

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

9:30 AM

8:16-11882 Stephen J Haythorne Chapter 7
Adv#: 8:16-01188 Jones v. Haythorne

#1.00 CONT'D STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt and Objection to Discharge [Demand for Jury]

FR: 11-3-16; 4-13-17; 5-11-17; 6-15-17; 10-19-17; 12-14-17; 3-22-18; 3-29-18; 5-31-18; 7-19-18; 10-18-18; 12-20-18; 3-21-19; 11-14-19; 11-19-19

Docket 1

*** VACATED *** REASON: OFF CALENDAR: Order Granting Motion for Order Dismissing Complaint for Revocation of Discharge Pursuant to 11 U.S.C. §727 Entered 12/4/2019

Courtroom Deputy:

OFF CALENDAR: Order Granting Motion for Order Dismissing Complaint for Revocation of Discharge Pursuant to 11 U.S.C. §727 Entered 12/4/2019 - td (12/5/2019)

Tentative Ruling:

November 3, 2016

Discovery Cut-off Date:	2/15/17
Pretrial Conference Date:	4/13/17 at 9:30 a.m. (XX)
Deadline to File Joint Pretrial Stipulation:	3/30/17

Deadline for Plaintiff to file Brief With Legal Authority/Analysis re Asserted Right to a Jury Trial	3/30/17
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Special Note: Paragraph 14 of the Complaint refers to an alleged violation of "Section 828(a)(2) . . . of Title 11 of the United States Code." There is no Section 828 in the Bankruptcy Code.

Note: If all parties agree with the foregoing schedule, appearances at today's hearing are waived and Plaintiff shall serve/lodge a scheduling

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order consistent with the same.

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April 13, 2017

Impose sanctions in the amount of \$100 as to Plaintiff's and Defendant's counsel for failure to timely file a joint pretrial stipulation. The court further notes that Plaintiff did not file a brief in support of his alleged right to a jury trial and the court assumes Plaintiff is no longer demanding a jury trial.

Plaintiff's counsel filed a late unilateral pretrial statement on April 11, 2017 but does not include a declaration stating why a joint pretrial stipulation was not filed -- Defendant's counsel did not sign off on the statement filed on April 11, 2017. Instead the declaration appears to be an improper "motion" to re-open discovery. Such a request can only be made by a properly noticed motion pursuant to LBR 9013-1.

Note: Appearances at this hearing are required.

May 11, 2017

Continue pretrial conference to June 15, 2017 at 10:30 a.m., same date/time as hearing on pending motion to re-open discovery. (XX)

Comments re the Joint Pretrial Stipulation:

1. Though Section III (Issues of Law) refers to 523(a)(2)(A), Section II (Disputed Facts) of the JPS does not reference 523(a)(2)(A) or any disputed facts relevant to the elements of fraud.
2. Though Section refers to disputed facts relevant to 523(a)(6), Section III does not refer to issues of law re 523(a)(6).
3. The court does not understand the issue of law implicated by Section III(2) of the JPS.

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4. Paragraph 9 of the Complaint refers to 523(a)(2)(B) but there is no reference to 523(a)(2)(B) in the JPS. Has this basis for nondischargeability been abandoned by Plaintiff?
5. Disputed facts relevant to the elements of slander *per se* are not set forth in the JPS.

Note: If all parties accept the foregoing tentative ruling, appearances at this hearing are not required. Though an amended JPS is not required for the 6/15/17 hearing, the parties are advised to heed the court's comments re the JPS for purposes of any amended JPS filed in the future.

June 15, 2017

Continue pretrial conference to October 19, 2017 at 9:30 a.m.; amended joint pretrial stipulation must be filed by October 5, 2017. (XX)

In preparing the joint pretrial stipulation, the parties should take in to consideration the court's comments above re the May 11, 2017 hearing.

Note: If both parties accept the foregoing tentative ruling, appearances at this hearing are not required.

October 19, 2017

No tentative ruling as disposition will depend upon the outcome of the Motion to Compel set on today's 10:30 a.m. calendar. This matter will be trailed to the 10:30 a.m. calendar.

December 14, 2017

Continue pretrial conference to March 22, 2018 at 9:30 a.m.; final version of

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pretrial stipulation must be filed by March 8, 2018. Deadline for filing pre-trial motions is January 18, 2018. February 22, 2018 at 2:00 p.m. shall be reserved for such motions. Pretrial motions not filed by January 18, 2018 will be deemed waived. (XX)

Comments re the Amended JPS filed 12/1/17:

1. Section II(2) should be modified to add "in a writing" after the phrase "misrepresented his financial condition."
2. All references to "Section 523(a)(b) shall be revised to correctly identify the statutes as 523(a)(2)(A) and 523(a)(2)(B).
3. Typos in Section II(16), line 11 ("filing") and Section III(2) ("Plaintiff") should be corrected.
4. The 12/1/17 version of the JPS does not include the list of witnesses and exhibits as represented therein.

Note: If all parties accept the foregoing tentative ruling, appearances at this hearing are not required.

March 29, 2018

The separately filed pretrial stipulations are both deficient and do not address issues previously identified by the court. The parties will be allowed one final opportunity to file a proper joint pretrial statement and severe monetary sanctions of not less than \$1000 will be imposed on the party who has not participated in the preparation of the final pretrial statement in good faith and in a timely manner.

If the parties cannot agree that a particular fact is undisputed, then it automatically goes into the disputed section of the statement -- one side cannot unilaterally decide that a disputed matter is undisputed.

The parties will be required to meet in person to work on the joint pretrial statement and should be thinking about a time/place to do so prior to today's

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Comments re the Unilateral Pretrial Statements:

1. The sender and receiver of the wired funds of \$232,557.66 should not be a disputed matter. For example, if wire documents indicate that Defendant was the sender, then Defendant should not be disputing that fact. If on the other hand, the sender of the wire was Gadzinski V in N Out Fund ("Gadzinski Fund"), then Plaintiff should include that fact as undisputed. Same the the identity of the recipient -- Plaintiff or Stellar Capital, Inc. ("Stellar")
2. The relationship between Defendant and Gadzinski Fund, if any, should be set forth as either a undisputed or disputed fact. Same re the relationship, if any, between Stellar and/or Plaintiff or Defendant.
3. The fact that a check in the amount of \$5,000 was paid on November 17, 2014 appears to be undisputed. Is there a dispute that the check was drawn on the account of Salt Creek Realty, Inc? What is the relationship, if any, between Salt Creek and Defendant?
4. Re Plaintiff's Sections I(I) and (J), what is the relevance of the rental to the 523 and 727 claims? If it has no bearing on such claims, it should be deleted.
5. Re Plaintiff's Sections I(L) - (V) -- why are these facts relevant to the 523 and 727 claims? If they have no bearing on such claims, they should be deleted.
6. The parties to the alleged agreement and the terms thereof appear to be in dispute and should be listed in the joint pretrial statement as a facts in dispute.
7. Re whether Defendant misrepresented his financial condition, both parties have failed to include the necessary requirement under 523(a)(2)(B) that such misrepresentation be **in writing**. The court has previously pointed out this deficiency. If there is no writing, then the 523(a)(2)(B) claim must be dismissed as a matter of law.

