

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

9:00 AM
2:00-000000

Chapter

- #1.00** Hearings in Judge Bason's courtroom (1545) are simultaneously:
- (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices),
 - (2) via ZoomGov video, and
 - (3) via ZoomGov telephone.

You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice. ZoomGov appearances are free.

ZoomGov Instructions for all matters on today's calendar:

Meeting ID: 160 689 0800

Password: 924275

Meeting URL: <https://cacb.zoomgov.com/j/1606890800>

Telephone: +1 669-254-5252 or +1 646-828-7666 or 833-568-8864 (Toll Free)

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Chapter 13: Persons needing to contact the Chapter 13 Trustee's attorney, either prior to the hearing or during a recess, can call Kaleen Murphy, Esq. at (213) 996-4433.

Members of the public, including the press, are always welcome in person (except in rare instances when the courtroom is sealed) and they may also listen via telephone to non-evidentiary hearings, but must not view any hearings via video (per mandate of the AO).

Any audio or video recording is strictly prohibited. Official recordings are available for a small fee through the Clerk's Office.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for

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Chapter

example, the judge can ask a question or anyone else can make an objection;
(d) if the judge does not see that you want to speak, or forgets to call on you,
please say so when other parties have finished speaking (do not send a "chat"
message, which the judge might not see); and (e) please let the judge know if he
mispronounces your name, uses the wrong pronoun, etc.

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:22-14879 Minnie Lee Young

Chapter 13

#1.00 Hrg re: Motion for relief from stay [RP]

NATIONSTAR MORTGAGE LLC
vs
DEBTOR

Docket 29

Tentative Ruling:

Grant as set forth below.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): N/A (no opposition on file as of the preparation of this tentative ruling)

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Deny the request to waive the 14-day stay provided by FRBP 4001(a)

**United States Bankruptcy Court
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CONT... **Minnie Lee Young**
(3) for lack of sufficient cause shown.

Chapter 13

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

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| Party Information |
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Debtor(s):

Minnie Lee Young

Represented By
Julie J Villalobos

Movant(s):

Nationstar Mortgage LLC

Represented By
Nichole Glowin

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:19-13395 Tausha Suzette Petrotta

Chapter 13

#2.00 Hrg re: Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
vs
DEBTOR

Docket 115

Tentative Ruling:

Grant as set forth below.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby adopting it as this Court's actual ruling.

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): N/A (no opposition on file as of the preparation of this tentative ruling)

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay. See 11 U.S.C. 349(b)(3) & 362(c).

In the alternative and in addition, the tentative ruling is to grant relief from the automatic stay as follows.

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CONT...

Tausha Suzette Petrotta

Chapter 13

Note regarding mootness: As provided in the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov), the tentative ruling is that a motion for relief from the automatic stay is not mooted even when the tentative ruling is that the stay no longer exists, for the following reasons:

a. Multiple, alternative grounds for relief should all be reached.

When a motion seeks the same relief on multiple alternative grounds, all of those grounds usually should be ruled on because a tentative or final ruling on any one ground might be reversed or altered later on. For example, movants often seek a ruling that the automatic stay does not prevent them from pursuing their remedies both (i) because the stay does not apply (e.g., after dismissal of the bankruptcy case, per 11 U.S.C. §§ 349(b)(3), 362(c)) and alternatively (ii) because relief from the stay is appropriate (under 11 U.S.C. § 362(d)). If the first ground later turns out to be reversed or altered (e.g., if a dismissal is vacated), the movant would be prejudiced if this Court had refused to reach the movant's alternative argument that the stay should be lifted. *See also, e.g., In re Krueger*, 88 B.R. 238, 241-42 (9th Cir. BAP 1988) (notwithstanding dismissal, stay held to continue due to lack of proper notice re dismissal).

b. Annulment, in rem relief, etc. Some matters always remain relevant, notwithstanding dismissal, closing of a case, or other grounds on which the stay might not currently exist. *See In re Aheong*, 276 B.R. 233 (9th Cir. BAP 2002).

For the foregoing reasons, the tentative ruling is that it is appropriate to address the following issues.

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. *See In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

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

CONT... **Tausha Suzette Petrotta**
(3).

Chapter 13

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

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| Party Information |
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Debtor(s):

Tausha Suzette Petrotta

Represented By
Donna R Dishbak

Movant(s):

The Bank of New York Mellon f/k/a

Represented By
Dane W Exnowski

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:23-17882 Najee Kristopher Thornton

Chapter 7

#3.00 Hrg re: Motion for relief from stay [RP]

LOANDEPOT.COM, LLC
vs
DEBTOR

Docket 12

Tentative Ruling:

Grant as set forth below.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby adopting it as this Court's actual ruling.

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): N/A (no opposition on file as of the preparation of this tentative ruling)

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay. See 11 U.S.C. 349(b)(3) & 362(c).

In the alternative and in addition, the tentative ruling is to grant relief from the automatic stay as follows.

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CONT...

Najee Kristopher Thornton

Chapter 7

Note regarding mootness: As provided in the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov), the tentative ruling is that a motion for relief from the automatic stay is not mooted even when the tentative ruling is that the stay no longer exists, for the following reasons:

a. Multiple, alternative grounds for relief should all be reached.

When a motion seeks the same relief on multiple alternative grounds, all of those grounds usually should be ruled on because a tentative or final ruling on any one ground might be reversed or altered later on. For example, movants often seek a ruling that the automatic stay does not prevent them from pursuing their remedies both (i) because the stay does not apply (e.g., after dismissal of the bankruptcy case, per 11 U.S.C. §§ 349(b)(3), 362(c)) and alternatively (ii) because relief from the stay is appropriate (under 11 U.S.C. § 362(d)). If the first ground later turns out to be reversed or altered (e.g., if a dismissal is vacated), the movant would be prejudiced if this Court had refused to reach the movant's alternative argument that the stay should be lifted. *See also, e.g., In re Krueger*, 88 B.R. 238, 241-42 (9th Cir. BAP 1988) (notwithstanding dismissal, stay held to continue due to lack of proper notice re dismissal).

b. Annulment, in rem relief, etc. Some matters always remain relevant, notwithstanding dismissal, closing of a case, or other grounds on which the stay might not currently exist. *See In re Aheong*, 276 B.R. 233 (9th Cir. BAP 2002).

For the foregoing reasons, the tentative ruling is that it is appropriate to address the following issues.

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. *See In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

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CONT... **Najee Kristopher Thornton**
(3).

Chapter 7

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

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| Party Information |
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Debtor(s):

Najee Kristopher Thornton

Pro Se

Movant(s):

loanDepot.com, LLC

Represented By
Jennifer C Wong

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:23-14272 Mark Andrew Verdugo

Chapter 13

#4.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 12/19/23

U.S. BANK TRUST NATIONAL ASSOC.
vs.
DEBTOR

Docket 31

***** VACATED *** REASON: APO**

Tentative Ruling:

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| Party Information |
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Debtor(s):

Mark Andrew Verdugo

Represented By
Joshua Sternberg

Movant(s):

U.S. Bank Trust National

Represented By
Theron S Covey
Fanny Zhang Wan

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:23-12627 Carlos Alonso Montero

Chapter 13

#5.00 Cont'd hrg re: Motion for relief from stay [PP]
fr. 12/19/23

TOYOTA MOTOR CREDIT CORP
VS
DEBTOR

Docket 29

***** VACATED *** REASON: APO**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Carlos Alonso Montero

Represented By
Jacqueline D Serrao

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:22-17109 Ryan Gregory Ortiz and Debra Diane Ortiz

Chapter 13

#6.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 12/5/23

NEWREZ LLC
vs
DEBTOR

Docket 46

***** VACATED *** REASON: APO**

Tentative Ruling:

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| Party Information |
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Debtor(s):

Ryan Gregory Ortiz

Represented By
Stephen L Burton

Joint Debtor(s):

Debra Diane Ortiz

Represented By
Stephen L Burton

Movant(s):

NewRez LLC D/B/A Shellpoint

Represented By
Dane W Exnowski
Kinnera Bhoopal

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:23-16208 Oweleo Lysette Titi

Chapter 13

#7.00 Cont'd hrg re: Motion for relief from stay [UD]
fr. 11/28/23

BLVD 6200 OWNER SOUTH, LLC
vs
DEBTOR

Docket 18

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

At the hearing on 11/28/23 this Court was persuaded to continue this matter to today. There is no tentative ruling but the parties should be prepared to address the current status of this matter, and whether this Court should set any briefing schedules, any hearings, or any other procedures.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 11/28/23:

Appearances required. There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see Debtor's response, dkt. 21).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

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10:00 AM

CONT... Oweleo Lysette Titi

Chapter 13

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| Party Information |
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Debtor(s):

Oweleo Lysette Titi

Represented By
Kahlil J McAlpin

Movant(s):

Blvd 6200 Owner South, LLC

Represented By
Richard Sontag

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:22-16428 Karen Deshawn Taylor

Chapter 13

#8.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 11/28/23

U.S. BANK, NATIONAL ASSOC
vs
DEBTOR

Docket 67

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

At the hearing on 11/28/23 this Court was persuaded to continue this matter to today. There is no tentative ruling but the parties should be prepared to address the current status of this matter, and whether this Court should set any briefing schedules, any hearings, or any other procedures.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 11/28/23:

Appearances required. There is no tentative ruling, but the parties should be prepared to address (a) whether the alleged arrears have been brought current and/or (b) whether they will agree to the terms of an adequate protection order (see Debtor's response, dkt. 70).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

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| Party Information |
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

CONT... Karen Deshawn Taylor

Chapter 13

Debtor(s):

Karen Deshawn Taylor

Represented By
Lionel E Giron

Movant(s):

U.S. Bank, National Association, as

Represented By
Theron S Covey
Dane W Exnowski
Fanny Zhang Wan

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

10:00 AM

2:21-16503 Daniel Christopher Bravo and Michele Marie Bravo

Chapter 13

#9.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 11/14/23, 1/09/24

ALLIED FIRST BANK, SB dba Servbank
vs
DEBTOR

Docket 62

***** VACATED *** REASON: Motion voluntarily dismissed (dkt. 71)**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Daniel Christopher Bravo

Represented By
Steven A Alpert

Joint Debtor(s):

Michele Marie Bravo

Represented By
Steven A Alpert

Movant(s):

Allied First Bank, SB dba Servbank

Represented By
Kirsten Martinez

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-15048 Jorge E. Padilla

Chapter 7

#1.00 Hrg re: Motion Objecting to Debtor's Homestead Exemption

Docket 41

Tentative Ruling:

Grant the Motion/Objection of the chapter 7 trustee ("Trustee") to Debtor's asserted homestead exemption because the record title to the purported homestead property indicates that Debtor has only a 1/3 interest as a joint tenant in such property and, because Debtor did not file an adversary proceeding to establish otherwise, he has no title to the remaining 2/3 interest and therefore cannot exempt that interest; or alternatively order mandatory mediation. Appearances required.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's actual ruling.

Key documents reviewed (in addition to motion papers): Opposition (dkt. 45); Reply (dkt. 47).

Analysis:

Debtor appears to be in a heartbreaking situation. He claims to be fully disabled, to have misunderstood the loan documents he was signing, and to have misunderstood what he needed to disclose to his attorneys and to the chapter 7 trustee ("Trustee") during his examination at the meeting of creditors under 11 U.S.C. 341(a). Debtor asserts that the grant deed transferring away 2/3 of the subject property actually only transferred bare legal title (to his sons, for purposes of obtaining a loan), not equitable title, and "[w]hen my legal counsel interviewed me, I reported that I was the sole owner of the property because that is what I believed." Debtor Decl. (dkt. 45, Ex. A) para. 6 (PDF p. 6:11-12) (emphasis added).

But that is only one version of the story. Debtor has not filed any adversary proceeding seeking declaratory relief that his version of events is accurate. See Rule 7001(2) & (9) (Fed. R. Bankr. P.). If Debtor had done so,

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CONT... Jorge E. Padilla

Chapter 7

he would have been subject to cross examination about issues such as (a) why he should not be held to the plain meaning of important legal documents when he allegedly knew that he was signing them without understanding them, (b) whether he cannot claim a 100% equitable interest in the subject property because to do so would be to commit a fraud on his mortgage lender (the lender apparently insisted on not just a guaranty by the sons but a transfer of a 2/3 interest to them, which makes sense because then the sons would have a far greater incentive to pay the mortgage and help their father avoid bankruptcy, with all of its potentially negative effects on timely payment of the mortgage debt), and (c) why he did not disclose the facts to his attorney or Trustee instead of silently relying on his "belie[f]" in the legal effect of documents he admits he did not understand.

In addition, there might be questions about whether Debtor's attorneys should have conducted a search of the real estate records (and whether that is standard practice, especially if there were any doubts about Debtor's ability to understand legal documents), and whether Debtor should be charged with the acts or omissions of his attorneys. This Court notes that Debtor has a duty to prepare schedules carefully, completely, and accurately, rather than placing the burden on Trustee and creditors to try to unearth the true facts. See *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001); *In re Mohring*, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992).

Of course, this Court recognizes that there might be grounds on which Debtor could excuse all of these things, and that this Court presumably has discretion to continue this objection and give Debtor time to amend his bankruptcy schedules, file an adversary proceeding, and do anything else he might need to do so as to assert those excuses. But this Court recognizes that Trustee would then have to incur the expense of responding to any such papers.

In addition, Debtor appears to go further and attempt to place the burden on Trustee not only to respond to any such belated acts by Debtor but also for Trustee to file his own adversary proceeding. Specifically, Debtor argues that it would be premature to apply the analysis under 11 U.S.C. 522(g) at this time because Trustee has yet to file an adversary proceeding and obtain a judgment regarding ownership of the subject property.

The tentative ruling is that Debtor is correct that section 522(g) does not actually apply, but also it would be inappropriate at this time to force Trustee to incur additional expenses - including responding to any amended

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CONT... Jorge E. Padilla

Chapter 7

bankruptcy schedules or other papers filed by Debtor, and forcing Trustee to file his own adversary proceeding - when, as set forth above, it is Debtor who (i) should have provided full disclosure in his bankruptcy schedules and (ii) should have filed an adversary proceeding or other appropriate papers to establish that his record ownership of 1/3 of the subject property should be treated as a 100% ownership instead. Nor is it clear that Debtor should be granted additional "bites at the apple" to correct these things, given (A) standard principles of judicial estoppel and (B) the Congressional policy embodied in section 522(g) of only granting relief as to involuntary transfers that were not concealed.

In other words, the tentative ruling is that, although Debtor is correct that section 522(g) is not yet applicable, nevertheless the Congressional policy reflected in section 522(g) suggests that this Court should be wary to granting Debtor additional opportunities, let alone shifting the expense to Trustee. Accordingly, this Court has doubts about granting Debtor an opportunity to file amended bankruptcy schedules or other papers before this Court rules on Trustee's motion/objection.

Notwithstanding all of the foregoing, the tentative ruling is to direct the parties to address why this Court should not order mandatory mediation. There are at least two reasons why mediation might be preferable to any ruling at this hearing and/or preferable to any ongoing litigation.

First, if this Court were to rule on the merits today, or even after extensive litigation, it probably lacks discretion to do anything other than "all or nothing," whereas in mediation the parties could agree to some sort of equitable compromise. Second, if this matter were fully litigated, either side could lose, and meanwhile, the parties' litigation expenses could consume much or all of any benefit that either side might hope to gain even if they prevail.

If this Court is persuaded to order mandatory mediation then the tentative ruling is to stay these proceedings and set a continued hearing for oral argument and any ruling on the pending motion/objection (if the matter has not settled). The tentative ruling, if this Court is persuaded to order mediation, is to set any such continued hearing on this motion/objection for 3/12/24 at 11:00 a.m., with a **deadline of 2/6/24** for the parties to lodge proposed order(s) assigning this matter to mediation.

If you are making an appearance, you may do so (1) in person in the

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CONT... Jorge E. Padilla

Chapter 7

courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Jorge E. Padilla

Represented By
Christopher J Lauria

Movant(s):

John P Pringle (TR)

Represented By
Michelle A Marchisotto

Trustee(s):

John P Pringle (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-12682 Stephen Perl

Chapter 7

Adv#: 2:23-01375 Cheung et al v. Perl

#2.00 Hrg re: Defendant's Motion for Order Dismissing the First Amended Complaint Objecting to Dischargeability of Debt for Failure to State a Cause of Action

Docket 13

Tentative Ruling:

Please see the tentative ruling for the status conference in this adversary proceeding (calendar no. 3, 1/23/24 at 11:00 a.m.).

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Stephen Perl

Represented By
David S Hagen

Defendant(s):

Stephen Perl

Represented By
David S Hagen

Movant(s):

Stephen Perl

Represented By
David S Hagen

Plaintiff(s):

Ka Cheung

Represented By
Joon M Khang

Ching Wong

Represented By
Joon M Khang

Martha Garibay

Represented By
Joon M Khang

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Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-12682 Stephen Perl

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Adv#: 2:23-01375 Cheung et al v. Perl

#3.00 Cont'd Status Conference re: Complaint to Determine
Nondischargeability of Debt Under 11 U.S.C. Section
523(a)(2) and (4)
fr. 10/17/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has reviewed the parties' joint status report (adv. dkt. 16) and the other filed documents and records in this adversary proceeding.

(a) Defendant/Debtor's motion to dismiss ("MTD," adv. dkt. 13) the first amended complaint ("FAC," adv. dkt. 12)

The tentative ruling is to grant the MTD for the reasons stated below.

Proposed order: Unless otherwise ordered, Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling (including for the hearing on 10/3/23, reproduced below), thereby incorporating it as this Court's actual ruling.

(i) Background

This Court previously granted a motion to dismiss the original complaint in this adversary proceeding. This Court's order (adv. dkt. 10) should have included a copy of this Court's adopted tentative ruling for 10/3/23. That tentative ruling is reproduced below, for completeness of the

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record as to this Court's reasoning in that earlier matter.

As for the present MTD, the tentative rulings are as follows. As before, the legal standards under Rules 8, 9(b), and 12(b)(6) (Fed. R. Civ. P.) are well known to the parties and the essential principles have been set forth in the parties' filed papers in this adversary proceeding, so this Court will not repeat them here.

(ii) Dismiss the FAC's first claim for relief

(A) Merits

The tentative ruling is to grant the MTD regarding the FAC's first claim, under 11 U.S.C. 523(a)(2)(A), for the reasons stated in the MTD and the Reply (adv. dkt. 17). In other words, the FAC lacks the required specificity: who exactly made the allegedly false representations, when, to whom, etc. See, e.g., *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged ... and [a] plaintiff must set forth what is false or misleading about a statement, and why it is false.") (citations omitted).

(B) Whether to grant leave to amend

At this hearing, counsel for Plaintiffs is directed to address whether the FAC can be further amended to cure the foregoing deficiency or if any statements about the financial condition of the relevant business(es) were made at times prior to when those businesses suffered their financial distress. In addition, this Court notes an issue that neither party has raised, but that this Court raises *sua sponte* in an effort to save all parties the time and expense of what might be pointless litigation. The FAC appears to rely on alleged statements about the financial condition of PIC, but such statements are only actionable they are in writing.

Specifically, sub-paragraph "(A)" of section 523(a)(2) makes certain false statements actionable "other than a statement respecting the debtor's or an insider's financial condition" (11 U.S.C. 523(a)(2)(A), emphasis added), and any statement about financial condition must be a "statement made in writing" in order to state any claim under subparagraph "(B)." See 11 U.S.C. 523(a)(2)(B). The FAC alleges (unspecified) "statements and representations made by Perl and his father about the soundness of PIC's finances in 2020 and 2021" FAC (adv. dkt. 12) p. 6:13-16 (emphasis added).

In sum, at this hearing counsel for Plaintiffs is directed to address

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whether the FAC can be amended to provide the missing specificity as to allegations of false statements, and also whether there is any "statement made in writing" within the meaning of subparagraph "(B)" of the statute. If so, the tentative ruling is to set a **deadline of 2/6/24** to file and serve a declaration that attaches plaintiffs' proposed Second Amended Complaint, and direct the parties not to file or serve any other papers but instead set a continued status conference as set forth below for this Court to rule on whether to authorize plaintiffs to file the proposed amended complaint.

If, on the other hand, the FAC cannot be amended to cure the foregoing defects, the tentative ruling is to grant the MTD as to the first claim for relief without leave to amend.

(iii) Dismiss the FAC's second claim for relief

(A) Fraud or defalcation

The tentative ruling is to grant the MTD as to the FAC's claims for "fraud or defalcation while acting in a fiduciary capacity" (11 U.S.C. 523(a)(4)) for the reasons stated in the MTD and the Reply. Specifically, in response to the MTD Plaintiffs have not established that the allegations in the FAC are sufficient to establish a fiduciary relationship between Plaintiffs and Defendant/Debtor.

(B) Embezzlement or larceny

Slightly different reasoning applies regarding embezzlement or larceny, because the statutory words "fiduciary capacity" (on which Defendant/Debtor focuses) do not modify the term "embezzlement." See *In re Peltier*, 643 B.R. 349, 359 (9th Cir. 2022) ("because 'while acting in a fiduciary capacity' does not modify 'embezzlement' or 'larceny,' and the statute is written in the disjunctive, a debt is nondischargeable if it was incurred due to (1) fraud or defalcation while acting in a fiduciary capacity, (2) embezzlement, or (3) larceny") (citations omitted).

The tentative ruling is to grant the MTD as to the alleged "embezzlement" under section 523(a)(4) because, as set forth regarding the "fraud" claims, the FAC lacks sufficient specificity. The elements of a claim for embezzlement, as set forth by the Court of Appeals for the Ninth Circuit, are as follows:

Under federal law, embezzlement in the context of nondischargeability has often been defined as the fraudulent appropriation of property by a person to whom such property has

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been entrusted or into whose hands it has lawfully come. Embezzlement, thus, requires three elements: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which it was entrusted; and (3) circumstances indicating fraud. [*In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991) (emphasis added, citations and quotation marks omitted).]

As set forth in connection with section 523(a)(2), the tentative ruling is that Defendant/Debtor has established the lack of sufficient specificity regarding any circumstances indicating "fraud." *But cf. Peltier*, 643 B.R. 349, 359-361 (describing how "circumstances indicating fraud" are somewhat different from fraud under section 523(a)(2); but not addressing the requirement for a complaint to be specific for any circumstances indicating fraud).

Therefore, the tentative ruling is that the FAC fails to allege sufficient "circumstances indicating fraud" for purposes of any claim for "embezzlement" under section 523(a)(4). (Plaintiffs have not pressed any claim for "larceny" in response to the MTD, so the tentative ruling to grant the MTD regarding larceny, to the extent, if any, that Plaintiffs claim under section 523(a)(4) might implicitly include a claim for larceny.)

(C) Whether to grant leave to amend

At this hearing, counsel for Plaintiffs is directed to address whether the FAC can be further amended, with respect to their claim for relief under section 523(a)(4), to plead the requisite fiduciary relationship as to "fraud or defalcation," and to plead "circumstances indicating fraud" with sufficient particularity for "embezzlement" (or "larceny," if Plaintiffs assert a claim for larceny). In addition, with respect to embezzlement, this Court again notes an issue that neither party has raised, but that this Court raises *sua sponte* in an effort to save all parties the time and expense of what might be pointless litigation.

