

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

1:16-10543 Dean Albert Maury Cazares

Chapter 7

#1.00 Motion for relief from stay [AN]

CHRISTIAN OLDE WOLBERS AND RAYMOND HERRERA
VS
DEBTOR

fr: 8/3/16(stip); 9/7/16(stip)
Stip filed 10/3/16

Docket 34

*** VACATED *** REASON: Order entered 10/4/16 continuing hearing
to 10/26/16 at 9:30 a.m.

Tentative Ruling:

In light of the *Second Stipulation to Continue Hearing on Motion to Lift Automatic Stay Pending Global Mediation* [doc. 72], this hearing is continued to **October 26, 2016 at 9:30 a.m.**

Appearances on October 5, 2016 are excused.

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Ian Landsberg

Movant(s):

Christian Olde Wolbers

Represented By
Larry Castruita

Raymond Herrera

Represented By
Larry Castruita

Trustee(s):

Diane Weil (TR)

Represented By
C John M Melissinos

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

1:15-12118 Jack Eliakim

Chapter 13

#2.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

fr. 6/15/16; 7/13/16; 8/17/16; 9/14/16

Docket 72

*** VACATED *** REASON: APO entered 9/30/16 [doc. 81]

Tentative Ruling:

- NONE LISTED -

Party Information

Creditor(s):

U.S. Bank, N.A., successor trustee to

Represented By
Mark T. Domeyer
Daniel K Fujimoto

Wells Fargo Bank, N.A./Wells Fargo

Represented By
Bruce E Brown
Senique Moore
Shainna Surles
Robert P Zahradka

Debtor(s):

Jack Eliakim

Represented By
Claudia L Phillips

Interested Party(s):

Courtesy NEF

Represented By
Robert P Zahradka
Mark T. Domeyer

Geraci Law Firm

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
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Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Jack Eliakim

Chapter 13

Amy E Martinez

Movant(s):

Wells Fargo Bank, N.A./Wells Fargo

Represented By
Bruce E Brown
Senique Moore
Shainna Surles
Robert P Zahradka

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

1:13-15328 Refugio Vazquez and Irene Vazquez

Chapter 13

#3.00 Motion for relief from stay [RP]

BANK OF AMERICA, NA
VS
DEBTOR

fr. 9/7/16

Stipulation for adequate protection filed 10/4/16

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Refugio Vazquez

Represented By
Kevin T Simon
Kevin T Simon

Joint Debtor(s):

Irene Vazquez

Represented By
Kevin T Simon
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, October 05, 2016

Hearing Room 301

9:30 AM

1:14-12897 Mati Timor

Chapter 13

#4.00 Motion for relief from stay [RP]

E*TRADE BANK
VS
DEBTOR

fr. 9/7/16

Docket 94

*** VACATED *** REASON: Order granting apo entered 9/28/16 [doc. 103]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mati Timor

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, October 05, 2016

Hearing Room 301

9:30 AM

1:13-15733 Nikita Mobed

Chapter 13

#5.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 8/3/16; 9/7/16

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nikita Mobed

Represented By
Ali R Nader

Movant(s):

The Bank of New York Mellon FKA

Represented By
Christina J O

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-10246 David Eugene Flores and Susan Muro Flores

Chapter 13

#5.10 Motion for relief from stay [RP]

U.S. BANK NATIONAL ASSOCIATION
VS
DEBTOR

fr. 09/21/16;

Order approving adequate protection on 10/04/16

Docket 37

***** VACATED *** REASON: APO entered 10/4/16 [doc. 44]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Eugene Flores

Represented By
D Justin Harelik

Joint Debtor(s):

Susan Muro Flores

Represented By
D Justin Harelik

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12203 Alfredo Gonzalez Villapando

Chapter 11

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

fr. 8/24/16

Docket 8

Tentative Ruling:

The debtor, having timely filed his chapter 11 plan and related disclosure statement on September 23, 2016 in accordance with the Court's mandate at the prior hearing, and no creditors having objected to the motion, the Court will grant the motion and continue the automatic stay in this case.

Appearances on October 5, 2016 are waived.

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

Party Information

Debtor(s):

Alfredo Gonzalez Villapando

Represented By
Giovanni Orantes

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12553 Shirlena Allen

Chapter 7

#7.00 Motion for relief from stay [UD]

DSS HOLDINGS, LLC
VS
DEBTOR

order of dismissal entered 9/19/16

Docket 9

Tentative Ruling:

This case was dismissed on September 19, 2016. 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 obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

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

Movant must submit 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):

Shirlena Allen

Pro Se

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Shirlena Allen

Chapter 7

Movant(s):

DSS Holdings, LLC

Represented By
Joseph Trenk

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12580 Lisa Marie Lepore

Chapter 7

#8.00 Motion for relief from stay [UD]

CAH 2014-1 BORROWER, LLC
VS
DEBTOR

Docket 7

Tentative Ruling:

This case was dismissed on September 30, 2016. 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 obtain possession of the property.

The order is binding and effective in any bankruptcy case commenced by or against the debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the property.

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

Movant must submit 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):

Lisa Marie Lepore

Pro Se

Movant(s):

CAH 2014-1 Borrower, LLC, a

Represented By
Agop G Arakelian

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Lisa Marie Lepore

Chapter 7

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-10099 Frank Adler and Lauren Adler

Chapter 7

#9.00 Motion for relief from stay [PP]

ALLY FINANCIAL
VS
DEBTOR

Docket 87

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 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):

Frank Adler

Represented By
Derik N Lewis

Joint Debtor(s):

Lauren Adler

Represented By
Derik N Lewis

Movant(s):

Ally Financial

Represented By

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Frank Adler and Lauren Adler

Chapter 7

Adam N Barasch

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-11303 Bahador Zaghi

Chapter 7

#10.00 Motion for relief from stay [PP]

WELLS FARGO BANK N.A.
VS
DEBTOR

Docket 47

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.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the U.S. Code.

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

Movant must submit 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):

Bahador Zaghi

Represented By
David S Hagen
David S Hagen

Movant(s):

Wells Fargo Bank, N.A. dba Wells

Represented By

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Bahador Zaghi

Chapter 7

Sheryl K Ith

Trustee(s):

Diane Weil (TR)

Pro Se

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

1:16-11911 Jacqueline A Blum and Stanford W Blum

Chapter 7

#11.00 Motion for relief from stay [PP]

CAB WEST, LLC
VS
DEBTOR

Docket 14

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.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the U.S. Code.