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8. The reference in both pretrial statements to "523(a)(2)(A)(B)" is facially defective as no such statute exists. It is either 523(a)(2)(A) or 523(a)(2)(B).
9. No facts relating to 523(a)(2)(A) are set forth in either pretrial statement. If there are no such facts, this claim should be dismissed as a matter of law.
10. Certain elements of fraud are missing from the issues of fact/law, e.g., intent to deceive, damages as a result of reliance on misrepresentations.
11. What is the relevance of Plaintiff contacting Defendant's parents for repayment to either the 523 or 727 claims? If not relevant, it should be deleted.
12. Re Plaintiff's Section II(15) -- a time frame needs to be added that is consistent with the applicable 727 subsection. Same re Section II(16). Plaintiff appears have lumped several allegations together without any time frames that fall within the applicable 727 subsection.
13. Plaintiff's Exhibits: re "Wells Fargo Documents:" need to better identify the documents. Are they bank statements or something else? Re "letters" and "emails" -- need to identify sender/recipient re each, such as Defendant has done in his exhibit list.
14. Re Plaintiff's Witness List: Re witness #s 9, 10, 11, 12, 13 -- there is no indication of the time period. for example, David Williams will be testifying about a commission paid to Defendant when? "When" makes a difference of purposes of whether the transaction should have been listed on Defendant's schedules or statement of financial affairs.

Special Note: Over the course of this adversary, this court has spent hours correcting issues on what should have been a straightforward joint pretrial statement. The court is concerned that the parties are not being thoughtful in the preparation of the pretrial statement. For example the court cannot even determine whether there are any facts to be litigated under 523(a)(2)(A) or 523(a)(2)(B) based on what currently appears in Plaintiff's pretrial statement.

Note: Appearances at this pretrial conference are MANDATORY.

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CONT... Stephen J Haythorne

Chapter 7

July 19, 2018

No tentative ruling; disposition will depend upon outcome of other motions on for hearing this date.

Party Information

Debtor(s):

Stephen J Haythorne

Represented By
David S Henshaw

Defendant(s):

Stephen J Haythorne

Pro Se

Plaintiff(s):

Richard A Jones

Represented By
Richard A Jones

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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8:17-13780 Maria H. Helton-Rehburg

Chapter 7

Adv#: 8:19-01188 Kosmala v. Breidenbach et al

#2.00 CON'TD STATUS CONFERENCE RE: Complaint for Avoidance of Transfers

FR: 12-5-19

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

December 5, 2019

Continue Status Conference to February 6, 2020 at 9:30 a.m. (XX)

A motion for default judgment may self-calendared for the same date/time as the continued Status Conference date. Alternatively, the motion may be filed without a hearing pursuant to the procedure set forth in Local Bankruptcy Rule 9013-1(o).

The motion for default judgment, supported by evidence, must be served on defendant and defendant's counsel in accordance with Local Rule 9013-1(d).

If the motion for default judgment is not heard by the continued date of the Status Conference, **THE ADVERSARY MAY BE DISMISSED** at the Status Conference for failure to prosecute.

Note: Appearances at this hearing are not required; Plaintiff to serve notice of the continued hearing date/time.

February 6, 2020

No timely filed updated status report or motion for default judgment has been

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Chapter 7

filed in this case. Accordingly, the court may impose sanctions in the amount of \$100 and/or issue an order to show cause why this adversary proceeding should not be dismissed for failure to prosecute.

Note: Appearance at this hearing is required.

Party Information

Debtor(s):

Maria H. Helton-Rehburg

Represented By
Christopher P Walker

Defendant(s):

Andrea M. Breidenbach

Pro Se

Manuela I. Kitchen

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Erin P Moriarty

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

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8:17-14535 Prime Metals U.S.A., Inc.

Chapter 7

Adv#: 8:19-01214 Marshack v. Chang Ding Metal Co., Ltd. et al

#3.00 STATUS CONFERENCE RE: Complaint for: 1. Breach of Contract Against Chang Ding; 2. Breach of Contract Against Hoa Phat; 3. Breach of Contract Against Pomina; 4. Avoidance and Recovery of Constructive Fraudulent Transfers Pursuant to 11 USC Sections 544, 548, 550, 551; California Civil Code Section 3439.04, 3439.05, 3439.07, 3439.08, 3439.09 Against Chang Ding; 5. Avoidance and Recovery of Constructive Fraudulent Transfers Pursuant to 11 USC Sections 544, 548, 550, 551; California Civil Code Section 3439.04, 3439.05, 3439.07, 3439.08, 3439.09 Against Hoa Phat; and 6. Avoidance and Recovery of Constructive Fraudulent Transfers Pursuant to 11 USC Sections 544, 548, 550, 551; California Civil Code Section 3439.04, 3439.05, 3439.07, 3439.08, 3439.09 Against Pomina

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/30/2020 AT 2:00 P.M.,
Per Order Entered 1/31/2020 (XX)**

Courtroom Deputy:

**CONTINUED: Status Conference Continued to 4/30/2020 at 2:00 p.m., Per
Order Entered 1/31/2020 (XX) - adm (1/31/2020)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Prime Metals U.S.A., Inc.

Represented By
Steven Werth

Defendant(s):

Chang Ding Metal Co., Ltd.

Pro Se

Hoa Phat Steel Co., Ltd.

Pro Se

Pomina 2 Steel Corporation

Pro Se

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CONT... Prime Metals U.S.A., Inc.

Chapter 7

Plaintiff(s):

Richard A Marshack

Represented By
Ronald S Hodges
Robert P Goe
Ryan S Riddles

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud
David M Goodrich
Robert P Goe

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8:17-14535 Prime Metals U.S.A., Inc.

Chapter 7

Adv#: 8:19-01215 Marshack v. R-Techo, Co., Ltd.

#4.00 STATUS CONFERENCE RE: Complaint for: 1. Avoidance and Recovery of Intentional Fraudulent Transfers; 2. Avoidance and Recovery of Constructive Fraudulent Transfers; 3. Avoidance and Recovery of Preferential Transfers; 4. Recovery of Avoided Transfers; 5. Declaratory Judgment: Alber Ego; 6. Recovery of Unauthorized, Improper Distributions to Shareholders; 7. Substantive Consolidation; 8. Breach of Fiduciary Duty; 9. Turnover of Property of the Estate; 10. Preservations of Avoided Transfers; 11. Disallowance of Claims; and 12. Temporary Restraining Order and Preliminary Injunction

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/2/2020 AT 9:30 A.M.,
Per Order Entered 2/4/2020 (XX)**

Courtroom Deputy:

CONTINUED: Status Conference Continued to 4/2/2020 at 9:30 a.m., Per Order Entered 2/4/2020 (XX) - td (2/4/2020)

Tentative Ruling:

February 6, 2020

No timely filed updated status report or motion for default judgment has been filed in this case. Accordingly, the court may impose sanctions in the amount of \$100 and/or issue an order to show cause why this adversary proceeding should not be dismissed for failure to prosecute.

Note: Appearance at this hearing is required.

Party Information

Debtor(s):

Prime Metals U.S.A., Inc.

Represented By
Steven Werth

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CONT... **Prime Metals U.S.A., Inc.**

Chapter 7

Defendant(s):

R-Techo, Co., Ltd. Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Ronald S Hodges
Robert P Goe
Ryan S Riddles

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud
David M Goodrich
Robert P Goe

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8:17-14535 Prime Metals U.S.A., Inc.

Chapter 7

Adv#: 8:19-01216 Marshack v. Hyundai Steel Company

#5.00 STATUS CONFERENCE RE: Complaint For: 1. Breach of Contract; 2. Breach of Implied Covenant of Good Faith and Fair Dealing; 3. Avoidance and Recovery of Intentional Fraudulent Transfers; 4. Avoidance and Recovery of Constructive Fraudulent Transfers; 5. Avoidance and Recovery of Property of the Bankruptcy Estate; 6. Temporary Restraining Order and Preliminary Injunction; 7. Avoidance of Preferential Transfers; 8. Recovery of Avoided Transfers; 9. Substantive Consolidation; 10. Declaratory Judgment: Alter Ego

Docket 1

***** VACATED *** REASON: CONTINUED TO 4/2/2020 AT 2:00 P.M.,
Per Order Entered 1/23/2020 (XX)**

Courtroom Deputy:

**CONTINUED: Status Conference Continued to 4/2/2020 at 2:00 p.m., Per
Order Entered 1/23/2020 (XX) - td (1/23/2020)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Prime Metals U.S.A., Inc.

