

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

Tuesday, July 30, 2024

Hearing Room 1545

9:00 AM
2:00-00000

Chapter

- #1.00** Hearings in Judge Bason's courtroom (1545) are simultaneously:
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 - (2) via ZoomGov video, and
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ZoomGov Instructions for all matters on today's calendar:

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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).

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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 -

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Los Angeles
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Hearing Room 1545

10:00 AM

2:22-15365 Eneida Marlene Mejia

Chapter 13

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

BRIDGECREST CREDIT COMPANY, LLC
vs
DEBTOR

Docket 50

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

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eneida Marlene Mejia

Represented By
Nicholas M Wajda

Movant(s):

Bridgecrest Credit Company, LLC as

Represented By
Cheryl A Skigin

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, July 30, 2024

Hearing Room 1545

10:00 AM

2:23-17803 Mark Z May

Chapter 13

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

SANTANDER CONSUMER USA INC.
vs
DEBTOR

Docket 43

Tentative Ruling:

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. 47).

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.

Party Information

Debtor(s):

Mark Z May

Represented By
Axel H Richter

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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

10:00 AM

2:24-13331 Fred Jasso

Chapter 7

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

CAPITAL ONE AUTO FINANCE
vs
DEBTOR

Docket 9

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.")

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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) 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).

Effective date of relief

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

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CONT... Fred Jasso
(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.

Party Information

Debtor(s):

Fred Jasso

Represented By
Raymond Perez

Movant(s):

Capital One Auto Finance, a division

Represented By
Cheryl A Skigin

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:24-13669 Sergei Stebliukov

Chapter 7

#4.00 Hrg re: Motion for relief from stay [PP]

VOLVO CAR FINANCIAL SERVICES, LLC
vs
DEBTOR

Docket 9

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.")

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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) 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).

Effective date of relief

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

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CONT... Sergei Stebliukov
(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.

Party Information

Debtor(s):

Sergei Stebliukov

Represented By
Richard G. Heston

Movant(s):

Volvo Car Financial Services LLC

Represented By
Garry A Masterson

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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

10:00 AM

2:24-14074 Viengkham Leuangkhamson

Chapter 7

#5.00 Hrg re: Motion for relief from stay [PP]

LBS FINANCIAL CREDIT UNION
vs
DEBTOR

Docket 11

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.")

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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) 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).

Effective date of relief

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

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CONT... Viengkham Leuangkhamson
(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.

Party Information

Debtor(s):

Viengkham Leuangkhamson

Represented By
Nicholas M Wajda

Movant(s):

LBS Financial Credit Union

Represented By
Karel Rocha

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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

10:00 AM

2:22-15868 LARRY DONNELL ROBINSON

Chapter 13

#6.00 Hrg re: Motion for relief from stay [UD]

THOMAS SAFRAN & ASSOCIATES
VS
DEBTOR

Docket 107

Tentative Ruling:

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. 110).

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.

Party Information

Debtor(s):

LARRY DONNELL ROBINSON

Represented By
Steven A Alpert

Movant(s):

Thomas Safran & Associates

Represented By
Catherine Schlomann Robertson

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

10:00 AM

2:24-13887 David Stephens

Chapter 13

#7.00 Hrg re: Motion for relief from stay [UD]

SANDRA CRISTOBAL
vs
DEBTOR

Docket 27

Tentative Ruling:

Appearances required. The tentative ruling is to grant the motion, except for the requested "*in rem*" relief, for the following reasons.

Proposed order: Unless otherwise ordered, Movant is directed to lodge proposed order(s) on this 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.

Key documents reviewed (in addition to motion papers): Debtor's opposition (dkt. 37); reply by movant Sandra Cristobal (dkt. 38).

Analysis

The undisputed timeline, and this Court's tentative rulings, are as follows:

4/4/24	Trustee under deed of trust conducts a foreclosure sale , and a high bid of \$559,000.00 is made.
4/12/24	Ms. Cristobal timely submits notice of intent to (over)bid per the procedures in Cal. Civ. Code ("CC") 2924m(c)(4). See MPA (dkt. 27-1) p. 9:13-14 & n.6.
5/16/24	Ms. Cristobal's timely submits her (over)bid . <i>Id.</i> p. 9:17-19 & n. 7.
5/17/24	Bankruptcy petition filed by Debtor (the " Petition Date ").
5/20/24*	No additional bids by deadline, so Ms. Cristobal is "deemed the last and highest bidder" (CC 2924m(c)(4)(B)).

On the one hand, the tentative ruling is that Debtor is

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correct that the sale itself does not "relate back" to the date of the foreclosure sale - in fact, the California statutes are explicit that the sale is "deemed final upon the acceptance of the last and highest bid" (CC 2924h(c)) and that a bid from an "eligible bidder" is "deemed the last and highest bidder" as of 5:00 p.m. "on the 45th day after the trustee's sale" ((CC 2924m(c)(4)(B)), *i.e.*, postpetition, not as of the prepetition foreclosure auction on 4/4/24.

On the other hand, the tentative ruling is that the lack of relation-back is irrelevant because the automatic stay does not apply at all. The sale was deemed final by operation of law, not by any "act" of Ms. Cristobal to "obtain possession" of the subject property, or to "exercise control over" such property, so the automatic stay of 11 U.S.C. 362(a)(3) does not apply (emphasis added). See *City of Chicago, Illinois v. Fulton*, 592 U.S. 154 (2021). Nor has Debtor pointed to any other paragraph of 11 U.S.C. 362(a) that would apply.

In other words, although it is true that the automatic stay would have prevented any "act" by Ms. Cristobal to finalize her purchase of the property out of foreclosure, she did not take any postpetition "act." Her prepetition bid simply turned out postpetition to be the last and highest bid. That had the effect of making the sale final, but not by any "act" of Ms. Cristobal, so Debtor has not shown that Ms. Cristobal violated the automatic stay in purchasing the property out of foreclosure.

**Note:* This Court calculates that 45 days after the foreclosure sale would be Sunday 5/19/24. But Ms. Cristobal has asserted, and Debtor does not dispute, that the last day for any additional overbids was Monday 5/20/24. This Court expresses no opinion about which date is correct.

5/28/24

Foreclosure trustee, having prepared the **trustee's deed**, sends it to Ms. Cristobal.

The tentative ruling is that, on the one hand, the acts by the foreclosure trustee of preparing and mailing the deed to Ms. Cristobal are "acts" that further Ms. Cristobal's intent to "obtain possession" of the subject property, or to "exercise control over"

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such property (11 U.S.C. 362(a)(3)), and therefore arguably could have violated the automatic stay. On the other hand, the tentative ruling is that (a) by that time Debtor had no cognizable interest in the subject property, so in fact the automatic stay did not apply, or alternatively (b) annulment of the stay is appropriate.

(a) Debtor had no cognizable interest in the subject property as of the Petition Date

Debtor has not cited any authority that he retained any cognizable interest in the subject property after foreclosure. He had already lost all rights as of the date of the foreclosure sale, and the only uncertainty was as to whom he had lost those rights - the high bidder on 4/4/24 or Ms. Cristobal or some other "eligible bidder" under CC 2924m(c).

Debtor did not have even bare legal title. The California foreclosure statute provides that "[t]itle to the property shall remain with the mortgagor or trustor or successor in interest until the property sale is deemed final as provided in this section." CC 2924m(f).

In addition, any right to cure the defaults had expired five days prior to the date of the foreclosure sale. See CC 2924c(a)(1)&(c). Nor does Debtor cite authority that he continued to have any other part of the "bundle of rights" that comprised his pre-foreclosure interest in the property.

Accordingly, the tentative ruling is that the automatic stay does not apply because there was no "property of the estate" at issue as of the Petition Date or thereafter. See 11 U.S.C. 362(a)(3); *In re Perl*, 811 F.3d 1120, 1128 (9th Cir. 2016) (automatic stay did not apply when debtor "had no remaining legal interest in the property" as of the petition date and, although he had "actual possession" that "has no bearing" on whether he had a "cognizable possessory interest" in the property) (emphasis added).

(b) Alternatively, annulment of the stay is appropriate

Debtor's opposition (dkt. 37 at pp. 4-5) does not address the annulment factors and the analysis set forth in Ms. Cristobal's motion papers (dkt. 27). The tentative ruling is that

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any arguments against annulment have been waived or forfeited, and that annulment is appropriate for the reasons set forth in Ms. Cristobal's motion papers.

(c) Conclusion as to trustee's deed: no stay violation

For the foregoing reasons, the tentative ruling is that Debtor has not established that the preparation and delivery of the trustee's deed violated the automatic stay, or is otherwise void or ineffective.

5/30/24

Ms. Cristobal **records the deed**, within the 60 days required by CC 2924h(c), so it relates back to foreclosure sale date of 4/4/24.

Although this recording is a postpetition "act" within the meaning of 11 U.S.C. 362(a)(3), it is excepted from the automatic stay under 11 U.S.C. 362(b)(3). *See In re Bebensee-Wong*, 248 B.R. 820, 823 (9th Cir. BAP 2000) (decided under parallel provisions of prior statute); *In re Ford*, 2022 WL 17742285 at *4 (Bankr. C.D. Cal. 2022) (applying *Bebensee-Wong* under current version of statute)). Specifically, recording the trustee's deed is an act to "perfect" an interest in property that would be effective, under California foreclosure statutes, even as against "an entity that acquires rights in such property before the date of perfection" (11 U.S.C. 546(b)(1)(A)).

For example, suppose hypothetically that Debtor had purported to transfer the property to a third party purchaser after the foreclosure sale, but "before the date of perfection" by Ms. Cristobal. In that situation, no argument or authority cited by Debtor would suggest that the third party purchaser who attempted to "acquire[] rights in such property" would have acquired anything under California law.

Nor does Debtor cite any authority that, in any other hypothetical situation, any entity could have acquired rights in the property that would have trumped Ms. Cristobal's rights to perfect her interest in the property under CC 2924m. The whole point of the statute is to provide the winning bidder, after the foreclosure sale, with title that is free of the borrower's pre-foreclosure interests, and Debtor offers no reason why the winning bidder would be subject to the risk that an entity could

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acquire a better interest in the property during the period that the statute provides for recording the trustee's deed.

Therefore, the tentative ruling is that the automatic stay does not apply to Ms. Cristobal's act of recording the trustee's deed because she qualifies for an exception to the automatic stay under 11 U.S.C. 362(b)(3) and 546(b)(1)(A).

In sum, the tentative ruling is that the automatic stay does not apply. First, Ms. Cristobal did not engage in any "act" that would have violated the automatic stay when her prepetition bid was deemed by operation of law to be the highest and best bid after the Petition Date. Second, the foreclosure trustee did not violate the automatic stay by preparing and sending her the trustee's deed, because by that time Debtor no longer had any cognizable legal or equitable interest in the subject property that could pass to the bankruptcy estate. Third, Ms. Cristobal did not violate the automatic stay by recording the trustee's deed, and thereby perfecting her interest, because that act qualifies for the exception to the automatic stay under section 362(b)(3).

For all of these reasons, it is appropriate to grant Ms. Cristobal's motion insofar as issuing an order ruling that the automatic stay was not violated. Alternatively, it is appropriate to grant annulment of the stay, effective immediately (by waiving the 14-day period of Rule 4001(a)(3), Fed. R. Bankr. P).

The tentative ruling is to deny only one portion of Ms. Cristobal's motion. Her request to grant "*in rem*" relief from the automatic stay (dkt. 27, p. 5) is not supported by any showing of repeated bankruptcy petitions or other acts that would appear to warrant such relief. Cf. *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017) (*in rem* relief is appropriate in different circumstances); *In re Choong* (Bankr. C.D. Cal., Case No. 2:14-bk-28378-NB, dkt. 31) (same).

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.

Party Information

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Chapter 13

Debtor(s):

David Stephens

Represented By
Dana M Douglas

Movant(s):

Sandra Cristobal

Represented By
Marina Fineman

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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2:24-15237 Sandy Marie Rodriguez

Chapter 13

#8.00 Hrg re: Motion in Individual Case for Order
Imposing a Stay or Continuing the Automatic
Stay as the Court Deems Appropriate

Docket 11

Tentative Ruling:

Grant in part and deny in part, as set forth below. Appearances required.

Key documents reviewed (in addition to motion papers): Opposition of secured creditor Rediger Investment Mortgage Fund ("Secured Creditor") (dkt. 13).

Analysis

(1) Secured Creditor has not established a presumption of a lack of good faith
Secured Creditor argues that a presumption of a lack of good faith arises under 11 U.S.C. 362(c)(3)(C)(i)(III) because Debtor's prior bankruptcy case was dismissed and, allegedly, there has not been "a substantial change in the personal or financial affairs" of Debtor since that dismissal. Opp. (dkt. 13) p. 3:13-4:5. On the one hand, as Secured Creditor points out, to the extent that Debtor relies on contributions from family or others, she has not provided any evidence that those persons are willing and able to provide such contributions. *Id.*

On the other hand, Debtor's declaration is evidence of other changes in her personal and financial circumstances. She declares that: (A) the tenants residing in Debtor's Property who were not paying rent - and whom she could not evict during the COVID-related moratoria on evictions - have now been evicted and can be replaced with new tenants (Stay Motion (dkt. 11) at para. 4(a)(1)(B)); and (B) commencing in February 2024 and continuing through June 2024, Debtor has made payments to Secured Creditor in excess of \$30,000 (*id.*, Ex. 1).

