

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Tuesday, June 6, 2023**

**Hearing Room 1568**

10:00 AM

**2:22-14389 Karmisha Lavette Little**

**Chapter 7**

**#1.00 APPLICANT: Trustee - Peter J Mastan**

Hearing re [38] Trustee's Final Report and Applications for Compensation

Docket 0

**Tentative Ruling:**

6/5/2023

**Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

No objection has been filed in response to the Trustee's Final Report. This Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: \$481.50

Total Trustee's Expenses: \$27.06

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The Chapter 7 Trustee shall submit a conforming order within seven days of the hearing.

**Party Information**

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**CONT... Karmisha Lavette Little**

**Chapter 7**

**Debtor(s):**

Karmisha Lavette Little

Represented By  
Andy Nguyen

**Trustee(s):**

Peter J Mastan (TR)

Pro Se

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10:00 AM

**2:22-16483 Metallic Blue Development LLC**

**Chapter 7**

**#2.00** Hearing  
RE: [102] Motion For Entry Of Order Authorizing And Approving Of Withdrawals  
Of Attorneys Of Record In The Case

Docket 102

**Tentative Ruling:**

6/5/2023

**Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.**

For the reasons set forth below, the Motion to Withdraw will be **GRANTED** upon Counsels' submission of a declaration attesting that (1) Counsel has produced to the Trustee all books and records of the Debtor within Counsels' custody and control and that (2) Counsel has used reasonable best efforts to cause Dozier and Ho to produce to the Trustee any of the Debtor's books and records that remain within those individuals' custody and control.

**Pleadings Filed and Reviewed:**

- 1) Notice of Motion and Motion for Entry of Order Authorizing and Approving of Withdrawals of Attorneys of Record in the Case [Doc. No. 102] (the "Motion")
- 2) Chapter 7 Trustee's Response to Motion for Entry of Order Authorizing and Approving of Withdrawals of Attorneys of Record in the Case [Doc. No. 107]
- 3) Response to Motion for Withdrawals of Debtor Attorneys, Asserting No Objection But on Conditions [filed by John Gonda and Michael Villano] [Doc. No. 108]
- 4) United States Trustee Response to Richard A. Marcus and Louis J. Esbin's Motion for Entry of Order Authorizing and Approving of Withdrawals of Attorneys of Record in the Case [Doc. No. 109]
- 5) Reply (Consolidated) to Responses of Trustee, Timothy Yoo, the United States Trustee, and Creditors, John Gonda and Michael Villano, to Motion for Entry of Order Authorizing and Approving of Withdrawals of Attorneys of Record in the

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**CONT... Metallic Blue Development LLC**  
Case [Doc. No. 112] (the "Reply")

**Chapter 7**

**I. Facts and Summary of Pleadings**

On November 28, 2022 (the "Petition Date"), Blue Orchid Concepts LLC ("Blue Orchid"), Sief Khafagi, John Gonda, Pauline Poon, Vijay A. Vakulabrahaman, Satish Nair, and Steve and Phoebe Ng (collectively, the "Petitioning Creditors") filed an involuntary Chapter 7 petition against Metallic Blue Development LLC (the "Debtor"). On February 1, 2023, the Court entered an Order for Relief. Doc. No. 19.

On March 17, 2023, the Court denied the Debtor's motions (1) to vacate the Order for Relief and (2) to provide the Debtor additional time to controvert the involuntary petition. Doc. Nos. 55 and 62. The Debtor's appeal of the denial of these motions is currently pending before the District Court, Case No. 2:23-cv-02402-GW.

On April 18, 2023, the Debtor received from the state of Washington a subpoena seeking business records pursuant to an investigation commenced by the Securities Division of the Washington State Department of Financial Institutions. On May 10, 2023, the Debtor's manager Brian Dozier ("Dozier") and sole member William Ho ("Ho") both resigned. Neither Dozier nor Ho attended the continued May 12, 2023 meeting of creditors.