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

Movant must submit 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):

Jacqueline A Blum

Represented By
David S Hagen

Joint Debtor(s):

Stanford W Blum

Represented By
David S Hagen

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Jacqueline A Blum and Stanford W Blum

Chapter 7

Movant(s):

Cab West, LLC

Represented By
Sheryl K Ith

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-11728 Artemio Pureco

Chapter 7

#12.00 Motion for relief from stay [PP]

VENTURA COUNTY CREDIT UNION
VS
DEBTOR

Docket 11

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Artemio Pureco

Represented By
Alla Tenina

Movant(s):

Ventura County Credit Union

Represented By
Ann G Lee

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-11864 Erika D Torres

Chapter 7

#13.00 Motion for relief from stay [RP]

BANK OF AMERICA, N.A.
VS
DEBTOR

Docket 22

Tentative Ruling:

Debtor received a discharge on October 3, 2016. 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 foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

Deny request for relief under 11 U.S.C. § 362(d)(4). Movant has not made a prima facie case that the filing of the petition was part of a scheme to delay, hinder and defraud creditors.

Any other request for relief is denied.

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

Movant must submit 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.

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Erika D Torres

Chapter 7

Party Information

Debtor(s):

Erika D Torres

Pro Se

Movant(s):

Bank of America, N.A.

Represented By
Robert P Zahradka

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12498 Joseph Smart

Chapter 13

#14.00 Motion for relief from stay [UD]

PLAYA VILLAS LLC
VS
DEBTOR

Docket 9

*** VACATED *** REASON: Voluntary dismissal of motion filed 9/16/16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Smart

Pro Se

Movant(s):

PLAYA VILLAS LLC

Represented By
Richard Sontag

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, October 05, 2016

Hearing Room 301

9:30 AM

1:11-18460 Joel S Blackburn

Chapter 13

#15.00 Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
VS
DEBTOR

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joel S Blackburn

Represented By
Shawn S White

Movant(s):

Nationstar Mortgage LLC

Represented By
Erica T Loftis

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-10157 Jose M. Lopez

Chapter 13

#16.00 Motion for relief from stay [RP]

DEUTSCHE BANK NATIONAL TRUST COMPANY
VS
DEBTOR

Docket 36

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 foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

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

Movant must submit 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 M. Lopez

Represented By
Kevin T Simon

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Jose M. Lopez

Chapter 13

Movant(s):

Deutsche Bank National Trust

Represented By
Darlene C Vigil

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, October 05, 2016

Hearing Room 301

9:30 AM

1:13-17260 Nver Kbdjian

Chapter 13

#17.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

Docket 61

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 foreclose upon and obtain possession of the property.

Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the debtor by telephone or written correspondence to offer such an agreement. Any such agreement shall be nonrecourse unless stated in a reaffirmation agreement.

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

Movant must submit 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):

Nver Kbdjian

Represented By
Abraham Dervishian

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

Wednesday, October 05, 2016

Hearing Room 301

9:30 AM

CONT... Nver Kbdjian

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

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, October 05, 2016

Hearing Room 301

9:30 AM

1:15-13353 Faye Ellen Di Panni and Robert Allen Di Panni

Chapter 13

#18.00 Motion for relief from stay [RP]

WELLS FARGO BANK, N.A.
VS
DEBTOR

STIP filed 10/3/16

Docket 30

*** VACATED *** REASON: APO entered 10/3/16 [doc. 37]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Faye Ellen Di Panni

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Robert Allen Di Panni

Represented By
Jeffrey J Hagen

Movant(s):

Wells Fargo Bank, N.A.

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12594 Sheia J Holland

Chapter 13

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

Docket 9

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):

Sheia J Holland

Represented By
Khachik Akhkashian

Movant(s):

Sheia J Holland

Represented By
Khachik Akhkashian

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, October 05, 2016

Hearing Room 301

9:30 AM

1:16-12594 Sheila J Holland

Chapter 13

#19.10 Order to show cause re: incapacity to receive credit counseling briefing pursuant to 11 U.S.C. § 109(h)(1)

Docket 16

Tentative Ruling:

The Court, having reviewed the declaration submitted with the debtor's motion to continue the automatic stay (matter no. 19 on today's calendar), finds that the facts contained therein satisfy the Order to Show Cause ("OSC"). Accordingly, the OSC is hereby discharged.

Appearances on October 5, 2016 are excused.

Party Information

Debtor(s):

Sheila J Holland

Represented By
Khachik Akhkashian

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, October 05, 2016

Hearing Room 301

1:30 PM

1:09-24188 Michelle C Fuller

Chapter 7

Adv#: 1:15-01130 Fuller v. Greendot, LTD

#20.00 Status conference re complaint to determine validity of
lien and avoidance of fraudulent lien

fr. 10/14/15; 12/2/15; 12/16/15; 2/10/16; 4/13/16; 5/4/16;
8/3/16; 8/17/16

Docket 1

Tentative Ruling:

If the plaintiff intends to dismiss certain defendants from this adversary proceeding, the plaintiff must file a notice of dismissal as to those defendants.

The Court will continue this status conference to **1:30 p.m. on October 19, 2016**. If the plaintiff does not file such a notice of dismissal prior to that date, the Court may dismiss this adversary proceeding for failure to prosecute.

Party Information

Debtor(s):

Michelle C Fuller

Represented By
David S Hagen
Philip D Dapeer

Defendant(s):

Greendot, LTD

Pro Se

Plaintiff(s):

Michelle Fuller

Represented By
Philip D Dapeer

Trustee(s):

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

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

Wednesday, October 05, 2016

Hearing Room 301

1:30 PM

CONT... Michelle C Fuller

Chapter 7

US Trustee(s):

United States Trustee (SV)

Pro Se

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

Wednesday, October 05, 2016

Hearing Room 301

1:30 PM

1:14-13401 Juan Carlos Orozco

Chapter 7

Adv#: 1:14-01166 Parker et al v. Orozco

#21.00 Pre-trial conference re: second amended complaint to determine nondischargeability of debt pursuant to 11U.S.C. sec 523(a)(2)(A) and 11 U.S.C. sec 523(a)(4)

fr. 8/3/16; 9/14/16(stip)

Docket 42

Tentative Ruling:

The Declaration of I. Donald Weissman, the plaintiffs' attorney, states that Mr. Weissman did not receive any communication from the defendant's attorney. However, pursuant to Local Bankruptcy Rule ("LBR") 7016-1(c), it is the plaintiffs' duty to prepare and serve a proposed pretrial stipulation "not later than 4:00 p.m. on the 7th day prior to the last day" for filing a proposed pretrial stipulation.

The parties have lodged separate unilateral pretrial statements. Does the defendant dispute facts IV.A.i. through IV.A.xxv from the plaintiffs' pretrial statement [doc. 71]? Do the plaintiffs dispute facts V.A.1. through V.A.6 from the defendant's pretrial statement [doc. 79]?

From the plaintiffs' pretrial statement, the Court will treat as disputed facts IV.A.xxvi. through IV.A.xxix . From the defendant's pretrial statement, the Court will strike, as irrelevant for purposes of trial, facts V.A.7 and V.A.9 through V.A.20. With respect to fact V.A.8, the parties should address the relevancy of this fact and whether this fact is disputed.

Regarding the "Issues of Facts to be Litigated," which is Section V.C. of the defendant's pretrial statement, the Court will strike issues V.C.17 - V.C.20, as they appear to be issues of law. Do the plaintiffs dispute that the remaining issues of fact are to be litigated at trial?

