United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

9:30 AM
1:00-00000 **Chapter**

#1.00 This calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1614867863
Meeting ID: 161 486 7863
Password: 848534
Dial by your location: 1 -669-254-5252 OR 1-646-828-7666
Meeting ID: 161 486 7863
Password: 848534

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

9:30 AM
1:17-13285 Angela Jean Garcia **Chapter 13**

#2.00 Motion for relief from stay

NEWREZ LLC DBA DBA SHELLPOINT MORTGAGE SERVICING

fr. 8/11/21, 9/8/21; 10/20/21, 12/8/21; 1/12/22

Docket 54

***** VACATED *** REASON: Vol. dismissed 2/15/22, ECF doc. 64 - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angela Jean Garcia	Represented By David H Chung

Movant(s):

NewRez LLC d/b/a Shellpoint	Represented By Nancy L Lee Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

9:30 AM

1:19-12533 Stuart Malin and Patricia Malin **Chapter 13**

#3.00 Motion for relief from stay

METROPOLITAN LIFE INSURANCE CO.

fr. 10/28/20, 6/30/21; 8/18/21; 9/29/21; 11/17/21

Docket 44

Tentative Ruling:

This hearing was continued so that the parties could work out a loan modification. Nothing has been filed since the last hearing. What is the status of this Motion?
APPEARANCE REQUIRED

Previous Tentative Below:
Petition Date : 10/06/2019
Confirmation Date: 04/16/2020
Service: Proper. Opposition filed on 10/9/2020 (Docket No. 48)
Property: 7718 Maestro Avenue, Los Angeles, California 91304
Property Value: $ 900,000 (per debtor's schedules)
Amount Owed: $462,609.56 (per Movant's declaration)
Equity Cushion: 48.59%
Equity: $437,390.44
Post-Petition Delinquency: $24,009.37 (22 payments of $2,090.85, $1,030.00, less suspense account $19.98).
Movant requests relief under 11 U.S.C.362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (option to enter into a loan modification) and 7 (waiver of the 4001(a)(3) stay). Movant alleges that the Debtor has missed postpetition payments. The last partial postpetition payment occurred on 2/27/20.
The Debtor opposes this motion and asserts that the Movant is not taking additional payments into account. Further, the Debtor attempted to get a hardship modification or Covid relief but the lender failed to follow through.

There is substantial equity in the Property, have the parties discussed

9:30 AM

CONT... Stuart Malin and Patricia Malin **Chapter 13**

entering into an APO or entering into a Loan Modification?

Party Information

Debtor(s):

Stuart Malin	Represented By Steven Abraham Wolvek

Joint Debtor(s):

Patricia Malin	Represented By Steven Abraham Wolvek

Movant(s):

Metropolitan Life Insurance	Represented By Daniel K Fujimoto Christopher Giacinto Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:00 AM

1:21-11879 Oweleo Lysette Titi **Chapter 7**

#4.00 Motion for relief from stay (personal property)

EXETER FINANCIAL LLC
F/K/A EXETER FINANCIAL CORP

fr. 1/5/22(stip); 1/25/22

Docket 27

***** VACATED *** REASON: Movant filed an Voluntary Dismissal of Motion - Doc. #58. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oweleo Lysette Titi — Represented By Jason Boyer

Trustee(s):

Nancy J Zamora (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:00 AM

1:21-11879 Oweleo Lysette Titi **Chapter 7**

#5.00 Motion for relief from stay (personal property)

EXETER FINANCIAL LLC
F/K/A EXETER FINANCIAL CORP

fr. 1/5/22(stip)

Docket 27

***** VACATED *** REASON: Duplicate of #4.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oweleo Lysette Titi — Represented By Jason Boyer

Trustee(s):

Nancy J Zamora (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:00 AM

1:21-12034 Jose Chavez Serenil **Chapter 7**

#6.00 Motion for relief from stay

CAPITAL ONE AUTO FINANCE

Docket 10

Tentative Ruling:

Petition Date: 12/21/2021
Chapter: 7
Service: Proper. No opposition filed.
Property: 2018 Honda Civic 4D Sedan
Property Value: $20,000 (per debtor's schedules)
Amount Owed: $ 26,722.23
Equity Cushion: negative
Equity: negative
Delinquency: $1,999.64

Movant alleges that the last payment received was on or about June 10, 2021.