Richard A. Marcus and Louis J. Esbin, the Debtor's counsel of record ("Counsel"), seek authorization to withdraw from representation. Counsel states that it is not possible to file schedules on the Debtor's behalf without violating § 707(b)(4)(C) and (D), which prohibit an attorney from filing a pleading unless the attorney can certify, after having performed a reasonable investigation, that the information contained in that pleading "is well grounded in fact," § 707(b)(4)(C)(ii)(I).

The Chapter 7 Trustee (the "Trustee"), the United States Trustee (the "UST"), and creditors John Gonda and Michael Villano (together, "Gonda/Villano") each filed responses to the Motion to Withdraw. The Trustee and the UST take no position on whether Counsel should be permitted to withdraw, but note that if the Motion to Withdraw is granted, the Debtor, a business entity, will be without representation. The Trustee and the UST state that the case should not be dismissed if the Debtor remains unrepresented.

The Trustee states that although he has received copies of the Debtor's books and records from counsel, he is "highly skeptical" that all of the books and records have been turned over. Doc. No. 107 at p. 2, n. 1. The Trustee asserts that Counsel's withdrawal "should be effective only upon the Debtor's satisfactory compliance with its duties to turn over the requested books, documents, records, and papers to the

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**Chapter 7**

Trustee." *Id.* at p. 2. Gonda/Villano contend that Counsel should not be permitted to withdraw unless they are also "required to use reasonable and best efforts to assure that the business records of the Debtor still under the control or possession of the controlling persons of the Debtor, Mr. Ho and Mr. Dozier, both of whom have recently resigned last week, be turned over to the Chapter 7 Trustee ...." Doc. No. 108 at p. 2.

Counsel states that they have turned over approximately 6,000 pages of documents to the Trustee. Counsel further argues that the Trustee, the UST, and Gonda/Villano have failed to demonstrate that they have standing to attempt to interpose conditions upon Counsel's withdrawal.

## **II. Findings and Conclusions**

The Court first addresses Counsel's contention that the Trustee, the UST, and Gonda/Villano lack standing to assert that Counsel's withdrawal should be subject to various conditions. This argument is without merit because Counsel's withdrawal will have an impact upon the future administration of the case. Therefore, the Trustee, the UST, and Gonda/Villano have standing to be heard in connection with the Motion to Withdraw.

Local Bankruptcy Rule ("LBR") 2091-1(a) requires that counsel obtain leave of court to withdraw from representation. LBR 2091-1(e)(2) provides that "no ... withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion."

California Rule of Professional Conduct 3-700(C)(1)(d) provides that an attorney may seek permission to withdraw if "[t]he client...renders it unreasonably difficult for the member to carry out the employment effectively." Counsel testifies that it is not possible to file true and accurate schedules on the Debtor's behalf. Dozier, the Debtor's manager, and Ho, the Debtor's sole member, have both resigned. The Court finds that circumstances exist making it unreasonably difficult for Counsel to effectively represent the Debtor.

Withdrawal shall not be effective unless and until Counsel files a declaration under penalty and perjury attesting that (1) Counsel has produced to the Trustee all books and records of the Debtor within Counsel's custody and control and that (2) Counsel has used reasonable best efforts to cause Dozier and Ho to produce to the Trustee any of the Debtor's books and records that remain within those individuals' control. Counsel testifies that over 6,000 pages of documents have already been produced. However, given the size and complexity of the Debtor's business

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operations, it is by no means clear that the 6,000 pages of records constitute the majority of documents within the Debtor's control.

Upon receipt of a satisfactory declaration attesting to the foregoing, the Court will prepare and enter an order authorizing Counsel to withdraw. Notwithstanding the fact that the Debtor will not be represented by counsel upon withdrawal, the Court will not dismiss the case solely on that basis, as doing so would prejudice creditors.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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

Metallic Blue Development LLC

Represented By  
Richard A Marcus

**Trustee(s):**

Timothy Yoo (TR)

Represented By  
Carmela Pagay

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**2:23-10671 Rubi Marek**

**Chapter 7**

**#3.00** Hearing RE: [11] Motion To Avoid Judgment Lien On Debtor's Principal Residence Under 11 U.S.C. § 522(f); Motion To Request Actual Damages And Punitive Damages Under For Violation Of The Automatic Stay Under 11 U.S.C. § 362(a) & (h);

Docket 11

**Tentative Ruling:**

6/5/2023

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For the reasons set forth below, the Motion is **GRANTED**.

