

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

Tuesday, November 15, 2022

Hearing Room 1568

10:00 AM

2:20-17005 Lauren Mae Holland

Chapter 7

#1.00 APPLICANT: Trustee: JASON M. RUND, TRUSTEE

Hearing re [55] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/14/2022

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: \$3,191.26

Total Trustee's Expenses: \$296.14

Accountant for Trustee Fees – Hahn Fife & Company LLP: \$1,000.00

Other Fees – Law Offices of Veronica M. Aguilar: \$11,146.40 (the fees were awarded on a final basis on April 1, 2022 pursuant to the Order [Doc. No. 41])

Other Expenses – Law Offices of Veronica M. Aguilar: \$2,134.00 (the expenses were awarded on a final basis on April 1, 2022 pursuant to the Order [Doc. No. 41])

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

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CONT... Lauren Mae Holland

Chapter 7

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

Debtor(s):

Lauren Mae Holland

Represented By
John C Colwell

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:20-17005 Lauren Mae Holland

Chapter 7

**#2.00 APPLICANT: Accountant for Trustee: HAHN FIFE
& COMPANY LLP**

Hearing re [55] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/14/2022

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Lauren Mae Holland

Represented By
John C Colwell

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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#3.00 APPLICANT: Other: Law Offices of Veronica M. Aguilar

Hearing re [55] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/14/2022

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Lauren Mae Holland

Represented By
John C Colwell

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:21-18070 Harry Chatsian and Mariam Simonyan

Chapter 7

**#4.00 APPLICANT: Trustee: JASON M. RUND
TRUSTEE**

Hearing re [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/14/2022

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: \$801.57

Total Trustee's Expenses: \$65.58

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... Harry Chatsian and Mariam Simonyan

Chapter 7

Debtor(s):

Harry Chatsian

Represented By
Sevan Gorginian

Joint Debtor(s):

Mariam Simonyan

Represented By
Sevan Gorginian

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, November 15, 2022

Hearing Room 1568

10:00 AM

2:22-13613 Taylor Ronald Woods

Chapter 7

#5.00 Status Hearing

RE: [1] Chapter 7 Involuntary Petition Against an Individual. LLC, a Delaware Limited Liability Company as assignee of West Bay Capital, LLC, a California Limited Liability Company (attorney Roye Zur), Capital Lending Resources, Inc., a California Corporation (attorney Roye Zur), Craig Quinn, as Trustee of the Craig & Colleen Quinn Family Trust dated September 2000 (attorney Roye Zur). (Zur, Roye)

fr. 8-30-22; 10-4-22

Docket 1

***** VACATED *** REASON: CONTINUED 12-20-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taylor Ronald Woods

Pro Se

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10:00 AM

2:21-15683 Michael Levine, Inc.

Chapter 11

#6.00 Status Conference Pursuant To 11 U.S.C. § 1188 (Subchapter V)

FR. 9-14-21; 10-5-21; 12-14-21; 1-4-22; 2-2-22; 2-23-22, 4-13-22; 6-15-22;
9-13-22; 10-11-22

Docket 0

***** VACATED *** REASON: CONTINUED 12-6-22 AT 10:00 AM**

Tentative Ruling:

11/14/2022

Order entered. Status Conference **CONTINUED** to **December 6, 2022 at 10:00 a.m.**,
to take place concurrently with the hearing on the Debtor's counsel's motion seeking
authorization to withdraw from representation.

Party Information

Debtor(s):

Michael Levine, Inc.

Represented By
Susan K Seflin
Jessica L Bagdanov

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Tuesday, November 15, 2022

Hearing Room 1568

10:00 AM

2:21-15685 Laurence Alen Freidin

Chapter 11

#7.00 Status Hearing
RE: [1] Chapter 11 Subchapter V Voluntary Petition Individual.

FR. 12-5-21; 12-14-21; 1-4-22; 2-2-22; 2-23-22; 4-6-22, 4-13-22; 6-15-22;
9-13-22; 10-11-22

Docket 1

***** VACATED *** REASON: CONTINUED 12-6-22 AT 10:00 AM**

Tentative Ruling:

11/14/2022

Order entered. Status Conference **CONTINUED to December 6, 2022 at 10:00 a.m.**,
to take place concurrently with the hearing on the Debtor's counsel's motion seeking
authorization to withdraw from representation.

