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

8:00 AM

1:00-00000 **Chapter**

#0.00 **All hearings on 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.

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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/1616655250

Meeting ID: 161 665 5250
Password: 102820MT

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 161 665 5250
Password: 47206977

8:00 AM
CONT... **Chapter**

Docket 0

Tentative Ruling:

All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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Password: 102820MT

8:00 AM

CONT... **Chapter**

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 161 665 5250
Password: 47206977

Wednesday, October 28, 2020 **Hearing Room 302**

9:30 AM

1:18-11124 Ernesto Bernabe Bustamante, Jr. and Lucia Tabunda **Chapter 13**

#1.00 Motion for relief from stay

LAKEVIEW LOAN SERVICING, LLC

fr. 9/24/20

Docket 50

***** VACATED *** REASON:**
Continued to 12/2 at 10am pursuant to a stipulation.

Tentative Ruling:

Continued to 12/2 at 10am pursuant to a stipulation.

Party Information

Debtor(s):

Ernesto Bernabe Bustamante Jr.	Represented By Jeffrey N Wishman

Joint Debtor(s):

Lucia Tabunda Bustamante	Represented By Jeffrey N Wishman

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

9:30 AM

1:19-11916 Ada E Renderos Velasquez **Chapter 13**

#2.00 Motion for relief from stay

IMPAC MORTGAGE CORP.

fr. 7/15/20, 9/9/20; 10/7/20

Docket 34

***** VACATED *** REASON: Resolved per APO (doc. 51) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ada E Renderos Velasquez	Represented By Ali R Nader

Movant(s):

IMPAC Mortgage Corp. dba	Represented By Erin M McCartney

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

10:00 AM

1:18-11764 **Alejandro Rodriguez Garibay** **Chapter 13**

#3.00 Motion for relief from stay

U.S. BANK TRUST NATIONAL ASSO.

Docket 70

Tentative Ruling:

Tentative Ruling
Petition Date : 07/16/2018
Confirmation Date: 7/22/2019
Service: Proper. No Opposition
Property: 11570 Bonham Avenue, Sylmar, CA 91342
Property Value: $ 570,000.00 (per debtor's schedules)
Amount Owed: $ 539,293.25 ($ 459,888.15per Movant's declaration) ($79,405.10 to a junior lien per Debtor's schedule)
Equity Cushion: 5%
Equity: $30,706.75
Post-Petition Delinquency: $6,105.43 (2 payments of $2,204.19, 5 late charges $93.21, and $1,231.00).
Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 6 (termination of co-debtor stay 11U.S.C.§1201(a)or § 1301(a)); and 7 (waiver of the 4001(a)(3) stay).
Movant alleges that the fair market value is declining and payments are not being made to Movant sufficient to protect Movant's interest against the decline and the Debtor has missed postpetition payments.
Cause exists under 362 and there is not enough of an equity cushion to provide adequate protection for the Movant.
Disposition: GRANT the motion for relief of stay.

No Appearance Required. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Alejandro Rodriguez Garibay Represented By

10:00 AM

CONT... **Alejandro Rodriguez Garibay** **Chapter 13**

Faith A Ford

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

10:00 AM

1:18-12547 **Michael Vara** **Chapter 11**

#4.00 Scheduling and case management conference and filing of monthly reports.

fr. 12/12/18; 5/22/19; 6/14/19, 8/7/19, 8/28/19, 10/16/19, 12/18/19, 4/1/20

Docket 16

***** VACATED ***** **REASON: Closed on an interim basis 6/3/2020 (doc. 149) - hm**

Tentative Ruling:

Vacated. Closed on an interim basis 6/3/2020 (doc. 149).

Party Information

Debtor(s):

Michael Vara — Represented By
Onyinye N Anyama

10:00 AM
1:19-12001 Hilcias Noe Morataya and Dora Estela Morataya **Chapter 13**

#5.00 Motion for relief from stay

WELLS FARGO BANK

Docket 35

Tentative Ruling:

Tentative Ruling
Petition Date : 08/09/2019
Confirmation Date: 01/03/2020
Service: Proper. No Opposition
Property: 2013 Toyota Prius (Vin #JTDKN3DU0D5643708)
Property Value: $ 9,500.00 (per debtor's schedules)
Amount Owed: $7,145.21 (per Movant's declaration)
Equity Cushion: 24.7 %
Equity: $2,354.79
Post-Petition Delinquency: $599.84 (2 payments of $251.48 and a late charge of $96.88)
Movant requests relief under 11 U.S.C.362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that the Debtor has missed postpetition payments and the fair market value of the property is rapidly declining.
While cause exists for lifting the automatic stay there appears to be a decent sized equity cushion here - which is a bit unusual in vehicles. Assuming the Debtor's valuation is accurate, the value has almost certainly depreciated since last year. The question is how large is the equity cushion? Have the parties discussed entering into an APO?

Appearance Required.

Party Information

Debtor(s):

Hilcias Noe Morataya — Represented By
Sydell B Connor

10:00 AM

CONT... Hilcias Noe Morataya and Dora Estela Morataya **Chapter 13**

Joint Debtor(s):

Dora Estela Morataya	Represented By Sydell B Connor

Movant(s):

Wells Fargo Bank, N.A., d/b/a Wells	Represented By Joseph C Delmotte

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

10:00 AM

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

#6.00 Motion for relief from stay

METROPOLITAN LIFE INSURANCE CO.

Docket 44

Tentative Ruling:

Tentative Ruling
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 entering into an APO or entering into a Loan Modification?

Appearance Required.

Party Information

Debtor(s):

Stuart Malin Represented By

10:00 AM
CONT... **Stuart Malin and Patricia Malin** **Chapter 13**

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

10:00 AM

1:20-10027 Marvin Alan Schaffer and Shirley Radler Schaffer **Chapter 13**

#7.00 Motion for relief from stay

TOYOTA LEASE TRUST

Docket 30

Tentative Ruling:

Tentative Ruling
Petition Date : 01/07/2020
Confirmation Date: 04/14/2020
Service: Proper. Debtor filed a non-opposition filed on 10/8/2020 (Docket No. 33)
Property: 2018 Toyota C-HR (Vin #NMTKHMBX1JR017860)
Property Value: $ 0
Amount Owed: $15,176.12 (per Movant's declaration)
Equity Cushion: 0%
Equity: $0
Post-Petition Delinquency: 15,176.12(1 Payment of $15,176.12 (Lease Agreement).
Movant requests relief under 11 U.S.C.362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that the there is no adequate protection because the fair market value and the Movant regained possession of the Property on August 25,2020.
Cause exists under Section 362 for lifting the automatic stay and the Debtor filed a non-opposition on 10/8/2020.
Disposition: GRANT the Movant's motion for relief of stay.

No Appearance Required. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Marvin Alan Schaffer	Represented By R Grace Rodriguez

10:00 AM

CONT... **Marvin Alan Schaffer and Shirley Radler Schaffer** **Chapter 13**

Joint Debtor(s):

Shirley Radler Schaffer	Represented By R Grace Rodriguez

Movant(s):

Toyota Lease Trust, as serviced by	Represented By Kirsten Martinez

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

10:00 AM
1:20-11132 Saima Karim **Chapter 7**

#8.00 Motion for relief from stay

VW CREDIT INC.

Docket 15

Tentative Ruling:

Tentative Ruling
Petition Date06/29/2020
Service: Proper. No Opposition
Property: 2018 Ducati (Vin #ZDM14B1W0JB006379)
Property Value: $ 9,500.00 (per debtor's schedules)
Amount Owed: $ 18,866.18 (per Movant's declaration)
Equity Cushion: 0%
Equity: $0
Post-Petition Delinquency: $757.68 (2 payments of $378.84)
Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that it has yet to receive a postpetition payment, that the Debtor failed to provide proof of insurance and that the fair market value is declining and payments are not being made to Movant sufficient to protect Movant's interest against the decline.

On October 13, 2020, an order granting discharge was issued pursuant to Section 727. On that date automatic stay was terminated and replaced by a discharge injunction. The relief being sought by the movant is now moot.
Disposition: DENY the Motion for Relief of Stay as Moot.

No Appearance Required. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Saima Karim — Represented By
Karl D Zufelt

10:00 AM

CONT... Saima Karim **Chapter 7**

Trustee(s):

David Keith Gottlieb (TR) Pro Se

10:00 AM

1:20-11148 Fayyaz Aly Dammanwalla and Meena Fayyaz **Chapter 7**

#9.00 Motion for relief from stay

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC

Docket 43

***** VACATED *** REASON: Withdrawal filed by Movant's attorney - Doc. #49. lf**

Tentative Ruling:

Vacated pursuant to a voluntary dismissal of the Motion. Docket No. 49. No appearance required.

