

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

Tuesday, September 6, 2022

Hearing Room 1545

9:00 AM

2:00-00000

Chapter

#1.00 Hearings in Judge Bason's courtroom (1545) are now simultaneously (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, and (3) via ZoomGov telephone.
You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice. ZoomGov appearances are free.

ZoomGov Instructions for all matters on today's calendar:

Meeting ID: 161 112 2656

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Meeting URL: <https://cacb.zoomgov.com/j/1611122656>

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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.

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

Docket 0

Tentative Ruling:

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

Tuesday, September 6, 2022

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9:00 AM

CONT...

- NONE LISTED -

Chapter

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

Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

2:20-11621 Luis Hernandez

Chapter 13

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

U.S. BANK NATIONAL ASSOCIATION
vs
DEBTOR

Docket 45

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):

Luis Hernandez

Represented By
Rebecca Tomilowitz

Movant(s):

U.S. Bank National Association

Represented By
Chad L Butler

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:22-12899 Maria Irma Medina

Chapter 13

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

WELLS FARGO BANK N.A.
vs
DEBTOR

Docket 21

Tentative Ruling:

Grant as set forth below.

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

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

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

Termination

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

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

Effective date of relief

Deny the request to waive the 14-day stay provided by FRBP 4001(a) (3) for lack of sufficient cause shown.

Co-debtor stay

**United States Bankruptcy Court
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10:00 AM

CONT... Maria Irma Medina

Chapter 13

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):

Maria Irma Medina

Represented By
Tyson Takeuchi

Movant(s):

WELLS FARGO BANK N.A., AS

Represented By
Nichole Glowin

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:22-11347 Adonis Ogbeni

Chapter 13

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

GLAN INVESTMENTS, LLC
vs
DEBTOR

Docket 52

Tentative Ruling:

Appearances required. Grant in part and deny in part 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 final ruling.

(1) Background

Movant Glan Investments, LLC asserts a claim of \$101,667.12 as of June 30, 2022, arising from receiver's certificates for remediation of health and safety issues at Debtor's real property. See Feldman Decl. (dkt. 52), p. 10:9-12. Movant argues that the automatic stay should not apply, pursuant to the "police powers" exception in 11 U.S.C. 362(b)(4), and alternatively that Debtor cannot modify its claim under the "principal residence" provisions of 11 U.S.C. 1322(b)(2).

Debtor asserts that it can pay any debt to Movant over 5 years, pursuant to 11 U.S.C. 1322(c)(2). Movant's principal declares that "I would not have contemplated funding the loan to the Receiver ... but for the short-term maturity date, nor had I known that the Property would be included in the Debtor's bankruptcy case." Feldman Decl. (dkt. 52), p. 10:13-16.

The chapter 13 petition commencing this case was filed on 3/11/22. Dkt. 1. The record is not entirely clear, but it appears that some of the loans advanced by Movant were made prepetition and some were made postpetition. In addition, it appears that Movant is uncertain whether some acts occurring postpetition might not have been within the scope of this Court's previous order (dkt. 29) granting relief from the automatic stay for the

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CONT... Adonis Ogbeni

Chapter 13

receivership to proceed. See Reply (dkt. 57), n. 4, at p. 4:24-28. Movant seeks annulment of the automatic stay as to any such matters.

(2) The automatic stay applies

Movant asserts an exemption from the automatic stay because its claim stems from the action before the Receivership Court, and this Court previously determined that this action was exempt from the automatic stay under the regulatory and police powers exception of 11 U.S.C. 362(b)(4). See Order (dkt. 29). Movant argues that, because the Receiver relied on Movant to fund the receivership and enforce regulatory and police powers, that same exception should also apply to Movant. See dkt. 52 at PDF pp. 19:1-20:6.

But Movant has not cited any authority applying the exception of 362(b)(4) in a similar set of circumstances (i.e., in which a lender or similar private party has been held to be exempt from the automatic stay because the purpose of the loan/transaction was to support enforcement of a governmental unit's regulatory or police power). Nor is this Court aware of any such authority.

To the contrary, Movant does not appear to qualify under section 362(b)(4) because it is not an "instrumentality" of California, a municipality, or another government. See 11 U.S.C. 101(27). Movant appears to be acting solely as a lender, and lacks the requisite level of closeness that would be necessary to qualify as an instrumentality of a government. See *In re Wade*, 115 B.R. 222, 226-29 (9th Cir. BAP 1990), *aff'd*, 948 F.2d 1122 (9th Cir. 1991).

Accordingly, the tentatively ruling is that Movant does not qualify for the exception set forth under 362(b)(4). Therefore the automatic stay applies.

(3) Relief from the automatic stay is appropriate

This Court assumes for the sake of discussion that Movant's claim theoretically could be modified by Debtor's proposed plan, although neither party has thoroughly addressed whether all the elements of 11 U.S.C. 1322(b)(2) apply. For example, there is no discussion in the parties' papers whether any of Movant's claims that arose postpetition should be treated as a prepetition claim pursuant to 11 U.S.C. 1305(a)(2).

But the tentative ruling is that this Court need not decide these issues. The central question remains whether Movant has shown "cause" for relief

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CONT... Adonis Ogbeni

Chapter 13

from the automatic stay under 11 U.S.C. 362(d)(1). The tentative ruling is that it has.

(a) Debtor has not provided evidence of being able to pay Movant through a refinance

There is no evidence that Debtor could pay off Movant through a refinancing of the subject property, let alone realistic evidence of a refinancing that is actually in prospect. Instead, Debtor appears to rely on paying Movant over five years through his proposed plan. This Court has concerns about that option.

(b) Debtor's chapter 13 plan (dkt. 49) appears on its face to be unconfirmable

First, the plan provides for 0% interest on Movant's claim. True, a 0% interest rate is typical for curing arrears, but this Court's understanding is that this is because arrears usually are mostly interest, and nonbankruptcy law often prohibits interest on interest for consumer loans.

The present situation is different. It appears that the debt to Movant is mostly principal, not interest, and for a business loan, so it appears that a 0% interest rate is insufficient.

In addition, the riskiness of any loan on the subject property would appear to require a higher than usual rate of interest. True, the improvements to the property funded by Movant might now make the property *somewhat* more attractive as collateral than when Movant made the loans. But the tentative ruling is to take judicial notice (Rule 201(b)(2), Fed. R. Evid.) that the conditions at the property were sufficiently egregious to cause the appointment of the receiver, so the property's condition started at a very low point. In addition there is no evidence in the receiver's reports (dkt. 57), or anything else in the record, that anything like a complete remediation of the property has been effected.

In other words, the tentative ruling is that the burden is on Debtor to show a realistic way of paying Movant, and he has not done so because he has not established that his proposed 0% interest rate is realistic. This is one ground for "cause" to grant relief from the automatic stay.