Party Information

Debtor(s):

Laurence Alen Freidin

Represented By
Susan K Seflin
Jessica L Bagdanov

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:21-16674 JINZHENG GROUP (USA) LLC

Chapter 11

#8.00 Hearing

RE: [395] motion for relief from the automatic stay re REAL PROPERTY RE:
2929 Amethyst Street, Los Angeles, CA 90032; 2526-2528 Lincoln Park Ave,
Los Angeles, CA 90031; 2520-2522 Lincoln Park Ave., Los Angeles, CA 90031

FR. 10-31-22; 11-14-22

Docket 395

***** VACATED *** REASON: WILL BE HEARD AT 11:00 AM TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JINZHENG GROUP (USA) LLC

Represented By
Zev Shechtman
Alphamorlai Lamine Kebeh
Danielle R Gabai

**United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
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Tuesday, November 15, 2022

Hearing Room 1568

11:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#100.00 APPLICANT: Attorney for Trustee - Marshack Hays LLP

Hearing RE [240] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

11/14/2022

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: \$17,928.51

Total Trustee's Expenses: \$41.16

Attorney for Trustee Fees – Marshack Hays LLP: \$180,609.50 (the fees in the amount of \$137,801.50 awarded on an interim basis on May 6, 2021 pursuant to the Order on Application for Payment of Interim Fees and/or Expenses [Doc. No. 217] are confirmed as final and the fees in the amount of \$42,808.00 applied for on May 26, 2022 pursuant to the Second and Final Application for Allowance of Fees and Costs Filed by Marshack Hays LLP as General Counsel for Trustee [Doc. No. 238] are approved)

Attorney for Trustee Expenses – Marshack Hays LLP: \$8,441.71 (the expenses in the amount of \$7,756.66 awarded on an interim basis on May 6, 2021 pursuant to the Order on Application for Payment of Interim Fees and/or Expenses [Doc. No. 217] are confirmed as final and the fees in the amount of \$685.05 applied for on May 26, 2022 pursuant to the Second and Final Application for Allowance of Fees and Costs Filed

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CONT... Bahram Zendedel

Chapter 7

by Marshack Hays LLP as General Counsel for Trustee [Doc. No. 238] are approved)
[Note 1]

Accountant for Trustee Fees – SLBiggs a division of SingerLewak: \$6,313.50

Accountant for Trustee Expenses – SLBiggs a division of SingerLewak: \$197.12

Charges – U.S. Bankruptcy Court: \$1,050.00

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.

Note 1: The Court notes a discrepancy of thirty-four cents between the Second and Final Application for Allowance of Fees and Costs Filed by Marshack Hays LLP as General Counsel for Trustee [Doc. No. 238] and the Trustee's Final Report [Doc. No. 240] with respect to the attorney for trustee expenses. The application lists the expenses as \$684.71 and the Trustee's Final Report lists the proposed payment as \$685.05. In view of the de minimis inconsistency, the cost associated with filing an amended final report would far outweigh the minimal discrepancy. No due process concern is at issue because all parties received notice of the proposed payment set forth in the Trustee's Final Report. As all creditors received notice of the figures set forth in the Trustee's Final Report, the Court will use the figure of \$685.05 with respect to the attorney for trustee expenses.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

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CONT... Bahram Zendedel

Chapter 7

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

**United States Bankruptcy Court
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11:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#101.00 APPLICANT: Accountant for Trustee - SLBiggs a division of
SingerLewak

Hearing RE [240] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

11/14/2022

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

**United States Bankruptcy Court
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11:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#102.00 Charges, U.S. Bankruptcy Court

Hearing RE [240] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

11/14/2022

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

**United States Bankruptcy Court
Central District of California
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11:00 AM

2:19-10549 Bahram Zendedel

Chapter 7

#103.00 APPLICANT: Trustee - Peter J. Mastan

Hearing RE [240] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

11/14/2022

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Bahram Zendedel

Represented By
Khachik Akhkashian

Trustee(s):

Peter J Mastan (TR)

Represented By
Chad V Haes

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2:21-16674 JINZHENG GROUP (USA) LLC

Chapter 11

#104.00 HearingRE: [420] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) -Debtor's Notice of Motion and Motion to Authorize Sale of Real Property located at 150 East La Sierra Drive, Arcadia, California 91006, Free and Clear of Liens; Memorandum of Points and Authorities, Declarations of Zhao Pu Yang, Kenny Yu, William Friedman, Stephen Eng, and Alphamorlai L. Kebeh, and Request for Judicial Notice in Support Thereof; proof of service. LLC (Kebeh, Alphamorlai)

Docket 420

Tentative Ruling:

11/14/2022

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 Court finds that the Debtor is entitled to sell the Property free and clear of the Disputed Funds as the Debtor has presented a bona fide dispute under § 363(f)(4). Therefore, the Opposition is **OVERRULED** and the Sale Motion is **GRANTED**.