Party Information

Debtor(s):

Fayyaz Aly Dammanwalla	Represented By Raj T Wadhwani

Joint Debtor(s):

Meena Fayyaz Dammanwalla	Represented By Raj T Wadhwani

Trustee(s):

Nancy J Zamora (TR)	Represented By Toan B Chung

10:00 AM
1:20-11579 Martha Delatorre **Chapter 7**

#10.00 Motion for relief from stay

SANTANDER CONSUMER USA INC

Docket 12

Tentative Ruling:

Tentative Ruling
Petition Date: 08/31/2020
Service: Proper. No Opposition
Property: 2017 Mercedes-Benz GLS (Vin # 4JGDF6EE0HA932403)
Property Value: $ 34,500.00 (per debtor's schedules)
Amount Owed: $ 43,158.77 (per Movant's declaration)
Equity Cushion: 0%
Equity: $0
Post-Petition Delinquency: $803.18
Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that it has yet to receive a postpetition payment, that the Debtor failed to provide proof of insurance and that the bankruptcy case was filed in bad faith (other bankruptcy cases were filed in which an interest in the Property was asserted).

The Debtor filed a statement intending to surrender the Property. Docket No. 15.

The Court GRANTS the Movant's motion but makes no findings as to being a bad faith filing.

NO APPEARANCE REQUIRED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Martha Delatorre	Represented By Kenneth H J Henjum

10:00 AM

CONT... **Martha Delatorre** **Chapter 7**

Trustee(s):

Nancy J Zamora (TR)	Pro Se

10:30 AM

1:11-22664 L.D.T. Investments Inc. **Chapter 7**

#11.00 Trustee's Final Report and Application for Compenstion and Deadline to Object

Trustee:
David Seror

Attorney for Trustee:
Brutzkus Gubner Rozansky Seror Weber

Docket 780

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the Trustee's Final Report, the Court finds that the fees and costs are reasonable and are approved as requested. This was an extremely difficult and complicated case. The trustee and his professionals have done an excellent job.

APPEARANCES WAIVED ON 10-28-20.

Party Information

Debtor(s):

L.D.T. Investments Inc. Pro Se

Trustee(s):

David Seror (TR) Represented By
David Seror
David Seror (TR)
Steven T Gubner
Corey R Weber
Michael W Davis
Richard Burstein
Elissa Miller
Aram Ordubegian
Andy Kong
Jessica L Bagdanov

10:30 AM
CONT... L.D.T. Investments Inc. **Chapter 7**

Ronald P Abrams
Talin Keshishian

10:30 AM

1:12-10231 **Owner Management Service, LLC and Trustee Corps** **Chapter 7**

#12.00 Evidentiary Hrg. re: Motion to Disallow Claims Objection to Proof of Claim No. 38

fr. 12/4/19, 1/8/20; 5/14/20; 7/16/20, 8/28/20

Docket 2317

***** VACATED ***** **REASON: Resolved per Settlement (ECF doc. 2486) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Owner Management Service, LLC — Pro Se

Trustee(s):

David Seror (TR) — Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan

10:30 AM
1:19-11292 Mani Mukherjee **Chapter 7**

#13.00 Trustee's Motion for Order:

(A) Authorizing the Private Sale of Real Property Located at 4408 Tosca Road, Los Angeles, California 91364 Outside the Ordinary Course of Business, Free and Clear of Claims, Liens, Encumbrances and Interests; and
(B) Approving a Compromise with Debtor

Docket 84

***** VACATED *** REASON: Cont. to 11/18/20 @10:30am (eg)**

Tentative Ruling:

Having considered the Motion, the Opposition filed by judgment creditor Devadatt Mishal, and Trustee's Reply and finding that a related Motion to Avoid Lien under 11 U.S.C. § 522(f) is set for hearing on 11/18/20 at 10:30 a.m., the Court finds cause to continue the hearing on this Motion to Sell to **November 18, 2020, at 10:30 a.m.**, remotely via ZoomGov.

Trustee to give notice of continued hearing.
APPEARANCES WAIVED ON 10/28/2020

Party Information

Debtor(s):

Mani Mukherjee	Represented By Armen Shaghzo

Trustee(s):

Nancy J Zamora (TR)	Represented By Peter J Mastan Dinsmore & Shohl llP Ashleigh A Danker

10:30 AM

1:20-11148 Fayyaz Aly Dammanwalla and Meena Fayyaz Chapter 7

#14.00 Motion RE: Objection to Claim Number 1 by Garthen Lenon.

Docket 26

Tentative Ruling:

ZOOMGOV APPEARANCE REQUIRED

This chapter 7 bankruptcy case was filed on June 30, 2020. On July 23, 2020, Garthen Lenon ("Lenon"), by his attorney Jay Rothman ("Rothman"), filed a proof of claim ("PoC 1") in this chapter 7 case, asserting an unsecured claim of $100,000, of which $13,600 is claimed as a priority claim under § 507(a)(4). Attached to PoC 1 in support of the claim is a state court complaint for wrongful termination.

Trustee objects to PoC 1 but does not specify under which subsection of § 502(b) her objection is based. Trustee notes that there is no documentation beyond the complaint to support the amounts listed in PoC 1, either for the unsecured claim or the priority claim. Trustee argues that, without more, PoC 1 is insufficient to be entitled to *prima facie* validity under FRBP 3001(f) and should be disallowed in its entirety.

In response, Claimant Lenon and attorney Rothman filed declarations in support of PoC1 (the "Lenon Decl." ECF doc. 63, and the "Rothman Decl." ECF doc. 64, respectively). Lenon explained in his declaration that, prepetition, he had asserted claims against Debtor for, among other things, wrongful termination, sexual harassment, violations of Labor Code related to meal and rest periods, and intentional infliction of emotional distress. Lenon Decl., ¶¶ 6-11, 12-14; PoC 1, Attachment. Debtor also attached to his declaration copies of timecards from July and August 2018. Id. In his declaration, Debtor's state court counsel Jay Rothman asserted that the underlying action is still in litigation and discovery phase and that additional discovery needs to be completed. Rothman Decl., ¶ 6. Rothman offered a breakdown of the unliquidated damages asserted in PoC 1, as follows:

Sexual harassment:	$65,000
Commission owed on alleged oral contract:	$15,000
Wage & hour violations	$10,000

10:30 AM
CONT... **Fayyaz Aly Dammanwalla and Meena Fayyaz** **Chapter 7**

Attorney's fees (to date & ongoing)	$10,000
Total asserted in PoC 1	$100,000

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. Under FRBP 3001(f), "a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim." FRBP 3001-3007. LR 3007-1. A proof of claim provides "some evidence as to its validity and amount" and *prima facie* validity is "strong enough to carry over a mere formal objection without more." Lundell v. Anchor Construction Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000), quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991). To be legally sufficient and *prima facie* valid under FRBP 3001, a claim must: (1) be in writing; (2) make a demand on debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would make the allowance equitable. 9 Collier on Bankruptcy (15th ed. Rev. 2004) ¶3001.05[2].

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient objection to rely solely on an alleged lack of *prima facie* validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section 502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, e.g., id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004). However, "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking *prima facie* validity. In re Campbell holds that, "[o]bjections without substance are inadequate to disallow claims, even if those claims lack the documentation required by Rule 3001(c)."

"The court, after notice and a hearing, shall determine the amount of such claim… as of the date of the filing of the petition, and shall allow such claim, except to the extent that – (1) such claim is unenforceable against debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated." 11 U.S.C. §502(b).

An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified. LBR 3007-1(c).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991).

It is generally held that failure to attach writings to a proof of claim does not require a bankruptcy court to disallow a claim on that basis alone. Rather, the claim is not entitled to be considered as *prima facie* evidence of the claim's validity. Ashford v. Consolidated Pioneer Mortgage Co. (In re Consolidated Pioneer Mortgage Co.), 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995). PoC 1 was filed with a copy of the state court complaint, which Trustee argues is insufficient to confer *prima facie* validity because the state court complaint contains no information to support "the seemingly arbitrary round number of $100,000 or the claimed priority amount of $13,650…." Based on this lack of *prima facie* validity afforded PoC 1, Trustee argues that the Claim be disallowed in its entirety.