Represented By
Steven Werth

Defendant(s):

Hyundai Steel Company

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Ronald S Hodges
Robert P Goe
Ryan S Riddles

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CONT... Prime Metals U.S.A., Inc.

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud
David M Goodrich
Robert P Goe

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9:30 AM

8:17-14535 Prime Metals U.S.A., Inc.

Chapter 7

Adv#: 8:19-01217 Marshack v. Mr. C's Towing at Southgate, Inc.

#6.00 STATUS CONFERENCE RE: Complaint for: 1. Avoidance and Recovery of Constructive Fraudulent Transfers pursuant to 11 U.S.C. Sections 544, 548, 550, 551; California Civil Code Sections 3439.04, 3439.05, 3439.07, 3439.08, 3439.09; 2. Recovery of Avoided Transfers; 3. Turnover of Property of the Estate; 4. Preservation of Avoided Transfers; 5. Temporary Restraining Order and Preliminary Injunction against Mr. C's Towing at Southgate, Inc.

Docket 1
*** VACATED *** REASON: CONTINUED TO 4/2/2020 AT 9:30 A.M.,
Per Order Entered 2/4/2020 (XX)

Courtroom Deputy:

CONTINUED: Status Conference Continued to 4/2/2020 at 9:30 a.m., Per Order Entered 2/4/2020 (XX) - td (2/4/2020)

Tentative Ruling:

February 6, 2020

A proof of service showing proper service of the summons and complaint has not been filed. Further, no timely filed updated status report or motion for default judgment has been filed in this case. Accordingly, the court may impose sanctions in the amount of \$100 and/or issue an order to show cause why this adversary proceeding should not be dismissed for failure to prosecute.

Note: Appearance at this hearing is required.

Party Information

Debtor(s):

Prime Metals U.S.A., Inc.

Represented By
Steven Werth

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CONT... Prime Metals U.S.A., Inc.

Chapter 7

Defendant(s):

Mr. C's Towing at Southgate, Inc.

Represented By
Ryan S Riddles

Plaintiff(s):

Richard A Marshack

Represented By
Ronald S Hodges
Robert P Goe
Ryan S Riddles

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Laila Masud
David M Goodrich
Robert P Goe

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8:17-14535 Prime Metals U.S.A., Inc.
Adv#: 8:19-01218 Marshack v. Kim et al

Chapter 7

#7.00 STATUS CONFERENCE RE: Complaint for: 1. Breach of Fiduciary Duty; 2. Accounting; and 3. Defalcation of Trust

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Discovery Cut-off Date:	June 1, 2020
Deadline to Attend Mediation:	June 15, 2020
Pretrial Conference Date:	July 16, 2020 at 9:30 a.m.
Deadline to Lodge Joint Pretrial Stipulation:	July 6, 2020

Special Note: The joint status report filed 1/28/20 provides very little information regarding the status of the case, why there is no discovery schedule, and why Plaintiff is waiting for non-answering defendants to participate. Per the docket, only one defendant, Minho An, was granted an extension of time to January 7, 2020 to file an answer. An's answer was timely filed.

Note: If all parties agree with the foregoing schedule, appearances at today's hearing are waived and Plaintiff shall serve/locate a scheduling order consistent with the same.

Party Information

Debtor(s):

Prime Metals U.S.A., Inc.

Represented By

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CONT... Prime Metals U.S.A., Inc.

Chapter 7

Steven Werth

Defendant(s):

Ik Dong Kim	Pro Se
Gill Su Sun	Pro Se
Minho An	Pro Se

Plaintiff(s):

Richard A Marshack	Represented By Ronald S Hodges Robert P Goe Ryan S Riddles
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays Laila Masud David M Goodrich Robert P Goe
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8:18-12967 Lillian Sikanovski Dulac

Chapter 7

Adv#: 8:19-01078 Bertrand H Dulac and Georgette C Dulac, Trustees o v. Dulac et al

#8.00 CON'TD STATUS CONFERENCE RE: Complaint to Determine Validity of Certain Notes and Deeds of Trust and to Perfect Secured Liens

FR: 7-18-19; 9-19-19; 12-5-19

Docket 1

Courtroom Deputy:

**SPECIAL NOTE: Status conference set for 2/6/2020 at 9:30 a.m., Cal. #9
re: Complaint in intervention (liz - 11-19-19)**

Tentative Ruling:

July 18, 2019

Continue status conference to September 19, 2019 at 9:30 a.m. to allow the chapter 7 trustee the opportunity to intervene. (XX)

Special Note: It appears the complaint is seeking relief against property of the bankruptcy estate and, therefore, the chapter 7 trustee would be an indispensable party.

Note: If all parties accept the foregoing tentative ruling, appearances at today's hearing are not required and Plaintiff shall serve notice of the continued hearing date/time (including service to the chapter 7 trustee).

September 19, 2019

Continue status conference to December 5, 2019 at 9:30 a.m.; updated status report must be filed by November 21, 2019. (XX)

Special comment: The court notes that though the Trustee signed the Joint

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CONT... Lillian Sikanovski Dulac

Chapter 7

Status Report on 9/17/19, the Trustee dismissed her Complaint in Intervention on 9/16/19.

Note: Appearances at today's hearing are not required; Plaintiff to serve notice of the continued hearing date/time.

December 5, 2019

Continue the Status Conference to February 6, 2020 at 9:30 a.m., same date/time as Status Conference now set for Third Party Complaint. Joint Status Report must be filed by January 23, 2020. (XX)

Note: Appearances at today's hearing are not required; Plaintiff to serve notice of the continued hearing date/time.

February 6, 2020

Continue status conference to June 4, 2020 at 9:30 a.m.; updated joint status report must be filed by May 21, 2020. Any motion for relief from stay and/or abstention must be filed no later than April 16, 2020 and set for hearing no later than May 7, 2020.

Note: If all parties accept the foregoing tentative ruling, appearances at this hearing are not required and Plaintiffs shall lodge a scheduling order consistent with the same.

Party Information

Debtor(s):

Lillian Sikanovski Dulac

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ronald H. Dulac

Pro Se

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9:30 AM

CONT... Lillian Sikanovski Dulac

Chapter 7

Lillian Sikanovski

Pro Se

Plaintiff(s):

Bertrand H Dulac and Georgette C

Represented By
Ronald Appel

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

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8:18-12967 Lillian Sikanovski Dulac

Chapter 7

Adv#: 8:19-01078 Bertrand H Dulac and Georgette C Dulac, Trustees o v. Dulac et al

#9.00 STATUS CONFERENCE RE: Complaint in Intervention to Determine Estate's Interest in Real Property and Validity and Extent of Liens, and Ancillary Relief

Docket 16

Courtroom Deputy:

**SPECIAL NOTE: Status conference set for 2/6/2020 at 9:30 a.m., Cal. #8
re: Original Complaint (liz - 11-19-19)**

Tentative Ruling:

February 6, 2020

Continue status conference to June 4, 2020 at 9:30 a.m.; updated joint status report must be filed by May 21, 2020. Any motion for relief from stay and/or abstention must be filed no later than April 16, 2020 and set for hearing no later than May 7, 2020.

