

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#1.00** Motion RE: Objection to Claim Number 27  
by Claimant Alisha Tamburri

Docket 223

**Tentative Ruling:**

The Trustee objects to the claim of Alisha Tamburri (claim #27) filed for breach of contract/fraud. The grounds of the objection are that the proof of claim does not include a writing on which it is based, the claim was scheduled by the Debtor as contingent and disputed, and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss

**United States Bankruptcy Court  
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**CONT... Shellie Melissa Halper**

Laura J Meltzer

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#2.00** Motion RE: Objection to Claim Number 30  
by Claimant Gloria Zindler and Mel Zindler

Docket 224

**Tentative Ruling:**

The Trustee objects to the claim of Gloria Zindler and Mel Zindler (claim #30). The loan in question appears to be to Paradise In Cortez, LLC and not the Debtor. There is no evidence that it was a loan to the Debtor. The Note was signed by Halper on behalf of Paradise In Cortez.

No opposition received as of 4/28.

**SUSTAIN**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

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

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

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10:00 AM

**CONT... Shellie Melissa Halper**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
Central District of California  
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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#3.00** Motion RE: Objection to Claim Number 31  
by Claimant Barbara Bruno and John Beymer

Docket 225

**Tentative Ruling:**

The Trustee objects to the claim of Barbara Bruno and John Beymer (claim # 31) filed for breach of contract/fraud. The ground of the objection is that the promissory note attached to the proof of claim is by Mortgage Center Services, Inc. and the note is signed on behalf of that entity. There is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Services, Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

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

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss

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**CONT... Shellie Melissa Halper**

Laura J Meltzer

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#4.00** Motion RE: Objection to Claim Number 38  
by Claimant Solomon Cohen

Docket 226

**\*\*\* VACATED \*\*\* REASON: Ntc. of w/drawal filed 4/9/18 (eg)**

**Tentative Ruling:**

- NONE LISTED -

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

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#5.00** Motion RE: Objection to Claim Number 45  
by Claimant Steve Van Eynde

Docket 227

**Tentative Ruling:**

The Trustee objects to the claim of Steve Van Eynde (claim #45). The grounds of the objection are that the proof of claim does not include a writing on which it is based and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Services, Inc."

No opposition received as of 4/28.

**SUSTAIN.**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

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

Shellie Melissa Halper

Represented By  
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Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss



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**CONT... Shellie Melissa Halper**

Laura J Meltzer

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#6.00** Motion RE: Objection to Claim Number 47  
by Claimant Norton Law Group

Docket 228

**Tentative Ruling:**

This claim of the Norton Law Group (claim #47) was filed on 10/1/10, which was after the 9/13/10 bar date. Further, it does not include any writing demonstrating that the fees, etc. are the liability of Halper in her personal capacity instead of Calabasas Treatment Center or other entities.

No opposition received as of 4/28.

**SUSTAIN**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

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

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Movant(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

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**CONT... Shellie Melissa Halper**

**Chapter 7**

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#7.00** Motion RE: Objection to Claim Number 40  
by Claimant Twin Palms Lending Group, LLC.

Docket 235

**\*\*\* VACATED \*\*\* REASON: Ntc. of w/drawal filed 4/9/18 (eg)**

**Tentative Ruling:**

- NONE LISTED -

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

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
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**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#8.00** Motion RE: Objection to Claim Number 46  
by Claimant DACA, LLC.

Docket 236

**Tentative Ruling:**

This claim of DACA LLC (claim #46) was filed on 9/14/10, which was after the 9/13/10 bar date. Further, it does not include any writing demonstrating that the fees, etc. are the liability of Halper in her personal capacity instead of The Mortgage Center Services, Inc., which was the maker of the Note.

No opposition received as of 4/28.

**SUSTAIN.**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
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10:00 AM

**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#9.00** Motion RE: Objection to Claim Number 42  
by Claimant Elizabeth Rose Agency, Inc..

Docket 237

**Tentative Ruling:**

The Trustee objects to the claim of Elizabeth Rose Agency, Inc. (claim #42) filed for breach of contract/fraud. The grounds of the objection are that the proof of claim does not include a writing on which it is based and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Inc."

No opposition received as of 4/28.

**SUSTAIN.**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss

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**CONT...**

**Shellie Melissa Halper**

Laura J Meltzer

**Chapter 7**

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10:00 AM

**1:09-23807 Shellie Melissa Halper**

**Chapter 7**

**#10.00** Motion RE: Objection to Claim Number 34  
by Claimant Deborah Rahm WIZ Industries.

Docket 238

**Tentative Ruling:**

The Trustee objects to the claim of WIZ Industries (claim #34). There is no evidence that it was a loan to the Debtor.

A \$105,000 loan was made on 11/29/07 from WIZ to The Mortgage Cetner Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 12/6/07 a second loan in the amount of \$157,500 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 1/7/08 a third loan in the amount of \$105,000 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 10/3/08 a fourth loan in the amount of \$242,650 was made from WIZ, but this time it was to Paradise In Cortez, LLC and Shellie Halper (individually). Halper is also named as a guarantor. The Note was signed by Halper on behalf of Paradise in Cortez, LLC, and also individually as "Personal guarantor." That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries. These were proceeds of a different property than the prior assignments of escrow proceeds.

The objection is largely to the first three notes.

No opposition received as of 4/28.

**SUSTAIN.**



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**CONT... Shellie Melissa Halper**

**Chapter 7**

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shellie Melissa Halper

Represented By  
Mark M Sharf  
Alan W Forsley  
Yi S Kim  
David Brian Lally

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Michael H Weiss  
Laura J Meltzer

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:10-10442 Victor Hugo Hernandez**

**Chapter 11**

**#11.00 Status Conference on Chapter 11 Case**

fr. 1/11/11, 3/29/11, 4/12/11, 6/14/11, 8/23/11, 10/25/11,  
1/17/12, 1/31/12, 2/28/12, 4/10/12, 6/12/12, 7/31/12,  
9/11/12, 11/20/12, 12/11/12, 2/26/13, 4/30/13, 6/18/13,  
8/27/13, 11/19/13, 1/14/14, 2/4/14, 3/11/14, 4/1/14, 6/24/14,  
9/16/14, 11/18/14, 12/16/14, 1/20/15, 2/24/15; 3/31/15; 5/12/15  
6/30/15; 8/18/15, 9/22/15, 2/9/16; 3/15/16; 4/26/16,  
6/7/16, 7/12/16, 8/16/16; 9/13/16, 10/11/16; 10/25/16; 11/15/16,  
12/20/16; 4/18/17, 5/16/17; 6/27/17, 8/1/17, 11/28/17, 2/13/18,  
3/27/18

Docket 1

**Tentative Ruling:**

Off calendar. Final decree entered. Case closed on 4/17/18.

