

**United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, March 13, 2024

Hearing Room 301

10:00 AM

6:23-15072 Larry Hall

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Navy Federal Credit Union, in the amount of \$15,072.00 re 2018 Chevrolet Malibu

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry Hall

Represented By
Paul Y Lee

Trustee(s):

Charles W Daff (TR)

Pro Se

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10:00 AM

6:24-10010 Tracey Rafealla Vigil

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance,
in the amount of \$9405.95, re: 2019 Honda Accord

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tracey Rafealla Vigil

Pro Se

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 301

10:00 AM

6:24-10301 MANUEL E BATRES

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and Altura Credit Union, in the amount of \$4,487.76, re: 2018 Nissan Altima

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MANUEL E BATRES

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

11:00 AM

6:14-12990 Garrick Craig Smedman and Veronica Lee Wilkins

Chapter 7

#4.00 CONT. Motion to Reopen Chapter 7 Case

From: 2/14/24, 2/28/24

EH ____

[Tele. appr. Jenny Doling, rep. Debtor]

[Tele. appr. Summer Shaw, rep. creditor, Denise Williams]

Docket 48

Tentative Ruling:

MOTION TO REOPEN CHAPTER 7 CASE

2/14/2024

BACKGROUND

On March 10, 2014, Garrick seedman ("Debtor" or "Plaintiff") and Veronica Wilkins (together, "Debtors" or "Plaintiffs") filed a Chapter 7 voluntary petition. On August 12, 2014, Debtors were discharged. On April 15, 2016, the case was closed.

On May 25, 2017, an order was filed granting a motion to reopen the Chapter 7 case. On May 27, 2017, Plaintiffs filed an adversary complaint against State Board of Equalization. On June 28, 2018, the bankruptcy case was closed.

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CONT... Garrick Craig Smedman and Veronica Lee Wilkins

Chapter 7

On January 24, 2024, Debtor filed the instant motion ("Motion") to reopen the Chapter 7 case, ex parte, to permit him to file motions to avoid two judgment liens that he was "unaware of" until "recently" under 11 U.S.C. § 522(f): (1) an abstract judgment recorded by Denise Williams, as Docket No. 2013-0266110, on June 4, 2013; and (2) an abstract judgment was recorded by Lobel Financial Corporation, as Docket No. 2013-0419471, on August 27, 2013.

On March 6, 2024, Debtor filed a reply ("Reply") to the Court's order setting the Motion for hearing. On the same day, creditor Denise Williams ("Williams") filed an opposition ("Opposition") to the Motion.

DISCUSSION

Per order entered on January 25, 2024, the Motion was set for hearing and continued by stipulation from February 14, 2024 to February 28, 2024, and then continued again by stipulation to March 13, 2024.

Per Debtor's Reply filed March 6, 2024 as Docket 64, Debtor requests to withdraw the Motion. Per Williams' Opposition, in relevant part, she argues that based on the Reply, the Motion should be deemed withdrawn.

Given the parties' expressed positions, the Court deems the Motion withdrawn by Debtor and the hearing shall go off-calendar.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Garrick Craig Smedman

Represented By

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CONT... **Garrick Craig Smedman and Veronica Lee Wilkins**
Jenny L Doling

Chapter 7

Joint Debtor(s):

Veronica Lee Wilkins

Represented By
Neil C Evans

Movant(s):

Garrick Craig Smedman

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:21-14299 Golden Arrow, Inc.

Chapter 7

#5.00 CONT. Notice of Trustee's Final Report and Applications for Compensation

From: 2/7/24

EH__

[Tele. appr. Howard Grobstein, chapter 7 trustee]

[Tele. appr. Nancy H Zamora, rep. chapter 7 trustee]

Docket 132

Tentative Ruling:

3/13/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, and noting the absence of opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 32,643.73

Trustee Expenses: \$ 361.96

Attorney Fees: \$ 32,643.72

Attorney Costs: \$ 572.18

Accountant Fees: \$ 4,204.61

Accountant Costs: \$ 33.27

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CONT... **Golden Arrow, Inc.**
Other Expenses: \$ 500

Chapter 7

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Golden Arrow, Inc.