The tentative ruling is that Debtor's declaration shows substantially changed circumstances, so Secured Creditor has not shown that this ground for a presumption of a lack of good faith applies (section 362(c)(3)(C)(i)(III)). True, conceivably there might be other grounds why the presumption applies,

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Chapter 13

but Secured Creditor has neither argued nor established such grounds. In any event, supposing for the sake of discussion that any such presumption could exist, Debtor could still rebut the presumption by providing "clear and convincing" evidence of good faith. See 11 U.S.C. 362(c)(3)(C).

(2) Whether or not a presumption applies, Debtor has the ultimate burden to establish good faith

Even if there is no *presumption* of a lack of good faith, the ultimate burden is still on Debtor to show good faith. See 11 U.S.C. 362(c)(3)(B). The question, therefore, is whether under either standard (with or without a presumption) Debtor has shown good faith.

(3) Debtor's current proposed plan appears to be unrealistic, but Debtor's considerable efforts appear to support a finding of good faith if she will commit to ongoing payments with termination of the automatic stay if she fails to maintain those payments

Debtor's problem in showing good faith is the math. Her proposed chapter 13 plan does not appear to be realistic, even supposing for the sake of discussion that she can provide evidence of the very substantial monthly contributions from her family and boyfriend, on which she relies. See Stay Motion (dkt. 11) at para. 4(a)(3)(F) (reliance on contributions).

Secured Creditor calculates that Debtor likely will need to pay it in excess of \$9,900.00 per month. See Opp. (dkt. 13) pp. 3:25-4:2 & n. 1. But Debtor's entire proposed monthly plan payment is only \$8,533.00 (dkt. 17, p. 3). In addition, some of that plan payment must be devoted to paying priority taxes, the Chapter 13 Trustee's fees, and Debtor's lawyer, leaving a proposed payment of only \$7,389.92 (*id.*, p. 7) to Secured Creditor.

In addition, Debtor's monthly disposable income depends on earnings of \$1,673.10, plus rents of \$3,200.00, plus contributions of \$7,000.00. See Sch. I (dkt. 14) at PDF pp. 21-22, lines 4 & 8h. If any one of those things were to have a momentary decline, Debtor would fall behind.

Moreover, Debtor's projected expenses do not include anything for home maintenance, repair, and upkeep (Sch. J, dkt. 14 at PDF p. 23, line 4c), or health insurance (*id.*, line 15b), and she projects only \$30.00 per month for medical and dental expenses (*id.*, line 11), and has a very lean budget in other ways (*id.*, *passim*).

In sum, it appears that Debtor is trying mightily to be able to retain her

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Chapter 13

home, but on the present record that appears to be unrealistic. That said, it is not uncommon for an initial proposed chapter 13 plan to need adjustments, and for family contributions to increase as needed, or for debtors to adjust their thinking and switch to a refinance or sale of property, particularly when, as in this case, it appears that the property might have substantial equity. See Sch. D (dkt. 14 at PDF p. 11). In addition, "the proof is in the pudding": Debtor has provided evidence, without contradiction from Secured Creditor, that she has made substantial payments recently. See Stay Motion (dkt. 11) Ex. 1.

Based on the foregoing, the tentative ruling is that Debtor will have met her burden to show that the filing of this case was in good faith (11 U.S.C. 362(c)(3)(B)) *if* she commits to continue "putting her money where her mouth is" by agreeing to an adequate protection order ("APO") that would require her to make her proposed payments of \$7,389.92 per month (dkt. 17, p. 7). To be clear, those monthly payments might well need to be increased if Secured Creditor were to file a motion seeking such relief (11 U.S.C. 362(d) & 363(e), or before any proposed chapter 13 plan could be confirmed; and alternatively Debtor might need to pursue a refinance or sale of the property or other options. But for present purposes this Court cannot presume that Debtor is wrong about her calculation of the monthly payment she has proposed: the issue is only whether Debtor is making a "good faith" estimate and is prepared to make adequate protection payments, not whether Debtor's (good faith) estimate turns out to be correct.

(4) Conclusion

The tentative ruling is to grant the Stay Motion conditioned on Debtor submitting to an APO requiring her to pay \$7,389.92 per month to Secured Creditor, with standard terms and conditions (*e.g.*, a grace period of 10 to 14 days; no more than three opportunities to fall behind and then catch up; etc.). At the hearing the parties are directed to address whether they will submit to this tentative ruling (all rights are reserved to contest this tentative ruling but then submit to it as a fallback position, or take any other approach).

After the hearing date *this Court will prepare an order* and the tentative ruling is to include the following language in that order:

The stay of 11 U.S.C. 362(a) applies subject to the following modifications and conditions:

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CONT...

Sandy Marie Rodriguez

Chapter 13

(1) Service and reconsideration. Any party in interest who was not timely served in accordance with FRBP 7004 (incorporated by FRBP 9014(b)) is hereby granted through 14 days after proper service to seek reconsideration, including retroactive relief (under FRBP 9023 and/or 9024). Any such person (a) may set a hearing on 14 days' notice, (b) may appear by telephone (if arrangements are made per Judge Bason's posted procedures), and (c) may present all arguments orally at the hearing (*i.e.*, no written argument is required). If written arguments appear necessary then this court will set a briefing schedule at the hearing.

(2) Reasons. (a) It appears appropriate to continue/impose the automatic stay, and to continue/impose it as to all persons rather than just as to selected persons, because one purpose of the automatic stay is to preventing a "race to collect" that could unfairly advantage some creditors at the expense of others. (b) To prevent possible abuse, this Court provides the foregoing simple process for reconsideration.

(3) Very limited ruling. This Court's tentative ruling to grant the foregoing relief is solely for purposes of this motion, and is not intended to have any binding effect with respect to any future assertions by any party in interest regarding the existence or lack of existence of good faith in any other context.

Party Information

Debtor(s):

Sandy Marie Rodriguez

Represented By
Jaime A Cuevas Jr.

Movant(s):

Sandy Marie Rodriguez

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:22-14384 Ritchie Roberts and Bernabe Faunillan Ceballos

Chapter 13

#9.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 6/4/24

FIRST-CITIZENS BANK & TRUST COMPANY
vs
DEBTOR

Docket 73

Tentative Ruling:

Tentative Ruling for 7/30/24:

Appearances required.

At the hearing on 6/4/24 this Court was persuaded to continue this matter to today to provide time for the results of Debtors' application to the California Mortgage Relief Program to become available. See Order (dkt. 77) at ¶ 17. 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 6/4/24:

Appearances required. There is no tentative ruling, but the parties should be prepared to address (a) the status of Debtors' application to the California Mortgage Relief Program, (b) whether the alleged arrears have been brought current, and/or (c) whether they will agree to the terms of an adequate protection order (see Debtor's response, dkt. 75).

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

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CONT... Ritchie Roberts and Bernabe Faunillan Ceballos Chapter 13

ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

Ritchie Roberts

Represented By
Michael T Reid

Joint Debtor(s):

Bernabe Faunillan Ceballos

Represented By
Michael T Reid

Movant(s):

First-Citizens Bank & Trust

Represented By
Cassandra J Richey
Darlene C Vigil

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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

10:00 AM

2:22-14583 Dany R West and Nicole M West

Chapter 13

#10.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 6/11/24

NATIONSTAR MORTGAGE, LLC
vs
DEBTOR

Docket 40

Tentative Ruling:

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 5/29/24 Stipulation for Continuance (dkt. 43) p. 2:7–9 (stating that the parties “are working together to allows Debtors time to either cure the post-petition arrears and enter into a ‘Stay-Current’ Adequqte Protection Order or otherwise enter into an Adequate Protection Order on the Relief Motion to cure the post-petition arrears”).

Note: Debtors’ response to the R/S Motion (dkt. 42) is missing multiple pages, and is not supported by a sufficient declaration. To the extent the parties are unable to agree to an adequate protection order and **if** this Court is persuaded to continue the hearing and grant Debtor any additional opportunity to respond, the tentative ruling is to **set a deadline of 8/6/24** for Debtor to file and serve a corrected opposition that includes the omitted pages and Debtor’s declaration.

Party Information

Debtor(s):

Dany R West

Represented By
Chris Gautschi

Joint Debtor(s):

Nicole M West

Represented By
Chris Gautschi

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CONT... Dany R West and Nicole M West

Chapter 13

Movant(s):

Nationstar Mortgage LLC

Represented By
Jennifer C Wong
Renee M Parker

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

10:00 AM

2:23-17910 Jose David Gutierrez

Chapter 13

#11.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 6/11/24

U.S. BANK NATIONAL ASSOICATION
vs
DEBTOR

Docket 53

Tentative Ruling:

Tentative Ruling for 7/30/24:

Appearances required.

At the hearing on 6/11/24 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.

At the 6/11/24 hearing, this Court directed Movant to provide written notice of this continued hearing and file a corresponding proof of service no later than 6/13/24. There is no indication on the docket that Movant did either. Movant should be prepared to address this omission at the 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.

Tentative Ruling for 6/11/24:

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. 55).

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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CONT... Jose David Gutierrez Chapter 13
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.

Party Information

Debtor(s):

Jose David Gutierrez

Represented By
Donald E Iwuchuku

Movant(s):

U.S. BANK NATIONAL

Represented By
Fanny Zhang Wan
Sean C Ferry

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

10:00 AM

2:22-15246 Zaida Araceli Lopez Montes

Chapter 13

#12.00 Hrg re: Motion for reconsideration to vacate and set aside the order for relief from the automatic stay pursuant Federal Rules of Bankruptcy Pcedure Rule 9024

Docket 67

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.

Key documents reviewed (in addition to motion papers): Order provisionally granting application and setting hearing on shortened notice (dkt. 69, the "OST"). (Because this matter has been set for hearing on shortened notice, the deadline for opposition papers has not elapsed as of the preparation of this tentative ruling. This Court will review any timely filed opposition papers prior to the hearing.)

(1) Debtor's apparent failure to provide notice of the Reconsideration Motion as directed by the OST

The OST (dkt. 69) required Debtor to provide notice of the Reconsideration Motion (dkt. 67) to U.S. Bank, N.A. ("Secured Creditor") no later than 7/22/24. There is no indication on the docket that Debtor complied with the notice requirements of the OST. Why not?

(2) Debtor's failure to follow the posted "Procedures of Judge Bason" (available at www.cacb.uscourts.gov) regarding motions for reconsideration

As set forth in the posted "Procedures of Judge Bason" (the "Procedures") (available at www.cacb.uscourts.gov), any party seeking reconsideration of relief granted to a third party must "describe your efforts to obtain that third party's consent to reconsideration and any response."

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CONT... Zaida Araceli Lopez Montes

Chapter 13

Procedures at section I.C. (p. 2). Neither the Reconsideration Motion (dkt. 67) nor the declaration filed in support thereof (dkt. 68) contains any description of what efforts Debtor made to obtain Secured Creditor's consent to reconsideration. Why not?

(3) Debtor's failure to specify the date of any foreclosure sale

This Court granted relief from the automatic stay to Secured Creditor on 4/22/24. Dkt. 61. Has Secured Creditor noticed a foreclosure sale of the Property? If so, when?

Party Information

Debtor(s):

Zaida Araceli Lopez Montes

Represented By
Travis M. Poteat

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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

10:00 AM

2:23-14528 Brian D Witzer

Chapter 7

#13.00 Hrg re: Declaration alleging default under
adequate protection order

Docket 192

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.

Key documents reviewed: R/S Motion filed by Royal Business Bank (dkt. 38–40), Debtor's opposition (dkt. 44), Bank's reply (dkt. 50), Adequate protection order (dkt. 55, the "10/10/23 APO"), Interim order granting R/S Motion in part (dkt. 188), Bank's declaration alleging default under 10/10/23 APO (dkt. 192, the "Default Declaration"), Debtor's reply (dkt. 193), Order regarding hearing on Default Declaration (dkt. 194)

Party Information

Debtor(s):

Brian D Witzer

Represented By
David S Hagen
Michael S Kogan

Trustee(s):

Sam S Leslie (TR)

Represented By
Jeremy Faith

**United States Bankruptcy Court
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Hearing Room 1545

11:00 AM

2:23-16106 Octavio Lara

Chapter 7

#1.00 Hrg re: Trustee's final report and account;
Application for fees and expenses
[David M Goodrich, Chapter 7 Trustee]

Docket 24

Tentative Ruling:

Approve the Chapter 7 Trustee's final report, grant the application for \$1,661.86 in fees plus \$30.06 in expenses for a total of \$1,691.92, and authorize and direct payment of that sum out of the assets of the estate. 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(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)).