The Court will adopt the defendant's statement of the issues of law to be litigated (Section V.B.), and the Court will add the following issue of law (apparently raised in

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Juan Carlos Orozco

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the plaintiffs' pretrial statement): "Does collateral estoppel apply to the plaintiffs' claims under 11 U.S.C. §§ 523(a)(2)(A) or (a)(4)?"

Have the parties exchanged the exhibits they intend to use at trial?

The plaintiffs have not adequately described the following exhibits on their list: Exhibits 3, 4, 5, 12, 22, 23 and 24. The plaintiffs must supplement their pretrial statement with additional identifying details as to these exhibits, such as the date and content of the exhibit.

Lastly, contrary to LBR 7016-1(b)(2)(E), the witness list attached to plaintiffs' pretrial statement does not include a summary of each witness's testimony. The plaintiffs must supplement their pretrial statement with a witness list that complies with LBR 7016-1(b)(2)(E).

The Court may set this matter for trial from **February 28, 2017 through March 3, 2017**, beginning at 9:30 a.m. The parties should be prepared to discuss their availability.

Prior to trial, the Court will require the parties to participate in the Court's mediation program. Within seven (7) days after this pretrial conference, the plaintiffs must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. During the pretrial conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator. The parties should contact their mediator candidates before the pretrial conference to determine if the availability of their candidates.

If the parties do not settle, the Court will hold a continued pretrial conference at **1:30 p.m. on February 8, 2016**. No later than **February 1, 2016**, the parties must file a **JOINT** witness schedule setting forth which witnesses will testify on which dates and times.

TRIAL BRIEFS:

The plaintiffs' trial brief must be filed and served **28 days** before trial.

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The defendant's trial brief must be filed and served **21 days** before trial.

Any reply brief by the plaintiffs must be filed and served **14 days** before trial.

WITNESS TESTIMONY:

Testimony of witnesses **must be presented live** at trial pursuant to the Federal Rules of Evidence.

The Court will NOT consider the testimony of any witnesses who were not identified on a party's witness list, and will not consider the testimony of any witness which is not relevant to the issues of fact and law for trial.

EXHIBITS:

All trial exhibits must be numbered and marked as required by Local Bankruptcy Rule ("LBR") 9070-1(a).

The Court will NOT consider any exhibit that was not identified on a party's exhibit list, and will not consider any exhibit which is not relevant to the issues of fact and law for trial.

One week prior to trial, each party must deliver to the chambers of Judge Victoria S. Kaufman the original and one copy of a notebook containing all of that party's trial exhibits, or the parties may deliver a joint exhibit notebook.

CLOSING ARGUMENTS:

Any closing arguments by the parties at the conclusion of trial cannot exceed **20 minutes** per party.

The Court will issue an order incorporating its trial procedures, the related deadlines and the trial dates.

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Chapter 7

Debtor(s):

Juan Carlos Orozco

Represented By
Faith A Ford

Defendant(s):

Juan Carlos Orozco

Represented By
Gerald N Silver

Plaintiff(s):

Howard Leese

Represented By
I Donald Weissman

Bobby Kimball

Represented By
I Donald Weissman

Robert D Parker

Represented By
I Donald Weissman

Trustee(s):

Diane Weil (TR)

Pro Se

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1:16-10166 Alice Sungjin Cheong

Chapter 7

Adv#: 1:16-01062 Kim et al v. Cheong et al

#22.00 Status conference re: complaint for non-dischargeability for debts incurred through false pretenses, false representation or actual fraud under 11 U.S.C. §523(a)(2)(A)

fr. 8/10/16

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:30 p.m. on November 9, 2016**, to be heard with the plaintiffs' motion for default judgment [doc. 23].

Appearances are excused on October 5, 2016.

Party Information

Debtor(s):

Alice Sungjin Cheong	Pro Se
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Defendant(s):

DOES 1 through 10, inclusive	Pro Se
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Alice Sungjin Cheong	Pro Se
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Plaintiff(s):

KYUNG CHUL KIM	Represented By Daren M Schlecter
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Mi Hee Kim	Represented By Daren M Schlecter
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Trustee(s):

Diane Weil (TR)	Pro Se
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Diane Weil (TR)	Pro Se
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US Trustee(s):

United States Trustee (SV)

Pro Se

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1:16-10543 Dean Albert Maury Cazares

Chapter 7

Adv#: 1:16-01080 Olde Wolbers et al v. Cazares

#23.00 Status Conference re: Complaint objecting to discharge

fr. 7/20/16; 9/14/16

Stipulation to continue filed 9/21/16

Docket 1

***** VACATED *** REASON: Order entered 9/27/16 continuing hearing to 10/19/16 at 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean Albert Maury Cazares

Represented By
Ian Landsberg

Defendant(s):

Dean Albert Maury Cazares

Pro Se

Plaintiff(s):

Raymond Herrera

Represented By
Larry Castruita

Christian Olde Wolbers

Represented By
Larry Castruita

Trustee(s):

Diane Weil (TR)

Pro Se

Diane Weil (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:16-10981 Justin Manou Hassan Vaezi

Chapter 7

Adv#: 1:16-01096 FTC Commercial Corp v. Vaezi

#24.00 Status conference re: complaint to determine dischargeability of a debt and objection to discharge

Docket 1

***** VACATED *** REASON: Order entered 10/4/16 reassigning case to Judge Barash**

Tentative Ruling:

The Court will transfer this adversary proceeding and the related bankruptcy case to the Hon. Martin R. Barash. This status conference is continued to **1:30 p.m. on November 10, 2016**, to be heard in Courtroom 303 of the courthouse located at 21041 Burbank Blvd., Woodland Hills, California 91367.

The Court will prepare the orders reassigning the bankruptcy case and this adversary proceeding.

Appearances on October 5, 2016 are excused.

Party Information

Debtor(s):

Justin Manou Hassan Vaezi

Represented By
Navid Kohan

Defendant(s):

Justin Manou Hassan Vaezi

Pro Se

Plaintiff(s):

FTC Commercial Corp

Represented By
Nico N Tabibi

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:16-11150 Laura Kay James

Chapter 7

Adv#: 1:16-01104 James et al v. Navient Solutions, Inc. et al

#24.10 Status conference re: complaint to determine dischargeability of student loan(s)

fr. 9/21/16

Docket 1

Tentative Ruling:

Contrary to Federal Rule of Bankruptcy Procedure 7004(b)(3), the plaintiffs did not serve defendant Navient Solutions, Inc. **"to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...."** (emphasis added).

Moreover, it is not apparent that the plaintiffs served defendant Navient Solutions, Inc. at a correct address. Based on the California Secretary of State website, the plaintiffs must serve this entity (***to the attention of an officer, a managing or general agent***) at one of the following addresses: (A) 2001 Edmund Halley Drive, Reston, VA 20191; or (B) 2710 Gateway Oaks Dr., Ste 150N, Sacramento, CA 95833.