This Court questions whether Plaintiffs have standing to assert that Defendant/Debtor embezzled from third parties, and the allegations in the FAC are vague about whether and precisely how Defendant/Debtor is alleged to have met the elements for embezzlement from Plaintiffs. In other words, even supposing for the sake of discussion that Defendant/Debtor embezzled funds from one business to pay his salary or other expenses of another business, how do Plaintiffs have standing to complain about the use of those

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funds, unless Plaintiffs can show that they have an actual property interest in those funds.

In sum, at this hearing counsel for Plaintiffs is directed to address whether and how the FAC can be amended to assert a fiduciary relationship as to "fraud or defalcation," to address the lack of specificity as to "circumstances indicating fraud," and to address whether and how Plaintiffs' property was "rightfully in the possession of" Defendant/Debtor and "appropriat[ed]" by him "to a use other than which it was entrusted" for purposes of "embezzlement" (*In re Littleton*, 942 F.2d 551, 555), as well as the elements of any claim for "larceny." See *Peltier*, 643 B.R. 349, 360 ("There is only one difference between embezzlement and larceny: for embezzlement, the perpetrator initially had the right to possess property and then stole it; while for larceny, the perpetrator stole property that the perpetrator never had a right to possess.") (citation omitted).

If Plaintiffs can explain how the FAC could be further amended to address the foregoing issues, the tentative ruling is to set the same deadline as set forth above for filing a declaration attaching a proposed Second Amended Complaint regarding the claim under section 523(a)(4) (while, again, directing the parties not to file any additional papers at this time, and instead setting a status conference to address the proposed Second Amended Complaint). If, on the other hand, Plaintiffs cannot explain how their FAC could be amended to meet the foregoing requirements, the tentative ruling is to grant the MTD as to the second claim for relief without leave to amend.

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. See generally *Stern v. Marshall*, 131 S.Ct. 2594, 2608 (2011) (if litigant

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"believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553 (9th Cir. 2012) (implied consent), *aff'd on other grounds*, 134 S. Ct. 2165 (2014); *In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); *In re Deitz*, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). *See generally In re AWTR Liquidation, Inc.*, 548 B.R. 300 (Bankr. C.D. Cal. 2016).

(b) Mediation [Intentionally omitted]

(c) Deadlines

This adversary proceeding has been pending since 8/7/23.

Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Joinder of parties/amendment of pleadings-deadline: TBD.

Discovery cutoff (for completion of discovery): TBD.

Expert(s) - deadline for reports: TBD.

Expert(s) - discovery cutoff (if different from above): TBD.

Dispositive motions to be heard no later than: TBD.

Joint Status Report: None required.

Continued status conference: 2/20/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD.

Pretrial conference: TBD.

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD.

Trial commencement: TBD.

Tentative Ruling for 10/3/23: [on motion to dismiss original complaint]
Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for

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public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has reviewed the filed documents and records in this adversary proceeding. For the reasons set forth below, the tentative ruling is to dismiss the Complaint and direct the parties to appear to address whether dismissal should be with leave to amend.

(a) Motion to dismiss (adv. dkt. 5, "MTD"), Opposition (adv. dkt. 7), Reply (adv. dkt. 8)

The legal standards under Rules 8 and 12(b)(6) (Fed. R. Civ. P.) are well known to the parties and set forth in detail in Defendant/Debtor's papers (see adv. dkt. 5), so this Court will not repeat them here.

(i) Plaintiffs' alleged failure to properly serve the Complaint appears to have been superseded by acceptance of service, with no harm to Defendant/Debtor

Defendant/Debtor argues that Plaintiffs failed to serve him with the summons and complaint in accordance with Rule 7004(e) (Fed. R. Bankr. P.) and argues that such failure establishes that Plaintiffs are not proceeding in good faith. MTD (adv. dkt. 5), pp. 9:18-10:2. Plaintiffs concede that they failed to timely serve those documents, but state that Debtor has since received and accepted service of the summons and complaint so there has been no actual harm or prejudice. Opposition (adv. dkt. 7), p. 3:18-23.

The tentative ruling is that in the absence of any prejudice to Defendant/Debtor, this Court will not take any action on this issue.

(ii) This Court is not considering the Promissory Demand Note attached to Plaintiffs' Opposition

The Complaint alleges that "[a]lthough Debtor has denied that he was an 'owner or officer' of [PMF Investment Corp], Debtor none-the-less signed [PMF Investment Corp.'s] Notes with Plaintiffs herein as 'President'" of that company. Adv. dkt. 1, p. 3:19-20. Defendant/Debtor attempts to dispute this allegation in the MTD (see, e.g., adv. dkt. 5, p. 4:1-4) and Plaintiffs responded by attaching a copy of a "Promissory Demand Note" to their Opposition papers to resolve that dispute (adv. dkt. 7, Ex. A, at PDF pp. 5-7).

The tentative ruling is that this Court will not consider the Promissory

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Demand Note in connection with this matter because this court must accept the allegations of the complaint as true, so any dispute regarding Defendant/Debtor's involvement with PMF Investment Corporation is not appropriately determined at this time. See, e.g., *Cholakyan v. Mercedes-Benz USA, LLC*, 796 F. Supp. 2d 1220, 1227 (C.D. Cal. 2011) (in ruling on a motion to dismiss "courts must accept the allegations of the complaint as true") (citation omitted).

(iii) 11 U.S.C. 523(a)(2)(A): false representation etc.

Section 523(a)(2)(A) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." To prevail on a claim under section 523(a)(2)(A) a creditor must prove that:

- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
 - (2) knowledge of the falsity or deceptiveness of his statement or conduct;
 - (3) an intent to deceive;
 - (4) justifiable reliance by the creditor on the debtor's statement or conduct; and
 - (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.
- [*In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000) (citations omitted)].

Defendant/Debtor seeks dismissal of the first claim for relief - which for the moment this Court presumes, for purposes of this part of the discussion, is brought under section 523(a)(2)(A) - on the grounds that plaintiffs (x) have not identified whether they seek relief under 523(a)(2)(A) or (a)(2)(B), and (y) have not alleged any specific representation(s) Defendant/Debtor allegedly made, how those representation(s) were false, or how Plaintiffs relied on those representation(s) to their detriment given that Plaintiffs' loans were made years before any alleged misrepresentation(s).

This Court agrees. The tentative ruling is that, in addition to the reasons stated in the MTD, Plaintiffs have not stated a viable claim for relief

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under section 523(a)(2)(A) because the Complaint does not allege that Defendant/Debtor, as distinguished from PMF Investment Corporation, obtained money, property, services, or credit from plaintiffs as a result of any false representation.

Additionally and alternatively, the Complaint vaguely asserts that "Debtor as president of [PMF Investment Corporation] along with his father, Peter Perl, sought to ease Plaintiffs' concerns and appease them by assuring them that [PMF Investment Corporation] was a strong company with sound finances" (adv. dkt. 1, p. 4:10-11) without setting forth the actual representations that Defendant/Debtor made. But, it appears that the alleged misrepresentations concerned PMF Investment Corporation's "financial condition" which does not support a claim for nondischargeability under the express language of section 523(a)(2)(A) (false statements "other than a statement respecting the debtor's or an insider's financial condition") (emphasis added).

For the reasons set forth above, the tentative ruling is to dismiss the first claim for relief under 11 U.S.C. 523(a)(2)(A).

(iv) 11 U.S.C. 523(a)(2)(B): false financial statement

Section 523(a)(2)(B) provides: "A discharge under section 727 ... of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by use of a statement in writing (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."

To the extent Plaintiffs seek relief under 11 U.S.C. 523(a)(2)(B), the tentative ruling is to dismiss the claim because it does not allege any facts to support a reasonable inference that Defendant/Debtor made material misstatements respecting PMF Investment Corporation's or his financial condition in writing.

The tentative ruling is to dismiss the first claim for relief under 11 U.S.C. 523(a)(2)(B).

(v) 11 U.S.C. 523(a)(4): fraud or defalcation while acting in a fiduciary capacity

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Section 523(a)(4) excepts from discharge "any debt for fraud or defalcation while acting in a fiduciary capacity." "To prevail under [section] 523(a)(4) the plaintiff must prove not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation." *In re Honkanen*, 446 B.R. 373, 378 (9th Cir. BAP 2011).

Federal bankruptcy law determines whether a fiduciary relationship exists within the meaning of section 523(a)(4). *In re Cantrell*, 329 F.3d 1119, 1125 (9th Cir. 2003). For purposes of section 523(a)(4), the fiduciary relationship "must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt." *In re Lewis*, 97 F.3d 1182, 1185 (9th Cir. 1996). State law determines whether the requisite trust relationship exists. *In re Mele*, 501 B.R. 357, 352 (9th Cir. BAP 2013).

Defendant/Debtor seeks dismissal of the second claim for relief on the grounds that the Complaint fails to allege the existence of a trust or fiduciary relationship, what actions constituted defalcation or embezzlement, or provide any specifics aside from a conclusory recitation of the text of the statute.

The tentative ruling is that Plaintiffs have not stated a viable for relief under 11 U.S.C. 523(a)(4) because Plaintiffs have not identified whether they seek a determination that Defendant/Debtor is liable for (x) "fraud ... while acting in a fiduciary capacity," or (y) "defalcation while acting in a fiduciary capacity." Those are two separate claims. Nor have Plaintiffs alleged sufficient facts to state a claim for relief under either claim. For example, the term "defalcation" requires a culpable state of mind involving knowledge of, or gross recklessness in respect to, the improper nature of the fiduciary behavior. *Bullock v. BankChampaign, N.A.*, 569 U.S. 267 (2013). Likewise, the term "fraud" has specific elements that have not been plead.

For the reasons set forth above, the tentative ruling is to dismiss the second claim for relief under 11 U.S.C. 523(a)(4).

(vi) Leave to amend the Complaint

The parties are directed to address at the hearing whether the Complaint can be amended to allege facts that would overcome the grounds for dismissal. See Rule 15(a)(2) (Fed. R. Civ. P.) ("The court should freely give leave [to amend] when justice so requires"); *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) ("Request for leave to amend

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should be granted with extreme liberality") (internal citations and quotation marks omitted); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 9th Cir. 1990) ("a [trial] court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegations of other facts"); *In re Tracht Gut, LLC*, 503 B.R. 804, 815 (9th Cir. BAP 2014), *aff'd*, 836 F.3d 1146 (9th Cir. 2016) (if bankruptcy court determines that amendment would be futile, it must dismiss the complaint with prejudice).

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

The parties are directed to address any outstanding matters of (a) venue, (b) jurisdiction, (c) this Bankruptcy Court's authority to enter final orders or judgment(s) in this proceeding and, if consent is required, whether the parties do consent, or have already expressly or impliedly consented. *See generally Stern v. Marshall*, 131 S.Ct. 2594, 2608 (2011) (if litigant "believed that the Bankruptcy Court lacked the authority to decide his claim...then he should have said so – and said so promptly."); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015) (consent must be knowing and voluntary but need not be express); *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553 (9th Cir. 2012) (implied consent), *aff'd on other grounds*, 134 S. Ct. 2165 (2014); *In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013) (rebuttable presumption that failure to challenge authority to issue final order is intentional and indicates consent); *In re Deitz*, 760 F.3d 1028 (9th Cir. 2014) (authority to adjudicate nondischargeability encompasses authority to liquidate debt and enter final judgment). *See generally In re AWTR Liquidation, Inc.*, 548 B.R. 300 (Bankr. C.D. Cal. 2016).

(b) Mediation

Is there is any reason why this Court should not order the parties to mediation before one of the volunteer mediators (*not* a Bankruptcy Judge), and meanwhile set the deadlines set forth below? The tentative ruling is to

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set a **deadline of 10/17/23** for the parties to lodge a proposed mediation order (the parties are directed to use the time between now and that deadline to find a mutually agreeable mediator whose schedule can accommodate the needs of this matter; and if the parties cannot even agree on a mediator they may lodge separate orders and Judge Bason will choose among them, or issue his own order).

(c) Deadlines

This adversary proceeding has been pending since 8/7/23.

Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a copy of this tentative ruling or otherwise memorializing the following.

Joinder of parties/amendment of pleadings-deadline: TBD.

Discovery cutoff (for completion of discovery): TBD.

Expert(s) - deadline for reports: TBD.

Expert(s) - discovery cutoff (if different from above): TBD.

Dispositive motions to be heard no later than: TBD.

Joint Status Report: 1/16/23

Continued status conference: 1/23/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD.

Pretrial conference: TBD.

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD.

Trial commencement: TBD.

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| Party Information |
|--------------------------|

Debtor(s):

Stephen Perl

Represented By
David S Hagen

Defendant(s):

Stephen Perl

Represented By
David S Hagen

Plaintiff(s):

Ka Cheung

Represented By

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Central District of California
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Tuesday, January 23, 2024

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11:00 AM

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Chapter 7

Joon M Khang

Ching Wong

Represented By
Joon M Khang

Martha Garibay

Represented By
Joon M Khang

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:21-19480 Howard Chorng Jeng Wu

Chapter 7

Adv#: 2:22-01061 Christensen et al v. Wu

#4.00 Status conference

Docket 1

Tentative Ruling:

Continue to 5/21/24 at 11:00 a.m. based on this Court's review of the latest Status Report (adv. dkt. 87) and the other filed papers in this case.

Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Plaintiff(s):

Ronald A Christensen

Represented By
Norma V. Garcia

Clifford Rosen

Represented By
Norma V. Garcia

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Howard Chorng Jeng Wu

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:21-19480 Howard Chorng Jeng Wu

Chapter 7

Adv#: 2:22-01074 Mirae Asset Securities & Investments (USA), LLC v. Wu

#5.00 Status conference

Docket 1

Tentative Ruling:

Continue to 3/12/24 at 11:00 a.m. for conclusion of the mediation that has just recently been ordered (dkt. 113) and/or for addressing the recently-filed withdrawal motion of Defendant/Debtor's counsel (adv. dkt.. 116) and for time to deal with the consequences of granting or denying that motion (e.g., time to retain new counsel). Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Plaintiff(s):

Mirae Asset Securities &

Represented By
Michael Garfinkel
Eric D Goldberg
James P Muenker

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Howard Chorng Jeng Wu

Rachel Ehrlich Albanese

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:21-19480 Howard Chorng Jeng Wu

Chapter 7

Adv#: 2:22-01076 Highgate Hotels, L.P. v. Wu

#6.00 Status conference

Docket 1

Tentative Ruling:

Continue to 3/12/24 at 11:00 a.m., for the parties to document their apparent settlement in principle, based on this Court's review of the latest Status Report (adv. dkt. 78) and the other filed papers in this case.

Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Plaintiff(s):

Highgate Hotels, L.P.

Represented By
Michael Niborski
Todd Evan Soloway
Bryan Thomas Mohler

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Howard Chorng Jeng Wu

Itai Yehuda Raz

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:21-19480 Howard Chornng Jeng Wu

Chapter 7

Adv#: 2:22-01071 Chiang et al v. Wu

#7.00 Status conference

Docket 1

Tentative Ruling:

Continue to 3/12/24 at 11:00 a.m., with a **deadline of 2/6/24** for the parties to lodge proposed order(s) assigning this matter to mediation, based on this Court's review of the latest Status Report (adv. dkt. 71) and the other filed papers in this case.

Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Howard Chornng Jeng Wu

Represented By
Eric Bensamochan

Defendant(s):

Howard Chornng Jeng Wu

Represented By
Eric Bensamochan

Plaintiff(s):

Michael Chung-Hou Chiang

Represented By
Norma V. Garcia

Agnes Shene Hwa Chin

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Howard Chorng Jeng Wu

Norma V. Garcia

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:20-10046 Samini Cohen Spanos LLP

Chapter 7

Adv#: 2:21-01259 Ehrenberg (TR) v. Samini Scheinberg, APC, a California corporation

#8.00 Cont'd Status Conference re: Complaint for (1) Avoidance and Recovery of Fraudulent Transfers, (2) Preservation of Fraudulent Transfers, and (3) Disallowance of Claims
fr. 3/15/22, 5/31/22, 8/2/22, 11/15/22, 2/21/23, 5/2/23, 8/8/23,
11/14/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue to 4/30/24 at 11:00 a.m., as a holding date, to be taken off calendar if this matter is dismissed pursuant to the parties' approved settlement agreement. See case in chief, dkt. 130 & 133. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

[PRIOR TENTATIVE RULINGS OMITTED]

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| Party Information |
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Debtor(s):

Samini Cohen Spanos LLP

Represented By
Robert P Goe

Defendant(s):

Samini Scheinberg, APC, a

Represented By
James D. Hornbuckle

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Samini Cohen Spanos LLP

Chapter 7

Plaintiff(s):

Howard M Ehrenberg (TR)

Represented By
Steve Burnell
Daniel A Lev

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steve Burnell

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:20-10484 The New School of Cooking, Inc.

Chapter 7

Adv#: 2:22-01067 Avery v. Becker

#9.00 Cont'd Status Conference re: Complaint for: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Voidable and/or Fraudulent Transfers; (3) Objection to Claim; (4) Breach of Fiduciary Duty; (5) Conversion (6) Unjust Enrichment
fr. 5/31/22, 9/6/22, 12/6/22, 1/24/23, 4/18/23, 4/25/23, 06/27/23, 9/5/23, 10/17/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue this status conference to 4/30/24 at 11:00 a.m. as a holding date, to be taken off calendar if this matter is dismissed pursuant to the parties' approved settlement agreement. See case in chief, dkt. 246 and 247.
Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Selth

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... The New School of Cooking, Inc.

Chapter 7

Defendant(s):

Christopher Becker

Represented By
Shirlee L Bliss

Plaintiff(s):

Wesley H. Avery

Represented By
Matthew A Lesnick
Lauren N Gans
Lisa Patel

Trustee(s):

Wesley H Avery (TR)

Represented By
Lesnick Prince & Pappas, LLP
Jeffrey L Sumpter
Debra E Cardarelli
Matthew A Lesnick
Lauren N Gans
Lisa Patel

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:20-10484 The New School of Cooking, Inc.

Chapter 7

Adv#: 2:22-01016 Avery v. Allen J. & Barbara C. Manzano Intervivos Trust

#10.00 Cont'd Status Conference re: Complaint for Avoidance and Recovery of Voidable and/or Fraudulent Transfers; and Objection to Claim fr. 3/29/22, 5/10/22, 5/31/22, 9/6/22, 12/6/22, 1/24/23, 4/18/23, 4/25/23, 06/27/23, 9/5/23, 10/17/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue this status conference to 4/30/24 at 11:00 a.m. as a holding date, to be taken off calendar if this matter is dismissed pursuant to the parties' approved settlement agreement. See case in chief, dkt. 246 and 247.

Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Selth

Defendant(s):

Allen J. & Barbara C. Manzano

Represented By
Shirlee L Bliss

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... The New School of Cooking, Inc.

Chapter 7

Plaintiff(s):

Wesley H. Avery

Represented By
Matthew A Lesnick
Lauren N Gans
Lisa Patel

Trustee(s):

Wesley H Avery (TR)

Represented By
Lesnick Prince & Pappas, LLP
Jeffrey L Sumpter
Debra E Cardarelli
Matthew A Lesnick
Lauren N Gans
Lisa Patel

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-12401 Annie Elizabeth Sanchez

Chapter 13

Adv#: 2:23-01436 Seeley v. Sanchez et al

#11.00 Cont'd status conference re: Complaint to determine
debt to be nondischargeable under section 523
(a)(2)(A) and 523(a)(4)
fr. 12/5/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has reviewed the parties' joint status report (adv. dkt. 10) and the other filed documents and records in this adversary proceeding and has no issues to raise *sua sponte* at this time.

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (dkt. 4 & 5).

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Annie Elizabeth Sanchez

Chapter 13

(b) Mediation

[Intentionally omitted]

(c) Deadlines

This adversary proceeding has been pending since 10/2/23.

The scheduled deadlines and/or hearing/trial date(s) have been memorialized in this Court's written order (adv. dkt. 8) except as modified/supplemented below.

Joinder of parties/amendment of pleadings-deadline: 2/15/24

Discovery cutoff (for completion of discovery): 2/29/24

Expert(s) - deadline for reports: 3/14/24 if any expert testimony will be presented.

Expert(s) - discovery cutoff (if different from above): 3/28/24 if any expert testimony will be presented.

Dispositive motions to be heard no later than: 5/7/24

Joint Status Report: 2/27/24

Continued status conference: 3/5/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD

Pretrial conference: TBD

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD

Trial commencement: TBD

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Annie Elizabeth Sanchez

Represented By

Misty A Perry Isaacson

Defendant(s):

Annie Elizabeth Sanchez

Represented By

Misty A Perry Isaacson

James Anthony Sanchez

Represented By

Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Annie Elizabeth Sanchez

Chapter 13

Joint Debtor(s):

James Anthony Sanchez

Represented By
Misty A Perry Isaacson

Plaintiff(s):

Brett Seeley

Represented By
Matthew A Lesnick
Lisa Patel

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-12389 Luis Ruiz Ramirez

Chapter 7

Adv#: 2:23-01363 The Golden 1 Credit Union, a California corporatio v. Ramirez

#12.00 Cont'd status conference re: Complaint to determine
dischargeability of debt [11 U.S.C. Section 523]
fr. 10/3/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required. The docket does not reflect any activity since the prior status conference, other than Plaintiff's substitution of counsel (adv. dkt. 9). New counsel should be prepared to address whether Plaintiff intends to continue prosecuting this adversary proceeding.

If so, the tentative ruling is to set a continued status conference on 3/12/24 at 11:00 a.m. If not, the tentative ruling is to dismiss the complaint without prejudice.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 11/28/23:

Continue this status conference to 1/23/24 at 11:00 a.m. per Plaintiff's Unilateral Status Report (adv. dkt. 8) (in anticipation of a Motion for Default Judgment). Appearances are not required on 11/28/23. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Luis Ruiz Ramirez

Chapter 7

Tentative Ruling for 10/3/23:

Continue this status conference to 11/28/23 at 11:00 a.m. and set a **deadline of 11/4/23** for Plaintiff to (x) obtain a Clerk's entry of default, and (y) file and serve a motion for entry of default Judgment with a hearing concurrent with the continued status conference. Appearances are not required on 10/3/23. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Note: The purported fraud appears to be that, because Debtor allegedly entered into the loan contract for the benefit of an (unnamed) third party and never made any payments, Plaintiff deduces that he never intended to make any payments, and Plaintiff relied on unspecified contrary false statements in the loan application. See *Complaint* (adv. dkt. 1) para. 5, 10, 12, 19, 34. Even if there is no opposition to the anticipated motion for a default judgment, this Court anticipates addressing whether this fraud is alleged with sufficient particularity, whether any supplemental evidence should be required, and whether relief is sought under 11 U.S.C. 523(a)(2)(A) or (B). See Rules 9(b) & 55(b)(2) (Fed. R. Civ. P., incorporated by Rules 7009 & 7055, Fed. R. Bankr. P.).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

Luis Ruiz Ramirez

Represented By
Jaime A Cuevas Jr.

Defendant(s):

Luis Ruiz Ramirez

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT... Luis Ruiz Ramirez

Chapter 7

Plaintiff(s):

The Golden 1 Credit Union, a

Represented By
Jamie P Dreher

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:23-12239 Marvin Giovanni Alvarado

Chapter 7

Adv#: 2:23-01356 Alvarado v. United States Department Of Education et al

#13.00 Cont'd Status Conference re: Complaint for Determination
that Student Loan Debt is Dischargeable
fr. 9/5/23, 10/17/23

Docket 1

***** VACATED *** REASON: Scheduling order approved on 1/19/24.
Continued to 5/21/ 2024 at 11:00 a.m.**

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue, and adopt new deadlines/dates (as stipulated by the parties, with one exception), all as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court's scheduling order (adv. dkt. 15) directed the parties to file a joint status report no later than 1/9/24 (*id.* p. 2:17) and lodge a proposed mediation order no later than 1/12/24 (*id.* p. 2:7). Those things did not occur.