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

Victor Hugo Hernandez

Represented By  
David I Brownstein  
Bonni S Mantovani

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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Courtroom 302 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 302**

10:00 AM

**1:13-10386 Shirley Foose McClure**

**Chapter 11**

**#12.00** Motion of John P. Reitman, Chapter 11 Trustee,  
for Order Approving Settlement with Barrett S. Litt,  
et al. Pursuant to Fed. R. Bankr. P. 9019

fr. 3/27/18

Docket 1344

**Tentative Ruling:**

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate.

prior tentative ruling (3/27/18)

John Reitman chapter 11 trustee (the "Trustee") for the estate (the "Estate") of Shirley McClure (the "Debtor") moves for approval of a settlement between the Trustee and Barrett Litt and affiliated parties (the "Litt Parties").

**Service:** Appears to be in order.

**Background**

**Initial Case**

Debtor initially filed for chapter 11 relief in 1992 (1:92-bk-1371-GM; the "Initial Case"). Early in that case the Debtor confirmed a plan of reorganization, but the case remained open pending the outcome of federal court litigation against the City of Long Beach.

In 2006, the Debtor and her son received \$20 million in settlement of a lawsuit against the City of Long Beach – 95% for the Debtor and 5% for her son. Barrett Litt and his law firms ("Litt") had represented them in this lawsuit since 1993, but Debtor's and Litt's relationship broke down. In July 2008, the Debtor brought a malpractice action against Litt in Superior Court (BC-393584; the "Litt State Court Action"), which included, *inter alia*, malpractice claims for advising the Debtor and her son to make an IRC §1033 election for the majority of their settlement funds and to invest in various real estate rental properties pursuant to that election.

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**CONT...**

**Shirley Foose McClure**

**Chapter 11**

In 2009, this Court granted Litt's final application and awarded fees of \$9,113,911.51 and costs of \$990,592.06 with a credit of \$9 million that had already been paid to Litt, so the remaining amount owed was \$1,104,503.57. (Initial Case dkt. 146). The Debtor appealed (Initial Case dkt 181), but the District Court and the Ninth Circuit upheld the fee award on appeal. McClure has brought another malpractice action against attorneys who represented her in this fee dispute with Litt. (McClure v. Tidus, et al. BC-443404).

In the meanwhile, Litt obtained and filed an abstract of judgment against thirteen real properties in which the Debtor had an interest. (Initial Case dkt 154, 155). The Court granted McClure a stay pending her appeal on certain conditions, including Litt's retention of his liens from the recorded abstracts of judgment. (Initial Case dkt. 218). The Initial Case was closed on August 16, 2016.

**This Chapter 11**

Debtor filed this case for Chapter 11 relief on December 21, 2012. The bulk of her estate's assets were comprised of her interest in multiple parcels of income producing residential real estate in Southern California, San Francisco, Maui, Indiana and Michigan (the "Properties"), most of which were 1033 Properties and owned 95% by the Debtor and 5% by her son. The major claims against the estate were (i) approximately \$460,000 in unsecured claims; (ii) secured lender claims of City National Bank ("CNB"), Pacific Mercantile Bank and its affiliate PM Asset Resolution, Inc. ("PMB"), and Shellpoint Mortgage Servicing for Bank of New York, as trustee ("Shellpoint Mortgage"), each secured by deeds of trust on various real estate, (iii) Litt's lien on most of the Properties (the "Litt Lien"), and (iv) a \$1,317,047 priority tax claim by the Franchise Tax Board ("FTB"). As the debtor-in-possession, the Debtor sold several Properties, using the money to repay some of her secured debt (CNB was paid off in full), for repairs and maintenance on other Properties, and to pay other expenses of the Properties and of this Chapter 11 case. Litt filed objections to most or all of these sales and filed appeals to the District Court when his objections were overruled.

On April 2, 2015, the Court entered an order limiting the Litt Lien to three Properties located at 910 Corbett St., Nos. 1, 2 and 3, San Francisco, CA. Litt appealed this order (the "Litt Lien Appeal") to the United States District Court, where it was assigned to Judge Wu and consolidated with related appeals that the Litt Parties had taken from the Court's orders

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**CONT... Shirley Foose McClure**

**Chapter 11**

(collectively, the "Litt Appeals"). In March 2017, the District Court remanded the Litt Lien Appeal for further consideration of the Ninth Circuit Court of Appeals decision in *Pacifica L 51 LLC v. New Investments, Inc. (In re New Investments Inc.)*, 840 F.3d 1137 (9<sup>th</sup> Cir. 2016).

The Trustee

On July 12, 2016, after this case had been pending for three years without confirmation of a plan and the Debtor had changed counsel repeatedly (often representing herself *pro se*), the Court ordered the appointment of a chapter 11 trustee in this case (Dkt. 1090). The United States Trustee appointed Mr. Reitman as Chapter 11 Trustee of the Estate (Dkt. 1105). Mr. Reitman accepted – and the Court approved – the appointment. (Dkt. 1106, 1113).

Since his appointment, the Trustee has taken a number of actions to administer the assets of the Estate. He reached a court-approved Closing Agreement with the Franchise Tax Board, resolving the Debtor's dispute with the FTB over the validity of the Debtor's 1033 election (described above). He obtained court authorization to sell two properties in Michigan that were unencumbered but not operating on a net cash flow positive basis. He reached a settlement with PMB (the PMB Settlement"), which is expected to result in the reduction of PMB's secured claim by at least \$650,000. The Court entered on order, following notice and a hearing, approving the PMB Settlement. The Debtor objected to the PMB Settlement and appealed the Court's order approving it (the "McClure Appeal"). The Trustee elected to have the McClure Appeal heard by the District Court and it has also been assigned to Judge Wu.