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph **2** (proceed under applicable non-bankruptcy law) and **6** (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Jose Chavez Serenil — Represented By Navid Kohan

Trustee(s):

Nancy J Zamora (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:00 AM

CONT... Jose Chavez Serenil **Chapter 7**

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM

1:12-14347 Michael T. Stoller and Vanessa Stoller **Chapter 7**

#7.00 Motion to Approve Compromise Under Rule 9019

Docket 107

***** VACATED *** REASON: Cont'd to 4/20/22 at 10:30 per order #141. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael T. Stoller — Represented By Michael S Kogan

Joint Debtor(s):

Vanessa Stoller — Represented By Michael S Kogan

Trustee(s):

Nancy J Zamora (TR) — Represented By Wesley H Avery Wesley H Avery

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM

1:12-14347 Michael T. Stoller and Vanessa Stoller **Chapter 7**

#8.00 Motion to Compel Abandonment of Action by Trustee

fr. 2/23/22

Docket 119

***** VACATED *** REASON: Cont'd to 4/20/22 at 10:30 per order #141. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael T. Stoller — Represented By Michael S Kogan

Joint Debtor(s):

Vanessa Stoller — Represented By Michael S Kogan

Trustee(s):

Nancy J Zamora (TR) — Represented By Wesley H Avery Wesley H Avery

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM

1:12-14347 Michael T. Stoller and Vanessa Stoller **Chapter 7**

#9.00 Motion for Order Sustaining the Trustee's Objection to an Amended Claim of Exemption; Request for Judicial Notice; Memorandum of Points and Authorities; Declarations in Support

Docket 127

***** VACATED *** REASON: Cont'd to 4/20/22 at 10:30 per order #141. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael T. Stoller — Represented By Michael S Kogan

Joint Debtor(s):

Vanessa Stoller — Represented By Michael S Kogan

Trustee(s):

Nancy J Zamora (TR) — Represented By Wesley H Avery Wesley H Avery

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM
1:17-12333 Karmile Yurdumyan **Chapter 7**

#10.00 Order Setting on Debtor's Motion to Reopen Chapter 7 case

Docket 207

Tentative Ruling:

Tentative ruling may be posted or updated before hearing. If this tentative is not updated by 4:00 p.m. on the day before the hearing, a tentative may not be posted and **appearances are required**.

Calls to the Court to check the status of tentative rulings are not permitted.

Party Information

Debtor(s):

Karmile Yurdumyan	Represented By Michael E Clark Rosie Barmakszian

Trustee(s):

David Keith Gottlieb (TR)	Represented By Peter A Davidson Howard Camhi

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM
1:18-11965 Ian Jacoby **Chapter 7**
Adv#: 1:18-01117 Williams v. Jacoby

#11.00 Pre trial conference re complaint for:
willful and malicious injury

fr. 1/9/19, 10/23/19, 1/15/20; 3/11/20, 9/2/20, 3/31/21; 9/1/21

Docket 1

Tentative Ruling:

On 12/29/21, District Court Judge Gee entered an Order Affirming this Court's Ruling Granting Defendant's Motion for Summary Judgment. Ad. ECF doc. 97. As it appears that there are no further matters for this Court to resolve, this adversary status conference is **VACATED as moot**. The Court shall close this case accordingly.

NO APPEARANCE REQUIRED on 3/2/2022

Party Information

Debtor(s):

Ian Jacoby	Represented By Andrew Goodman Vincent V Frounjian

Defendant(s):

Ian Jacoby	Pro Se

Plaintiff(s):

Garrett Williams	Represented By Lazaro E Fernandez

Trustee(s):

Amy L Goldman (TR)	Pro Se

10:30 AM
1:19-12102 Hawkeye Entertainment, LLC **Chapter 11**
Adv#: 1:21-01064 Hawkeye Entertainment, LLC et al v. Chang et al

#12.00 Motion For Order Directing Plaintiffs To Pay Attorney's Fees Incurred By Defendants In Connection With Adversary Proceeding (December 1, 2021 January 31, 2022)

Docket 50

Tentative Ruling:

On July 17, 2009, Hawkeye Entertainment, LLC ("Hawkeye") entered into a lease agreement ("Lease") with Pax America Development, LLC. Pursuant to the terms of the Lease, Hawkeye was entitled to use the first four floors and the basement of a building located at 618 South Spring Street, Los Angeles, California, more commonly referred to as the Pacific Stock Exchange Building (the "Property"). Hawkeye and WERM Investments, ("WERM") (collectively "Plaintiffs") entered into a sublease agreement. The Property is now owned by Smart Capital, LLC ("Smart Capital"), and there have been ongoing disputes between Smart Capital and Hawkeye for years. These disputes directly caused Hawkeye to file for bankruptcy under chapter 11 of the Bankruptcy Code on August 21, 2019 (Case No. 1:19-bk-12102-MT). After a contentious bankruptcy case, which included five-day trial on a lease assumption motion ("Assumption Motion"), the Reorganized Debtor confirmed a plan.