Trustee's request overstates how Rule 3001 operates in this context. The nine paragraphs of subsection (b) set forth the sole grounds for disallowance under section 502. Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co., 549 U.S. 443 (2007). As noted above, Trustee's objection does not explain under which subsection of 502(b) she is seeking disallowance of the unsecured portion of the claim, nor can the Court discern which subsection would be applicable here. Instead, where a claim is found to lack the evidence required for *prima facie* validity under FRBP 3001, the claimant is required to allege facts sufficient to support their claim when facing an objection to claim. In re Consolidated Pioneer Mortgage Co., 178 B.R. at 226. In his declaration filed in support of the claim, Lenon has alleged sufficient facts to show the existence a claim, if the alleged facts are proven to be accurate, even if the amount listed on PoC1 as unsecured is contingent and unliquidated, and likely contested.

Under § 502(b)(1), a claim cannot be disallowed on account of it being

10:30 AM
CONT... Fayyaz Aly Dammanwalla and Meena Fayyaz Chapter 7

"contingent or unmatured" if the claim is otherwise enforceable against the debtor. 11 U.S.C. § 502(b)(1). A party objecting to a claim must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." In re Holm, 931 F.2d at 623. Here, Trustee's objection did not challenge any particular aspect of unsecured claim asserted in PoC 1, except for its alleged lack of documentation. This "mere formal objection" is not adequate to defeat the $100,000 portion of the claim designated as unsecured.

Trustee also objects to the $13,650 portion of PoC 1 designated as "priority" claim under § 507(a)(4) for wages and salary earned 180 days before the bankruptcy petition was filed or the debtor's business ends, whichever is earlier. Lenon attached to his declaration copies of handwritten sign-up sheets from July and August 2018, presumably to bolster his claim for damages for Labor Code violations. Lenon did not, however, explain how $13,650 would be entitled to priority under § 507(a)(4), when he alleged in the state court complaint that he terminated his employment on or about August 21, 2018, far outside the 180-day period of time covered by § 507(a)(4). Trustee's objection demonstrated factual and legal grounds to disallow the portion of PoC 1 designated as priority under § 507(a)(4).

Trustee's objection is OVERRULED as to the portion of PoC 1 asserting an unsecured claim of $100,000. Trustee should be prepared to discuss whether she will request that the Court estimate this contingent and/or unliquidated claim under § 502(c) for purposes of allowance.

Trustee's objection is SUSTAINED as to the portion of PoC 1 asserting a priority under § 507(a)(4) of $13,650.

Party Information

Debtor(s):

Fayyaz Aly Dammanwalla	Represented By Raj T Wadhwani

Joint Debtor(s):

Meena Fayyaz Dammanwalla	Represented By Raj T Wadhwani

Trustee(s):

Nancy J Zamora (TR)	Represented By

10:30 AM

CONT... **Fayyaz Aly Dammanwalla and Meena Fayyaz** **Chapter 7**

Toan B Chung

11:00 AM

1:12-19998 Process America, Inc. **Chapter 11**

Adv#: 1:12-01421 Tigrent Group Inc. v. Process America, Inc. et al

#15.00 Status conference re complaint for:
damages and equitable relief

fr. 1/31/13, 3/21/13, 5/23/13, 8/29/13, 11/7/13,
12/5/13, 4/24/14, 6/5/14, 11/6/14, 3/19/15,
6/4/15, 7/22/15, 8/12/15, 9/9/15, 2/24/16,
5/25/16, 7/27/16, 9/28/16, 12/14/16; 2/8/17,
4/26/17,7/11/17; 9/6/17, 11/1/17, 11/30/17,
1/9/18; 5/1/18, 6/21/18, 8/30/18; 9/20/18, 6/26/19
9/21/18, 10/31/18; 12/12/18, 2/27/19; 3/13/19; 12/11/19, 1/29/20
2/26/20; 3/25/20; 5/20/20, 6/2/20

Docket 1

Tentative Ruling:

No status report filed as of 10/26/20.

ZoomGov appearance required.

Party Information

Debtor(s):

Process America, Inc.	Represented By Ron Bender John-patrick M Fritz

Defendant(s):

Process America, Inc.	Pro Se
Kimberly S Ricketts	Pro Se
Craig Rickard	Pro Se
KEITH PHILLIPS	Pro Se
Gwendolyn Phillips	Pro Se

11:00 AM
CONT... Process America, Inc. **Chapter 11**

C2K Group, LLC	Pro Se
Applied Funding, Inc.	Pro Se
KBS Dreams, Inc.	Pro Se
Like Zebra, LLC	Pro Se
Stripe Entertainment Group, Inc.	Pro Se

Plaintiff(s):

Tigrent Group Inc.	Represented By Thomas F Koegel

U.S. Trustee(s):

United States Trustee (SV)	Pro Se

11:00 AM

1:18-12917 Sohail Mobasseri **Chapter 7**

Adv#: 1:19-01049 LendingHome Funding Corp. v. Mobasseri

#16.00 Status Conference Re:
Complaint by LendingHome Funding Corp.
against Sohail Mobasseri.

fr. 9/30/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sohail Mobasseri	Represented By Dana M Douglas

Defendant(s):

Sohail Mobasseri	Represented By Dana M Douglas M. Jonathan Hayes

Plaintiff(s):

LendingHome Funding Corp.	Represented By Adam Forest Kerry A. Moynihan

Trustee(s):

David Keith Gottlieb (TR)	Pro Se

11:00 AM

1:18-12917 Sohail Mobasseri **Chapter 7**

Adv#: 1:19-01049 LendingHome Funding Corp. v. Mobasseri

#17.00 Motion to Dismiss Section 727 Adversary Proceeding Based on Settlement

Docket 58

Tentative Ruling:

Defendant and Plaintiff move for the Court's approval of the Settlement Agreement (ad. doc. 58), as amended by the Addendum (hereafter, the "Settlement Agreement," ad. doc. 71, filed 10/1/2020), and dismissal of the Adversary Case in accordance with the terms of the Settlement Agreement. If the Court grants this Motion, the parties intend to consummate the Settlement Agreement and, once payment has cleared, Plaintiff will submit an order dismissing this action.

Service proper on both the Motion and the Addendum. No response filed. MOTION GRANTED. MOVANT TO LODGE ORDER WITHIN 7 DAYS.

APPEARANCES WAIVED ON 10/28/20

Party Information

Debtor(s):

Sohail Mobasseri	Represented By Dana M Douglas

Defendant(s):

Sohail Mobasseri	Represented By Dana M Douglas M. Jonathan Hayes

Plaintiff(s):

LendingHome Funding Corp.	Represented By Adam Forest Kerry A. Moynihan

11:00 AM

CONT... **Sohail Mobasseri** **Chapter 7**

Trustee(s):

David Keith Gottlieb (TR) Pro Se

11:00 AM

1:19-10828 Anna Barseghian **Chapter 7**

Adv#: 1:19-01084 Zamora, Chapter 7 Trustee v. Barseghian

#18.00 Status Conference Re: Complaint for Denial of Discharge.

fr. 9/18/19, 11/6/19, 1/8/20; 4/8/20; 6/24/20, 8/19/20

Docket 1

***** VACATED *** REASON: Order entered adv. dismissed 9/2/20 (eg)**

Tentative Ruling:

Party Information

Debtor(s):

Anna Barseghian	Represented By Aris Artounians

Defendant(s):

Anna Barseghian	Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee	Represented By Wesley H Avery

Trustee(s):

Nancy J Zamora (TR)	Represented By Wesley H Avery Law Office of Wesley H. Avery, APC

11:00 AM

1:19-11935 **Maria Estela San Vicente** **Chapter 11**

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

fr. 6/24/20

Docket 81

Tentative Ruling:

Having reviewed the Disclosure Statement (ECF doc. 81), the Plan of Reorganization (ECF doc. 80), and the Order Granting Motion to Value Collateral (ECF doc. 95), the Court finds that the proposed disclosure statement contains adequate information to solicit acceptance or rejection of the proposed plan of reorganization.

The Court will set a confirmation briefing schedule at the status conference.

Disclosure is APPROVED.

Party Information

Debtor(s):

Maria Estela San Vicente — Represented By Thomas B Ure

11:00 AM

1:19-11935 Maria Estela San Vicente **Chapter 11**

#20.00 Scheduling and Case Management Conference and Filing of Monthly Reports

fr. 11/6/19; 6/24/20

Docket 31

Tentative Ruling:

Debtor should submit order on disclosure ASAP.
Disclosure and Plan package with ballots are to be mailed by November 11, 2020
Objections and ballots are due by December 2
Ballot talley and response to any objections due by December 9
Confirmation hearing is December 16 at 11:00 am by zoomgov.com

APPEARANCE REQUIRED.