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).

Party Information

Debtor(s):

Octavio Lara

Represented By
D Justin Harelik

Trustee(s):

David M Goodrich (TR)

Pro Se

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Hearing Room 1545

11:00 AM

2:23-15530 Young C Cho

Chapter 7

#2.00 Hrg re: Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens and Interests Subject to Overbid

Docket 67

Tentative Ruling:

Grant the sale motion, subject to overbids, pursuant to 11 U.S.C. 363(b), (f), and (m), as further set forth below. 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, dkt. 67-69): N/A (no opposition on file as of the preparation of this tentative ruling).

Analysis:

As to the "free and clear" aspect of the sale, this Court notes that the motion does not cite any cases, but it does cite the statute and the tentative ruling is to grant the motion on each of the following alternative grounds: under section 363(f)(1) (as to all liens and other interests per *In re Spanish Peaks Holdings II, LLC*, 872 F.3d 892, 900-901 (9th Cir. 2017)), (f)(2) (as to JPMorgan Chase Bank, N.A.), (f)(3) (as to all liens and other interests), (f)(4) (as to purported lienholder Jay H. Kim), and (5) (as to all liens and other interests, per *In re Jolan*, 403 B.R. 866 (Bankr. W.D. Wash. 2009)). See *generally* the "Procedures of Judge Bason" (available at www.cacb.uscourts.gov; search for "363(f)").

As to the "good faith" aspect of the sale, if there is a winning overbidder then, as contemplated in the motion, that overbidder will have to submit a good faith declaration if they want a good faith finding under section 363(m).

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CONT... Young C Cho

Chapter 7

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.

Party Information

Debtor(s):

Young C Cho

Represented By
Julie J Villalobos

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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11:00 AM

2:22-16299 Yolanda Wafer Narcisse

Chapter 7

#3.00 Hrg re: Debtor's Motion for Contempt for Violation of the Discharge Injunction

Docket 18

Tentative Ruling:

Award \$2,000.00 against creditor Navy Federal Credit Union ("Creditor") and in favor of Debtor, as compensation for damages sustained in connection with Creditor's violation of the discharge injunction, but deny Debtor's request to conduct a further evidentiary hearing regarding damages, and conduct no further hearings regarding Creditor's unlawful post-discharge collection activities. Appearances are not required on 7/30/24. (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.")

Proposed order(s): Unless otherwise ordered, Debtor 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.

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 at dkt. 18-20): Creditor's Opposition (dkt. 24); Debtor's Reply (dkt. 25).

Analysis

(1) Facts

Debtor filed a voluntary chapter 7 petition on 11/16/22 and received a discharge on 2/27/23 (dkt. 11). Creditor was listed on Debtor's schedules on account of an approximately \$8,400.00 credit card debt incurred in 2019. Schedule E/F (dkt. 1) at para. 4.16. Creditor received notice of Debtor's

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CONT... Yolanda Wafer Narcisse

Chapter 7

discharge. See 3/1/23 Certificate of Notice (dkt. 13) (indicating that Creditor received notice of the discharge order via the Bankruptcy Noticing Center's electronic data interchange system).

On 9/1/23, Creditor filed an action against Debtor in the Superior Court of California for the County of Placer, seeking to collect upon the roughly \$8,400.00 in discharged credit card debt. Dkt. 20, Ex. A. Debtor declares that she "received a call from someone on behalf of" Creditor regarding the action at an unspecified date "[i]n November." Debtor's Decl. (dkt. 20) at ¶ 9. She states that she "personally received a copy of the Complaint and related documents the day after Thanksgiving." Debtor's Decl. (dkt. 20) at ¶ 13.

On 1/11/24, Debtor's counsel sent written correspondence to Creditor's counsel, demanding that the action be dismissed and offering "to informally resolve this outstanding matter" for "\$25,000 in compensation, which includes attorney's fees and costs that have been incurred to date." Demand Letter (Opposition (dkt. 24-1) at Ex. B). On 1/12/24 – the day after the Demand Letter was sent – Creditor dismissed the action. Opposition (dkt. 24-1) at Ex. C.

(2) Legal standard for finding Creditor in contempt

"[A] court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1799 (2019).

The tentative ruling is that there was no objectively reasonable basis for Creditor to conclude that the filing of the action was lawful. Creditor filed the action after Debtor had received a discharge and Creditor had received notification of that discharge. Creditor appears to concede this point, stating that its collection activities "were inadvertent and promptly rectified" Opposition (dkt. 24) p. 3:6.

(3) Damages

Although Creditor violated the discharge injunction, the tentative ruling is that Debtor is not entitled to an award of damages greater than \$2,000.00. Creditor dismissed the action one day after Debtor's counsel sent Creditor's counsel the one-page Demand Letter. Preparing a simple form Demand Letter should not have required Debtor's counsel to expend a substantial

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CONT... Yolanda Wafer Narcisse

Chapter 7

amount of attorney time - no more than \$2,000.00 of services at most (and probably much less; but the tentative ruling is that, in an effort to avoid the expense to both parties of further proceedings, this is an appropriate award based on the record presented).

The tentative ruling is that setting an evidentiary hearing to permit Debtor "to fully present evidence regarding [Creditor's] improper conduct" (Sanctions Motion (dkt. 19) p. 19:27–18) would serve only to needlessly increase attorney fees and cause unnecessary delay. See *generally* Rule 1001 (Fed. R. Bankr. P.) (requiring this Court to construe the procedural rules so as "to secure the just, speedy, and inexpensive determination of every case and proceeding").

True, Debtor testifies that learning of the complaint prevented her from enjoying the Thanksgiving holiday weekend with her family. Debtor's Decl. (dkt. 20) at ¶ 12. But Debtor's situation is nothing like the authority she cites for awards of emotional distress damages.

For example, *In re Snowden*, 769 F.3d 651 (9th Cir. 2014), involved (a) repeated harassing calls to the hospital where the debtor worked, resulting in her being paged, causing her to "run to the phone thinking ... [her daughter had] an emergency" (*id.* p. 654), and forcing her to "put[] patient[s] on hold" (*id.* p. 657), and (b) instead of filing a complaint (as in this case), the creditor in *Snowden* "used an electronic funds transfer to debit Snowden's bank account for the amount due, overdrawing her account by \$816.88, including bank charges" (*id.* p. 655), which caused the debtor's finances to "careen[] out of control" (*id.*), and then when she "went to [the creditor's] office to sort out the situation" the creditor did not (as in this case) undo its violation within a day but instead told the debtor that "someone would contact her, but no one did." *Id.* (Internal quotation marks omitted in some instances.) See also *In re Dawson*, 390 F.3d 1139, 1149-50 (9th Cir. 2004) (listing examples), abrogated on other grounds by *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015); and *In re Nordlund*, 494 B.R. 507, 513, 520, 524 (Bankr. ED Cal. 2011) (creditor "chose to bombard the debtors with 24 written communications ... seemingly designed to harangue and coerce them into paying [the creditor]" for 10 months "despite nine separate requests that it stop making any demands on the debtors," including 7 letters after being informed that debtor "was being treated for anxiety and depression," and even after debtor's "psychiatrist" wrote letter).

In contrast, Debtor admits that when she contacted her bankruptcy

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CONT... Yolanda Wafer Narcisse

Chapter 7

counsel she "understood [the complaint] to likely be either a mistake" or a violation of the Bankruptcy Code that her attorney could fix (what she describes as "a fraudulent attempt to collect money from me"). Debtor Decl. (dkt. 20) p. 2:13-14. Although this Court presumes that this did not entirely alleviate Debtor's concerns, the tentative ruling is that this is nowhere near enough distress to warrant any award of emotional distress damages.

Alternatively, the tentative ruling is that the \$2,000.00 that this Court is tentatively prepared to award is sufficient to cover both the minimal time it should have taken Debtor's attorney to write a letter to Creditor and any emotional distress damages plus any deterrent award.

(4) Conclusion

Debtor's counsel could have easily demanded Creditor's voluntary dismissal of the complaint, and at most included a demand for a small dollar amount to cover attorney fees and alleged emotional distress or to serve as a deterrent. Instead, Debtor and her counsel chose to demand \$25,000.00.

The tentative ruling is that, on the record presented, Debtor and her counsel chose to "make a mountain out of a molehill," in the apparent hope of obtaining a windfall. The tentative ruling is that any attorney fees and other alleged damages over \$2,000.00 is a self-inflicted injury to Debtor and/or her attorney.

Party Information

Debtor(s):

Yolanda Wafer Narcisse

Represented By
Michael E Clark
Joseph Brian Angelo

Trustee(s):

Wesley H Avery (TR)

Pro Se

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11:00 AM

2:24-13606 Carla Lanette Martinez

Chapter 7

#4.00 Hrg re: Motion to Dismiss Chapter 7 case for cause under 11 U.S.C. section 707(a), or in the alternative, motion to extend deadline for filing motion to dismiss case under section 707(b)(3) and/or complaint under 11 U.S.C section 727 objecting to debtor's discharge

Docket 14

Tentative Ruling:

(A) Extend UST's deadlines to file either (x) a motion to dismiss this case for abuse or (y) an adversary proceeding seeking denial of Debtor's discharge and (B) to the extent UST advises this Court that Debtor's amended schedules remain deficient, set a deadline for Debtor to file amended schedules and continue the hearing, all as set forth below. Appearances required.

Proposed order(s): Unless otherwise ordered, UST 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.

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): Amended schedules (dkt. 19), Debtor's opposition (dkt. 20)

Analysis

After United States Trustee ("UST") filed the instant motion to dismiss this case under 11 U.S.C. 707(a) (dkt. 14, the "MTD"), Debtor filed amended schedules (dkt. 19). At the hearing, UST is requested and directed to advise

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CONT... Carla Lanette Martinez

Chapter 7

in what respects the UST believes the amended schedules have or have not corrected all the deficiencies that necessitated the MTD. To the extent that the amended schedules remain deficient, the tentative ruling is (A) to **set a deadline of 8/13/24** for Debtor to file a second set of amended schedules and (B) continue this hearing to **9/10/24 at 11:00 a.m.**

The delays resulting from the incomplete schedules initially filed by Debtor have prevented UST from properly assessing whether grounds exist for filing either (x) a motion to dismiss Debtor's case for abuse under 11 U.S.C. 707(b)(3) or (y) an adversary proceeding seeking denial of Debtor's discharge under 11 U.S.C. 727. Accordingly, the tentative ruling is to extend both deadlines as to UST only to 11/4/24.

Note: Debtor's opposition papers include a demand for a jury trial. Opp. (dkt. 20) p. 1:10. The tentative ruling is that there is no basis in law or in fact to demand a jury.

Party Information

Debtor(s):

Carla Lanette Martinez	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, July 30, 2024

Hearing Room 1545

11:00 AM

2:18-13055 Kimberly Michele Stills

Chapter 13

Adv#: 2:24-01139 Stills v. Sallie Mae Bank

#5.00 Status conference re: Complaint for:
Determination of discharge

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

(a) Missing response to the complaint

On 6/25/24, this Court approved a stipulation extending Defendant's deadline to respond to the complaint to 7/22/24. Adv. dkt. 8. As of the preparation of this tentative ruling, no response to the complaint is on file. The parties are directed to address this issue at the hearing.

(b) Missing status report

As of the preparation of this tentative ruling, no status report is on file. The parties are cautioned that failure to timely file status reports may result in adverse consequences.

(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)

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CONT... **Kimberly Michele Stills**

Chapter 13

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

The tentative ruling is that it would be premature to direct the parties to attend formal mediation at this time.

(c) Deadlines

This adversary proceeding has been pending since 5/21/24.

The tentative ruling is that it would be premature to set any litigation deadlines (other than a continued status conference) until after Defendant has responded to the complaint.

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.

Joint Status Report: 8/13/24.

Continued status conference: 8/27/24 at 11:00 a.m.

