

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

**Thursday, October 20, 2016**

**Hearing Room 301**

10:30 AM

**1:10-16923 Antara Bioscience Inc.**

**Chapter 7**

**#1.00** Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Gumport Mastan, Attorneys for Chapter 7 Trustee

Docket 66

**Tentative Ruling:**

Amy L. Goldman, chapter 7 trustee – approve fees of \$2,750.00 and pro rata reduced payment to trustee of \$859.21 in fees.

Gumport | Mastan (“GM”), counsel to chapter 7 trustee – approve fees of \$34,629.00 and reimbursement of expenses of \$954.47. The Court will also approve the pro rata reduced payment to GM of \$10,782.36 in fees and \$298.21 for reimbursement of expenses, and authorize the subordination of GM’s fees to the payment of administrative taxes due. The Court will disallow \$54.00 in fees for the reasons stated below.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, \*11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, \*1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) (“Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.”).

Accordingly, the Court will disallow the following fees incurred in the “Case Administration” category:

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**CONT...**

**Antara Bioscience Inc.**

**Chapter 7**

<b>Date</b>	<b>Description</b>	<b>Timekeeper</b>	<b>Time</b>	<b>Fee</b>
2/26/2012	Update litigation index in In re Antara Bioscience.	KMM	0.10	\$5.00
4/23/2012	Update litigation index in In re Antara Bioscience.	KMM	0.10	\$5.00
5/4/2012	Update litigation index in In re Antara Bioscience.	KMM	0.10	\$5.00
4/7/2015	Update pleading clips.	KMM	2.00	\$13.00
5/18/2016	Update litigation index in In re Antara Bioscience, Inc.	KMM	0.20	\$13.00
6/16/2016	Update litigation index in In re Antara Bioscience, Inc.	KMM	0.20	\$13.00

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or her professionals 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 the relevant applicant(s) will be so notified.

**Party Information**

**Debtor(s):**

Antara Bioscience Inc.

Represented By  
Glenn Ward Calsada

**Trustee(s):**

Amy L Goldman (TR)

Represented By  
Amy L Goldman (TR)  
Peter J Mastan  
Leonard L Gumport  
Claire Wu

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**1:14-13456 Gingko Rose Ltd.**

**Chapter 11**

**#2.00** Application for interim fees and/or expenses for  
Michael R Totaro, Debtor's Attorney

Docket 355

**Tentative Ruling:**

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under section 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including - (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . . ." 11 U.S.C. § 330(a)(3). Except in circumstances not relevant to this case, "the court shall not allow compensation for - (i) unnecessary duplication of services; or (ii) services that were not - (I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

The proof of service of the application states that the applicant served the application on April 20, 2016. However, the application includes services performed until September 23, 2016. As a result, the proof of service is deficient. The applicant must file an amended proof of service or correctly serve notice of the hearing on the application.

In the application, the applicant does not disclose "the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration," as required by Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(A)(iii).

Lastly, the applicant did not file and serve 45 days' notice on other professionals in accordance with LBR 2016-1(a)(2)(A). The applicant must provide such notice prior

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**CONT... Gingko Rose Ltd.**

**Chapter 11**

to the hearing on the application.

Aside from these deficiencies, having assessed the issues raised by the objecting creditors, the Court is satisfied that applicant has justified an award of \$15,000 in fees and that such an award meets the applicable standards for the Court to approve such fees on an interim basis in accordance with 11 U.S.C. § 331.

To provide sufficient time for the applicant to correct the issues noted above, the Court intends to continue this hearing to **10:30 a.m. on December 8, 2016.**

**Party Information**

**Debtor(s):**

Gingko Rose Ltd.

Represented By

Marc A Lieberman

Stephen E Ensberg Esq

Michael R Totaro

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**1:15-10466 Ernest Charles Barreca**

**Chapter 7**

**#3.00** Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Docket 67

**Tentative Ruling:**

David Seror, chapter 7 trustee - approve fees of \$1,252.30 and reimbursement of expenses of \$15.90.

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his professionals 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 the relevant applicant(s) will be so notified.

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

Ernest Charles Barreca

Represented By  
Lewis R Landau  
Lewis R Landau  
Jeff Katofsky  
Jeff Katofsky

**Trustee(s):**

David Seror (TR)

Pro Se

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**1:15-12025 Carlos Aparicio Hernandez**

**Chapter 7**

**#4.00** Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 81

**Tentative Ruling:**

Nancy Hoffmeier Zamora, chapter 7 trustee - approve fees of \$1,299.02 and reimbursement of expenses of \$1,164.18.