The Trustee believes that the PMB Settlement is a key step on the road to proposing and funding a plan of reorganization. However, the PMB Settlement provides that PMB's claim must be paid in full by Jun 30, 2018, which requires sale of the Estate's properties in San Francisco, Southern California (other than the Debtor's residence in Fullerton), and Hawaii. In January 2018, the Court approved the Trustee's retention of brokers to market and sell these Properties.

The Proposed Settlement with the Litt Parties

The Trustee has reached a settlement with the Litt Parties, embodied in a settlement agreement (the "Litt Settlement Agreement"; Exhibit 1 to the

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**CONT... Shirley Foose McClure**

**Chapter 11**

Declaration of John Reitman), which provides for:

- the reduction of the \$1.1 million Litt Lien on the Corbett Properties (by more than \$800,000) to \$340,000 (the "Litt Settlement Secured Claim"), plus interest thereafter at the federal post-judgment interest rate of 0.45%,
- release of the Litt Lien on all other Properties,
- dismissal of the Litt State Court Case (although not the claims of Jason McClure),
- dismissal of Litt's appeals
- payment of the Litt Settlement Secured Claim upon the sale or refinancing of the Corbett Properties
- customary mutual releases.

The Trustee is seeking approval of the Litt Settlement Agreement. As discussed in the analysis section below, the Trustee argues that this proposed settlement with Litt is fair and equitable and should be approved under the standard set by the Ninth Circuit.

**Joinder of Litt Parties**

The Litt parties join in the Motion, and argue as follows:

The claims against Litt that the Trustee proposes to settle would not yield any real value for the estate. The Debtor had repeatedly been offered the opportunity to settle with Litt under a 2006 Agreement that would have limited Litt's fees to \$9 million; the Debtor instead chose to go forward with claims against Litt – using a variety of attorneys and in circumstances that indicate the weakness of the Debtor's claims against Litt. The Litt State Court Action has been stayed since 2008 and is barred by *res judicata* (the debtor has litigated every claim she has against Litt in this Court) and the statute of limitations. In particular, the claims against Litt for allegedly deficient tax advice are weak. The Debtor retained other tax counsel before filing the tax returns in question and buying more 1033 properties. The debtor's damages are limited: FTB has settled its claim for \$800,000 in taxes and \$288,000 in interest and the IRS has not filed a claim and the time to do so has passed.

**Debtor's Opposition**

The Debtor has filed an opposition, arguing as follows:

As the Court has acknowledged, this will be a surplus case. Thus, the settlement will be of no benefit to creditors (who will be paid in full anyway)

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**CONT... Shirley Foose McClure**

**Chapter 11**

and will affect only the amount of Debtor's recovery. At the November 28, 2017 hearing, in response to questioning by the Court, the Trustee's counsel stated that the Trustee's projections suggest that there would be a surplus. The Court then stated that if the sale of the Properties did yield a surplus, then the Litt State Court Action could be an asset for the Debtor to keep and pursue. This settlement would deprive the Debtor of the right to pursue these claims against the Litt parties, claims that the Court has said belong to the Debtor.

The Debtor's projections support the conclusion that this a surplus estate: the various properties are listed for sale by the Trustee at \$6.8 million, while secured claims are only \$2.7 million and the Trustee's latest report shows cash of \$950,000. On the other side, unpaid unsecured claims are \$300,000 (without Sulmeyer, Kupetz' disputed claim), the FTB is owed \$1.1 million, and Litt's \$1.1 fee claim should be considered an offset against the Debtor's malpractice claim. (Administrative claims have not yet been litigated, but Debtor's prior counsels have already been paid \$240,000.)

The Debtor and Litt were close to a settlement of the Litt State Court Action shortly after it was filed in 2008, until Litt's malpractice carrier sued Litt for rescission. The State Court Action has been stayed since 2009 - at the request of Litt - pending resolution of the Franchise Tax Board audit.

This Court's ruling and Judge Wu's affirmation of that ruling did not adjudicate the Debtor's claims against Litt, as Judge Wu expressly stated on the record at a July 8, 2012 hearing.

Since his appointment in July 2016, the Trustee has taken no steps to investigate the Litt State Court Action or Litt's disputed claims. He has not interviewed the Debtor, allowed the Farley firm to conduct discovery or file an amended complaint, requested the litigation files, or hired replacement counsel for Farley (except the Makarem firm, which had a conflict of interest as it had previously been retained by the Debtor and her son).

The Debtor does have experienced professional malpractice counsel willing to take the Litt State Court Action: Arie Spangler, who estimates that she will need 7-8 months to prepare for trial, assuming that discovery is still open.

The Debtor's claims against the Litt parties are meritorious. The Farley firm, which took the Litt State Court Action on a modified contingency basis in 2014, valued the litigation in the \$10 million range. The tax attorneys hired by the Debtor and her son, as well as the FTB, all concluded that Litt had

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committed malpractice.

If successful, the Debtor or the Trustee could recover against Litt. He was a multi-millionaire even before he received \$9 million from the Debtor's estate. He has \$3 million in litigation insurance and Arch's rescission action is still pending, awaiting the outcome of the Litt State Court Action. At a minimum, a judgment against Litt could be offset against his \$1.1 million claim.

To approve a compromise, the Court must make an independent determination that the compromise is reasonable, fair and equitable: it cannot merely rubber stamp the Trustee's conclusion.

To oppose a settlement, the Debtor must show that s/he is a "person aggrieved," *i.e.*, directly and adversely affected pecuniarily. This can be shown where there is a reasonable possibility of a surplus in the case. This Court has already acknowledged that this is a surplus case and that the Litt State Court Action accordingly belongs to the Debtor. In contrast, this settlement is not in the paramount interest of the unsecured creditors, because they will be paid in any event.