Party Information

Debtor(s):

Kimberly Michele Stills

Represented By
Daniela P Romero

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Central District of California
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CONT... Kimberly Michele Stills

Chapter 13

Defendant(s):

Sallie Mae Bank

Pro Se

Plaintiff(s):

Kimberly Michele Stills

Represented By
Michael E Clark

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, July 30, 2024

Hearing Room 1545

11:00 AM

2:20-19018 Dedra M Chachere-Hunt

Chapter 7

Adv#: 2:21-01253 Pringle v. Chachere-Hunt et al

#6.00 Cont'd Status Conference re: Complaint for (1) Declaratory Relief [28 U.S.C. Section 2201(a), FRBP 7001(9)]; (2) Avoidance of Fraudulent Transfer, Continuous Fraud [11 U.S.C. Section 541]; (3) Turnover and Accounting of Estate Property [11 U.S.C. Section 542]; (4) Avoidance of Fraudulent Transfer, Continuous Fraud; (5) Recovery of Avoided Transfers [11 USC Section 550]; and (6) Authorization of Sale of Property [11 U.S.C. Section 363] fr. 3/1/22, 4/12/22, 4/26/22, 5/31/22, 8/23/22, 10/11/22, 12/6/22, 2/7/23, 04/18/23, 04/25/23, 5/16/23, 6/27/23, 7/11/23, 7/19/23, 8/8/23, 9/12/23, 10/31/23, 1/09/24, 3/5/24, 5/7/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

Continue to 9/24/24 at 11:00 a.m. to allow time for consummation of the settlement approved in the bankruptcy case in chief on 4/19/24 (dkt. 75 & 78) (including recordation of a deed of trust, see Status Report (adv. dkt. 91) at para. 5). Appearances are not required on 7/30/24. (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]

Party Information

Debtor(s):

Dedra M Chachere-Hunt

Represented By
Kahlil J McAlpin

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Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, July 30, 2024

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11:00 AM

CONT... Dedra M Chachere-Hunt

Chapter 7

Defendant(s):

Dedra M. Chachere-Hunt

Represented By
Kahlil J McAlpin

Robert B. Hunt

Represented By
Kahlil J McAlpin

Candice Hunt

Represented By
Kahlil J McAlpin

Amber Hunt

Represented By
Kahlil J McAlpin

Robert Stevenson Hunt

Represented By
Kahlil J McAlpin

Plaintiff(s):

John P. Pringle

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
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Courtroom 1545 Calendar**

Tuesday, July 30, 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

#7.00 Cont'd status conference
fr. 1/23/24, 3/12/24, 5/7/24

Docket 1

***** VACATED *** REASON: Resolved by stipulation (dkt. 123) and order thereon.**

Tentative Ruling:

- NONE LISTED -

Party Information

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
Rachel Ehrlich Albanese

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 30, 2024

Hearing Room 1545

11:00 AM

2:21-19480 Howard Chorong Jeng Wu

Chapter 7

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

#8.00 Cont'd status conference
fr. 1/23/24, 5/21/24, 6/25/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

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

At the status conference on 6/25/24, this Court was advised that a stipulated judgment to be entered shortly by the District Court would resolve the instant non-dischargeability action. The parties are directed to provide an update as to whether the District Court has taken any action with respect to the stipulated judgment.

2) Standard requirements

[Intentionally omitted]

Tentative Ruling for 6/25/24 (same as for 5/21/24):

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.

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11:00 AM

CONT... Howard Chorng Jeng Wu

Chapter 7

(1) Current issues

Plaintiffs and Defendant/Debtor were also involved in litigation before the United States District Court for the Central District of California (Case No. 8:20-cv-01973-JLS) (the "District Court Action"). On 5/10/23, Plaintiffs obtained in the District Court Action an order granting Plaintiffs' motion to enforce a global settlement agreement (adv. dkt. 73, the "Settlement Enforcement Order"). Defendant/Debtor appealed the Settlement Enforcement Order to the Ninth Circuit, but on 5/9/24 the Ninth Circuit dismissed that appeal as untimely. See 5/9/24 Order, Case No. 23-55618 (the order has not been docketed in this adversary proceeding).

The parties are directed to address whether any further proceedings are contemplated that would prevent the Settlement Enforcement Order from being enforceable. If the Settlement Enforcement Order is enforceable, the parties are directed to state their positions on whether the Settlement Enforcement Order also resolves the instant dischargeability action.

2) Standard requirements

[Intentionally omitted]

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

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
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CONT... Howard Chorng Jeng Wu

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

11:00 AM

2:21-19480 Howard Chorng Jeng Wu

Chapter 7

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

#9.00 Cont'd status conference
fr. 1/23/24, 3/12/24, 4/2/24, 4/9/24, 5/21/24,
6/25/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

Stipulated judgment (adv. dkt. 84) was entered on 7/8/24. Nevertheless, the tentative ruling is to continue this Status Conference to 9/10/24 at 11:00 a.m. to provide parties an opportunity to request any post-judgment relief that might be relevant. To the extent no post-judgment relief is requested, this Court anticipates that the tentative ruling posted prior to the continued status conference will most likely be that no appearances will be required and the status conference will be taken off calendar. Appearances are not required on 7/30/24. (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]

Party Information

Debtor(s):

Howard Chorng Jeng Wu

Represented By
Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu

Represented By

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11:00 AM

CONT... Howard Chorng Jeng Wu

Chapter 7

Eric Bensamochan

Plaintiff(s):

Michael Chung-Hou Chiang

Represented By
Norma V. Garcia

Agnes Shene Hwa Chin

Represented By
Norma V. Garcia

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 30, 2024

Hearing Room 1545

11:00 AM

2:23-15048 Jorge E. Padilla

Chapter 7

#10.00 Cont'd hrg re: Motion Objecting to
Debtor's Homestead Exemption
fr. 1/23/24, 3/12/24, 4/9/24, 6/4/24,
6/25/24

Docket 41

***** VACATED *** REASON: Per order entered on 7/9/24 [dkt. 60]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge E. Padilla

Represented By
Christopher J Lauria
Christopher J Langley

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
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Tuesday, July 30, 2024

Hearing Room 1545

1:00 PM

2:24-14407 Maine Consulting, LLC

Chapter 11

#1.00 Hrg re: U.S. Trustee's Motion to dismiss or convert case

Docket 26

***** VACATED *** REASON: Case Dismissed w/ bar on 7/17/24 [dkt. 37]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maine Consulting, LLC

Represented By
Rhonda Walker

Movant(s):

United States Trustee (LA)

Represented By
Dare Law

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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Hearing Room 1545

1:00 PM

2:24-14407 Maine Consulting, LLC

Chapter 11

#2.00 Cont'd Status Conference re: Chapter 11 Case
fr. 7/9/24, 7/16/24

Docket 1

***** VACATED *** REASON: Case Dismissed w/ bar on 7/17/24 [dkt. 37]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maine Consulting, LLC

Represented By
Rhonda Walker

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 30, 2024

Hearing Room 1545

1:00 PM

2:24-14190 Davon Jermell White

Chapter 11

#3.00 Hrg re: Stipulation by and between Davon Jermell White and V & E Inc. dba Powersport Financial consenting to the use of cash collateral for the term of the case

Docket 44

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 4, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Davon Jermell White

Represented By
Stella A Havkin

Movant(s):

Davon Jermell White

Represented By
Stella A Havkin
Stella A Havkin
Stella A Havkin
Stella A Havkin

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:00 PM

2:24-14190 Davon Jermell White

Chapter 11

#4.00 Cont'd Status conference re: Chapter 11 case
fr. 6/25/24, 7/16/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

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) Debtor's disclosures/missing papers

At the 7/16/24 status conference, this Court set a deadline of 7/26/24 at noon for Debtor to file additional motion papers and disclosures. As of the preparation of this tentative ruling, that deadline has not yet elapsed. This Court will review the additional papers and disclosures once they are filed. The parties should be prepared to address the sufficiency of Debtor's disclosures, and potential remedies.

(b) Notice (dkt. 45) of (implicit) motion to approve cash collateral stipulation (dkt. 44)

The bare-bones "profit and loss" projection (proposed budget) attached to the stipulation suffers from the same deficiencies as Debtor's first amended bankruptcy Schedules I and J (dkt. 43) as discussed at the hearing on 7/16/24. See *also* Tentative Ruling for 6/25/24 (reproduced below). In addition, Debtor did not serve his papers until 7/9/24 which is only 21 days before this hearing, and therefore ignores the additional 3 days required for service via U.S. mail (Rule 9006(f), Fed. R. Bankr. P.). In addition, there is no actual motion - just a stipulation and a notice of a (non-existent) motion.

All of that said, the tentative ruling is to treat the notice and stipulation

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CONT...

Davon Jermell White

Chapter 11

together as a form of cash collateral motion and approve it because (i) the only party whose asserted interest in cash collateral is being affected (V & E Inc.) has signed off on the stipulation, (ii) no party in interest has objected to Debtor's procedure or to Debtor's concessions as to V & E Inc. having a security interest (dkt. 44, pp. 1:28-2:5) nor to the limitation period for anyone to challenge the terms of the stipulation (*id.*, pp. 3:22-4:9), and (iii) those provisions appear to be reasonable. Debtor's counsel is cautioned, however, that in future an actual motion should be filed and served (it can be very short - just a request to approve the stipulation - but there should be a motion).

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)).

(c) Budget motion [none filed as of preparation of this tentative ruling]

This Court's concerns about the lack of information in the proposed budget (see part "(1)(b)" of this tentative ruling, above) are much more significant in connection with the budget motion that Debtor was supposed to have filed. As of the preparation of this tentative ruling, no such motion has been filed. The parties are directed to address these issues at the hearing.

(2) Dates/procedures. This case was filed on 5/28/24.

- (a) Bar date: 8/6/24 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. 12).
- (b) Procedures Order: dkt. 6 (timely served, dkt. 10).
- (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: *if* this case is not converted or dismissed, 8/27/24 at 1:00 p.m., with a written status report due by 8/20/24.

Tentative Ruling for 7/16/24:

Appearances required.

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

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Davon Jermell White

Chapter 11

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 disclosures

The tentative ruling is that Debtor's additional disclosures still have not sufficiently remediated the deficiencies discussed at the 6/25/24 status conference. The parties should be prepared to address that issue, and potential remedies.

(2) Dates/procedures. This case was filed on 5/28/24.

(a) Bar date: 8/6/24 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. 12).

(b) Procedures Order: dkt. 6 (timely served, dkt. 10).

(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: *if* this case is not converted or dismissed, 7/30/24 at 1:00 p.m. No written status report is required.

Tentative Ruling for 6/25/24:

Appearances required by counsel for Debtor and by Debtor(s) themselves 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) Creditor matrix

Debtor has revealed new creditors without paying the filing fee to add

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Davon Jermell White

Chapter 11

them to the creditor matrix. See Notice (dkt. 25). These new creditors are being deprived of critical notice of this bankruptcy case. Debtor is cautioned that this omission can go toward establishing a record of failing to appear in proper prosecution of this case and can lead to adverse consequences for Debtor. If Debtor has not **paid the filing fee by the time of this status conference** then Debtor is directed to address why not (at this status conference).

(b) Anticipated motions

Debtor's status report (dkt. 23) contemplates a motion for use of cash collateral, a budget motion, eight motions to avoid judicial liens, an application to employ an "Associate general counsel," and at least one more application to employ another professional - the particulars are unclear because of illegible type. See Stat.Rpt. (dkt. 23) p. 4. Debtor should have explained in detail in the Status Report why all of these things are appropriate or feasible. See Stat. Rpt. (dkt. 23, p. 2, item A.2.).

As discussed below, it appears that Debtor has \$100.00 in the bank, no net income, no prospects of any future net income for at least a year, and essentially no unencumbered assets with which to pay administrative expenses let alone creditors. This appears on its face to be a liquidating case in which Debtor has no realistic prospect of paying anyone, except himself through an asserted homestead exemption.

Again, all of these things should have been addressed in writing prior to this hearing, and Debtor's failure to address those things might be a waiver or forfeiture of any right to contest them. Alternatively, if Debtor is permitted to address these issues orally, Debtor must address **why should this case not be immediately converted to chapter 7 or dismissed?** See 11 U.S.C. 1104 & 1112, *and* Procedures Order (dkt. 6).

(c) Income and assets

Debtor's bankruptcy schedules and Statement of Financial Affairs ("SOFA") are missing key information, as is his status report. They also appear to be inconsistent both internally and one to another.

Debtor reports that he is not employed; he has \$100.00 in the bank; he has closed a check cashing business and a luxury car rental/"Lifestyle consultant" business, his only remaining business is owning two over-encumbered rental properties (one directly and another, in which he lived until

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Chapter 11

5/23, indirectly), and his only other significant assets are (i) a third over-encumbered property to which he moved prepetition (and in which he now asserts a homestead exemption of \$699,421.00 (Sch. C, dkt. 22 at PDF p. 19)), and (ii) a Lamborghini with roughly \$20,000.00 in equity. See dkt. 22 at PDF pp. 12, 13, 15 19, 63 & 69 *and passim*. Debtor reports that he receives \$491.00 per month in food stamps and general assistance plus an estimated net income of \$1,753.00 per month from an unspecified business or property - presumably one or both rental properties. See Bankr. Sch. I (dkt. 22 at PDF p. 59).

First, the express instruction in bankruptcy Schedule I, line 8a, is to "[a]ttach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income." *Id.* (emphasis added). No such statements are attached.

Second, Debtor is reminded that for all reporting purposes he must disclose affiliates' income and expenses (among other things). See Procedures Order (dkt. 6) p. 2:11-13. In other words, he must disclose the income and expenses of the rental property that he owns indirectly, not just the one that he owns directly.