The disputes between Hawkeye and Smart Capital continued. On September 20, 2021, the Plaintiffs filed an adversary complaint against Michael Chang (the owner of Smart Capital) and Smart Capital (collectively "Defendants") for: 1) preliminary injunctive relief; 2) temporary restraining order; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing; 5) breach of implied covenant of quiet enjoyment; 6) negligent interference with prospective economic advantage; 7) intentional interference with prospective economic advantage; and 8) intentional interference with contractual relations. The Plaintiff's also filed an emergency motion for a temporary restraining order and for issuance of an order to show cause why a preliminary injunction should not be issued. Docket No. 2. The Court denied the Plaintiffs' emergency motion. Docket No. 13.

Defendants filed a motion to dismiss the Complaint which was granted over

10:30 AM

CONT... Hawkeye Entertainment, LLC **Chapter 11**

the Plaintiffs' opposition. The case was dismissed for a lack of subject matter jurisdiction and without prejudice to refile the complaint in another court. See Docket No. 30. Defendants moved for an attorney fee award based on the provisions in the Lease. Docket No. 32. The Court granted an attorney's fee award in the amount of $79, 021 to the Defendants over the Plaintiff's opposition. Now the Defendants move for a supplemental award of attorney's fees incurred in bringing the previous fee motion, Plaintiff's oppose the motion.

Standard:

The general rule is that the prevailing party is not entitled to collect attorney's fees from the losing party. Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 448 (2007). This default rule can be overcome by an applicable statute or enforceable contract. Id. The California Legislature codified the American Rule when it enacted California Code of Civil Procedure section §1021, which states in pertinent part:

> Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

CCP § 1021; Trope v. Katz, 11 Cal. 4th 274, 278-79 (1995). CCP § 1021 also implicates Cal. Code Civ. P. §§ 1032 and 1033(5):

> (a) As used in this section, unless the context clearly requires otherwise: . . . (4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not. . . . (b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

CCP 1032(a) and (b); *see also* Hamilton v. Charalambous (In re Charlambous), 2013 Bankr. LEXIS 4655, *17-18 (B.A.P. 9th 2013). CCP 1033.5(a)(10)(A) provides:

> (a) The following items are allowable as costs under Section 1032: . . . (10) Attorney fees, when authorized by any of the following: . . . (A) Contract.

Collectively, by their terms, CCP § 1021, and Cal. Code Civ. P. §§ 1032 and 1033 make clear that attorney's fees may be sought by a prevailing party in disputes sounding in either tort or contract. Charalambous at *18. If there is an attorney's fees provision in an agreement between the parties, courts look to the language of the language of the agreement to determine whether an award of attorney's fees is warranted. *See* 3250 Wilshire Boulevard Bldg. v. W.R. Grace & Co., 990 F. 2d 487, 489 (9th Cir. 1993); Klaus v. Thompson (In re Klaus), 181 B.R. 487, 500 (Bankr. C.D. Cal. 1995). The Ninth Circuit has held that "[d]ismissal of a complaint for lack of subject matter jurisdiction does not deprive the court of jurisdiction to hear a request for fees under state law." First & Beck, a Nevada LLC v. Bank of the Southwest, 267 Fed. Appx. 499, 502 (9th Cir. 2007), *citing* Kona Enterprises, Inc. v. Bishop, 229 F.3d 877, 887 (9th Cir. 2000).

In line with the Court's previous ruling with regard to attorney's fees and costs, the supplemental fees incurred by the Defendants to bring a motion for an attorney fee award would be permitted. Plaintiff was the prevailing party, and the Lease allows the prevailing party to recover attorney's fees and costs. Parties do not necessarily dispute that the supplemental fees would be allowed under the lease. The issue here is whether the Defendants would be allowed to recover these supplemental fees now or whether they waived their right to recover them.

A request for attorney's fees is governed by Federal Rule 54(d), which is made applicable to this adversary proceeding by Rule 7054 of the Federal Rules of Bankruptcy Procedure ("FRBP" or "Bankruptcy Rules"). Federal Rule 54(d) provides in relevant part:

> (2) Attorney's Fees
>
> > (A) Claim to Be by Motion. A claim for attorney's fees . . . must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.
> >
> > (B) Timing and Contents of the Motion. Unless a statute or a court

order provides otherwise, the motion must:

> (i) be filed no later than 14 days after entry of judgment;
>
> (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
>
> (iii) state the amount sought or provide a fair estimate of it; and
>
> (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

"Although the 14-day period is not jurisdictional, the failure to comply [with Rule 54] should be sufficient reason to deny the fee motion, absent some compelling showing of good cause." Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 889-90 (9th Cir. 2000). The Ninth Circuit dealt with an issue of a supplemental attorney fee motions in Perfect 10, Inc. v. Giganews, Inc., 847 F.3d 657 (9th Cir. 2017). In Perfect 10, the applicant argued that the supplemental fee application was timely because the original motion was timely, and the applicant asked in the original motion for the trial court to set a date to supplement their fee request. Id. at 676-77. The Ninth Circuit affirmed the trial court's denial of an applicant's supplemental fee request for being untimely under FRCP 54(d) even though the original fee application was timely. Id. The Court found that the applicant should have anticipated filing a reply and arguing their original fee application; therefore, the applicant should have provided a fair estimate of the costs associated with filing the original fee application. Id.