Key Sale Terms:

- 1) Proposed purchaser: Kenny Yu
- 2) Property for sale: 150 East La Sierra Drive, Arcadia, California 91006
- 3) Purchase price: \$2,100,000.00
- 4) Overbids: The initial overbid shall be \$2,150,000.00. Subsequent overbids shall be in increments of \$10,000.00, subject to adjustment by the Court to facilitate bidding.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Motion to Authorize Sale of Real Property Located at 150 East La Sierra Drive, Arcadia, California 91006, Free and Clear of Liens [Doc. No. 420] (the "Sale Motion")

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CONT... JINZHENG GROUP (USA) LLC

Chapter 11

- a) Debtor's Notice of the Sale Motion [Doc. No. 421]
- 2) Memorandum of Points and Authorities in Support of Limited Opposition to Debtor's Sale Motion [Doc. No. 433] (the "Opposition")
- 3) Declaration of Ken Hansen in Support of the Opposition [Doc. No. 434] (the "Declaration")
- 4) Debtor's Reply to the Opposition [Doc. No. 442] (the "Reply")
- 5) Debtor's Evidentiary Objection to the Declaration in Support of the Opposition [Doc. No. 443] (the "Evidentiary Objection")

I. Facts and Summary of Pleadings

The Debtor filed a voluntary Chapter 11 petition on August 24, 2021 (the "Petition Date"). The Debtor continues in possession of its property and is operating and managing its business as a debtor-in-possession. The estate consists of several properties, including a parcel located at 150 East La Sierra Drive, Arcadia, California 91006 (the "Property"). The Debtor requests authority to sell the Property free and clear of liens pursuant to 11 U.S.C. § 363.

With the aid of a broker, the Debtor has agreed to sell the Property to Kenny Yu (the "Buyer") for \$2,100,000.00. The only remaining requirement to close the sale is the Court's approval, subject to qualified overbids made at the sale hearing. The overbid procedures, which are detailed in the Sale Motion, include a minimum initial overbid of \$2,150,000.00, minimum overbidding increments of \$10,000.00, and an initial overbid deposit of \$64,500.00 (the "Overbid Procedures"). The Debtor's breakdown of the expected net proceeds from the sale of the Property, excluding the Disputed Funds (as defined below), are:

Sale Price	\$2,100,00.00
Commission to Debtor's Brokers (3%)	(\$63,000.00)
Commission to Buyer's Brokers (2%)	(\$42,000.00)
Sale costs (estimated 2% of Sale Price)	(\$42,000.00)
Sound Deed of Trust (Principal and Standard Interest only)	(\$1,563,645.47)
Estimated Net Sale Proceeds	\$206,937.80

The Property is encumbered by the following liens:

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JINZHENG GROUP (USA) LLC

Chapter 11

1. A deed of trust in favor of Sound Equity Inc. ("Sound"), securing a note in the amount of approximately \$2,340,000.00 (the "Sound Lien"). According to Sound, the current amount of debt outstanding on the note is approximately \$1,928,454.69. This amount is comprised of a principal debt of \$1,551,633.59 (the "Sound Principal"), standard interest charges at the rate of 8.99% in the total amount of \$130,193.28 (the "Sound Standard Interest"), default interest charges at the rate of 24% in the total sum of approximately \$196,672.80 (the "Sound Default Interest"), attorneys' fees in the amount of at least \$8,100.00 (the "Sound Attorneys' Fees"), and various other fees and charges in the amount of \$54,658.58, which is primarily comprised of late charges and "foreclosure fees" (the "Sound Miscellaneous Fees").
2. A claim of mechanic's lien in favor of Resco Electric, Inc. ("Resco"), in the amount of \$3,837.24 (the "Resco Lien").
3. A claim of mechanic's lien in favor of TCS Building Solution, Inc. ("TCS"), in the amount of \$350,000.00 (the "TCS Lien").

The Sound Lien, the Resco Lien, and the TCS Lien are hereinafter collectively referred to as the "Liens."

The Debtor disputes the Sound Default Interest, the Sound Attorneys' Fees, the Sound Miscellaneous Fees, the Resco Lien, and the TCS Lien (collectively, the "Disputed Funds"). The Debtor argues that the Sound Default Interest and the Sound Miscellaneous Fees are inequitable and/or unreasonable and would harm the estate and general unsecured creditors. The Debtor disputes the Sound Attorneys' Fees as not allowable. The Debtor asserts that the Resco Lien and the TCS Lien are avoidable under the Bankruptcy Code. Therefore, the Debtor argues that the Disputed Funds are subject to a bona fide dispute under § 363(f)(4) and the Property may be sold free and clear of the Liens, including the Disputed Funds.

The Debtor is not requesting an elimination of the Liens or an immediate disallowance of the Disputed Funds. The Debtor intends to satisfy the undisputed portions owed under the Liens, as detailed above, in full with the net sale proceeds. The Debtor wishes to set aside the net sale proceeds, which the Disputed Funds would attach to, so the proposed sale of the Property may close expeditiously and generate a meaningful distribution for the benefit of the unsecured creditors.

While Sound does not object to the sale of the Property, it objects to the withholding of the net sale proceeds with respect to the Disputed Funds. The

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Chapter 11

Opposition's main arguments include: (i) the Debtor has failed to establish a bona fide dispute with respect to the Disputed Funds; (ii) the Lender is entitled to the full amount due under § 502(h); and (iii) the Debtor is judicially estopped from denying the allowability of the Disputed Funds because of the 9019 Motion and the Transfer Order, as explained below.