Third, despite claiming to have no active businesses except two rental properties, Debtor apparently has multiple employees. See StatRpt (dkt. 23) p. 7 (stating that Debtor paid in cash his "workers" - plural). That appears to be inconsistent: why would rental properties need more than one employee? In fact, given that Debtor is not working and has not been working for a couple of years (per the SOFA), why has he not been fully managing the rental properties himself with no employees.

Fourth, Debtor's current and projected income appear to be minimal, and far less than his expenses. Debtor's historical reported gross income is under \$11,000.00 per year (SOFA, dkt. 22, at PDF pp. 63-64). Debtor's current reported gross income amounts to \$26,928.00 per year based on his bankruptcy Schedule I (*i.e.*, \$491.00 + \$1,753.00 = \$2,244.00/mo. x 12 = \$26,920.00). Debtor's Schedule I states that he does not expect any other changes within the coming year. Is Debtor proposing to remain unemployed for at least the next year, rent out two rental properties for minimal if any net income (it is unclear which properties are rented out and/or which generate any positive cash flow, but the current net income is far below his expenses), and do nothing else to pay creditors?

Fifth, how can Debtor suggest in his status report that he will have

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CONT... Davon Jermell White

Chapter 11

enough income for "refinancing" his alleged "primary residence"? See Stat.Rpt. (dkt. 23) p. 8. This is especially suspect because Debtor states under oath that he does not expect his income or expenses to change over the next year (dkt. 22 at PDF pp. 59 & 61) and he reports negative monthly net income: -\$11,640.00. In these circumstances, how is any refinance possible (what lender will extend a loan based on a large negative monthly income?); and even if it were possible (from some "hard money" lender), how would it be on terms that could be approved by this Court?

Sixth, given the above issues, how can creditors, the U.S. Trustee, the Subchapter V Trustee, or this Court have any confidence that there are not other matters (presently unknown) that should have been disclosed and addressed in Debtor's bankruptcy schedules, SOFA, and status report?

In sum, Debtor's "disclosures" appear to be wholly inadequate. They are (w) incomplete, (x) internally inconsistent, (y) so unrealistic that they make a mockery of the disclosures required by the bankruptcy rules, forms, and this Court's Procedures Order, and (z) predicated on proceeding under chapter 11 even though there is no apparent reason for proceeding in chapter 11 instead of chapter 7.

Of course, this Court recognizes that it has only a very limited record before it and, conceivably, there are plausible explanations for all of the foregoing issues. But the trouble is that any such explanations should have already been included in the Status Report (dkt. 23, p. 2, question A.2.), and/or in bankruptcy Schedules I and J, including in the space provided to explain any expected increase or decrease in income or expenses within the next year (dkt. 22 at PDF pp. 59 & 61).

If this case is not immediately converted to chapter 7 or dismissed - which, on the present record, it probably will be - the tentative ruling is to set a **deadline of 7/2/24** for Debtor to file:

- (A) an amended bankruptcy Schedule I with attached statements for each rental property or business and an attached explanation, under penalty of perjury, why Debtor does not expect any change in his income or expenses for the coming year,
- (B) an amended status report that explains how a refinance of his alleged principal residence is remotely feasible, or alternatively explains what steps he is taking toward an immediate sale of that property, and that states what Debtor intends to do with his

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Chapter 11

rental properties and Lamborgini, and how all of that can make proper use of chapter 11, all supported by Debtor's declaration under penalty of perjury, and

(C) whatever other amended or supplemental papers are necessary or appropriate to provide meaningful and full disclosures, all verified under oath.

Debtor is cautioned that, even if this case is not converted to chapter 7 or dismissed today - which it probably will be - the foregoing matters appear to be evidence of failing to appear in proper prosecution of this case, and can lead to other adverse consequences for Debtor.

(2) Dates/procedures. This case was filed on 5/28/24.

(a) Bar date: 8/6/24 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. 12).

(b) Procedures Order: dkt. 6 (timely served, dkt. 10).

(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: *if* this case is not converted or dismissed, 7/16/24 at 1:00 p.m. No written status report is required beyond the amended status report referenced above.

Party Information

Debtor(s):

Davon Jermell White

Represented By
Stella A Havkin

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:23-18208 Meir Siboni

Chapter 11

#5.00 Hrg re: Motion for relief from stay [NA]

VICINO LIMITED PARTNERSHIP
vs
DEBTOR

Docket 156

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 incorporating 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)

(1) Limited relief. Modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movant may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to the following limitations (Judge Bason's standard limitations).

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Meir Siboni

Chapter 11

(a) No enforcement against property of the bankruptcy estate. The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate - any such property shall be distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is not property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

(b) Claim allowance, priority, and discharge issues. Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.

(c) No relief in *other* bankruptcy cases. 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).

(2) Additional analysis:

The Bankruptcy Court "shall grant relief from the stay" upon a showing of "cause." 11 U.S.C. 362(d)(1). Such relief need not take the form of a complete termination of the automatic stay, but instead may include "modifying or conditioning such stay." *Id.*

"Cause" is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.1990). In determining whether "cause" exists to grant relief from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). See *In re Merriman*, 616 B.R. 381, 389 & n. 5 (9th Cir. BAP 2020); *In re Kronemeyer*, 405 B.R. 915 (9th Cir. BAP 2009); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559–60 (Bankr. C.D. Cal.2004). Those factors are: (1) Whether the relief will result in a partial or complete resolution of the issues; (2) The lack of any connection with or interference with the bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary; (4) Whether a specialized tribunal has been established to hear the

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particular cause of action and whether that tribunal has the expertise to hear such cases; (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) The impact of the stay on the parties and the "balance of hurt." *Plumberex*, 311 B.R. at 559. "[W]hile the *Curtis* factors are widely used to determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*, 2011 WL 6826253 at *4 (C.D. Cal. Dec. 9, 2011). *Accord Merriman*, 616 B.R. 381, 389. See also, e.g., *In re Conejo Enters., Inc.*, 96 F.3d 346, 353 (9th Cir. 1996) (discretion to deny stay relief even when faced with non-core state claims).

Based on the present record, the tentative ruling is that these factors weigh in favor of granting relief as set forth above. Most significantly, (A) the State Court Action involves three non-debtor parties (Jonathan Menlo, Rikki Menlo, and MCBY26, LLC); (B) allowing the State Court Action to proceed is unlikely to interfere with this bankruptcy case, since the State Court Action pertains to the liquidation of an unsecured guaranty claim, and Debtor sought bankruptcy protection primarily to resolve disputes with Frank Menlo, Vera Menlo, and Miracle Mile Properties that have little if anything to do with the unsecured guaranty claim at issue in the State Court Action; and (C) the claims at issue arise primarily under state law.

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

Party Information

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Chapter 11

Debtor(s):

Meir Siboni

Represented By
Thomas B Ure

Movant(s):

Vicino Limited Partnership

Represented By
David I Brownstein

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2:23-18208 Meir Siboni

Chapter 11

#6.00 Cont'd status conference re: Chapter 11 case
fr. 6/4/24, 6/25/24, 7/9/24

Docket 109

Tentative Ruling:

Tentative Ruling for 7/30/24:

Continue as set forth below. Appearances are not required on 7/30/24. (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) R/S Motion (dkt. 156) filed by Vicino Limited Partnership, No opposition on file

Grant the R/S Motion (dkt. 156) as set forth in the tentative ruling for Cal. No. 5.

(2) Dates/procedures. This case was filed on 12/12/23, and was converted from chapter 13 to chapter 11 on 5/15/24 (dkt. 109).

(a) Bar date: 2/20/24 (dkt. 23 & 24, the "Original Bar Date") and 7/1/24 (dkt. 134, the "Supplemental Bar Date")

(b) Procedures Order: dkt. 108 (not timely served, but eventually served which gives notice of matters therein, dkt. 127)

(c) Plan/Disclosure Statement: TBD

(d) Continued status conference: 8/6/24 at 2:00 p.m. (as stated on the record at the 7/9/24 status conference). No written status report required.

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[PRIOR TENTATIVE RULING(S) OMITTED. For principal issues, see Order on motion to dismiss case (dkt. 97); additional Order re same (dkt. 109); and Order directing appointment of examiner (dkt. 169).]

Party Information

Debtor(s):

Meir Siboni

Represented By
Thomas B Ure

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2:24-15023 XTC Holdings, LLC

Chapter 11

#7.00 Order directing Erendira Cronkhite to appear and show cause why she should not be permanently barred from (A) Being a debtor in bankruptcy or (B) Filing a bankruptcy petition on behalf of any person or entity and (2) Directing debtor to appear and show cause why this case should not be dismissed, with a bar of a least 180 days, if not permanent bar, against being a debtor in any future

Docket 8

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 8, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

XTC Holdings, LLC	Pro Se
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Trustee(s):

Gregory Kent Jones (TR)	Pro Se
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2:24-15023 XTC Holdings, LLC

Chapter 11

#8.00 Status conference re: Chapter 11 case

Docket 1

Tentative Ruling:

Dismiss case with concurrent 180-day and permanent re-filing bars against being a debtor in any future bankruptcy case, and permanently bar Erendira Cronkhite from filing any bankruptcy petition on behalf of either herself or any other person or entity, all as set forth below. Appearances required by Debtor's principal Ms. Cronkhite and 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) Order: (1) Directing Erendira Cronkhite to Appear and Show Cause Why She Should Not be Permanently Barred from (A) Being a Debtor in Bankruptcy or (B) Filing a Bankruptcy Petition on Behalf of Any Person or Entity and (2) Directing Debtor to Appear and Show Cause Why this Case Should Not be Dismissed, with a Bar of at Least 180 Days, if Not a Permanent Bar, Against Being a Debtor in Any Future Bankruptcy Case (dkt. 8, the "OSC"); Notice of OSC (dkt. 15); no opposition on file; Response by creditor Platinum Loan Servicing, Inc. in support of OSC (dkt. 22)

As a threshold matter, this Court notes that although United States Trustee's ("UST") motion to dismiss this case (dkt. 17, the "MTD") is not on for hearing today, it is appropriate for this Court to consider the representations made in that MTD in connection with this Principal Status Conference. See generally Procedures Order (dkt. 10) at ¶ 2 (explaining that "[w]ithout further notice this Court will automatically hold other status conferences at the same time as any other hearing in this case and may issue appropriate orders including on ... case disposition (e.g., appoint a trustee, conversion, dismissal, and imposing a bar against future

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Chapter 11

bankruptcies – even if the case has already been dismissed") (emphasis in original).

On June 26, 2024, Erendira Cronkhite, acting as Debtor's authorized agent, caused Debtor to file the above-captioned "face-sheet" chapter 11 petition. According to the petition, Debtor's principal place of business is located at 2762 Armacost Ave., Los Angeles, CA 90064 (the "Property"). There is no indication that Debtor is represented by counsel. "It has been the law for the better part of two centuries ... that a corporation may appear in federal court only through licensed counsel." *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201-02 (1993); see also Local Bankruptcy Rule 9011-2(a) ("A corporation ... may not file a petition or otherwise appear without counsel in any case or proceeding" except in limited circumstances [which are not applicable to this case]).

On June 13, 2024, this Court dismissed a voluntary chapter 13 petition filed by Ms. Cronkhite with a 180-day bar to being a debtor in bankruptcy. See dkt. 14, Case No. 2:24-bk-14156-NB. Ms. Cronkhite listed the Property as her residential address in the dismissed chapter 13 case. See dkt. 1 at ¶ 5, Case No. 2:24-bk-14156-NB. The instant case is the third bankruptcy petition affecting the Property that Ms. Cronkhite has caused to be filed within the past three months.

Neither Debtor nor Ms. Cronkhite have filed a response to the OSC. There is no indication that Debtor has retained counsel. In addition, as set forth in the MTD, Debtor (A) failed to appear at the initial debtor interview and (B) has failed to comply with any of UST's reporting requirements. See MTD (dkt. 17) at p. 3:14–4:14 (listing the documents and financial reports Debtor failed to provide). Nor is there any indication that Debtor has served the Procedures Order (dkt. 10) upon creditors as directed by this Court.

The tentative ruling is to dismiss this case, with concurrent 180-day and permanent bars against being a debtor in any future bankruptcy case, based upon (1) a determination that Debtor filed the instant petition not to accomplish legitimate bankruptcy objectives, but instead to hinder creditors from exercising their rights with respect to the Property, (2) Debtor's failure to retain legal counsel, (3) Debtor's failure to comply with the reporting obligations imposed by UST, and (4) Debtor's failure to comply with any of its fiduciary duties to creditors as a debtor-in-possession.