On November 22, 2021, the Court entered an order dismissing the case and the Defendants timely filed an application for an award of attorney fees. Docket No. 32. The Defendants assert that because the order states that the "motion is granted in its entirety" and there are a few references to supplemental fees in the original motion that the Court ordered otherwise; therefore, the fourteen (14) day after judgment deadline has been altered. The Court disagrees.

In the original motion for attorney fees, there is only a fleeting mention to Defendants reserving the right to supplement their attorney's fees – twice in the notice of the motion, once in the body of the motion under the section labeled "Facts," and once in a declaration. There was no legal authority or argument for why the

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CONT... Hawkeye Entertainment, LLC **Chapter 11**

Defendants would be entitled to this relief; rather, the requested relief is mentioned only once in the actual body of the motion, and it is placed in a place where relief is not usually requested. Defendants made no mention of this at oral argument and the Court never addressed this issue in its memorandum decision. This form of relief was not granted. Further, if this had been properly addressed, the Court would have allowed the Defendants to submit a limited fee application for the additional fees and given the Plaintiffs the opportunity to respond to whether the fees were reasonable or not – the Court did something similar to this in Hawkeye's bankruptcy case – in order to keep the costs down. The order states that the motion was granted in its entirety but does not lay out instructions for seeking supplemental fees. The fourteen (14) day after judgment deadline was not modified by the Court order.

As in Perfect 10, Defendants' counsel should have reasonably anticipated the fees that would be incurred to file an attorney fee application, reply and at oral argument. Accordingly, this motion for supplemental fee application is untimely.

There are also other issues with regards to these supplemental fees. First is the issue of reasonableness. While the Court found that the fees related to the original fee award motion were reasonable, the Court was very liberal in doing so and gave the benefit of the doubt to the Defendants. This supplemental fee application would make the total fee award over $100,000. That is simply too much for what occurred in this case. This case started with Plaintiffs' application for a TRO, which the Defendants opposed, then the Defendants filed a motion to dismiss, and the case was dismissed on grounds of jurisdiction. There was no need to conduct extensive discovery in order to have this case successfully dismissed, rather, it was a pretty straight-forward legal argument. To award over $100,000 would be excessive. If the Court had been inclined to consider additional fees on top of the original attorney fee award, then it would have been far less liberal on considering what was reasonable, which would have significantly reduced the award.

Finally, this motion for supplemental feees does not appear to include fees that were incurred in the filing of this motion. At what point does it end? Litigation for the sake of attorney's fees is a waste of judicial resources and abuses the court system. These parties must start bearing the cost of their choices, or this dispute will never end.

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CONT... Hawkeye Entertainment, LLC **Chapter 11**

For all these reasons, Defendants' motion is DENIED.

Party Information

Debtor(s):

Hawkeye Entertainment, LLC	Represented By Sandford L. Frey

Defendant(s):

Michael Chang	Represented By David S Kupetz Steve Burnell
Smart Capital Investments I, LLC,	Represented By Steven Werth David S Kupetz Steve Burnell
Top Properties Corporation	Represented By David S Kupetz Steve Burnell

Plaintiff(s):

Hawkeye Entertainment, LLC	Represented By Sandford L. Frey
WERM Investments LLC	Represented By Sandford L. Frey

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

Wednesday, March 2, 2022 **Hearing Room 302**

10:30 AM

1:20-12088 Godwin Osaigbovo Iserhien **Chapter 11**

#13.00 Post Confirmation Status Conference

fr. 11/17/21

Docket 82

Tentative Ruling:

Debtor did not file a post-confirmation status report in advance of this hearing. What is the status of performance under the confirmed ch. 11 plan?

APPEARANCE REQUIRED

Party Information

Debtor(s):

Godwin Osaigbovo Iserhien — Represented By
Onyinye N Anyama
Diana Torres-Brito

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

1:20-11601 Andrea Ricci **Chapter 13**

Adv#: 1:20-01120 Hensarling et al v. Crooks

#14.00 Status Conference Re: Complaint to Determine Non-Dischargeability of Debt and for Entry of Judgment for Money

fr. 2/17/21, 2/24/21; 2/9/22

Docket 1

Tentative Ruling:

Section 1334(c)(1) governs permissive abstention:

> Nothing in this section prevents a district court in the interest of justice or in the interest of comity with State courts or respect for the State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

In determining whether to permissively abstain from hearing a matter, the bankruptcy court must consider the totality of the circumstances. See In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990). Specifically, the court should consider: (1) the effect or lack thereof on the efficient administration of the estate if the Court remands or abstains; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficult or unsettled nature of applicable law; (4) the presence of related proceeding commenced in state court or other nonbankruptcy proceeding; (5) jurisdictional basis, if any, other than § 1334; (6) the degree of relatedness or remoteness of proceeding to main bankruptcy case; (7) the substance rather than the form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and Id. at 1166-67.