Party Information

Debtor(s):

Maria Estela San Vicente	Represented By Thomas B Ure

11:00 AM

1:19-12735 Reynaldo Rene Vizcarra **Chapter 7**

Adv#: 1:20-01024 Infinity Capital Funding, LLC v. Vizcarra

#21.00 Status Conference Re: Complaint to Determine Dischargeability of a Debt under 11 U.S.C. Sec. 523(a)(2) and 523(a)(6)

fr. 4/15/20; 7/22/20

Docket 1

***** VACATED *** REASON: Stip. cont. to 1/6/21 @ 11am (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reynaldo Rene Vizcarra — Represented By David R Hagen

Defendant(s):

Reynaldo Rene Vizcarra — Pro Se

Plaintiff(s):

Infinity Capital Funding, LLC — Represented By Diane C Stanfield

Trustee(s):

Diane C Weil (TR) — Pro Se

11:00 AM

1:20-11148 **Fayyaz Aly Dammanwalla** **Chapter 7**

Adv#: 1:20-01075 ZAMORA v. MISSION BANK

#22.00 Status Conference Re: Complaint for
(1) Avoidance of Unauthorized PostPetition
Transfer [11 USC Sec. 549(a)];
(2) Recovery of Avoided Transfer
[11 USC Sec. 550(a)];
(3) Automatic Preservation of Avoided
Transfer [11 USC Sec. 551]; and
(4) Turnover of Estate's Property
[11 USC Sec. 542]

Docket 1

***** VACATED ***** **REASON: Per order #9. lf**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fayyaz Aly Dammanwalla	Represented By Raj T Wadhwani

Defendant(s):

MISSION BANK	Pro Se

Joint Debtor(s):

Meena Fayyaz Dammanwalla	Represented By Raj T Wadhwani

Plaintiff(s):

NANCY J ZAMORA	Represented By Toan B Chung

Trustee(s):

Nancy J Zamora (TR)	Represented By

11:00 AM

CONT... Fayyaz Aly Dammanwalla **Chapter 7**

Toan B Chung

11:00 AM
1:20-11148 Fayyaz Aly Dammanwalla **Chapter 7**
Adv#: 1:20-01076 ZAMORA v. BUDWANI

#23.00 Status Conference Re: Complaint for
(1) Avoidance of Unauthorized PostPetition
Transfer;
(2) Avoidance of Insider Preferences
[11 USC Sec. 547];
(3) Turnover of Estate's Property
[11 USC Sec. 542];
(4) Recovery of Avoided Transfers
[11 USC Sec. 550(a)]; and
(5) Automatic Preservation of Avoided
Transferes [11 USC Sec. 551]

Docket 1

***** VACATED *** REASON: Ntc. of dismissal filed- case settled 10/7/20 (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fayyaz Aly Dammanwalla	Represented By Raj T Wadhwani

Defendant(s):

NADIA BUDWANI	Pro Se

Joint Debtor(s):

Meena Fayyaz Dammanwalla	Represented By Raj T Wadhwani

Plaintiff(s):

NANCY J ZAMORA	Represented By Toan B Chung

11:00 AM

CONT... Fayyaz Aly Dammanwalla **Chapter 7**

Trustee(s):

Nancy J Zamora (TR) Represented By
Toan B Chung

1:00 PM

1:19-13002 Stephen E. Pearcy **Chapter 13**

#24.00 Motion For Sanctions as against debtor and his counsel jointly and severally, pursuant to rule 9011 of The Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule 9011-3

fr. 9/22/20

Docket 142

Tentative Ruling:

Background:

On February 1, 2012, Stephen Pearcy ("Debtor") and Melissa Pearcy filed a dissolution of marriage in the Los Angeles Superior Court ("Family Law Action"). On June 25, 2019, the Debtor was found guilty of numerous counts of contempt for non-payment of temporary spousal support to Ms. Pearcy. Subsequently, Ms. Pearcy filed an order to show cause and affidavit of contempt as against the Debtor, as a result of the Debtor failing to make additional spousal support. In order to delay the Family Law Action and stop the possibility of being placed in jail the Debtor filed this bankruptcy case under chapter 13 of the Bankruptcy Code on December 3, 2019.

On February 11, 2020, Ms. Pearcy and her counsel, Melissa Buchman, filed an objection to the Debtor's proposed plan and argued that there were several critical omissions and errors made in the Debtor's schedules. At the continued confirmation hearing on August 25, 2020, the Court dismissed the case for being over the Ch. 13 debt limit. The Court found that the Debtor purposefully understated certain liabilities in order to manipulate the schedules so that he could file under Ch. 13 of the Bankruptcy Code and placed a 180-day bar on the Debtor from refiling. The Court also found that the purpose for filing this bankruptcy case was to thwart the Family Law Action. The Court maintained jurisdiction to decided motions for sanctions. On August 28, 2020, the Court entered the order dismissing the case.

On August 26, 2020, Ms. Pearcy and Ms. Buchman filed this motion for sanctions under Federal Rule of Bankruptcy Procedure 9011(c) against the Debtor and the Debtor's counsel, Michael Chekian, for $29,269.34. Debtor opposed the motion. The Court conducted a hearing on September 22, 2020 and continued the hearing to October

28, 2020, in order to allow parties to file supplemental memoranda addressing the issue of mootness. Both parties timely filed these supplemental memoranda.

Legal Standard:

A bankruptcy court may award attorneys' fees and costs as a sanction under authority of Bankruptcy Rule 9011, which is identical to Federal Rule of Civil Procedure 11. DeVille v. Cardinale (In re Deville), 280 B.R. 483, 494 (9th Cir. BAP 2002). While a bankruptcy court can award fees and costs, Rule 9011 is "an extraordinary remedy, one to be exercised with extreme caution." Operating Engineers Pension Trust v. A-C Co., 859 F.2d 1336, 1345 (9th Cir. 1988). An award of sanctions for a violation of Rule 9011 is "an exceptionally serious matter reserved for those rare situations in which a claim or defense is asserted without any evidentiary support or legal basis, or for improper purposes, such as to harass or delay an opponent, or cause undue expense." Board of Trustees v. Quinones (In re Quinones), 543 B.R. 638, 646 (Bankr. N.D. Cal. 2015). The purpose of Rule 9011 is designed to encourage counsel to avoid groundless filing or pleadings filed for improper purposes, primarily through the imposition of sanctions. Rule 9011 (c) provides that reasonable attorneys' fees may be awarded as a sanction only upon "motion":

> A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

Fed. R. Bankr. P. 9011 (c)(2)

A motion for sanctions is further described, in relevant part, in Rule 9011 (c)(1)(A):

> A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately

> corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). . . .

Fed. R. Bankr. P. 9011 (c)(1)(A).

FRBP 9011(c)(1) requires a 21 day "safe harbor" period before a motion for sanctions can be filed with the court. "Parties who ask for sanctions under this rule are not permitted to circumvent the safe harbor by waiting until it is too late to withdraw or correct the offending matter." Barber v. Miller, 146 F.3d 707, 710-11 (9th Cir. 1998). A party seeking sanctions cannot deprive the party that sanctions are being sought from the opportunity to escape sanctions by withdrawal or correction. Polo Bldg. Grp., Inc. v. Rakita (In re Shubov), 253 B.R. 540, 545 (B.A.P. 9th Cir. 2000).

The imposition of [Rule 9011] sanctions…requires only a showing of objectively unreasonable conduct. Miller v. Cardinale (In re DeVille), 361 F.3d 539, 549 (9th Cir. 2004) (quoting Lony v. E.I. Du Pont de Nemours & Co., 935 F.2d 604, 616 (3d Cir. 1991). "[A] finding of bad faith is not required. Davis v. Alexander (In re High Speed Music, Inc.), 2007 Bankr. LEXIS 4545 (Bankr. C.D. Cal. 2007). FRBP 9011 allows for bankruptcy courts to impose sanctions in three situations, 1) where papers are submitted demonstrate factual frivolity, 2) legal frivolity, or 3) where papers were submitted for an improper purpose. Business Guides, Inc. v. Chrimatic Communications Enterprises, Inc., 892 F.2d 802, 808 (9th Circ. 1989). Moreover, "[i]n determining whether sanctions are warranted… [the court] must consider both frivolousness and improper purpose on a sliding scale, where the more compelling the showing as to one element, the less decisive need be the showing as to the other." In re Silberkraus, 336 F.3d 864, 870 (9th Cir. 2003).