II. Findings and Conclusions

A. The Sale of the Property May be Authorized Under Section 363 of the Bankruptcy Code

Section 363(b) authorizes the sale of estate property out of the ordinary course of business, subject to court approval. The trustee or debtor-in-possession must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005).

The Court finds that the proposed sale of the Property, subject to the Overbid Procedures, will effectively maximize the value of the estate's interest in the Property and, therefore, is an exercise of the Debtor's reasonable business judgment. The Debtor retained a licensed real estate broker to list, market, and aid in selling the Property. The Debtor has obtained the Buyer's offer, subject to the Overbid Procedures, which is the highest and best offer received to date. The sales price was a result of arms-length negotiations with the Buyer and the Debtor believes that it represents a fair and adequate price for the Property. The Opposition does not object to the sale of the Property or the proposed sale price.

Relatedly, upon reviewing the declarations attached to the Sale Motion, the Court finds that the Buyer is a good faith purchaser entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether § 363(m) protections are warranted.

Additionally, the Debtor may pay brokerage commissions, ordinary and customary costs of sale (including title and escrow fees) through escrow, and reimburse the Debtor's broker's out of pocket expenses.

B. The Property May be Sold Free and Clear of the Disputed Funds Pursuant to § 363(f)(4)

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Chapter 11

Section 363(f) of the Bankruptcy Code provides that, upon certain conditions, the trustee (or debtor-in-possession) may sell property free and clear of a lien or interest in such property:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

A bona fide dispute exists if there is "an objective basis for either a factual or a legal dispute" as to an interest in property of the estate. *Liberty Tool & Manufacturing v. Vortex Fishing Sys., Inc. (In re Vortex Fishing Sys., Inc.)*, 277 F.3d 1057, 1064 (9th Cir. 2002). [Note 1] "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). To meet its burden under § 363(f)(4), the Debtor must do more than merely allege that a dispute exists; instead, the Debtor must identify factual grounds showing an objective basis for the dispute. *Id.* The required evidentiary showing "depends upon a case-by-case consideration of: (i) the procedural posture of the case, (ii) the need to expedite the sale, and (iii) the nature of the basis for determining that a dispute exists." *In re Robotic Vision Sys., Inc.*, 322 B.R. 502, 506 (Bankr. D.N.H. 2005).

The Court finds that the Debtor has outlined a bona fide dispute with respect to the Disputed Funds. Therefore, the Property may be sold free and clear of the Disputed Funds pursuant to § 363(f)(4). However, the Court is neither finding nor postulating as to the merits of the Debtor's underlying disputes (*i.e.*, whether the Disputed Funds

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Chapter 11

are in fact allowable).

i) The Sound Default Interest, the Sound Attorneys' Fees, and the Sound Miscellaneous Fees are Subject to a Bona Fide Dispute

Per the Sale Motion, in support of finding a bona fide dispute as to the Sound Default Interest, the Debtor advances that although bankruptcy courts apply a presumption of allowability for contracted-for default rates, equities may challenge such presumption. *In re Beltway One Dev. Grp., LLC*, 547 B.R. 819, 830 (B.A.P. 9th Cir. 2016) (noting that "the presumptive rule for default interest is also subject to rebuttal based on equitable considerations"). The Debtor asserts that courts weigh various factors when reviewing the allowability of claims for default rates, specifically the potential harm to junior or unsecured creditors. *In re DWS Invs., Inc.*, 121 B.R. 845, 849 (Bankr. C.D. Cal. 1990) (considering the default interest's relation to the market rate of interest, the default interest's relationship to the actual or projected loss as a result of nonpayment, the debtor's solvency, and the likelihood of distribution to unsecured creditors); *Id.* at 849 (declining to apply a post-petition default interest rate in part because "[t]he estate is insolvent and the unsecured creditors are unlikely to receive a distribution" if the rate is applied). A court's power to modify a default rate of interest should be limited to instances where, among other situations, the application of the interest rate would harm the general unsecured creditors or impair a debtor's fresh start. *In re 3MB, LLC*, 609 B.R. 841 (Bankr. E.D. Cal. 2019).

Per the Sale Motion, the Sound Default Interest is approximately 8x the market rate at the time the Sound Lien was executed. The Debtor contends that at the present stage of the case, the estate's unsecured creditors will not receive distributions in full satisfaction of their claims, if at all. Moreover, the Debtor notes that the estate does not yet have sufficient funds to pay administrative expenses. Per the Reply, if the Debtor prevails in its anticipated objection to the Sound Default Interest, the Sound Attorneys' Fees, and the Sound Miscellaneous Fees, it will recover approximately \$260,000.00, which is a substantial sum that would inure to the estate and unsecured creditors. As the payment of the Disputed Funds is directly at the expense of general unsecured creditors, the equities of awarding such monies must be considered.