Of course, disregarding court-ordered deadlines is not advisable. But the parties have filed (after those deadlines) a stipulation (adv. dkt. 18) to extend or moot these and other deadlines.

On the one hand, this Court commends the parties for their attempts to work consensually on various aspects of this matter, and their stipulation very appropriately suggests new deadlines/dates. On the other hand, the parties are encouraged, in any similar circumstances in future, to attempt to apprise this Court of the situation before whatever deadlines apply.

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT...

Marvin Giovanni Alvarado

Chapter 7

For example, either or both of the parties could have filed a very brief status report or other notice informing this Court that the parties were working on a stipulation to extend deadlines, or they could have telephoned chambers to convey that information. Those things would have saved this Court's staff from additional work that was likely to be (and in fact turned out to be) mooted.

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

[Previously addressed. See, e.g., adv. dkt. 11, p. 4]

(b) Mediation

[See above.]

(c) Deadlines

This adversary proceeding has been pending since 7/6/23. The current deadlines are set forth in this Court's scheduling order (adv. dkt. 15). The tentative ruling is to adopt the new deadlines/dates set forth in the parties' stipulation (adv. dkt. 18) - with one exception noted below - and to direct Plaintiff to lodge, within seven days, a proposed order memorializing those new deadlines/dates, either by attaching a copy of this tentative ruling or by otherwise listing those new deadlines/dates, as follows:

Joinder of parties/amendment of pleadings-deadline: 11/17/23

Lodge proposed mediation order: 5/11/24

Discovery cutoff (for *completion* of discovery): 6/30/24

Expert(s) - deadline for reports: 7/13/24 (if any expert testimony will be presented).

Expert(s) - discovery cutoff (if different from above): 7/27/24 (if any expert testimony will be presented).

Dispositive motions to be heard no later than: 8/6/24 [**NOTE**: this deadline is before the 8/8/24 deadline stipulated by the parties, because 8/8/24 is not a regular hearing date for these types of motions]

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

CONT...

Marvin Giovanni Alvarado

Chapter 7

Joint Status Report: 5/7/24

Continued status conference: 5/21/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD

Pretrial conference: TBD

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD

Trial commencement: TBD

Party Information

Debtor(s):

Marvin Giovanni Alvarado

Represented By
Lauren M Foley

Defendant(s):

United States Department Of

Represented By
Elan S Levey

Nelnet Academic Services, LLC

Pro Se

Joint Debtor(s):

Reina Marie Alvarado

Represented By
Lauren M Foley

Plaintiff(s):

Reina Marie Alvarado

Represented By
Lauren M Foley

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

11:00 AM

2:22-13500 Moussa Moradieh Kashani

Chapter 7

Adv#: 2:23-01425 Armon Funding, LLC et al v. Kashani

#14.00 Cont'd status conference re: Complaint to
determine dischargeability of debt
fr. 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue to 3/5/24 at 11:00 a.m. with a **deadline of 2/6/24** for service as set forth below. Appearances required by counsel for Plaintiffs.

At the hearing on 11/28/23 this Court was persuaded to continue this matter to this date to allow time for Plaintiffs to properly serve Defendant/Debtor with the summons and complaint. On 11/28/23 Plaintiffs filed a proof of service. Adv. dkt. 4. But the tentative ruling is that Plaintiffs' service is defective, because it appears that Plaintiffs served a stale summons. See Rule 7004(e) (Fed. R. Bankr. P.) (requiring service of a summons and complaint "within 7 days after the summons is issued").

The tentative ruling is that, in general, counsel's mistake and/or oversight in failing to timely effectuate service does not constitute "good cause" warranting an extension of time under Rule (4)(m) (Fed. R. Civ. P.), made applicable to this proceeding pursuant to Rule 7004(a)(1) (Fed. R. Bankr. P.). See, e.g., *Caldera-Bredeson v. U.S. Postal Serv.*, 2023 U.S. Dist. LEXIS 42469, at *5-6 (D. Nev. Mar. 13, 2023).

Nevertheless, this Court has discretion to provide an extension of time (see *id.* and 10 *Collier on Bankruptcy* para. 7004.02), and the tentative ruling is that in the circumstances of this matter it is appropriate to do so for the following reasons. First, the deadline to file a nondischargeability action was 9/18/23 (the same day the complaint was filed) so if this Court were to dismiss the complaint, even without prejudice, the claims will be time-barred. Second, Plaintiffs' proof of service of the stale summons and complaint (adv. dkt. 4) reflects service on Defendant/Debtor on 11/28/23, to the address listed in his chapter 7 case and on his chapter 7 bankruptcy counsel, both via

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CONT... Moussa Moradieh Kashani

Chapter 7

regular U.S. mail, so Defendant/Debtor has already received notice of this proceeding. Third, Defendant/Debtor has not filed his own motion raising this issue or asserting any prejudice. Fourth, "decisions on the merits are favored over dispositions based on procedural grounds." *In re Watt*, 2019 Bankr. LEXIS 3426, at *8 (Bankr. D. Nev. Oct. 10, 2019) (citations omitted). Fifth and finally, although Plaintiffs' 126-day-delay is not insignificant, the "Ninth Circuit has affirmed district courts when granting extensions for service months after the initial deadline." *Caledera-Bredeson*, 2023 U.S. Dist. LEXIS 42469, at *10 (citations omitted). For all of the foregoing reasons, the tentative ruling is to (x) continue this proceeding to the time and date stated at the start of this tentative ruling and (y) set a **deadline of 2/6/24** for Plaintiffs to (i) obtain a new summons, and (ii) file a proof of service establishing proper service of the complaint and new summons on Defendant/Debtor.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 11/28/23:

Appearances required by counsel for Plaintiffs.

This adversary proceeding was filed on 9/18/23 and the Clerk's Office issued a summons (adv. dkt. 2) the following day but, as of the preparation of this tentative ruling, there is no proof of service of the summons or complaint on file and Plaintiffs do not appear to be prosecuting this action. In addition, Plaintiffs have not filed a unilateral status report as required by LBR 7016-1(a) (3).

Plaintiffs are directed to appear to address why this proceeding should not be dismissed for failure to prosecute and/or deemed an abandonment of the claim asserted in the complaint. See LBR 7016-(f) & (g).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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Party Information

Debtor(s):

Moussa Moradieh Kashani

Represented By
Sandford L. Frey
Robyn B Sokol

Defendant(s):

Moussa Moradieh Kashani

Pro Se

Plaintiff(s):

Armon Funding, LLC

Represented By
Andrew Mase
Matthew H. Aguirre

The Ryzman Family Partnership

Represented By
Andrew Mase
Matthew H. Aguirre

Benson Capital Partners, LLC

Represented By
Andrew Mase
Matthew H. Aguirre

RNGF Investments #1, LLC

Represented By
Andrew Mase
Matthew H. Aguirre

The Ryzman Foundation, Inc.

Represented By
Andrew Mase
Matthew H. Aguirre

Rafael Ryzman

Represented By
Andrew Mase
Matthew H. Aguirre

Elimor Goldwicht

Represented By
Andrew Mase
Matthew H. Aguirre

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CONT... Moussa Moradieh Kashani

Chapter 7

Philana Chen

Represented By
Andrew Mase
Matthew H. Aguirre

Michael Fenig

Represented By
Andrew Mase
Matthew H. Aguirre

Elie Ryzman

Represented By
Andrew Mase
Matthew H. Aguirre

Trustee(s):

John P Pringle (TR)

Represented By
Toan B Chung

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11:00 AM

2:23-12556 Richard B Scott

Chapter 7

Adv#: 2:23-01370 JRM Construction West LLC v. Scott

#15.00 Cont'd status conference re: Complaint for denial
of discharge pursuant to 11 U.S.C. section
727(a)(4)(A)
fr. 10/17/23

Docket 1

***** VACATED *** REASON: Continued to 4/2/24 at 11:00 a.m. per
stipulation (adv. dkt. 11) and order thereon.**

Tentative Ruling:

| |
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| Party Information |
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Debtor(s):

Richard B Scott

Represented By
Stephen R Wade

Defendant(s):

Richard B Scott

Represented By
Stephen R Wade

Plaintiff(s):

JRM Construction West LLC

Represented By
Robert P Goe
Charity J Manee

Trustee(s):

Jason M Rund (TR)

Pro Se

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11:00 AM

2:23-12556 Richard B Scott

Chapter 7

Adv#: 2:23-01373 Board of Trustees of the Southern Nevada and Calif v. Scott

#16.00 Cont'd status conference re: Complaint to Determine
the dischargeability of certain debt
fr. 10/17/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has reviewed the parties' joint status report (adv. dkt. 4) and the other filed documents and records in this adversary proceeding.

(a) Plaintiff's motion for exemption from mediation requirement (adv. dkt. 10), no opposition on file

This matter is not on calendar for today because Plaintiff has not lodged a proposed order or taken any other action to prosecute the motion. But, in view of the parties' representation that they are engaging in informal settlement discussions (adv. dkt. 11, p. 3), the tentative ruling is to excuse Plaintiff's lack of prosecution and excuse the requirement to attend mandatory mediation, subject to this Court potentially deciding in future to order mandatory mediation.

In future Plaintiff's counsel is encouraged to take appropriate steps to follow up when seeking relief from this Court by way of a motion (such as lodging a proposed order). Alternatively, and often more efficiently, at any status conference Plaintiff can orally raise requests to deviate from previously set deadlines, dates, or procedures set by this Court.

Proposed order(s): Unless otherwise ordered, Plaintiff is directed to

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Richard B Scott

Chapter 7

lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

Matters of venue, jurisdiction, and authority have been determined and/or waived or forfeited (see adv. dkt. 4).

(b) Mediation [Intentionally omitted]

(c) Deadlines

This adversary proceeding has been pending since 8/4/23. The scheduled deadlines and/or hearing/trial date(s) have been memorialized in this Court's written order (adv. dkt. 7) except as modified/supplemented below.

Joint Status Report: n/a

Continued status conference: 4/9/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD

Pretrial conference: TBD

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD

Trial commencement: TBD

[PRIOR TENTATIVE RULING(S) OMITTED]

| |
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| Party Information |
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Debtor(s):

Richard B Scott

Represented By
Stephen R Wade

Defendant(s):

Richard B Scott

Represented By

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Stephen R Wade

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Plaintiff(s):

n/a n/a Board of Trustees of the

Represented By
Michael R Odoca
Dylan J. Lawter

Trustee(s):

Jason M Rund (TR)

Pro Se

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Hearing Room 1545

11:00 AM

2:23-14528 Brian D Witzer

Chapter 7

Adv#: 2:23-01447 HOWARD v. WITZER

#17.00 Cont'd Status Conference re: Complaint to Determine Non-Dischargeability
fr. 1/2/24

Docket 1

Tentative Ruling:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has reviewed the parties' joint status report (adv. dkt. 14) and the other filed documents and records in this adversary proceeding and has no issues to raise *sua sponte* at this time, except as set forth in Section (2)(a) of this tentative ruling.

(2) Standard requirements

The following are Judge Bason's standard requirements for status conferences. (To the extent that the parties have already addressed these issues in their status report, they need not repeat their positions at the status conference.)

(a) Venue/jurisdiction/authority

Plaintiff checked the box in the local form status report (adv. dkt. 14, p. 4, para. F) stating that he does not consent to this Court's entry of a final judgment and/or order in this adversary proceeding. The tentative ruling, however, is that this Court has both the jurisdiction and authority to enter a final judgment and/or order.

First, the First Amended Complaint ("FAC") (adv. dkt. 4) only asserts legal claims that are "core proceedings arising under title 11" within the

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meaning of 28 U.S.C. 157(b)(1). Those claims are within the non-exclusive statutory list of "core" proceedings under 28 U.S.C. 157(b)(2)(I) (determinations as to the dischargeability of particular debts) & (J) (objections to discharge as a whole). See *also* District Court General Order 13-05 (filed 7/1/13) (referral of bankruptcy matters to this Bankruptcy Court).

Therefore, this Bankruptcy Court does in fact have the jurisdiction and authority to issue "final" (*i.e.*, appealable) judgments and orders within the meaning of 28 U.S.C. 157(b) & 158(a)(1) and (d)(1), as distinguished from having to "submit proposed findings of fact and conclusions of law to the district court" under 28 U.S.C. 157(c)(1) (emphasis added). The latter procedure is only required for non-core matters. See *also* Rule 9001(7) (Fed. R. Bankr. P.) ("judgment" defined to include any appealable order).

Second, the tentative ruling is that Plaintiff has waived or forfeited any contrary argument, because he has chosen this forum in which to file his complaint and FAC, and he has acknowledged that this is a "core" proceeding in his FAC. See FAC (adv. dkt. 4) p. 2:7-8. See *generally In re AWTR Liquidation Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (discussing Supreme Court and lower court interpretation of Constitution and statutes, including waiver issues).

In addition, the tentative ruling is that venue is proper under 28 U.S.C. 1409(a).

This Bankruptcy Court does not expect that the parties will view any of the foregoing as surprising or controversial, and this Court expects that an inadvertent typographical error explains the checked box on the status report (adv. dkt. 14, p. 4, para. F). Nevertheless, in an abundance of caution, the parties are directed to address at the hearing whether they wish to contest these tentative rulings and brief these issues.

(b) Mediation

The tentative ruling is not to order the parties to mandatory mediation at this time. This Court anticipates, however, that it might do so after discovery, or at least initial discovery, has been completed.

(c) Deadlines

This adversary proceeding has been pending since 10/23/23.

Pursuant to LBR 9021-1(b)(1)(B), plaintiff is directed to lodge a proposed order via LOU within 7 days after the status conference, attaching a

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copy of this tentative ruling or otherwise memorializing the following.

Joinder of parties/amendment of pleadings-deadline: 7/2/24

Discovery cutoff (for completion of discovery): 7/16/24

Expert(s) - deadline for reports: 7/23/24 if any expert testimony will be presented.

Expert(s) - discovery cutoff (if different from above): 7/30/24 if any expert testimony will be presented.

Dispositive motions to be heard no later than: 9/10/24

Joint Status Report: 4/16/24.

Continued status conference: 4/30/24 at 11:00 a.m.

Lodge Joint Proposed Pretrial Order: TBD

Pretrial conference: TBD

Deliver trial exhibits to other parties and chambers, including direct testimony by declaration unless excused: TBD

Trial commencement: TBD

| |
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| Party Information |
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Debtor(s):

Brian D Witzer

Represented By
David S Hagen
Michael S Kogan

Defendant(s):

BRIAN D. WITZER

Represented By
Michael S Kogan

Plaintiff(s):

NATHANIEL HOWARD

Represented By
Timothy Lee

Trustee(s):

Sam S Leslie (TR)

Represented By
Jeremy Faith

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2:19-18316 Ashley Susan Aarons

Chapter 7

#18.00 Cont'd hrg re: Chapter 7 Trustee's Motion for Order Authorizing
Abandonment of Property of the Estate Pursuant to 11 U.S.C. §554(a)
fr. 10/17/23, 11/28/23

Docket 643

Tentative Ruling:

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| Party Information |
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Debtor(s):

Ashley Susan Aarons

Represented By

Shulman Bastian Friedman & Bui LLP

Richard L Antognini

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Movant(s):

David M Goodrich (TR)

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:19-18316 Ashley Susan Aarons

Chapter 7

#19.00 Cont'd hrg re: Motion by Asset Recovery Association, Inc. D.B.A. ClaimsXP order (1) Amending the ClaimsXP employment order; (2) Amending the Furtado Employment order; & (3) Disgorging fees already paid to Furtado fr. 11/28/23

Docket 649

Tentative Ruling:

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|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Ashley Susan Aarons

Represented By

Shulman Bastian Friedman & Bui LLP
Richard L Antognini
David R Haberbusch
Vanessa M Haberbusch
Lane K Bogard

Movant(s):

Asset Recovery Association

Represented By

Selena Rojhani

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:19-18316 Ashley Susan Aarons

Chapter 7

#20.00 Cont'd hrg re: Motion to Partially Strike Omnibus Reply
by ClaimsXP and Strike Declaration of Debtor Ashley Aarons
fr. 11/28/23

Docket 662

Tentative Ruling:

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| Party Information |
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Debtor(s):

Ashley Susan Aarons

Represented By

Shulman Bastian Friedman & Bui LLP

Richard L Antognini

David R Haberbush

Vanessa M Haberbush

Lane K Bogard

Movant(s):

Furtado Law PC

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:19-18316 Ashley Susan Aarons

Chapter 7

#21.00 Cont'd Preliminary hrg re: Notice of compensation report
& compensation report by Asset Recovery Assoc.
Inc. D.B.A.Claim SXP
fr. 6/27/23, 8/15/23, 9/19/23, 10/17/23, 11/28/23

Docket 612

Tentative Ruling:

Tentative Ruling for 1/23/24:
Appearances required.

(1) Current issues

(a) The parties

For purposes of the matters on today's calendar, this Court will refer to the parties as follows.

(i) Trustee. David M. Goodrich, Esq.

(ii) Debtor. Ashley Susan Aarons.

(iii) Verus. Secured creditor(s) Patch of Land Lending, LLC, a Delaware limited liability company; FCI Lender Services, Inc., a California corporation; California TD Specialists; Verus Residential Loanco, LLC, a Delaware limited liability company; Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as owner for Verus Securitization Trust 2020-NPL 1; VST 2020-NPL1 REO, LLC. All of the foregoing are referred to, collectively or individually as the context may suggest, as "Verus."

(iv) ClaimsXP & Counsel. Claims adjuster Asset Recovery Association, Inc., d.b.a. will be referred to as "ClaimsXP." ClaimsXP is represented by Selena Rojhani, Esq. ("Ms. Rojhani").

(v) Furtado. Special litigation counsel, Furtado Law PC, and its principal, David J. Furtado, Esq. will be referred to collectively or individually, as the context may suggest, as "Furtado."

(vi) Other administrative claimants: (A) Shulman, Bastian, Friedman & Bui, LLP ("Bastian Firm"); and (B) The Law Offices of Totaro & Shanahan ("Totaro Firm").

(b) Notice/application for compensation of ClaimsXP (dkt. 612); Order

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setting initial hearing and permitting only limited additional papers (dkt. 618); Notice of hearing (dkt. 622); Oppositions of Verus (dkt. 613), Totaro Firm (dkt. 614, 615), Bastian Firm (dkt. 617), and Trustee (dkt. 626); ClaimsXP's reply (dkt. 627)

(i) Background

At the hearing on 11/28/23 this Court made various oral tentative rulings and continued this hearing to today. Among other things, this Court made a tentative finding of fact - or a mixed finding of fact and conclusion of law - that neither ClaimsXP nor Furtado had made adequate disclosures, at the time when they were seeking to be employed. This Court never would have approved their employment if they had disclosed that they might be working on at least some of the same matters, and each would independently seek compensation - at least partially double-billing the estate.

To illustrate, if their fees were allowed in full, with ClaimsXP seeking a 30% fee and Furtado 40% on the same matters. Verus and/or the estate would be billed an enormous **70% contingency fee**, plus expenses, plus claims for attorney fees. In other words, if all requested fees and other charges were allowed, Verus and the estate easily could receive paltry net insurance proceeds, or even suffer a net loss.

Each one of ClaimsXP and Furtado alleges that, when Debtor was applying to employ them and thereafter when they were doing their work, they were ignorant of the actual facts regarding the other one's compensation. This Court assumes for the sake of discussion that this is so (although, as this Court partially reviewed at the hearing on 11/28/23, there are reasons to doubt this). In any event, based on the record presently before this Court, their alleged ignorance of the actual facts does not matter.

Each of them admitted that they had worked together on multiple occasions in the past, and such collaboration between claims adjusters and insurance attorneys apparently is not uncommon (although it was unknown to this Court). So each of them knew (and this Bankruptcy Court did not know) that Verus and/or the bankruptcy estate *very well might* be charged a material additional amount on top of their own fee.

It is irrelevant for these purposes whether they assumed that such additional dollar amount might "only" be 10% or so on top of their own fees (as Furtado has alleged), or some other percentage or dollar amount. Regardless of the specific dollar amount, the tentative ruling is that they knew that, before Verus and/or the bankruptcy estate received a penny of

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insurance proceeds, those proceeds would be reduced by substantially more than their own contingency fee. But they did not disclose that fact.

Nothing in the record presently before this Court appears to excuse ClaimsXP and Furtado from their duties of disclosure. *See generally* Rule 2014 (Fed. R. Bankr. P.) (employment application must be accompanied by a "verified statement of the person to be employed," and must state "necessity for the [proposed] employment," reasons for selection of proposed professional, services to be rendered, proposed "arrangement for compensation," and "all connections" with "the debtor, creditors, an other party in interest [which, in this case, included disclosure of all connections between ClaimsXP and Furtado], their respective attorneys and accountants," etc.) (emphasis added); *and see also* 11 U.S.C. 101(14) (definition of "disinterested person"), 327 (authorization for debtor in possession, acting as trustee for benefit of creditors, to hire professionals who are disinterested persons and do not hold or represent interests adverse to estate), 328 (authorization for retention on "any reasonable terms and conditions," but only if adequately disclosed, and also subject to different compensation if such terms and conditions "prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions"), and 330 (compensation must be "reasonable" and for "actual, necessary services," etc.) (emphasis added).

Moreover, in addition to the matters addressed at the hearing on 11/28/23, the tentative ruling is that, even if full and appropriate disclosure had been made (which it was not), this Court did not understand and could not have reasonably anticipated the double-billing problem described above. In other words, even supposing for the sake of discussion that ClaimsXP and Furtado fully complied with their disclosure requirements (which is contrary to this Court's present understanding), the tentative ruling is that the terms of employment can and should be revisited under section 328.

At the hearing on 11/28/23, this Court's oral tentative ruling was that normally a lack of full disclosure results in a **denial of all fees**. But this Court tentatively ruled that as a matter of law it has discretion to award *some* fees despite a lack of full disclosure, in appropriate circumstances. This Court presumed (without deciding) that it *might* be appropriate to award some fees, on the assumption that (A) both ClaimsXP and Furtado added value by maximizing the insurance proceeds that were paid to the bankruptcy estate and (B) by analogy to a real estate broker, if they facilitated the recovery of

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Chapter 7

insurance proceeds, denial of all fees to ClaimsXP and Furtado probably would result in an excessive windfall to Verus and/or the bankruptcy estate.

This Court left open the question whether any such compensation should be based on some sort of contingency fee, an hourly rate, or some other measure. This Court made no final rulings, and the rights of all parties in interest have been preserved while this matter has been continued to today. This Court also directed ClaimsXP and Furtado to meet and confer, at Trustee's law offices, to attempt to reach a consensual resolution between themselves and, to the extent necessary, with Verus, Trustee, and others, regarding what compensation they should receive.