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

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or her professionals 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 the relevant applicant(s) will be so notified.

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

Carlos Aparicio Hernandez

Represented By  
Steven L. Kimmel  
Steven L. Kimmel

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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**1:15-12608 Stacie Silver**

**Chapter 11**

**#5.00** Second Interim Application for allowance of compensation and reimbursement of expenses of Financial Relief Law Center, counsel for debtor and debtor-in-possession

Docket 77

**Tentative Ruling:**

In the application, the applicant does not disclose "the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration," as required by Local Bankruptcy Rule 2016-1(a)(1)(A)(iii).

In light of the debtor's income tax liability for 2015, and the funds in the debtor's possession as of August 31, 2016 (as set forth in her monthly operating report for August 2016), the debtor may lack sufficient funds to pay any approved fees of the applicant at this time.

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

Stacie Silver

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

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10:30 AM

**1:16-11769 Paula Dean Laddusire**

**Chapter 11**

**#6.00** First Interim Application for Allowance of Fees and Expenses to Debtor's counsel, Jerome S. Cohen

Docket 53

**Tentative Ruling:**

Cohen & Bordeaux, LLP ("Applicant"), counsel to the debtor and debtor in possession - approve fees in the amount of \$25,000, pursuant to 11 U.S.C. § 330.

Note: No response has been filed. Accordingly, no court appearance by Applicant 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 Applicant will be so notified.

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

Paula Dean Laddusire

Represented By

Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen

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**1:16-11769 Paula Dean Laddusire**

**Chapter 11**

**#7.00** First and Final Application for Compensation and Reimbursement of Expenses of Crowe Horwath LLP Accountants and Financial Advisors for Debtor

Docket 65

**Tentative Ruling:**

Contrary to Local Bankruptcy Rule ("LBR") 2016-1(a)(2)(B) and Federal Rule of Bankruptcy Procedure ("FRBP") 2002(a), the applicant did not serve all creditors with notice of the hearing on the application.

The Court will continue this hearing to **10:30 a.m. on November 17, 2016**. No later than **October 27, 2016**, the applicant must file proof of service of the application to all creditors, in accordance with LBR 2016-1(a)(2)(B) and FRBP 2002(a).

Appearances are excused on October 20, 2016.

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

Paula Dean Laddusire

Represented By  
Clifford Bordeaux  
Jerome S Cohen

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**1:16-10073 Shahla Dowlati**

**Chapter 11**

**#7.10** Second interim application for compensantion and reimbursement of expenses of Michael Jay Berger

fr. 10/6/16

Docket 129

**Tentative Ruling:**

Law Offices of Michael Jay Berger ("Applicant"), counsel to the debtor and debtor in possession - approve fees in the amount of \$9,285.50 and reimbursement of expenses in the amount of \$257.57, pursuant to 11 U.S.C. § 331, for the period between March 16, 2016 through August 31, 2016. Applicant may collect 85% of the approved fees and 100% of the approved expenses at this time.

Note: No response has been filed. Accordingly, no court appearance by Applicant 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 Applicant will be so notified.

**Party Information**

**Debtor(s):**

Shahla Dowlati

Represented By  
Michael Jay Berger

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1:00 PM

**1:13-11900 Whitney Green Lynn**

**Chapter 11**

**#8.00** Post confirmation status conference

fr: 12/5/13; 1/30/14; 3/13/14(stip); 5/1/14; 6/19/14(stip); 7/10/14;  
9/18/14; 2/19/15; 8/20/15; 8/18/16; 8/25/16

**STIP filed 10/6/16**

Docket 75

**Tentative Ruling:**

Although the stipulation attached as Exhibit B to the status report addendum and separately filed as doc. 184 is signed by counsel for both parties, the signature block for the reorganized debtor's attorney is incorrect. It states "Debtor Juliet April Daniels." Parties must re-submit a revised stipulation with a corrected signature page.

Notwithstanding the foregoing, the Court finds that the reorganized debtor has cured the deficiencies in his July 28, 2016 status report. Continue to **1:00 p.m. on February 16, 2017**. On or before **February 2, 2017**, the reorganized debtor must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **and be supported by evidence**.

Appearances on October 20, 2016 are excused.