Note: If all parties accept the foregoing tentative ruling, appearances at this hearing are not required and Plaintiffs shall lodge a scheduling order consistent with the same.

Party Information

Debtor(s):

Lillian Sikanovski Dulac

Represented By
Michael Jones
Sara Tidd

Defendant(s):

Ronald H. Dulac

Pro Se

Lillian Sikanovski Dulac

Pro Se

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CONT... Lillian Sikanovski Dulac

Chapter 7

Plaintiff(s):

Bertrand H Dulac and Georgette C

Represented By
Ronald Appel
Michael Jones

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Erin P Moriarty

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Hearing Room 5A

9:30 AM

8:18-14543 Carissa Louise Clemens

Chapter 7

Adv#: 8:19-01006 Clemens v. US Dept of Education

**#10.00 CON'TD STATUS CONFERENCE RE: Dischargeability (523(a)(8), Student
Loan)**

(Another Summons Issued 8/7/2019)
FR: 11-7-19

Docket 1

***** VACATED *** REASON: OFF CALENDAR: Order Approving
Stipulation to Dismiss Adversary Proceeding Entered 12/30/2019**

Courtroom Deputy:

**OFF CALENDAR: Order Approving Stipulation to Dismiss Adversary
Proceeding Entered 12/30/2019 - td (12/30/2019)**

Tentative Ruling:

Party Information

Debtor(s):

Carissa Louise Clemens Pro Se

Defendant(s):

US Dept of Education Represented By
Elan S Levey

Plaintiff(s):

Carissa Clemens Pro Se

Trustee(s):

Karen S Naylor (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room

5A

9:30 AM

8:19-11139 Chirag Shewa

Chapter 7

Adv#: 8:19-01177 Gama World Technologies, Inc. v. Shewa

#11.00 CONT'D STATUS CONFERENCE RE: Complaint to Determine
Nondischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(2)(A), (B),
523(a)(4) and (6)

FR: 11-21-19; 12-19-19

Docket 1

Courtroom Deputy:

**SPECIAL NOTE: Call from plaintiff's attorney, Bryan M. Lieffer
(213-680-5179), advising that this matter has settled. A motion to
approve the settlement is forthcoming. -sb (12/16/2019 3:35 PM).**

Tentative Ruling:

November 21, 2019

No proof of service showing proper service of the summons and complaint
and no status report filed as required by LBR 7016-1. Impose sanctions in
the amount of \$100 against Plaintiff's counsel. Court to issue Order to Show
Cause why this adversary proceeding should not be dismissed for failure to
prosecute.

Note: Appearance at this hearing is required.

December 19, 2019

Continue status conference to February 6, 2020 at 9:30 a.m.; updated status
report must be filed by January 23, 2020 if the matter is still pending as of that
date. (XX)

Note: If both parties accept the foregoing tentative ruling, appearances

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
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Thursday, February 6, 2020

Hearing Room 5A

9:30 AM

CONT... Chirag Shewa

Chapter 7

at this hearing are not required and Plaintiff shall serve notice of the continued hearing date/time.

February 6, 2020

Take status conference off calendar in light of pending settlement agreement.

Note: Appearance at this hearing is not required.

Party Information

Debtor(s):

Chirag Shewa

Represented By
Leonard M Shulman

Defendant(s):

Chirag Shewa

Pro Se

Plaintiff(s):

Gama World Technologies, Inc.

Represented By
Bryan Leifer

Trustee(s):

Thomas H Casey (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room

5A

10:00 AM

8:19-13464 Robert P Fiorentino and Phyllis A Fiorentino

Chapter 13

#12.00 Hearing RE: Motion for relief from the automatic stay [REAL PROPERTY]

SPECIALIZED LOAN SERVICING LLC

VS.

DEBTORS

Docket 32

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Grant motion without waiver of FRBP 4001(a)(3).

Basis for Tentative Ruling:

1. Debtor's Second Amended Plan specifically provides that current postpetition mortgage payments will be maintained. According to the unrefuted evidence presented by Movant, Debtor has failed to maintain such payments and, therefore, cause exists under 362(d)(1) to lift the automatic stay on this ground alone. Movant's position is supported by the 9th Circuit Appellate Panel. See *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 435 (9th Cir. BAP 1985) (failure to make post-confirmation payments is "cause" for lifting the stay); *In re Watson*, 2017 WL 5196710 (9th Cir. BAP) (November 9, 2017).
2. Debtors argue that, notwithstanding their failure to comply with the terms of their own second amended plan, Movant is adequately protected by a substantial equity cushion. However, as noted by the BAP in *Ellis*, "Lack of adequate protection is but one example of "cause" for relief from stay." 60

**United States Bankruptcy Court
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Judge Erithe Smith, Presiding
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Thursday, February 6, 2020

Hearing Room 5A

10:00 AM

CONT... Robert P Fiorentino and Phyllis A Fiorentino
B.R. at 435.

Chapter 13

3. The court notes parenthetically that even if the court were to consider the alleged equity cushion, there is no evidence that Debtors have taken any steps to list the property for sale, e.g., no application to employ a broker even though the case has been pending for approximately 5 months.

Party Information

Debtor(s):

Robert P Fiorentino	Represented By Julie J Villalobos
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Joint Debtor(s):

Phyllis A Fiorentino	Represented By Julie J Villalobos
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Movant(s):

Specialized Loan Servicing LLC	Represented By Austin P Nagel Kirsten Martinez
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Trustee(s):

Amrane (SA) Cohen (TR)	Pro Se
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United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room

5A

10:00 AM

8:19-14614 Delecia A Holt

Chapter 7

#13.00 CONT'D Hearing RE: Motion for relief from the automatic stay
[PERSONAL PROPERTY]

FINANCIAL SERVICES VEHICLE TRUST

VS.

DEBTOR

FR: 1-9-20

Docket 14

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

January 9, 2020

Grant with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the 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.

February 6, 2020

Grant the motion with the waiver of FRBP 4001(a)(3).

At the hearing held on January 9, 2020, Debtor advised the court that the vehicle in question is being driven by, and payments are made by, a relative of Debtor. This is not a vehicle used by Debtor thought she is apparently liable on the loan. Granting relief from the automatic stay is actually in

**United States Bankruptcy Court
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Thursday, February 6, 2020

Hearing Room 5A

10:00 AM

CONT... Delecia A Holt

Chapter 7

Debtor's best interest as receiving as she will receive a discharge of this obligation and have no further legal or personal liability for it.

Party Information

Debtor(s):

Delecia A Holt Pro Se

Movant(s):

Financial Services Vehicle Trust Represented By
Cheryl A Skigin

Trustee(s):

Thomas H Casey (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:00 AM

8:19-14614 Delecia A Holt

Chapter 7

#14.00 CON'TD Hearing RE: Motion for relief from the automatic stay
[PERSONAL PROPERTY]

DAIMLER TRUST

VS.

DEBTOR

FR: 1-9-20

Docket 16

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

January 9, 2020

Grant with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the 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.

February 6, 2020

Grant the Motion with waiver of FRBP 4001(a)(3).

At the January 9, 2020 hearing Debtor appeared and was specifically told to file an opposition AND provide proof of lease payments made from October through and including January 2020. Debtor has provided no proof of such

**United States Bankruptcy Court
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Thursday, February 6, 2020

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5A

10:00 AM

CONT... Delecia A Holt
payments.

Chapter 7

Debtor's argument regarding service is not persuasive. Service need only be made by mail. Debtor obviously received the motion and appeared at the hearing. The proof of service filed re the Motion shows proper service. More importantly, at the January 9, 2020 hearing, she was given an additional time to file and serve the required opposition documentation.