Analysis:

Ms. Pearcy and Ms. Buchman notified the Debtor and Debtor's counsel with two separate informal notices regarding two separate issues which form the basis for Ms. Pearcy's an Ms. Buchman's motion for sanctions. The first notification was sent on May 15, 2020, by way of a letter and the actions believed to warrant sanctions were objections to proofs of claims. Docket No. 156, Ex. A. The second notification was emailed to Chekian on July 17, 2020 and asked that the entire bankruptcy case to be dismissed.

Docket No. 142, Ex. B. Ms. Buchman served Debtor with the motion for sanctions on August 3, 2020 (reply brief declaration) satisfying the 21-day safe harbor period prior to the filing of the motion for sanctions. Docket No. 142. The motion alleges three bases for sanctions: 1) improper objections to claims, 2) the motion to approve the sale of real property had no legal basis, and 3) the Debtor's bankruptcy case was filed in bad faith. The Debtor and Debtor's counsel withdrew the objections to the proofs of claims prior to the Ms. Pearcy and Ms. Buchman filing this motion for sanctions. Docket No. 126 & 127. The Court rendered its' ruling dismissing the bankruptcy case the day before the motion for sanctions was filed and an order dismissing the bankruptcy case was entered two days after the motion for sanctions was filed.

Mootness:

Article III limits federal court's jurisdiction to "cases or controversies." See Public Utils. Comm'n v. Federal Energy Regulatory Comm'n, 100 F.3d 1451, 1458 (9th Cir. 1996) ("The jurisdiction of federal courts depends on the existence of a 'case or controversy' under Article III of the Constitution.") A party must maintain a live controversy through all stages of the litigation process. See Di Giorgio v. Lee (In re Di Giorgio), 134 F.3d 971, 974 (9th Cir. 1998) ("To qualify for adjudication in federal court, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.") If an action or a claim loses its character as a live controversy, then the action or claim becomes "moot," and the federal courts lack jurisdiction to resolve the underlying dispute. See Ruiz v. City of Santa Maria, 160 F.3d 543, 549 (9th Cir. 1998).

Ms. Pearcy and Ms. Buchman rely heavily on Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990) for the proposition that the matter before it is not moot, and the Court must adjudicate the Rule 9011 motion. The Supreme Court found that courts may enforce Fed. R. Civ. P. 11 even after a plaintiff has filed a notice of dismissal under Fed. R. Civ. P. 41(a)(1). As a violation of Rule 11 is complete when a paper is filed, a voluntary dismissal does not expunge a Rule 11 violation. In order to comply with Rule 11's requirement that a court shall impose sanctions if a pleading, motion, or other paper is signed in violation of Rule 11, a court must have the authority to consider whether there has been a violation of the signing requirement regardless of the dismissal of an underlying action.

The Supreme Court's ruling in Cooter has since been rolled back. The twentyone-day "safe harbor" period was added to Rule 11 in 1993 and to Rule 9011 in 1997. "The effect of this change was to reverse the result in cases such as Cooter & Gell v. Hartmarx Corp., 496 U.S. 384 (1990)." In re Jazz Photo Corp., 312 B.R. 524, fn 11 (Bankr. D.N.J. 2004) ; see also De La Fuente v. DCI Telecomms., Inc., 259 F.Supp. 2d 250 (S.D.N.Y 2003) ("The rule established by Cooter & Gell was partially superseded by the amendment of Rule 11 in 1993…a court can no longer issue Rule 11 sanctions in a case where, as in Cooter & Gell, a complaint was voluntarily dismissed within 21 days of a request for Rule 11 sanctions."). "The purpose of the safe harbor provision is "to give the offending party the opportunity [within the safe harbor period] to withdraw the offending pleading and thereby escape sanctions." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998).

The Debtor withdrew the objections to claims within the 21-day safe harbor period, in doing so preventing the Court from adjudicating whether sanctions are appropriate as to that issue. Now if the Debtor had withdawn this case and the motion to sell then these matters would be moot; however,he did not voluntary withdraw the case and motion to sell prior to the Court dismissing the case on separate grounds. The Court took a further look at In re Gonzalez, 2019 Bankr. LEXIS 3269 *7 (Bankr. C.D. Cal. 2019) and is convinced by Ms. Pearcy's and Ms. Buchman's argument between monetary and non-monetary sanctions awards; thus, the Court is not persuaded this case is helpful here. The question here is whether an involuntary dismissal of the Debtor's case by the Court is different from a voluntary dismissal even though the results of both are effectively the same.

The central purpose of Fed. R. Civ. P. 11 is to deter baseless filings in a federal court. If an attorney fails to act in accordance with the behavior prescribed in Rule 11, then the attorney opens themselves up to sanctions. "The purpose of the safe harbor, however, is to give the offending party the opportunity, within 21 days after service of the motion for sanctions, to withdraw the offending pleading and thereby escape sanctions." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998). "Nothing in the Rule or the history of the 1993 amendment prevents the district court from taking this action, [sanctioning a party], after judgment." Id. at 711.

According to Ms. Buchman's declaration in the reply, the motion was officially served on Debtor on August 3, 2020. The Court dismissed the Debtor's case on August 25, 2020, and an order was signed memorializing the Court's ruling on August 28, 2020. The last day of the 21-day safe harbor was August 24, 2020, meaning the first day in Ms. Pearcy and Ms. Buchman could have filed was August 25, 2020. By the time the Court had dismissed the Debtor's case, the 21-day safe harbor had ran and the motion for sanctions was in the process of being filed with the Court. If the Debtor either voluntarily dismissed the case and motion to sell prior to the termination if the 21-day safe harbor or if the Court's involuntary dismissal of the case cut short this safe harbor, then the Rule 9011 motion for sanctions would have been mooted. Since the 21-day safe harbor passed without the voluntary dismissal of the case and withdrawing of the motion to sell, the Court concludes that the involuntary dismissal of the Debtor's case does not prevent it from addressing the merits of Ms. Pearcy's an Ms. Buchman's arguments. Accordingly, the Court will address the motion to sell and the bad faith bankruptcy case filing in turn.

Under 11 U.S. Code § 363(f) "[t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—(1)applicable nonbankruptcy law permits sale of such property free and clear of such interest…". Here the Debtor filed a motion to sell property rights pursuant to this section of the Code on July 31, 2020. Docket No. 122. The Debtor refers to this section in his brief and omits material issue present, whether state law permits such a sale.

California Family Code § 2040(a)(2)(A) provides that a temporary restraining order " [r]estraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court…". Under California law, all property acquired during marriage is community property. Cal Fam. Code §760. Any artistic work created during the marriage constitutes community property. See Lorraine v. Lorraine, 8 Cal. App. 2d 687, 701 (1935). The property rights the Debtor was seeking to sell in this motion clearly would fall under community property and would require written consent or an order from the State Court. Debtor's counsel was aware of the automatic restraining order and still omitted this information in his initial brief. It was not until after Ms. Pearcy and Ms. Buchman filed opposition raising this issue when Debtor's Counsel addressed this issue in his reply brief. While Debtor's Counsel raised an interesting point, that Debtor could file a motion to approve the sale in this Court and a motion in the State Court simultaneously, the fact that Debtor's Counsel omitted this critical piece of information in his initial moving papers is concerning. The Court does not believe that the motion itself is frivolous because the Court could have tailored the relief sought being contingent on a ruling from the state court. The motion was an attempt to liquidate assets and get this matter settled. It had the potential to break a lengthy logjam after years of litigation. The court should have been apprised initially of the competing Family Court order. .

Ms. Pearcy's an Ms. Buchman's next argument for why sanctions are appropriate is because they believe the Debtor's Chapter 13 filing was made in bad faith. Pursuant to 11 U.S. Code § 109(e), "[o]nly an individual… that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $419,257 and noncontingent, liquidated, secured debts of lest than $1,257,850… may be a debtor under chapter 13 of this title." On August 25, 2020 the Court dismissed the Debtor's case after it found that the bankruptcy case was filed to "thwart the family law actions" and "significantly manipulated his schedules… so that he would come in under the debt limit." The Court dismissed the case and placed a 180-day bar on refiling.

When a bankruptcy court determines that Rule 9011(b) has been violated, it "may," but is not required to, impose a sanction. Rule 9011 provides that "sanctions imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated," and that such sanctions may include "some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. R. Bankr. P. 9011(c)(2). The rule does not list other factors that a court should consider in deciding whether to impose a sanction and what sanction to impose. The Advisory Committee Note to Civil Rule 11 suggests the following factors for consideration:

—whether the improper conduct was willful or negligent;

—whether the improper conduct was part of a pattern of activity or an isolated event;

—whether the improper conduct infected the entire pleading or only one particular count or defense;

—whether the person has engaged in similar conduct in other litigation;

—whether the improper conduct was intended to injure;

—the effect the improper conduct had on the litigation process in time or expense;

—whether the responsible person is trained in the law;

—the amount, given the financial resources of the responsible person, that is needed to deter that person from repetition in the same case; and

—the amount needed to deter similar activity by other litigants.