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

Whitney Green Lynn

Represented By  
Douglas M Neistat

**Movant(s):**

Whitney Green Lynn

Represented By  
Douglas M Neistat

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**1:14-15621 Edward D. Roane**

**Chapter 11**

**#9.00** U.S. Trustee Motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

**Stipulation to continue filed 10/6/16**

Docket 164

**\*\*\* VACATED \*\*\* REASON: Order entered 10/7/16 continuing hearing to 11/17/16 at 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

Edward D. Roane

Represented By  
Michael Jay Berger

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1:00 PM

**1:15-11278 Henry A. Suarez, D.D.S., Inc.**

**Chapter 11**

**#10.00** Confirmation hearing re debtor's second amended chapter 11 plan of reorganization

Docket 154

**Tentative Ruling:**

Confirm *Debtor's Second Amended Chapter 11 Plan of Reorganization* dated August 8, 2016 [doc. 154]. No later than **April 6, 2017**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **April 20, 2017 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

**Party Information**

**Debtor(s):**

Henry A. Suarez, D.D.S., Inc.

Represented By  
M Jonathan Hayes  
Amelia Puertas-Samara

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**Thursday, October 20, 2016**

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1:00 PM

**1:15-11278 Henry A. Suarez, D.D.S., Inc.**

**Chapter 11**

**#11.00** Status conference re chapter 11 case

fr. 6/11/15; 10/15/15; 10/22/15; 3/10/16; 5/5/16; 7/7/16; 7/21/16; 8/25/16

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

Henry A. Suarez, D.D.S., Inc.

Represented By  
M Jonathan Hayes

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1:00 PM

**1:15-12608 Stacie Silver**

**Chapter 11**

**#12.00** Confirmation hearing re amended chapter 11 plan of reorganization

Docket 68

**Tentative Ruling:**

- NONE LISTED -

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

Stacie Silver

Represented By  
Andy C Warshaw  
Richard L. Sturdevant

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**Hearing Room 301**

1:00 PM

**1:15-12608 Stacie Silver**

**Chapter 11**

**#13.00** Status conference re chapter 11 case

fr. 9/17/15; 3/17/16; 5/12/16; 7/28/16; 8/25/16

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

Stacie Silver

Represented By  
Andy C Warsaw

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**Thursday, October 20, 2016**

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1:00 PM

**1:15-13076 Leonora Manor, LLC**

**Chapter 11**

**#14.00** Status conference re chapter 11 case

fr. 11/5/15; 3/10/16; 8/4/16; 8/25/16

Docket 1

**Tentative Ruling:**

In light of the debtor's pending Court-approved sale of its real property, the Court will continue this status conference to **1:00 p.m. on December 1, 2016.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report **MUST BE SUPPORTED BY EVIDENCE** in the form of declarations and supporting documents.

Appearances are excused on October 20, 2016.

**Party Information**

**Debtor(s):**

Leonora Manor, LLC

Represented By  
Daniel J Weintraub  
James R Selth

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**Thursday, October 20, 2016**

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**1:16-10317 Donmetz Home LLC**

**Chapter 11**

**#15.00** Status conference re chapter 11 case

fr. 3/24/16; 8/25/16

Docket 1

**Tentative Ruling:**

The Court will continue this status conference to **2:00 p.m. on December 1, 2016**, to be held in connection with the hearing on the adequacy of the debtor's proposed disclosure statement [doc. 100].

Appearances are excused on October 20, 2016.

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

Donmetz Home LLC

Represented By  
M Jonathan Hayes

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1:00 PM

**1:16-10486 Robert Marshall**

**Chapter 11**

**#16.00** Motion for order determining value of collateral  
[11 U.S.C. § 506(a), FRBP 3012)

fr. 7/19/16; 9/15/16

Docket 55

**Tentative Ruling:**

**9/15/2016 Tentative:**

The Court will value the subject property, located at 28045 Promontory Lane, Valencia, CA 91354, at \$230,000 as of July 7, 2016.

The debtor must submit an order within seven (7) days.

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

Robert Marshall

Represented By  
M Jonathan Hayes

**Movant(s):**

Robert Marshall

Represented By  
M Jonathan Hayes

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1:00 PM

**1:16-10486 Robert Marshall**

**Chapter 11**

**#17.00** Status conference re: chapter 11 case  
fr. 5/5/16; 09/08/16; 9/15/16

Docket 1

**Tentative Ruling:**

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1) and (4)(F) and (H), this case will be dismissed. The debtor has not timely filed his August and September 2016 monthly operating reports.