As pointed out by Daimler Trust, the transaction involves a *lease* and not a purchase. Accordingly, Debtor is not the title owner of the vehicle (she is the lessee) and has no equity in the property. Failure to make the lease payments and lack of equity constitutes grounds for granting relief from the automatic stay under 362(d)(1) (cause shown by Daimler for payment default) and 362(d)(2) (lack of equity and vehicle not necessary for reorganization -- there is no reorganization in a chapter 7.).

Party Information

Debtor(s):

Delecia A Holt Pro Se

Movant(s):

Daimler Trust
Represented By
Sheryl K Ith

Trustee(s):

Thomas H Casey (TR) Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:00 AM

8:20-10090 Brian N. Willis

Chapter 13

#15.00 Hearing RE: Motion for relief from automatic stay
[ACTION IN NON-BANKRUPTCY FORUM]

ALAN WONG

VS.

DEBTOR

Docket 11

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Grant with 4001(a)(3) waiver.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Brian N. Willis

Represented By
Fritz J Firman

Movant(s):

Alan Wang

Represented By
Peter C Wittlin

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, February 6, 2020

Hearing Room 5A

10:00 AM

CONT... Brian N. Willis

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:10-26006 James E. Case and Laura M. Case

Chapter 7

#16.00 Hearing RE: First and Final Fee Application of Hahn Fife & Company for Allowance of Fees and Expenses From October 29, 2019 Through November 19, 2019

[HAHN FIFE & COMPANY, ACCOUNTANT FOR CHAPTER 7 TRUSTEE]

Docket 106

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition 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):

James E. Case

Represented By
Bert Briones

Joint Debtor(s):

Laura M. Case

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... James E. Case and Laura M. Case

Chapter 7

Reem J Bello

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:10-26006 James E. Case and Laura M. Case

Chapter 7

#17.00 Hearing RE: Second and Final Application for Allowance and Payment of Fees and Reimbursement of Expenses

[WEILAND GOLDEN GOODRICH LLP, COUNSEL FOR CHAPTER 7 TRUSTEE]

Docket 109

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition 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):

James E. Case

Represented By
Bert Briones

Joint Debtor(s):

Laura M. Case

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Jeffrey I Golden (TR)

Represented By

**United States Bankruptcy Court
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Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... James E. Case and Laura M. Case

Chapter 7

Reem J Bello

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:10-26006 James E. Case and Laura M. Case

Chapter 7

#18.00 Hearing RE: Trustee's Final Report and Application for Final Fees and Expenses

[JEFFREY I. GOLDEN, CHAPTER 7 TRUSTEE]

Docket 113

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Approve fees and expenses as requested.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Applicant is required. Should an opposition 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):

James E. Case

Represented By
Bert Briones

Joint Debtor(s):

Laura M. Case

Represented By
Michael Jones
Sara Tidd

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:11-25430 Uliana A Kozeychuk

Chapter 7

#19.00 Hearing RE: Chapter 7 Trustee's Motion for an Order 1) Approving the Trustee's Agreement to See the Estate's Interest in Certain Litigation Pursuant to Section 363; 2) Approving Overbid Procedures; 3) Determining the Debtor is a Good Faith Purchaser

Docket 34

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Grant the Motion, subject to overbid.

Party Information

Debtor(s):

Uliana A Kozeychuk Pro Se

Movant(s):

Thomas H Casey (TR) Pro Se

Trustee(s):

Thomas H Casey (TR) Pro Se

United States Bankruptcy Court
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Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:15-12320 Francisco Delgado and Paula Delgado

Chapter 13

#20.00 Hearing RE: Chapter 13 Trustee's Motion for Order for Return of Estate Property
Re Select Portfolio Servicing [Claim No.26]

Docket 50

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Grant Motion.

Note: This matter appears to be uncontested. Accordingly, no court appearance by the Movant is required. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required and Movant will be so notified.

Party Information

Debtor(s):

Francisco Delgado

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Paula Delgado

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

United States Bankruptcy Court
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Santa Ana
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Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:18-12003 Jack G. Gaglio

Chapter 7

Adv#: 8:18-01172 Pacific Western Bank v. Gaglio et al

#21.00 Hearing RE: Motion for Order Awarding Debtor Laura A. Gaglio Attorney's Fees and Costs as Prevailing Party

Docket 64

***** VACATED *** REASON: CONTINUED TO 3/5/2020 AT 10:30 A.M.,
Per Order Entered 1/29/2020 (XX)**

Courtroom Deputy:

**CONTINUED: Hearing Continued to 3/5/2020 at 10:30 a.m., Per Order
Entered 1/29/2020 (XX) - td (1/29/2020)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack G. Gaglio

Represented By
Timothy S Huyck
Thomas J Eastmond

Defendant(s):

Jack G. Gaglio

Represented By
Thomas J Eastmond
Robert P Goe

Laura A. Gaglio

Represented By
Thomas J Eastmond
Robert P Goe
Marc C Forsythe

Joint Debtor(s):

Laura A. Gaglio

Represented By
Timothy S Huyck
Thomas J Eastmond

**United States Bankruptcy Court
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Judge Erithe Smith, Presiding
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Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... Jack G. Gaglio

Chapter 7

Plaintiff(s):

Pacific Western Bank

Represented By
Kenneth Hennesay

Trustee(s):

Karen S Naylor (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:19-13844 Sepas Property Management LLC

Chapter 11

#22.00 CON'TD Hearing RE: Motion by United States Trustee to Dismiss Case or Convert to One Under Chapter 7 Pursuant To 11 U.S.C. §1112(b)

FR: 1-16-10

Docket 14

*** VACATED *** REASON: OFF CALENDAR: Order Dismissing this Bankruptcy Case Entered 1/31/2020

Courtroom Deputy:

OFF CALENDAR: Order Dismissing this Bankruptcy Case Entered 1/31/2020 - td (2/3/2020)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sepas Property Management LLC

Represented By
Dennis Connelly

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room

5A

10:30 AM

8:19-13844 Sepas Property Management LLC

Chapter 11

#23.00 CONT'D STATUS CONFERENCE Hearing on Status of Chapter 11 Case; and
(2) Requiring Report on Status of Chapter 11 Case

FR: 12-5-19; 1-16-20

Docket 1

*** VACATED *** REASON: OFF CALENDAR: Order Dismissing this
Bankruptcy Case Entered 1/31/2020

Courtroom Deputy:

**OFF CALENDAR: Order Dismissing this Bankruptcy Case Entered
1/31/2020 - td (2/3/2020)**

Tentative Ruling:

December 5, 2019

No status report filed other than Debtor's counsel's statement that Debtor has terminated legal representation. As a business entity may not represent itself in a bankruptcy case, the court will issue an Order to Show Cause Why This Case Should Not Be Dismissed Due to Violation of Local Bankruptcy Rule 9020-2.

January 16, 2020

Continue status conference to February 6, 2020 at 10:30 a.m., same datetime as continued hearing on UST's motion to dismiss/convert case. (XX)

Note: Appearances at this hearing are not required.

Party Information

Debtor(s):

Sepas Property Management LLC

Represented By
Dennis Connally

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:19-13858 Bruce Elieff

Chapter 11

#24.00 CON'TD Hearing RE: Application of The Debtor and Debtor-In-Possession for Authority to Employ Force Ten Partners, LLC as Financial Advisor Effective as of The Petition Date **[Affects Bruce Elieff]**

FR: 12-5-19; 1-9-20

Docket 43

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

December 5, 2019

Potential Service Issue: LBR 2014-1(b)(2)(1) requires that employment applications be served on the 20 Largest Unsecured Creditors. The court could not determine from the proof of service re this application that such creditors were served. If not, the hearing on this application will be continued to January 9, 2020 at 10:30 a.m.