Furthermore, the Trustee has presented no evidence that he has made a substantive review of the merits of the Litt State Court Action, such that he could make an "informed judgment after diligent investigation." Nor has he presented any facts to allow this Court to determine whether the settlement falls above the "lowest point in the range of reasonableness." Nor has the Trustee presented any evidence that a judgment against Litt would not be collectible.

**Reply by Trustee**

The Court has made no finding that this is a surplus Estate, but was speaking hypothetically. The Trustee's counsel did not represent that the Estate is "unequivocally" surplus, but only that the Trustee's good faith projections show that a surplus is possible. On March 22 the Trustee will file the analysis requested by the Court in its email. Without the sale of the Debtor's current residence and/or the settlement with Litt, it is likely that it will not be surplus.

The Motion contains four pages of analysis of the claims in the Litt State Court Action. The Opposition is unsupported by admissible evidence and the documents that she attaches do not support her arguments: Litt did not admit that he committed malpractice, but he stated that he sought the



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advice from a tax attorney, who later represented the Debtor directly. The assertion that Litt was the architect of the 1033 program will be hotly litigated in the state court trial.

The damages are also questionable since the 1033 election does not eliminate taxes, but merely defers them.

As to the involvement of the Trustee in the case, the Trustee did meet with the Debtor on 8/18/16 and conducted an extensive interview with her at that time, including the issues of the Litt State Court Action. The Trustee, in consultation with the Farley Firm, decided not to proceed to discovery since the Litt State Court Action was stayed and Debtor's health and the ongoing settlement discussions meant that to go forward with discovery would not be in the best interest of the Debtor or the Estate. There was no need to have the Farley Firm turn over the litigation files since that firm represented the Trustee until it withdrew.

The Trustee agrees that difficulty in collecting a judgment is not a significant issue.

**Reply by Litt Parties**

There has been no determination that this is a surplus estate and that determination cannot be made until all of the professionals have filed their fee applications and had their fees allowed by the Court. The amount of income taxes would also need to be determined. If McClure wins on her appeal of the PMB settlement the Estate could end up owing \$650,000 more. She has done nothing to dispute the SulmeyerKupetz claim. And her assertion that Litt's claim is disputed is incorrect since it has been determined by a final judgment.

The settlement provides an immediate benefit to the estate of over \$800,000. Also the Court has never determined that the Litt State Court Action belong to her rather than to the Estate. Although Litt does not and has not agreed that he is liable to Ms. McClure, he is willing to reduce his secured claim by over \$800,000 to buy peace.

Further, there is no factual support for most of McClure's brief.

**Litt Objections to Evidence**

Shirley McClure Declaration – overrule all objections

Robert Wood Declaration (ex. B, ex. D) – overrule

Harold Winnett Declaration (ex. C) – overrule. It is clear from the complete

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declaration that it refers to a meeting held on or about 2/27/07.

Robert Wood Declaration (ex. O – sustain as it appears to be unsigned, however, this is a copy form 2008 and is part of something larger. There may be a signed copy somewhere.

**Analysis**

The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Litt Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*In re A & C Properties*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2<sup>nd</sup> Cir. 1985); *Spirtos v. Ray (In re Spirtos)*, 2006 Bankr. LEXIS 4894 at \*32 (B.A.P. 9<sup>th</sup> Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9<sup>th</sup> Cir. 2003).

In essence, the proposed settlement gives up the estate's claims against Litt – valued by the Debtor at \$10 million - in exchange for an \$800,000 reduction in Litt's secured debt. The Trustee argues that probabilities of success in the Litt State Court Case and the complexity, inconvenience and delay in litigating it support approval of this compromise. Regarding complexity, the Debtor asserted numerous claims based on a wide variety of (sometimes conflicting) factual allegations. Litt has asserted a

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variety of defenses to these claims. (These claims, factual allegations, and defenses have been considered by the Trustee and are detailed in pages 9-11 of the Motion.) Regarding the probabilities of success, the difficulties in litigating the Litt State Court Case include the staleness of the matter (which has been stayed since 2009), the need for testimony from the Debtor (who is in ill health and may not be able to cooperate), and the Trustee's lack of counsel (after the Debtor opposed the employment of Ron Makarem and contacted Mr. Makarem directly, the Trustee has not been able to find counsel). Thus, while a jury might prove sympathetic to Ms. McClure (and there appear to be no difficulties in collection), the Trustee has made the business judgment that there is substantial risk that the Estate might not prevail in the Litt State Court Case and the interests of the estate are best served by the Litt Settlement Agreement (which also resolves the Litt Appeals and allows the Trustee to focus on effectuating the PMB Settlement and formulating a plan to bring this bankruptcy case to conclusion).

Ordinarily, this would be sufficient for the Court – in deference to the Trustee's business judgment – to find that that this proposed settlement is within the range of reasonableness and thus fair and equitable. However, two concerns in this case prevent the Court from drawing that conclusion: (i) the possibility that this will be a surplus estate and (ii) allegations that the Trustee has not duly investigated and pursued the State Court Action.

If the sale of the Properties alone would yield a surplus estate, then this settlement will not affect creditor recoveries – the creditors would be paid in full in any event. The settlement would not be in the "paramount interests of creditors." It would only affect the Debtor's recoveries and she is opposed to the settlement. And, if the Debtor pursues the litigation, then the cost, difficulty or uncertainty of litigation are irrelevant to the estate. Thus, if it appears likely that the estate will be surplus, the Court will not approve this proposed settlement, absent some other compelling reason to do. (For instance, the Trustee repeatedly states the importance of effectuating the PMB Settlement, but never directly states that this settlement is necessary to effectuate the PMB Settlement, which is solely to sell some of the properties and for which real estate broker(s) have been hired.)

Second, the Trustee has not retained counsel to pursue this matter and the Debtor alleges that the Trustee has not truly investigated the merits of the Litt State Court Action (*i.e.*, neither reviewed the case files nor interviewed the Debtor). It should be noted that although the Trustee states

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that he held a long meeting with the Debtor soon after he was appointed, he also indicates that this covered many topics and the Litt issues were only a part of those. And as to making an independent review of the files, he only alludes to his prior attorney and there is no showing as to whether he has actually made an independent determination (or had an expert review the files). The Court is also concerned about the fact that the Trustee has not hired a new attorney in the last months or – apparently – even tried to employ one. There is no showing that this litigation could not proceed expeditiously.