The tentative ruling is to **permanently bar** Ms. Cronkhite from both (A) being a debtor in bankruptcy and (B) filing, or causing to be filed, any

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CONT... XTC Holdings, LLC

Chapter 11

bankruptcy petition on behalf of any person or entity, based upon Ms. Cronkhite's history of unfairly manipulating the Bankruptcy Code for the purpose of hindering creditors from exercising their rights against the Property, pursuant to 11 U.S.C. 105(a) and 349(a) and, alternatively, pursuant to this Court's inherent powers to manage its own docket. *See In re Glover*, 537 Fed. Appx. 741 (9th Cir. 2013) (affirming dismissal with a five-year bar to re-filing under 11 U.S.C. § 105(a)); *In re Leavitt*, 171 F.3d 1219 (9th Cir. 1999) (affirming dismissal with prejudice based on finding of bad faith, considering whether debtor misrepresented facts, unfairly manipulated Code, or otherwise filed his petition or plan in inequitable manner; debtor's history of filings and dismissals; whether the debtor intended to defeat state court litigation; and whether egregious behavior is present).

Proposed orders: After the hearing, this Court will prepare orders (x) dismissing the case with concurrent 180-day and permanent re-filing bars and (y) imposing the permanent filing bar described above against Ms. Cronkhite.

(2) Dates/procedures. This case was filed on 6/26/24.

- (a) Bar date: Not applicable
- (b) Procedures Order: dkt. 10 (not served by Debtor as directed by this Court)
- (c) Plan/Disclosure Statement: Not applicable
- (d) Continued status conference: Not applicable

Party Information

Debtor(s):

XTC Holdings, LLC

Pro Se

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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2:23-12863 Energy Plus Solar Inc.

Chapter 11

#9.00 Hrg re: Debtor Energy Plus Solar, Inc.'s Motion for Attorney's Fees in the Amount of \$15,114.18 and Punitive Damages in the Amount of \$100,000.00

Docket 357

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 11, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Energy Plus Solar Inc.

Represented By
Michael Jay Berger

Movant(s):

Energy Plus Solar Inc.

Represented By
Michael Jay Berger

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:23-12863 Energy Plus Solar Inc.

Chapter 11

#10.00 Cont'd Combined hrg re: Final Approval of
Disclosures and Plan Confirmation
fr. 12/19/23, 2/6/24, 3/12/24, 4/30/24

Docket 1

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 11,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Energy Plus Solar Inc.

Represented By
Michael Jay Berger

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:23-12863 Energy Plus Solar Inc.

Chapter 11

#11.00 Cont'd Status Conference re: Chapter 11 Case
fr. 6/13/23, 7/11/23, 8/15/23, 9/12/23, 10/3/23,
11/14/23, 12/19/23, 2/6/24, 3/12/24, 4/2/24, 4/30/24,
5/7/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

Confirm the Plan and grant in part and deny in part Debtor's second sanctions motion, all as set forth below. 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) Debtor's second sanctions motion (dkt. 357), Klausen Opp. (dkt. 360), Reply (dkt. 361)

(i) Background

This is the second motion for sanctions (dkt. 357, the "Second Sanctions Motion") brought by Debtor against Ms. Klausen and her counsel, Roger E. Naghash. In the Second Sanctions Motion, Debtor seeks a judgment for attorney fees against Ms. Klausen and Mr. Naghash, jointly and severally, pursuant to (A) 28 U.S.C. 1927 and (B) this Court's inherent authority to regulate the conduct of litigants before it. Debtor also seeks an award of \$100,000 in punitive damages. Second Sanctions Motion (dkt. 357) p. 15:25–16.

An order granting Debtor's First Sanctions Motion and awarding compensatory sanctions (dkt. 210, 212, 223, 245, & 246) was entered on 3/20/24. See dkt. 268 (the "First Sanctions Order"). Prior to issuance of the First Sanctions Order, this Court issued an interim order (dkt. 226, the "First Interim Sanctions Order") that provided Ms. Klausen notice of her potential

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CONT... Energy Plus Solar Inc.

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sanctions exposure and listed examples of the improper litigation conduct engaged in by Mr. Naghash on Ms. Klausen's behalf.

(ii) Procedures, and authority to award sanctions

As explained in the First Interim Sanctions Order, Debtor was entitled to seek sanctions "only under this Court's inherent authority" and was not entitled to sanctions from this Bankruptcy Court under 28 U.S.C. 1927. See First Interim Sanctions Order (dkt. 226) pp. 14–15. Debtor has not presented any reasons why this Court should depart from that determination.

As for sanctions under this Court's inherent authority, the more proper procedure would have been for Debtor to file a motion seeking an order of this Court directing Ms. Klausen and Mr. Naghash to show cause (an "OSC"), pursuant to 11 U.S.C. 105(a) and LBR 9020-1(a), why they should not be held in contempt under this Court's inherent authority. But, despite Ms. Klausen's numerous objections, she has never raised any such procedural objection, either in the past or in connection with the present motion, and the tentative ruling is that any such objection has been waived and forfeited (although in future Debtor is directed to follow LBR 9020-1).

Alternatively, the tentative ruling is that this Court has the authority to modify the typical procedures (see LBR 9020-1(a) ("Unless otherwise ordered by the court ...") and it is appropriate to do so in this instance. Ms. Klausen has had plenty of notice of the types of conduct that may lead to compensatory or other sanctions, and there is no showing of any cognizable prejudice from addressing the merits of Debtor's sanctions motion without the additional delay and expense to all parties of further briefing on any OSC.

(iii) Merits

Unfortunately, Ms. Klausen and Mr. Naghash have chosen to disregard this Court's numerous warnings about the need to avoid improper litigation conduct. Instead they have continued to engage in various wrongful acts and omissions, including (A) repeated failures to present any evidence and (B) repeated failures to follow proper procedures.

On 3/29/24, this Court issued an order setting a continued confirmation hearing for 4/30/24. See dkt. 290 (the "3/29/24 Continuance Order"). Among other things, that order provided that at the 4/30/24 confirmation hearing, the "sole remaining issue will be whether the February 2024 MOR undermines the recent evidence that Debtor's plan is feasible ..., and no additional

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briefing or evidence will be permitted prior to that hearing." 3/29/24 Continuation Order (dkt. 290) at PDF p. 7. On 4/16/24, in violation of the 3/29/24 Continuation Order, Ms. Klausen filed an unauthorized supplemental brief opposing confirmation of the Plan (dkt. 309).

The sanctions sought by Debtor against Ms. Klausen and Mr. Naghash fall into three categories: (A) \$7,396.08 "due to repetitive and vexatious filings ... in violation of [the 3/29/24 Continuation Order]," Second Sanctions Motion (dkt. 357) at p. 4:5–8; (B) \$7,718.10 "due to [Ms. Klausen's] improper appeals of this Court's orders," *id.* at p. 4:8–10; and (C) \$100,000 in punitive damages "in light of [Ms. Klausen's] and [Mr. Naghash's] 'doubling down' and flouting the Court's repeated warnings," *id.* at p. 4:11–12. These three categories are addressed below.

(A) Alleged violation of the 3/29/24 Continuation Order and other alleged non-appellate misconduct

Debtor is correct that Ms. Klausen's filing on 4/16/24 of supplemental papers opposing plan confirmation clearly violated the 3/29/24 Continuation Order. But this Court disagrees with Debtor to the extent it is asserting that any other papers filed by Ms. Klausen in March and April 2024 also contravened the 3/29/24 Continuation Order. That order set a continued hearing on confirmation of Debtor's chapter 11 plan, and its prohibition on the filing of additional papers is fairly construed only to apply to papers filed in connection with the confirmation hearing, not *all* papers.

Nevertheless, the tentative ruling is that Ms. Klausen's filed papers during the period for which Debtor seeks attorney fees have all been knowingly, willfully, and maliciously (x) filed in bad faith, (y) frivolous, including both frivolous legal arguments and being unsupported by any admissible evidence to support her factual allegations, and (z) filed for purposes of harassment and to increase Debtor's attorney fees, in the hope of overburdening Debtor and thereby accomplishing indirectly the termination of this bankruptcy case that she has been unable to accomplish directly. The tentative ruling is to grant the Second Sanctions Motion in full as to the non-appellate fees sought by Debtor, in the amount of \$7,396.08, awarded jointly and severally against both Ms. Klausen and Mr. Naghash.

(B) Alleged improper appeals of this Court's orders

The tentative ruling is that this Court lacks authority to sanction Ms.

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Energy Plus Solar Inc.

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Klausen or Mr. Naghash on account of Ms. Klausen's appeals of this Court's orders. To the extent, if at all, that Ms. Klausen or her counsel have engaged in improper litigation conduct in connection with their appeals, Debtor's remedy is to seek relief from the courts adjudicating those appeals.

(C) Request for \$100,000 in punitive damages

The tentative ruling is that Debtor's request for \$100,000 in punitive damages exceeds this Bankruptcy Court's authority. Certain provisions of the Bankruptcy Code authorize the imposition of punitive damages in specific circumstances. See, e.g., 11 U.S.C. 362(k) (punitive damages available to an *individual* injured by any *willful* violation of the automatic stay); 11 U.S.C. 303(i)(2)(A) (punitive damages awardable against a petitioning creditor who filed an involuntary petition in bad faith, but only if the petition is dismissed other than on consent of all petitioners and the debtor). But, except for such express statutory authorization, this Bankruptcy Court is not authorized to award "serious punitive penalties," and is instead limited to imposing "'relatively mild' non-compensatory fines" *In re Dyer*, 322 F.3d 1178, 1193–94 (9th Cir. 2003).

The dollar amount at which a punitive sanction crosses the threshold dividing sometimes-necessary "'relatively mild' non-compensatory fines" from "serious punitive penalties" remains unsettled. *Dyer*, 322 F.3d 1178, 1193–94. But Ms. Klausen and Mr. Naghash have not addressed this issue, and in any event the tentative ruling is that it is appropriate for this Court to award punitive sanctions of \$5,000.00.

(D) Payment of sanctions award

As noted above, in the past this Court has made its compensatory sanctions payable through a reduction in distributions on account of Ms. Klausen's Claim. See First Sanctions Order (dkt. 268 at PDF p. 4). But the tentative ruling is that in view of the blatant and undeterred continuation of Ms. Klausen's improper tactics, it is appropriate to direct immediate payment, within 21 days after entry of an order granting the Second Sanctions Motion, of the compensatory sanctions of \$7,396.08 plus the punitive sanctions of \$5,000.00.

In addition, the tentative ruling is that, to the extent Debtor might be unable to collect from Ms. Klausen and Mr. Naghash, or unwilling to incur additional attorney fees and expenses attempting to collect, Debtor may elect

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to offset the dollar amount of the sanctions set forth above against Ms. Klausen's claim in this case. To be clear, this is different from the method of collection set forth in the First Sanctions Order (dkt. 268). Debtor has not requested, and this Court is not sua sponte making any tentative ruling, to modify that order.

(E) Conclusion as to Second Sanctions Motion

It is extremely unfortunate that Ms. Klausen and Mr. Naghash are refusing to change their improper litigation tactics. From the start of this bankruptcy case Debtor has proposed to pay 100% of Ms. Klausen's claim over time. Although she has raised a few partially legitimate concerns (e.g., questioning the feasibility of Debtor's proposed Plan) the overwhelming majority of her objections have been substantively frivolous, procedurally improper, and, this Court has become convinced, presented for improper purposes including harassment and attempting to gain litigation advantage by imposing an unsustainable level of expense of legal fees on Debtor. For all of the foregoing reasons, the tentative ruling is the compensatory sanctions, and punitive sanctions within this Bankruptcy Court's limited authority, must be awarded.

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 complete copy of this tentative ruling, thereby assuring completeness of the record and incorporating it as this Court's actual ruling. (If the PDF file of this tentative ruling is too large to attach to the proposed order, Movant may instead file a notice of this ruling on the CM/ECF docket (see dkt. 322 & 323) and reference the docket number of such notice in the proposed order.)

(b) Continued confirmation hearing (dkt. 90, 124, 136, 176, 178, 183, 208, 215, 218, 318)

(i) Plan feasibility

This Court cannot confirm a plan unless it determines that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in

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the plan.” 11 U.S.C. 1129(a)(11). The purpose of this “feasibility requirement” is “to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation.” *In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility, and the mere prospect of financial uncertainty is not enough to prevent confirmation. See *In re Sunnyslope Hous. Ltd. P’ship*, 859 F.3d 637, 646–47 (9th Cir. 2017), *as amended* (June 23, 2017) (feasibility requirement satisfied where debtor demonstrated that the plan “has a reasonable probability of success”).

This Court has previously expressed concerns as to whether Debtor’s gross revenue, as reflected in its Monthly Operating Reports, is sufficient to fund the Plan. (In assessing feasibility, this Court focuses on gross revenue—as opposed to other measures of business performance such as net income, operating income, or some other financial metric—because Debtor’s MORs indicate that Debtor’s costs are primarily fixed, rather than variable. The presence of significant fixed costs in Debtor’s operations means that the primary factor in Debtor’s ability to achieve profitability will be whether Debtor can consistently generate sales above a certain threshold.)