(ii) Current issues

ClaimsXP and Furtado should be prepared to address whether they - and any other parties in interest - have reached a proposed resolution on how to split the \$100,000.00 in compensation previously paid to Furtado. If not, the tentative ruling is to set an evidentiary hearing (*i.e.*, what would be called a "trial" if this matter were being litigated in an "adversary proceeding" instead of in a "contested matter"). The tentative ruling is that the *maximum* combined compensation will be \$100,000.00 and, based on the lack of full disclosure from both parties, the total compensation for both professionals might be reduced significantly or entirely disallowed and/or disgorged. *See In re Park-Helena Corp.*, 63 F.3d 877 (9th Cir. 1995) (failure to disclose relevant information may result in a denial of all requested fees, even if the failure to disclose was negligent or inadvertent); *see also In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorneys' fees") (citations omitted).

If this Court is persuaded to set an evidentiary hearing, the tentative ruling is that, in order to keep expenses down and because the parties have already had an opportunity to brief the issues, this Court will set a half-day evidentiary hearing with no further briefing permitted (except to the limited extent described below), with direct testimony consisting of the declarations that have already been filed in this contested matter. Parties would be permitted to conduct live cross-examination at the evidentiary hearing, limited to the scope of the previously-filed declarations (again, except as described below). At the conclusion of the evidentiary hearing this Court contemplates

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assessing whether any post-trial briefing is necessary or appropriate, or if instead it is appropriate to issue an oral ruling.

The tentative ruling is also to set a **deadline of 2/6/24** for the parties to file declarations attaching time records for fees, and details of expenses incurred, in connection with recovering the insurance proceeds. If one or both of the parties believe they have already filed whatever records they are able to provide, they should file a declaration indicating the applicable docket and page numbers for this Court to review. Note, however, usually any time records in bankruptcy cases are very detailed (*e.g.*, they are usually in 10ths of an hour), and although this Court does not expect professionals who were retained on a contingency basis to have kept equally detailed contemporaneous daily time records, the more detail the better in terms of this Court's ability to evaluate the relative values of both parties' services. In other words, ClaimsXP and Furtado are encouraged to provide as much details as possible.

The tentative ruling is to set the evidentiary hearing (if one is required) for 3/6/24 from 9:00 a.m. to noon. The parties are directed to address any additional procedural issues, such as whether they will be requesting that they or any witnesses be permitted to appear remotely via video. See Rule 43(a) (Fed. R. Civ. P., incorporated by Rule 9017, Fed. R. Bankr. P.) (video testimony only for "good cause in compelling circumstances and with appropriate safeguards").

At this 1/23/24 hearing, all parties in interest are directed to address whether they will participate in the evidentiary hearing, and whether they have objections to the foregoing tentative ruling regarding the procedures for such a hearing. The parties in interest known to this Court include ClaimsXP, Furtado, Trustee, Verus, the Totaro Firm, and the Bastian Firm.

(c) Disgorgement motion of ClaimsXP (dkt. 651), Furtado Firm's evidentiary objections (dkt. 654-656) & opposition (dkt. 657), ClaimsXP's reply (dkt. 658 & 660), Debtor Decl. (dkt. 659), Furtado Decl. (dkt. 661)

Same as above, except that all rights are reserved to reiterate the evidentiary objections at the half-day evidentiary hearing (if one is held), and for the party seeking to introduce the evidence to provide supplemental testimony, **by the above-stated deadline** for time records, to attempt to overcome such objections (subject to live cross-examination at the evidentiary hearing).

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CONT... Ashley Susan Aarons

Chapter 7

(d) Furtado Firm's motion to strike (dkt. 662)
Same as above.

(e) Trustee's motion to abandon (dkt. 643 & 644), Oppositions of Verus (dkt. 646), ClaimsXP (dkt. 647), and Debtor (dkt. 652, untimely filed), Trustee's reply (dkt. 648), Stipulation/order continuing hearing (dkt. 664 & 666)

There is no tentative ruling. The Trustee is directed to provide an update on the status of this motion, to the extent possible in view of the outstanding issues involving ClaimsXP and Furtado.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 11/28/23:
Appearances required.

This Court anticipates hearing oral argument on the matters on today's calendar and making oral tentative rulings.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 10/17/23:
Appearances required.

There is no tentative ruling but the parties are directed to address (i) the status of this motion, and (ii) whether this Court should set deadlines for any additional briefing and/or a date for an evidentiary hearing.

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If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

[INTERIM TENTATIVE RULINGS OMITTED]

**Tentative Ruling for 6/28/23:
Appearances required.**

There is no tentative ruling but the parties are directed to address (i) the issues raised in the opposition and reply papers that have been filed to date, (ii) whether this Court should order the parties to mandatory mediation at this time, and/or (iii) whether this Court should set deadlines for any additional briefing and/or a date for an evidentiary hearing.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed: Notice/application for compensation (dkt. 612); Order setting initial hearing and permitting only limited additional papers (dkt. 618); Notice of hearing (dkt. 622); Oppositions of Verus (dkt. 613), Law Offices of Totaro & SHanahan (dkt. 614, 615), Shulman Bastian Friedman & Bui LLP (dkt. 617), and Chapter 7 Trustee (dkt. 626); Applicant's reply (dkt. 627).

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Ashley Susan Aarons

Represented By

Shulman Bastian Friedman & Bui LLP

Richard L Antognini

David R Haberbush

Vanessa M Haberbush

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Lane K Bogard

Chapter 7

Movant(s):

Asset Recovery Association

Represented By
Selena Rojhani

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:23-14459 Online Edugo, Inc.

Chapter 11

#1.00 Hrg re: Motion for relief from stay [RP]

OPEN BANK
vs
DEBTOR

Docket 79

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 2, 1/23/24 at 1:00 p.m.).

| |
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| Party Information |
|--------------------------|

Debtor(s):

Online Edugo, Inc.

Represented By
Kevin Tang

Movant(s):

Open Bank

Represented By
Christopher Crowell

Trustee(s):

Susan K Seflin (TR)

Pro Se

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#2.00 Cont'd Status Conference re: Chapter 11 Case
fr. 8/15/23, 9/12/23, 10/17/23, 12/19/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Motion for relief from the automatic stay filed by Open Bank (dkt. 79), no opposition on file

This Court has ordered Debtor to make monthly adequate protection payments of \$9,816.83 to Open Bank, with payments coming due "**on or before the 17th of each month**," dkt. 74 at ¶ 2 (emphasis in original); see also dkt. 39, 50, & 68 (prior interim cash collateral orders). Open Bank alleges that Debtor has consistently failed to timely make its adequate protection payments and seeks relief from the automatic stay on that basis.

The tentative ruling is to direct Debtor to address at the hearing whether, realistically, it will be able immediately to cure the postpetition arrears and the other grounds on which Open Bank seeks relief from the automatic stay. If not, the tentative ruling is to terminate the automatic stay immediately, and direct Open Bank to lodge a proposed order (on the appropriate local form).

If Debtor represents that it can immediately cure the postpetition defaults, the tentative ruling is to enter an adequate protection order ("APO") containing the following provisions:

- 1) The automatic stay remains in effect subject to the following terms and conditions.

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- 2) Debtor must become current on all previously-ordered adequate protection payments no later than **1/26/24**. See dkt. 74 at ¶ 2, and dkt. 39, 50, & 68.
- 3) Thereafter, Debtor must make regular monthly adequate protection payments in the amount of \$9,816.83 commencing on or before **2/17/24**.
- 4) Debtor must become current on the Property taxes which became delinquent after December 11, 2023 (consisting of a first installment in the amount of \$8,970.51, a penalty of \$897.05, and any related charges such as any interest) no later than **1/26/24**.
- 5) Debtor must provide evidence, no later than **1/26/24**, of insurance coverage on the Property, which names Open Bank as an additional insured (if that is required by the loan documents), and must remain current on all taxes that become due postpetition with regard to the Property.
- 6) Upon any default in the terms and conditions set forth in paragraphs 2–5, Open Bank must serve written notice of default to Debtor and Debtor's attorney. If Debtor fails to cure the default within 14 days after service of such written notice, Open Bank may file and serve a declaration under penalty of perjury specifying the default, together with a proposed order terminating the stay, which this Court may grant without further notice or hearing.
- 7) Notwithstanding anything contained in this Adequate Protection Order to the contrary, Debtor is entitled to a maximum number of **two (2)** notices of default and opportunities to cure pursuant to the preceding paragraph. Once Debtor has defaulted this number of times on the obligations imposed by this Adequate Protection Order and has been served with this number of notices of default, Open Bank is relieved of any obligation to serve additional notices of default and provide additional opportunities to cure. If an event of default occurs thereafter, Open Bank shall be entitled, without first serving a notice of default and providing Debtor with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail Debtor's failures to perform under this Adequate Protection Order, together with a proposed order terminating the stay, which this Court may enter without further notice or hearing.

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- 8) This Adequate Protection Order is binding only during the pendency of this bankruptcy case. If, at any time, the stay is terminated with respect to the Property by court order or by operation of law, this Adequate Protection Order ceases to be binding as against Open Bank and it may proceed to enforce its remedies under applicable nonbankruptcy law against the Property and/or against Debtor.
- 9) If Open Bank obtains relief from stay based on Debtor's defaults under this Adequate Protection Order, the order granting that relief will contain a waiver of the 14-day stay as provided in Rule 4001(a) (3) (Fed. R. Bankr. P.).
- 10) Open Bank may accept any and all payments made pursuant to this Adequate Protection Order without prejudice to or waiver of any rights or remedies to which it would otherwise have been entitled under applicable nonbankruptcy law.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

(b) Status of the sale of the Property

At the prior Status Conference, Debtor represented that plan negotiations with creditors had broken down, that Debtor intended to file a motion to sell the Property within two weeks (a "Sale Motion") in lieu of filing a Plan, and that Debtor hoped to file the Sale Motion within two weeks. As of the preparation of this tentative ruling, no Sale Motion is on file. Why not?

The tentative ruling is to set the deadline specified in Section "(2)(c)" of this tentative ruling, below, for Debtor to file a Sale Motion, and to vacate the previously-ordered 1/16/24 deadline for Debtor to file an amended Plan and Disclosure Statement.

(2) Dates/procedures. This case was filed on 7/17/23.

- (a) Bar date: 9/25/23 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 10).
- (b) Procedures Order: dkt. 6 (served 11 days late, see dkt. 19)
- (c) Plan (dkt. 63)/Disclosure Statement (dkt. 64)/Sale Motion: Sale

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Motion due by 2/2/24. Previously-ordered 1/16/24 deadline to file amended plan and disclosure statement VACATED; deadline to be reset if necessary.

(d) Continued status conference: 2/6/24 at 1:00 p.m. No written status report required.

Tentative Ruling for 12/19/23:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Cash collateral motion (dkt. 15), Opposition of Open Bank (dkt. 21), Interim Order (dkt. 36, 39), Opposition of Velocity Commercial Capital, LLC (dkt. 43, 44), Interim Orders (dkt. 50, 68)

The tentative ruling is to grant the motion on a further interim basis on the same terms as the prior interim orders, through the conclusion of a continued hearing contemporaneous with the continued status conference (see part "(2)(d)" of this tentative ruling, below).

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

(b) Application to employ Tang & Associates as general bankruptcy counsel (the "Employment Application," dkt. 27), supplemental declarations of Kevin Tang and Connie King (dkt. 46), Order setting hearing (dkt. 53), supplemental declarations of Kevin Tang, Meeyoung Jeffrey, Joseph Seo, and Connie Kim (dkt. 57, 58, 71)

Debtor's proposed counsel is directed to print out a copy of this Court's 9/21/23 order (dkt. 53), this Court's tentative ruling for 10/17/23, and the latest supplemental declarations (dkt. 71), and be prepared to address the issues therein.

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(c) Plan (dkt. 63) and Disclosure Statement (dkt. 64)

The tentative ruling is to set the deadline specified in Section "(2)(d)" of this tentative ruling, below, for Debtor to file amended plan documents. Debtor's counsel is reminded (i) not to use out of date forms (see the Tentative Ruling for 10/17/23, reproduced below) and (ii) to abide by this Court's admonition: DO NOT SERVE any draft Plan, except on the U.S. Trustee, until this Court issues an order authorizing service (although drafts usually can and should be shared with major creditors as part of negotiations).

(d) Missing status report

The adopted ruling for 10/17/23 directed Debtor to file a status report by 12/5/23 but no report has been filed. Why not? What is the status of Debtor's attempts to reorganize its finances and/or its business?

(2) Dates/procedures. This case was filed on 7/17/23.

(a) Bar date: 9/25/23 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 10).

(b) Procedures Order: dkt. 6 (served 11 days late, see dkt. 19)

(c) Plan (dkt. 63)/Disclosure Statement (dkt. 64): Amended plan and disclosure statement due by 1/16/24.

(d) Continued status conference: 2/6/24 at 1:00 p.m. No written status report required.

Tentative Ruling for 10/17/23:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Cash collateral motion (dkt. 15), Order shortening time (dkt. 16, the "OST"), Proof of service (dkt. 18), Opposition of Open Bank (dkt. 21), Notice

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of continued hearing (dkt. 32, amended by dkt. 35), First Interim Cash Collateral Order (dkt. 36, amended by dkt. 39), Opposition of Velocity Commercial Capital, LLC (dkt. 43), Request for judicial notice (dkt. 44), Notice of continued cash collateral hearing (dkt. 49), Second Interim Cash Collateral Order (dkt. 50), Monthly Operating Report for September 2023 (dkt. 60)

The initial hearing on Debtor's request for authorization to use cash collateral was conducted on 8/15/23, after which this Court entered its first interim order authorizing the use of cash collateral, see dkt. 36 & 39 (the "First Interim Cash Collateral Order"). This Court entered a Second Interim Cash Collateral Order (dkt. 50) on 9/14/23.

According to the Monthly Operating Report for September 2023 (dkt. 60), Debtor made adequate protection payments during that month to (a) the Small Business Administration (\$398.00), (b) Open Bank (\$9,816.83), and (c) Velocity Commercial Capital, LLC ("Velocity") (\$1,350.00). At the 9/12/23 hearing, Velocity reported that negotiations with Debtor regarding the sufficiency of adequate protection payments were ongoing.

There is no tentative ruling, but the parties should be prepared to address whether negotiations regarding adequate protection payments have been productive.

(b) Application to employ Tang & Associates as general bankruptcy counsel (dkt. 27, the "Employment Application"), Supplemental declarations of Kevin Tang and Connie King (dkt. 46), Order setting hearing on Employment Application (dkt. 53), Supplemental declarations of Meeyoung Jeffrey, Joseph Seo, and Kevin Tang (dkt. 57 & 58)

First, although Debtor's proposed counsel was ordered to file supplemental declarations by no later than 10/3/23 addressing this Court's concerns regarding the funding of proposed counsel's retainer by third parties (each a "Funder"), see dkt. 53, the supplemental declarations were not filed until 10/12/23 and 10/13/23—nine and ten days late. If this Court approves the Employment Application, in future proposed counsel must meet this Court's deadlines.

Second, the declarations still do not address the issues that this Court directed Debtor to address. The adopted tentative ruling for 9/12/23 (reproduced in full below) states in part:

As stated in the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov), "Declarations and/or briefs" generally are

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required to address the ethical concerns involved whenever a retainer is paid by a third party. **See Cal. Rule of Prof'l Conduct 1.8.6; *In re Beverly Crest, LLC* (Case No. 2:19-bk-20000-NB, **dk. 44**).**" Based on this Court's review of the application and supplemental declarations, the Funders and proposed counsel have not addressed all of the issues that this Court typically requires prior to approving proposed employment. [Tentative Ruling for 9/12/23, part (1)(c), emphasis added.]

The above-referenced California Rule of Professional Conduct 1.8.6 is entitled "Compensation from One Other than Client" and it provides, in full:

A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless:

(a) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship;
(b) information is protected as required by Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6; and
(c) the lawyer obtains the client's **informed written** consent [see below] at or before the time the lawyer has entered into the agreement for, charged, or accepted the compensation, or as soon thereafter as reasonably practicable, provided that no disclosure or consent is required if:

(1) nondisclosure or the compensation is otherwise authorized by law or a court order; or

(2) the lawyer is rendering legal services on behalf of any public agency or nonprofit organization that provides legal services to other public agencies or the public. [Rule 1.8.6 (Approved by the Cal. Supreme Court, Effective November 1, 2018) (emphasis added) (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.8.6-Exec_Summary-Redline.pdf) (last checked 10/16/23).]

Ms. Connie Kim is Debtor's principal, and initially she filed a declaration that said nothing at all about any potential conflict of interest between Debtor and Debtor's Funders, let alone Debtor's **informed** consent to employment of counsel notwithstanding such potential conflicts. See Kim Decl. (dk. 46, p. 3). The supplemental declarations provided by Debtor do not include any declaration of Ms. Kim; rather, Mr. Tang (whose firm is proposed counsel to Debtor) declares that Ms. Kim "gave her **informed [sic]**

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consent through a **phone call** with her on July 14, 2023." See Tang Decl. (dkt. 58), p. 4:8-10 (emphasis added). There is no information about what disclosures Mr. Tang provided to "inform[]" Ms. Kim, and her (hearsay) oral confirmation is not "written" consent as required by the rule.

More extensively, the above-referenced *Beverly Crest* order directed the debtor therein to address the following issues, which Debtor in this case is also required to address:

(a) Connections. What are **all** of the connections [see below regarding Mr. Seo's partial disclosure of one connection] between the Funder, on the one hand, and Debtor, Debtor's proposed counsel, **and any of the other types of persons listed in FRBP 2014** [see below regarding the failure of both Mr. Seo and Ms. Jeffrey to address any connections other than with Debtor, Mr. Tang, and his firm] on the other hand -- *e.g.*, have there been any economic or business or personal connections between the Funder and Debtor *beyond* the fact of being direct or indirect equity owners, or between the Funder and proposed counsel, or any creditor or other party in interest, or their respective attorneys or accountants? These questions may be answered, if appropriate, by referring to *specific* disclosures already on file, *e.g.*, in the bankruptcy schedules.

(b) Terms. Debtor asserts that it was not the intention of the Funders that the funds be treated as loans or give rise to prepetition claims, and that instead the funds were intended as equity contributions, but there is no *evidence* to support that assertion (*e.g.*, declarations from each Funder).

(c) Informed consent of Funders. Has each Funder been advised regarding actual and potential conflicts of interest, and that the sole attorney-client relationship and duty of loyalty is with Debtor, not the Funder? Who provided such advice: independent counsel, or Debtor's proposed counsel (and, if the latter, was each Funder given the opportunity to obtain independent counsel)? Has each Funder given informed consent? Are those things in writing?

(d) Informed consent of debtor. Has the debtor likewise been fully advised and given informed consent? Who provided such advice? Are these things in writing? [See above regarding the lack of evidence of Ms. Kim's **informed written** consent.]

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(e) Other considerations. Has proposed counsel demonstrated or represented to the Court the absence of an actual or potential conflict, a lack of disinterestedness, or any other basis for disqualification? *See In re Kelton Motors, Inc.*, 109 B.R. 641 (Bankr. D. Vt. 1989); *In re Hathaway Ranch Partnership*, 116 B.R. 208, 219 (Bankr. C.D. Cal. 1990); *In re Park-Helena Corp.*, 63 F.3d 877 (9th Cir. 1995). [*In re 9469 Beverly Crest, LLC* (Case No. 2:19-bk-20000-NB) dkt. 44, pp. 2:15-3:9 (boldface with underlining added; other emphasis in original).]

Joseph Seo declares that he is the assistant of Connie Kim, Debtor's principal. Seo Decl. (dkt. 57, p. 3) at ¶ 1. He further declares that he has "no economic or business connection with the Debtor." *Id.* at ¶ 5. But Mr. Seo does not specify the nature or scope of his responsibilities as Ms. Kim's "assistant."

Without more information regarding Mr. Seo's employment relationship with Ms. Kim, this Court cannot evaluate whether Mr. Seo's contribution of \$3,000 towards payment of the prepetition retainer poses issues warranting further scrutiny of the Employment Application.

For example, unless Ms. Kim is wealthy enough to employ an assistant responsible solely for her personal needs (shopping for groceries, picking up dry cleaning, etc.), presumably at least some of the services Mr. Seo performs as Ms. Kim's assistant pertain to Debtor's business operations. This Court notes that at the initial cash collateral hearing conducted on 8/15/23, Mr. Seo provided translation services for Ms. Kim. But there is no disclosure whether Mr. Seo has been employed or his services have been used by Debtor at any time, nor whether he is paid by Debtor (in money or in other forms of consideration), and the fair value of such payment.

To illustrate this Court's concerns, suppose that Mr. Seo funded \$3,000 of the prepetition retainer with the objective of helping Debtor remain in business, for the purpose of protecting his own employment as either Debtor's employee or as Ms. Kim's personal assistant (as distinguished from any role for Debtor). If that is in fact the case (and to be clear, this Court is not necessarily saying that it is), perhaps Mr. Seo's \$3,000 contribution could not reasonably be characterized as a "gift" to Debtor, which is how it is described in his declaration.

More broadly, this Court repeats that all of Mr. Seo's connections with Debtor, and all of the other persons listed in Rule 2014 - including his past

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and current compensation for any services provided to Debtor, and the sources of such compensation - might be relevant for a whole host of reasons. For example, such information could reveal how much influence Ms. Kim and/or Debtor have over him, or such information might be relevant to whether Mr. Seo could be the recipient of an avoidable preference (if arrears in his compensation were paid shortly prior to the bankruptcy petition). These are only examples of some of the ways in which disclosure of all connections might be important.

But, instead of disclosing all connections, Debtor and Mr. Seo provided a apparently false declaration that he has "no economic or business connection with the Debtor" (Seo Decl., dkt. 58, p. 3:14), and he fails to provide any information about his connections with various other types of persons listed in Rule 2014, such as creditors, their accountants, and their attorneys. Given Debtor's and Mr. Seo's failure to abide by the specific instructions of this Court, there arises a suspicion that Debtor's lack of information might be more than mere negligence: it could indicate an intent to obscure relevant facts.

For all of the foregoing reasons, the tentative ruling is that Debtor's counsel is directed to inquire extensively into all of the connections of the Funders to all of the types of persons described in Rule 2014, and to file and serve supplemental declarations of Ms. Kim, Mr. Seo, and Ms. Jeffrey **no later than 12/5/23**. The tentative ruling is to continue this hearing on the employment application to be concurrent with the continued Status Conference (see part "(2)(d)" of this Tentative Ruling, below).

Debtor's proposed counsel is cautioned that this Court should not have to repeat previously-adopted tentative ruling, and that if counsel's employment is authorized (x) no time should be charged for any work relating to attempting to obtain employment subsequent to the initial employment application (there is no showing that any such work benefits the bankruptcy estate, as distinguished from benefitting Debtor's proposed counsel by permitting it to correct what it should have done from the outset), (y) this Court is contemplating making employment prospective, rather than retroactive, given the extensive delays in responding to this Court's explicit directions; the possible prejudice to the bankruptcy estate in this case; and the need to provide a disincentive to similar failures in future; and (z) even if retroactive employment is approved, counsel's failure to respond to this Court's explicit directions may have a bearing on what hourly rate of

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compensation is reasonable, or other matters.

(c) Plan (dkt. 63) and Disclosure Statement (dkt. 64)

The tentative ruling is that, because the forms used by Debtor pre-date the addition of Subchapter V of chapter 11 of the Bankruptcy Code, the disclosures regarding discharge are inaccurate (and other portions of the forms also might be inaccurate). In addition, in Subchapter V case, a disclosure statement normally is not required, and it is typical to use the Subchapter V form plan.

Nevertheless, the filed Plan might be a good starting point for negotiations with creditors, and the tentative ruling is that it would be premature to require Debtor to prepare and file any amended Plan at this time. To the contrary, doing so probably would waste time and money.