A court imposing sanctions under Rule 9011 "has wide discretion in determining what sanction" should properly be imposed. Smyth v. City of Oakland (In re Brooks-Hamilton), 329 B.R. 270, 283 (citing Kowalski-Schmidt v. Forsch (In re Giordano), 212 B.R. 617, 622 (B.A.P. 9th Cir. 1997)) *aff'd in part, rev'd in part on other grounds*, 202 F.3d 277 (9th Cir. 1999)

As to the motion to sell property, Debtor's counsel was aware of the ATRO and either negligently or willfully omitted this information in his initial pleadings. As an attorney, Debtor's counsel has a duty of candor to the Court. Had Debtor's counsel simply mentioned that there was an issue with state law in his brief the Court would deny Ms. Pearcy's and Ms. Buchman's motion for sanctions as to this point even if his arguments were ultimately rejected. By not referencing a critical fact, the Court finds that this action violated FRBP 9011. The question this raises is what is sufficient to deter repetition of this conduct? Given the long and contested history of this case, the Court is convinced Ms. Pearcy and Ms. Buchman would likely have filed an opposition to this motion to sell anyway, so full attorney's fees for filing an opposition is not appropriate. The Court, in its' discretion, will deny Debtor's counsel all fees he incurred in drafting this motion. The Debtor will not be subject to sanctions as to this point.

The issue of bad faith filing is a closer call. In bankruptcy practice it is not uncommon for debtors to file in order to prevent a perceived greater harm – in this instance it was to avoid being placed in jail. While the Debtor clearly attempted to thwart the family court action and prevent going to jail, that by itself does not necessarily warrant sanctions under FRBP 9011. Further, debtors often come in over the Chapter 13 debt limits and try to get under the debt limits imposed by the Bankruptcy Code. What is different here is the Debtor knew what the amount of his liabilities were prior to filing and manipulated these numbers on his schedule. The factors above are pretty split, the Debtor willfully listed the values of his debts and assets wrong and this appears throughout the case; however, the intent of the Debtor appears to be to save his own skin rather than to injure Ms. Pearcy and Ms. Buchman – not to say they have not been injured by the Debtor filing for bankruptcy. Additionally, this Debtor's actions have only been problematic as to this one bankruptcy case. Had this behavior continued over the course of several cases the Court would be more inclined that the Debtor's actions warranted greater sanctions.

The case was an attempt to see if the litigation could be ended and a resolution reached. This is often the case where a bankruptcy filing finally interrupts years of family court litigation. Debtor's counsel made a good faith attempt to get this into a free

1:00 PM

CONT... Stephen E. Pearcy Chapter 13

settlement conference with an effort to resolve all issues. The overall plan was in good faith, even if the court disagrees with certain decisions.

The ultimate purpose for sanctions under FRBP 9011 is to deter repetition or similar activity rather than to compensate others. Here the Court denied the Debtor's motion to continue the confirmation hearing, denied a request for time to consider converting this case to a Chapter 11, chose to dismiss the case rather than convert it, and placed a 180-day bar on the Debtor from filing again. These actions are affectively sanctions designed to deter the Debtor from repeating his actions. What Ms. Pearcy and Ms. Buchman seek from their motion for sanctions is more based on compensating them, the party that has been wronged by the Debtor's actions, rather than seeking to deter conduct. The Court will not compensate Ms. Pearcy and Ms. Buchman fully because they chose to vigorously litigate this case. With that said, the Court agrees that something further is required to ensure the Debtor does not continue this action any further. The Debtor had filed a previous bankruptcy case and was aware that he needed to be truthful on his statements and schedules and chose not to be. The Court will grant only those fees which are directly connected to opposing the Debtor's plan. These include tasks: 1) drafting an objection to confirmation of proposed plan (5.2 hours), 2) drafting objection to confirmation of amended proposed plan (4.6 hours), 3) preparation of supplemental objection to confirmation of amended plan (2.5 hours), and the Court will allow 1 hour for appearances at confirmation hearings. Billed at Ms. Buchman's rate of $395, this totals $5,253.50. This award will be against the Debtor only. Debtor's counsel appears to have been in a difficult situation. There appears to have been some disconnect between the Debtor's bankruptcy case and the family law case. Additionally, it is not clear how forthcoming the Debtor was with Debtor's counsel about the amount of his debts. Accordingly, the Court is will not make Debtor's counsel liable for the sanctions imposed against the Debtor.

This ruling does not preclude movants from seeking damages arising from this case in a different forum. Additionally, if the Debtor's inappropriate behavior continues in this Court sometime in the future, then the Court may choose to enforce stiffer sanctions.

Conclusion:

1:00 PM
CONT... **Stephen E. Pearcy** **Chapter 13**

The Court will grant sanctions as follows:

1) Any fees incurred by Debtor's counsel in drafting the motion to sell property are forfeited.

2) The Court imposes sanctions against the Debtor in the amount of $5,253.50 payable to movants.

Party Information

Debtor(s):

Stephen E. Pearcy — Represented By Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR) — Pro Se

1:00 PM
1:19-13002 Stephen E. Pearcy **Chapter 13**

#25.00 Application of Attorney For Debtor for Allowance of Fees and Expenses Following Dismissal or Conversion of Chapter 13 Case

Period: 6/26/2020 to 9/11/2020,
Fee: $6,450.00,
Expenses: $225.00.

Docket 155

Tentative Ruling:

On December 3, 2019, Stephen Pearcy ("Debtor") filed a Chapter 13 petition. The Debtor retained Michael Chekian as counsel for this bankruptcy case and they entered into a Rights and Responsibilities Agreement. Docket No. 15. On May 20, 2020, Mr. Chekian submitted an application for compensation for $6,525.00 in fees and $145.65 for expenses. Mellisa Pearcy and Melissa Buchman filed an objection and the application was set for hearing for July 21, 2020. The Court granted Mr. Chekian's application and entered an order to that effect on July 22, 2020. Docket No. 120.

At the continued confirmation hearing on August 25, 2020, the Court dismissed the case for being over the Ch. 13 debt limit. The Court found that the Debtor purposefully understated certain liabilities in order to manipulate the schedules so that he could file under Ch. 13 of the Bankruptcy Code and placed a 180-day bar on the Debtor from refiling. On August 28, 2020, the Court entered the order dismissing the case.

On September 11, 2020, Mr. Chekian filed another application seeking attorney's fees of $6,450.00 ($3,000 of which are basic services according to the RARA and additional $3,450.00 for additional extraordinary services and costs of $225.00 for the period of June 26, 2020 to September 11, 2020. The total incurred fees and costs by Debtor after credit for the $2,000.00 plus $310 filing fee paid up front is $17,673.25. Mr. Chekian is only seeking $13,345.65 ($6,670 in the previous application plus $6,675.00). The Chapter 13 Trustee filed comments stating that it had no opposition to Mr. Chekian's fees. Ms. Pearcy and Ms. Buchman filled opposition on September 30, 2020.

1:00 PM
CONT... **Stephen E. Pearcy** **Chapter 13**

Standard:

The compensation for services and reimbursement of expenses of professionals are determined under the standard provided in section 330. Only those professionals whose employment is authorized by the court pursuant to section 327 or 1103, or who represent chapter 12 or chapter 13 debtors, are entitled to compensation under section 330. 11 U.S.C.S. § 330(a)(1)(A) authorizes allowance of reasonable compensation for actual, necessary services, and 11 U.S.C.S. § 330(a)(3)(A)-(D) includes among relevant factors the time spent on services, the rates charged therefor, whether the services were necessary at the time rendered, and whether they were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the issue at hand. Section 330(a)(4) provides:

> Except as provided in subparagraph (B), the court shall not allow compensation for—
>
> (i)unnecessary duplication of services; or
>
> (ii)services that were not—
>
> (I) reasonably likely to benefit the debtor's estate; or
>
> (II) necessary to the administration of the case

Analysis:

To begin Mr. Chekian argues that Ms. Buchman and Ms. Pearcy lack standing to object to an attorney fee application because they are not entitled to any distributions held by the Trustee.

Standing to object to a fee application in the bankruptcy court has both a constitutional and prudential dimension. Constitutional standing requires that a party:

> must demonstrate that "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury in fairly traceable to the challenged conduct of the [other party]; and (3) that it be likely, as opposed to merely speculative, that the injury will be

redressed by a favorable decision.