The Debtor is attempting to liquidate its portfolio of properties to generate funds for the benefit of the estate and its creditors. The Debtor's properties are all encumbered by claims secured by liens, which may also assert default interest claims, which the Debtor plans to challenge. The Debtor's argument in support of finding a bona fide dispute with respect to the Sound Default Interest and the Sound

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Miscellaneous Fees is that they are inequitable and unreasonable because they would greatly reduce any distributions available for the general unsecured creditors. The Debtor asserts that the Sound Attorneys' Fees are subject to a bona fide dispute because Sound has not provided a basis to allow the requested post-petition attorneys' fees; therefore, the Debtor argues that the Sound Attorneys' Fees may not be allowed. The Court finds that the Debtor has provided objective evidence to establish a bona fide dispute as to the Sound Default Interest, the Sound Attorneys' Fees, and the Sound Miscellaneous Fees.

ii) The TCS Lien and the Resco Lien are Subject to a Bona Fide Dispute

The Debtor disputes the TCS Lien and the Resco Lien. The Debtor argues that the TCS Lien is avoidable. Per the Sale Motion, the TCS Lien was recorded five days before the Property was transferred to the Debtor. According to § 547(e)(3), however, the transfer was "made" when the Debtor received the transfer of the Property. Accordingly, pursuant to § 547(e)(2)(C), the transfer is deemed to have occurred immediately before the Petition Date because it was not perfected as of the Petition Date. Additionally, in support of a finding that the TCS Lien is subject to a bona fide dispute, the Debtor notes that the TCS Lien is for the benefit of TCS, a creditor, it was recorded in connection with an alleged debt arising from previously performed alleged construction services, and it would enable TCS to obtain more than it would under a Chapter 7 liquidation.

The Debtor also argues that the TCS Lien and the Resco Lien were not properly perfected under California law. In order to perfect a mechanic's lien in California, the claimant must bring an action to enforce the lien within 90 days after recordation of the claim of lien. Otherwise, the lien expires and is unenforceable. Cal. Civ. Code § 8460; *In re 450 S. W. Ave., LLC*, 633 B.R. 894, 898 (B.A.P. 9th Cir. 2021) (perfection of mechanic's lien was filed more than 90 days after recording and was thus unenforceable). In cases where the Bankruptcy Code's automatic stay prevents the claimant from commencing an action to perfect a mechanic's lien, 11 U.S.C. § 546 allows the claimant to provide notice of its intention to perfect the lien within the applicable time limit. *Id.* at 900. The Debtor contends that because neither TCS nor Resco complied with applicable nonbankruptcy law or the Bankruptcy Code to perfect their lien by either filing a complaint or indicating an intent to perfect within the applicable timeframe, the TCS Lien and the Resco Lien are avoidable under § 544.

Neither TCS nor Resco filed an opposition to the Sale Motion. The Court finds that the Debtor has made the requisite showing under § 363(f)(4) that the TCS Lien

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and the Resco Lien are subject to a bona fide dispute. However, the Court is not making a finding as to the merits of the allowability of the TCS Lien or the Resco Lien at this time.

iii) The Opposition is Overruled

First, the Opposition argues that the Debtor is judicially estopped from contesting the Sound Lien. The Court disagrees. Under the doctrine of judicial estoppel, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001). Judicial estoppel "is an equitable doctrine invoked by a court at its discretion." *Id.* at 750. Invocation of the doctrine is appropriate where "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 751.

Judicial estoppel does not apply here because the Debtor has not gained an unfair advantage or imposed an unfair detriment upon Sound. On July 5, 2022, the Debtor filed a 9019 Motion [Doc. No. 278] (the "9019 Motion") seeking the Court's approval of a settlement agreement between the Debtor and La Sierra LLC, pursuant to which La Sierra LLC would transfer the Property back to the Debtor in exchange for a release from liability for any avoidance and turnover claims. In its Transfer Order [Doc. No. 322] (the "Transfer Order"), the Court approved the 9019 Motion, reiterating that the transfer would be "without prejudice to the rights of any creditors of La Sierra or any lienholders in the Property." Sound argues that the language regarding prejudice in the 9019 Motion and the Transfer Order judicially estops the Debtor from contesting the Sound Lien, as withholding the Sound Default Interest, the Sound Attorneys' Fees, and the Sound Miscellaneous Fees would prejudice Sound. However, the 9019 Motion and the Transfer Order do not prohibit the Debtor from challenging the Sound Lien under the Bankruptcy Code. By simply using the quoted language above regarding prejudice, the Court did not make any conclusive findings regarding the allowability of the Sound Lien, including the Sound Default Interest, the Sound Attorneys' Fees, and the Sound Miscellaneous Fees. Therefore, the Debtor is not judicially estopped from contesting the Sound Lien because the Debtor has not gained an unfair advantage or imposed an unfair detriment upon Sound.