The tentative ruling is not to set any deadline for filing any amended Plan documents at this time. Debtor is reminded of this Court's admonition: DO NOT SERVE any draft Plan, except on the U.S. Trustee, until this Court issues an order authorizing service (although drafts usually can and should be shared with major creditors as part of negotiations).

(2) Dates/procedures. This case was filed on 7/17/23.

- (a) Bar date: 9/25/23 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 10).
- (b) Procedures Order: dkt. 6 (served 11 days late, see dkt. 19)
- (c) Plan (dkt. 63)/Disclosure Statement (dkt. 64): see above part "(1)(c)" of this Tentative Ruling, above.
- (d) Continued status conference: 12/19/23 at 1:00 p.m., *brief* status report due 12/5/23.

Tentative Ruling for 9/12/23:

Appearances required by counsel for Debtor.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

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Los Angeles
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CONT... Online Edugo, Inc.

Chapter 11

(1) Current issues

(a) Cash collateral motion (dkt. 15), Order shortenting time (dkt. 16, the "OST"), Proof of service (dkt. 18), Opposition of Open Bank (dkt. 21), Notice of continued hearing (dkt. 32, amended by dkt. 35), Interim Order (dkt. 36, amended by dkt. 39), Opposition of Velocity Commercial Capital, LLC (dkt. 43) & Request for judicial notice (dkt. 44)

There is no tentative ruling. The parties should be prepared to address whether negotiations regarding adequate protection payments have been productive.

(b) Missing budget motion

The adopted ruling for 8/15/23 set a deadline of 8/22/23 for Debtor to file any outstanding so-called "first day" motions but, as of the preparation of this tentative ruling, Debtor has not filed a budget motion. Why not?

(c) Application to employ Tang & Associates as general bankruptcy counsel (dkt. 27), Supplemental declaration (dkt. 46)

This matter is not on for hearing today, but the Supplemental Declaration (dkt. 46) discloses that Meeyoung Jeffrey, the sister of Debtor's principal, and Joseph Seo, the assistant of Debtor's principal (the "Funders") funded proposed counsel's \$12,000.00 pre-petition retainer. As stated in the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov), "Declarations and/or briefs" generally are required to address the ethical concerns involved whenever a retainer is paid by a third party. See Cal. Rule of Prof'l Conduct 1.8.6; *In re Beverly Crest, LLC* (Case No. 2:19-bk-20000-NB, dkt. 44)." Based on this Court's review of the application and supplemental declarations, the Funders and proposed counsel have not addressed all of the issues that this Court typically requires prior to approving proposed employment.

The tentative ruling is to set a **deadline of 9/19/23** for the parties to file supplemental declaration(s) addressing those issues and lodge a proposed order.

(2) Dates/procedures. This case was filed on 7/17/23.

(a) Bar date: 9/25/23 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one

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has already been sent, see dkt. 10).

(b) Procedures Order: dkt. 6 (served 11 days late, see dkt. 19)

(c) Plan/Disclosure Statement: file by 90 days after the petition date
(per 11 U.S.C. 1189(b)) (DO NOT SERVE - except on the U.S.
Trustee). See Procedures Order.

(d) Continued status conference: 10/31/23 at 1:00 p.m., *brief* status
report due 10/17/23.

[PRIOR TENTATIVE RULING(S) OMITTED]

| |
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| Party Information |
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Debtor(s):

Online Edugo, Inc.

Represented By
Kevin Tang

Trustee(s):

Susan K Seflin (TR)

Pro Se

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2:23-17634 7111 Sepulveda LLC

Chapter 11

#3.00 Hrg re: Motion for relief from stay [RP]

QUALFAX, INC.
vs
DEBTOR

Docket 26

Tentative Ruling:

The tentative ruling is that, although it appears that the automatic stay probably applies, there also appears to be cause to grant some type of relief from the stay, but a continuance is required because (1) an essential party in interest was not served and (2) the parties' papers are late and incomplete. The tentative ruling to that no additional briefing will be permitted, except as provided below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Key documents reviewed: Motion (the "R/S Motion," dkt. 26); Opposition papers (dkt. 29, 30); Movant's Errata (dkt. 32) and Reply (dkt. 32).

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge a proposed order continuing this hearing via LOU within 7 days after this hearing date (per LBR 9021-1(b)(1)(B)), and attach a copy of this tentative ruling, thereby incorporating it as this Court's actual ruling.

Analysis

Qualfax, Inc. ("Qualfax") has filed its R/S Motion (dkt. 26) with respect to property in which Debtor apparently has no ownership interest, commonly known as 1415 W. Garvey Ave. N., West Covina, CA 91790-2137 (the "Non-Debtor Property"). Debtor owns a different property, at 7111 Sepulveda Blvd., Van Nuys, CA 91405 (the "Debtor Property").

Qualfax describes Debtor as a "co-obligor on the debt that is cross-collateralized by the [Non-Debtor Property]" (dkt. 26, p. 4, para. 6.d.), which

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appears to be correct because Debtor has executed a promissory note that lists Debtor and its affiliate, collectively, as "Borrower." See Errata (dkt. 32) Ex. 1 (at PDF pp. 3-8). Qualfax notes that, although Debtor does not assert any interest in the Non-Debtor Property, Debtor "owns cross-collateralized property [*i.e.*, the Debtor Property]." R/S Motion (dkt. 26) p. 7, para. 6.d.&e.

Qualfax has checked a box stating that an "optional Memorandum of Points and Authorities [P&As] is attached to this motion" (*id.* para. 7) and another box asserting that the automatic stay does not apply (*id.*, p. 5, para. 4). But in fact no such P&As were attached to the motion, and there is no analysis in the motion papers about why the automatic stay allegedly does not apply. In addition, in its Errata (dkt. 32) Qualfax concedes that it failed to attach a complete copy of the promissory note that is at issue.

(1) A continuance is appropriate for service on the receiver who apparently has taken possession of the Non-Debtor Property

Rule 4001(a) (Fed. R. Bankr. P.) requires service on various specified parties in interest and on "such other entities as the court may direct." See *also* LBR 4001-1(c). Debtor's (very belated) Opposition argues that Qualfax should have served a "state court receiver allegedly appointed with respect to the [Non-Debtor Property]" - namely, Richardson Griswold ("Receiver"). See Opp. (dkt. 29) pp. 5:18-6:6:1, *and* Opp. Decl. (dkt. 30) p. 2:26-28 & Ex. F (at PDF p. 127) *and id.* at PDF p. 133 (listing address of Mr. Griswold on proof of service).

The tentative ruling is to agree with Debtor that Receiver should have been served. First, as a matter of due process, Receiver has a substantial interest at stake, and that interest is particularly important because any receiver is deemed to be an arm of the court that appointed the receiver. In other words, both due process and comity are implicated.

Second, even if due process and comity were not at issue (which they are), as a matter of this Court's discretion it is appropriate to continue this hearing so that Receiver can be given notice of this hearing. In addition, Receiver should have notice of this Court's reasoning in this tentative ruling (just as Debtor and Qualfax have such notice). *Contra* Reply (dkt. 31) pp. 4:20-5:2 (asserting that no rule requires service on Receiver).

True, as Qualfax points out, not only was Debtor's Opposition very late but it also fails to provide any excuse for such lateness. See Reply (dkt. 31) p. 6:16-28. But the tentative ruling is that Debtor's unexcused tardiness

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cannot be the basis for this Court to prejudice Receiver, who has not been shown to be to blame in any way.

For the foregoing reasons, the tentative ruling is to continue this preliminary hearing on the R/S Motion to the same date and time as the continued status conference (see calendar no. 4 on this 1:00 p.m. calendar for 1/23/24). The tentative ruling is to set a **deadline of 1/24/24** for Qualfax to file a notice of that continued hearing, with a copy of this tentative ruling attached, and a proof of service of such notice on Receiver and Debtor. In addition, the tentative ruling is to set a **deadline of 1/30/24 at noon** for Receiver to file and serve any written response to the R/S Motion, with any reply permitted orally at the continued hearing.

The tentative ruling is that the continued hearing will be treated as the final hearing under 11 U.S.C. 362(e)(1), subject to the possibility that Debtor (or Receiver, if he were to oppose granting immediate relief from the automatic stay) might be persuaded to grant a further continuance of the hearing for "compelling circumstances" under section 362(e)(1). The tentative ruling is that, if this Court is inclined in future to order a further continuance (which is an issue on which this Court expresses no present opinion) and if Qualfax and any other parties in interest do not object at the continued hearing to any further continuance, they will be deemed to have consented and/or waived or forfeited any such objection. In other words, if this Court forgets to address the "compelling circumstances" issue at the continued hearing, the parties are directed to remind this Court.

(2) Alternatively, a continuance is appropriate because the parties' papers are late and incomplete

In its Reply (dkt. 31, p. 2:1-18), Qualfax argues that Debtor's Opposition failed to address Qualfax's assertion that the automatic stay does not apply, and its R/S Motion should be granted on that basis alone. Although it is true that Debtor ignored this issue, the tentative ruling is that Qualfax puts the cart before the horse because Qualfax did not provide any argument in its original R/S Motion papers about why the automatic stay allegedly does not apply (nor do its Reply papers cite any authority in support of its argument on this issue).

The tentative ruling is to set a **deadline of 1/30/24 at noon** for both parties to file and serve briefs addressing whether or not the automatic stay applies.

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(3) The tentative ruling is that the automatic stay does apply, but it should be terminated as of the conclusion of the final hearing on the R/S Motion

The parties raise a host of issues. The tentative ruling is not to permit oral argument on these issues at this preliminary hearing - because the Receiver should have a chance to appear, hear any such oral arguments, and respond orally. But this tentative ruling addresses all of these issues on a preliminary basis for the benefit of the Receiver, Debtor, and Qualfax, so that they can decide whether to contest these tentative rulings at the continued hearing.

(a) The tentative ruling for the continued hearing is that the automatic stay does apply

The tentative ruling is that, although 11 U.S.C. 362(a)(6) does not stay an act against property in which a debtor-guarantor has no property interest, nevertheless the stay does apply when the debtor is not just a guarantor but is actually a co-obligor, because then even just pursuing *in rem* remedies against non-debtor property falls within the statutory prohibition against "any" act to "collect ... or recover a claim against the debtor" (as distinguished from a claim against a guarantor or other third party). 11 U.S.C. 362(a)(6) (emphasis added). Compare, e.g., *In re Advanced Ribbons & Off. Prod., Inc.*, 125 B.R. 259, 263 (9th Cir. BAP 1991); 3 *Collier on Bankruptcy* para. 362.03[8][b]&[c].

The foregoing analysis interprets the statute to mean exactly what it says: section 362(a)(6) stays "any" act - even if that act is only against a non-debtor's property - to collect or recover a "claim against the debtor" but not claims against third parties such as guarantors. 11 U.S.C. 362(a)(6) (emphasis added). This Court recognizes that in each instance the creditor's overall intent can be the same (it wants to get paid) and the practical and economic effect can be the same, but the tentative ruling is that this is not enough to change the plain meaning of the statute.

This Court also recognizes that arguably the pursuit of a claim against a guarantor (or its property) is in actuality one way of pursuing a claim against a debtor. In addition, if the foreclosure of the non-debtor property is not stayed then, instead of a well-marketed sale of that property there will be a foreclosure sale that could recover only 70% or less of the fair market value of that property, thereby increasing the deficiency claim against the debtor. Put differently, it makes no practical or economic difference whether the

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debtor is a co-obligor with the third party who owns the non-debtor property or if instead that third party owner is only a guarantor: either way, the debtor will almost certainly suffer practical and economic consequences if the foreclosure is not stayed.

But, even though the overall intent of the creditor and the practical and economic effect might be the same, the tentative ruling is that this does not warrant extending the automatic stay to protect guarantors or other third parties or their property. The plain meaning of the statute is that it applies only to pursuit of "claims against the debtor," not claims against others, and if acts against the latter were stayed then the scope of the automatic stay would be greatly expanded if not limitless. Congress had to draw the line somewhere, and it chose to draw the line at "claims against the debtor," even if claims against third parties or their property can be based on the same overall intent of the creditor (to get paid) and have the same practical and economic effects.

Alternatively, supposing for the sake of discussion that the meaning of the statute were not plain, the tentative ruling is that the other traditional tools of statutory interpretation also suggest that Congress intended to stay "any" acts to collect or recover "claims against the debtor," even though it did not intend to extend the stay so far that it prevents acts against non-debtors and non-debtor property. That conclusion is supported by the reported decisions. *See Advanced Ribbons*, 125 B.R. 259, at pp. 264-67 & nn. 10-11 et seq. (examining statutory context, legislative history, and reported decisions).

Debtor is not without any remedy. If it cannot persuade or force its affiliate to file its own bankruptcy petition, Debtor could file an adversary proceeding seeking preliminary injunctive relief. *See Advanced Ribbons*, 125 B.R. 259, 266 at n. 14.

Notwithstanding all of the foregoing analysis, this Court reiterates that the parties have not briefed these issues. This Court has not conducted any exhaustive research on them, and all rights are reserved to argue contrary to the foregoing tentative ruling in the briefs for this this Court has set a deadline as stated above.

(b) Standing

Debtor argues that Qualfax has not shown that it has standing because the copy of the promissory note signed by Debtor is incomplete. Opp (dkt. 29) pp. 4:27-5:17. The tentative ruling is to overrule this objection for two

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alternative reasons.

First, only a "colorable" showing of standing is required, and the declaration in support of the motion meets that test. See *In re Veal*, 450 B.R. 897, 912 *and passim* (9th Cir. BAP 2011). Second, the Errata provides a complete copy of the promissory note, which is payable to Qualfax, so it has standing. See *also* Reply (dkt. 31) p. 3:9-22.

(c) Alleged misrepresentation regarding notice of sale

Debtor argues that Qualfax has "[m]isrepresented" the notice of sale at issue, in that such notice of sale allegedly "lists both the [Non-Debtor Property] and the [Debtor Property]." Opp. (dkt. 29) p. 6: 2-5 (emphasis added). From this, Debtor argues that the act that Qualfax seeks to undertake - foreclosure - is stayed because it is in fact an act against property of Debtor/the estate.

But Debtor's premise is flawed. The notice of sale pointed to by Debtor (dkt. 29, p. 6:2-8 *and* dkt. 30, Ex. C p. 2, at PDF p. 119) is a notice of sale for only the Debtor Property, whereas the R/S Motion seeks relief from the automatic stay (if the stay applies) solely as against the Non-Debtor Property. Therefore, the tentative ruling is to overrule this objection to the R/S Motion.

(d) "Cause" for relief under 11 U.S.C. 362(d)(1)

(i) Shifting burdens of proof

Section 362(d)(1) provides that this Court "shall" grant relief from the automatic stay for "cause, including the lack of adequate protection of an interest in property of [the party seeking relief from the automatic stay]." 11 U.S.C. 362(d)(1) (emphasis added). The word "including" is "not limiting" (11 U.S.C. 102(3)), so "cause" is not limited to a lack of adequate protection.

The burdens of proof under section 362(d) shift back and forth. It appears to be undisputed that Qualfax has the initial burden to show at least some sort of "cause" for relief from the automatic stay, which could include an initial showing of an apparent lack of adequate protection. Once Qualfax meets its initial burden, the burden shifts to Debtor on all issues under section 362(d)(1), pursuant to 11 U.S.C. 362(g)(2).

The burden can shift back to Qualfax. But only if Debtor provides evidence of greater weight than Qualfax's initial evidence of "cause" for relief.

This Court can require an evidentiary hearing on any relevant factual

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issue on which there is a genuine dispute. See Rule 56(a) (Fed. R. Civ. P., incorporated by Rules 7056 & 9014(c), Fed. R. Bankr. P.). But motions for relief from the automatic stay are summary proceedings, and this Court has broad discretion to decide issues either based on declarations and other written evidence filed with the motion and opposition papers, or alternatively based on a short and expedited evidentiary hearing. See *generally Veal*, 450 B.R. 897.

(ii) Qualfax's initial showing of "cause"

Although Qualfax's R/S Motion is not entirely clear, it appears to argue that there is "cause" for relief from the automatic stay under section 362(d)(1) for two reasons. One is Debtor's lack of an ownership interest in the Non-Debtor Property and the other appears to be a lack of adequate protection.

On the latter point, Qualfax estimates that as of 1/23/24 it will be owed \$3,033,251.03 (R/S Motion, dkt. 26, p. 7, para. 8.g.), and it points out that its debt exceeds any equity in the Debtor Property, according to Debtor's own bankruptcy schedules. Specifically, Debtor's bankruptcy schedules estimate the value of the Debtor Property at \$7,000,000.00 (R/S Motion, dkt. 26, p. 8, para. 11.d.(d) & Ex. 6 at Bates pp. 48-51). Debtor lists Qualfax in 3d lien position (*id.*, Bates p. 49, item 2.1), behind a 1st lien of Lone Oak Fund, LLC estimated at \$8,050,000.00 (*id.*, item 2.2) and a 2d lien of Marom Kislev Three estimated at \$2,565,000.00 (*id.*, Bates p. 50, item 2.3). In other words, on the face of Debtor's bankruptcy schedules it appears that the debt to Qualfax is entirely underwater (unless cross-collateralization can greatly reduce the senior debts, although Debtor's bankruptcy schedules attached to the R/S Motion fail to give any hint of cross-collateralization).

(iii) Debtor has not adequately rebutted the showing of "cause" for relief

Debtor argues that there is no "cause" for relief from the automatic stay because Qualfax supposedly has not provided evidence of the "value of the Property" (Debtor defines "the Property" to mean the Debtor Property, not the Non-Debtor Property). Opp. (dkt. 29) pp. 2:20 & 6:12-20. Debtor also argues that Qualfax "must prove that the value of the collateral is declining." *Id.* p. 6:21-26 (*citing United Sav. Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370 (1988)).

The tentative ruling is that Debtor is wrong on all aspects of this

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argument.

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(A) The fact that Debtor does not own the Non-Debtor Property is *prima facie* "cause" for relief, after a very short "breathing spell" - probably only through the conclusion of the final hearing on the R/S Motion

As noted above, the R/S Motion is not seeking relief as against the Debtor Property - only against the Non-Debtor Property. The tentative ruling is that, even if (as this Court tentatively concludes above) the automatic stay does apply - *i.e.*, if the automatic stay prevents Qualfax from taking any act to collect its debt by proceeding with foreclosure against the Non-Debtor Property - Qualfax has shown "cause" for relief from that stay because, after a very short "breathing spell," it would be inappropriate to permit Debtor to protect property of its non-debtor affiliate without having that affiliate file its own bankruptcy petition, or without meeting the standards to enjoin the foreclosure. *See generally In re Excel Innovations, Inc.*, 502 F.3d 1086 (9th Cir. 2007). In other words, neither the affiliate nor Debtor should not have the benefits of affiliate's bankruptcy without the burdens.

The tentative ruling is that the very short breathing spell should be only through the conclusion of the final hearing on the R/S Motion. Debtor was served with the R/S Motion on 12/29/23 (see dkt. 26 at Bates pp. 72-73) so it has already had some time in which its affiliate could file its own bankruptcy petition or it could have sought preliminary injunctive relief to protect the Non-Debtor Property, and the tentative ruling is that only a very short additional period is warranted.

But neither party has briefed the issue about how long the automatic stay in Debtor's bankruptcy case should protect the Non-Debtor Property despite the lack of any bankruptcy case of Debtor's affiliate, and despite the lack of any preliminary injunction against foreclosing on that property. The tentative ruling is to direct the parties to file and serve briefs on these issues by the **same deadline set forth above** (in section "(2)" of this tentative ruling) regarding the section 362(a)(6) issues.

(B) Lack of adequate protection

Beyond the "cause" just described (that the automatic stay should not be used to give debtor's affiliate the benefits without the burdens of bankruptcy, or meeting the standards for preliminary injunctive relief to protect a non-debtor or its property), the tentative ruling is that Qualfax has provided enough evidence to meet its initial burden to show a *prima facie* "lack of

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adequate protection." Debtor's own sworn estimate of value of the Debtor Property, in its bankruptcy schedules, establish this *prima facie* showing.

True, Debtor now contests its own prior valuation of its property in its bankruptcy schedules. But the tentative ruling is that Debtor's evidence is too speculative.

Specifically, the tentative ruling is that Debtor's out-of-date appraisal report of \$10.8 million for the Debtor Property, as of 6/25/20, is too speculative. For example, the appraisal itself states that it is based on an "extraordinary assumption" that "permitting will be completed in short-term" (dkt. 30, Ex. B, p. 2, carryover paragraph, at PDF p. 25), and it is unclear from the record before this Court whether permitting was in fact completed and whether any such permitting included restrictions or other terms and conditions that would not support anything like the estimated value of the property in the appraisal report.

Similarly, although Debtor provides a broker's opinion of value of \$8.5 to \$9 million for the Non-Debtor Property (dkt. 30, Ex. A), the tentative ruling is that this is also too speculative to find that Qualfax is adequately protected. It appears to be undisputed that the Non-Debtor Property is raw land, and the broker's attempt to estimate the value of that raw land based on an estimate of future rents after construction (*id.* p. 3 at PDF p. 8) or based on allegedly comparable sales of completed properties (*id.* p. 2 at PDF p. 8) is not reliable enough to establish adequate protection.

In other words, updated and persuasive declarations of appraisers for both properties, or similar evidence, would be needed for this Court (x) to make the substantial upward adjustment that Debtor asserts to the value of the Debtor Property provided in its own sworn bankruptcy schedules and/or (y) to find that, despite the large senior liens on the Debtor Property, Qualfax is adequately protected by any equity in that property or in the Non-Debtor Property. On the present record, the tentative ruling is that Debtor has not adequately rebutted Qualfax's evidence of a lack of adequate protection.

(C) The issue of whether property values are declining

As a preliminary matter, it is unclear whether Debtor is asserting that Qualfax is undersecured or conversely that it is oversecured (once the value of both properties is taken into account). On the one hand, Debtor appears to be asserting that Qualfax is undersecured because it argues, citing *Timbers*, that Qualfax "must prove that the value of the collateral is declining," and that

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holding only applies when a creditor is undersecured. See Opp. (dkt. 29) p. 6:12-26. On the other hand, Debtor appears to assert that Qualfax is oversecured because Debtor alleges that it has obtained a loan commitment that will allow it to pay off all debts on both properties in full "and leave additional funds to start the development of Debtor's Property" (Opp., dkt. 29, p. 2:22-25).

The tentative ruling is that either way Debtor's arguments are unavailing. If Qualfax is undersecured then the speculative nature of any scheme to develop raw land typically is sufficient cause for some sort of relief from the automatic stay, possibly after a relatively short "breathing spell" which is often accorded debtors if they can show sufficient prospects of refinancing or selling the property, or sufficient prospects of obtaining new equity investment, or other viable alternatives that protect the creditor's interest. The tentative ruling is that Debtor has not shown sufficient evidence for more than a very short breathing spell.

Conversely, if Qualfax is oversecured by an equity cushion (for which there is no adequate evidence) then presumably it is entitled to add to its claim any accruing interest, attorney fees, and other charges (11 U.S.C. 506(b)), all of which can erode any equity cushion. Therefore, absent sufficient evidence of a very substantial equity cushion (e.g., 20%), oversecured creditors usually are entitled to monthly adequate protection payments. See *generally, e.g., In re Mellor*, 734 F.2d 1396, 1400-02 (9th Cir. 1984). Debtor has not offered any such payments, and there is no evidence that it is capable of making any such payments.

