of the action will be subserved,' and (2) 'the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.'" *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007) (quoting Rule 36(b)). "The first half of the test in Rule 36(b) is satisfied when upholding the admissions would practically eliminate any presentation of the merits of the case." *Id.*, at 622.

Regarding the second prong, "[t]he party relying on the deemed admission has the

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

CONT... Michael A Di Bacco

Chapter 7

burden of proving prejudice." *Id.*

The prejudice contemplated by Rule 36(b) is not simply that the party who obtained the admission will now have to convince the factfinder of its truth. Rather, it relates to the difficulty a party may face in proving its case, e.g., caused by the unavailability of key witnesses, because of the sudden need to obtain evidence with respect to the questions previously deemed admitted.

Id. (internal quotations omitted). "When undertaking a prejudice inquiry under Rule 36(b), district courts should focus on the prejudice that the nonmoving party would suffer at trial." *Id.*, at 623 (collecting cases). For instance, in *Sonoda v. Cabrera*, 255 F.3d 1035, 1038 (9th Cir. 2001), the defendants did not timely respond to requests for admission, prompting the plaintiff to move for an order to deem all requests for admission admitted. The district court granted the motion. *Sonoda*, 255 F.3d at 1038. Subsequently, the defendants moved for relief under Rule 36(b). *Id.*, at 1039. The district court granted the relief, and the plaintiff appealed. *Id.*

On appeal, the Ninth Circuit Court of Appeals held that the district court did not abuse its discretion by granting a motion under Rule 36(b). *Id.*, at 1039-40. The Court of Appeals held that deeming the requests admitted and allowing the plaintiff to proceed with a motion for summary judgment based on the deemed admissions "would effectively eliminate a merits determination." *Id.*, at 1040. The Court of Appeals also affirmed the district court's ruling that, "because the motion was made pre-trial," the plaintiff "would not be hindered in presenting his evidence to the factfinder." *Id.*

On the other hand, in *Conlon*, the Court of Appeals upheld a district court's ruling denying a request for relief under Rule 36(b) where the plaintiff: (A) "relied on the admissions... through the discovery and dispositive motion cut-off dates, with no indication that [the defendant] intended to file a motion to withdraw his admissions;" (B) "only eight days remained until trial;" and (C) as a result of relying on the deemed admissions through such a late stage of the proceeding, the plaintiff "conducted none of the discovery it otherwise needed to prove its case at trial." *Conlon*, 474 F.3d at 624. Even under these facts, the Court of Appeals noted that "the issue is close...." *Id.*

With respect to the first prong, Plaintiff admits that he intends to file a motion for

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

CONT...

Michael A Di Bacco

Chapter 7

summary judgment based on the deemed admissions. Opposition, p. 8. As such, although Debtor did not support the Motion with a declaration, Plaintiff concedes that denying the Motion would eliminate the presentation of merits in this proceeding. Thus, the first prong is satisfied.

As to the second prong, *Plaintiff* has the burden of proving he would be prejudiced if the Court grants relief under Rule 36(b). Pursuant to the authorities above, the fact that Plaintiff will have to engage in discovery and prove his case, as opposed to relying on the deemed admissions, is not the type of prejudice contemplated by Rule 36(b). Rather, Plaintiff would have to show that reliance on the deemed admissions caused the unavailability of evidence, or the sudden need to obtain evidence close in time to trial. Plaintiff has not met his burden of proving such prejudice.

Unlike *Conlon*, here, Debtor filed his request for relief under Rule 36(b) approximately four months before the discovery cutoff date. At this early stage of the adversary proceeding, with months of discovery ahead, Plaintiff has not shown that he will be unable to obtain evidence he needs to prove his case.

Moreover, Plaintiff's reference to Debtor's past conduct, in state court, does not establish the type of prejudice contemplated by Rule 36(b). Even if the Court admits Plaintiff's evidence in support of these arguments, the record before the Court indicates that Debtor's counsel is cooperating with Plaintiff. [FN2]. Specifically, the emails attached by Plaintiff to his motion to compel [doc. 28] indicate that Debtor's counsel sent multiple documents in response to Plaintiff's discovery requests. Although the documents may be untimely and subject to sanctions for being disorganized, the emails undermine Plaintiff's position that he will be prejudiced by Debtor obtaining relief under Rule 36(b). [FN3]. In light of the above, and to promote adjudication of this proceeding on the merits, the Court will grant the Motion.

Finally, Plaintiff requests monetary sanctions, in accordance with Rule 37, incurred opposing the Motion. However, Rule 37(c)(2) provides that, "[i]f a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof." At this time, a request for cost of proof sanctions is premature; Plaintiff has not attempted to prove "a document to be genuine or the

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

CONT...

Michael A Di Bacco

Chapter 7

matter true." Plaintiff's reference to Rule 37(a)(5) also is inapplicable. Rule 37(a)(5) provides an avenue for recovering attorneys' fees where a party requests an order compelling disclosure or discovery. Plaintiff did not file a motion to compel Debtor to respond to the requests for admission; Plaintiff's motion to compel requests production of documents, not a response to the subject requests for admission. As such, there is no basis to award Plaintiff attorneys' fees and costs incurred opposing the Motion, especially in light of the fact that Plaintiff did not successfully oppose the Motion.

III. CONCLUSION

The Court will grant the Motion.

Debtor must submit an order within seven (7) days.

FOOTNOTES

1. Contrary to the Court's instructions, Plaintiff did not timely submit a scheduling order within seven days of the status conference.
2. Plaintiff's evidence in support of these arguments is a declaration by Plaintiff's current attorney, David B. Lally. Mr. Lally does not contend he was involved in the state court litigation to which he refers, and there is no indication that Mr. Lally has personal knowledge of Debtor's actions in state court. The emails attached to Mr. Lally's declaration do not show Mr. Lally as a sender, recipient or copied party to any of the emails regarding Debtor's allegedly dilatory conduct.
3. In the Opposition, Plaintiff also argues that Debtor did not establish excusable neglect under FRBP 9006(b). However, Plaintiff has not cited any authorities where a court used FRBP 9006(b) instead of Rule 36(b) to analyze whether a party is entitled to provide untimely responses to requests for admission. In fact, the only court addressing the issue held that Rule 36(b), and not FRBP 9006(b), applies to a request to submit untimely responses to requests for admission. *See In re Hoffman*, 2000 WL 192986, at *2 (Bankr. E.D. Pa. Feb. 14, 2000).

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

Wednesday, September 22, 2021

Hearing Room 301

2:30 PM

CONT... Michael A Di Bacco

Chapter 7

Party Information

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Movant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se