Second, Sound argues that it has an allowed, secured claim under § 502(a) and (h)

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arising from the transfer of the Property pursuant to the Transfer Order. The Court disagrees. § 502(h) entitles parties holding a claim arising from the recovery of property to a claim the same as if such claim had arisen before the date of the filing of the petition. For example, if a court avoids a transfer of property, the transferee of the property may still file a proof of claim in connection with that transfer. As discussed above, per the Transfer Order, the Property came into the Debtor's estate in exchange for a release of claims against the transferee, La Sierra LLC. § 502(a) and (h) allow parties to assert claims with respect to a transfer of property, however, this Court never made a determination as to Sound's claim and its allowability. Moreover, pursuant to § 502(h), the proper holder of a claim in the context of the 9019 Motion and the Transfer Order would be La Sierra LLC, the transferee of the Property, not Sound as a lienholder in the Property. Therefore, as Sound was not the transferee of the Property with respect to the Transfer Order, Sound does not have a proper claim under § 502(a) and (h).

The Opposition devotes substantial space to arguing the underlying merits of and entitlement to the Disputed Funds. However, the Court is not making a finding as to the allowability of the Disputed Funds at the present time. The Court only finds that the Debtor has outlined a bona fide dispute with respect to the Disputed Funds. Therefore, the Court finds that the Property may be sold free and clear of the Disputed Funds. The Disputed Funds shall attach to the net sale proceeds, with the same force, effect, validity and priority that they have with respect to the Property. The net sale proceeds are to be held in escrow, not to be distributed, pending the Court's review and determination of the substantive arguments regarding the allowability of the Disputed Funds.

C. The Evidentiary Objection is Sustained

The Opposition makes allegations with respect to past draws on the loan advanced by Sound and the Debtor's involvement with such draws. In the Reply, the Debtor argues that Sound's discussion of the past draws is irrelevant with respect to the existence of a bona fide dispute central to the Sale Motion. The Court agrees with the Reply's stance. The past draws on the loan are extraneous to the current issue before the Court: whether a bona fide dispute exists as to the Disputed Funds for the purpose of selling the Property free and clear of the Liens in accordance with the Sale Motion.

Relatedly, on November 8, 2022, the Debtor filed Debtor's Evidentiary Objection to the Declaration in Support of the Opposition [Doc. No. 443] (the "Evidentiary

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Objection"). The Evidentiary Objection, which is based on lack of foundation and personal knowledge, concerns the following statement: "Jinzheng drew down \$93,600 on the Loan on October 1, 2021; \$37,555 on October 25, 2021, and \$133,707.70 on December 21, 2021." The Court sustains the Evidentiary Objection.

D. The Overbid Procedures are Approved

The Overbid Procedures, which are summarized above and outlined in the Sale Motion, are approved. In the event that any qualified overbidders are present, the Court will conduct the auction in accordance with the Overbid Procedures. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level; however, parties are free to submit bids in excess of the bid level announced by the Court. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction.

E. Waiver of FRBP 6004(h) is Granted

The order approving the sale of the Property shall take effect immediately upon entry. It is in the best interests of the estate and the creditors to complete the sale of the Property at the earliest possible time. Therefore, to ensure an expeditious closing, the Court grants the Debtor's requested waiver of the 14-day stay of the effect of the sale order. Additionally, the Debtor is authorized to execute all documents and instruments necessary to effectuate the sale of the Property.

III. Conclusion

In the Opposition, Sound devotes substantial space to arguing the underlying merits of and its entitlement to the Disputed Funds. However, the Court is not making a finding as to the allowability of the Disputed Funds at the present time. The Court only finds that the Debtor has outlined a bona fide dispute with respect to the Disputed Funds. The net sale proceeds are to be held in escrow, not to be distributed, pending the Court's determination of the allowability of the Disputed Funds.

For the reasons set forth above, the Court finds that the Debtor is entitled to sell the Property free and clear of the Disputed Funds as the Debtor has presented a bona fide dispute under § 363(f)(4). Therefore, the Opposition is **OVERRULED** and the Sale Motion is **GRANTED**. Within seven days of the hearing, the Debtor shall submit an order incorporating this tentative ruling by reference.

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Note 1: Although *Vortex Fishing* defined "bona fide dispute" for purposes of § 303, courts have held that § 303's definition of "bona fide dispute" also applies in the context of § 363(f)(4). See, e.g., *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991); *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004).

Party Information

Debtor(s):

JINZHENG GROUP (USA) LLC

Represented By

Zev Shechtman

Alphamorlai Lamine Kebeh

Danielle R Gabai

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#105.00 Hearing

RE: [395] motion for relief from the automatic stay re REAL PROPERTY RE:
2929 Amethyst Street, Los Angeles, CA 90032; 2526-2528 Lincoln Park Ave,
Los Angeles, CA 90031; 2520-2522 Lincoln Park Ave., Los Angeles, CA 90031

FR. 10-31-22; 11-14-22

Docket 395

Tentative Ruling:

11/14/2022

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, REL's Motion for Relief from the Automatic Stay is **GRANTED** pursuant to § 362(d)(1) and (d)(2), but REL shall not conduct a foreclosure sale prior to **March 7, 2023**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 395] (the "RFS Motion")
 - a) Memorandum of Points and Authorities Re Motion for Relief from Stay [Doc. No. 396]
- 2) Debtor's Notice of Opposition and Opposition to Motion for Relief from the Automatic Stay Filed by Royal Equity Lending LLC [Doc. No. 430] (the "Opposition")
 - a) Official Committee of Unsecured Creditors Joinder to Debtor's Opposition to Royal Equity Lending LLC/Bobs LLC's Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362
- 3) Reply in Support of Royal Equity Lending LLC/Bobs LLC's Motion for Relief from Automatic Stay [Doc. No. 438]

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I. Facts and Summary of Pleadings

A. Background

On August 24, 2021 (the “Petition Date”), Jinzheng Group (USA) LLC (the “Debtor”) filed a voluntary Chapter 11 petition. The Debtor’s primary asset is approximately 31 acres of undeveloped land located near downtown Los Angeles (the “Vacant Land”). The Debtor purchased the Vacant Land in August 2016 for \$18.5 million. An appraisal commissioned by the Debtor shortly prior to the Petition Date by Cushman & Wakefield valued the Vacant Land at \$23.45 million. Prior to the Petition Date, the Debtor had intended to create a residential housing development on the Vacant Land.

As of the Petition Date, Royal Equity Lending/Bobs LLC (“REL”) asserted a claim against the Debtor in the amount of \$9,353,009.29. The loan giving rise to REL’s claim (the “Loan”) is secured by the Vacant Land as well as several other adjoining properties containing residential buildings (collectively, the “Properties”).

On May 18, 2022, the Court denied without prejudice REL’s motion for relief from the automatic stay with respect to the Properties (the “First RFS Motion”). *See* Doc. No. 226 (order denying First RFS Motion) and Doc. No. 223 (ruling explaining the reasons for the denial of the First RFS Motion). In support of the First RFS Motion, REL submitted an appraisal valuing the Vacant Land at \$6.89 million. Observing that “[t]he best way to determine value is exposure to a market,” *Bank of America v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 456–57 (1999), the Court found that the 2016 arms-length transaction, in which the Debtor purchased the Vacant Land for \$18.5 million, was more persuasive evidence of the Vacant Land’s value than REL’s appraisal. The Court noted that REL had identified no events which could have caused the Vacant Land to lose roughly two-thirds of its value since 2016. In denying the First RFS Motion, the Court did not make a finding as to the exact value of the Properties. The Court reasoned that even applying conservative assumptions, the Debtor had substantial equity in the Properties.

On July 12, 2022, the Court entered an order authorizing the Debtors to employ CREM Group and Marcus & Millichap as its real estate brokers (the “Brokers”) to market the Properties. The Properties were officially listed for sale on July 26, 2022. Because of the uniqueness of the Properties and the wide range of professional opinions of value, the Brokers made a strategic determination to market the Properties without a list price.

As of October 17, 2022, the Brokers had executed non-disclosure agreements (the

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“NDAs”) with four interested parties, had completed one on-site property tour, and had received no offers. In view of the lack of offers, the Brokers recommended that the Debtor add a price to the listing. The Debtor agreed to the Brokers’ recommendation. On October 20, 2022, the Brokers added a \$12 million list price to their marketing materials.

B. Summary of Papers Filed in Connection with REL’s Motion for Relief from the Automatic Stay

REL moves for relief from the automatic stay with respect to the Properties, pursuant to § 362(d)(1) and (d)(2). In support of the RFS Motion, REL submits an appraisal valuing the Properties at \$8.6 million as of September 8, 2022. [Note 1] REL asserts a total claim against the Properties of \$11,351,597.94. In arguing that stay relief is appropriate, REL emphasizes that it has not received any payments on the Loan since July 2021 and that it has not received any adequate protection payments during the bankruptcy case. REL also notes that when its appraiser visited the Properties, he observed that a building that had been located at 2602 Lincoln Avenue had been demolished.

The Debtor opposes the RFS Motion. It requests that the stay remain in place for an additional 240 days—120 days for the Debtor to complete the marketing of the Properties and 120 days for a purchaser to close escrow. The Debtor disputes REL’s valuation, but has *not* submitted any evidence as to the value of the Properties. Instead, the Debtor argues that the completion of the marketing process is the best way to determine the value of the Properties.

The Official Committee of Unsecured Creditors joins the Debtor’s opposition to the RFS Motion.

II. Findings of Fact and Conclusions of Law

When it denied the First RFS Motion without prejudice, the Court observed that “[t]he best way to determine value is exposure to a market.” *Bank of America v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 456–57 (1999). The Properties have now been exposed to the marketplace, having been listed for sale since July 26, 2022. This exposure to the market has shown that the Vacant Land is worth far less than the \$18.5 million purchase price paid by the Debtor in 2016. Although the Vacant Land and the adjoining residential properties have been marketed for more than three months, no offers for the Properties have been received. Further, there has been minimal interest in the Properties—only four interested parties have executed NDAs,

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and the Brokers have conducted only one on-site tour of the Properties.