The following summarizes Debtor’s monthly revenue throughout the course of this case:

May 2023 (dkt. 53)—\$0
June 2023 (dkt. 83)—\$19,590
July 2023 (dkt. 106)—\$35,928
August 2023 (dkt. 131)—\$25,500
September 2023 (dkt. 151)—\$21,465
October 2023 (dkt. 169)—\$40,134
November 2023 (dkt. 184)—\$18,507
December 2023 (dkt. 217)—\$23,388
January 2024 (dkt. 220)—\$73,928
February 2024 (dkt. 274)—\$27,706
March 2024 (dkt. 312)—\$57,314
April 2024 (dkt. 339)—\$29,932
May 2024 (dkt. 355)—\$64,447

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As would be expected with any small business, there is considerable variability in Debtor's gross revenue from month to month. Nonetheless, the MORs show a consistent uptrend in sales beginning in January 2024. The tentative ruling is that the general sales uptrend is of sufficient magnitude and duration to support a determination that Debtor's plan is feasible.

In addition, the tentative ruling is that the fallout from Ms. Klausen's aggressive litigation tactics further bolsters the determination that the plan is feasible. On 10/11/23, this Court entered an order determining that Ms. Klausen held an allowed unsecured claim of \$142,762.04 (the "Claim"). See dkt. 145 (the "Claim Allowance Order"). On 3/20/24, this Court entered an order imposing compensatory sanctions against Ms. Klausen and her counsel, Roger E. Naghash, jointly and severally, in the amount of \$53,646.84 (dkt. 268, the "Sanctions Order"). This Court determined that sanctions were warranted to compensate Debtor for the costs of responding to "a long history of frivolous objections by Ms. Klausen." Sanctions Order (dkt. 268) at p. 5. This Court ruled that subject to certain conditions and exceptions, the sanctions would be payable by reducing the distributions that Ms. Klausen would be entitled to receive under Debtor's Plan on account her Claim.

Ms. Klausen has appealed the Sanctions Order (dkt. 268) and other rulings adverse to her. But those orders have not been stayed and remain in full force and effect.

Excluding Ms. Klausen's Claim, the total allowed amount of all other general unsecured claims is \$38,128.90. See Plan (dkt. 90), Ex. B-3. That is, Ms. Klausen's Claim is the largest general unsecured claim by a significant margin. The upshot is that any reduction in distributions on account of Ms. Klausen's Claim materially contributes to the feasibility of the Plan.

Based on the foregoing, the tentative ruling is that Debtor has met its burden to establish the feasibility of the Plan.

(ii) Additional issues raised in the unauthorized papers filed by Ms. Klausen

In its adopted tentative ruling setting this continued confirmation hearing, this Court stated "that at the continued hearing the sole remaining issue will be whether the MORs undermine the recent evidence that Debtor's Plan is feasible, **and no additional briefing or evidence will be permitted prior to that hearing.**" Adopted Tentative Ruling for 4/30/24 (dkt. 322) at

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PDF p. 19 (emphasis added). The tentative ruling is to decline to consider, and to strike from the record, the following additional papers filed by Ms. Klausen in violation of the 4/30/24 ruling:

- a) Creditor, Diane L. Klausen's Fourth Supplemental Objections and Oppositions to Confirmation of Proposed Subchapter V, Proposed Plan (dkt. 359)
- b) Creditor, Diane L. Klausen Objections and Oppositions to the Debtor's Monthly Operating Report – May 31, 2024 (dkt. 356)
- c) Creditor, Diane L. Klausen Objections and Oppositions to the Debtor's Monthly Operating Report – April 30, 2024 (dkt. 346)

(iii) Conclusion regarding confirmation

As noted above, the sole remaining issue to be addressed at this confirmation hearing is whether Debtor's Plan is feasible. Having determined the Plan to be feasible for the reasons set forth above, the tentative ruling is to confirm the Plan.

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 complete copy of this tentative ruling, thereby assuring completeness of the record and incorporating it as this Court's actual ruling. (If the PDF file of this tentative ruling is too large to attach to the proposed order, Movant may instead file a notice of this ruling on the CM/ECF docket (see dkt. 322 & 323) and reference the docket number of such notice in the proposed order.)

In addition, Debtor is directed to include in the proposed confirmation order the language required by LBR 3020-1(b) and the following text:

Debtor is directed to file a Notice of Effective Date within two court days after the effective date of the plan has occurred (*i.e.*, once it is clear that the effective date has not been delayed by stay or other matters that might delay the effective date under the applicable plan provisions). The notice need not be served on any parties in interest except the United States Trustee.

(2) Dates/procedures. This Subchapter V case was filed on 5/9/23.

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- (a) Bar date: 7/18/23 per General Order 20-01 and notice (dkt. 16).
- (b) Procedures Order: dkt. 5 (timely served, dkt. 12)
- (c) Plan/Disclosure Statement (dkt. 90): See part "(1)(b)" of this tentative ruling, above.
- (d) Continued status conference: 9/24/24 at 1:00 p.m. No written status report required.

[PRIOR TENTATIVE RULINGS OMITTED (for some key issues, see Orders re sanctions (dkt. 226, 268); Order denying Ms. Klausen's motion for attorney fees (dkt. 325, 330)]

Party Information

Debtor(s):

Energy Plus Solar Inc.

Represented By
Michael Jay Berger

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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2:19-23303 Candelario Lora

Chapter 11

#12.00 Cont'd Status Conference re: Post Confirmation
fr. 12/17/19, 1/14/20, 02/18/20, 03/31/20, 4/21/20,
5/5/20, 6/30/20, 7/28/20, 9/1/20, 9/15/20, 9/29/20,
11/12/20, 1/5/21, 3/2/21, 6/1/21, 9/7/21, 9/14/21,
12/14/21, 3/15/22, 4/26/22, 9/20/22, 12/20/22,
1/24/23, 2/21/23, 4/25/23, 5/30/23, 6/27/23, 10/3/23,
2/6/24, 3/12/24, 4/9/24, 5/14/24, 6/25/24

Docket 1

***** VACATED *** REASON: This matter has been continued to 09/10/24
at 1:00 p.m. per parties' stipulation and order thereon**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Candelario Lora

Represented By
James D. Hornbuckle

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2:23-10384 Joseph Youshaei

Chapter 11

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

BANK OF HOPE
vs
DEBTOR

Docket 206

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Movant(s):

Bank of Hope

Represented By
J. Alexandra Rhim

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

Chapter 11

#14.00 Hrg re: Application for payment of final fees and/or expenses
[Havkin and Shrago]

Docket 203

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

Chapter 11

#15.00 Hrg re: Motion to Dismiss Bankruptcy Case

Docket 198

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Movant(s):

Joseph Youshaei

Represented By
Stella A Havkin
Stella A Havkin
J. Bennett Friedman
J. Bennett Friedman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

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#16.00 Cont'd hrg re: First And Final Application Of Levene, Neale, Bender,
Yoo & Golubchik L.L.P. for Approval Of Fees And Reimbursement
Of Expenses
fr. 7/16/24

Docket 187

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

Chapter 11

#17.00 Cont'd hrg re: First & Final Fee Application for
Hahn Fife & Company for allowance of fees &
expenses
fr. 7/16/24

Docket 195

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Movant(s):

Hahn Fife & Company

Pro Se

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

Chapter 11

#18.00 Cont'd hrg re: First And Final Application Of Subchapter V Trustee
(Prior to Being in Possession of the Estate) For Approval Of Fees
And Reimbursement Of Expenses
fr. 7/16/24

Docket 186

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Movant(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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#19.00 Cont'd hrg re: First And Final Application Of Subchapter V Trustee
(in Possession of the Estate) For Approval Of Fees And
Reimbursement Of Expenses
fr. 7/16/24

Docket 185

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 20,
7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Movant(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

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2:23-10384 Joseph Youshaei

Chapter 11

#20.00 Cont'd Status Conference re: Chapter 11 Case
fr. 2/21/23, 3/21/23, 4/25/23, 5/30/23, 6/13/23,
8/8/23, 10/3/23, 11/28/23, 12/19/23, 1/09/24,
2/20/24, 4/2/24, 6/25/24, 7/16/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:

Approve the fee applications filed by professionals employed by the estate; deny the motion for relief from the automatic stay filed by Bank of Hope ("Bank"); grant Debtor's motion to dismiss this case; and continue the status conference to provide parties an opportunity to request any post-dismissal relief that might be relevant, all as set forth below. 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) First and final fee application of Levene, Neale, et al., attorneys for Subchapter V Trustee (dkt. 187, the "SubV Attorney Fee Application"), Declaration of SubV Trustee (dkt. 188), Notice of SubV Attorney Fee Application (dkt. 189), No opposition on file

The SubV Attorney Fee Application is internally inconsistent: in the text and notice of the application, Attorneys for SubV Trustee seek fees of \$80,333.00, but the exhibits submitted in support of the application indicate that fees of only \$78,158.00 were incurred. Attorneys for SubV Trustee state that they have billed 115.6 hours at a blended hourly billing rate of approximately \$676.00. SubV Attorney Fee Application (dkt. 187) p. 2:26–28. This statement implies that the \$78,158.00 figure in the exhibits is correct (115.6 hours multiplied by the approximate hourly billing rate of \$676.00 = approximately \$78,145.60).

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The tentative ruling is that it is not necessary for Attorneys for SubV Trustee to renotice their final fee application. Because the error overstated the fees requested, there is no prejudice to parties in interest.

The tentative ruling is (A) to allow \$78,158.00 in fees and \$255.62 in expenses, for a total award of \$78,413.62, on a final basis; and (B) to authorize and direct payment of the full amount allowed.

Proposed order: Unless otherwise ordered, Applicant 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) First and final fee application of Hahn et al., accountants for Subchapter V Trustee (dkt. 195, the "SubV Accountant Fee Application"), Declaration of SubV Trustee (dkt. 197), Notice of SubV Accountant Fee Application (dkt. 189), No opposition on file

Allow \$9,409.00 in fees and \$49.30 in expenses, for a total award of \$9,458.30, on a final basis; and authorize and direct payment of the full amounts allowed.

Proposed order: Unless otherwise ordered, Applicant 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)).

(c) First and final fee application of SubV Trustee for services rendered prior to Debtor's removal from possession (dkt. 186), Notice of fee application (dkt. 189)

Allow \$5,005.00 in fees and \$0.00 in expenses (no expenses were sought), for a total award of \$5,005.00, on a final basis, on account of services rendered by SubV Trustee prior to Debtor's removal from possession; and authorize and direct payment of the full amounts allowed.

Proposed order: Unless otherwise ordered, Applicant 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)).

(d) First and final fee application of SubV Trustee for services rendered subsequent to Debtor's removal from possession (dkt. 185), Notice of fee

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application (dkt. 189)

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Allow \$19,769.50 in fees and \$58.05 in expenses, for a total award of \$19,827.55, on a final basis, on account of services rendered by SubV Trustee subsequent to Debtor's removal from possession; and authorize and direct payment of the full amounts allowed.

Note: The text of the application states that expenses of \$58.50 are sought (dkt. 185 at p. 12:4), whereas the supporting billing records (and the notice (dkt. 189)) indicate that the correct expense figure is \$58.05. No parties are prejudiced by this *de minimis* error, but Applicant is cautioned that accuracy in fee applications is paramount, and that a more substantial error in future may require re-noticing (and a corresponding delay in payment).

Proposed order: Unless otherwise ordered, Applicant 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)).

(e) First and final fee application of Havkin et al., Debtor's general bankruptcy counsel (dkt. 203), Notice of fee application (dkt. 204)

Allow \$56,578.00 in fees and \$2,335.51 in expenses, for a total award of \$58,913.51, on a final basis; and authorize and direct payment of the full amounts allowed.

Proposed order: Unless otherwise ordered, Applicant 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)).

(f) R/S Motion filed by Bank (dkt. 206), Debtor's opposition (dkt. 216), Bank's reply (dkt. 219)

Bank asserts that it is entitled to relief from the automatic stay under 11 U.S.C. 362(d)(1), (d)(2), and (d)(4) with respect to a single-family residence located at 268 S. Almont Drive, Beverly Hills, CA 90211 (the "Property"). Bank alleges that Debtor transferred the Property to Baker Equity, LLC ("Baker Equity") on 7/19/17 without obtaining Bank's authorization. R/S Motion (dkt. 206-1) p. 3:6–13. According to the Subchapter V Plan that Debtor filed on 4/23/23, Debtor is the 100% owner of Baker Equity. Plan (dkt. 62) p. 10:20–21.

Bank's theory is that as a result of the transfer, Debtor's interest in the

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Property "is in serious question," R/S Motion (dkt. 206-1) p. 7:4–5, and that accordingly relief from the automatic stay is warranted – including "in rem" relief under 11 U.S.C. 362(d)(4). Bank does not submit any evidence as to the Property's value.

The tentative ruling is that any prospective relief from the automatic stay (section 362(d)(1) and (2)) will be moot if, as provided below, this Court dismisses this bankruptcy case. The dismissal will terminate the automatic stay by operation of law. See 11 U.S.C. 362(c).