Litt and the Debtor have each argued the merits of the Debtor's claims against Litt (as described above). In the Motion, the Trustee discusses the difficulties of the litigation, but does not state any judgment on the merit of the underlying claims. This Court cannot determine the merits of these claims, but it does need to know that the Trustee's business judgment rests on an informed consideration of those merits. Thus, even if this estate is not surplus, the Court would need further information from the Trustee regarding his investigation of the actual merits of the Litt State Court Action in order to approve this settlement. Some was given in the Trustee's declaration filed in response to my email. Let's discuss this a bit more.

One further question deals with fees to be paid to prior litigation counsel. If this is settled, are any due? Do they agree to what they are to receive in an administrative claim? What will that be?

**Tentative Ruling:** Deal with the above questions. Motion denied if it is likely that the estate is surplus. See my comments on the email sent 3/23 for details of the calculation.

**THE EMAIL:**

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the

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Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

**Movant(s):**

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

**Trustee(s):**

John P. Reitman

Represented By

John P Reitman

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Jon L Dalberg

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**#13.00** Motion to Compel Abandonment of State Court  
Litigation Case BC443404 McClure v. Tidus

fr. 3/27/18

Docket 1355

**Tentative Ruling:**

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate.

prior tentative ruling (3/27/18)

This motion concerns the state court trial in McClure v. Tidus, LASC BC443404. The trial is scheduled to begin on 3/26/18 (Judge Mark Mooney presiding) and there is a final pre-trial hearing set for 3/16/18. There is no attorney for the Plaintiff in that the Farley Law Firm was relieved as counsel on 10/16/17 and no new counsel has been employed. The Farley Law Firm had been employed as special litigation counsel to the Debtor.

The Trustee has known since June 2017 that the Farley Firm would be withdrawing because of a conflict. Nothing has been done by the Trustee.

McClure has been served with five motions in limine.

The fee agreement with the Farley Firm was \$150/hour and 20% of the recovery. The total billing for their work through 6/21/17 was \$22,450.50 fees and \$5,271.40 costs – mostly to defend the Tidus Defendant's motions for summary judgment heard on 1/5/17 and 1/6/17 and to respond to the defendant's discovery demands. No litigation preparation has been done since the Trustee was appointed.

There is insurance coverage for the Tidus Defendants and they are being defended by their insurance carriers. It therefore appears that a judgment against them would be collectible.

At the time of the motion for summary judgment (Jan. 2017), Judge

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Mooney divided the plaintiff's claims into two parts. Part 1 is her cause of action in the handling of the Litt fee motion. That is going to trial. Part 2 is the cause of action to amend the Litt complaint pending in state court – which was dismissed without prejudice as not being ripe since the Litt case was still pending.

At the time of the disclosure statement in April/May 2016, the Farley firm estimated the damages at \$10 million.

The Trustee does not want to pursue Plaintiff's claims in this case or the Litt one. The Trustee wanted to settle with the Tidus Defendants for a much reduced amount.

At this point, the motion goes into issue of hiring Makarem.

Also there is an issue about hiring Taylor to complete the negotiations for a payout with the FTB and an upcoming five-year statutory deadline.

The Debtor wishes the McClure v. Tidus case to be abandoned in that it is clearly burdensome to the Estate and is not being properly administered. §554 Abandonment is appropriate when the trustee delays in the administration of an asset. *Hyman v. Plotkin (in re Hyman)*, 967 F.2d 1316, 1321 (9<sup>th</sup> Cir. 1992).

Opposition

The Trustee is actively conducting negotiations with the parties in interest. Any agreement would be subject to Court approval. Therefore the Trustee requests a continuance to conclude his negotiations.

Because the Trustee is negotiating a resolution, this case is not burdensome to the Estate. And it certainly is not an inconsequential value and benefit. Thus the statutory standard for abandonment has not been met.

As to the \$10 million figure, that is the value placed by the Debtor for both the Tidus action and the Litt Action – not for the Tidus action alone. But she also indicates that the Tidus action has so little value that it should be abandoned.

The Debtor had hired by Farley Firm and the Trustee continued to act on the advice of that Firm. The Trustee is and has been fully aware of the



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bifurcated nature of the claim in the Tidus action.

The May 1, 2017 settlement demand made by the Trustee was no a "fire sale" demand. The amount of this demand (which is confidential) was prepared after consultation with the Farley Firm. It took into consideration the Debtor's poor health which made discovery and prosecution of the case more complicated. Anyway, the Defendants did not make a meaningful response.

Once the Farley Firm withdrew, the Trustee retained the Makarem Firm. When the Debtor contacted Ron Makarem and threatened to object to his employment, that firm withdrew. Since then, the Trustee has continued to seek qualified counsel, but without success. Thus, the fact that the Estate does not have litigation counsel in the Tidus Case is due to a combination of the Debtor's interference with the Trustee's efforts to retain the Makarem Firm and the difficulties that the Trustee has had in finding suitably qualified counsel to replace the Makarem Firm.

It is premature to determine that this is a surplus case. Hopefully it will be, but in the meantime whatever value resides in the Tidus Case should be preserved for the benefit of the Estate and not abandoned to the Debtor.

Reply

The State Court case has been continued to 7/16/18 by Judge Mooney. It is currently stayed.

After the Makaram Firm withdrew, the Trustee never suggested another law firm. The Trustee still has not prepared for trial.

However, the Debtor will retain Aire Spangler to represent her – if the case is abandoned – at a blended contingency rate and the Debtor will contribute up to 50% of the net proceeds to the estate if that is needed to pay creditors in full.

The Debtor then sets forth a calculation to show that this is a surplus estate.

Proposed Ruling

It appears that the trial has been taken off calendar and will not be

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reset until July 2018.

I am concerned that the Trustee has a weak negotiating position since he clearly is not ready to go to trial. And I do not understand why it is taking months and months to find new counsel.