Second, the Plan (dkt. 49, p. 3) contemplates a "step up" from \$1,239.69/mo. to \$4,447.99/mo. starting in month 6. But per 11 U.S.C. 1325(a)(5)(B)(iii)(I) the payments to Movant must be "in equal monthly amounts." This is an additional ground for "cause" to grant relief from the automatic stay.

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CONT... Adonis Ogbeni

Chapter 13

Third, feasibility appears to be a paramount concern. For one thing, Debtor would have to increase his payments above what he has proposed, to pay interest and equal monthly payments far greater than his initial payments (as set forth above). In addition, based on this Court's judicial notice of the dire condition of the property while Debtor was (mis)managing it (as set forth above), Debtor apparently cannot be relied upon to generate reliable, substantial income from the property sufficient to pay Movant. This is an alternative ground for "cause" for relief from the automatic stay.

(c) Policy concerns

Although the above tentative ruling is that Movant does not qualify for the regulatory and police powers exception to the automatic stay, the very existence of that exception shows Congressional intent that bankruptcy cases not interfere with regulatory and police power enforcement. So, in evaluating "cause" under section 362(d)(1), the tentative ruling is that this Court must consider health and safety issues.

If Movant's claim could be stretched out over five years, that precedent would deter future prospective lenders from funding receiver's certificates for rehabilitation of properties with health and safety issues. Therefore, the tentative ruling is that it is appropriate to grant Movant relief from the automatic stay so that it may be repaid much sooner. Again, Debtor has not provided any evidence of any realistic refinance that is in prospect. All of this is an additional ground for "cause" for relief from the automatic stay.

(4) Specific types of relief from the automatic stay

The tentative ruling is to grant the following types of relief from the automatic stay.

(a) Termination

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

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

(b) Relief notwithstanding future bankruptcy cases

Deny, without prejudice to any other types of relief granted herein (or previously granted).

The motion appears to request "*in rem*" relief (i.e., relief applicable notwithstanding *future* bankruptcy cases (under 11 U.S.C. 362(d)(4) and/or *In*

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Chapter 13

re Vazquez, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31)). See dkt. 52, p. 5 (nos. 10, 11). Yet Movant has not set forth any facts, legal reasoning, and/or evidence to establish sufficient cause for such relief, and instead has merely "checked" those boxes without further explanation. Accordingly, the tentative ruling is to deny that request.

(c) Retroactive relief

Grant the request for retroactive annulment of the stay. See *In re Nat'l Enviro. Waste Corp.*, 129 F.3d 1052, 1054-56 (9th Cir. 1997); *In re Fjeldsted*, 293 B.R. 12 (9th Cir. BAP 2003); and see also *In re Merriman*, 616 B.R. 381, 389-90 & n. 6 and 391-95 (9th Cir. BAP 2020) (retroactive relief is permissible, and *Fjeldsted* factors should not be applied mechanically); *In re Williams*, 323 B.R. 691, 697-702 (9th Cir. BAP 2005) (various issues involving annulment, and application of *Fjeldsted*), aff'd, 204 Fed.Appx. 582 (9th Cir. 2006), overruled on other issues, *In re Perl*, 811 F.3d 1120 (9th Cir. 2016) (scope of automatic stay).

(d) Effective date of relief

Deny the request to waive the 14-day stay provided by FRBP 4001(a) (3) for lack of sufficient cause shown.

(e) 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.

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):

Adonis Ogbeni

Represented By
Anthony Obeli Egbase

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

CONT... Adonis Ogbeni

Chapter 13

Movant(s):

Glan Investments, LLC

Represented By
Ori S Blumenfeld

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:22-12738 Edwin Alberto Salas and Diana Marta Salas

Chapter 13

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

MERCEDES-BENZ FINANCIAL SERVICES
USA LLC
vs
DEBTOR

Docket 21

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. 27).

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):

Edwin Alberto Salas

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Diana Marta Salas

Represented By
Michael E Clark
Barry E Borowitz

Movant(s):

Mercedes-Benz Financial Services

Represented By

**United States Bankruptcy Court
Central District of California
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Neil Bason, Presiding
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Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

CONT... Edwin Alberto Salas and Diana Marta Salas **Chapter 13**
Sheryl K Ith

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:22-11884 James Benjamin Williams

Chapter 13

**#5.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 5/31/22, 8/9/22**

YAANGA, LLC
vs
DEBTOR

Docket 16

Tentative Ruling:

Tentative Ruling for 9/6/22:

Appearances required.

At the hearing on 8/9/22 this Court was persuaded to continue this matter to today. There is no tentative ruling but the parties should be prepared to address the current status of this matter, and whether this Court should set any briefing schedules, any hearings, or any other procedures.

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

Tentative Ruling for 8/9/22:

Appearances required.

At the hearing on 5/31/22 this Court was persuaded to continue this matter to today. This Court has reviewed the supplemental papers filed by Movant (dkt. 27) and Debtor (dkt. 28, 32), as well as the papers regarding Debtor's proposed refinancing (dkt. 28, 33, 34).

Debtor is directed to address feasibility, including how Debtor will finance conversion of his garage into a rental unit, the estimated cost and time involved, the estimated increase in monthly revenue once the conversion is completed, and any other information pertinent to feasibility. (To be clear, this is not a hearing on whether to approve the proposed refinancing; but feasibility is relevant to adequate protection while this motion for relief from

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

CONT... James Benjamin Williams

Chapter 13

the automatic stay is continued. See 11 U.S.C. 361, 362(d)(1).)

Debtor is also directed to address why this information has not already been provided, as part of the refinancing motion or in his supplemental opposition to Movant's motion for relief from the automatic stay.

Subject to Debtor sufficiently addressing the foregoing, the tentative ruling is to continue this hearing to 9/20/22 at 10:00 a.m. (as requested by Debtor, dkt. 32, p. 2:15-17).

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 5/31/22:

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): No opposition on file.
Analysis:

Movant seeks relief from stay under 11 U.S.C. 362(d)(1) based on Debtor's alleged (i) bad faith in filing this bankruptcy case and (ii) defaults to senior lienholders, among other things. Filing a bankruptcy case to stop a foreclosure sale is not *per se* bad faith. To the contrary, delaying a bankruptcy petition until the eve of foreclosure might be evidence that Debtor was attempting in good faith to explore alternatives to bankruptcy and only filed the petition as a last resort after other efforts to resolve the financial issues were unavailing.

True, Movant appears to be correct that Debtor's proposed chapter 13 plan does not adequately address senior lienholders' claims at present, because there is no evidence that Debtor is eligible and has applied for the California Mortgage Relief Program, or that any refinance as proposed in the

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10:00 AM

CONT... **James Benjamin Williams**

Chapter 13

chapter 13 plan is realistic. Nor has Debtor responded to this motion as of the preparation of this tentative ruling.

But, based on a review of Debtor's bankruptcy schedules (dkt. 1, PDF pp. 12, 20-21), it appears Movant is protected by a very large equity cushion (approximately \$480,000.00). Dkt. 2, p. 3. If Debtor's attempts to obtain mortgage relief funds and/or refinance are unsuccessful, it appears that Movant will be adequately protected by Debtor's ability to sell the subject property and pay Movant out of the proceeds (or, alternatively, by Movant's ability to foreclose).