If service is determined to be correct, grant the application, including the *Knudsen* provisions and overrule all objections to the same.

January 9, 2020.

Continue hearing one final time to February 6, 2020 at 10:30 a.m. (XX)

The omnibus notice [docket #149] which is intended to correct the notice issue raised by the court in its December 5, 2019 tentative ruling does not comply with LBR 2014-1(b)(3)(B), (C), (D) and (E).

Debtors will be allowed one final opportunity to properly serve the notice of the Applications. Debtors' counsel shall not charge Debtors for the

United States Bankruptcy Court
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Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... Bruce Elieff

Chapter 11

preparation of the notice reflected as docket #149.

February 6, 2020

Service issue corrected; Approve application, including *Knudsen* provisions.

Note: If the objecting party(ies) accept the foregoing tentative ruling, appearances at this hearing are not required.

Party Information

Debtor(s):

Bruce Elieff

Represented By
Paul J Couchot

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room

5A

10:30 AM

8:19-13858 Bruce Elieff

Chapter 11

#25.00 CON'TD Hearing RE: Debtor's Motion for Order Authorizing Employment of Couchot Law, LLP, as Debtors General Insolvency Counsel **[Affects All Debtors]**

FR: 12-5-19; 1-9-20

Docket 44

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

December 5, 2019

Potential Service Issue: LBR 2014-1(b)(2)(1) requires that employment applications be served on the 20 Largest Unsecured Creditors. The court could not determine from the proof of service re this application that such creditors were served. If not, the hearing on this application will be continued to January 9, 2020 at 10:30 a.m.

If service is determined to be correct, grant the application, including the *Knudsen* provisions and overrule all objections to the same. However, applicant must file quarterly fee applications commencing at the end of the first quarter 2020.

January 9, 2020.

Continue hearing one final time to February 6, 2020 at 10:30 a.m. (XX)

The omnibus notice [docket #149] which is intended to correct the notice issue raised by the court in its December 5, 2019 tentative ruling does not comply with LBR 2014-1(b)(3)(B), (C), (D) and (E).

Debtors will be allowed one final opportunity to properly serve the notice of

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Courtroom 5A Calendar**

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... Bruce Elieff

Chapter 11

the Applications. Debtors' counsel shall not charge Debtors for the preparation of the notice reflected as docket #149.

February 6, 2020

Service issue corrected; Approve application, including *Knudsen* provisions -- Applicant must file quarterly fee applications commencing at the end of the first quarter 2020.

Note: If the objecting party(ies) accept the foregoing tentative ruling, appearances at this hearing are not required.

Party Information

Debtor(s):

Bruce Elieff

Represented By
Paul J Couchot

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar**

Thursday, February 6, 2020

Hearing Room

5A

10:30 AM

8:19-13858 Bruce Elieff

Chapter 11

#26.00 CON'TD Hearing RE: Motion in Debtors' Chapter 11 Cases for Order Authorizing Debtor in Possession to Employ Professional Real Estate Broker Timothy Tamura [Affects 4627 Camden, LLC]

FR: 12-5-19; 1-9-20

Docket 49

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

December 5, 2019

Potential Service Issue: LBR 2014-1(b)(2)(1) requires that employment applications be served on the 20 Largest Unsecured Creditors. The court could not determine from the proof of service re this application that such creditors were served. If not, the hearing on this application will be continued to January 9, 2020 at 10:30 a.m.

If service is determined to be correct, grant the application, without the conditions of weekly reports requested by objecting creditor -- the court finds such a request unnecessarily burdensome.

January 9, 2020.

Continue hearing one final time to February 6, 2020 at 10:30 a.m. (XX)

The omnibus notice [docket #149] which is intended to correct the notice issue raised by the court in its December 5, 2019 tentative ruling does not comply with LBR 2014-1(b)(3)(B), (C), (D) and (E).

Debtors will be allowed one final opportunity to properly serve the notice of the Applications. Debtors' counsel shall not charge Debtors for the

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... Bruce Elieff

Chapter 11

preparation of the notice reflected as docket #149.

February 6, 2020

Service issue corrected; Approve application (weekly reports requested by objecting party not required).

Note: If the objecting party(ies) accept the foregoing tentative ruling, appearances at this hearing are not required.

Party Information

Debtor(s):

Bruce Elieff

Represented By
Paul J Couchot

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:19-13858 Bruce Elieff

Chapter 11

#27.00 CONT'D Hearing RE: Motion in Debtors' Chapter 11 Cases For Order
Authorizing Debtor in Possession to Employ Professional Real Estate Broker
Timothy Tamura **[Affects Bruce Elieff]**

FR: 12-5-19; 12-19-19; 1-9-20; 1-30-20

Docket 50

Courtroom Deputy:

SPECIAL NOTE: Stipulation to Continue Hearing to 3/5/2020 at 10:30 a.m. to be Filed and Order to Be Lodged per Martha of Couchot Law, Attorneys for Debtor - td (2/4/2020)

Tentative Ruling:

January 9, 2020.

Continue hearing one final time to February 6, 2020 at 10:30 a.m. (XX)

The omnibus notice [docket #149] does not comply with LBR 2014-1(b)(3)(B), (C), (D) and (E).

Debtors will be allowed one final opportunity to properly serve the notice of the Applications. Debtors' counsel shall not charge Debtors for the preparation of the notice reflected as docket #149.

February 6, 2020

[NOTE: THIS TENTATIVE RULING HAS BEEN MODIFIED SINCE ITS ORIGINAL POSTING]

Approve Application to Employ, except that the broker shall not commence any marketing and/or listing of the Perham property until after the entry of a court order specifically authorizing Debtor to market and/or list such property.

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Santa Ana
Judge Erithe Smith, Presiding
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Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

CONT... Bruce Elieff

Chapter 11

Note: Appearances at this hearing are not required.

Party Information

Debtor(s):

Bruce Elieff

Represented By
Paul J Couchot

United States Bankruptcy Court
Central District of California
Santa Ana
Judge Erithe Smith, Presiding
Courtroom 5A Calendar

Thursday, February 6, 2020

Hearing Room 5A

10:30 AM

8:19-13858 Bruce Elieff

Chapter 11

#28.00 CON'TD Hearing RE: Motion in Debtors' Chapter 11 Cases For Order
Authorizing Debtor in Possession to Employ Professional Real Estate Broker
Carol Trapani **[Affects Morse Properties, LLC]**

FR: 12-5-19; 1-9-20

Docket 60

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

December 5, 2019

Potential Service Issue: LBR 2014-1(b)(2)(1) requires that employment applications be served on the 20 Largest Unsecured Creditors. The court could not determine from the proof of service re this application that such creditors were served. If not, the hearing on this application will be continued to January 9, 2020 at 10:30 a.m.

If service is determined to be correct, grant the application, modified by the terms set forth in Debtor's reply.

January 9, 2020.

Continue hearing one final time to February 6, 2020 at 10:30 a.m. (XX)

The omnibus notice [docket #149] which is intended to correct the notice issue raised by the court in its December 5, 2019 tentative ruling does not comply with LBR 2014-1(b)(3)(B), (C), (D) and (E).

Debtors will be allowed one final opportunity to properly serve the notice of the Applications. Debtors' counsel shall not charge Debtors for the preparation of the notice reflected as docket #149.

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10:30 AM

CONT... Bruce Elieff

Chapter 11

February 6, 2020

Service issue corrected; Approve application with the modifications set forth in Debtor's Reply.

Note: If the objecting party(ies) accept the foregoing tentative ruling, appearances at this hearing are not required.