It appears that Ms. McClure will be hiring new counsel on some sort of mixed contingency arrangement. She is now offering to provide the estate with up to 50% of her net recovery if needed to be sure that all creditors are paid in full. What is the situation as to fees owed to the Farley Firm or the Makaram Firm?

Per my email, both sides have provided me with a draft accounting of this estate. From that I have prepared a spreadsheet. See my comments from the email sent on 3/23.

**THE EMAIL:**

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

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(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no

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urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

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**Debtor(s):**

Shirley Foose McClure

Represented By  
Andrew Goodman  
Yi S Kim  
Robert M Scholnick  
James R Felton  
Faye C Rasch  
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Lisa Nelson  
Michael G Spector

**Trustee(s):**

John P. Reitman

Represented By  
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Jon L Dalberg

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**#14.00    Hearing re: Valuation**

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,  
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,  
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,  
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,  
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,  
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,  
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,  
12/19/17; 1/9/18, 3/19/18, 3/27/18

Docket      1

**Tentative Ruling:**

This will trail the motion to settle with Litt.

prior tentative ruling (1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list and market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

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Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group ]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

*Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course if there is an objection on other grounds, I may decide to hold a hearing.*

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prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus

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10:00 AM

**CONT...**      **Shirley Foose McClure**  
lawsuit.

**Chapter 11**

The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.  
**Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.**

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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**CONT... Shirley Foose McClure**

**Chapter 11**

prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/16)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.



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**CONT... Shirley Foose McClure**

**Chapter 11**

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

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**1:13-10386 Shirley Foose McClure**

**Chapter 11**

**#15.00 Status Conference re: Ch 11 Case**

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,  
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,  
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,  
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,  
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,  
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,  
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,  
12/19/17, 1/9/18, 3/19/18, 3/27/18

Docket 1

**Tentative Ruling:**

I would like to know the status of the sale of properties under the PMB settlement.

prior tentative ruling (3/27/18)

No tentative ruling. Let's see what happens on the motion to settle with Litt, the Tidus abandonment motion, and the sale of the properties under the PMB settlement.

prior tentative ruling (1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list an market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

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**CONT... Shirley Foose McClure**

**Chapter 11**

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group ]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

*Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like*

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**CONT... Shirley Foose McClure**

**Chapter 11**

*to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course is there is an objection on other grounds, I may decide to hold a hearing.*

prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

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**CONT... Shirley Foose McClure**

**Chapter 11**

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

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prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

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**CONT... Shirley Foose McClure**

**Chapter 11**

seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

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**CONT... Shirley Foose McClure**

**Chapter 11**

prior tentative ruling (10/11/6)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

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As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

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**Debtor(s):**

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Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

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Elaine Nguyen

**United States Bankruptcy Court  
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10:00 AM

**1:14-15182 Mark Alan Shoemaker**

**Chapter 7**

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

**#16.00** Defendant's motion for relief of default and reconsideration of Court's order denying application to waive required fee on appeal

Docket 307

**Tentative Ruling:**

Mr. Shoemaker appealed the judgment to the BAP and requested a fee waiver (IFP). The BAP referred the IFP request to me on 2/27/18 and on 3/6/18 I ordered at hearing on 3/13/18. According to the motion, the notice of the hearing was not actually mailed until 3/8/18 and was only received on 3/14/18, the day after the hearing. Because no opposition was filed, the IFP application was denied. Shoemaker then contacted Kenneth Lau at the OUST and advised him that he would be filing the motion. Lau stated that the OUST did not take a position on this. Attached to this motion is a copy of a recent affidavit submitted in one of the Ninth Circuit appeals to show greater detail in the income and expenses. [He requests -sort of - that this be kept under seal for reasons of privacy.] He adds that his calculation of mailing fees for "these matters" (apparently those for other appeals) was \$75 per month and in actuality it will be over \$100 since January 2018. After the expenses listed in the affidavit, income would be \$90 per month. If the motion for IFP is denied, Shoemaker requests a payment plan of \$25 per month.

OUST Response

The statement of non-opposition was clearly only as to the filing of the motion to reconsider, not of the content of that motion. The affidavit discloses income and employment information that is in conflict with similar information contemporaneously disclosed in his IFP application filed in Shoemaker v. United States, CV 18-615. There are a list of discrepancies.

Reply

The OUST has no standing because this is between Shoemaker and the Court. Shoemaker admits to some income and has voluntarily provided the Ninth Circuit with additional information because it is more explanatory.



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**CONT... Mark Alan Shoemaker**

**Chapter 7**

[Shoemaker adds many comments about the integrity of the OUST, which is not relevant to this application.] Because of the cost, Shoemaker rests on the papers and will not be attending the hearing in person or by phone.  
[Shoemaker also believes that the Court has animus towards this case.]

Proposed Ruling

To the extent that there is a request to file the affidavit under seal, that is denied. This this not meet the requirements of a document that qualifies to be filed under seal. 11 USC §107. Also, the papers on the Ninth Circuit docket are not under seal.

The present affidavit filed in the Ninth Circuit on 3/21/18 shows income received from 3/17-3/18 of \$2,622 per month average from employment and \$2,140 from unemployment benefits. This totals \$4,862 per month. However, Shoemaker states that the amount expected for April is \$2,140.

On his IFP application to the BAP (filed on 2/15/18), Shoemaker states under penalty of perjury that his average monthly income (take home pay) is \$1,800.

28 USC §1930(f) allows the bankruptcy court to waive filing fees if the debtor has income of less than 150% of the income official poverty line applicable to a family of that size and is unable to pay the fee in installments. The maximum income for a single person is \$1507.50 per month. No matter which calculation is used, Shoemaker exceeds this.

Even if he were to have met the income requirement, looking at the breakdown of expenses on the Ninth Circuit application, it appears that he can pay the filing fee at this time. He is spending \$225 per month for transportation (not including motor vehicle payments). This is a high amount. His claimed \$100 per month for mailing is also high. The BAP filing fee is \$298.