Represented By
W. Derek May

Trustee(s):

Howard B Grobstein (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
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11:00 AM

6:21-15966 John Hershey, Jr.

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

[Tele. appr. Howard Grobstein, chapter 7 trustee]

Docket 36

Tentative Ruling:

3/13/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, and noting the absence of opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 3,250.00

Trustee Expenses: \$ 78.67

Accountant Fees: \$ 1,890.00

Accountant Expenses: \$ 417.72

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

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CONT... John Hershey, Jr.

Chapter 7

Debtor(s):

John Hershey Jr.

Represented By
Sundee M Teeple

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:22-14723 Better Nutritionals, LLC

Chapter 7

#7.00 Motion Trustee's to Abandon Estate's Interest in Any and All Tangible Personal Property Assets Located at 14855 Innovation Dr., Riverside, CA; To Reject Contract, If Any, Retroactive To Motion Date; Declaration of Larry D. Simons (Motion filed 2/21/24)

EH__

[Tele. appr. Tinho Mang, rep. chapter 7 trustee]

Docket 941

Tentative Ruling:

**TRUSTEE'S MOTION TO ABANDON ESTATE'S INTEREST IN ANY AND ALL TANGIBLE
PERSONAL PROPERTY, AND REJECT CONTRACT WITH MCLANE**

3/13/2024

BACKGROUND

On December 20, 2022, Better Nutritionals, LLC ("Debtor") filed a Chapter 11 voluntary petition. On March 30, 2023, the case was converted to Chapter 7.

On February 21, 2024, on behalf of Debtor, the Chapter 7 Trustee ("Trustee") filed a motion to abandon the estate's interest in any and all tangible personal property assets located at 14855 Innovation Drive, Riverside, CA 92508, and reject any contract with McLane ("Motion"). On the same day, the Motion was set for hearing.

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CONT... Better Nutritionals, LLC

Chapter 7

No opposition was filed.

DISCUSSION

The Bankruptcy Code provides that "after notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Pursuant to LBR 6007-1(a), "a trustee or debtor in possession who desires to abandon property of the estate may seek to do so by a notice of intent to abandon without the necessity for filing a motion to abandon." "If no timely objection and request for hearing is filed and served, the property is deemed abandoned without further order of the court." LBR 6007-1(d)(1). "If an entity desires an order of the court authorizing or directing, and confirming, the case trustee's or debtor in possession's abandonment of the property, that entity may lodge a proposed form of order with the court in accordance with the procedure set forth in LBR 9013-1(o)(3)." LBR 6007-1(d)(2).

11 U.S.C. § 365(a) provides, in relevant part, "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In making its determination, the Court need only engage in "a cursory review of a trustee's decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision." *Durkin v. Benedor*, 204 F.3d 1276, 1282 (9th Cir. 2000); *see also Agarwal v. Pomona Valley Med. Group, Inc.*, 476 F.3d 665, 670 (9th Cir. 2007).

Here, the Trustee has established that any personal property located at 14855 Innovation Drive, Riverside, CA 92508 is of inconsequential value to the estate. Further, Trustee has articulated a sound business judgment in support of his request to

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CONT... Better Nutritionals, LLC

Chapter 7

reject any executory contract with McLane, as there is no benefit to the estate for any storage agreement.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the motion to abandon the estate's interest in any and all tangible personal property assets located at 14855 Innovation Drive, Riverside, CA 92508, and REJECT any executory storage contract with McLane as of February 21, 2024.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Better Nutritionals, LLC

Represented By
John N Tedford IV
Aaron E. DE Leest
Danielle R Gabai

Movant(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Michael A Sweet
Daniel A Lev

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood

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CONT... Better Nutritionals, LLC