**Pleadings Filed and Reviewed:**

- 1) Debtor's Notice of Motion and Motion to Avoid Judgment Lien on Debtor's Principal Residence Under 11 U.S.C. § 522(f); Motion to Request Actual Damages and Punitive Damages for Violation of the Automatic Stay Under 11 U.S.C. § 362(a) & (h) [Doc. No. 11] (the "Motion")
- 2) No opposition to the Motion is on file

**I. Facts and Summary of Pleadings**

On February 7, 2023 (the "Petition Date"), Rubi Marek (the "Debtor") filed a voluntary Chapter 7 petition. Timothy Yoo (the "Trustee") was appointed to administer the case.

The Debtor's principal residence is located at 431 N. Hicks Avenue, Los Angeles, CA 90063 (the "Property"). Per an appraisal, the Property has a fair market value of approximately \$750,000.00. The Property is encumbered by a first mortgage in favor of Peoples Discount Mortgage in the amount of \$532,500.00 (the "Loan"). Per the Motion, the current amount outstanding on the Loan is \$525,580.14. The Debtor claims an exemption in the Property in the amount of \$182,676.00 under California

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**CONT... Rubi Marek**

**Chapter 7**

Code of Civil Procedure 704.720(d).

On July 6, 2022, the Los Angeles Superior Court entered a judgment in favor of Rossana Ruey ("Ruey") against the Debtor. On February 28, 2023, Ruey recorded an Abstract of Judgment (the "Abstract") in the amount of \$9,312.65 against the Property (the "Ruey Lien"). Additionally, on or about April 10, 2023, Ruey executed an Earnings Withholding Order (the "Wage Garnishment Order"). Per the Debtor's declaration attached to the Motion, wages in the amount of \$1,988.07 have been withheld as of May 8, 2023.

As the Ruey Lien was recorded and the Wage Garnishment Order was executed after the Petition Date, the Debtor contends that these acts violated the automatic stay. The Motion seeks to avoid the Ruey Lien and to collect actual and punitive damages against Ruey.

As of the issuance of this tentative ruling, no opposition to the Motion has been filed.

## **II. Findings of Fact and Conclusions of Law**

### Violation of the Automatic Stay

Upon the filing of a bankruptcy petition, the automatic stay goes into effect. Pursuant to Section 362(a), the automatic stay prohibits "... (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; ... (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; ... (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title..."

A judgment lien on real property is created by recording an abstract of the judgment in the recorder's office of the county where the property is located. Cal. Civ. Proc. Code § 697.310.

As of the Petition Date, the automatic stay was in effect. After the Petition Date, Ruey recorded the Abstract, executed the Wage Garnishment Order, and garnished the Debtor's wages. Ruey's actions violated the automatic stay.

The Ruey Lien did not come into existence until recordation of the Abstract, which occurred almost three weeks after the Petition Date. As the Ruey Lien was recorded post-petition in violation of the automatic stay, the Ruey Lien is void *ab initio*. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992).

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Therefore, the Debtor's request to avoid the Ruey Lien under § 522(f) as an impairment of the Debtor's homestead exemption is unnecessary, because the Ruey Lien never attached to the Property.

The County of Los Angeles' Clerk's Office is directed to remove the Ruey Lien as null and void upon receipt of a copy of the Court's order granting the Motion, which will incorporate this tentative ruling by reference.