For all of these reasons, the tentative ruling is that Debtor has not adequately rebutted Qualfax's *prima facie* evidence that its interests under its lien against the Debtor Property are not adequately protected. This is an alternative ground to find "cause" to grant relief from the automatic stay.

Again, the tentative ruling is that such relief should take the form of only a very brief additional period before terminating the automatic stay. The tentative ruling is that such period should be through the conclusion of the final hearing on the R/S Motion.

(e) Relief under 11 U.S.C. 362(d)(2)

Section 362(d)(2) provides that this Court "shall" grant relief from the automatic stay if "(A) the debtor does not have an equity in [the Non-Debtor Property]; and (B) such property is not necessary to an effective

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reorganization." 11 U.S.C. 362(d)(2). The burden is on Debtor to show that it can file a plan of reorganization that will have "a reasonable possibility of being confirmed within a reasonable time." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Assoc's, Ltd.*, 484 U.S. 365, 375-76 (1988) (citation omitted). See also *In re Sun Valley Newspapers*, 171 B.R. 71, 75 (9th Cir. BAP 1994) (sliding scale, requiring stronger showing of ability to reorganize as case gets older).

Debtor appears to argue that because of the cross-collateralization involving both the Debtor Property and the Non-Debtor Property, and because of Debtor's and its affiliate's prospects of developing those properties, those properties are both necessary to an effective reorganization. See Opp. (dkt. 29) p. 7:8-8:2. The tentative ruling is that Debtor has not presented enough evidence to warrant more than a very short continuance of the automatic stay, through the conclusion of the final hearing on the R/S Motion. Debtor has not, for example, provided any binding letter of intent from a refinancing lender.

This an an alternative ruling for granting relief from the automatic stay as set forth above. The tentative ruling is to set the **same deadline as set forth above**, in part "(2)" of this tentative ruling, for Debtor to file and serve a supplemental declaration with any new evidence of an effective reorganization in prospect, such as a binding letter of intent.

(4) Conclusion

All rights are reserved to argue the specified issues in supplemental briefs by the deadlines set forth above, and to argue all of the foregoing issues at the continued hearing.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

7111 Sepulveda LLC

Represented By
Thomas B Ure

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Movant(s):

QUALFAX, INC.

Represented By
Harris L Cohen

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Chapter 11

#4.00 Cont'd status conference re: Chapter 11 case
fr.12/19/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference, and continue the hearing on the motion of Qualfax, Inc. ("Qualfax") for relief from the automatic stay (the "R/S Motion," dkt. 26) to the same date and time, all as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Qualfax R/S Motion (dkt. 26); belated opposition by Debtor (dkt. 29, 30); no reply on file as of preparation of this tentative ruling

Continue to the same date and time as the status conference (see part "(2)(d)" of this tentative ruling, below, with associated deadlines and procedures, and for the reasons, set forth in the tentative ruling for calendar 3 on today's calendar (1/23/24 at 1:00 p.m.)

(2) Dates/procedures. This case was filed on 11/17/23.

(a) Bar date: 2/23/24 (dkt. 20) (timely served, dkt. 21)

(b) Procedures Order: dkt. 7 (timely served, dkt. 10)

(c) Plan/Disclosure Statement: file by 3/15/24 (DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.

(d) Continued status conference: 2/6/24 at 1:00 p.m. No written status report is required.

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

CONT... 7111 Sepulveda LLC

Chapter 11

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

7111 Sepulveda LLC

Represented By
Thomas B Ure

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-16398 1052 Martel, LLC

Chapter 11

#5.00 Cont'd status conference re: Chapter 11 case
fr. 10/31/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Plan (dkt. 47) and Disclosure Statement ("D/S," dkt. 48)

The tentative ruling is that it would be premature to serve the Plan and D/S until Debtor has at least filed an application to employ a real estate broker, and more likely until Debtor has a proposed sale in hand that could be approved via confirmation of an amended Plan (that would specify the details of the proposed sale, and the proposed distributions).

Accordingly, the tentative ruling is not to authorize Debtor to serve the Plan and D/S, and not to set any deadline at this time for filing any amended Plan and D/S. The tentative ruling is that these things can be addressed at a future status conference.

In connection with the continued status conference Debtor should be prepared to address how long Debtor proposes to take to sell the property and/or pursue other options, including any time to obtain permits and develop the property if Debtor proposes to do those things before marketing the property for sale. Additionally, if development is contemplated prior to sale, Debtor should be prepared to address how it proposes to fund the

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CONT... 1052 Martel, LLC
development.

Chapter 11

- (2) Dates/procedures. This case was filed on 9/29/23.
- (a) Bar date: 2/29/24 (prior deadline of 12/15/23 vacated, see dkt. 34, 41) (adequate service on 12/1/23, dkt. 42)
 - (b) Procedures Order: dkt. 17 (timely served, dkt. 23)
 - (c) Plan/Disclosure Statement (dkt. 47, 48): timely filed on 1/8/24 (DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.
 - (d) Continued status conference: 4/2/24 at 1:00 p.m. *Brief* status report due 3/19/24.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

1052 Martel, LLC

Represented By
Thomas B Ure

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-16108 337 6th Ave, LLC

Chapter 11

#6.00 Cont'd Status Conference re: Chapter 11 case
fr. 10/17/23, 11/14/23, 12/5/23, 12/19/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Plan (dkt. 34) and Disclosure Statement ("D/S," dkt. 35)

The day before the 12/19/23 hearing Debtor filed its Plan and D/S. At that hearing this Court was prepared to dismiss this case based on the unlikelihood that Debtor could reorganize its affairs but was persuaded to continue the matter to this date.

The tentative ruling is that it would be premature to proceed with balloting on any proposed chapter 11 plan unless Debtor is able to successfully negotiate a resolution with secured creditor Citadel Servicing Corporation to avoid a foreclosure sale in view of this Court's recent order granting it relief from the automatic stay. Dkt. 37. In addition, it would be premature to serve the Plan and D/S until Debtor has at least filed an application to employ a real estate broker, and more likely until Debtor has a proposed sale in hand that could be approved via confirmation of an amended Plan (that would specify the details of the proposed sale, and the proposed distributions).

For these reasons, the tentative ruling is not to authorize Debtor to

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1:00 PM

CONT...

337 6th Ave, LLC

Chapter 11

serve the Plan and D/S, and not to set any deadline at this time for filing any amended Plan and D/S. The tentative ruling is that these things can be addressed at a future status conference.

(b) Future of this case

If the docket does not reflect any progress by the time of the continued status conference (see part "(2)(d)" of this tentative ruling, below) then this Court anticipates posting (prior to that continued status conference) a tentative ruling for dismissal of this case.

(2) Dates/procedures. This case was filed on 9/19/23.

(a) Bar date: 11/30/23 (dkt. 16) (timely served, dkt. 17).

(b) Procedures Order: dkt. 3 (timely served, dkt. 6)

(c) Plan/Disclosure Statement (dkt. 34, 35): timely filed on 12/18/23
(DO NOT SERVE - except on the U.S. Trustee). See
Procedures Order.

(d) Continued status conference: Continue to 3/5/24 at 1:00 p.m.

Tentative Ruling for 12/19/23:

Dismiss this case. Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Motion for relief from the automatic stay of (dkt. 23, "R/S Motion") of Citadel Servicing Corporation ("Movant"), no opposition on file

Grant as set forth in the tentative ruling for calendar 2 on today's calendar (12/19/23 at 1:00 p.m.).

(b) Future of this case

As of the preparation of this tentative ruling Debtor has not opposed

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CONT... 337 6th Ave, LLC

Chapter 11

the R/S Motion, which affects Debtor's sole asset, nor does it appear that any sale or refinancing is realistic because of the negative equity in the property. Accordingly, the tentative ruling is to dismiss this case on this Court's own motion, pursuant to 11 U.S.C. 105(a), 1112, and the Procedures Order (dkt. 3, 6).

(2) Dates/procedures. This case was filed on 9/19/23.

(a) Bar date: 11/30/23 (dkt. 16) (timely served, dkt. 17).

(b) Procedures Order: dkt. 3 (timely served, dkt. 6)

(c) Plan/Disclosure Statement: file by 12/18/23 (DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.

(d) Continued status conference: *If* this matter is not dismissed, continue to 1/23/24 at 1:00 p.m. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

337 6th Ave, LLC

Represented By
Thomas B Ure

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

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1:00 PM

2:23-18579 Clinical Edify

Chapter 11

#7.00 Hrg re: Motion in Chapter 11 case for order approving a budget for the use of the debtor's cash and postpetition income

Docket 39

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 10, 1/23/24 at 1:00 p.m.).

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| Party Information |
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Debtor(s):

Clinical Edify

Represented By
Steven R Fox

Movant(s):

Clinical Edify

Represented By
Steven R Fox

**United States Bankruptcy Court
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Los Angeles
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Tuesday, January 23, 2024

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1:00 PM

2:23-18579 Clinical Edify

Chapter 11

#8.00 Cont'd hrg re: Motion for authority to use cash collateral on an interim and final basis fr. 1/2/24

Docket 6

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference (Calendar No. 10, 1/23/24 at 1:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Clinical Edify

Represented By
Steven R Fox

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:23-18579 Clinical Edify

Chapter 11

#9.00 Cont'd hrg re: Motion to authorize debtor to pay
prepetition priority employee wages
fr. 1/2/24

Docket 7

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference (Calendar No. 10,
1/23/24 at 1:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Clinical Edify

Represented By
Steven R Fox

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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2:23-18579 Clinical Edify

Chapter 11

#10.00 Cont'd status conference re: Chapter 11 case
fr. 1/2/24

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required by Debtor, the objecting creditors, and Debtor's principal.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Debtor's motion for authorization to pay prepetition wages (the "Prepetition Wages Motion," dkt. 7), Interim Prepetition Wages Order (dkt. 26), no opposition on file

This Court conducted a "first day" emergency hearing on the Prepetition Wages Motion on 1/2/24 and entered an order granting that motion on an interim basis on 1/5/24 (dkt. 26). The tentative ruling is to grant the Prepetition Wages Motion on a final basis.

As to insiders, this Court presumes that Debtor properly served its notices of insider compensation, and that the time for objections has expired without any objection known to Debtor. Therefore, to the extent the Prepetition Wages Motion applies to insiders it appears appropriate to grant that motion on a final basis. Debtor's counsel is directed, and counsel for the United States Trustee is invited, to address whether this Court's presumption is correct.

As for payment to employee Alizy Jimenez, this Court previously authorized payment to Mr. Jimenez on a provisional basis because he was omitted from the written motion and was added by oral amendment at the hearing, subject to any opposition in connection with this continued hearing.

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Chapter 11

Appropriate notice of Debtor's intent to pay Mr. Jimenez's prepetition wages has now been provided, and no parties have timely objected.

(b) Debtor's motion for authorization to use cash collateral (the "Cash Collateral Motion," dkt. 8), Interim Cash Collateral Order (dkt. 27), no opposition on file

This Court conducted a "first day" emergency hearing on the Cash Collateral Motion on 1/2/24 and entered an order granting that motion on an interim basis on 1/5/24 (dkt. 27). The tentative ruling is to grant the Cash Collateral Motion on a final basis.

(c) Debtor's motion for approval of budget for the use of cash and post-petition income (the "Budget Motion," dkt. 39), Order setting hearing on Budget Motion on shortened notice (dkt. 40), Notice of hearing on Budget Motion (dkt. 41), Balance Sheet and Profit and Loss Statement (dkt. 44), Opposition to Budget Motion filed by American Career College, Inc. and West Coast University, Inc. (dkt. 51); Reply (dkt. 53)

American Career College, Inc. and West Coast University, Inc. (collectively, "Judgment Creditors") hold a judgment in excess of \$5.9 million against Roger Ortiz, Debtor's 100% owner. Judgment Creditors object to Debtor's proposal to pay \$12,500 per month in "officer salary."

In a declaration filed in support of Debtor's "first day" motion, Mr. Ortiz testifies that Debtor has "two regular employees with me being the third employee." Ortiz Decl. (dkt. 8) at ¶ 7. The Budget Motion does not specify whether the "officer salary" is payable solely to Mr. Ortiz or whether Debtor's other two employees are also considered "officers." Debtor should be prepared to clarify this issue at the hearing.

The tentative ruling is that that a salary of \$12,500 per month (even if payable only to Mr. Ortiz) is a presumptively reasonable dollar amount given Mr. Ortiz's apparent qualifications and the nature of Debtor's business, all subject to certain caveats set forth below. Mr. Ortiz holds a Masters in Public Administration from San Diego State University, Ortiz Decl. at ¶ 6, and his role at Debtor "is a full time job that stretches into late night and over weekends," *id.* at ¶ 8.

The tentative ruling is that the other expenses set forth in the proposed budget are also presumptively reasonable.

In their opposition to the Budget Motion, Judgment Creditors allege

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Chapter 11

that Mr. Ortiz has an "extensive and recent history of testifying falsely" and "disregarding court orders," and that accordingly a Chapter 11 Trustee should be appointed, and they request that Debtor not pay anything to Mr. Ortiz until they have "sufficient time to bring a motion for appointment of a trustee." Opp. (dkt. 51) at 3:18–26. The Judgment Creditors cite powerful evidence: the findings of fact in an extensive minute order of Chief District Judge Gutierrez (Ex. 1 to dkt. 51).

The tentative ruling is that, although Judgment Creditors raise very troubling issues, which might indeed warrant appointment of a chapter 11 trustee or other relief, those issues have yet to be briefed, and in addition it is conceivable that Debtor could now be "on the straight and narrow path" and generating funds with which to pay all creditors from legitimate business operations. See *id.* at, e.g., p. 17 (District Court persuaded to grant injunctive relief, but "takes issue with the scope of the injunction proposed by [Judgment Creditors]").

In addition, it might be too expensive for a chapter 11 trustee to be appointed. In other words, even if Debtor is continuing to engage in wrongful conduct, other remedies might be in the best interests of creditors, so this Court should not presume that a chapter 11 trustee will supplant Debtor's current principal.

The tentative ruling is that this Court cannot find, based on the present record, that it would be appropriate at this early date to deny any compensation to Mr. Ortiz and thereby jeopardize or possibly terminate Debtor's ability to generate funds to pay creditors. Accordingly, the tentative ruling is to grant the Budget Motion on a temporary basis, and revisit the foregoing issues at the continued hearing(s).

The tentative ruling is to continue the Budget Motion to the same date and time as the continued status conference (see part "(2)(d)" of this tentative ruling, below). This Court anticipates further continuing the Budget Motion until a reasonable time has passed for the foregoing issues to be addressed in due course.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's actual ruling.

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CONT... Clinical Edify

Chapter 11

(d) Debtor's applications to employ the Fox Law Corporation as its general bankruptcy counsel (dkt. 34) and Patrick Rettig Corporation as its Chief Restructuring Officer (dkt. 35) (collectively, the "Employment Applications")

The Employment Applications are not scheduled for hearing today, but it is appropriate for this Court to bring to Debtor's attention the fact that neither Employment Application is accompanied by local form F 2014-1.STMT.DISINTEREST.PROF (statement of disinterestedness), as required by this Court's posted Procedures (available at www.cacb.uscourts.gov). The tentative ruling is to direct Debtor to file form F 2014-1.STMT.DISINTEREST.PROF by no later than **1/30/24**. As stated in those Procedures:

Note: the judge prefers that local form F 2014-1 not repeat the employment application – instead simply say "see application" or the like (reasons: proposed professionals frequently do not track the language of Rule 2014, so the judge requires use of the form so that someone verifies the elements of that rule under penalty of perjury, and so the court staff does not have to do a line-by-line comparison with each element of the Rule).

(2) Dates/procedures. This case was filed on 12/27/23.

- (a) Bar date: 3/1/24 (DO NOT SERVE notice yet – court will prepare an order after the status conference).
- (b) Procedures Order: dkt. 3 (timely served, dkt. 25)
- (c) Plan/Disclosure Statement: TBD
- (d) Continued status conference: 2/6/24 at 1:00 p.m., concurrent with other matters. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Clinical Edify

Represented By
Steven R Fox

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-13307 Seyed Mustafa Maghloubi

Chapter 11

#11.00 Order to show cause why this court should
not impose sanctions and/or direct the
appointment of a chapter 11 trustee

Docket 60

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 13,
1/23/24 at 1:00 p.m.).

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| Party Information |
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Debtor(s):

Seyed Mustafa Maghloubi

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-13307 Seyed Mustafa Maghloubi

Chapter 11

#12.00 Cont'd hrg re: U.S. Trustee's Motion to dismiss or convert case
fr. 11/28/23

Docket 42

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference (Calendar No. 13,
1/23/24 at 1:00 p.m.).

Tentative Ruling for 11/23/23:

Please see the tentative ruling for the Status Conference (Calendar no. 4,
11/28/23 at 1:00 p.m.).

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| Party Information |
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Debtor(s):

Seyed Mustafa Maghloubi

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1545

1:00 PM

2:23-13307 Seyed Mustafa Maghloubi

Chapter 11

#13.00 Cont'd Status conference re: Chapter 11 case
fr. 11/14/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required by counsel for Debtor and Debtor himself.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Order Directing Debtor to Appear and Show Cause Why this Court Should Not Impose Sanctions and/or Direct the Appointment of a Chapter 11 Trustee (the "OSC," dkt. 60), Notice to creditors of OSC (dkt. 78–79), Declaration of Seyed Maghloubi Re OSC (the "Maghloubi Decl.," dkt. 81), Declaration of Tony Forberg Re OSC (the "Forberg Decl.," dkt. 82), Declaration of Michael R. Totaro in Support of OSC (the "Totaro Decl.," dkt. 83)

(i) Background

On 12/11/23, this Court issued an order requiring Seyed Maghloubi to appear and show cause why this Court should not impose sanctions and/or direct the appointment of a Chapter 11 Trustee (the "OSC," dkt. 60). Complete background information is set forth in the OSC and will not be restated herein.

At the time of issuance of the OSC, Mr. Maghloubi had not yet filed a complete list of creditors. On 12/18/23, after Mr. Maghloubi filed his list of creditors, this Court caused notice of the OSC to be served upon creditors. Dkt. 77–78.

Michael Totaro is the only creditor who has filed papers in response to the OSC. See *generally* Totaro Decl. Mr. Totaro alleges that Mr. Maghloubi

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CONT... **Seyed Mustafa Maghloubi**

Chapter 11

owes him approximately \$60,000 in past due rent, see Totaro Decl. at ¶ 8, and that Mr. Maghloubi caused approximately \$75,000 in damage to residential property that Mr. Maghloubi and his family had rented from Mr. Totaro, see *id.* at ¶ 10. Mr. Totaro further alleges that Mr. Maghloubi's schedules contain numerous false statements as well as "fabrications by omission," see *id.* at ¶ 3.

(ii) Mr. Maghloubi's ongoing non-compliance with this Court's orders

As explained with greater particularity in the OSC, Mr. Maghloubi has disregarded orders of this Court and has failed to timely comply with numerous obligations imposed upon him by the Bankruptcy Code. Mr. Maghloubi is now represented by counsel and belatedly filed his bankruptcy schedules on 12/12/23.

The tentative ruling is that, although Mr. Maghloubi has very belatedly filed his bankruptcy schedules (including his Statement of Financial Affairs), which is a start, he has failed to do so with enough attention, and this hearing will be continued to the same date as the next status conference (see part "(2)(b)" of this tentative ruling, below). The tentative ruling is to set a **deadline of 1/29/24** for Mr. Maghloubi to file amended bankruptcy schedules.

Meanwhile, the tentative ruling is to impose a small **punitive sanction of \$1,000.00** upon Mr. Maghloubi for disregarding this Court's Procedures Order (dkt. 32) and his other duties in this bankruptcy case. The sanction shall be paid to the Clerk of the Court no later than **2/9/24**.

In setting the dollar amount of this sanction, this Court has taken into consideration (along with all the other facts and circumstances) that (i) the OSC warned Mr. Maghloubi that he might face a punitive sanction of up to \$2,000.00; (ii) Mr. Maghloubi has not denied his past misconduct described in the OSC, and he did not respond regarding the dollar amount; and (iii) most importantly, a more substantial dollar amount could harm creditors by taking funds that might otherwise go to them (*i.e.*, although Mr. Maghloubi's misconduct probably warrants a larger dollar amount of sanctions, imposing a larger amount might be counterproductive).

Mr. Maghloubi is strongly cautioned that he has a duty to prepare bankruptcy schedules and other papers accurately, and that when misstatements are frequent they look more and more like intentional acts and omissions to "hide the ball," or "shift the costs" to creditors to uncover the truth, or otherwise make improper use of the legal system. In addition, the

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CONT... Seyed Mustafa Maghloubi

Chapter 11

longer Mr. Maghloubi fails to devote sufficient attention to this case, or attempts to mislead creditors (or this Court) by misstatements or omissions, the more he will risk much more serious sanctions.

The tentative ruling is that at this time that Court cannot conclude that appointment of a Chapter 11 Trustee would inure to the benefit of creditors (including Mr. Totaro) in view of the additional administrative costs. Although not entirely clear from his papers, it appears that Mr. Totaro's ultimate objective would be for a Chapter 11 Trustee to attempt to administer Mr. Maghloubi's auto business. On this record, this Court is concerned that any potential recoveries from the administration of Mr. Maghloubi's non-exempt assets might well be insufficient to justify the additional administrative costs.

On the other hand, this Court is also mindful that the very fact that Mr. Maghloubi has failed to file fully accurate bankruptcy schedules only reinforces that he might have substantially greater assets than currently meets the eye. In addition, this Court is mindful that, even if the chances of better creditor recoveries are not great, the integrity of the bankruptcy system must be upheld. Therefore, at a future hearing this Court will consider again whether to appoint a chapter 11 trustee or impose other remedies.

In sum, Mr. Maghloubi's past wrongful acts and omissions have not been *excused*; he cannot "unring the bell"; his very belated bankruptcy schedules have not been prepared accurately enough; he might be subject to additional sanctions or remedies for his acts and omissions to date; and the \$1,000.00 punitive sanction is in no way intended to be full compensation to this Court for Mr. Maghloubi's harm to the administration of justice, let alone any compensation to creditors including Mr. Totaro. But, in limiting the current, interim punitive sanction to \$1,000.00, this Court is mindful that any court should be reluctant to "act as prosecutor, judge, and jury"; and all rights are reserved for parties in interest to seek their own remedies.

For all of these reasons it appears to be appropriate to levy punitive damages of only \$1,000.00 at this time, without in any way excusing Mr. Maghloubi's acts and omissions, and without prejudice to any future remedies that might be imposed by this Court based in whole or in part on Mr. Maghloubi's acts and omissions, and also without prejudice to the rights of any parties in interest to seek any appropriate remedies when and if appropriate.

Proposed order(s): Unless otherwise ordered, after the hearing *this Court will prepare and issue an order (x) imposing a punitive*

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CONT...

Seyed Mustafa Maghloubi

Chapter 11

sanction of \$1,000.00 upon Mr. Maghloubi and (y) continuing the hearing on this OSC.

(b) Motion by the United States Trustee ("UST") to dismiss this bankruptcy case ("MTD," dkt. 42); Response (dkt. 57) by petitioning creditors MJ Shanahan & Associates and We Enforce Judgments, LLC (collectively, "Petitioners")

This Court conducted an initial hearing on the MTD on 11/28/23, after which it issued the OSC discussed in Section "(1)(a)" of this tentative ruling, above. The tentative ruling is to continue the MTD to the same date and time as the continued status conference (see part "(2)(d)" of this tentative ruling, below), for the reasons set forth in Section "(1)(a)."