Deny the motion for reconsideration. The full filing fee is to be paid within 10 days of the entry of the order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

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**CONT...      Mark Alan Shoemaker**

**Chapter 7**

**Defendant(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

**Movant(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

Mark Alan Shoemaker

Pro Se

**Plaintiff(s):**

U.S. Trustee

Represented By  
Kenneth G Lau  
Hatty K Yip  
Nancy S Goldenberg

**Trustee(s):**

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-11387 Real Estate Short Sales Inc**

**Chapter 7**

**#17.00** Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18

Docket 164

**Tentative Ruling:**

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency of \$57,000+ and a post-petition one of \$7,685.70. This was continued by stipulation.

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Real Estate Short Sales Inc

Represented By  
Stephen L Burton

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**CONT... Real Estate Short Sales Inc**

**Chapter 7**

**Movant(s):**

Barcelona Tower Inc

Represented By  
Jill L Kim

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

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10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

**#18.00 Status Conference re: Chapter 11 case**

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,  
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,  
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18

Docket 1

**Tentative Ruling:**

Nothing further received as of 4/28/

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

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**CONT...**

**Solyman Yashouafar**

**Chapter 11**

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court  
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**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

**#19.00** Status Conference re: Seconde Amended Complaint  
Complaint To (I) Quiet Title Of The Rexford Home,  
(II) Set Aside Foreclosure Sale Of The Rexford Home,  
(III) Avoid Actual And Constructive Fraudulent Transfer  
Of Rexford Home And Actual Fraudulent Transfer Of  
Chalette Home, (IV) Recover The Properties Or Value  
Thereof, And (V) Related Relief by Jeremy V Richards  
on behalf of David K Gottlieb against all defendants

fr. 12/19/17, 1/23/18, 2/27/18

Docket 39

**Tentative Ruling:**

Off calendar. A third amended complaint has been filed.

prior tentative ruling (2/27/18)

**Prepared on 12/14. Will be updated before the 2/27 hearing.**

The second amended complaint was filed on 10/18/17. A summons was issued on 11/7 and a date to respond was 12/7. The following were on new summonses:

Soda Partners (filed an answer on 11/7)

Quality Loan Service

Chase Manhattan Mortgage Co.

Howard Abselet (filed an answer on 12/6)

Israel Abselet (filed and answer on 12/6)

Citivist Financial Services (stipulation consenting to entry of judgment filed on 12/12)

There is stipulation between the Trustee (plaintiff) and Elkwood and Fieldbrook to extend time to respond to 12/7. On 12/7 they filed a motion to dismiss the first, second, eighth and ninth claims. This is set for hearing on 1/23/18 at 10:00 a.m.

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**CONT... Solyman Yashouafar**

**Chapter 11**

Meanwhile, the Abselets have filed a motion in the district court to withdraw the reference. Presumably that will be heard before the 1/23/18 date for the motion to dismiss. Unless the district court withdraws the reference, the 1/23 hearing will go forward. Even if the reference is withdrawn, there will still be a hearing on the motion to dismiss, although that will be set at the convenience of the district court. So please prepare to oppose that motion in a timely fashion.

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

Solyman Yashouafar

Represented By  
Mark E Goodfriend

**Defendant(s):**

Fieldbrook, Inc.

Represented By  
Daniel J McCarthy

Elkwood Associates, LLC

Represented By  
Daniel J McCarthy

**Plaintiff(s):**

DAVID K GOTTLIEB

Represented By  
Jeremy V Richards  
John W Lucas

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

**#20.00** Status Conferencere re: Third amended complaint to  
1) Quiet Title of the Rexford Home, 2) Avoid actual and  
constructive fraudulent transfers of Rexford home and  
actual fraudulent transfer of Chalette Home,  
3) Recover The Rexford Home and Value of the  
Chalette Home, and 4) Related Reief

Docket 80

**Tentative Ruling:**

A third amended complaint has been filed and answers have been filed (as of 4/23) by Elkwood, Fieldbrook, and the Abselets. Per the joint status report, all parties who need to answer the complaint have done so. (the status conference says that Soda Partners LLC filed an answer to the TAC, but the Court does not find that on the docket. Plaintiff intends to file a motion for summary judgment.

As to a discovery cutoff, the Plaintiff estimates by September. The Defendants want it to be 12/3/18 with Expert discovery of 2/1/19.

Elkwood has also filed a counterclaim against the Trustee, which the Trustee has answered. Elkwood seeks \$600,000 from the Trustee as an administrative expense for the rent while Massoud and his family lived at Rexford rent-free.

There is a jury trial request and and Defendants do not consent to the bankruptcy court entering a final judgment. There may be a cross-motion for summary judgment. Trial estimates are given, but it is premature for that. Neither side wants mediation - which is not surprise to the Court.

proposed ruling:

Let's set a date by which the MSJ will be filed and heard. Give enough time so that the Defendants can file their own MSJ, if they decide to. Then continue the status conference to that hearing date.

As to discovery, let's use a cutoff of October 1.

**United States Bankruptcy Court  
Central District of California  
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**Tuesday, May 01, 2018**

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10:00 AM

**CONT... Solyman Yashouafar**

**Chapter 11**

**Party Information**

**Debtor(s):**

Solyman Yashouafar

Represented By  
Mark E Goodfriend

**Defendant(s):**

Citivist financial Services, Inc.

Pro Se

Israel Abselet

Represented By  
Henry S David

Howard Abselet

Represented By  
Henry S David

Chase Manhattan Mortgage Co.

Pro Se

Quality Loan Service

Pro Se

Soda Partners, LLC

Represented By  
Ronald N Richards

Fieldbrook, Inc.

Represented By  
Daniel J McCarthy

Elkwood Associates, LLC

Represented By  
Daniel J McCarthy

**Plaintiff(s):**

DAVID K GOTTLIEB

Represented By  
Jeremy V Richards  
John W Lucas

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

**#20.01** Status Conference re: Counterclaim by Elkwood Associates, LLC,  
against DAVID K GOTTLIEB Demand for Jury Trial

Docket 83

**Tentative Ruling:**

See cal. #20. This concerns the cross claim and will trail the complaint.