As for any relief under section 362(d)(4), the tentative ruling is that Bank has not met its burden of proof. Debtor sought bankruptcy protection on 1/24/23 – approximately six years after the purported transfer of the Property to Baker Equity on 7/19/17. The tentative ruling is that a purported transfer pre-dating the petition by six years does not make the filing of the bankruptcy petition commencing this case so much later part of a "scheme" to hinder, delay, or defraud creditors involving an unauthorized transfer, within the meaning of 11 U.S.C. 362(d)(4). That is reinforced by Debtor's full disclosure of the nature of his indirect ownership interest in the Property. See, e.g., Schedule A/B (dkt. 22) at para. 1.1 (stating that Debtor owns the Property in "[f]ee [s]imple"); Plan (dkt. 62) at p. 10:20–21 (stating that the Property is held by Baker Equity, an entity 100% owned by Debtor).

For the foregoing reasons, the tentative ruling is to deny the R/S Motion in its entirety.

Proposed order: Unless otherwise ordered, Debtor 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.

(g) Debtor's motion to dismiss (dkt. 198, the "MTD"), Notice of MTD (dkt. 199), Declarations of David and Mansour Youshaei (dkt. 211 & 213), SubV Trustee non-opposition (dkt. 215), Bank of Hope conditional opposition (dkt. 217)

The tentative ruling is to dismiss the case, pursuant to 11 U.S.C. 1112(b)(1), as requested by Debtor.

Bank of Hope ("Bank") argues that dismissal must be accompanied by a 180-day re-filing bar under 11 U.S.C. 109(g)(2), because Bank filed a

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motion seeking relief from the automatic stay (dkt. 206) seven days after Debtor filed its MTD (dkt. 198). The tentative ruling is that 11 U.S.C. 109(g) (2) mandates imposition of a 180-day re-filing bar.

Turning to other topics, the tentative ruling is that the dismissal order should contain all the provisions requested by SubV Trustee, as follows (see dkt. 215 at p. 3:6–17):

- 1) SubV Trustee is authorized to pay administrative fees and costs.
- 2) Any discharge entered in this case is vacated.
- 3) SubV Trustee's duties are discharged.
- 4) SubV Trustee's bond is exonerated.
- 5) Notwithstanding dismissal of the case, this Court retains jurisdiction over the 12/20/23 order approving the settlement agreement (dkt. 145, the "Settlement Order").
- 6) Debtor is directed to dismiss the appeal of the Settlement Order (BAP Case No. 24-cv-1000) within ten days of entry of the dismissal order.
- 7) Upon dismissal of the case, SubV Trustee will have no further responsibilities with respect to the escrow and tax liabilities associated with the sale of the car wash.

Proposed order: Unless otherwise ordered, SubV Trustee 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.

(2) Dates/procedures. This case was filed on 1/24/23. On 6/2/23 this Court entered an order removing Debtor from possession and expanding the Subchapter V Trustee's powers. See dkt. 86.

- (a) Bar date: 4/4/23 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. 12).
- (b) Procedures Order: dkt. 6 (timely served, dkt. 10)
- (c) AmPlan/Disclosure Statement: N/A
- (d) Continued status conference: 8/27/24 at 1:00 p.m. No written status report required. To the extent no post-dismissal relief is requested, this Court anticipates that the tentative ruling posted

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CONT...

Joseph Youshaei

Chapter 11

prior to the continued status conference will most likely be that no appearances will be required and the status conference will be taken off calendar.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Joseph Youshaei

Represented By
Stella A Havkin
J. Bennett Friedman

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Represented By
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
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Tuesday, July 30, 2024

Hearing Room 1545

1:00 PM

2:23-16232 9301 Cherokee Lane, LLC, a Delaware Limited Liabil

Chapter 11

#21.00 Cont'd hrg re: BMO Bank N.A.'S Motion to Dismiss Case
Under 11 U.S.C. §§ 1112(b) and 105(a)
fr. 04/09/24, 5/7/24, 7/9/24

Docket 157

***** VACATED *** REASON: Cont'd to 9/10/24 at 1:00 p.m. per
stipulation (dkt. 235) and order thereon**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

9301 Cherokee Lane, LLC, a

Represented By
Marc A Lieberman
Alan W Forsley

Movant(s):

BMO Bank N.A.

Represented By
Wayne R Terry
Catherine M. G. Allen
Jason D Curry

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1:00 PM

2:23-16232 9301 Cherokee Lane, LLC, a Delaware Limited Liabil

Chapter 11

#22.00 Cont'd hrg re: Discovery Dispute re: Order Granting Omnibus Ex Parte Application for an Order Pursuant to Federal Rule of Bankruptcy Procedure 2004 Authorizing Secured Creditor PMF CA REIT, LLC to Issue a Subpoena Requiring the Production of Documents by (1) Banc of California, Inc.; (2) Ventura County Credit Union; (3) Goldman Sachs & Co., LLC; (4) Wells Fargo Bank, N.A. and (5) Portfolio Escrow Inc.
fr. 1/25/24, 2/6/24, 03/05/24, 4/9/24, 4/30/24, 6/11/24, 7/16/24

Docket 69

Tentative Ruling:

Please see the tentative ruling for the status conference in the bankruptcy case-in-chief (Calendar No. 23, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

9301 Cherokee Lane, LLC, a

Represented By
Marc A Lieberman
Alan W Forsley

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Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, July 30, 2024

Hearing Room 1545

1:00 PM

2:23-16232 9301 Cherokee Lane, LLC, a Delaware Limited Liabil

Chapter 11

#23.00 Cont'd Status Conference re: Chapter 11 Case
fr. 10/31/23, 11/28/23, 1/09/24; 2/6/24, 2/20/24,
3/5/24, 4/9/24, 4/30/24, 5/7/24, 5/14/24, 6/4/24,
6/11/24, 6/18/24, 7/9/24, 7/16/24

Docket 1

Tentative Ruling:

Tentative Ruling for 7/30/24:
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) Debtor's attempts to sell the Property

Debtor's efforts have primarily been focused upon its attempts to sell property located at 9301 Cherokee Lane, Beverly Hills, CA 90210 (the "Property"). Debtor is directed to provide an update as to the status of sale and marketing efforts.

(b) BMO's motion to dismiss bankruptcy case (dkt. 157–160, the "Bankruptcy MTD"), Stipulations to continue Bankruptcy MTD and orders thereon (dkt. 205, 207, 229, 231, 235, & 237)

The Bankruptcy MTD has been continued to 9/10/24 at 1:00 p.m. pursuant to a stipulation (dkt. 235) and order thereon (dkt. 237).

(c) BMO's motion to dismiss Debtor's complaint (adv. dkt. 7, the "Adversary MTD"), Debtor/Defendant's opposition (adv. dkt. 12–13), Stipulations to continue Adversary MTD and orders thereon (adv. dkt. 15–16, 18, 20, 22, 24, 26, & 28)

The Adversary MTD has been continued to the date of the continued

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CONT... **9301 Cherokee Lane, LLC, a Delaware Limited Liabil** **Chapter 11**

hearing on the Bankruptcy MTD (see part "(1)(b)," above) pursuant to a stipulation (adv. dkt. 26) and order thereon (adv. dkt. 28).

(d) Continued discovery dispute (see dkts. 67, 69, 88, 99-101, 114, 137, 148, 150, 197, & 219)

Based upon the status report filed on 6/4/24 (dkt. 219) and the information presented at the 6/4/24 status conference, it appears that the discovery issues might be consensually resolved, mooted by other developments, and/or not the focus of the parties' attentions at this time. The tentative ruling is to continue the hearing on the discovery dispute to the date of the continued status conference (see part "(2)(d)," below).

(2) Dates/procedures. This case was filed on 9/25/23.

(a) Bar date: 12/8/23 (dkt. 40) (timely served, dkt. 42)

(b) Procedures Order: dkt. 4 (timely served, dkt. 10)

(c) Plan/Disclosure Statement (dkt. 60, 61): timely filed on 12/22/23
(DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.

(d) Continued status conference: 8/27/24 at 1:00 p.m. (concurrent with other matters). No written status report required.

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

9301 Cherokee Lane, LLC, a

Represented By
Marc A Lieberman
Alan W Forsley

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1:00 PM

2:23-16232 9301 Cherokee Lane, LLC, a Delaware Limited Liabil Chapter 11

Adv#: 2:24-01052 9301 Cherokee Lane, LLC, a Delaware Limited Liabil v. BMO Bank N.A.

#24.00 Cont'd hrg re: Motion to Dismiss Adversary Proceeding
fr. 05/07/24, 06/04/24, 7/9/24

Docket 7

***** VACATED *** REASON: Cont'd to 9/10/24 at 1:00 p.m. per
stipulation (adv. dkt. 26) and order thereon**

Tentative Ruling:

Please see the tentative ruling for the status conference in the bankruptcy case-in-chief (Calendar No. 23, 7/30/24 at 1:00 p.m.).

Party Information

Debtor(s):

9301 Cherokee Lane, LLC, a

Represented By
Marc A Lieberman
Alan W Forsley

Defendant(s):

BMO Bank N.A.

Represented By
Wayne R Terry
Jason D Curry
Catherine M. G. Allen

Movant(s):

BMO Bank N.A.

Represented By
Wayne R Terry
Jason D Curry
Catherine M. G. Allen

Plaintiff(s):

9301 Cherokee Lane, LLC, a

Represented By
Marc A Lieberman

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 30, 2024

Hearing Room 1545

2:00 PM

2:22-11471 Cherry Man Industries, Inc.

Chapter 11

Adv#: 2:24-01067 HAMID R. RAFATJOO IN HIS CAPACITY AS CHAPTER 11 TR v.

#1.00 Cont'd Status Conference re: Complaint for: (1) Avoidance of Preferential Transfers [11 U.S.C. § 547]; (2) Avoidance of Actual Fraudulent Transfers [11 U.S.C. § 548(A)(1)(A)]; (3) Avoidance of Constructive Fraudulent Transfers [11 U.S.C. §548(A)(1)(B)]; (4) Recovery of Avoided Transfers [11 U.S.C. § 550]; and (5) Disallowance of Claims [11U.S.C. §502] fr. 06/04/24

Docket 1

***** VACATED *** REASON: This matter is scheduled to be heard on 08/27/24 at 2:00 p.m. per parties' stipulation and order thereon (dkt. 16)**

Tentative Ruling:

- NONE LISTED -

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):

AMERICAN EXPRESS

Pro Se

Plaintiff(s):

HAMID R. RAFATJOO IN HIS

Represented By
David B Golubchik

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By
Hamid R Rafatjoo
Krikor J Meshefejian

**United States Bankruptcy Court
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Los Angeles
Neil Bason, Presiding
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CONT...

Cherry Man Industries, Inc.

David B Golubchik
Jonathan Gottlieb

Chapter 11

**United States Bankruptcy Court
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Hearing Room 1545

2:00 PM

2:23-18208 Meir Siboni

Chapter 11

Adv#: 2:24-01083 Menlo et al v. Siboni

#2.00 Cont'd Status Conference re: Complaint to Determine Non-Dischargeability
of Debt
fr. 6/4/24

Docket 1

***** VACATED *** REASON: Continued to 8/6/24 at 2:00 p.m. per oral
ruling at 7/9/24 Status Conference.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meir Siboni

Represented By
Thomas B Ure

Defendant(s):

Meir Siboni

Represented By
Thomas B Ure

Plaintiff(s):

Franklin Menlo

Represented By
Paul P Young

Miracle Mile Properties, LP

Represented By
Paul P Young

Franklin Menlo Trustee of the Menlo

Represented By
Paul P Young

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Tuesday, July 30, 2024

Hearing Room 1545

2:00 PM

2:23-18208 Meir Siboni

Chapter 11

Adv#: 2:24-01027 Siboni v. Menlo et al

#3.00 Cont'd Status Conference re: Complaint to Determine Priority Extent of Liens, Declaratory Relief and Recovery of Assets of the Estate: (1) Quiet Title; (2) Quiet Title; (3) Quiet Title; (4) Declaratory Relief (5) Cancellation of Instrument; (6) Cancellation of Instrument; (7) Cancellation of Instrument; (8) Breach of Fiduciary Duty; (9) Breach of Fiduciary Duty; (10) Concealment fr. 4/2/24, 4/9/24, 4/11/24, 6/4/24

Docket 1

***** VACATED *** REASON: Continued to 8/6/24 at 2:00 p.m. per oral ruling at 7/9/24 Status Conference.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meir Siboni

Represented By
Thomas B Ure

Defendant(s):

Jonathan Menlo

Represented By
Elsa M Horowitz

Frank Menlo

Represented By
Paul P Young
Kevin C Ronk

Menlo Trust U/T/L February 22,

Represented By
Paul P Young
Kevin C Ronk

Miracle Mile Properties, LP

Represented By
Paul P Young
Kevin C Ronk

DOES 1-10

Pro Se

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CONT... Meir Siboni

Chapter 11

Plaintiff(s):

Meir Siboni

Represented By
Thomas B Ure