There is no tentative ruling, but the parties should be prepared to address whether this Court should (1) continue this hearing for several months, e.g., to 8/2/22 at 10:00 a.m. to determine whether Debtor has obtained mortgage relief funds and/or a refinance, and/or (2) grant Movant some form of modified relief that would protect it's interests (a) in the event that Debtor does not timely address the problems identified by Movant or (b) if this Court is persuaded in future to grant relief from stay to any other lienholder (*i.e.*, so that Movant is not prejudiced by another lienholder foreclosing before Movant can proceed with its own foreclosure).

Party Information

Debtor(s):

James Benjamin Williams

Represented By

Sanaz Sarah Bereliani

Movant(s):

Yaanga, LLC

Represented By

David I Brownstein

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:18-10339 Estela Toledo

Chapter 13

#6.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 7/26/22

U.S. BANK NATIONAL ASSOCIATION
vs
DEBTOR

Docket 64

Tentative Ruling:

Tentative Ruling for 9/6/22:

Appearances required.

At the hearing on 7/26/22 this Court was persuaded to continue this matter to today. There is no tentative ruling but the parties should be prepared to address the current status of this matter, and whether this Court should set any briefing schedules, any hearings, or any other procedures.

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

Tentative Ruling for 7/26/22:

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. 69).

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

**United States Bankruptcy Court
Central District of California
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Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

CONT... Estela Toledo

Chapter 13

Debtor(s):

Estela Toledo

Represented By
William G Cort

Movant(s):

U.S. Bank National Association, not

Represented By
Nichole Glowin

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, September 6, 2022

Hearing Room 1545

10:00 AM

2:21-10361 DOUGLAS E. WALLACE, JR

Chapter 13

#7.00 Cont'd hrg re: Motion for relief from stay [PP]
fr. 8/23/22

BMW BANK OF NORTH AMERICA
vs
DEBTOR

Docket 95

Tentative Ruling:

Party Information

Debtor(s):

DOUGLAS E. WALLACE JR

Represented By
Misty Wilks

Movant(s):

BMW Bank of North America

Represented By
Marjorie M Johnson

Trustee(s):

Kathy A Dockery (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1545 Calendar

Tuesday, September 6, 2022

Hearing Room 1545

10:00 AM

2:22-13779 Steven Chang

Chapter 7

#8.00 Cont'd hrg re: Motion for relief from stay [UD]
fr. 8/23/22

IL JUR HUR
vs
DEBTOR

Docket 9

Tentative Ruling:

Tentative Ruling for 9/6/22:

Appearances required. Grant relief that will remain effective notwithstanding any future bankruptcy case ("in rem" relief), subject to any opposition and reply at the hearing, because Movant has provided notice of this continued hearing (dkt. 13) in accordance with this Court's adopted Tentative Ruling for 8/23/22 (reproduced below). Such *in rem* relief is in addition to the relief already granted in that adopted Tentative Ruling.

Relief notwithstanding future bankruptcy cases.

Grant the following relief pursuant to 11 U.S.C. 362(d)(4) and the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31), as applicable:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within two years after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

Note: Per the Posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) this Court's order will state that the Court "does not make" a finding that Debtor was involved in the "scheme" referenced in

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CONT... Steven Chang

Chapter 7

section 362(d)(4), unless there is sufficient evidence that Debtor was involved and Debtor is given clear notice that the movant seeks an express finding that Debtor was involved. The tentative ruling in this particular case is that there is sufficient evidence and notice.

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 8/23/22:

Grant in part as set forth below, and continue in part to 9/6/22 at 10:00 a.m. to address the following issues. Appearances are not required on 8/23/22. (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.

The automatic stay does not apply

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

Alternatively, the automatic stay does not apply because the movant obtained a prepetition unlawful detainer judgment, and Debtor has not satisfied the statutory requirements to remain in possession. See 11 U.S.C. 362(b)(22) and (l) and (b).

Alternatively, the automatic stay does not apply because Movant obtained a prepetition eviction judgment and writ of possession. See *In re Perl*, 811 F.3d 1120, 1127-28 (9th Cir. 2016) ("We conclude that under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue.").

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10:00 AM

CONT... Steven Chang Chapter 7

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

Note regarding mootness: Judge Bason's standard tentative ruling is as follows. For three reasons the above tentative ruling that there *is no stay* does not moot requests for relief from whatever stay might apply. First, such *alternative* rulings are appropriate because (i) the very nature of *tentative* rulings is that this Court could be persuaded to depart from any one of them, and (ii) a *final* ruling on any one issue could be reversed on appeal. Second, even if there is currently no stay, that could change - e.g., if there is no stay because of dismissal of this bankruptcy case, such dismissal could be vacated and that might reimpose the stay even if there is a lack of adequate protection, or other grounds why the stay should not apply, and therefore the movant will suffer cognizable harm unless the issues are addressed now (Judge Bason regularly vacates dismissals based on stipulations or other good cause). Third, if the motion includes any request for relief as to *past* acts (annulment) or *future* cases (*in rem* relief), those things are still at issue even if there is no *current* automatic stay. See *In re Aheong*, 276 B.R. 233 (9th Cir. BAP 2002). For all of these reasons, the tentative ruling is that it is appropriate to address the following issues.

Termination

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

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

Retroactive relief

Deny the request for retroactive annulment of the stay because Judge Bason is not prepared to issue a blanket annulment with respect to whatever unspecified things might have occurred postpetition.

Relief notwithstanding *future* bankruptcy cases.

As to the requested relief that will remain effective notwithstanding any future bankruptcy case, continue the motion to the date and time set forth at the start of this tentative ruling, for service on the persons who executed the

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CONT... Steven Chang

Chapter 7

documents through which the movant asserts its interest in the property (sometimes referred to in the mortgage context as the "original borrower").

Reasons: See LBR 4001-1(c)(1)(B). In addition, Judge Bason has due process concerns about granting such relief without service on the person(s) whose interests may be most directly affected. See *generally Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (due process generally). In this matter, such persons appear to include: Keum Nam Chang.

Option for shortened time: This Court has selected a continued hearing date that contemplates shortened notice (per Rule 9006) but that date is conditioned on the movant (i) serving, on the day after the current hearing date, the motion papers and notice of the continued hearing date, and (ii) filing that notice and a proof of service no later than the next day. Alternatively, the movant may self-calendar a continued hearing on regular notice.

Option for interim/partial order: Movant may elect to lodge a proposed order granting the partial relief provided in this tentative ruling, but any such order must recite that a continued hearing has been set to consider additional relief (or, alternatively, that the movant no longer seeks additional relief and the Clerk's office is requested and directed to take the continued hearing off calendar).