Proposed order: Unless otherwise ordered, the UST is directed to lodge proposed order(s) on the foregoing matter via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's actual ruling.

(c) Service of the Procedures Order

As discussed in the OSC, Mr. Maghloubi failed to serve the Procedures Order (dkt. 32) upon creditors. The tentative ruling is (x) to issue an Amended Procedures Order and to direct Mr. Maghloubi to serve that order upon creditors and (y) to conduct a continued status conference (which will be treated as a Principal Status Conference) at the date and time set forth in part "(2)(d)" of this tentative ruling, below.

Proposed order(s): Unless otherwise ordered, after the hearing this Court will prepare and issue an Amended Procedures Order.

(d) Mr. Forberg's disclosure of settlement communications

Mr. Maghloubi's current attorney, Mr. Tony Forberg, is strongly cautioned not to reveal settlement communications in future. His declaration and the exhibits thereto (dkt. 82 at, e.g., PDF p. 7) improperly reveal the dollar amounts and other details of settlement communications. There is no jury in the current proceedings, so there is no risk of prejudice to a jury, but Mr. Forberg's disclosures are offensive to the administration of justice. Any similar misconduct in future might result in a sanctions.

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Central District of California
Los Angeles
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1:00 PM

CONT... Seyed Mustafa Maghloubi

Chapter 11

(2) Dates/procedures. The involuntary petition commencing this case was filed on 5/30/23. An Order for Relief was entered on 6/27/23, dkt. 11. The case was converted from Chapter 7 to Chapter 11 on 10/12/23, dkt. 29.

(a) Bar date: TBD

(b) Procedures Order: See Section "(1)(c)," above.

(c) Plan/Disclosure Statement: TBD

(d) Continued status conference: 2/20/24 at 1:00 p.m. (no written status report required).

[PRIOR TENTATIVE RULING(S) OMITTED. See Order to Show Cause (dkt. 60) for more information.]

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| Party Information |
|--------------------------|

Debtor(s):

Seyed Mustafa Maghloubi

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-16105 1318 Flower Street, LLC

Chapter 11

#14.00 Cont'd status conference re: Chapter 11 case
fr. 10/17/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Forbearance agreement with Poppy Bank

Debtor represents that it has entered into a forbearance agreement with its largest secured creditor, Poppy Bank, and intends to file a motion to dismiss so that it can complete construction of its hotel outside of bankruptcy. Status Report (dkt. 56) at ¶ 1. The tentative ruling is (x) to continue the Status Conference as set forth in Section "(2)(d)," below, and (y) to vacate the previously-ordered 1/17/24 deadline to file a plan and disclosure statement (with such deadline to be re-set in future if necessary).

(2) Dates/procedures. This case was filed on 9/19/23.

(a) Bar date: 1/9/24 (Bar Date Order timely served, dkt. 43)

(b) Procedures Order: dkt. 13 (not timely served, but eventually served which gives notice of matters therein, dkt. 25 & 35)

(c) Plan/Disclosure Statement: See Section "(1)(a)," above.

(d) Continued status conference: 2/20/24 at 1:00 p.m., concurrent with other matters. No written status report required.

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Los Angeles
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Tuesday, January 23, 2024

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1:00 PM

CONT... 1318 Flower Street, LLC

Chapter 11

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
|--------------------------|

Debtor(s):

1318 Flower Street, LLC

Represented By
Douglas C Biggins

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-12637 Robert Dwight Winter, Jr.

Chapter 11

#15.00 Cont'd Status Conference re: Chapter 11 Case
fr. 5/30/23, 6/13/23, 6/27/23, 7/11/23, 8/8/23,
10/3/23, 10/31/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Debtor's Second Amended Subchapter V Plan (the "Plan," dkt. 102)

The Internal Revenue Service asserts a claim in the total amount of \$3,836,180.06 (consisting of a secured claim in the amount of \$3,125,464.65 and an unsecured claim in the amount of \$710,715.41) (Claim 4-2, the "IRS Claim"). Debtor has noticed a hearing on his objection to the IRS Claim for February 20, 2024 (dkt. 103 & 104). The tentative ruling is that it would be premature to direct Debtor to serve his Plan upon creditors, or to determine whether the disclosures set forth within the Plan are sufficient, given that Debtor's objection to the IRS Claim has not yet been adjudicated.

2) Dates/procedures. This case was filed on 4/28/23.

- (a) Bar date: 7/7/23 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 17).

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CONT...

Robert Dwight Winter, Jr.

Chapter 11

(b) Procedures Order: dkt. 8 (timely served, dkt. 12)

(c) Second Amended Subchapter V Plan: dkt. 102 (DO NOT SERVE – except on U.S. Trustee). See Procedures Order.

(d) Continued status conference: 2/20/24 at 1:00 p.m., concurrent with other matters. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Robert Dwight Winter Jr.

Represented By
Leslie A Cohen

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1545

1:00 PM

2:22-16991 Fallah Nasser Alfallah

Chapter 11

#16.00 Cont'd Status Conference re: Chapter 11 Case
fr. 1/21/23, 3/21/23, 4/4/23, 5/16/23, 6/27/23,
7/11/23, 8/8/23, 9/19/23, 10/3/23, 10/5/23,
11/14/23, 12/5/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required. If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

There is no tentative ruling, but Debtor should be prepared to provide an update on the status of the sale of 1365 Shadybrook Drive, Beverly Hills, CA 90210 (*i.e.*, has the sale closed and have the secured creditors been paid?), and to discuss any issues regarding the Measure ULA tax.

(2) Dates/procedures. This case was filed on 12/26/22.

- (a) Bar date: 3/31/23 (dkt. 30) (timely served, dkt. 35)
- (b) Procedures Order: dkt. 9 (timely served, dkt. 18)
- (c) Plan/Disclosure Statement: TBD.
- (d) Continued status conference: 3/5/24 at 1:00 p.m. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Fallah Nasser Alfallah

Represented By
Derrick Talerico

**United States Bankruptcy Court
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Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-14313 IVCINYA COMPANY LLC

Chapter 11

#17.00 Cont'd Status Conference re: Chapter 11 Case
fr. 7/13/23, 8/8/23, 9/12/23, 10/31/23, 11/28/23,
12/5/23, 12/19/23, 1/2/24

Docket 1

***** VACATED *** REASON: No post-dismissal matters requiring a
hearing have been filed. A status conference will be held concurrent with any
self-calendared hearing on any post-dismissal matters. See dkt. 95.**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

IVCINYA COMPANY LLC

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

1:00 PM

2:22-15163 The Hacienda Company, LLC

Chapter 11

#18.00 Status Conference re: Post confirmation
fr. 10/25/22, 12/6/22, 12/20/22, 1/24/23, 02/07/23,
3/7/23, 4/4/23, 6/27/23, 7/11/23, 7/18/23, 8/8/23,
9/19/23, 10/3/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference as set forth below. Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has no issues to raise *sua sponte* at this time.

(2) Dates/procedures. This case was filed on 9/21/22. The petition was amended to elect Subchapter V on 9/21/22 (dkt. 6).

(a) Bar date: 11/30/22 per General Order 20-01 (70 days after petition date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 15).

(b) Procedures order (dkt. 3): timely served (dkt. 5).

(c) Plan (dkt. 129): Plan confirmed on 9/19/23. See Memorandum Decision (dkt. 200 & 204).

(d) Post-confirmation status conference: 5/7/24 at 1:00 p.m.
Post-confirmation status report due 4/23/24.

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CONT... The Hacienda Company, LLC

Chapter 11

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

The Hacienda Company, LLC

Represented By
David L. Neale
Lindsey L Smith
Juliet Y. Oh

Trustee(s):

Susan K Seflin (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1545

1:00 PM

2:23-11695 2202 East Anderson Street, LLC

Chapter 11

#19.00 Cont'd hrg re: Application for payment of: Final fees and/or expenses
[Law Offices of Raymond H. Aver, APC]
fr. 11/28/23, 12/19/23

Docket 182

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference (Calendar No. 20, 1/23/24 at 1:00 p.m.).

Tentative Ruling for 12/19/23:

Please see the tentative ruling for the status conference (Calendar No. 8, 12/19/23 at 2:00 p.m.).

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| Party Information |
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Debtor(s):

2202 East Anderson Street, LLC

Represented By
Raymond H. Aver

Trustee(s):

Carolyn A Dye (TR)

Represented By
James A Dumas Jr
Christian T Kim

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2:23-11695 2202 East Anderson Street, LLC

Chapter 11

#20.00 Cont'd Status Conference re: Chapter 11 Case
fr. 4/25/23, 5/4/23, 5/12/23, 5/22/23, 5/30/23,
6/27/23, 7/18/23, 8/8/23, 9/12/23, 9/19/23,
10/3/23, 11/14/23, 12/19/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Address the pending matters as set forth below, with no continuances.
Appearances are not required. (If you wish to contest the tentative ruling, see
the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov,
then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the
courtroom, unless the Court has been closed (check the Court's website for
public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For
ZoomGov instructions for all matters on calendar, please see page 1 of the
posted Tentative Rulings.

Analysis:

This Court has issued an order (dkt. 201) approving the structured
dismissal of this bankruptcy case, but the remaining outstanding matter
known to this Court is the pending fee application of the law offices of
Raymond H. Aver ("Aver"), which is calendar no. 19 on this calendar (1/23/24
at 1:00 p.m.). That fee application seeks (1) an award of \$50,035.25 in fees
and expenses to be paid from the estate, which is subject to a pending
objection that this Court has taken under submission - this Court expects to
issue an order on that matter shortly - and (2) a judgment of \$22,550.00
against guarantor Zion Vanounou (pursuant to this Court's adopted tentative
ruling for 12/19/23 and the Aver firm's notice served on Mr. Vanounou, dkt.
202) - the tentative ruling is to issue the requested judgment, and Aver is
directed to lodge a proposed judgment on the latter matter within 7 days after
this hearing.

In addition, the tentative ruling is (a) to assure completeness of the

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CONT... 2202 East Anderson Street, LLC

Chapter 11

record by issuing a Memorialization of Tentative Rulings that attaches a copy of this tentative ruling for 1/23/24 and all the tentative rulings reproduced below and (b) not to continue this status conference, but instead simply issue a ruling on the submitted matter in the near future.

The Trustee is reminded to file a notice memorializing when this bankruptcy case is dismissed. See Order (dkt. 201) p. 3:3-9.

Tentative Ruling for 12/19/23:

(1) Grant the final fee applications filed by professionals (except that the fees sought by Debtor's Counsel will be reduced by \$3,000.00 for employment issues and \$8,000.00 for so-called "Conversion/Dismissal" issues), but prohibit payment from the estate at this time, (2) continue the hearing on the Structured Dismissal Motion to enable Trustee to correct a service defect, and (3) continue the status conference, all as set forth below. Appearances are not required on 12/19/23. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Chapter 11 Trustee's motion for a structured dismissal (the "Structured Dismissal Motion," dkt. 179), Supplement to Structured Dismissal Motion (dkt. 192)

This Court's adopted Tentative Ruling for 11/14/23 (reproduced below) directed counsel for the Chapter 11 Trustee ("Trustee") to serve the Structured Dismissal Motion on "all creditors" and file a proof of service "no later than **11/21/23**" (emphasis in original), so as to comply with Rule 2002(a)(4) (Fed. R. Bankr. P.). As of the preparation of this tentative ruling, no such proof of service is on file.

The tentative ruling is to continue the hearing on the Structured Dismissal Motion to be contemporaneous with the continued status conference (see Section "(2)(d)" of this Tentative Ruling, below) and direct

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CONT... 2202 East Anderson Street, LLC

Chapter 11

Trustee to file a proof of service showing that creditors have been served with the Structured Dismissal Motion and notice of the continued hearing by a **deadline of 12/21/23**.

(b) Lack of notice of continued hearing on fee applications

This Court's adopted Tentative Ruling for 11/14/23 (reproduced below) directs counsel for Trustee to serve notice of the continued hearing on all fee applications and file a proof of service "no later than **11/21/23**" (emphasis in original). As of the preparation of this tentative ruling, no such proof of service is on file.

On the one hand, it is true that all creditors received notice of the prior hearing on this final fee application (see dkt. 177, 183, 186), and no creditors objected to the requested fees. On the other hand, the structured dismissal issues are somewhat tied to payment of any allowed fees, and therefore it is not harmless error for Trustee's counsel to have disregarded this Court's direction to serve notice of the continued hearing on the fee applications.

The tentative ruling is that any parties in interest who failed to timely file a written opposition have waived and/or forfeited their right to oppose the award of the requested fees, but that is different from whether those fees should be paid as part of the proposed structured dismissal. Accordingly, the tentative ruling is to grant the fee applications but not authorize payment until a ruling on the Structured Dismissal Motion.

(c) Final fee application of Debtor's accountants LEA Accountancy LLP (dkt. 172), Declaration in support of final fee application (dkt. 173), Notice and amended notice of final fee application (dkt. 177 & 186), no opposition on file

Allow \$19,516.50 in fees and \$292.68 in expenses, for a total final award of \$19,809.18. No payment is authorized at this time (see part "(1)(b)" of this Tentative Ruling, above).

(c) Final fee application of Trustee's counsel Dumas & Kim, APC (dkt. 176), Notice and amended notice of final fee application (dkt. 177 & 186), Supplemental declaration in support of final fee application (dkt. 191), no opposition on file

Allow \$79,895.00 in fees and \$326.70 in expenses, for a total final award of \$80,221.70. No payment is authorized at this time (see part "(1)(b)" of this Tentative Ruling, above).

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CONT... 2202 East Anderson Street, LLC

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(d) Final fee application of Chapter 11 Trustee Carolyn A. Dye (dkt. 174), Notice and amended notice of final fee application (dkt. 177 & 186), no opposition on file

Allow \$237,353.44 in fees (no expenses are sought). No payment is authorized at this time (see part "(1)(b)" of this Tentative Ruling, above).

(e) Final fee application of Debtor's general bankruptcy counsel Law Offices of Raymond H. Aver, APC ("Aver," dkt. 182), Notice of final fee application (dkt. 183), Chapter 11 Trustee's objection to final fee application (dkt. 185), Reply in support of final fee application (dkt. 188)

(i) Background: Employment of Aver, Mr. Vanounou's guaranty, and agreement to this Court's jurisdiction over any disputes

On 6/29/23, this Court entered an order authorizing Debtor to employ Aver, with employment effective as of 4/20/23. See dkt. 103 (the "Employment Order"). The Employment Order states that employment is authorized "on the terms and conditions set forth in the Employment Application" Employment Order at p. 3.

The Employment Application (dkt. 48) states that Mr. Zion Vanounou, Debtor's principal, "has also agreed to guaranty payment of the Aver Firm's fees" Employment Application at p. 3 (emphasis added). A supplement to the Employment Application filed on 6/13/23 (dkt. 86) includes a copy of a retainer agreement which states, among other things, that Mr. Vanounou "must guaranty payment of the Firm's attorneys fees and costs." Dkt. 83, Ex. 3, at p. 2, last sentence (PDF p. 15). The retainer agreement also, among other things, cautions that "[y]our ... agreement to guaranty the Firm's fees raises a potential conflict of interest," that invoices should be reviewed immediately, and that any dispute (as to fees, claims of malpractice, etc.) shall be determined by this Court (or else by binding arbitration). *Id.*, p. 3 (PDF p. 16).

The retainer agreement concludes, "I/We have read and understand the terms of this letter agreement, am authorized to accept this agreement on behalf of [Debtor], and/or guaranty performance of this agreement." Dkt. 83, Ex. 3, p. 5 (PDF p. 18) (emphasis added). Mr. Vanounou has signed the retainer agreement in two capacities. He has signed as Debtor's manager and in his individual capacity. *Id.*

(ii) Background: appointment of Trustee, and Trustee's objection

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Chapter 11

to Aver fees

On 5/22/23, this Court entered an order striking Debtor's Subchapter V designation (dkt. 63). On 5/23/23, this Court directed the United States Trustee (the "UST") to appoint a Chapter 11 Trustee, and on 5/24/23, the UST filed a notice stating that Carolyn A. Dye had been appointed as Trustee. Dkt. 63 & 68.

Aver seeks final approval of fees and expenses of \$72,585.25 (consisting of \$68,775.00 in fees incurred to date, \$3,670.00 for preparing this final fee application, and \$140.25 in expenses), with \$50,035.25 of such fees and expenses to be paid from the estate and the remaining \$22,550.00 to be paid by Mr. Vanounou. (Aver received a \$26,000.00 post-petition retainer, so if Counsel's request were approved in its entirety, an additional \$24,035.25 would be due from the estate after drawdown of the retainer.)

Trustee does not object to Aver's request to be paid from the post-petition retainer, but does object to Aver's request to receive additional payment from the estate beyond the post-petition retainer. Specifically, Trustee contends that Aver's fee request should be reduced by (A) \$8,060.40 on account of allegedly unnecessary fees incurred in obtaining employment and (B) \$15,385.00 on account of allegedly unnecessary fees incurred in attempting to prevent this Court from striking Debtor's Subchapter V designation so that a Chapter 11 Trustee would not have to be appointed.

(Note: Aver itemizes fees incurred with respect to category "(B)" under the "Conversion/Dismissal" task code; for simplicity, this Court will adopt that nomenclature when discussing such fees. To insure a clear record, it is important to highlight a minor math error in Trustee's calculations pertaining to fees incurred by Aver under the "Conversion/Dismissal" task code. Trustee states that Aver incurred \$26,425 in fees under that task code; in actuality, Aver billed only \$22,385 for "Conversion/Dismissal" services. Trustee concedes that Aver should be entitled to receive \$7,000 for services billed under "Conversion/Dismissal." Correcting Trustee's figures to account for her math error, this means that, according to Trustee, Aver's fees for "Conversion/Dismissal" services should be reduced by \$15,385—not reduced by \$19,425 as stated in Trustee's papers.)

(iii) Jurisdiction over Mr. Vanounou

Relying upon the retainer agreement's requirement that Mr. Vanounou guaranty payment of Aver's fees, Aver asks this Court to enter a judgment against Mr. Vanounou and in favor of Aver in the amount of \$22,550.00

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(which allegedly represents the amount of fees incurred by Aver subsequent to the appointment of Trustee). This Court has an independent obligation to determine whether it has jurisdiction to issue such a judgment, "even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d 1097 (2006).

The tentative ruling is that this Court does have jurisdiction to issue a judgment against Mr. Vanounou requiring him to pay Aver's fees. In both his capacity as Debtor's manager and in his personal capacity, Mr. Vanounou signed a retainer agreement in which he agreed to guaranty Aver's fees. Mr. Vanounou signed a declaration authenticating the retainer agreement, and submitted that declaration in support of the Aver's employment application. The tentative ruling is that by performing these actions, Mr. Vanounou has subjected himself to the jurisdiction of this Bankruptcy Court.

As for proper service on Mr. Vanounou, and proper procedures, the tentative ruling is that there is no requirement for an adversary proceeding under Rule 7001 (Fed. R. Bankr. P.), and therefore service of the fee application on Mr. Vanounou would have been sufficient, at least if notice to him had prominently made it clear that Aver was asking for a judgment against him personally. But it does not appear that Mr. Vanounou was served. See Notice (dkt. 183) (Mr. Vanounou not listed on proof of service); *and* Fee App. (dkt. 182) (last two pages: service list, but no declaration of service, and Mr. Vanounou omitted).

Accordingly, the tentative ruling is to continue the hearing on the Aver fee application as to Mr. Vanounou, to be contemporaneous with the continued status conference (see part "(2)(d)" of this Tentative Ruling, below), with a **deadline of 12/21/23** for Aver to file and serve a notice of that continued hearing. The tentative ruling is that such notice must state:

Note to Mr. Zion Vanounou: The Bankruptcy Court has directed that the Law Offices of Raymond H. Aver, APC ("Aver") must serve you with this notice. Aver seeks a judgment against you for fees that you guaranteed, in the claimed amount of \$22,550.00 (which allegedly represents the amount of fees incurred by Aver subsequent to the appointment of the Chapter 11 Trustee in this case). The Bankruptcy Court has addressed that request on a preliminary basis in a tentative ruling that was posted prior to a hearing on 12/19/23 (available at www.cacb.uscourts.gov under "Tentative Rulings"). The tentative ruling is that the Bankruptcy

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CONT...

2202 East Anderson Street, LLC

Chapter 11

Court has jurisdiction and authority to enforce that guaranty and enter a judgment against you in the claimed dollar amount. But all of your rights are reserved to oppose Aver's request for a judgment against you. **Your deadline is 1/9/24** to file and serve any written opposition; and **Aver's deadline for any reply is 1/16/24**. If you file a timely written opposition, you also may appear at the hearing to orally contest the requested fee judgment.

(iv) Appropriateness of entering a judgment against Mr.

Vanounou

Having addressed the threshold issue of jurisdiction, the next question is whether it is appropriate for this Court to enter a judgment against Mr. Vanounou and in favor of Aver in the amount of \$22,550.00, on account of services performed on behalf of the estate by Aver subsequent to the appointment of Trustee. The tentative ruling is that such a judgment is warranted. Mr. Vanounou remains contractually bound by the retainer agreement, in which he agreed to guaranty fees incurred by Aver. Further, the tentative ruling is that Mr. Vanounou personally benefitted from the services because he is the 100% owner of Debtor.

Note: Again, all rights are reserved for Mr. Vanounou to contest these tentative rulings by filing a written opposition and appearing at the continued hearing (as explained above).

(v) Aver's entitlement to fees from the estate

Under 11 U.S.C. 330(a)(1), this Court is authorized to award "reasonable compensation for actual, necessary services rendered" by an estate professional.

In determining the amount of compensation to award, this Court considers the nature, the extent, and the value of such services, taking into account all relevant factors, including—

- A) the time spent on such services;
- B) the rates charged for such services;
- C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- E) with respect to a professional person, whether the person is

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board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

- F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. [11 U.S.C. 330(a)(3).]

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. B.A.P. 2000).

(vi) Services in so-called "Conversion/Dismissal" category

Trustee contends that of the \$22,385 billed under the "Conversion/Dismissal" task category, Aver is entitled to be paid only \$7,000. Trustee's theory is that it was essentially inevitable that Debtor's Subchapter V designation would be stricken and that a Chapter 11 Trustee would be appointed, and therefore Aver's attempts to obtain a different result are not compensable.

The tentative ruling is largely to overrule Trustee's objection and to determine that time spent by Aver attempting to obtain a stipulated resolution under which Debtor could continue to proceed under Subchapter V is mostly compensable. Trustee is correct that because Debtor's "primary activity is the business of owning single asset real estate," 11 U.S.C. 1182(1)(A), its eligibility to proceed under Subchapter V is subject to challenge. But the fact that a Subchapter V designation is subject to challenge does not necessarily mean that the designation will ultimately be stricken—even if, as was the case here, Debtor does not qualify as a Subchapter V debtor under the definition set forth in 11 U.S.C. 1182(1)(A).

The procedure to challenge a debtor's Subchapter V designation is set forth in Rule 1020 (Fed. R. Bankr. P.). As set forth in that rule, the "status of a case as ... a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement" in its petition, "unless and until the court enters an order finding that the debtor's statement is incorrect." Any objection to a debtor's Subchapter V designation initiates a contested matter governed by Rule 9014. See Rule 1020(c). That means an objecting party could subsequently stipulate to waive its objection.