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

Solyman Yashouafar

Represented By  
Mark E Goodfriend

**Defendant(s):**

QUALITY LOAN SERVICE

Pro Se

Elkwood Associates, LLC

Represented By  
Daniel J McCarthy

Fieldbrook, Inc.

Represented By  
Daniel J McCarthy

Soda Partners, LLC

Represented By  
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Abselet

Represented By  
Henry S David

Israel Abselet

Represented By  
Henry S David

Citivist financial Services, Inc.

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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**Hearing Room 303**

10:00 AM

**CONT... Solyman Yashouafar**

**Chapter 11**

State Street Bank and Trust Co.

Pro Se

DMARC 2007-CD5 Garden Street,

Pro Se

**Plaintiff(s):**

DAVID K GOTTLIEB

Represented By  
Jeremy V Richards  
John W Lucas

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:17-01050      Gottlieb v. Yashouafar

**#21.00**      Motion of David K. Gottlieb, Chapter 11  
Trustee, for Summary Judgment on All  
Claims For Relief Against Defendant

fr. 1/23/18, 2/13/18

Docket      24

**Tentative Ruling:**

Off calender. Order entered on 4/9/18.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Solyman Yashouafar

Represented By  
Mark E Goodfriend

**Defendant(s):**

Parinaz Yashouafar

Pro Se

**Plaintiff(s):**

David K. Gottlieb

Represented By  
Jeremy V Richards  
John W Lucas

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
Courtroom 303 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:17-01050      Gottlieb v. Yashouafar

**#22.00**      Status Conference re: Complaint

fr. 7/25/17, 10/17/17, 1/23/18, 2/13/18

Docket      1

**\*\*\* VACATED \*\*\* REASON: order entered on msj 4/9/18 (eg)**

**Tentative Ruling:**

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

Solyman Yashouafar

Represented By  
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By  
C John M Melissinos  
Mark M Sharf

**Defendant(s):**

Parinaz Yashouafar

Pro Se

**Plaintiff(s):**

David K. Gottlieb

Represented By  
Jeremy V Richards

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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Courtroom 303 Calendar**

**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12255 Solyman Yashouafar**

**Chapter 11**

Adv#: 1:16-01169 Encino Corporate Plaza LP v. Yashouafar et al

**#23.00** Status Conference Re:  
First Amended Complaint by Encino Corporate  
Plaza LP for:  
1 - Nondischargeability of Debt (Count One  
for Fraud [Deceit]-Pursuant to 11 USC Sec.  
523(a)(2)(A));  
2 - Nondischargeability of Debt (Count Two  
for Fraud [Fraudulent Transfers]-Pursuant to  
11 USC Sec. 523(a)(2)(A));  
3 - NonDischargeability of Debt (Count Three  
for Defalcation as a Fiduciary - Pursuant to  
11 USC Sec. 523(a)(4));  
4 - Nondischargeability of Debt (Count Four  
for Willful and Malicious Injury [Conversion]-  
Pursuant to 11 USC Sec. 523(a)(6)); and  
5 - Nondischargeability of Debt (Count Five  
for Willful and Malicious Injury [Fraudulent  
Transfers]-Pursuant to 11 USC Sec.  
523(a)(6))

fr. 2/21/17, 3/28/17; 6/27/17, 8/22/17, 1/23/18

Docket 30

**Tentative Ruling:**

On 4/25/18 Plaintiff filed a unilateral status report, noting that the Defendants have not responded to several communication. It expects to complete discovery by 9/1/18 and to be ready for trial by 11/1/18.

The parties should appear by phone. Why didn't the Defendants participate in the status report process? Set a discovery cutoff date of 9/1/18.

prior tentative ruling (1/23/18)

**United States Bankruptcy Court  
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**CONT... Solyman Yashouafar**

**Chapter 11**

On 10/10/17, the Order granting the 9019 motion between the Trustee and Abselet was entered. Nothing further received in this adversary case as of 1/17/18. This is a §523 case and the settlement does not affect that.

prior tentative ruling (8/22/17)

On 7/18/17 the Court entered an order approving the stipulation of the parties to stay this action and vacate all dates and deadlines set by the Court. This was done so that the settlement between Abselet and the Trustee could be finalized. That settlement is now set for hearing on 8/22/17.

Abselet had brought this non-dischargeability action on behalf of Encino Corporate Plaza LP (ECPLP) by virtue of his execution on the Yashouafars' ownership interest in ECPLP. In the settlement agreement, Howard Abselet will continue to pursue the liquidation of ECPLP. Since this is a §523(a) complaint that - if the Plaintiff prevails - will merely give Howard Abselet a judgment that survives the discharge, it is not effected by the settlement agreement.

Are the parties ready to move forward on this case?

\*\*\*\*\*

Motion to withdraw the reference was denied. The parties want a pretrial conference after 8/21/17 and anticipate trial in October. Plaintiff does not want to mediate - at least at this time. Both consent to a final judgment in this court, but this is probably irrelevant in a §523 case.

By stipulation, the Yashouafars have until 2/17 to respond to the complaint.

I would like to know what the discovery plan is and then I will continue this status conference. Let's get something in writing, please.

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

Massoud Aaron Yashouafar

Represented By  
C John M Melissinos  
Mark M Sharf

Solyman Yashouafar

Represented By  
Mark E Goodfriend



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
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10:00 AM

**CONT... Solyman Yashouafar**

**Chapter 11**

**Defendant(s):**

Solyman Yashouafar

Pro Se

Massoud Aaron Yashouafar

Pro Se

**Plaintiff(s):**

Encino Corporate Plaza LP

Represented By  
Jessica Mickelsen Simon  
Henry S David  
Andrew F Kim

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards  
John W Lucas

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
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**Tuesday, May 01, 2018**

**Hearing Room 303**

10:00 AM

**1:16-12408 Massoud Aron Yashouafar**

**Chapter 11**

**#24.00** Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,  
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,  
9/19/17, 1/23/18

Docket 1

**Tentative Ruling:**

This case is being jointly administered with 16-12255.

See cal. #18

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

Massoud Aron Yashouafar

Pro Se