The parties have been litigating in state court since September 2019, so there is a related proceeding commenced in a nonbankruptcy forum, weighing in favor of abstention. Plaintiff argues that the State Court Action and this adversary proceeding concern the exact same

11:00 AM

CONT... Andrea Ricci **Chapter 13**

set of facts and circumstances, events, parties, witnesses and evidence, and discovery is complete. It does not appear feasible to sever state law claims from the issues of dischargeability. As Plaintiffs note, both the State Court action and this adversary rely on overlapping discovery and there is no way to separately try issues related to Defendant Crooks' actions in this adversary proceeding from those complained of in the State Court Action. Although Defendant is correct that only this Court can rule on issues of dischargeability under § 523, the bankruptcy court may give preclusive effect to the State Court findings of fact and apply those precluded facts to the controlling law of dischargeability under § 523.

The presence of nondebtor parties also weighs heavily in favor of abstention. While Plaintiffs did submit to the jurisdiction of this Court by filing a proof of claim, there can be no jurisdiction over the other non-party defendants Shaun O'Halloren; Lindsay Pacifico; Barry Shields; and the entities A&H and BP. See State Court Complaint, ¶¶ 6-10. Because the actions and representations (or omissions) of and between these several parties are at issue in the State Court Action, and those same representations (or omissions) by Defendant are raised in the adversary complaint, two separate trials run the risk that two different courts will make conflicting findings of fact related to Defendant's actions and intent. Lastly, Plaintiffs have exercised their right to a jury trial before the State Court.

The Court is not insensitive to Debtor's concern that abstention will result in State Court findings that cannot be given preclusive effect here. See *e.g.* Debtor's comparison between breach of fiduciary duty under California law and under 11 U.S.C. § 523(a)(4), Defendant's Brief, ¶¶ 10-11. Further, Debtor notes that the kind of findings made by a jury in California may not be sufficiently detailed to be preclusive here. To balance the prejudice on both sides, as the claim will need to be liquidated anyway in this chapter 13 bankruptcy, the parties should be prepared to discuss a stipulated Relief from Stay Order to allow the State Court trial to proceed to judgment, the findings of which will be binding on Plaintiffs here under issue preclusion on summary judgment, such that no further trial on § 523 will take place.

APPEARANCE REQUIRED

Party Information

Debtor(s):

Andrea Ricci — Represented By
Robert M Aronson

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

CONT... Andrea Ricci **Chapter 13**

Defendant(s):

Tonya Crooks	Pro Se

Joint Debtor(s):

Tonya Crooks	Represented By Robert M Aronson

Plaintiff(s):

Sandra Hensarling	Represented By Alberto J Campain
Ashely Hensarling	Represented By Alberto J Campain
Browgal, LLC (in its derivative	Represented By Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

1:20-11601 Andrea Ricci and Tonya Crooks **Chapter 13**

#15.00 Motion for relief from stay

SANDRA HENSERLING

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/2, 1/19/22; 1/26/22

Docket 26

Tentative Ruling:

Apperance Required

Party Information

Debtor(s):

Andrea Ricci — Represented By Robert M Aronson

Joint Debtor(s):

Tonya Crooks — Represented By Robert M Aronson

Movant(s):

Sandra Hensarling — Represented By Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

1:20-11601 Andrea Ricci and Tonya Crooks **Chapter 13**

#16.00 Motion for relief from stay

BROWGAL, LLC

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/21, 1/19/22; 1/26/22

Docket 25

Tentative Ruling:

Appearance required.

Party Information

Debtor(s):

Andrea Ricci — Represented By Robert M Aronson

Joint Debtor(s):

Tonya Crooks — Represented By Robert M Aronson

Movant(s):

Browgal, LLC — Represented By Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

1:20-11601 Andrea Ricci and Tonya Crooks **Chapter 13**

#17.00 Motion for relief from stay

ASHLEY HENSARLING

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/21, 1/19/21; 1/26/22

Docket 24

Tentative Ruling:

Appearance required.

Party Information

Debtor(s):

Andrea Ricci — Represented By Robert M Aronson

Joint Debtor(s):

Tonya Crooks — Represented By Robert M Aronson

Movant(s):

Ashley Hensarling — Represented By Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:00 AM

1:21-10493 Nayeli Del Carmen Orellana Flores **Chapter 7**

Adv#: 1:21-01069 Mezei v. Acatrinei

#18.00 Order To Show Cause Why This Adversary Proceeding Should Not Be Dismissed Under Local Rule 7016-1(g)

Docket 4

***** VACATED *** REASON: Dismissed; OSC vacated as moot**

Tentative Ruling:

This case was voluntarily dismissed by Plaintiff on January 14, 2022, so this OSC may be VACATED as moot.