Regarding SLC Student Loan Trust, the plaintiffs served this defendant at a Sioux Falls, South Dakota address. The Delaware Secretary of State's website lists several entities with this name with addresses for service of process located in Delaware. These entities are mentioned at the following web address:

<http://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>

After visiting that website, the plaintiffs may enter "SLC Student Loan Trust" into the search field. This search yields several results. The plaintiffs must specify which of these entities is the proper defendant and serve that entity at the address found on the website. If the entity is a corporation, the plaintiffs must comply with the service rules outlined above. If the entity is a trust, the plaintiffs must substitute the trustee of the trust as the real party in interest. Federal Rule of Civil Procedure 17(a)(1)(E).

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Upon naming the trustee as a defendant, if the trustee is a corporation, the plaintiffs must serve the trustee pursuant to the rules above.

The original summons having expired, the plaintiffs must request an alias summons from the Court. The plaintiffs can obtain an alias summons from the Court by sending a request letter to Courtroom Services, Attn: Patty Garcia, 21041 Burbank Blvd., Woodland Hills, CA 91367. The plaintiffs must attach to this letter official Court Form F 7004-1, having completed the top caption and clearly indicating such summons is an alias summons by interlineating "Alias" where appropriate on the form.

This alias summons must be served upon the defendants within 14 days of its issuance by the Court, pursuant to Fed. R. Bankr. P. 7004 and Local Bankr. R. 7004-1(b). The plaintiffs must attach to the alias summons a copy of the complaint and a copy of Judge Kaufman's Status Conference Instructions.

To demonstrate proper service of the alias summons and the complaint and instructions to be served with that summons, the plaintiffs must file a signed proof of service indicating that the alias summons and the documents to be served with that summons were timely served on defendant.

The Court will continue this status conference to **1:30 p.m. on November 16, 2016**. No later than **November 2, 2016**, the plaintiffs must file a proof of service demonstrating proper service of the alias summons, complaint and status conference instructions on the defendants, in accordance with the rules outlined above.

Party Information

Debtor(s):

Laura Kay James	Pro Se
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Defendant(s):

SLC Student Loan Trust	Pro Se
NY State Higher Ed	Pro Se
Navient Solutions, Inc.	Pro Se

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Joint Debtor(s):

Jake Guillermo James Pro Se

Plaintiff(s):

Jake Guillermo James Pro Se

Laura Kay James Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

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1:16-12097 N.E. Designs, Inc.

Chapter 11

Adv#: 1:16-01103 N.E. Designs, Inc. v. Goldberg

#25.00 Status conference re complaint for injunctive relief and declaratory relief

Docket 1

*** VACATED *** REASON: Notice of voluntary dismissal of adversary proceeding filed 8/16/16 [FRBP 7041(a)]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

N.E. Designs, Inc.

Represented By
Charles Shamash
Sandford Frey

Defendant(s):

Adam Goldberg

Pro Se

Plaintiff(s):

N.E. Designs, Inc.

Represented By
Sandford Frey

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1:09-13962 John Obara

Chapter 7

Adv#: 1:09-01239 AFC CAL, LLC et al v. Obara et al

#26.00 Motion to expunge 6 notices of pendency of actions and request for attorneys fees of \$3,382.50 against plaintiff and its counsel

Docket 199

Tentative Ruling:

Grant.

I. BACKGROUND

On April 7, 2009, John Obara and Myrna Castro (together, "Debtors") filed a voluntary chapter 7 petition.

On July 9, 2009, AFC CAL, LLC ("Plaintiff") filed a complaint (the "Complaint") against Debtors, initiating this adversary proceeding. The Complaint, amended on November 9, 2009 (the "FAC") [doc. 9], requested nondischargeability of the debts owed to Plaintiff pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(6). Plaintiff also objected to Debtors' discharge under 11 U.S.C. §§ 727(a)(2), (a)(4), (a)(5) and (a)(7).

On February 8, 2013, the Court entered judgment (the "Judgment") [doc. 120] in favor of Plaintiff on its 11 U.S.C. §§ 523(a)(2) and (6) claims and in favor of Debtors on Plaintiff's claims under 11 U.S.C. § 727.

On February 21, 2013, Debtors filed Notices of Appeal to the Bankruptcy Appellate Panel (the "BAP") [docs. 123 and 124]. On May 28, 2014, the BAP entered judgment affirming this Court on the issues of nondischargeability and reversing on the issue of damages (the "BAP Judgment"). On June 26, 2014, Debtors appealed the BAP Judgment to the Ninth Circuit Court of Appeals (the "Ninth Circuit") [docs. 184 and 185]. On August 25, 2014, the Ninth Circuit dismissed Ms. Castro's appeal [doc. 187] and on October 24, 2014, the Ninth Circuit dismissed Mr. Obara's appeal [doc. 188].

On August 17, 2016, Plaintiff brought a motion to amend the Judgment to add

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"nonparty alter egos" as judgment debtors (the "Motion to Amend") [doc. 193]. The alleged alter ego judgment debtors Plaintiff seeks to include via the Motion to Amend are OFRI, Inc. and Armida Henriquez (together, "Alleged Judgment Debtors").

Shortly after filing the Motion to Amend, Plaintiff filed with the Ventura County Recorder's Office six Notices of Pendency of Action (otherwise known as *lis pendens*) as to six properties owned by the Alleged Judgment Debtors (the "Six Properties"). The Six Properties were not listed in Debtors' schedules and statements.

On September 6, 2016, the Alleged Judgment Debtors filed a motion to expunge the *lis pendens* (the "Motion") [doc. 199]. Plaintiff opposed the Motion (the "Opposition") [doc. 207] and the Alleged Judgment Debtors filed a reply to the Opposition (the "Reply") [doc. 209].

II. ANALYSIS

A. Standing

Pursuant to Cal. Code Civ. Proc. § 405.30, "a person who is not a party to the action shall obtain leave to intervene from the court *at* or before the time the party brings the motion to expunge the notice." (emphasis added).

Plaintiff asserts that the Alleged Judgment Debtors do not have standing "unless and until [the Motion] is granted or until [Alleged Judgment Debtors] obtain relief to intervene in the current adversary case." Opposition, p. 6. However, under the plain language of the statute, the Alleged Judgment Debtors may request intervention at the same time they move to expunge. To this end, in the Second Reply, the Alleged Judgment Debtors "respectfully request that the Court consider its motion to expunge to also include a motion for intervention." Second Reply, p. 3. *See Myvett v. Litton Loan Servicing, LP*, 2009 WL 960223, at *1 (N.D. Cal. Apr. 8, 2009) (unpublished disposition) (granting leave to intervene at the same time the court granted a nonparty's motion to expunge *lis pendens*).

The Court will allow the Alleged Judgment Debtors to intervene for the purpose of requesting expungement of the *lis pendens*.

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B. Propriety of the Lis Pendens

Cal. Code Civ. Proc. § 405.20 states that "[a] party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged..." A "real property claim" is defined in Cal. Code Civ. Proc. § 405.4 as "the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility."