Effective date of relief

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

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):

Steven Chang

Pro Se

Movant(s):

IL JUR HUR

Represented By

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CONT... Steven Chang

Chapter 7

Bryan Diaz

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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11:00 AM

2:21-17476 Kelly W. Armstrong

Chapter 7

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

Docket 19

Tentative Ruling:

Approve the final report and allow \$1,025.28 in fees and \$10.45 in expenses, for a total award of \$1,035.73, and authorize and direct payment of the full amounts allowed.

Proposed order(s): 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)).

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.

Party Information

Debtor(s):

Kelly W. Armstrong

Represented By
W. Derek May

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Hearing Room 1545

11:00 AM

2:21-18111 Daniel H Choi and Eunhee Choi

Chapter 7

#2.00 Hrg re: Trustee's final report and account;
Application for fees and expenses
[Jason M. Rund, Chapter 7 Trustee]

Docket 27

Tentative Ruling:

Approve the final report and allow \$1,102.61 in fees and \$32.86 in expenses, for a total award of \$1,135.47, and authorize and direct payment of the full amounts allowed.

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

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.

Party Information

Debtor(s):

Daniel H Choi

Represented By
Young K Chang

Joint Debtor(s):

Eunhee Choi

Represented By
Young K Chang

Trustee(s):

Jason M Rund (TR)

Pro Se

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CONT... Daniel H Choi and Eunhee Choi

Chapter 7

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Hearing Room 1545

11:00 AM

2:15-11928 Yasmin Devika Nanayakkara

Chapter 7

#3.00 Hrg re: Motion to reopen case to enter judgment enforcing terms of parties stipulation

Docket 176

Tentative Ruling:

The tentative ruling is (a) to grant the motion, for the reasons set forth in the moving papers and in the absence of any opposition from the Debtor, and (b) to enter the requested judgment for the \$33,213.34 balance owed by Debtor.

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.")

Note: The order setting this hearing (dkt. 177) inadvertently directed *Debtor*, rather than the *Movant*, "to serve a copy of this order and all Motion papers (if they have not already been served), and file a proof of service" (*id.*, p. 2, para. 3). But the tentative ruling is that any such error was harmless because (x) the motion papers were served on Debtor (dkt. 176, PDF p. 33), and (y) Debtor was served with a copy of the order setting this hearing from the Bankruptcy Noticing Center (see dkt. 179). Accordingly, the tentative ruling is that notice and service were proper and Debtor's failure to oppose the motion is deemed as her consent to this Court granting the relief requested. See LBR 9013-1(h).

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

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CONT... **Yasmin Devika Nanayakkara**

Chapter 7

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):

Yasmin Devika Nanayakkara Pro Se

Trustee(s):

David A Gill (TR) Represented By
Stella A Havkin

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Hearing Room 1545

11:00 AM

2:22-13079 Jose Reyes Torres

Chapter 7

Adv#: 2:22-01133 Yoo v. De La Cruz

#4.00 Status conference re: Complaint for (1) Avoidance of voidable transfer; (2) Recovery of avoided transfer; (3) Sale of interest of co-owner in property of the estate; and (4) Turnover of property

Docket 1

*** VACATED *** REASON: Continued to 10/25/22 at 11:00 a.m. [dkt. 11]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Reyes Torres	Represented By Jaime A Cuevas Jr.
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Defendant(s):

Guadalupe I De La Cruz	Pro Se
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Plaintiff(s):

Timothy J. Yoo	Represented By Carmela Pagay
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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United States Bankruptcy Court
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Hearing Room 1545

11:00 AM

2:20-21244 Harry H. Yegiazaryan
Adv#: 2:21-01184 Yegiazaryan v. Zuntafi

Chapter 7

#5.00 Cont'd Status Conference re: Complaint for Determination that Student
Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8)(B)
and in the Alternative 523(a)(8)
fr. 11/16/21, 12/14/21, 3/15/22, 5/31/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

In view of this Court's order granting Plaintiff's motion for summary judgment and entry of judgment in Plaintiff's favor (adv. dkt. 27, 28), the tentative ruling is that there are no further issues to be resolved and to take this matter off calendar. 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.

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Harry H. Yegiazaryan

Represented By
Christine A Kingston

Defendant(s):

FMS Bank serviced by Zuntafi

Represented By
William J Wall

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11:00 AM

CONT... Harry H. Yegiazaryan

Chapter 7

Plaintiff(s):

Harry H. Yegiazaryan

Represented By
Christine A Kingston

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Hearing Room 1545

11:00 AM

2:19-18316 Ashley Susan Aarons

Chapter 7

Adv#: 2:22-01008 Aarons v. Patch of Land Lending, LLC et al

#6.00 Cont'd Status Conference re: Removal
fr. 3/15/22, 4/26/22, 6/14/22, 6/21/22,
6/30/22, 8/2/22

Docket 1

***** VACATED *** REASON: Order granting Defendants' motion to dismiss entered 8/8/22 (dkt. 55) and no post-dismissal papers filed by 8/16/22 deadline setforth therein**

Tentative Ruling:

Party Information

Debtor(s):

Ashley Susan Aarons

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

Defendant(s):

Patch of Land Lending, LLC

Represented By
Joshua L Scheer

FCI Lender Services, Inc.

Represented By
Joshua L Scheer

California TD Specialists

Represented By
Joshua L Scheer

Versus Residential LoanCo, LLC

Represented By
Joshua L Scheer

Plaintiff(s):

Ashley Susan Aarons

Represented By

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11:00 AM

CONT... Ashley Susan Aarons

Chapter 7

Mainak DAttaray
Richard L Antognini

Trustee(s):

David M Goodrich (TR)

Pro Se

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Tuesday, September 6, 2022

Hearing Room 1545

11:00 AM

2:19-18316 Ashley Susan Aarons

Chapter 7

Adv#: 2:22-01104 Julius Aarons, As Trustee of the Aarons 1991 Livin v. Patch of Land

#7.00 Cont'd status conference re: Removal
fr. 7/5/22, 8/2/22, 8/9/22

Docket 1
*** VACATED *** REASON: Order granting defendants motion to
dismiss adversary proceeding entered on 8/17/22

Tentative Ruling:

Party Information

Debtor(s):

Ashley Susan Aarons

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

Defendant(s):

Patch of Land Lending, LLC

Represented By
Joshua L Scheer

FCI Lender Services, Inc

Represented By
Joshua L Scheer

California TD Specialists

Represented By
Joshua L Scheer

Versus Residential LoanCo, LLC

Represented By
Joshua L Scheer

Plaintiff(s):

Julius Aarons, As Trustee of the

Represented By
Richard L Antognini
Michael Tusken

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11:00 AM

**CONT... Ashley Susan Aarons
Trustee(s):**

Chapter 7

David M Goodrich (TR)

Pro Se

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Hearing Room 1545

11:00 AM

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

Chapter 7

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

#8.00 Cont'd Status Conference re: Complaint for: (1) Avoidance and Recovery of Preferential Transfers; (2) Avoidance and Recovery of Voidable and/or Fraudulent Transfers; (3) Objection to Claim; (4) Breach of Fiduciary Duty; (5) Conversion (6) Unjust Enrichment
fr. 5/31/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

Continue to 12/6/22, at 11:00 a.m., with no written status report required prior to that date, provided that unless the parties file a status report requesting a hearing in advance of that date, this Court anticipates posting a tentative ruling waiving appearances and further continuing the status conference into 2023 (after this Court has established hearing dates for 2023).