Based upon the Court's review of the debtor's schedules of assets and liabilities and statement of financial affairs, filed on March 4, 2016, and the claims docket, the Court concludes that it is in the best interest of creditors and the estate to dismiss this case.

The Court will prepare the order.

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

Robert Marshall

Represented By  
M Jonathan Hayes

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Thursday, October 20, 2016

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1:00 PM

1:16-11496 Claudia Phillips

Chapter 11

#18.00 U.S. Trustee Motion to dismiss or convert under 11 U.S.C. § 1112(b) to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

**Order of dismissal with 180 day bar entered 9/27/16**

Docket 43

**\*\*\* VACATED \*\*\* REASON: Case dismissed with 180-day bar on 9/27/16  
[doc. 48]**

**Tentative Ruling:**

- NONE LISTED -

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

Claudia Phillips

Represented By  
Claudia L Phillips

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**1:16-11769 Paula Dean Laddusire**

**Chapter 11**

**#19.00** U.S. Trustee Motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 58

**Tentative Ruling:**

- NONE LISTED -

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

Paula Dean Laddusire

Represented By

Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Clifford Bordeaux  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen  
Jerome S Cohen

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**1:16-12357 Yadira M. Lara**

**Chapter 11**

**#20.00** U.S. Trustee Motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 14

**\*\*\* VACATED \*\*\* REASON: Voluntary dismissal of motion filed  
10/17/2016**

**Tentative Ruling:**

- NONE LISTED -

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

Yadira M. Lara

Represented By  
Donald E Iwuchuku

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**1:16-12357 Yadira M. Lara**

**Chapter 11**

**#20.10** Status conference re chapter 11 case

fr. 10/13/16

Docket 1

**Tentative Ruling:**

On October 13, 2016, the debtor filed a status report. However, the status report is not supported by evidence, as required by the Court's Scheduling Order (as defined in the tentative ruling posted for the prior status conference, as set forth below). The debtor also must explain why she has not yet filed her monthly operating report for September 2016.

Assuming the debtor effectively resolves these issues, the parties should address the following:

Deadline to file proof of claim ("Bar Date"): **December 30, 2016.**

Deadline to mail notice of Bar Date: **October 31, 2016.**

The debtor(s) must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor(s) and/or debtor(s) in possession to file proposed plan and related disclosure statement: **January 31, 2017.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 16, 2017.**

The debtor(s) in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's(s') 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor(s) and/or debtor

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**CONT... Yadira M. Lara**

**Chapter 11**

(s) in possession to file a proposed plan and related disclosure statement.

The debtor(s) must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

**Tentative from 10/13/16:**

On September 8, 2016, the Court entered an *Order Setting Hearing on Status of Chapter 11 Case and Requiring Report on Status of Chapter 11 Case* ("Scheduling Order") [doc. 11]. The Scheduling Order required the debtor to submit a status conference report no later than 14 days before the status conference date, i.e., September 29, 2016.

On September 13, 2016, the United States Trustee filed his *Motion Under 11 U.S.C. § 1112(b) to Dismiss or Convert Case with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* ("UST Motion") [doc. 14]. The hearing on the UST Motion is set for October 20, 2016 at 1:00 p.m.

On October 5, 2016, the debtor filed her response to the UST Motion [doc. 23]. As of October 11, 2016, the debtor has not filed a status conference report.

In light of the foregoing, the Court will continue the status conference to **October 20, 2016 at 1:00 p.m.** to coincide with the hearing on the UST Motion. If the debtor fails to comply with the Scheduling Order before the continued status conference date, the Court may dismiss the debtor's case pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(4) (E) for failure to comply with an order of this Court.

Appearances on October 13, 2016 are excused.

**Party Information**

**Debtor(s):**

Yadira M. Lara

Represented By  
Donald E Iwuchuku

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**1:15-13076 Leonora Manor, LLC**

**Chapter 11**

**#21.00** Status conference re chapter 11 case

fr. 11/5/15; 3/10/16; 8/4/16; 8/25/16

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled to 1:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

Leonora Manor, LLC

Represented By  
Daniel J Weintraub  
James R Selth

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

**Thursday, October 20, 2016**

**Hearing Room 301**

2:00 PM

**1:13-17906 Juan Ramirez-Duenas**

**Chapter 11**

**#22.00** Debtor's Motion for entry of discharge and final decree in chapter 11 case pursuant To 11 U.S.C. 1141(D)(5) upon completion of payments to unsecured creditors

Docket 105

**Tentative Ruling:**

Grant motion for entry of chapter 11 discharge. In accordance with 11 U.S.C. §1141 (d)(5)(A) and (B), movant has shown sufficient cause for entry of discharge in his case.