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Tinho Mang
Michael A Sweet
Daniel A Lev

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6:23-11945 Robert Matthew Haney

Chapter 7

#8.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

[Tele. appr. Todd Frealy, chapter 7 trustee]

Docket 19

Tentative Ruling:

3/13/2024

Service: Proper

Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, and noting the absence of opposition, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h), the Court is inclined to APPROVE the proposed distribution and the following administrative expenses:

Trustee Fees: \$ 1,973.34

Trustee Expenses: \$ 25.13

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Robert Matthew Haney

Represented By
Michael Smith

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CONT... Robert Matthew Haney

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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11:00 AM

6:23-12746 Mutih Georges Safar

Chapter 7

#9.00 CONT. Motion to compel trustee to abandon interest in property of estate (third party claims of Debtor)
(Motion filed 10/4/23)

From: 11/8/23, 1/10/24

EH__

[Tele. appr. Joel Tasca, rep. creditor, NetCredit]

Docket 13

Tentative Ruling:

11/08/2023

BACKGROUND

On June 23, 2023, Mutih Georges Safar ("Debtor") filed a Chapter 7 voluntary petition.

On July 27, 2023, Debtor filed an amended Schedules A/B and C to list and exempt the claims against creditors NetCredit Loan Services, LLC ("NetCredit") and Upgrade (collectively "Creditors"). The amended schedules state that the dollar amount listed is for exemption purposes only and "should not be interpreted as a cap on damages." Debtor listed \$27,950.00 as exempt under C.C.P. § 703.140(b)(5).

Debtor appears to have demanded a settlement amount of \$99,800.00 from Creditors in a separate proceeding.

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CONT... Mutih Georges Safar

Chapter 7

On October 4, 2023, Debtor filed the instant motion to compel ("Motion to Compel") the Chapter 7 trustee ("Trustee") to abandon his claims against Creditors due to the alleged inconsequential value of those claims to the estate.

On October 24, 2023, Trustee filed an objection to the Motion to Compel ("Objection").

On October 25, 2023, NetCredit filed a response to Debtor's Motion to Compel ("Response").

On November 1, 2023, Debtor filed a reply to Trustee's Objection ("Reply").

DISCUSSION

In the Motion to abandon, Debtor asserts that the claims against Net Credit and Upgrade ("Claims") are of inconsequential value and should be abandoned because, in essence, they have less value than the total of the exempted amount (\$27,950) plus an alleged separate attorney lien. However, there is no total value of the Claims provided, nor is there any amount or authority provided for the alleged separate attorney lien. In opposition, Trustee has provided evidence as to a value of \$99,800 for the Claims, and thus the Claims do not appear to be of inconsequential value to the Estate. As to the attorney lien, no argument, authority or evidence is presented in the Motion to support the existence of such lien and the amount, if any. As of the petition date and until abandonment, the Claims are property of the estate that only the Trustee has standing to prosecute, and otherwise Debtor's counsel has not been authorized by the Bankruptcy Court to prosecute such claims.

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CONT... Mutih Georges Safar

Chapter 7

In Debtor's reply, Debtor states he supports the Trustee's alternative request that it keep the NET amount of proceeds, and turn the excess over to the Trustee. However, the Trustee requests all excess funds, while the Debtor's proposal is unclear of what constitutes "net" proceeds – presumably this includes the alleged attorney lien amount (which, again, is unsubstantiated).

TENTATIVE RULING

On the record, the Debtor has not met his burden of establishing the Claims are of inconsequential value and benefit to the estate, and the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mutih Georges Safar

Represented By
Michael E Clark
Joseph Brian Angelo

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CONT... Mutih Georges Safar

Chapter 7

Movant(s):

Mutih Georges Safar

Represented By

Michael E Clark

Michael E Clark

Joseph Brian Angelo

Joseph Brian Angelo

Trustee(s):

Robert Whitmore (TR)

Pro Se

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11:00 AM

6:23-12964 Santos H Cubias

Chapter 7

#10.00 Chapter 7 Trustee's Application to Employ Pope's Antiques & Auctions, Inc. as Auctioneer
(Application filed 2/20/24)

Also #11

EH__

[Tele. appr. Todd Frealy, chapter 7 trustee]

Docket 19

Tentative Ruling:

3/13/2024

BACKGROUND

On July 6, 2023, Santos Cubias ("Debtor") filed a Chapter 7 voluntary petition. On October 16, 2023, Debtor received a discharge.