Appearances are not required on 9/6/22. (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):

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub

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

Chapter 7

James R Selth

Defendant(s):

Christopher Becker

Represented By
Shirlee L Bliss

Plaintiff(s):

Wesley H. Avery

Represented By
Matthew A Lesnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Lesnick Prince & Pappas, LLP
Jeffrey L Sumpter
Debra E Cardarelli
Matthew A Lesnick

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Hearing Room 1545

11:00 AM

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

Chapter 7

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

#9.00 Cont'd status conference re: Complaint for avoidance and recovery of voidable and/or fraudulent transfers; and objection to claim
fr. 3/29/22, 5/10/22, 5/31/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

Continue to 12/6/22, at 11:00 a.m., with no written status report required prior to that date, provided that unless the parties file a status report requesting a hearing in advance of that date, this Court anticipates posting a tentative ruling waiving appearances and further continuing the status conference into 2023 (after this Court has established hearing dates for 2023).

Appearances are not required on 9/6/22. (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):

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Seltz

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

Chapter 7

Defendant(s):

Allen J. & Barbara C. Manzano

Represented By
Shirlee L Bliss

Plaintiff(s):

Wesley H. Avery

Represented By
Matthew A Lesnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Lesnick Prince & Pappas, LLP
Jeffrey L Sumpter
Debra E Cardarelli
Matthew A Lesnick

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Hearing Room 1545

11:00 AM

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

Chapter 7

Adv#: 2:22-01011 Avery v. CEC Educational Services, LLC

#10.00 Cont'd Status Conference re: Complaint for Avoidance and Recovery of Voidable and/or Fraudulent Transfers; and Objection to Claim
fr. 03/29/22, 05/10/22, 6/14/22, 7/26/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

Continue to 10/11/22 at 11:00 a.m. (to go off calendar if the contemplated settlement motion is granted, see Notice of Settlement, adv. dkt. 18).

Appearances are not required on 9/6/22. (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):

The New School of Cooking, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Seltz

Defendant(s):

CEC Educational Services, LLC

Pro Se

**United States Bankruptcy Court
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CONT... The New School of Cooking, Inc.

Chapter 7

Plaintiff(s):

Wesley H. Avery

Represented By
Matthew A Lesnick
Lauren N Gans

Trustee(s):

Wesley H Avery (TR)

Represented By
Lesnick Prince & Pappas, LLP
Jeffrey L Sumpter
Debra E Cardarelli
Matthew A Lesnick

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Tuesday, September 6, 2022

Hearing Room 1545

1:00 PM

2:21-10368 Mrudula Kothari

Chapter 11

#1.00 Hrg re: Debtor's motion for an order (1) Approving the sale of debtor's real property free and clear of all liens, claims encumbrances, and interests, with the exception of enumerated exclusions; (2) Approving bidding procedures; (3) Finding that the buyer is a good faith purchaser; (4) Authorizing and approving the payment of certain claims from sale proceeds; (5) Waiving the fourteen-day stay period set forth in bankruptcy rule 6004(h); (6) and providing related relief

Docket 196

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 2, 9/6/22 at 1:00 p.m.).

Party Information

Debtor(s):

Mrudula Kothari

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Hearing Room 1545

1:00 PM

2:21-10368 Mrudula Kothari

Chapter 11

#2.00 Cont'd Status Conference re: Chapter 11 Case
fr. 2/9/21, 03/02/21, 4/6/21, 4/27/21, 6/1/21, 7/20/21,
8/31/21, 9/28/21, 10/26/21, 12/14/21, 2/15/22, 3/15/22,
3/29/22, 4/12/22, 5/31/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:
Appearances required.

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

(1) Current issues

(a) Motion to sell Yuma Property (the "Sale Motion," dkt. 196, 197, 198), no opposition on file

This Court has several concerns with the Sale Motion.

(i) Closing the sale before any sale order is final?

There is no evidentiary support, or even any argument, in favor of Debtor's proposed "no final order requirement" (dkt. 196, p. 3:12-19): *i.e.*, that any overbidder must close the sale within five business days after entry of any order granting the Sale Motion, even if there is a pending appeal, or else forfeit its deposit. What is the reason for this incredibly expedited process?

The very fact of proposing this condition seems likely to "chill the bidding" (what prospective purchaser would be willing to agree to such terms?). How is such a condition compatible with Debtor's duties, commonly referred to as those of a "trustee for the benefit of creditors"?

If Debtor can provide a sufficient response for this Court not to deny the Sale Motion, this Court has the following additional concerns.

(ii) What grounds to waive the 14-day stay?

Debtor requests a waiver of the 14-day stay provided by Rule 6004(h)

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1:00 PM

CONT... Mrudula Kothari

Chapter 11

(Fed. R. Bankr. P.). But again, there is no argument or evidence in support, except the bare assertion that the "sale needs to be completed as soon as possible." Sale Motion (dkt. 196), p. 10:13. Why does the sale "need[] to be completed so quickly?

(iii) Will Bank of America be paid?

The estimated closing statement (Sale Motion, dkt. 196, Ex. 2, at PDF p. 42 of 76) omits any payment on account of Bank of America's lien, even though Debtor concedes that the balance on that lien is approximately \$8,500.00 and proposes to pay it out of escrow (*id.*, pp. 4:6 & 5:20), and this lien is listed on the title report (*id.*, Ex. 1, at PDF p. 21 (Requirement #8)). The tentative ruling is to require an updated estimated closing statement, listing a payment in a dollar amount agreed to by this lienholder (its proof of claim #5 is for \$9,389.03), or a disputed claims reserve if Debtor has a *bona fide* dispute as to the correct dollar amount. In addition, the tentative ruling is to direct Ms. Havkin to file a new declaration, with a proposed form of order as an exhibit, so that Debtor and Bank of America can agree on language acceptable to the bank regarding payment of its lien.

(iv) What is the treatment of Royal Business Bank?

There are several issues concerning the lien of Royal Business Bank. By way of background, the Sale Motion does not explain that this is the same lien listed on the title report as "Tomatobank, N.A." with attorneys "Garcia, Hengl, Kinsey & Villarreal, P.C." (assuming that this is in fact the same lien). See Sale Motion (dkt. 196), Ex. 2, at PDF p. 20 of 76, Requirement #7. Nor does the Sale Motion explain that this is the same lien listed on the estimated closing statement as "Garcia & Villarreal" (assuming that is true). See *id.* at PDF p. 42 of 76.