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.

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

Juan Ramirez-Duenas

Represented By  
Anthony Obehi Egbase

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

**Thursday, October 20, 2016**

**Hearing Room 301**

2:00 PM

**1:16-11150 Laura Kay James and Jake Guillermo James**

**Chapter 7**

**#23.00 Debtors' motion for violation of the automatic stay and creditor misconduct**

Docket 34

**Tentative Ruling:**

**I. BACKGROUND**

On February 19, 2016, creditor Viktoria Kirakosian filed a claim in state small claims court against Laura Kay James and Jake Guillermo James ("Debtors") for breach of contract and injury to property. Declaration of Viktoria Kirakosian (the "Kirakosian Declaration"), ¶ 4.

On April 7, 2016, Ms. Kirakosian filed a second claim in state small claims court against Debtors for breach of contract and injury to property. *Id.*, ¶ 5.

On April 18, 2016, Debtors filed a voluntary Chapter 7 bankruptcy petition.

On April 21, 2016, Ms. Kirakosian filed an amended claim in one of her small claims actions against Debtors. *Id.* According to Ms. Kirakosian, she did not receive notice of Debtors' filing until April 22, 2016. *Id.*

On July 29, 2016, Debtors filed the a motion for an order finding that Ms. Kirakosian violated the automatic stay (the "Motion") [doc. 34]. The Motion makes the following allegations:

On or about April 28, 2016, the Los Angeles County Sheriff's Department (the "Sheriff's Department") executed a wage garnishment on Debtors.

On or about June 23, 2016, the Sheriff's Department executed a wage garnishment on Debtors.

On or about July 7, 2016, the Sheriff's Department executed a wage garnishment on Debtors.

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**Chapter 7**

On or about July 8, 2016, the chapter 7 trustee advised Ms. Kirakosian that she was in violation of the automatic stay during a § 341(a) meeting of the creditors.

On or about June 22, 2016, one of the small claims actions was set for trial for June 30, 2016. That trial was rescheduled for August 16, 2016.

On September 30, 2016, Ms. Kirakosian filed an opposition to the Motion (the "Opposition") [doc. 40]. In the Opposition, Ms. Kirakosian asserts that she did not take any action on the small claims actions upon receiving notice of Debtors' bankruptcy filing. Ms. Kirakosian also states that she did not have any control over the wage garnishments executed by the Sheriff's Department and has not received any money from postpetition wage garnishments.

## **II. LEGAL STANDARDS**

### ***A. Violations of the Automatic Stay***

Pursuant to 11 U.S.C. § 362, in relevant part:

- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of—
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
  - (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
  - (4) any act to create, perfect, or enforce any lien against property of the estate;
  - (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secured a claim that arose before the commencement of the case under this title;

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- (6) any act to collect, assess, or a recover a claim against the Debtor that arose before the commencement of the case;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor...

"[A]ctions taken in violation of the automatic stay are void." *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000) (citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)). An affirmative duty is imposed on non-debtor parties to comply with the stay, and to remedy any violations, even if inadvertent, of the automatic stay. *In re Dyer*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

With respect to wage garnishments, "a garnishing creditor has an affirmative duty to stop garnishment proceedings when notified of the automatic stay." *In re Roberts*, 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994).

For instance, in *In re Roche*, the bankruptcy court had "to determine whether a judgment creditor and/or its attorney is in willful violation of the automatic stay by staying but not releasing a bank garnishment filed pre-petition despite repeated requests from the debtor." 361 B.R. 615, 618 (Bankr. N.D. Ga. 2005).

There, at the time of the debtors' bankruptcy filing, the garnished funds had not yet been remitted to the creditor, but the creditor's lien had attached upon the service of the summons of garnishment. *Id.* After the creditor had been informed that a bankruptcy petition had been filed, the debtors requested that the creditor immediately dismiss the garnishment. *Id.* The creditor did not do so. *Id.*, at 619.

The court found that the creditor's failure to dismiss the garnishment was a willful violation of the automatic stay. *Id.*, at 623. The court stated:

When a creditor receives actual notice of the filing of a case, the burden is on the creditor to ensure that the automatic stay is not violated.