On February 20, 2024, the Chapter 7 trustee ("Trustee") filed a motion for the sale ("Sale Motion") of a 2014 Volvo truck ("Property"). The instant application to employ ("Application to Employ") Pope's Antiques & Auctions, Inc. ("Auctioneer") was filed concurrently by the Trustee.

No opposition to the Application to Employ has been filed.

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CONT... Santos H Cubias

Chapter 7

DISCUSSION

Here, the Application to Employ details Auctioneer's proposed total compensation, the reasons for the selection, the required estimated fees to be paid by the buyer, Auctioneer's status as a "disinterested person", and the professional services to be rendered. Moreover, Trustee has established the necessity of the sale and the Auctioneer's services, as well as the reasonableness of the proposed compensation terms.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Application to Employ.

APPEARANCES WAIVED. Movant to lodge order within

Party Information

Debtor(s):

Santos H Cubias

Represented By
Hector Vega

Movant(s):

Todd A. Frealy (TR)

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:23-12964 Santos H Cubias

Chapter 7

#11.00 Chapter 7 Trustee's Motion for Order Authorizing Sale of Personal Property of the Estate
(Motion filed 2/20/24)

EH__

[Tele. appr. Todd Frealy, chapter 7 trustee]

Docket 21

Tentative Ruling:

MOTION FOR ORDER AUTHORIZING SALE OF PERSONAL PROPERTY OF THE ESTATE

3/13/2024

BACKGROUND

On July 6, 2023, Santos Cubias ("Debtor") filed a Chapter 7 voluntary petition. On October 16, 2023, Debtor received a discharge.

On February 20, 2024, the Chapter 7 trustee ("Trustee") filed an application to employ ("Application to Employ") Pope's Antiques & Auctions, Inc. ("Auctioneer"). The instant motion ("Sale Motion") for the sale of a 2014 Volvo truck ("Property") was filed concurrently by the Trustee.

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CONT... Santos H Cubias

Chapter 7

No opposition to the Sale Motion has been filed.

DISCUSSION

I. Service of the Motion

FRBP 6004(a) requires that notice be given for a proposed sale of property in accordance with FRBP 2002(a)(2), stating that all interested parties must be given notice. Service was proper.

II. Sale of Estate Property Pursuant to Section 363(b)

The trustee, after notice and a hearing, may sell property of the estate. 11 U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997).

a) Sale Price Fair and Reasonable

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CONT... Santos H Cubias

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Here, Trustee represents Auctioneer has estimated the fair market value of the Property to be approximately \$20,000. The Sale Motion also states that the buyer will be expected to cure all outstanding DMV fees in the amount estimated to be \$3,600. The Trustee estimates the sale will generate \$11,150 in net proceeds, less estimated administrative fees in the amount of \$3,500 (estimated DMV fees in the amount of \$3,600 will be paid separately by the buyer). Trustee estimates that there will be approximately \$7,650 available for distribution to general unsecured creditors. Based on Trustee's representation, the sale price is fair and reasonable.

b) Violation of Applicable Nonbankruptcy Law

The sale of the property must be in accordance with 11 U.S.C. § 363 (b)(1)(B)(2) which requires a finding that no showing was made that such sale would violate applicable nonbankruptcy law. There has been no showing that this sale would violate nonbankruptcy law.

c) Business Justification

Here, the Trustee asserts that this sale is in the best interest of the estate. Through the sale, gross proceeds of about \$7,650, which can be distributed to creditors. Trustee has provided sufficient business justification for the sale. The Court finds that the sale is in the best interest of the estate.