In any event, the estimated closing statement does not reflect the alleged arrangement with Royal Business Bank. Apparently, (x) that bank will be paid the first \$18,000.00 out of escrow, to be applied to its claim, (y) any additional proceeds up to \$50,000.00 will be transferred to it to be held in trust "for disbursement upon certification/evidence of repair[s]" (per the email attached to the Havkin Declaration, Sale Motion (dkt. 196) at PDF p. 73), and (z) if there were to be any proceeds above \$68,000.00 (*i.e.*, \$18,000.00 plus \$50,000.00), those funds apparently would be paid to the bank to be applied to its claim.

In addition, the Sale Motion does not specifically commit to the condition that the \$50,000.00 held in trust will "go to City-required repairs

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first." *Id.* In addition, Ms. Havkin's declaration is unsigned. See *id.* at PDF p. 71.

The tentative ruling is to direct Ms. Havkin to file a new declaration with a revised estimated closing statement that has separate line items for (i) the \$18,000.00 payment out of escrow to the claim of Royal Business Bank, (ii) the payment of up to \$50,000.00 for the bank to hold in trust for repairs, and (iii) a payment of any net proceeds above \$68,000.00 to be paid to the bank. In addition, the tentative ruling is to direct Ms. Havkin to include in her proposed form of order (attached to her declaration) the foregoing terms, or other terms acceptable to Royal Business Bank.

(v) No analysis of section 363(f)

The Sale Motion's request to authorize a sale free and clear of liens includes no analysis at all, except for quoting the statute. The tentative ruling is to direct Debtor to file a supplemental brief and declaration(s) that address the precise legal grounds for a sale free and clear (*i.e.*, is it under 11 U.S.C. 363(f)(1), (2), (3), (4) or (5), and what are the alleged grounds under which each paragraph is applicable?) (see the posted "Procedures of Judge Bason" available at www.cacb.uscourts.gov).

(vi) Lack of evidence to support a "good faith" finding

Any "good faith" finding (11 U.S.C. 363(m)) must be supported by sufficient declaration(s) to establish good faith. The Sale Motion asserts that the proposed buyer "is unknown to the Owners and not related to the Owners" (Sale Motion, dkt. 196, p. 9:17), but there are no declarations from the proposed buyer or from the Owners (Debtor's declaration does not address this issue).

In any event, at a minimum a sufficient declaration is required from the proposed buyer, or any successful overbidder, before this Court will include a "good faith" finding in any order granting the Sale Motion. See the posted Procedures of Judge Bason, available at www.cacb.uscourts.gov (search for "363(m)," and note the relevant standards for any 363(m) declarations).

(vii) Conclusion as to the Sale Motion

At the hearing, the parties are directed to address whether the first issue above should result in denial of the Sale Motion (without prejudice to filing and serving a new motion that does not have the above-referenced deficiencies). If the Sale Motion is not denied on that ground, the parties are directed to address an appropriate date for a continued hearing, with a deadline to file and serve the above-referenced supplemental brief and

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declaration(s), with a revised estimated closing statement and a form of proposed order.

(b) Inaccurate MORs?

It appears that Debtor's Monthly Operating Reports ("MORs") for the months of May, June and July are inaccurate as follows.

It appears the problem started with Debtor's May MOR (dkt. 192).

Debtor reported the following:

<u>Cash on hand at start of month:</u>	\$54,224.30
<u>Cash receipts:</u>	\$22,305.96
<u>Cash disbursements:</u>	(\$20,564.09)
<u>Net cash flow:</u>	<u>\$1,741.87</u>
<u>Cash on hand at end of month:</u>	<u>\$34,905.01</u>

But (x) Debtor's April MOR reported \$53,224.30 in "[c]ash on hand at the end of the month" (not \$54,224.30) (dkt. 184, p. 2, para. 23) and (y) $\$54,224.30 + \$1,741.87 = \$55,966.17$ (not \$34,905.01). So Debtor's math does not add up.

These apparent problems became further compounded because Debtor used the apparently incorrect \$34,905.01 figure for its June MOR (dkt. 194, p. 2, para. 19), which resulted in the same (apparent) problem carrying over into Debtor's July MOR (dkt. 200, p. 2, para. 19).

All of the foregoing calls into question the accuracy and reliability of all of Debtor's MORs. Is Debtor simply carrying over figures from prior months without actually verifying the math? Why has this apparent discrepancy of almost \$20,000.00 not been noticed by Debtor or its professionals?

The tentative ruling is to set a **deadline of 9/13/22** for Debtor to file amended MORs for May, June & July 2022 correcting the issues discussed above (and any other issues that Debtor and its counsel may identify after further review of the MORs).

(c) Changes in income/expenses

Based on this Court's review of Debtor's MORs, it appears Debtor's income and expenses have dropped significantly. See May MOR (dkt. 192) (\$22,305.96 receipts, \$20,564.09 disbursements), June MOR (dkt. 194) (\$16,695.57 receipts, \$17,299.67 disbursements) & July MOR (dkt. 200) (\$14,613.31 receipts, \$11,572.04 disbursements). Debtor should be prepared to briefly address these changes and what impact that might have

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on its reorganization efforts.

(2) Dates/procedures. This case was filed on 1/19/21.

(a) Bar date: 3/30/21 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. 11).

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

(c) Amended Plan: TBD

(d) Continued status conference: 9/27/22 at 1:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

[PRIOR TENTATIVE RULINGS OMITTED]

Party Information

Debtor(s):

Mrudula Kothari

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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**#3.00 Hrg re: Law Offices of Michael Jay Berger's Application for Order
Authorizing Payment of First and Final Fees and Reimbursement
of Expenses**

Docket 347

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 6, 9/6/22 at 1:00 p.m.).

Party Information

Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By
Hamid R Rafatjoo
Krikor J Meshefesian
David B Golubchik
Jonathan Gottlieb

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#4.00 Hrg re: First And Final Fee Application Of Kelley Drye & Warren LLP
For Allowance Of Compensation For Services Rendered And
Reimbursement Of Expenses Incurred As General Bankruptcy Counsel
To The Official Committee Of Unsecured Creditors Of Cherry Man Industries,
Inc. For The Period From April 4, 2022 Through And Including July 21, 2022

Docket 369

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 6,
9/6/22 at 1:00 p.m.).

Party Information

Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By
Hamid R Rafatjoo
Krikor J Meshefesian
David B Golubchik
Jonathan Gottlieb

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#5.00 Hrg re: First And Final Fee Application Of Province, LLC For Allowance Of Compensation For Services Rendered And Reimbursement Of Expenses Incurred As Financial Advisor To The Official Committee Of Unsecured Creditors Of Cherry Man Industries, Inc. For The Period From April 4, 2022 Through And Including July 21, 2022

Docket 371

Tentative Ruling:

Please see the tentative ruling for the status conference (Calendar No. 6, 9/6/22 at 1:00 p.m.).

Party Information

Debtor(s):

Cherry Man Industries, Inc.