The Ninth Circuit Court of Appeals summarized the filing of a *lis pendens* under California law as follows:

A *lis pendens* filed with the county recorder is a notice that an action is pending "concerning real property or affecting the title or right of possession of real property." Cal. Civ. Pro. Code § 409(a). The meaning of the phrase "concerning real property" is identical to "affecting the title or right of possession of real property." *Burger v. Superior Court*, 151 Cal.App.3d 1013, 1017, 199 Cal.Rptr. 227 (1984). Recordation of a *lis pendens* binds all subsequent parties who acquire an interest in the property by the judgment thereafter rendered in the action. *Urez Corp. v. Superior Court*, 190 Cal.App.3d 1141, 1144, 235 Cal.Rptr. 837 (1987).

In re Lane, 980 F.2d 601, 603–04 (9th Cir. 1992).

Here, the Court rendered judgment. To that extent, the action is no longer pending. However, Plaintiff filed the Motion to Amend. It is unclear if that is sufficient to constitute a pending action for purposes of recording a *lis pendens*. Either way, as discussed below, recordation of the *lis pendens* was improper. Plaintiff has not cited any authority supporting its position that recording the *lis pendens* was appropriate. Plaintiff's citation to *Kirkeby v. Superior Court of Orange County*, 33 Cal.4th 642 (2004), is inapposite. There, the relevant pleading asserted a fraudulent conveyance claim. *Kirkeby*, 33 Cal.4th at 649. The court found that "a fraudulent conveyance claim requesting relief pursuant to Civil Code section 3439.07, subdivision (a)(1), if successful, may result in the voiding of a transfer of title of specific real property." *Id.*

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The same is not true here. The FAC, upon which Plaintiff obtained an order of nondischargeability, contained causes of action based on: actual fraud, false pretenses, or false representations; willful and malicious injury; transfer with the intent to hinder, delay, or defraud a creditor or officer of the estate; knowingly and fraudulently making a false oath; and failure to satisfactorily explain any loss of assets or deficiency of assets to meet the debtor's liabilities.

The objects of these causes of action were business debts, business assets (including equipment and vehicles), financing debts and jewelry. None of these causes of action mention title to real property. The adversary proceeding is solely concerned with determining the dischargeability of some of Debtors' debts, based on the causes of action contained in the FAC. As such, this adversary proceeding is not an "action in which that real property claim is alleged." Cal. Code Civ. Proc. § 405.20.

The Motion to Amend does not transform this adversary proceeding into an action concerning real property. Regardless of how the Court eventually rules on the Motion to Amend, the FAC would still be the relevant document pursuant to Cal. Code Civ. Proc. § 405.4 for determining whether a party has a "real property claim," and therefore may record *lis pendens*. The text of § 405.4 specifies that only "pleadings" and the claims and causes of action contained therein qualify as a "real property claim" pursuant to Cal. Code Civ. Proc. § 405.20. Because the Motion to Amend is not a pleading, it cannot satisfy Cal. Code Civ. Proc. § 405.20.

Of note, even the relief requested in the Motion to Amend would not "affect...title to, or the right to possession of, specific real property or...the use of an easement identified in the pleading...." Cal. Code Civ. Proc. § 405.4. Because the FAC does not include claims that fall within the purview of Cal. Code Civ. Proc. § 405.4, the *lis pendens* were improperly recorded and should be expunged.

Finally, the Alleged Judgment Debtors request attorneys' fees pursuant to Cal. Code Civ. Proc. § 405.38, which states that "[t]he court shall direct that the party prevailing

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on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust."

The Court will award the Alleged Judgment Debtors \$2,447.50. The Court will also award the Alleged Judgment Debtors attorneys' fees arising from the Alleged Judgment Debtors' counsel's appearance at the hearing on the Motion and travel time to the courthouse. However, the Court will not award fees for *both* attorneys' appearance and travel. Rather, the Court will award \$1,485 for attorney Joseph S. Fischbach's estimated fees incurred traveling to and appearing in Court, but not the estimated fees for travel and appearance incurred by attorney Ian Kasoff.

The Court will deny the Alleged Judgment Debtors' request for additional damages. First, because this request was first brought up in the Alleged Judgment Debtors' reply, it is belatedly asserted. Second, the Alleged Judgment Debtors have not cited any authority for their request for damages. Cal. Code Civ. Proc. § 405.38 only provides for attorneys' fees and costs, not additional damages. Consequently, the Alleged Judgment Debtors' request for additional damages is denied.

III. CONCLUSION

The Court will grant the Motion and expunge the *lis pendens*.

The Alleged Judgment Debtors must submit an order within seven (7) days.

Party Information

Debtor(s):

John Obara

Represented By
Charles Shamash

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Defendant(s):

Myrna Castro

Represented By
Raymond H. Aver

John Obara

Represented By
Raymond H. Aver
Charles Shamash

Joint Debtor(s):

Myrna Castro

Represented By
Charles Shamash

Plaintiff(s):

AFC CAL, LLC

Represented By
Tom Roddy Normandin
Nichole M Wong

Trustee(s):

Diane Weil (TR)

Pro Se

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1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

#27.00 Plaintiff's Motion to strike defendants' request for judicial notice

Docket 83

Tentative Ruling:

The Court will take judicial notice of the documents in the defendants' request for judicial notice (the "RJN") [doc. 80] and deny the plaintiff's motion to strike the requests (the "Motion to Strike") [doc. 83].

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Federal Rule of Civil Procedure ["Rule"] 12(b)(6) motion." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (quoting *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994)). Rule 12(b)(6) expressly provides that when "matters outside the pleading are presented to and not excluded by the court, the motion *shall* be treated as one for summary judgment and disposed of as provided in Rule 56. . . ." Rule 12(b)(6).

There are, however, two exceptions to the requirement that consideration of extrinsic evidence converts a 12(b)(6) motion to a summary judgment motion. First, a court may consider "material which is properly submitted as part of the complaint" on a motion to dismiss without converting the motion to dismiss into a motion for summary judgment. *Branch*, 14 F.3d at 453 (citation omitted). If the documents are not physically attached to the complaint, they may be considered if the documents' "authenticity ... is not contested" and "the plaintiff's complaint necessarily relies" on them. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir.1998). Second, under Fed.R.Evid. 201, a court may take judicial notice of "matters of public record." *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir.1986).

Lee, 250 F.3d at 688-89. "[W]hen a court takes judicial notice of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.'" *Id.*, at 690 (quoting *Southern Cross Overseas Agencies, Inc. v. Wah*

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Kwong Shipping Grp. Ltd., 181 F.3d 410, 426-27 (3rd Cir. 1999)).

For purposes of the defendants' motion to dismiss, the Court need not consider the "truth of the facts" within any of the documents in the RJN. The Court will only take judicial notice of the existence of the documents.