Party Information

Debtor(s):

Bruce Elieff

Represented By
Paul J Couchot

United States Bankruptcy Court
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10:30 AM

8:19-14366 Richard Thomas Letwak

Chapter 7

#29.00 Hearing RE: Creditor Coastline JX Holdings, LLC's Motion to Extend Time to File Objection to Debtor's Claim of Exemption

Docket 11

*** VACATED *** REASON: OFF CALENDAR: Notice of Voluntary Dismissal of Creditor JX Holdings, LLC's Motion, filed 2/4/2020

Courtroom Deputy:

OFF CALENDAR: Notice of Voluntary Dismissal of Creditor JX Holdings, LLC's Motion, filed 2/4/2020 - td (2/4/2020)

Tentative Ruling:

February 6, 2020

Grant motion to extend though March 8, 2020. No further extensions will be granted. Overrule Debtor's objections.

Party Information

Debtor(s):

Richard Thomas Letwak

Represented By
Timothy McFarlin

Movant(s):

Coastline JX Holdings, LLC

Represented By
Kenneth Hennesay

Trustee(s):

Richard A Marshack (TR)

Pro Se

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Santa Ana
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8:19-13770 Dove Real Estate & Association Management LLC **Chapter 11**
Adv#: 8:19-01204 Dove Real Estate & Association Management, LLC v. Macarthur Village

#30.00 Hearing RE: Defendant Macarthur Village Homeowners Association's Motion for Summary Judgment on the Debtor's Complaint for Determination of Validity, Priority, or Extent of Lien and Declaratory Judgment Thereon

Docket 8

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

February 6, 2020

Grant Motion except as to the general request for attorney's fees.

Basis for Tentative Ruling

On September 27, 2019, plaintiff Dove Real Estate & Association Management, LLC ("Debtor") filed a voluntary chapter 11 petition.

On October 15, 2019, Debtor filed a complaint against defendant MacArthur Village Homeowners Association (the "HOA") seeking a declaratory judgment that the HOA did not hold an ORAP Lien (defined below) against Debtor's personal property and that the HOA's claim against Debtor is unsecured (the "Complaint").

The HOA filed an answer on November 14, 2019 (the "Answer") [AP dkt. #6].

The HOA moves for summary judgment on the Complaint (the "Motion") [AP dkt. #8] seeking declaratory judgment that:

- (i) the Order to Appear for Examination ("ORAP") was properly served on Debtor on July 2, 2019,
- (ii) pursuant to CCP § 708.110(d), the effective date of such service

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CONT... Dove Real Estate & Association Management LLC Chapter 11

was June 26, 2019, the date on which the ORAP was issued;

- (iii) the HOA holds a lien on Debtor's personal property pursuant to CCP § 708.110 (the "ORAP Lien") in the amount of \$357,505.13;
- (iv) the ORAP Lien cannot be invalidated due to improper or defective service; and
- (v) attorney's fees and costs permitted by law.

In sum, the HOA contends that it holds an ORAP Lien based on service of the ORAP on Debtor more than 90 days prior to the petition date. Debtor contends that service was invalid based on defective proof of service filed in state court so the HOA's claim is therefore unsecured.

A. Undisputed Facts

The HOA is comprised of 618 condominiums in Santa Ana, California. Debtor previously served as the HOA's management company. HOA's Statement of Uncontroverted Facts ("SUF") 1; Debtors' Statement of Genuine Issues ("SGI") 1.

On April 11 and June 7, 2019, the HOA obtained two monetary awards against Debtor in the total amount of \$357,505.13 in a state court (the "State Court Action"). SUF 2; SGI 2.

On June 26, 2019, the state court issued the ORAP directing the appearance of Kevin Shelton ("Shelton"), Debtor's managing member, to appear for a judgment debtor examination pursuant to CCP § 708.110. Reply Larry Mikelson Decl., Ex. A (the ORAP); SUF 3; SGI 3.

The ORAP was served on July 2, 2019. SUF 4; SGI 4 (Debtor raises an objection to the legal effect of this fact, not that the fact occurred). On July 25, 2019, the HOA filed a Proof of Service related to the ORAP with the state court (the "POS"). Reply Mikelson Decl., EX. A (the POS); SUF 4; SGI 4 (Debtor raises an objection to the legal effect of this fact, not that the fact occurred).

Section 2 of the POS stated that the "Party Served" was "Dove Real

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Estate and Association Management, LLC." Section 3 stated that "Person Served" was "party in item 2" [sic]. Mikelson Decl., p. 4, ¶12 and Ex. D.

At all times relevant, Shelton was the managing member and CEO of Debtor. SUF 5; SGI 5.

Shelton appeared on the appointed date and time per the ORAP. Shelton was accompanied by two attorneys, one of whom was Debtor's state court counsel and Daniel Weintraub of Weintraub & Seltz, APC. SUF 6; SGI 6.

At no time during the examination did Shelton, or either of his attorneys, raise any objections regarding service of the ORAP or the POS. SUF 7; SGI 7.

After becoming aware that Debtor was contesting the validity of the POS, the HOA's counsel contacted One Legal LLC ("One Legal") and requested that One Legal provide an amended proof of service specifically identifying the person served in Section 2 of the POS. SUF 8; SGI 8.

On October 24, 2019, One Legal provided the HOA's counsel with an amended POS (signed by Andrew Swatzell, the person who also signed the original POS). Reply Mikelson Decl., Ex. B (the "Amended POS"); SUF 9; SGI 9.

Debtor filed its chapter 11 petition on September 27, 2019. SUF 10; SGI 10.

On January 16, 2020, a second amended proof of service was prepared by One Legal (the "Second Amended POS"). Reply Mikelson Decl., p. 3, ¶8 and Ex. C

B. Summary Judgment Standard

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those

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 matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323 (1986). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Id.* at 324. The substantive law will identify which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Id.* A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.*

 In the absence of any disputed material facts, the inquiry shifts to whether the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323. Furthermore, where intent is at issue, summary judgment is seldom granted. See, *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996), *cert. denied*, 118 S. Ct. 48 (1997).

C. The HPA Holds An ORAP Lien That Arose July 2, 2019

1. The HOA Served the ORAP on Debtor, Thereby Creating the ORAP Lien

 California Code of Civil Procedure ("CCP") § 708.110(d) provides, that service of an order to appear for a debtor's examination on a judgment debtor "creates a lien on the personal property of the judgment debtor for a period of one year from the date of the order unless extended or sooner terminated by the court." Pursuant to CCP § 708.110(d), service of an order to appear for a debtor's examination must be made in the manner specified in CCP § 415.10, i.e., by personal service. Corporations Code § 17701.16 and CCP § 416.10(a) and (b), collectively, provide that service may be effectuated on "the person designated as agent for service of process" or the "president, chief executive officer, or other head of the corporation...a general manager, or a person authorized by the corporation to receive service of process."

 In this case, the ORAP was addressed to Shelton, as "Managing Member, Dove Real Estate and Association management, LLC", the ORAP ordered Shelton to appear for a judgment debtor examination, the ORAP was

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personally served on Shelton, Shelton was the managing member and CEO of Debtor at all times relevant, and Shelton actually appeared at the judgment debtor examination at the time/date specified in the ORAP- represented by counsel for Debtor. See SUF 3-6; SGI 3-6. Indeed, in argument, Debtor admits as much: "Debtor does not deny that Mr. Shelton was the individual served with the ORAP on July 2, 2019." Opp'n, p. 4:27-28. Accordingly, the court finds that the ORAP was actually, personally served on Shelton as the managing member of Debtor.