Represented By
David S Kupetz
Asa S Hami
Victor A Sahn

Trustee(s):

Hamid R. Rafatjoo (TR)

Represented By
Hamid R Rafatjoo
Krikor J Meshefesian
David B Golubchik
Jonathan Gottlieb

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#6.00 Cont'd Status Conference re: Chapter 11 Case
fr. 03/22/22, 03/29/22, 04/07/22, 04/12/22, 4/14/22,
4/26/22, 5/5/22, 5/10/22, 5/17/22, 5/20/22, 5/31/22,
6/14/22, 6/21/22, 6/30/22, 7/8/22, 7/26/22, 8/2/22,
9/1/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/1/22:
Appearances required.

(1) Current issues

(a) Fee application of Berger firm (dkt. 347); opposition of Cathay Bank (dkt. 381); joinder/opposition of Trustee (dkt. 383); stipulation with U.S. Trustee ("UST") (dkt. 388); reply of Berger firm (dkt. 398)

(i) Overview

The tentative ruling is to make two reductions to the \$144,748.50 in requested fees, subject to any additional responses from creditors who were not previously served with a prior order of this Court, as required by that order, and a continued hearing (as set forth below) to address any such additional responses. See Oder (dkt. 314), p. 3:18-20.

First, disallow \$40,000.00 under the usual standards of 11 U.S.C. 330.

Second, disallow one-half of the remainder (i.e., \$144,748.50 - \$40,000.00 = \$104,748.50, and \$104,748.50/2 = an additional \$52,374.25 reduction) due to the Berger firm's disloyalty to Debtor and violation of its duties under the Bankruptcy Code and applicable rules, in undertaking simultaneous representation of Debtor's principal who had at least potential conflicts of interest, and almost certainly actual conflicts of interest.

In other words, the tentative ruling is to allow \$52,374.25 in fees. In addition, the tentative ruling is to allow \$975.89 in expenses, for a total allowance of \$53,350.14. The tentative ruling is not to authorize any

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payment at this time, except out of any remaining balance of the prepetition retainer.

(ii) Legal standards

The applicable legal standards for review of the requested fees are set forth in the statute and rules (11 U.S.C. 328, 329 & 330(a)(1), (3), (4) & (6); Rules 2016 & 2017, Fed. R. Bankr. P.) and in the parties' papers. See Application (dkt. 347), pp. 19:16-23:17; Cathay Bank Obj. (dkt. 381), p. 10:1-28. Similarly, the standards applicable to employment and disclosure, including as to disinterestedness and potential or actual conflicts, are set forth in the statute and rules (11 U.S.C. 101(14) & 327(a); Rule 2014, Fed. R. Bankr. P.; Rule 3-310, Cal. Rule Prof'l Conduct) and in the parties' papers. See Cathay Bank Obj. (dkt. 381), pp. 7:17-8:11; Trustee Obj. (dkt. 383), pp. 2:7-5:24. This Court will not repeat those standards, but will note that this Court previously ruled as follows, in the order authorizing the Berger firm's employment:

On the one hand, the source of the Berger Firm's retainer does not appear to be a basis for denial of the Employment Application. True, the better practice would have been for the Berger Firm immediately to disclose and make abundantly clear that the name of both Debtor and Debtor's principal, Mr. Frank Lin appeared on its retainer check, and to provide a copy of that check with its Employment Application, together with an explanation that the Berger Firm was informed and believed that the source of funds was Debtor, not Mr. Lin. But, although this situation falls dangerously close to the one described in *In re Park-Helena Corp.*, 63 F.3d 877 (9th Cir. 1995), this Court notes an important distinction.

In *Park-Helena* it was known by the law firm that the retainer was paid by a check drawn on the account of the debtor's principal, not the debtor itself – the firm's argument was only that the existence of an obligation from the principal to the debtor effectively transformed the funds from his own money into the debtor's money. See *id.* at 880-81. In contrast, in this case the record does not support any such knowledge by the Berger Firm. Instead, based on this Court's review, it appears that the Berger Firm relied upon the representations of Debtor, and was unaware of the actual

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source of the retainer; and as stated on the record at the above-captioned hearings this Court is loath to delve into attorney-client communications in any attempt to obtain greater certainty as to the precise communications. So, while the Berger Firm should in future provide more disclosure, this Court is not persuaded that it is disqualified from employment in this case.

On the other hand, the Berger Firm subsequently developed a conflict of interest when it undertook the representation of Mr. Lin, because among other things Debtor's bankruptcy estate may have claims against Mr. Lin. While the Berger Firm asserts that this dual representation was due to the impression that it imminently was going to be substituted out as proposed counsel for Debtor, this does not excuse the Berger Firm from essentially jumping the gun. This Court concludes that the Berger Firm developed a conflict of interest at that time, as well as a violation of its duty of loyalty to Debtor.

It appears that this Court has discretion what remedy to impose, based on situations broadly analogous to this one. See e.g., *In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997); and see generally *In re Kobra Properties*, 406 B.R. 396 (E. D. Cal. Bankr. 2009). In any event, no party in interest has asserted otherwise, so any such arguments are deemed waived and forfeited. [Order (dkt. 314), pp. 2:3-3:5 (emphasis in original).]

(iii) Reasonable and necessary fees (11 U.S.C. 330)

On the one hand, although Debtor's proposed cash collateral budgets were wholly inadequate, this Court does not fully know, and it is probably impossible to know with any great precision, to what extent that was the fault of Debtor, rather than the Berger firm. In addition, the lack of success of some matters, such as the turnover proceedings, does not necessarily mean that the Berger firm should not have tried.

On the other hand, the Berger firm must bear responsibility for certain failings. For example, the cash collateral motion should at least have addressed the following:

- (A) the motion failed to identify all entities asserting an interest in cash collateral (see Tentative Ruling for 3/22/22, reproduced below);

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- (B) the budget should have been weekly instead of monthly (the standard type of budget for almost any business that is not a very simple real estate lessor), and if Debtor was unable to produce weekly budgets for some reason, that should have been addressed;
- (C) the proposed budget should have been either the typical 13 week duration or something close (a longer period generally is too unpredictable, particularly in the circumstances of this case);
- (D) the motion should have provided standard information and terms, such as historical data for comparison, and a commitment to providing regular variance reports; and
- (E) Debtor's budgets contained numerous issues, such as apparently duplicate entries, incorrect math, and unauthorized payments (see, e.g., Cathay Bank's Status Report, dkt. 90, p. 4:7-28), and as to all of these issues the Berger firm either should have (x) caught them before the budget saw the light of day, (y) addressed them in the cash collateral motion, and/or (z) addressed whether Debtor was or was not prepared to hire a financial advisor to fix these issues (in other words, to the extent if any that the Berger firm left it to Debtor to generate proposed budgets without review by the firm, such lack of oversight of Debtor was unwarranted, especially given Debtor's repeated errors for week after week in this case).