In fact, the only document cited by the Court in its analysis of the defendants' motion to dismiss is Exhibit 1 to the RJN, which is the California Supreme Court's denial of Plaintiff's petition for review. The Court did not take as true any of the findings within the decision, only the effect of the decision on the procedural posture of this case.

Consequently, the Court will deny the Motion to Strike. The Court will also overrule the plaintiff's evidentiary objections [doc. 82].

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

Party Information

Debtor(s):

Marilyn S. Scheer

Represented By
David M Reeder

Defendant(s):

Joann Remke

Represented By
Kevin W Coleman
Tracey L McCormick

Kenneth E. Bacon

Represented By
Kevin W Coleman
Tracey L McCormick

Joseph Dunn

Represented By
Kevin W Coleman
Tracey L McCormick

State Bar Of California

Represented By
Tracey L McCormick

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Luis J Rodriguez

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Represented By
Kevin W Coleman
Tracey L McCormick

Plaintiff(s):

Marilyn S. Scheer

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

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1:13-14649 Marilyn S. Scheer

Chapter 7

Adv#: 1:13-01241 Scheer v. State Bar Of California et al

#28.00 Status conference re complaint for declaratory and injunctive relief, and monetary damages for: (1) violation of the automatic/permanent stay of 11 U.S.c. §§362,524 and 727 and; (2) Discriminatory treatment under 11 U.S.C. §525(a)

fr. 7/20/16

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marilyn S. Scheer

Represented By
David M Reeder

Defendant(s):

Joann Remke

Represented By
Kevin W Coleman

Kenneth E. Bacon

Represented By
Kevin W Coleman

Joseph Dunn

Represented By
Kevin W Coleman

State Bar Of California

Represented By
Kevin W Coleman

Luis J Rodriguez

Represented By
Kevin W Coleman

Plaintiff(s):

Marilyn S. Scheer

Pro Se

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

Wednesday, October 05, 2016

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Trustee(s):

David Seror (TR)

Pro Se

David Seror (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Represented By
Katherine Bunker

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 301 Calendar**

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1:14-10041 Roger Bernard McClain

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Adv#: 1:14-01058 Crown Coachworks, Inc. v. McClain

#29.00 Motion of plaintiff Crown Coachworks, Inc. for award of attorneys fees

fr. 7/6/16; 7/27/16, 9/21/16

Docket 80

Tentative Ruling:

The Court will adopt the tentative ruling issued on July 27, 2016.

The plaintiff refers to Trial Exhibit 14 as evidence that the state court awarded the plaintiff attorneys' fees. However, Exhibit 14 includes only the plaintiff's *request* for attorneys' fees in the amount of \$3,462.37. Exhibit 14 contains no indication that the state court actually awarded attorneys' fees. As noted in the Court's prior tentative ruling, Exhibit 15, which is the state court's judgment, makes no mention of an award of attorneys' fees. Moreover, the judgment awarded the plaintiff a total of \$56,049.25, which is \$4,082.37 less than the plaintiff's requested total of \$60,131.62. Because the state court did not award the plaintiff the full \$60,131.62 requested, and because the judgment does not explicitly state that the \$56,049.25 actually awarded includes an award of attorneys' fees, there is no evidence that the plaintiff obtained an award of attorneys' fees in state court.

The only explanation offered by the plaintiff for the discrepancy between the state court's award of \$56,049.25 and the plaintiff's request of \$60,131.62 is that the plaintiff used a 10% interest rate for its interest calculation whereas the state court used a 7% interest rate for its calculation. However, if this were true, the state court would have awarded the plaintiff \$56,367.32, not \$56,049.25. In addition, as noted by the defendant, the interest rate was properly calculated at 10% pursuant to Cal. Civ. Code § 3289(b).

As such, the plaintiff has not demonstrated that it obtained an award of attorneys' fees

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in state court and the Court will adopt its tentative ruling from July 27, 2016.

7/27/2016 Tentative:

Grant in part and deny in part.

I. BACKGROUND

On May 30, 2006, Crown Coachworks, Inc. ("Plaintiff") filed a lawsuit against Roger McClain ("Defendant"), alleging: (1) Conversion; (2) Fraud; (3) Money Had and Received; (4) Negligence; (5) Intentional Interference with Prospective Economic Advantage; and (6) Negligent Interference with Economic Advantage.

On May 13, 2008, the parties and their counsel executed a joint document entitled *Stipulation for Entry of Judgment* (the "Stipulation") [Trial Exhibit 11]. In relevant part, the Stipulation included the following terms:

- 1) Plaintiff shall recover judgment from Defendant in the principal sum of \$45,000. No interest shall accrue unless and until a judgment is actually entered, in which event interest shall accrue from the date of filing this action, according to law.
- 2) Each party to this Stipulation shall bear its own attorney's fees and costs unless and until there is a default pursuant to the terms of this Stipulation.
...
- 6) If Defendant fails to make any of the payments to Plaintiff...then Defendant shall be in default under this Stipulation, if, and only if, after 7 days notice from the Plaintiff to make any such payment, the Defendant then fails to make any such payment to the Plaintiff. If the Defendant makes any such payment within said 7 day grace period, then the Defendant shall not be in default under this Stipulation. Further, if any judgment is entered pursuant to this Stipulation, then the amount of any such judgment shall be the \$45,000.00, less any payments made by Defendant pursuant to Paragraph 4 herein.
...
- 14) This Stipulation shall be deemed mutually drafted by the parties and any ambiguity, if there is any, shall not be construed against either party due to

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the fact that party was responsible for the drafting of the document.

[Trial Exhibit 11]. Defendant made approximately 11 months of payments under the Stipulation. Joint Pretrial Statement [doc. 62], ¶ 20. Eventually, Defendant defaulted when he failed to make payments provided by the Stipulation. *Id.*, ¶ 19.

On May 18, 2009, after Defendant defaulted pursuant to the Stipulation, Plaintiff filed an ex parte application to enter judgment pursuant to the Stipulation [Trial Exhibit 14]. On May 19, 2009, the state court entered judgment in favor of Plaintiff (the "State Court Judgment") [Trial Exhibit 15]. The State Court Judgment reads, in full:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that
PLAINTIFF shall have and recover from [DEFENDANT] as follows:

Judgment in the sum of \$56,049.25.
Plaintiff may execute immediately upon entry.

[Trial Exhibit 15].

On January 3, 2014, Defendant filed a joint voluntary chapter 7 petition with his wife.

On March 24, 2014, Plaintiff filed a complaint against Defendant, seeking nondischargeability of the debt owed to it pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and (a)(6) and denial of Defendant's discharge pursuant to 11 U.S.C. § 727(a)(4).

On May 2, 2016, the Court entered judgment in favor of Plaintiff [doc. 76]. The Court found that Defendant embezzled money from Plaintiff and that the debt owed to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(4). *See Archer v. Warner*, 538 U.S. 314, 123 S.Ct. 1462, 155 L.Ed.2d 454 (2003). The Court found in favor of Defendant on the remaining claims [doc. 74].