III. 14-Day Stay

FED. R. BANKR. P. Rule 6004(h) states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Court deems the absence of objections to be consent to the relief requested, pursuant to Local Rule 9013-(1)(h),

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CONT... Santos H Cubias

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and, therefore, will waive the stay of Rule 6004(h).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Sale Motion, APPROVING of the sale of the Property.

APPEARANCES WAIVED. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Santos H Cubias

Represented By
Hector Vega

Movant(s):

Todd A. Frealy (TR)

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:23-15408 Floyd King, Jr.

Chapter 7

#12.00 Motion to Dismiss Debtor Pursuant to 11 U.S.C. § 707(a) & Contingent Motion to Extend Dismissal and Discharge Deadlines
(Motion filed 2/20/24)

EH__

[Tele. appr. Cameron Ridley, rep. Office of the United States Trustee]

Docket 15

Tentative Ruling:

**MOTION OF THE U.S. TRUSTEE TO DISMISS BANKRUPTCY CASE AND CONTINGENT
MOTION TO EXTEND DISCHARGE AND DISMISSAL DEADLINES PURSUANT TO 11
U.S.C. § 707(a)**

3/13/2024

BACKGROUND

On November 17, 2023, Floyd King, Jr. ("Debtor") filed a Chapter 7 voluntary petition.

On December 19, 2023, the 341(a) meeting of the creditors ("341(a) Meeting") was held. On January 16, 2024, a continuance of the 341(a) Meeting was held. On February 13, 2024, another continuance of the 341(a) Meeting was held.

On February 20, 2024, the United States Trustee ("UST") filed a motion to dismiss the

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CONT... Floyd King, Jr.

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case and a contingent motion to extend discharge and dismissal deadlines pursuant to 11 U.S.C. § 707(a) ("Motion").

No opposition was filed.

DISCUSSION

I. DISMISSAL OF THE CHAPTER 7 CASE

According to LBR 1017-2(b),

"[t]he failure of a chapter 7 debtor to appear at the initial meeting of creditors and any continuance thereof is cause for dismissal of the case. Pursuant to LBR 9013-1(q), the court will dismiss the case without a hearing upon the trustee's motion for dismissal and declaration that the debtor has failed to appear at two meetings of creditors."

UST's counsel's declaration in support of the Motion says that Debtor failed to appear to each 341(a) Meeting following the initial meeting on December 19, 2023. This indicates that Debtor failed to appear to at least two 341(a) Meetings. Therefore, pursuant to LBR 1017-2(b) and LBR 9013-1(q), the Court may dismiss the instant case. As an aside, the Court notes that the 341(a) Meetings were continued because it appears Debtor left the initial 341(a) Meeting prior to an examination under oath by the Chapter 7 trustee pursuant to 11 U.S.C. § 343.

Additionally, according to 11 U.S.C. § 707,

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(a) [t] The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

§ 707 is applicable here because Debtor appears to be an individual debtor under Chapter 7 whose debts are primarily consumer debts.

Finally, according to 11 U.S.C. § 521(a)

...

(3) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

Here, Debtor appears to have left the initial 341(a) Meeting prior to an examination under oath by the Chapter 7 trustee pursuant to 11 U.S.C. § 343 and failed to appear at the two continued 341(a) Meetings. As a result, the Chapter 7 trustee is unable to complete a review of Debtor's financial affairs, which is causing an unreasonable delay that is prejudicial to the creditors.

II. Trustee's Request for A 180-Day Bar

According to *In re Mitchell*, "[a]s its plain language suggests, § 349 gives a court authority to "sanction a debtor for cause by imposing a bar against re-filing." *In re Grischkan*, 320 B.R. 654, 661 (Bankr.D.Ohio 2005)" 357 B.R. 142, 157 (Bankr. C.D.