NO APPEARANCE REQUIRED on 3-2-2022

Party Information

Debtor(s):

Nayeli Del Carmen Orellana Flores — Represented By D Justin Harelik

Defendant(s):

Sabrina A. Acatrinei — Pro Se

Plaintiff(s):

Tiborg Mezei — Represented By Michael R Totaro

Trustee(s):

David Seror (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

11:30 AM

1:21-10293 PB 6 LLC **Chapter 11**

#19.00 Chapter 11 Case Mgmt Conference

fr. 4/7/21, 9/8/21; 10/20/21, 12/8/21

Docket 0

***** VACATED *** REASON: Cont. to 3/9/22 @ 1pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

PB 6 LLC Represented By
Jeffrey S Shinbrot

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1:21-11412 Jose Carlos Nevarez **Chapter 13**

#20.00 Motion for relief from stay

OSM LOAN ACAUISITIONS, IX LP

fr.10/20/21; 11/17/21; 12/16/21; 1/12/22

Docket 23

Tentative Ruling:

APPEARANCE REQUIRED ON 3-2-2022

The resolution of this Motion will depend on whether Debtor can demonstrate that a successful reorganization, within a reasonable time, is assured. In Sun Valley Newspapers, the issue before the Bankruptcy Appellate Panel ["BAP"] was whether the bankruptcy court abused its discretion in granting relief from the automatic stay when the bankruptcy court made specific findings that there was no equity in the property and no prospect of a successful reorganization within a reasonable period of time. Sun Valley Newspapers, Inc. v. Sun World Corp. (In re Sun Valley Newspapers), 171 B.R. 71 (B.A.P. 9th Cir. 1994). In analyzing the requirement under § 326(d)(2)(B) that a debtor show that a proposed or contemplated plan is not patently unconfirmable and has realistic chance of being confirmed, the BAP noted that:

> [T]he burden can be separated into four stages based upon when the creditor requests relief from the automatic stay. In the early stage of the case, "the burden of proof ... is satisfied if the debtor can offer sufficient evidence to indicate that a successful reorganization within a reasonable time is 'plausible." Near the expiration of the exclusivity period, "the debtor must demonstrate that a successful reorganization within a reasonable time is 'probable." After the expiration of the exclusivity period, "the debtor must offer sufficient evidence to indicate that a successful reorganization within a reasonable time is 'assured." Regardless of the amount of time a case has been pending, if "the evidence indicates that a successful reorganization within a reasonable

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CONT... Jose Carlos Nevarez **Chapter 13**

time is 'impossible,' the court must grant relief from the stay."

In re Sun Valley Newspapers, 171 B.R. at 75 (internal citations omitted)(emphasis added).

1-12-2022 TENTATIVE BELOW:

At the hearing held on Dec. 16, 2021, the Court ordered Debtor to file a declaration regarding his unauthorized use of cash collateral, and any motion or stipulation required to bring him into compliance with the requirements of the Code. On January 4, 2022, Debtor filed the required declaration but no motion for use of cash collateral, or stipulation thereon, has been filed. Moreover, Debtor did not include with his declaration any evidence of the residential leases from which the cash collateral is garnered.

These basic compliance issues were to have been sorted out at this point in this bankruptcy. While the Court did allow the Debtor to convert this case to chapter 11 in order to give him a chance at reorganization, this glaring oversight makes his chances of success in a chapter 11 case dubious at best.

APPEARANCE REQUIRED

Prior Tentative Ruling below:

As the RFS motion turns heavily on whether there is sufficient equity to protect the creditor and whether a confirmation of the Chapter 11 plan is likely, The question of likely reorganization will be addressed here.

The Debtor entered into a loan ("Loan") with OSM Loan Acquisitions IX, LP ("Creditor"). The principal of the Loan was $740,000.00 at a non-default interest rate of 10.99%. The Loan had an approximate one-year terAm and matured on December 1, 2020. The Loan was secured by way of 1st Deed of Trust ("DOT") against real property located at 13200 Pinney Ave., Pacoima, CA 91331 ("Property"). According

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CONT... Jose Carlos Nevarez **Chapter 13**

to a recent appraisal, the Property is valued at approximately $1,138,000.00. Dkt. No. 34 The Debtor has been in default of the Loan for a year now. The default interest rate is 18.99%. Debtor filed for bankruptcy in May 2021 and the case was dismissed on August 27, 2021. Case No. 21-10877. Debtor filed this bankruptcy. Shortly thereafter, the Creditor filed a relief from stay motion which the Debtor opposes. The Debtor also filed a motion to convert this chapter 13 case to a chapter 11, which the Creditor opposes.