On May 16, 2016, Plaintiff filed a motion requesting attorneys' fees and costs (the "Motion") [doc. 80]. Plaintiff also filed a Bill of Costs [doc. 81]. The Motion requests attorneys' fees and costs based on the contractual agreement between the parties found in paragraph 2 of the Stipulation.

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On June 22, 2016, Defendant filed an opposition to the Motion [doc. 94]. Defendant asserts that the relevant provision in the Stipulation cannot be read as a fee shifting provision that makes Defendant liable for attorneys' fees and costs incurred by Plaintiff in this proceeding.

II. ANALYSIS

A. *California Code of Civil Procedure §§ 685.040 and 1033.5(a)(10)(A)*

Pursuant to Cal. Code of Civ. Proc. § 685.040—

The judgment creditor is entitled to the reasonable and necessary cost of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.

Section 1033.5(a)(10)(A) states that attorney's fees are allowable as costs when authorized by contract.

"[Section] 685.040 entitles a judgment creditor to obtain post-trial attorneys' fees incurred to enforce the judgment if 'the underlying judgment included an award of contractually-based attorneys' fees[.]' *In re Rodarte*, 2012 WL 11980860, at *4 (C.D. Cal. Aug. 24, 2014) (citing *Jaffe v. Pacelli*, 165 Cal.App.4th 927, 935 (Ct. App. 2008)). This award, however, "is not based on the survival of the contract, but is instead based on the award of attorney fees and costs in the trial judgment." *Jaffe*, 165 Cal.App.4th at 935. As explained in *Jaffe*, the "resulting judgment" must include an attorney fees provision that was awarded based on a contractual agreement to shift fees between the parties:

[T]he promissory note that gave rise to the underlying case and to the resulting judgment rendered against Pacelli included an attorney fees provision. *The October 7, 1996, judgment contained an attorney fees award* based on the contractual provision in the promissory note,

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pursuant to Code of Civil Procedure section 1033.5, subdivision (a) (10)(A).

Thus, Jaffe is entitled pursuant to Section 685.040 to recover reasonable attorney fees and necessary costs incurred in the bankruptcy proceedings to enforce the judgment.

Id., at 938 (emphasis added).

Under § 685.040, Plaintiff is entitled to costs. The statute clearly states that judgment creditors, like Plaintiff, are entitled to the "reasonable and necessary cost of enforcing a judgment." As noted in *Jaffe*, enforcement includes ensuring that a debt is nondischargeable once a bankruptcy case is filed. *Id.*

However, attorneys' fees are included as costs only if "if the underlying judgment includes an award of attorney's fees to the judgment creditor." Cal. Code of Civ. Proc. § 685.040. Here, the judgment entered by the state court in response to the stipulation for judgment does not include an award of attorneys' fees. As such, Plaintiff is not entitled to attorneys' fees under this statute.

B. California Civil Code § 1717

Pursuant to Cal. Civ. Code § 1717(a)—

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

"Civil Code § 1717 makes an otherwise unilateral contractual obligation to pay attorney's fees into a reciprocal one in an action on the contract but Civil Code § 1717 is not applicable in a tort action." *In re Bic Pho*, 2016 WL 1620375, at *3 (Bankr. N.D. Cal. Apr. 20, 2016); *see also Santisas v. Goodin*, 17 Cal.4th 599, 615 (1998) (finding that § 1717 applies only to fees incurred to litigate contract claims); *and In re*

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Deuel, 482 B.R. 323, 328 (Bankr. S.D. Cal. 2012) (same).

"A judgment on the embezzlement or larceny claims arises from independent bad acts of the defendant and has the effect of establishing rights of the parties irrespective of any rights or obligations on a contract. Therefore,...actions under § 523(a)(4) for embezzlement and larceny are not actions 'on a contract' and cannot serve as the basis for attorneys' fees under § 1717." *In re Quinones*, 2015 WL 9412851, at *18 (Bankr. N.D. Cal. Dec. 18, 2015).

Here, Plaintiff prevailed on its embezzlement claim. This claim cannot be categorized as an "action on a contract" and, as a result, Plaintiff is not entitled to fees under this statute.

C. California Code of Civil Procedure §§ 1021 and 1032

Cal. Code of Civ. Proc. §§ 1021 and 1032 provide two avenues through which parties may contract to shift fees to one party or another.

"Collectively, by their terms, [Cal. Code of Civ. Proc.] § 1021, and [Cal. Code of Civ. Proc.] §§ 1032 and 1033 make clear that attorney's fees may be sought by a prevailing party in disputes sounding in either tort or contract. Indeed, as the California courts have uniformly ruled, [Cal. Code of Civ. Proc.] § 1021 and [Cal. Code of Civ. Proc.] § 1032 are the *only* bases for awards of attorney's fees in tort disputes when provided by agreement of the parties." *In re Charalambous*, 2013 WL 3369299, at *6 (B.A.P. 9th Cir. July 3, 2013) (citing *Xuereb v. Marcus & Millichap, Inc.*, 3 Cal.App.4th 1338, 1342 (Ct. App. 1992) and *Maynard v. BTI Grp, Inc.*, 216 Cal.App.4th 984 (Ct. App. 2013)).

Pursuant to Cal. Code of Civ. Proc. § 1021—

Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

"[Section 1021] permits attorney's fees agreements, but contains no restriction as to

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the nature of the lawsuits for which such fees may be recovered. Several recent California cases have underscored this view, holding that where attorney's fees are not recoverable for a non-contract action under section 1717, they may nonetheless be recoverable under section 1021." *3250 Wilshire Blvd. Bldg. v. W.R. Grace & Co.*, 990 F.2d 487, 489 (9th Cir. 1993) (citing *Lerner v. Ward*, 13 Cal.App.4th 155 (Ct. App. 1993) and *Xuereb*, 3 Cal.App.4th 1338). "We conclude, therefore, that California law permits recovery of attorney's fees by agreement, for tort as well as contract actions." *Id.*

Pursuant to Cal. Code of Civ. Proc. § 1032(b)—

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Under Cal. Code of Civ. Proc. § 1033.5(a), the following items are allowable as costs pursuant to § 1032:

- (10) Attorney's fees, when authorized by any of the following:
 - (A) Contract.
 - (B) Statute.
 - (C) Law.

"California Code of Civil Procedure § 1032(b) entitles a 'prevailing party' to 'recover costs' as a matter of right 'in any action or proceeding.' Costs may include attorney's fees when authorized by contract, even when the action is not 'on a contract.'" *In re Mac-Go Corp.*, 541 B.R. 706, 715 (Bankr. N.D. Cal. 2015) (citing Cal. Code of Civ. Proc. § 1033.5(a)(10)).

"California Code of Civil Procedure § 1032(a)(4) defines a 'prevailing party' to include (a) the party with a net monetary recovery; (b) a defendant in whose favor a dismissal is entered; (c) a defendant where neither plaintiff nor defendant obtains any relief; and (d) a defendant as against those plaintiffs who do not recover any relief

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against that defendant. Where a party falls squarely within one of these four definitions, a trial court has little discretion in determining the prevailing party, particularly when there is a party with a 'net monetary recovery.'" *Id.* (citing *Goodman v. Lozano*, 47 Cal.4th 1327 (2010)).