Notwithstanding this actual service, however, Debtor argues that the ORAP Lien is invalid because the POS is defective because it did not specifically identify Shelton as the person that was served with the ORAP on July 2, 2019. Debtor's argument fails for two reasons- binding Ninth Circuit authority and substantial compliance with state law.

1. The Ninth Circuit Has Held that an ORAP Lien Is Created under CCP § 708.110(d) with Service Alone .

Debtor's argues that the ORAP Lien is invalid because it was not perfected with a valid proof of service. Yet, under binding Ninth Circuit authority, no type of "perfection" is required to create a valid ORAP lien. In a case cited by Debtor itself, *In re Hilde*, 120 F.3d 950, 953 (9th Cir. 1997), the Ninth Circuit, in interpreting CCP § 708.110(d), found that "an ORAP lien is created simply by service on the debtor of an order to appear for a debtor's examination[.]" *Id.*, *supra*, at 953. The court rejected the argument that an ORAP lien was not perfected until a turnover order was issued in state court finding that nothing in the statute "refers to 'perfection.'" The court further found that CCP §708.110 did not suggest that "creation of the ORAP lien by service of the order to appear is contingent on some further act by the creditor or the court." *Id.* See, *In re Swintek*, 906 F.3d 1100, 1102 (9th Cir. 2018)("[A]n ORAP lien is created simply by service on the debtor of an order to appear for a debtor's examination")(*citing Hilde*); *In re Burns*, 291 B.R. 846, 850 (B.A.P. 9th Cir. 2003)(relying on *Hilde* to find that service of ORAP on judgment debtor alone was sufficient to create lien on judgment debtor's property in the possession of third party). The Ninth Circuit's interpretation in *Hilde* is consistent with the plain language of the statute.

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Like Hilde, here, Debtor's argument that the ORAP Lien is invalid because a valid proof of service was not completed is effectively an attempt to include an additional "perfection" requirement to the creation of the ORAP Lien. This argument is unpersuasive in light of both the statute and binding Ninth Circuit authority.

2. The HOA Has Complied With the "Substantial Compliance Rule" Regarding Service

The second reason Debtor's argument is unpersuasive is that, even under California law, a valid proof of service is not required to effectuate service.

CCP § 417.10(a) provides that the proof of service must show the time and place where the summons and complaint were delivered to defendant; and, if to a corporation or entity, the name and capacity of the person served on its behalf. Corporations Code § 17701.16 and CCP § 416.10(a) and (b), collectively, provide that service on a limited liability company (like a corporation) may be effectuated on "the person designated as agent for service of process" or the "president, chief executive officer, or other head of the corporation...a general manager, or a person authorized by the corporation to receive service of process."

In Debtor's cited legal authority, *Ramos v. Homeward Residential, Inc.*, (2014) 223 Cal. App. 4th 1434, 1442, the state court voided a default judgment against a defendant corporation for lack of proper service. The Ramos court, after noting the distinction between the "party" and a "person to be served," found that the proof of service was defective because it did not identify any individual under § 416.10 as the person who was served on behalf of the defendant corporation. *Id.*

The Ramos court, however, did not end its analysis there noting that a "facial defect" in the proof of service is not the end of the court's inquiry. See *Id.* Instead, "the burden then fell on Ramos to show, that, notwithstanding the facial defect in service, service nonetheless substantially complied with the requirements of the Code of Civil Procedure." *Id.*

Indeed, the Ramos court further found that, "It is axiomatic that strict

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compliance with the code's provisions for service of process is not required....

'The provisions of this chapter should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant[.]'" Id. at 1443 (emphasis in original). "[S]ubstantial compliance is sufficient" and "[i]n general, substantial compliance with the code occurs when, although not properly identified in a proof of service, the person to be served in fact actually received the summons." Id. See also, Dill v. Berquist Constr. Co., 24 Cal. App. 4th 1426, 1439 n. 12 (1994) (declining to apply "substantial compliance rule" because "actual notice..." is particularly essential with respect to a corporate defendant, which can only be served through an individual person" and plaintiff failed to direct the summons to any individual).

In this case, the undisputed fact is that that the POS is defective because it failed to identify Shelton as the person who was served with the ORAP on behalf of Debtor. The "person served" in the Section 3 of the POS was "Party Served" in Section 2, i.e., "Dove Real Estate and Association Management, LLC." Mikelson Decl., p. 4, ¶ 12 and Ex. D (the POS); SUF 4; SGI 4. Thus, any presumption that a valid proof of service is entitled to under California Evidence Code § 647 is inapplicable here because the proof of service is defective. See, Dill v. Berquist Constr. Co., 24 Cal. App. 4th 1426, 1442(1994) ("Here, the proofs of service show that the mail sent by Dill was addressed solely to the corporations, not to any of the permissible persons to be served enumerated by section 416.10. Therefore, the proofs of service failed to comply with the minimum statutory requirements, and no presumption of proper service ever arose.").

Like Ramos, however, the inquiry does not end here and the burden thus falls on the HOA to demonstrate that service of the ORAP was in substantial compliance with the CCP, i.e., that Shelton actually received the ORAP. See also, Dill, *supra* at As noted above, the court has previously found that Shelton was actually served with the ORAP in his capacity as managing member of Debtor. See SUF 3-6; SGI 3-6. As such, the court finds that service of the ORAP was valid under the "substantial compliance rule."

With regards to the HOA's argument that Debtor waived any defects in the POS by making a general appearance at the judgment debtor examination, this argument is unnecessary in light of the fact that service of the ORAP was

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statutorily completed prior to the of Mr. Shelton. Because the court finds that personal service of the ORAP on Shelton was effective prepetition and, therefore, the lien arose prepetition notwithstanding the defective POS, the court concludes that neither the Amended POS or the Second Amended POS can be deemed to have created or perfected a lien in violation of 362(a).

Accordingly, the HOA has demonstrated the absence of any disputed material facts regarding actual service of the ORAP on Shelton, as managing member of Debtor. The HOA is thus entitled to judgment as a matter of law that it holds the ORAP Lien in the amount of \$357,505.13 against Debtor's personal property per CCP §708.110(d).

D. The ORAP Lien was Created on July 2, 2019- The Date of Service

The HOA argues that the ORAP Lien, "once served, relates back to the date the ORAP was issued by the state court, see, Mot., p. 7:18-8:1. However, the plain language of the 708.110(d) clearly provides that the lien is created as of the date of service and the *term* of the lien, unless extended or shortened, is one year from the date of the issuance of the ORAP. See *Hilde*, 120 F.3d at 954.

Party Information

Debtor(s):

Dove Real Estate & Association

Represented By

Daniel J Weintraub

Crystle Jane Lindsey

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Chapter 11

Defendant(s):

Macarthur Village Homeowners

Represented By
Barry R Gore

Plaintiff(s):

Dove Real Estate & Association

Represented By
James R Seltz
Crystle Jane Lindsey

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8:19-13770 Dove Real Estate & Association Management LLC Chapter 11
Adv#: 8:19-01204 Dove Real Estate & Association Management, LLC v. Macarthur Village

#31.00 CON'TD STATUS CONFERENCE RE: Complaint for Determination of Validity, Priority, or Extent of Lien and Declaratory Judgment Thereon

FR: 1-9-20

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

January 9, 2020

Continue status conference to February 6, 2020 at 2:00 p.m., same date/time as Defendant's pending motion for summary judgment; updated joint status report not required. (XX)

Note: Appearances at this hearing are not required.

Party Information

Debtor(s):

Dove Real Estate & Association	Represented By Daniel J Weintraub Crystle Jane Lindsey
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Defendant(s):

Macarthur Village Homeowners	Pro Se
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Plaintiff(s):

Dove Real Estate & Association	Represented By James R Seltz
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