...

While [the creditor] took a legal position that the stay did not apply in

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**Chapter 7**

its communications with [the debtors'] counsel, [the creditor] did not seek confirmation of that position from the Court, but instead placed the burden on the [the debtors] to confirm their position.

*Id.* The court further found that "[w]here a garnishment lien holder has notice of the automatic stay, courts have consistently found that a creditor willfully violates the stay by failing to release that garnishment." *Id.* (citing *In re Briskey*, 258 B.R. 473 (Bankr. M.D. Ala. 2001); *In re Elder*, 12 B.R. 491 (Bankr. M.D. Ga. 1981); *In re Mims*, 209 B.R. 746 (Bankr. M.D. Fla. 1997); and *In re Suarez*, 149 B.R. 193 (Bankr. D. N.M. 1993)).

***B. Damages***

11 U.S.C. § 362(k)(1) provides:

Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

A prima facie case under section 362(k) requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay. *In re Fernandez*, 227 B.R. 174, 181 (B.A.P. 9th Cir. 1998).

*i. Willfulness*

"A creditor who attempts collection of prepetition debt after it knows of the debtor's bankruptcy is subject to sanctions for willful violation of the automatic stay." *In re Bourke*, 543 B.R. 657, 664 (Bankr. D. Mont. 2015). "[T]he willfulness test for automatic stay violations merely requires that: (1) the creditor know of the automatic stay; and (2) the actions that violate the stay be intentional." *Morris v. Peralta*, 317 B.R. 381, 389 (B.A.P. 9th Cir. 2004) (citing *Eskanos v. Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)). "Once a creditor has knowledge of the bankruptcy, it is deemed to have knowledge of the automatic stay." *In re Breul*, 533 B.R. 782, 787-88 (Bankr. C.D. Cal. 2015) (citing *In re Ramirez*, 183 B.R. 583, 589 (B.A.P. 9th Cir. 1995)).

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ii. *Types of Damages*

Regarding damages, the award of attorneys' fees and costs contemplated by 11 U.S.C. § 362(k) includes "attorney's fees incurred in prosecuting an action for damages...." *In re Schwartz-Tallard*, 803 F.3d 1095, 1101 (9th Cir. 2015).

An award of punitive damages requires "some showing of reckless or callous disregard for the law or rights of others." *In re Snowden*, 769 F.3d 651, 657 (9th Cir. 2014); quoting *In re Bloom*, 875 F.2d 224, 228 (9th Cir. 1989).

To establish emotional distress damages, "an individual must (1) suffer significant harm, (2) clearly establish the significant harm, and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." *In re Dawson*, 390 F.3d 1139, 1149 (9th Cir. 2004). "[P]ecuniary loss is not required in order to claim emotional distress damages." *Id.* "Fleeting or trivial anxiety or distress does not suffice to support an award; instead an individual must suffer significant emotional harm." *Id.*; see also *In re Skeen*, 248 B.R. 312, 319 (Bankr. E.D. Tenn. 2000) (holding that "because the emotional distress suffered...was fleeting, inconsequential, and medically insignificant...it is not compensable") (internal quotations omitted).

The Ninth Circuit Court of Appeals found that emotional distress damages may be clearly established in several different ways, including: (1) "corroborating medical evidence;" (2) "non-experts, such as family members, friends, or coworkers, may testify to manifestations of mental anguish and clearly establish that significant emotional harm occurred;" or (3) "emotional distress may be readily apparent even without corroborative evidence," such as when "the violator [has] engaged in egregious conduct" or "a reasonable person would suffer significant emotional harm."

### III. ANALYSIS

#### A. *Filing an Amended Claim in Small Claims Court*

Here, the only postpetition activity with the small claims action of which there is evidence is Ms. Kirakosian's filing of an amended claim. Because Ms. Kirakosian

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filed the amended claim postpetition, the filing was a violation of the automatic stay. As such, the amended filing is void. *Gruntz*, 202 F.3d at 1082.

However, Ms. Kirakosian's declaration demonstrates that she did not have notice of the bankruptcy filing at the time she filed an amended claim in small claims court. There being no evidence to the contrary, Ms. Kirakosian's violation of the stay was not willful. As a result, Debtors are not entitled to damages under § 362(k)(1) for this violation, nor have Debtors provided evidence of damages arising from Ms. Kirakosian's postpetition filing of an amended claim in small claims court.