This Court is vested with the authority to approve such a stipulation,

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deem objections to the Subchapter V designation waived, and allow the case to continue to proceed under Subchapter V—even when, as in the present case, Debtor does not satisfy the eligibility requirements specified in 11 U.S.C. 1182(1)(A). This Court takes judicial notice that in several other Subchapter V cases all parties have agreed to waive the ineligibility issues because, in those cases, the parties ultimately considered it more efficient to continue to use the services of the Subchapter V Trustee. A similar result might have been obtained in this case, and Debtor's preparation and filing of papers on this issue preserved this option.

True, seeking to preserve the possibility of a consensual resolution does not warrant excessive time advancing arguments that have little or no chance of success. The time incurred must be proportionate to the potential results (a cost/benefit analysis, or put differently a rough "present discounted value" analysis, is required so that the cost of services does not exceed the likely benefit). Accordingly, some downward adjustment is appropriate. But not as much as Trustee requests.

The upshot is that most of the services performed by Aver in an attempt to allow the case to continue to proceed under Subchapter V appear to have been "'reasonably likely' to benefit the estate at the time the services were rendered," *Mednet*, 251 B.R. 103, 108. For example, it is possible (although by no means certain) that administrative expenses may have been reduced had Aver succeeded in obtaining a stipulated withdrawal of the objection to Debtor's Subchapter V designation.

It is important to emphasize that in the Ninth Circuit, estate professionals are **not** required to show that the services "*resulted in identifiable, tangible, and material benefit to the bankruptcy estate*" to obtain compensation, *Mednet*, 251 B.R. 103, 107 (emphasis in original). This Court must not allow hindsight bias to interfere with its assessment of the value of a professional's services. The appropriate analytical framework is whether, *at the time the services were performed*, there was a reasonable probability that the services could inure to the estate's benefit. The tentative ruling is that in this case, there was such a reasonable probability, and it is therefore appropriate to allow all of the \$22,385 in fees billed by Aver under the "Conversion/Dismissal" task category.

The tentative ruling is that reduction of the requested \$22,385.00 to only \$7,000.00 is excessive, but that reduction of \$8,000.00 is appropriate leaving a balance in this category of \$14,385.00 (\$22,385.00 - \$8,000.00 =

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\$14,385.00).

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(vii) Service in the "Firm Employment" category

Trustee also objects to Debtor's Counsel's request for \$9,060.40 in fees billed under the "Firm Employment" task category. Trustee's position is that Debtor's Counsel is entitled to compensation of only \$1,000.00 for obtaining employment.

On 5/31/23, this Court issued an order setting a hearing on Debtor's Counsel's Employment Application. See Dkt. 80. As explained in that order, the Employment Application did not comply with the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) by, among other things, (A) failing to sufficiently address ethical concerns arising from payment of Debtor's Counsel's retainer by a third party and (B) failing to include local form F 2014-1.STMT.DISINTEREST.PROF (statement of disinterestedness).

The tentative ruling is that, had Debtor's Counsel exercised greater diligence in complying with this Court's procedures, he could have avoided billing \$3,000.00 of the \$9,060.40 charged to obtain employment. Accordingly, the tentative ruling is to disallow \$3,000.00 in fees billed under the "Firm Employment" task code.

(viii) Conclusion regarding Aver's fee application

The tentative ruling is (A) to allow Aver \$38,895.00 in fees and \$140.25 in expenses, for a total award of \$39,035.25 (the requested \$50,035.25 minus \$8,000.00 in the "Conversion/Dismissal" category minus another \$3,000.00 in the "Firm Employment" category) which presumably will be paid from the estate, after resolution of the stipulated dismissal issues (payments from the estate consist of (i) the \$26,000.00 post-petition retainer plus (ii) an additional \$13,035.25 to be paid from cash on hand in the estate); and (B) to enter a judgment in favor of Aver and against Mr. Vanounou, requiring Mr. Vanounou to pay Aver \$22,550.00 on account of Mr. Vanounou's guaranty. Again, no payment from the estate is authorized at this time (see part "(1)(b)" of this Tentative Ruling, above), and all rights are reserved for Mr. Vanounou to contest these tentative rulings by filing a written opposition and appearing at the continued hearing (see part "(1)(e)(iii)" of this Tentative Ruling, above).

(2) Dates/procedures. This case was filed on 3/23/23. On 5/22/23 this Court entered orders striking Debtor's Subchapter V election (dkt. 63) and directing the U.S. Trustee to appoint a chapter 11 trustee (dkt. 65).

(a) Bar date: 6/1/23 per General Order 20-01 (70 days after petition

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date in Subchapter V cases) (DO NOT SERVE any notice: one has already been sent, see dkt. 14). The tentative ruling is not to set a new claims bar date despite this Court's revocation of Debtor's Subchapter V designation because this Court is not aware of any authority requiring that a new bar date be set.

(b) Procedures Order: 3/24/23, dkt. 7 (sufficient evidence of service, dkt. 56)

(c) Plan/Disclosure Statement: Not applicable

(d) Continued status conference: 1/23/24 at 1:00 p.m. No written status report required.

Tentative Ruling for 11/14/23:

Continue this Status Conference to 12/19/23 at 2:00 p.m. and continue matters scheduled for hearing on 11/28/23 to the date of the continued Status Conference, so that certain service deficiencies can be corrected, all as set forth below. Appearances are not required on 11/14/23. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed: Chapter 11 Trustee's Report (dkt. 169), her motion for a structured dismissal (the "Structured Dismissal Motion," dkt. 179), and Fee applications filed by the estate's professionals (dkt. 172–74, 176–77, & 182–83)

The Chapter 11 Trustee (the "Trustee") has noticed a hearing on her Structured Dismissal Motion for 11/28/23 at 1:00 p.m. Pursuant to Rule 2002(a)(4) (Fed. R. Bank. P.), "all creditors" must receive no fewer than 21 days' notice of a motion to dismiss a Chapter 11 case. The Structured Dismissal Motion was served only on those creditors who receive electronic notice via the Notice of Electronic Filing system, rather than all creditors.

This Court is not aware of grounds to overlook the service defect given

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that the dividend proposed in the Structured Dismissal Motion will not pay the allowed claims of general unsecured creditors in full. The tentative ruling is (x) to continue the hearing on the Structured Dismissal Motion from 11/28/23 at 1:00 p.m. to the date of the continued Status Conference set forth above, and (y) to direct the Trustee to provide notice of the continued hearing to all creditors and file a proof of service so indicating by no later than **11/21/23**.

The estate's professionals have filed fee applications which have been set for hearing on 11/28/23 at 2:00 p.m. (collectively, the "Fee Applications"). The tentative ruling is (x) to continue the hearing on the Fee Applications to the date of the continued Status Conference set forth above, and (y) to direct the Trustee's general bankruptcy counsel to provide notice of the continued hearing to all creditors and file a proof of service so indicating by no later than **11/21/23**.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
|--------------------------|

Debtor(s):

2202 East Anderson Street, LLC

Represented By
Raymond H. Aver

Trustee(s):

Carolyn A Dye (TR)

Represented By
James A Dumas Jr
Christian T Kim

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2:23-11397 Michael R Totaro

Chapter 11

Adv#: 2:23-01155 Totaro v. Maghloubi et al

#21.00 Cont'd status conference re: Complaint against Seyed Maghloubi, Nelly Maghloubi aka Nelly Salamanca for 1) Abuse of process; 2) Breach of contract; 3) Intentional Infliction of emotional distress; 4) Fraud; 5) Financial elder abuse fr. 7/18/23, 8/15/23, 10/17/23, 11/14/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference in the bankruptcy case in chief (Calendar No. 21, 1/23/24 at 1:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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Debtor(s):

Michael R Totaro

Represented By
Andy C Warshaw

Defendant(s):

Seyed Mostafa Maghloubi

Represented By
Tony Forberg

Nelly Maghloubi

Represented By
Tony Forberg

Plaintiff(s):

Michael R Totaro

Represented By
Andy C Warshaw

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2:23-11397 Michael R Totaro

Chapter 11

#22.00 Cont'd Status Conference re: Chapter 11 case
fr. 3/21/23, 4/4/23, 4/28/23, 5/16/23, 6/13/23,
7/18/23, 8/15/23, 10/17/23, 11/14/23, 11/28/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required by Debtor (or any counsel for Debtor).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

(1) Current issues

(a) Accuracy of Amended Monthly Operating Reports

Mr. Totaro has acknowledged that the Amended Monthly Operating Reports (the "MORs") that he has recently filed contain various unspecified errors which he does not intend to correct:

Last week I amended all of my prior filed Monthly Operating Reports to correct inaccurate information based on my misreading of the new court form. In reviewing those amendments I still see errors but nothing that affects the overall veracity of the documents. Therefore I am not going to further amend all of the reports since there is no difference in the outcome of the figures, only the place where they were entered in the report. [Status Report (dkt. 166) at ¶ 5.]

As Mr. Totaro well knows, full, accurate, and transparent disclosure is paramount in bankruptcy. See, e.g., *In re Mohring*, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992), *aff'd*, 153 B.R. 601 (9th Cir. BAP 1993), *aff'd*, 24 F.3d 247 (9th Cir. 1994) ("The proper 'operation of the bankruptcy system depends on honest reporting.' ... Numerous cases hold that the debtor has a duty to prepare schedules carefully, completely, and accurately."). It is not up to Mr.

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Totaro to decide whether the unspecified errors in the MORs "affect[] the overall veracity of the documents," Status Report at ¶ 5. Creditors, the United States Trustee, and other interested parties are entitled to accurate disclosures in the MORs.

Mr. Totaro is directed to address at this status conference the nature of all errors in the MORs. If this Court is persuaded that amended MORs need to be filed so as not to be misleading then the tentative ruling is to set a **deadline of 2/6/24** for Mr. Totaro to file Amended MORs correcting all errors in the current MORs.

(b) Totaro v. Maghloubi et al. (Adv. No. 2:23-ap-01155-NB)

This Court has previously determined that litigation of this adversary proceeding is stayed in view of the filing of the involuntary petition against Mr. Maghloubi (which began as a Chapter 7 case but was subsequently converted to Chapter 11):

The tentative ruling is also that before anything other than mediation occurs in this proceeding, (x) the parties must file in the adversary proceeding a stipulation with the Chapter 7 Trustee modifying the respective stays arising in the chapter 7 bankruptcy cases to proceed with this litigation, and lodge a proposed order approving that stipulation, or (y) Debtor and/or the Maghloubis must file in the chapter 7 bankruptcy cases motions for relief from the automatic stay to allow this litigation to go forward and obtain orders granting such relief. [Tentative Ruling for 7/18/23.]

The parties have not taken any of the actions necessary to lift the stay of the adversary proceeding. The tentative ruling is (x) to direct that the stay remain in effect unless otherwise ordered by this Court and (y) to continue the status conference in this adversary proceeding to be contemporaneous with the status conference in the bankruptcy case in chief (see part "(2)(d)" of this tentative ruling, below).

(2) Dates/procedures. This case was filed on 3/8/23.

(a) Bar date: 6/15/23 (dkt. 73, 90); Proof of Service (dkt. 91)

(b) Procedures order: dkt. 30 (timely served, dkt. 41).

(c) Plan/Disclosure Statement: file by 3/13/24 (DO NOT SERVE - except on the U.S. Trustee). See the "Procedures of Judge

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Bason" (available at www.cacb.uscourts.gov) (search for "Chapter 11: Plan").

(d) Continued status conference: 2/6/24 at 1:00 p.m., concurrent with other matters. No written status report required.

[PRIOR TENTATIVE RULINGS OMITTED]

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| Party Information |
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Debtor(s):

Michael R Totaro

Represented By
Andy C Warshaw

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2:23-15583 Mega Sunset, LLC

Chapter 11

#23.00 Cont'd hrg re: Motion for order authorizing debtor
and debtor in possession to use cash collateral
fr. 10/31/23

Docket 37

***** VACATED *** REASON: Per ex parte application (dkt. 56) and order
thereon (see also dkt. 50).**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Mega Sunset, LLC

Represented By
Raymond H. Aver

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2:23-15583 Mega Sunset, LLC

Chapter 11

#24.00 Cont'd Status conference re: Chapter 11 case
fr. 10/3/23, 10/17/23, 10/31/23

Docket 1

***** VACATED *** REASON: Per ex parte application (dkt. 56) and order
thereon (see also dkt. 50).**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Mega Sunset, LLC

Represented By
Raymond H. Aver

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2:22-11471 Cherry Man Industries, Inc.

Chapter 11

#25.00 Cont'd hrg re: Emergency Motion Authorizing Use of Cash Collateral
fr. 3/22/22 , 3/24/22, 3/29/22, 4/7/22, 4/12/22, 4/26/22, 5/5/22, 5/10/22,
5/17/22, 5/31/22, 6/14/22, 6/21/22, 6/30/22, 07/08/22, 7/26/22, 9/1/22,
9/20/22, 10/25/22, 11/18/22, 12/06/22, 12/20/22, 1/3/23, 01/24/23,
2/7/23, 3/7/23, 4/25/23, 6/13/23, 7/18/23, 8/15/23, 9/19/23,10/31/23

Docket 21

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the status conference (Calendar No. 26,
1/23/24 at 1:00 p.m.).

[PRIOR TENTATIVE RULINGS OMITTED]

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| Party Information |
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Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn
Hamid R Rafatjoo
David B Golubchik

Movant(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn
Hamid R Rafatjoo
David B Golubchik

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CONT... Cherry Man Industries, Inc.

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Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By
Hamid R Rafatjoo
Krikor J Meshefejian
David B Golubchik
Jonathan Gottlieb

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2:22-11471 Cherry Man Industries, Inc.

Chapter 11

#26.00 Cont'd Status Conference re: Chapter 11 Case
fr. 03/22/22, 03/29/22, 04/07/22, 04/12/22, 4/14/22,
4/26/22, 5/5/22, 5/10/22, 5/17/22, 5/20/22, 5/31/22,
6/14/22, 6/21/22, 6/30/22, 7/8/22, 7/26/22, 8/2/22,
9/1/22, 9/6/22, 9/20/22, 9/28/22, 10/6/22, 10/11/22,
10/25/22, 11/1/22, 11/3/22, 11/4/22, 11/18/22,
12/6/22, 12/8/22, 12/20/22, 1/3/23, 1/24/23, 2/7/23,
3/7/23, 4/4/23, 4/25/23, 6/13/23, 7/18/23, 8/15/23,
9/19/23, 10/31/23, 11/14/23

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Continue the status conference as set forth below. The hearing on the cash collateral motion has already been continued (see Order, dkt. 681).

Appearances are not required on 1/23/24. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

This Court has no issues to raise *sua sponte* at this time.

(2) Dates/procedures. This case was filed on 3/17/22.

(a) Bar date: 9/13/22 (per Order, dkt. 356, and Proof of Service, dkt. 359)

Admin bar date: 10/31/22 (per Order, dkt. 463, and Proof of Service, dkt. 468 & 469)

(b) Procedures Order: dkt. 9 (served on 4/11/22, dkt. 109)

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(c) Plan/Disclosure Statement: TBD

(d) Continued status conference: 2/20/24 at 1:00 p.m. No written status report required.

Tentative Ruling for 10/31/23:

Continue all matters in the case scheduled for today to 1/23/24 at 1:00 p.m. to allow time for the parties to continue to engage in settlement discussions, and for Trustee to file an amended complaint, which is currently due 12/29/23.

See 2:22-ap-01199-NB, adv. dkt. 47 (unless the parties agree to further extend that deadline, which they may agree without prior order of this Court, but in that event they are directed to memorialize their agreement in a written stipulation and/or agreed order). Appearances are not required on 10/31/23. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Note: This Court's previous orders regarding the use of cash collateral continue in effect (e.g., replacement liens), and unless the parties seek the assistance of this Court regarding any modification of adequate protection, this Court will presume that any continued use of cash collateral is by agreement, as permitted by 11 U.S.C. 363(c).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

[PRIOR TENTATIVE RULINGS DELETED]

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| Party Information |
|--------------------------|

Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn
Hamid R Rafatjoo

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David B Golubchik

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By

Hamid R Rafatjoo

Krikor J Meshefejian

David B Golubchik

Jonathan Gottlieb

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2:22-11471 Cherry Man Industries, Inc.

Chapter 11

Adv#: 2:22-01199 Rafatjoo v. Cherry Man Industries, LLC et al

#27.00 Cont'd Status Conference re: Complaint for: 1. Declaratory Relief; 2. Reformation of Contract; 3. Breach of Covenant of Good Faith and Fair Dealing ; and 4. Unjust Enrichment
fr. 1/24/23, 3/21/23, 4/25/23, 6/13/23, 8/15/23, 9/19/23, 10/31/23

Docket 1

***** VACATED *** REASON: Order approving stip dismissing adversary approved on 12/20/23 [dkt. 50]**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
|--------------------------|

Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn
Hamid R Rafatjoo
David B Golubchik

Defendant(s):

Cherry Man Industries, LLC

Represented By
Brian M Metcalf

CSC Generation Holdings, Inc.

Represented By
Brian M Metcalf

Plaintiff(s):

Hamid R. Rafatjoo

Represented By
Krikor J Meshefejian
David B Golubchik

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CONT... Cherry Man Industries, Inc.

Chapter 11

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By

Hamid R Rafatjoo

Krikor J Meshefejian

David B Golubchik

Jonathan Gottlieb

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-14986 ASE Construction, Inc.

Chapter 11

#28.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 1/09/24

VELOCITY COMMERCIAL CAPITAL, LLC
vs
DEBTOR

Docket 109

Tentative Ruling:

Tentative Ruling for 1/23/24:

Please see the tentative ruling for the Status Conference (calendar no. 29, 1/23/24 at 1:00 p.m.).

Tentative Ruling for 1/9/24:

Please see the tentative ruling for the Status Conference (calendar no. 3, 1/9/24 at 1:00 p.m.).

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| Party Information |
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Debtor(s):

ASE Construction, Inc.

Represented By
Anthony Obehi Egbase

Movant(s):

Velocity Commercial Capital, LLC

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-14986 ASE Construction, Inc.

Chapter 11

#29.00 Cont'd status conference re: Chapter 11 case
fr. 9/12/23, 9/19/23, 10/3/23, 10/17/23, 10/31/23,
12/19/23, 1/2/24, 1/09/24

Docket 1

Tentative Ruling:

Tentative Ruling for 1/23/24:

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

(1) Current issues

(a) Motion for relief from the automatic stay (dkt. 109 & 110, "R/S Motion") of Velocity Commercial Capital, LLC ("Movant"), Debtor's opposition (dkt. 115), Movant's reply (dkt. 117), Notice of continued hearing (dkt. 125, amended by dkt. 126), proof of service of R/S Motion on twenty-largest unsecured creditors (dkt. 127)

The tentative ruling is to grant the R/S Motion for the reasons set forth in the motion and reply papers as set forth below, but with no foreclosure for a period to be addressed at the hearing.

(i) Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(2).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

(ii) Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)

(3).

**United States Bankruptcy Court
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1:00 PM

CONT...

ASE Construction, Inc.

Chapter 11

(iii) Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's actual ruling.

(b) Plan (dkt. 123) and Disclosure Statement ("D/S," dkt. 124)

The tentative ruling is that Debtor's Plan and D/S contemplate rental income from Debtor's interest in the 8420 South Broadway property, but that is a minor portion of Debtor's projected cash flow. Accordingly, if this Court is persuaded to adopt its tentative ruling on the R/S Motion (see above), then Debtor is directed to address whether it will need to file an amended Plan and D/S and at least an amended Exhibit "I" to the D/S (dkt. 124, at PDF pp. 19-20).

If this Court is persuaded to grant the R/S Motion, the tentative ruling is to set a **deadline of 2/20/24** for Debtor to file (BUT NOT SERVE - except on the U.S. Trustee) an amended Plan and D/S.

(2) Dates/procedures. This case was filed on 8/3/23.

(a) Bar date: 12/5/23 (dkt. 38) (timely served, dkt. 39)

(b) Procedures Order: dkt. 6 (timely served, dkt. 9)

(c) Plan/Disclosure Statement (dkt. 123, 124): timely filed on 1/9/24
(DO NOT SERVE - except on the U.S. Trustee). See
Procedures Order.

(d) Continued status conference: 3/5/24 at 1:00 p.m. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

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| Party Information |
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**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

CONT... ASE Construction, Inc.

Chapter 11

Debtor(s):

ASE Construction, Inc.

Represented By
Anthony Obehi Egbase

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-13086 The Amadeus Trust under Declaration of Trust of Ja

Chapter 11

#30.00 Cont'd hrg re: Motion of Debtor and Debtor-In-Possession for an Order Pursuant to 11 U.S.C. § 363(b)(1): (1) Approving the Debtor's Use and Lease of Its Real Property as a Short-Term Vacation Rental; and (2) Approving a Related Property Management Agreement for the Management and Lease of the Debtor's Real Property
fr. 9/12/23, 10/3/23, 10/17/23, 10/31/23, 12-19-23, 1/09/24

Docket 39

***** VACATED *** REASON: Per stipulation for continuance (dkt. 148)
and order thereon.**

Tentative Ruling:

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| Party Information |
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Debtor(s):

The Amadeus Trust under

Represented By
Jeffrey I Golden
Christopher A, Minier

Movant(s):

The Amadeus Trust under

Represented By
Jeffrey I Golden
Christopher A, Minier

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-13086 The Amadeus Trust under Declaration of Trust of Ja

Chapter 11

#31.00 Cont'd hrg re: U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust's Motion to Dismiss Chapter 11 Case, or in the Alternative Motion to Appoint a Ch. 11 Trustee fr. 9/19/23, 10/3/23, 10/17/23, 10/31/23, 11/14/23, 12/19/23, 01/09/24

Docket 51

***** VACATED *** REASON: Per stipulation for continuance (dkt. 148)
and order thereon.**

Tentative Ruling:

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| Party Information |
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Debtor(s):

The Amadeus Trust under

Represented By
Jeffrey I Golden
Christopher A, Minier

Movant(s):

U.S. Bank Trust, N.A., as Trustee for

Represented By
Christopher M McDermott

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

1:00 PM

2:23-13086 The Amadeus Trust under Declaration of Trust of Ja

Chapter 11

#32.00 Cont'd Status Conference re: Chapter 11 Case
fr. 6/13/23, 8/8/23, 9/12/23, 10/3/23, 10/17/23,
10/31/23, 11/14/23, 12/19/23, 1/09/24

Docket 1

***** VACATED *** REASON: Per stipulation for continuance (dkt. 148)
and order thereon.**

Tentative Ruling:

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| Party Information |
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Debtor(s):

The Amadeus Trust under

Represented By
Jeffrey I Golden
Christopher A, Minier

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2024

Hearing Room 1545

2:00 PM

2:23-13086 The Amadeus Trust under Declaration of Trust of Ja

Chapter 11

#1.00 Hrg re: Second Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Golden Goodrich LLP, General Insolvency Counsel for Debtor and Debtor-In-Possession

Docket 138

Tentative Ruling:

Allow \$138,422.00 in fees and \$2,471.10 in expenses, for a total award of \$150,893.60, pursuant to the fee application (dkt. 138, 139) and the supplemental declaration (dkt. 153). Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Proposed order: Unless otherwise ordered, Applicant is directed to lodge a proposed order on the foregoing matter via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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| Party Information |
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Debtor(s):

The Amadeus Trust under

Represented By
Jeffrey I Golden
Christopher A, Minier