Damages

Section 362(k)(1) provides that "...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." Willfulness will be found "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1799 (2019). [Note 1]

Attorneys' fees may be awarded for a willful violation of the automatic stay under Section 362(k). *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1097 (9th Cir. 2015). With respect to punitive damages, a movant must show reckless or callous disregard for the law or the rights of others, which may include proof of bad faith conduct. *In re Sundquist*, 566 B.R. 563 (Bankr. E.D. Cal. 2017). In determining the appropriate amount of punitive damages, a court may weigh: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in comparable cases." *Id.*

As the Ruey Lien was recorded and the Wage Garnishment Order was executed after the Petition Date, Ruey violated the automatic stay. Under the standard set forth in *Taggart v. Lorenzen*, these acts were done willfully. Ruey had actual notice of the instant bankruptcy filing and the imposition of the resulting automatic stay due to being listed in the Debtor's schedules and included in the mailing matrix. There is no objectively reasonable basis for concluding that Ruey's post-petition acts of recording the lien and garnishing wages might be lawful at that time. Therefore, the Court finds that Ruey willfully violated the automatic stay.

Actual damages have been established by the loss of the Debtor's wages garnished by Ruey after the Petition Date. Additionally, in connection to the Motion and Ruey's

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violation of the automatic stay, the Debtor's counsel incurred fees in the amount of \$3,200.00, which the Court finds reasonable.

With respect to punitive damages, the Debtor has shown evidence of Ruey's bad faith conduct in connection to the automatic stay violation. As a general chronological timeline, after the Petition Date: (i) the Ruey Lien was recorded; (ii) the Debtor's counsel called and emailed Ruey addressing the automatic stay violation; (iii) Ruey replied via email regarding the violation; and (iv) Ruey subsequently executed the Wage Garnishment Order and garnished the Debtor's wages. Per the Motion, Ruey has taken no corrective actions to-date. After reviewing Ruey's conduct, the Court finds it appropriate to award punitive damages to the Debtor equal to the amount of the Debtor's wages garnished by Ruey after the Petition Date in violation of the automatic stay.

For the reasons outlined above, Ruey is ordered to: (i) remove the Abstract from the Property; (ii) return any wages garnished from the Debtor after the Petition Date in the amount of \$1,988.07; (iii) pay attorney's fees to the Debtor in the amount of \$3,200.00; and (iv) pay punitive damages in the amount of \$1,988.07. The total amount of damages awarded to the Debtor is \$7,176.14.

### **III. Conclusion**

Based upon the foregoing, the Motion is **GRANTED**. Within seven days of the hearing, the Debtor shall submit a proposed Order, incorporating this tentative ruling by reference, via the Court's Lodged Order Upload (LOU) system.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1:** Although *Taggart v. Lorenzen* was decided in the context of the discharge injunction, its reasoning regarding the proper willfulness standard also applies in the context of Section 362(k).

**Party Information**

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**CONT... Rubi Marek**

**Chapter 7**

**Debtor(s):**

Rubi Marek

Represented By  
Ruben Fuentes

**Movant(s):**

Rubi Marek

Represented By  
Ruben Fuentes

**Trustee(s):**

Timothy Yoo (TR)

Pro Se

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**2:22-14858 Mylife.com Inc.**

**Chapter 11**

**#4.00** Hearing  
RE: [165] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement

Docket 165

**\*\*\* VACATED \*\*\* REASON: RESCHEDULED 6-7-23 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

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

Mylife.com Inc.

Represented By  
Leslie A Cohen

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Central District of California  
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**2:22-14858 Mylife.com Inc.**

**Chapter 11**

**#5.00** Hearing  
RE: [168] Application for Compensation for Larson LLP, Special Counsel,  
Period: 1/9/2023 to 5/16/2023, Fee: \$227,886.00, Expenses: \$12,373.57.

Docket 168

**\*\*\* VACATED \*\*\* REASON: RESCHEDULED 6-7-23 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

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

Mylife.com Inc.

Represented By  
Leslie A Cohen

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**2:22-14858 Mylife.com Inc.**

**Chapter 11**

**#6.00 Hearing**

RE: [167] Application for Compensation for Leslie A Cohen, Debtor's Attorney,  
Period: 1/1/2023 to 5/4/2023, Fee: \$74,255, Expenses: \$563.50.

Docket 167

**\*\*\* VACATED \*\*\* REASON: RESCHEDULED 6-7-23 AT 10:00 AM**

**Tentative Ruling:**

- NONE LISTED -

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

Mylife.com Inc.

Represented By  
Leslie A Cohen