On November 17, 2021, a hearing was held on Movant's motion for relief from stay and Debtor's motion to convert. At the hearing, Debtor elaborated on his theory about cramming down the interest of the loan. The Court allowed further briefing on this issue and continued the motion to December 16, 2021.

Default Interest:

Generally, the Code does not provide for pendency interest to creditors, because the filing of the petition usually stops interest from accruing. Id. Section 506(b), however, provides an exception for oversecured creditors:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

§ 506(b). Thus, an oversecured creditor can recover pendency interest as part of its allowed claim, at least to the extent it is oversecured. Wells Fargho Bank, N.A. v. Beltway One Dev. Grp., LLC (In re Beltway One Dev. Grp., LLC) 547 B.R. 819, 826 (9th Cir. BAP 2016). The postpetition, pre-effective date interest rate determined under § 506(b) commences on the petition date and continues until the effective date stated in the confirmed plan, after which the cramdown interest rate, determined under § 1129, commences if the plan is confirmed. Id. at FN 1; see also Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai), 581, F.3d 1090, 1101 (9th Cir. 2009). Moreover, bankruptcy courts "should apply a presumption of allowability for the contracted for default rate, provided that the rate is not unenforceable under applicable nonbankruptcy law." Id. at 830.

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CONT... Jose Carlos Nevarez **Chapter 13**

Subsection §1123(d) renders void *Entz-White*'s rule that a debtor who proposes to cure a default may avoid a higher, post-default interest rate in a loan agreement. Pacifica L 51 LLC v. New Invs. Inc., 840 F.3d 1137, 1140 (9th Cir. 2016). The plain language of § 1123(d) compels the holding that a debtor cannot nullify a preexisting obligation in a loan agreement to pay post-default interest solely by proposing a cure. Id. at 1141.

Creditor is a secured creditor and the Property currently has a limited equity cushion. As such, the Creditor is entitled to pendency interest, costs and charges (per the terms of the Loan). Furthermore, the default interest rate that has accrued prior and during the pendency of the bankruptcy is allowed until a plan is confirmed; confirming a plan does not relieve the Debtor from the penalties that were incurred while the Loan was in default – i.e. the default interest. As such, the Creditor is entitled to its principal, plus interest at the default rate of 18.99%, and any costs incurred up until either a plan is confirmed, or the equity cushion is extinguished. Based on the Creditor's pleadings, the current amount of the claim (as of December 2, 2021) is approximately $1,008,041.56 and the default interest adds approximately $390.35 to the Creditor's claim per day.

Cramming Down Interest:

11 U.S.C. §1123(a)(5)(H) provides:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan …
>
> (5) provide adequate means for the plan's implementation, such as …
>
> (H) extension of a maturity date or a change in an interest rate or other term of outstanding securities…

The controlling case on an appropriate cramdown interest is the Supreme Court case Till v. SCS Credit Corp., 541 U.S. 465 (2004). In Till, the Supreme Court identified the appropriate method to determine a cramdown interest rate in the context of a Chapter 13 case as the "formula approach." Under the formula approach, the Court calculates the appropriate interest rate by beginning with the national prime rate and then adjusting upward based upon any risk factors. Till, 541 U.S. at 479. These

risk factors include, but are not limited to, the circumstances of the estate, the nature of the security, and the duration and feasibility of the plan. Id. The Supreme Court made clear that, "starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors[.]" Id.

In Till, the matter before the Supreme Court involved a Chapter 13 cramdown, but its analysis applies equally in the Chapter 11 context. In re Tapang, 540 B.R. 701, 707 (N.D. Cal. Bankr. 2015). To determine the appropriate interest rate in the case of a Chapter 11 cramdown:

> [A] bankruptcy court should apply the market rate of interest where there exists an efficient market. And, when no efficient market exists for a Chapter 11 debtor, then the Bankruptcy Court should employ the formula approach endorsed by the Till plurality.

In re Dunlap Oil Co, 2014 Bankr. LEXIS 4931, at * 19 (BAP 9th Cir. 2014).

In the Debtor's supplemental brief, Debtor proposed to pay out the Creditor's claim by modifying the terms of the Loan by repaying it "over a reasonable period of time at a reasonable rate of interest." There are no details as to what a "reasonable" time would be. The Creditor seems to presume that it is a thirty (30) year note but Debtor's position leaves room for interpretation. Further, the chart of proposed payments includes both interest and principal payments. This suggests that the Debtor is attempting to transform an interest only note with a balloon payment to something resembling more of traditional mortgage. There is no break down as to what the percentage of the payments would go towards paying the principal and what goes towards paying the interest and does not suggest how long it would take to pay off the Movant's claim. Finally, the Debtor's calculation is premised on a claim of one million ($1,000,000.00) dollars. As of this date, the Creditor's claim is already over that figure and continues to grow every day. By the time the Debtor can confirm a plan, it is likely the Creditor's claim will be well above $1,050,000.00, so the numbers provided by the Debtor are off. With that said, an analysis of whether the Debtor could viably confirm a plan based on cramming down the interest payments will be addressed.