First, Plaintiff is a prevailing party for purposes of § 1032. Plaintiff obtained a "net monetary recovery" by preventing its judgment from being subject to discharge. Although Plaintiff did not prevail on *all* claims, Plaintiff was successful in accomplishing its main objective, which was to make the debt owed to it nondischargeable. Thus, the only issue is whether, pursuant to §§ 1021 and 1032, the parties have contracted to award Plaintiff attorneys' fees *in this particular context*.

"As to tort claims, the question of whether to award attorney's fees turns on the language of the contractual fee provision, i.e., whether the party seeking fees has prevailed within the meaning of the provision and whether the type of claim is within the scope of the provision." *Bic Pho*, 2016 WL 1620375 at *4; *see also Brown Bark III L.P. v. Haver*, 219 Cal.App.4th 809, 827–28 (finding that fee provision must be broad enough to cover tort claims); *3250 Wilshire Blvd.*, 990 F.2d at 489 (finding § 1021 provision applied in tort action because it allowed fees to prevailing party for "any suit" or other proceeding with respect to the "subject matter or enforcement" of the agreement).

Plaintiff points to the provision in paragraph 2 of the Stipulation, which reads:

Each party to this Stipulation shall bear its own attorney's fees and costs unless and until there is a default pursuant to the terms of this Stipulation.

[Trial Exhibit 11]. Defendant asserts that this provision is ambiguous and cannot be read to award Plaintiff fees. The Court must turn to California's rules on contract interpretation to assess this provision.

D. Rules of Contract Interpretation

"Where a party claims a right to recover attorneys' fees based on a contract, the claiming party typically must first establish the existence of a valid enforceable agreement that contains an attorneys' fees provision, and then must establish that the

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provision entitles recovery of attorneys' fees under the particular circumstances of the litigation." *Deuel*, 482 B.R. at 327.

A contract provision is "considered ambiguous when it is capable of two or more constructions, both of which are reasonable." *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 40 Cal.4th 19, 27 (2006).

Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.) The 'clear and explicit' meaning of these provisions, interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage' (*id.*, § 1644), controls judicial interpretation. (*Id.*, § 1638.) (2) Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.

Santisas, 17 Cal.4th at 608. The contract must also be read as a whole, allowing other provisions to give effect to every part, and if reasonable, aid in the interpretation of the other. Cal. Civ. Code § 1641; *see also City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal.App.4th 445, 473 (1998). However, when an inconsistency exists, a court must give effect to the parties' main purpose. *Sy First Family Ltd. Partnership v. Cheung*, 70 Cal.App.4th 1334, 1342 (1999).

If an ambiguity exists, a court may allow the parties "full opportunity to produce evidence of the facts, circumstances and conditions surrounding its execution as well as the conduct of the parties to the contract." *Walter E. Heller Western, Inc. v. Tecrim Corp.*, 196 Cal.App.3d 149, 158 (Ct. App. 1987). The court may also admit extrinsic evidence "to explain or interpret ambiguous language." *Rosenfeld v. Abraham Joshua Heschel Day School, Inc.*, 226 Cal.App.4th 886, 897 (Ct. App. 2014).

"[A] broadly phrased contractual attorney fee provision may support an award to the prevailing party in a tort action." *Gil v. Mansano*, 121 Cal.App.4th 739, 743 (Ct. App. 2004); *see also Thompson v. Miller*, 112 Cal.App.4th 327, 333-37 (Ct. App. 2003); *Santisas*, 17 Cal.4th at 607 (holding that language reading "arising out of the execution of the agreement" was sufficient); *Allstate Ins. Co. v. Loo* 46 Cal.App.4th

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1794, 1799 (Ct. App. 1996) (same with clause that read "relating to the demised premises"); *Moallem v. Coldwell Banker Com. Group, Inc.*, 25 Cal.App.4th 1827, 1831 (Ct. App. 1994) (same when contract read "relating to the contract"); and *Xuereb*, 3 Cal.App.4th at 1342 (same with provision reading "to which this Agreement gives rise").

Here, that the provision at issue is a fee shifting clause is not ambiguous because it is not "capable of two or more constructions, both of which are reasonable." *TRB Investments*, 40 Cal.4th at 27. Interpreting the provision in its "ordinary and popular sense" leads to this conclusion. Cal. Civ. Code § 1644.

Merriam-Webster defines "unless" as "except on the condition that" or "under any other circumstance than." Merriam-Webster (June 30, 2016). Merriam-Webster defines "until" as "up to (a particular time)." *Id.* The parties define what constitutes a default for purposes of the Stipulation in paragraph 6 of the Stipulation. Moreover, the parties agreed to bear their own costs "except on the condition that" and "up to" the time that a party defaults. The Court concludes that this provision is a fee-shifting clause.

However, it is unclear from this provision in which scenario the defaulting party is to pay the other party's fees and costs. As noted above, a fee-shifting provision in a contract "must establish that the provision entitles recovery of attorneys' fees *under the particular circumstances of the litigation.*" *Deuel*, 482 B.R. at 327 (emphasis added).

The only portion of this provision that provides a hint is the phrase "unless and until there is a *default pursuant to the terms of this Stipulation.*" (emphasis added). The relevant terms of the Stipulation discuss Defendant's payment plan and an automatic entry of a judgment in favor of Plaintiff should Defendant fail to make payments on the plan. Black's Law Dictionary defines "default" as "[t]he omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due." Black's Law Dictionary (10th ed. 2014). As such, Defendant's legal and contractual duties pursuant to the Stipulation include timely making the payments as set forth in the Stipulation.

Were Plaintiff to sue Defendant for breach of contract, it appears that Plaintiff would be entitled to attorneys' fees and costs for enforcing the Stipulation. The judgment in

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this adversary proceeding, however, was based on a tort. It appears this provision does not cover attorneys' fees incurred in litigating torts which *preceded* the parties' entry into the Stipulation, such as Defendant's embezzlement. *See* Cal. Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting....").

III. CONCLUSION

The Court will award Plaintiff its costs of \$2,963.86, which includes the costs set forth in its Bill of Costs and the additional costs set forth in the declarations attached to the Motion.

The Court will deny Plaintiff's request of attorneys' fees.

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

Party Information

Debtor(s):

Roger Bernard McClain

Represented By
Joshua L Sternberg
Neil C Evans

Defendant(s):

Roger Bernard McClain

Represented By
Neil C Evans

Joint Debtor(s):

Nensi Sahinian McClain

Represented By
Joshua L Sternberg

Mediator(s):

Joel B. Weinberg

Represented By
Joel B Weinberg

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Plaintiff(s):

Crown Coachworks, Inc.

Represented By
Martin R Berman
Konrad L Trope

Trustee(s):

Diane Weil (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se