> City of Sausalito v. O'Neill, 386 F.3d 1186, 1197 (9th Cir. 2004) (quoting Friends of Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-181, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)). While the Code does not specify which parties may object to an estate professional's application for approval of compensation and expenses, under § 330(a) and Rule 2002(a)(6), among others, "parties in interest" are entitled to receive notice of the filing of, and the hearing concerning, such application. Presumably, the same parties in interest entitled to notice of the filing and hearing on a fee application would, in response to the notice, have some right to be heard. A party holding a "pecuniary interest" in property of the estate is a party in interest. Hasso v. Mozsgai (In re La Sierra Fin. Servs.), 290 B.R. 718, 728 (9th Cir. BAP 2002).

The issue of whether Ms. Buchman and Ms. Pearcy having standing is an interesting one. Obviously, Ms. Buchman and Ms. Pearcy are creditors and had a pecuniary interest in the Debtor's bankruptcy estate when the case was still ongoing; however, when the case was dismissed the bankruptcy estate revests the property of the estate back to the Debtor. *See* 11 U.S. Code § 349. Ms. Buchman and Ms. Pearcy are not administrative claimants as referenced to in LBR 3015-1(q)(6) that would be entitled to some distribution, so there is a real question whether they still have a pecuniary interest in the estate. With Ms. Buchman's and Ms. Pearcy's motion for sanctions still outstanding and because of the overlap between that motion and this attorney fee application the Court believes they still have a pecuniary interest in the estate. Accordingly, Ms. Buchman and Ms. Pearcy have standing to object to Mr. Chekian's fee application.

The next argument advanced by Mr. Chekain is that the objection was not timely filed; thus, the Court should deem it as waived pursuant to LBR 9013-1(h). LBR 9013-1(h) provides:

> Except as set forth in LBR 7056-1(g) with regard to motions for summary judgment, if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be.

The language for waiver is clearly discretionary. There were many different motions pending and being discussed at the time this application was filed, and the objection o the fees was noted at one of the hearings. In the interest of justice and the parties involved the Court elects not to waive Ms. Buchman's and Ms. Pearcy's objection for not being timely filed.

Here Ms. Pearcy and Ms. Buchman argue that the fees being sought by Mr. Chekian are not necessary for the administration of the case and to the benefit of the estate because the Chapter 13 case was filed for an improper purpose – to thwart the dissolution case. Ms. Pearcy and Ms. Buchman argue that since the Debtor was over the Chapter 13 debt limit the services provided by Mr. Chekian would not be necessary and could not benefit the estate. The Court is unpersuaded by this argument.

It is not uncommon for a chapter 13 debtor to grapple with debt limit issues, but when it is clear a debtor is over the debt limits the Court will convert or dismiss the case. Here the Court allowed the case to progress until it became clear that the Debtor was over the debt limits and the Court dismissed the case. It appeared for a while that a global resolution might be possible with the assistance of the bankruptcy mediation program. While the Debtor should have been aware of the amount of his liabilities, as evidenced by statements made in 2018 in the dissolution case, its not clear as to what Mr. Chekian knew. Unlike Ms. Buchman, Mr. Chekian was not involved in the dissolution matter. The papers submitted to this Court suggest that there may have been some disconnect between the Debtor's bankruptcy case and the family law case. On top of this disconnect, this case is a bit more difficult than the typical chapter 13 case – there are multiple sources of revenue and serious liability issues, with lots of disputes over the nature and size of the liabilities. While it is certain that Mr. Chekian knew that the Debtor was over the debt limits at the tail end of the Debtor's bankruptcy case, it is not so clear that he was aware of the debt limit issue at the outset of this case even though it is clear the Debtor was aware of this issue. Outside of the debt limit issue, the Debtor was making thousands in plan payments and was working towards confirming a plan. The Court is not convinced there was a bad faith effort on the part of Mr. Chekian and that he was only trying to advocate on behalf of his client the best he could. He was able to at least initiate some settlement talks and attempted to obtain a global settlement of this matter that had raged on for years.

The next issue raised by Ms. Pearcy and Ms. Buchman is that Mr. Chekian should not be awarded any fees directly related to the filing of the motion to sell. The Court addressed this issue in its' tentative ruling for motion for sanctions. For the reasons stated in that tentative the Court will not award fees incurred in drafting that motion. It should have fronted the issue of the Superior Court order controlling the asset.

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CONT... Stephen E. Pearcy **Chapter 13**

Accordingly, the Court reduces Mr. Chekian's fees by $937.50.

The final issue raised by Ms. Pearcy and Ms. Buchman is that Mr. Chekian should not be awarded any fees relating to the mediation with Judge Jury because Ms. Pearcy and Ms. Buchman were not interested in mediating. Even though Ms. Pearcy and Ms. Buchman did not want to mediate because they viewed the mediation as being pointless, the Court does not fault Mr. Chekian for wanting to work out a settlement agreement but encourages parties to negotiate and see whether a deal is possible. The Court sees no basis for denying fees incurred relating to the mediation with Judge Jury. It would be against public policy to penalize an attorney for any settlement attempt that did not work out.

The only remaining concern the Court has is with regard to fees and costs incurred in defending his previous fee application. In Baker Botts L.L.O. v. ASARCO LLC, 576 U.S. 121 (2015), the Supreme Court held that Section 330(a)(1) does not allow professionals to be paid for fees incurred by defending their fee application. The Court went on to explain that when professionals defend their applications for compensation, they represent their own interests rather than the bankruptcy estate's interests. Accordingly, the Court reduces Mr. Chekian's fees and costs by $401.25. All other fees appear to be reasonable and necessary.

The Court will reduce the fees and costs awarded to Mr. Chekian by $1,338.75 and grants a total of $5,336.25 in fees and costs to Mr. Chekian.

Party Information

Debtor(s):

Stephen E. Pearcy	Represented By Michael F Chekian

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

1:00 PM
1:20-10069 Shawn Sharon Melamed **Chapter 7**
Adv#: 1:20-01046 Mazakoda, Inc. v. Melamed et al

#26.00 Motion for Judgment on the Pleadings under Rule 12(c)

fr. 10/14/20

Docket 15

Tentative Ruling:

In 2007, Shawn Sharon Melamed and Jenous Tootian ("Defendants") together with Edmond Melamed, Rozita Melamed, and J&J Oil, Inc., borrowed $500,000 from Mazakoda, Inc. ("Plaintiff"). This loan was secured by Edmond and Rozita's residential property. In May 2014, the Plaintiff sent the Defendants and their co-obligors a letter demanding repayment of the loan. After Debtors and their obligators failed to do so, the Plaintiff commenced a lawsuit in State Court (Mazakoda, Inc. v. J&J Oil, Inc. et al., Los Angeles Superior Court Case No. BC554926). On March 27, 2018, the state court entered judgment in favor of the Plaintiff, decreeing that it was entitled to repayment of the loan with interest, as well as attorneys' fees and costs, and that the Richland Property would be sold to satisfy the debt. A writ of sale issued upon the judgment and as a result of the issuance of the writ of sale Edmond and Rozita filed for a Chapter 11 petition (2:18-bk-22426-NB).

On January 10, 2020, the Defendants filed a Chapter 7 petition. On April 20, 2020, the Plaintiff initiated an adversary proceeding against the Defendants. The Complaint seeks to deny the Defendants a discharge pursuant to 11 U.S.C. § 727. Specifically, the Complaint alleges that the Defendants transferred, removed, or concealed property, that the defendants concealed, falsified, or failed to preserve records, the defendants fraudulently made states under oath, and the Defendants fail to explain any loss of assets to meet liabilities.

On September 10, 2020, the Defendants filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). The Plaintiff filed an opposition on October 16, 2020.

F.R.Civ.P.12(c):

Federal Rule of Civil Procedure 12(c) is made applicable in adversary proceedings through Federal Rule of Bankruptcy Procedure 7012. This rule provides that a party may move for judgment on the pleadings "[a]fter the pleadings are closed." Fed. R. Civ. P. 12(c). Typically, "the pleadings are closed for the purposes of Rule 12(c) once a complaint and answer have been filed." Doe v. United States, 419 F.3d 1058, 1061 (9th Cir. 2005). When a motion for judgment on the pleadings is filed before the filing of an answer, the motion is premature and should be denied. Id.