Debtor argues that the interest rate will be between 5-10% based on the Till

risk factors. The current prime rate is 3.25% and Debtor argues the equity cushion and the Creditor being oversecured favors a lower interest rate. The Creditor argues that the Debtor would not be able to obtain a loan from the market with anything lower than a 10.99% interest payment. If this were package as a traditional mortgage, then there should be an efficient market to decide what the interest would be. Debtor has not provided the Court with adequate details on what the length of time would be and what the market would provide as an appropriate interest. With that said, there are some negative factors which would most likely require a higher interest rate rather than a lower one. The first of which is inflation and possibility of increased interest payments. The possibility of inflation causing the interest rate to increase is likely high now and as a result lenders may require higher interest rates to curb the inflationary effect. The next factor is the fact the Debtor has defaulted on two separate loans. The Debtor has defaulted on this loan and another loan (secured by a 2nd DOT) to a David De Wispelaere – as of the petition date the outstanding balance was $60,587.57 with a default interest rate of 21%. This would make lending to the Debtor riskier; thus, require a higher interest rate. Finally, although there is an equity cushion now, both secured loans are oversecured and are incurring default interest. Every day the equity cushion gets smaller, and by approximately April or May of 2022, the equity cushion would be all but gone. Realistically, the Debtor is looking at an interest rate no lower than 9%.

According to Debtor's amended schedule I (Dkt. No. 39), the Debtor's projected monthly income is $10,187.26. According the Debtor's schedule J (Dkt. No. 16) the Debtor's monthly expenses are $8,492.17. This leaves the Debtor with $1,695.09 surplus to go to creditors. In the Debtor's expenses is $6,777.17 that go toward the home ownership expense. The monthly payments amortized as the Debtor proposes will be over $8,000.00. What puts this over the top though is the 2 DOT. Even if that is treated similarly to how this Loan will be treated, then the expenses are greater than projected net income. The expenses listed in schedule J are barebones and there is not much room to maneuver. Cramming down the interest and amortizing payments over 30 years cannot be done, even with the Debtor's recent increase of income. If debtor cannot find another source of income or a way to effectively address these issues, there is no point in denying relief from stay or converting the case to Chapter 11. See In re Tsung Yu Chien, 2020 U.S. Dist. LEXIS 126601 * 8 (C.D. Cal. 2020) (Chapter 11 requires a reorganization of a debtor's assets[,]" and "[i]f [the

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CONT... Jose Carlos Nevarez **Chapter 13**

debtor] could not reorganize, conversion to Chapter 11 would be futile.") That said, the debtor has a 30 year history with this property and appears very motivated to find a way to reorganize. It is also very early in the case and debtor should be given an opportunity to propose a feasible plan.

The court will set a date for a disclosure hearing and continue the RFS to that date to see whether he has found a way to deal with the very serious issues outlined above. The continued date and disclosure hearing will be March 2, 2022 at 1:00 pm. Debtor should file a detailed disclosure statement and plan explaining how he will actually confirm a plan in the time permitted under the rules.

Appearance Required

Party Information

Debtor(s):

Jose Carlos Nevarez	Represented By Nathan A Berneman

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

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1:21-11412 Jose Carlos Nevarez **Chapter 11**

#21.00 Disclosure Statement Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization

Docket 61

Tentative Ruling:

References: In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); See also In re Metrocraft, 39 B.R. 567 (Bankr. N.D.Ga. 1984); § 1125

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g.*, In re A.C. Williams, *supra*.

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. In re Metrocraft Pub. Services, Inc., 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. In re Michelson, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

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5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. In re East Redley Corp., 16 B.R. 429 (Bankr. E.D.Pa. 1982).

6. LBR 3017-1(a) requires at least 36 days notice to all parties in interest. FRBP 3017(a) provides that the disclosure statement be served by mail as required under FRBP 2002(b)

The U.S. Trustee and OSM Loan Acquisitions ("OSM") both filed oppositions to the disclosure statement on grounds of lacking adequate information relating to certain topics that relate to feasibility. While issues of feasibility are typically reserved for confirmation, the Court is concerned that the Plan described may be patently unconfirmable.

APPEARANCE REQUIRED

Party Information

Debtor(s):

Jose Carlos Nevarez — Represented By
Thomas B Ure

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, March 2, 2022 **Hearing Room 302**

1:00 PM

1:21-11412 Jose Carlos Nevarez **Chapter 11**

#22.00 Motion to Use Cash Collateral

Docket 76

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

Jose Carlos Nevarez — Represented By
Thomas B Ure