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CONT... Floyd King, Jr.

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Cal. 2006). The *Mitchell* court concluded that the debtor filed a Chapter 7 petition in bad faith, and subsequently found this to be sufficient "cause" under 11 U.S.C. § 349 to impose a 180-day bar against refiling another Chapter 7 petition.

Here, the UST provided evidence that Debtor failed to appear to multiple 341(a) Meetings and failed to meaningfully appear to the initial 341(a) Meeting. The UST has therefore provided sufficient cause to impose a 180-day bar to refiling pursuant to § 349.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the motion to dismiss the case with a 180-day bar and DENY the alternative requests to extend discharge and dismissal deadlines as MOOT.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Floyd King Jr.

Represented By
Neil R Hedtke

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, March 13, 2024

Hearing Room 301

2:00 PM

6:14-22067 Gary S. Hann

Chapter 7

Adv#: 6:21-01018 Hann v. Sakaya et al

#13.00 Defendants' Motion to Withdraw as Counsel
(Motion filed 2/12/24)

EH__

[Tele. appr. Sanaz Sarah Bereliani, rep. Defendant's FRANCIS P. SAKAYA; an individual; JACQUELINE MBWILLE SAKAYA, an individual; and BABALAO INVESTORS, LLC.]

Docket 250

Tentative Ruling:

MOTION TO WITHDRAW AS COUNSEL OF RECORD

3/13/2024

BACKGROUND

On September 27, 2014, Gary S. Hann ("Plaintiff" or "Debtor") filed a Chapter 7 voluntary bankruptcy petition. On January 12, 2015, Plaintiff received a discharge. On September 21, 2015, the bankruptcy case was closed.

On May 30, 2017, the Court reopened the case upon the motion of the United States Trustee ("UST") for the Chapter 7 Trustee ("Trustee") to determine whether there were assets capable of being administered. On April 11, 2018, the Court closed Debtor's bankruptcy case for the second time.

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On February 15, 2019, the Court reopened the case for a second time. On July 30, 2019, the bankruptcy case was closed for a third time.

On December 22, 2020, the Court reopened the case for a third time. On February 5, 2021, Plaintiff filed an adversary proceeding against Francis Sakaya, Jacqueline Mbville, Babalao Investors LLC, Collis, Griffor & Hendra PC and Stuart Collis. The adversary proceeding contained causes of action for: (1) injunctive and declaratory relief; (2) determination and cancellation of wrongful instruments; (3) relief from unlawful takings of exempt property; and (4) turnover of property and money. On April 14, 2021, defendants Collis, Griffor & Hendra PC and Stuart Collis were dismissed from the case upon stipulation with Plaintiff. Francis Sakaya, Jacqueline Mbville, and Babalao Investors LLC remain as defendants (collectively "Defendants").

On or about May 29, 2022, Sanaz S. Bereliani ("Attorney") filed a substitution of attorney to represent Defendants in this adversary proceeding.

On February 12, 2024, Defendants' Attorney filed the instant motion to withdraw as attorney ("Motion to Withdraw").

No opposition has been filed.

DISCUSSION

Courts consider California Rule of Professional Conduct 3-700 when analyzing requests for leave to withdraw. *See Roldan v. PSLA LLC*, 2021 WL 4699225, at 1 (C.D. Cal. June 10, 2021).

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Rule 3-700 says, in pertinent part:

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client

- (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
- (b) seeks to pursue an illegal course of conduct, or
- (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
- (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
- (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
- (f) breaches an agreement or obligation to the member as to expenses or fees.

Rule 3-700(C)(1).