A Rule 12(c) motion is "'functionally identical'" to a Rule 12(b)(6) motion to dismiss for failure to state a claim, and therefore the same legal standard applies. Cafasso v. General Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 n.4 (9th Cir. 2011). That is, a court considers "whether the complaint's factual allegations, together with all reasonable inferences, state a plausible claim for relief." Id. at 1054; *see also* Johnson v. Rowley, 569 F.3d 40, 44 (2d Cir. 2009) (stating that, "[t]o survive a Rule 12(c) motion, the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face"). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)."A motion for judgment on the pleadings should be granted where it appears the moving party is entitled to judgment as a matter of law." Geraci v. Homestreet Bank, 347 F.3d 749, 751 (9th Cir. 2003).

"[T]he court must construe the complaint in the light most favorable to the plaintiff, taking all her allegations as true and drawing all reasonable inferences from the complaint in her favor." Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005). "When considering a motion for judgment on the pleadings, this court may consider facts that 'are contained in materials of which the court may take judicial notice.'" Heliotrope General, Inc. v. Ford Motor Co., 189 F.3d 971, 981, n. 18 (9th Cir. 1999). A motion for judgment on the pleadings may be granted if, after assessing the complaint and matters for which judicial notice is proper, it appears "beyond doubt that the [non-moving party] cannot prove any facts that would support his claim for relief." Morgan v. County of Yolo, 436 F.Supp.2d 1152, 1155 (E.D. Cal. 2006), *aff'd,*277 Fed.Appx. 734 (9th Cir. 2008).

Analysis:

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CONT... Shawn Sharon Melamed Chapter 7

Here the Plaintiff's complaint is brought pursuant to Section 727. To effectuate the fresh start policy, a claim for denial of a discharge under § 727 is construed liberally in favor of the discharge and strictly against a person objecting to the discharge. First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9th Cir. 1986). Under 11 U.S.C.S. § 727(a), a court shall enter a discharge in a Chapter 7 bankruptcy case unless one of twelve disqualifying conditions specified in § 727(a) applies. The Plaintiff brings four claims pursuant to subsections (a)(2),(a)(3),(a)(4)(A), and (a)(5). The Defendants believe that the Plaintiff's complaint is based solely on speculation and that the Plaintiff cannot support its' claims with evidence. The Court will analyze each claim in turn.

As to the first claim, a party seeking denial of discharge under § 727(a)(2) must prove two things: "(1) a disposition of property, such as transfer or concealment, and (2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor through the act [of] disposing of the property." *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997). Here the complaint alleges that the Defendants have been involved in a money shifting scheme in order to hinder or defraud creditors and have made it difficult to determine the true state of their finances. The complaint asserts that the Defendants and their family members purport to "pay" and "loan" one another money, but these transactions are not recorded, and they appear to be done in cash. There are numerous other allegations in the complaint such as the Defendants paid Edmond to work for his company and continued to pay him after his employment, the Defendants' income perfectly matches their expenses with no net profit or loss and the Defendants receive a loan each month from a brother-in-law but list the debt as disputed (suggesting this is a disbursement of family money for which the defendants have an interest in rather than a loan).

The Defendants shrug off these allegations and assert that this type of behavior is common and is merely family generosity; however, this falls short of the required showing that the Plaintiff cannot prove any facts that would support a claim for relief. The facts alleged in the complaint at least suggest that there may be some concealment of property and an attempt to hinder or delay creditors from disposing of the property. The Plaintiff will ultimately need to prove these allegations by preponderance of the evidence at trial. The discovery process will ultimately reveal whether there is sufficient evidence for the Plaintiff to prevail but at this stage the complaint sufficiently pleads facts that could be used to support relief claimed under Section 727(a)(2).

As to the second claim, in order to state a prima facie case under section 727(a)

(3) a creditor objecting to discharge must show (1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure makes it impossible to ascertain the debtor's financial condition and material business transactions." Lansdowne v. Cox (In re Cox), 410 F.3d 1294, 1296 (9th Cir. 1994) (quoting Meridian Bank v. Alten, 958 F.2d 968, 972 (3rd Cir. 1980). Again, the Plaintiff has set forth facts supporting a substantially plausible inference that the Defendants failed to keep records from which their financial condition may be ascertained. The Plaintiff alleges that the Defendants' financial condition includes the sharing of money between and among Defendants and their relatives, and that these transfers are made in cash and without proper documentation. The Plaintiff also alleges that the Defendants do not keep proper records of their consulting business or of their purported loan from the brother-in-law, which are their sole declared sources of income. These allegations are sufficient to create a plausible inference that Defendants have unjustifiably failed to keep or preserve records from which their financial condition may be ascertained.

As to the third claim, section 727(a)(4)(A) denies a discharge to a debtor who "knowingly and fraudulently" makes a false oath or account in the course of the bankruptcy case. § 727(a)(4)(A). A false statement or an omission in the debtor's bankruptcy schedules or statement of financial affairs can constitute a false oath. See Searles v. Riley (In re Searles), 317 B.R. 368, 377 (9th Cir. BAP 2004); Roberts v. Erhard (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005), aff'd, 241 Fed. Appx. 420, 2007 WL 2089041 (9th Cir.). "The fundamental purpose of §727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." Fogal Legware of Switz., Inc. v. Wills (In re Wills), 243 B.R. 58, 63 (9th Cir. BAP 1999) (citing Aubrey v. Thomas (In re Aubrey), 111 B.R. 268, 274 (9th Cir. BAP 1990)). That said, a false statement or omission that has no impact on a bankruptcy case is not material and does not provide grounds for denial of a discharge under § 727(a)(4)(A). Id.

The complaint alleges that Defendants knowingly and fraudulently made a false oath on several occasions. The Plaintiff asserts that the Defendants' misrepresent that they owe an $180,000 disputed debt to the brother-in-law, when in fact that money, if paid at all, was simply given to Defendants without any loan documentation, interest payments, or other hallmarks of a loan. Further, the brother-in-law's monthly payments to the Defendants are not a loan as represented but are distributions of family money. Additionally, the Plaintiff alleges that the Defendants failed to disclose in their schedules the true extent of their interest in money and property in the custody of brother-in-law, including, but not limited to, the source or sources of funds from which the brother-in-law makes the above payments to the Defendants. These allegations are more than sufficient to create a plausible inference that the Defendants made a false oath or account in their bankruptcy papers, subjecting them to denial of discharge under 11 U.S.C. § 727(a)(4)(A).

The final basis for denial of discharge alleged in the Fourth Claim for Relief is where the chapter 7 debtor fails "to explain satisfactorily, before determination of denial of discharge . . . any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. § 727(a)(5). To establish a prima facie case under § 727(a)(5), the objector to discharge must demonstrate that:

> (1) [the] debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets;
>
> (2) on the date the bankruptcy petition was filed or order of relief granted, the debtor no longer owned the assets; and
> (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

Retz v. Samson (In re Retz), 606 F.3d 1189, 1205 (9th Cir. 2010).

Here the Plaintiff has incorporated earlier paragraphs alleging that based on their receipt of purported loan proceeds and consulting fees from the brother-in-law and the apparent sharing of money through sham arrangements between the brother-in-law, the Defendants, and the Defendants' relatives Edmond and Rozita, all in cash and without proper documentation, Debtors may have substantial assets which they have not disclosed and which should be available to creditors. They then allege that "the relationship between Payam Toutian and Debtors appears to be of such a nature that would entitle Debtors to potentially receive more than $8,0000 a month from Payan Toutian, and thereby meet their liabilities, yet receive only the bare minimum needed to equal their disclosed monthly expenses, resulting in Debtors having an apparent net income of 37 cents per month."

Elements for a prima facia § 727(a)(5) claim must still be alleged. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 562 (2007) ("In practice, a complaint . . . must contain either direct or inferential allegations respecting **all the material** elements necessary to sustain recovery under some viable legal theory"). The last cause of action does not address at all the element that any property at one time was owned by the

Defendants that is then not explained. The allegations raised in the complaint deal with a money shifting scheme in which the parties make payments and loans to each other only in cash, but they do not address any accumulation of assets or a specific asset that should be explained. While ongoing cash flow, income and liabilities suffice for the other causes of action, more specificity is needed for this one.

The Court will DENY the Defendants' motion for judgment on the pleadings as to the first three causes of action. The motion is GRANTED as to the fourth cause of action. Leave to amend within 30 days is granted.

Party Information

Debtor(s):

Shawn Sharon Melamed	Represented By Giovanni Orantes

Defendant(s):

Shawn Sharon Melamed	Represented By Andrew Edward Smyth
Jenous Tootian	Represented By Andrew Edward Smyth

Joint Debtor(s):

Jenous Tootian	Represented By Giovanni Orantes

Plaintiff(s):

Mazakoda, Inc.	Represented By Scott E Gizer

Trustee(s):

Amy L Goldman (TR)	Represented By Scott E Gizer