The only valuation evidence before the Court is the appraisal submitted by REL. That appraisal values the Properties at \$8.6 million, far less than REL's claim which now exceeds \$11.35 million. The Debtor asserts that "many aspects of REL's secured claim are unreasonable and objectionable," Doc. No. 430 at p. 16, including REL's contention that it is entitled to approximately \$1.2 million in postpetition interest and approximately \$1 million in loan extension fees. The Debtor notes that if "REL's claim was only comprised of its principal and interest at the original contract rate of 9.75%, the current value of the claim would be \$8,520,442.10." *Id.* However, the Debtor's challenge to the amount of REL's claim is devoid of evidence or legal authority showing why REL should not be entitled to post-petition interest or extension fees. For purposes of the instant RFS Motion only, the Court finds that REL holds a claim against the Properties of \$11,351,597.94. [Note 2] The Debtor cannot defeat stay relief by making vague and unsubstantiated allegations regarding the amount of REL's claim.

A. REL is Entitled to Stay Relief Pursuant to § 362(d)(1)

Under § 362(d)(1), a secured creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such" secured creditor. A secured creditor is *not* adequately protected if its equity cushion is less than 20%. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984).

As noted, the only evidence before the Court as to the Properties' value is the appraisal submitted by REL, which values the Properties at \$8.6 million as of September 8, 2022. For purposes of the instant RFS Motion only, the Court finds that REL holds a claim against the Properties in excess of \$11.35 million. Because there is no equity in the Properties, REL is *not* adequately protected by an equity cushion. In addition, the Debtor has not made any adequate protection payments to REL since the commencement of the case, and the Debtor lacks any source of cash from which to make adequate protection payments going forward. As a result, REL is entitled to stay relief pursuant to § 362(d)(1).

B. REL is Entitled to Stay Relief Pursuant to § 362(d)(2)

Under § 362(d)(2), the Court is required to grant stay relief if the debtor lacks equity in the property and the property is not essential to an effective reorganization that is in prospect. As explained by the U.S. Supreme Court:

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Once the movant under § 362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to establish that the collateral at issue is "necessary to an effective reorganization." *See* § 362(g). What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that *is in prospect*. This means, as many lower courts, including the en banc court in this case, have properly said that there must be "a reasonable possibility of a successful reorganization within a reasonable time."

United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375–76 (1988) (emphasis in original).

As discussed in Section II.A., above, the Properties are worth \$8.6 million, but REL's claim against the Properties exceeds \$11.35 million. Therefore, for purposes of the instant RFS Motion only, the Court finds that there is no equity in the Properties.

Although the Properties are necessary to an effective reorganization, there is no evidence before the Court that any such effective reorganization is "in prospect." The Debtor has requested an additional 240 days to close the sale of the Properties. Notwithstanding the fact that they have been marketed by qualified Brokers for more than three months, there has been little interest in the Properties. There is no evidence before the Court to suggest that the Properties will be sold at any time in the near future. Any reorganization by the Debtor is dependent upon a successful sale of the Properties. Consequently, no effective reorganization is "in prospect," meaning that REL is entitled to relief from the automatic stay pursuant to § 362(d)(2).

C. REL Shall Not Conduct a Foreclosure Sale Prior to March 7, 2023

REL has represented that after relief from stay is granted, it will be unable to conduct a foreclosure sale for approximately 111 days, since it has still not filed a Notice of Default or a Notice of Sale. The Court will grant REL relief from the automatic stay for the reasons set forth above, but will prohibit REL from conducting a foreclosure sale prior to **March 7, 2023** (the date that is 111 days subsequent to the hearing date of REL's RFS Motion). REL shall not be prevented from immediately taking any and all other actions that are necessary to enable the foreclosure sale to go forward on March 7, 2023, including but not limited to filing a Notice of Default and Notice of Sale. REL will not be prejudiced by this prohibition given that March 7, 2023 is the first date that REL could conduct a foreclosure sale in any event. The stay

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of the foreclosure sale will provide the Debtor a final opportunity to attempt to sell the Property.

III. Conclusion

Based upon the foregoing, the RFS Motion is **GRANTED** pursuant to § 362(d)(1) and (d)(2), but REL shall not conduct a foreclosure sale prior to **March 7, 2023**. The Court will prepare and enter an appropriate order.

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, the Judge's Law Clerks, 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

Specifically, the appraisal values the Vacant Land at \$6.8 million, values an adjacent residential property located at 2526 Lincoln Park, Los Angeles, CA 90031 at \$800,000, and values another adjacent residential property located at 2520 Lincoln Park, Los Angeles, CA 90031 at \$1 million.

Note 2

This finding is without prejudice to the Debtor's ability to challenge the amount and/or validity of REL's claim in the future.

Party Information

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