A breach in the relationship between the attorney and the client may justify the attorney's withdrawal. *See, e.g., U.A. Local 342 Joint Labor–Management Committee v. South City Refrigeration, Inc.*, 2010 WL 1293522, 3 (N.D.Cal. Mar.31, 2010) (client's failure to cooperate or communicate effectively justified granting counsel leave to withdraw from the case); *see also Lewis v. Nevada County*, 2009 WL 463510,

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Chapter 7

1 (E.D.Cal. Feb.23, 2009) (client's failure to cooperate and take notice of counsel's advice justified granting counsel leave to withdraw from the case). However, withdrawal is only proper if the client's interests will not be prejudiced. *See Ramirez v. Sturdevant*, 21 Cal.App.4th 904, 915, 26 Cal.Rptr.2d 554 (1994) (an attorney may not withdraw "at a critical point" and thereby prejudice the client's case); *see also* California Rule of Professional Conduct, Rule 3-700(A)(2) ("A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.").

According to the Motion to Withdraw, Attorney seeks leave to withdraw based on a "substantive breach in the relationship between Defendants and Attorney..." The supporting declaration says "...there has been a breach of our representation agreement which prevents" Attorney from being able to continue to zealously represent Defendants.

The Court notes that service on Defendants of the Motion to Withdraw is proper. Additionally, no opposition has been filed, which the Court deems consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT Attorney's Motion to Withdraw.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gary S. Hann

Pro Se

**United States Bankruptcy Court
Central District of California
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CONT... Gary S. Hann

Chapter 7

Defendant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

Jacqueline Mbville

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Movant(s):

Francis P Sakaya

Represented By
Sanaz Sarah Bereliani

Jacqueline Mbville

Represented By
Sanaz Sarah Bereliani

Babalao Investors LLC

Represented By
Sanaz Sarah Bereliani

Plaintiff(s):

Gary S Hann

Pro Se

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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Central District of California
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Wednesday, March 13, 2024

Hearing Room 301

2:00 PM

6:23-11468 Tito Barrientos

Chapter 7

Adv#: 6:23-01080 Whitmore v. Barrientos

#14.00 CONT. Status Conference re Complaint by Robert S. Whitmore against Olga Lilia Barrientos. (\$350.00 Fee Charge To Estate). COMPLAINT FOR:
1.AVOIDANCE AND RECOVERY OF INTENTIONAL FRAUDULENT TRANSFERS AND RECOVERY OF SAME [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.07]; 2.AVOIDANCE AND RECOVERY OF CONSTRUCTIVE FRAUDULENT TRANSFERS AND RECOVERY OF SAME [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.05, 3439.07]; 3.DECLARATORY RELIEF [11 U.S.C. §§ 544, 548; FED. R. BANKR. P. 7001(9)]; 4.UNJUST ENRICHMENT [11 U.S.C. § 105]; 5.DISALLOWANCE OF CLAIMS [11 U.S.C § 502(d)]; AND 6.TURNOVER OF PROPERTY OF THE ESTATE [11 U.S.C. § 542] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property))

From: 9/27/23, 12/13/23

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/12/24 BY ORDER
ENTERED 2/15/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tito Barrientos

Represented By
Mona V Patel

Defendant(s):

Olga Lilia Barrientos

Pro Se

Plaintiff(s):

Robert S. Whitmore

Represented By

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CONT...

Tito Barrientos

Brandon J. Iskander

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Represented By
Robert P Goe
Brandon J. Iskander

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6:23-14734 Joshua Tongco

Chapter 11

Adv#: 6:23-01123 Tongco v. Blue Rock Capital Group et al

#15.00 Plaintiff's Motion for Default Judgment
(Motion filed 1/24/24)

[Placed on calendar by order entered 2/15/24]

EH__

[Tele. appr. Andy Warshaw, rep. Plaintiff]

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Tongco

Represented By
Andy C Warshaw

Defendant(s):

Blue Rock Capital Group

Pro Se

C T Corporation System

Pro Se

Movant(s):

Joshua Tongco

Represented By
Andy C Warshaw

Plaintiff(s):

Joshua Tongco

Represented By
Andy C Warshaw

Trustee(s):

Arturo Cisneros (TR)

Represented By

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CONT...

Joshua Tongco

Arturo Cisneros

Chapter 11