***B. The Wage Garnishments***

As it stands, there is no evidence on the record as to the dates on which the garnishments occurred. Debtors allege that garnishments occurred on April 28, 2016, June 23, 2016 and July 7, 2016. If Debtors supplement the record with evidence that garnishments occurred on this date, the garnishments would be a violation of the automatic stay.

Moreover, even if Ms. Kirakosian was initially unaware of the fact that postpetition garnishments were taking place, she would have known by September 19, 2016, the date this Court entered an order setting the Motion for hearing, that the Sheriff's Department was continuing to garnish Debtors' wages. At that time, Ms. Kirakosian had an affirmative duty to dismiss the garnishment and direct the Sheriff's Department to return all garnished wages to the estate. Failing to do so would be a willful violation of the automatic stay entitling Debtors to damages.

Debtors have provided no evidence of damages incurred as a result of the alleged violation of the automatic stay. Debtors must supplement the Motion with evidence of the amount of the garnishments and any additional actual damages claimed by Debtor, any evidence that clearly establishes emotional distress and evidence justifying an award of punitive damages.

Debtors also request attorneys' fees incurred as a result of the violation of the automatic stay. However, Debtors are in pro per. Debtors have cited no authority supporting their position that they are entitled to attorneys' fees even though they represent themselves.

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**IV. CONCLUSION**

The Court intends to continue this hearing to **2:00 p.m. on December 1, 2016**. Based on that hearing date, no later than **November 10, 2016**, Debtors must file and serve on Ms. Kirakosian's attorney evidence of: (1) the dates and amounts of the garnishments; (2) any actual damages arising from the garnishment; (3) evidence that clearly establishes emotional distress; and (4) any evidence justifying an award of punitive damages. No later than **November 17, 2016**, Ms. Kirakosian may file and serve on Debtors a response to the additional evidence.

In light of the pending adversary proceeding filed by Ms. Kirakosian (1:16-ap-01097-VK), the Court encourages the parties to participate in mediation to resolve their dispute. The United States Bankruptcy Court for the Central District of California offers mediation on a *pro bono* basis through the Mediation Program for Bankruptcy Cases and Adversary Proceedings (the "Mediation Program"). Local Bankruptcy Rules, Appendix III. The parties should be prepared to discuss their willingness to participate in the Mediation Program.

If the parties would like to mediate this matter and the adversary proceeding, within seven (7) days after this hearing, Ms. Kirakosian must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. During the hearing, the parties should inform the Court of their choice of Mediator and Alternate Mediator.

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

Laura Kay James	Pro Se
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**Joint Debtor(s):**

Jake Guillermo James	Pro Se
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**Trustee(s):**

Nancy J Zamora (TR)	Pro Se
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Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
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**1:16-11769 Paula Dean Laddusire**

**Chapter 11**

**#24.00** Cohen & Bordeaux, LLP's Motion to to be relieved as counsel

Docket 68

**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.

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

Paula Dean Laddusire

Represented By  
Clifford Bordeaux  
Jerome S Cohen

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
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1:16-12097 N.E. Designs, Inc.

Chapter 11

#25.00 Application of Debtor and Debtor in Possession pursuant to Bankruptcy Code sections 327(e) and 1107; FRBP 2014; and LBR 2014-1; for order authorizing employment of Fischbach & Fischbach as Special Counsel

fr. 9/22/16

Docket 26

**\*\*\* VACATED \*\*\* REASON: Order entered 10/14/16 continuing hearing to 11/10/16 at 2:00 p.m.**

**Tentative Ruling:**

- NONE LISTED -

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

N.E. Designs, Inc.

Represented By  
Sandford Frey  
Stuart I Koenig

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Victoria Kaufman, Presiding  
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**Thursday, October 20, 2016**

**Hearing Room 301**

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**1:16-12099 Shamel Sanani**

**Chapter 11**

**#26.00** Motion for extension of deadline to object to exemptions pursuant to Federal Rule of Bankruptcy Procedure 4003(B)(1)

Docket 34

**Tentative Ruling:**

Grant an extension of time to object to debtor's exemptions up to and including November 22, 2016. In accordance with Federal Rule of Bankruptcy Procedure 4003 (b)(1), movant has demonstrated sufficient cause to grant such an extension.

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.

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

Shamel Sanani

Represented By  
Mohammad Azhar Asadi