Similarly, the Berger firm bears responsibility for numerous other problems in this case, such as:

- (F) not addressing the legal standards for "first day" motions (e.g., "immediate and irreparable harm," as set forth in the Tentative Rulings for 3/22/22, reproduced below);
- (G) repeatedly failing to serve this Court's "Procedures" order (dkt. 9), which is important to give all creditors notice of this Court's procedures including possible case-dispositive matters that may be addressed at any status conference (see Tentative Rulings for 3/22/22 and 4/12/22, reproduced below);
- (H) not paying the filing fee to amend the creditor matrix, thereby preventing some creditors from receiving notices (see Tentative Ruling for 4/12/22, reproduced below);
- (I) attempting to shift the burden to this Court's staff to prepare

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orders and attach exhibits, while either fabricating authorization to do so or being careless with the truth (see *id.*);

(J) initially seeking turnover of property via a motion instead of an adversary proceeding as required by the applicable rules (see Order, dkt. 98);

(K) not adequately addressing the standards for the "critical vendor" motion (see Cathay Bank Obj., dkt. 381, p. 11:14-22; Trustee Obj., dkt. 383, p. 6:19-24);

(L) billing a very considerable amount of time on case administration, a large portion of which involved compliance with the UST's reporting requirements such as Monthly Operating Reports ("MORs"), but, although a certain amount of attorney time is helpful and even necessary in reviewing MORs and other UST compliance issues, at a certain point such financial matters should be the job of financial professionals and/or should result in Debtor hiring better bookkeepers and other employees (generally at much cheaper rates than attorneys, who are not trained in financial matters), or alternatively the attorneys must provide a persuasive explanation for not pursuing such alternatives; and

(M) despite over \$6,000.00 in requested fees regarding the Berger firm's own employment, it did not adequately address the disclosure and actual or potential conflict issues. See Cathay Bank Obj. (dkt. 381), pp. 11:27-12:4.

(iv) Fee reduction due to brief representation of conflicting interests

This Court has already noted that it appears to have discretion how much to reduce the Berger firm's fees. A significant reduction is warranted based on the firm's brief, but serious, transgression of its duties, in simultaneously representing both Debtor and its principal, Mr. Lin. See Order (dkt. 314) (quoted above, in block quote).

As Cathay Bank argues:

Here, Mr. Lin is the Debtor's president at 61% shareholder. He holds interests which are adverse to the estate: (a) his preference exposure for the prepetition retainer "reimbursement" described in the Application, (b) his defense of the Bank's action to recover on

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his guaranty of the Debtor's debt to the Bank, and (c) any other avoidable transfers between the Debtor and Mr. Lin. These adverse interests are material. Mr. Lin's potential preference liability to the estate, that has been uncovered thus far, arises directly from the Debtor's retainer paid to the Berger Firm. And, the firm's representation of Mr. Lin relates directly to his defense of an action by the Bank to recover from him based on his guaranty of the Debtor's obligations to the Bank. To the extent Mr. Lin is successful in defending the Bank's guaranty action, the Bank (an estate creditor) is necessarily worse off and the estate is, at least potentially, also worse-off. [Cathay Bank Obj. (dkt. 381), p. 8:12-21]

The tentative ruling is that the Berger firm's simultaneous representation of Debtor and Mr. Lin is a very serious violation of its duties, and although this Court was not persuaded to deny the Berger firm's employment, a substantial reduction in fees is required. The tentative ruling is to reduce by one half any fees that are allowed after the usual "reasonable" and "necessary" review under 11 U.S.C. 330.

First, the integrity of the bankruptcy system at stake. Counsel for business debtors must always be careful to distinguish between the entity that is their client and the principals, whose interests often diverge from the bankruptcy estate's interests. Second, in this case it appears that actual harm has been caused.

True, it is probably impossible to know exactly how many of the problems in this case may have stemmed from Debtor acting for the benefit of its principals rather than the estate, and whether some or all of those problems could have been ameliorated or entirely avoided if the Berger firm had been more mindful of its duty of loyalty toward Debtor and its other ethical and legal obligations. But the tentative ruling is that at the very least the evidence is that Berger firm bears significant responsibility for the problems in this case, and it is more likely than not that the problems stem in substantial part from the Berger firm's lack of sufficient care regarding its duties under the Bankruptcy Code and the applicable rules.

This is not to say that the Berger firm did anything *knowingly* wrong. Nor is this Court finding or concluding that it committed any *malpractice* (that issue is not before this Court, and the standards are different).

But the Berger firm has not disputed that it is within this Court's

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discretion whether to disallow up to all of its fees based on 11 U.S.C. 328(c) and the authorities cited in the parties' briefs. On the record presented, the tentative ruling is that the Berger firm violated the disinterestedness requirement and the other requirements under the Bankruptcy Code, FRBP, and California ethics rules, and has not met its burden to show that any less substantial reduction in its fees than set forth above is warranted.

In sum, the simultaneous representation of conflicting interests was very brief, but it is also very troubling. The tentative ruling is that the foregoing substantial sanctions are necessary and appropriate.

(v) Requested surcharge under 11 U.S.C. 506(c)

The Berger firm has not cited any authority contrary to Cathay Bank's arguments that (x) it lacks standing to seek a surcharge; (y) it has not provided sufficient evidence of a benefit to the bank or analysis of the legal standards for any surcharge; and (z) granting a surcharge would be inappropriate, because then the Berger firm's fees would be paid ahead of the bank's superpriority claim under 11 U.S.C. 507(b). See Cathay Bank Obj. (dkt. 381), p. 12:9-22. The Berger firm's reply does not adequately address these issues, and the tentative ruling is that any arguments for a surcharge have been waived and forfeited. See Reply (dkt. 398), p. 12:18-26.

Nor has the Berger firm argued for any other basis for any involuntary "carve-out" from the bank's liens, including its lien on cash collateral. The tentative ruling is that any such arguments have also been forfeited and waived.

This Court's recollection is that Cathay Bank has only agreed to a voluntary carve-out for the Trustee, his professionals, and the Creditors Committee's professionals, not for the Berger firm. In other words, without a surcharge under section 506(c), it might well be that there are no funds with which to pay the Berger firm (except its retainer balance).

If that is correct, it is very unfortunate. But that is the risk that counsel for any debtor takes when the bankruptcy estate becomes administratively insolvent (except for any carve-outs from secured creditors' collateral).

(vi) The Berger firm's retainer

The Trustee argues (dkt. 383, pp. 4:17-5:24) that the Berger firm's retainer should be disgorged. As a practical matter that might mean that the firm would receive nothing. The tentative ruling is to deny the Trustee's

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(vii) Continued hearing

As noted at the start of this tentative ruling, the Berger firm overlooked the requirement to serve (until its Reply) a copy of this Court's order authorizing its employment on all parties in interest. Service of that order is important because it provides notice to creditors of the ethical concerns that might affect any fee application.

The tentative ruling is that, before any of the foregoing tentative rulings become final as to parties in interest who were not previously served with that order, this Court will need to provide such parties with an additional opportunity to be heard. Accordingly, the tentative ruling is to hold a continued hearing contemporaneous with the continued status conference (see part "(2)(b)" of this tentative ruling, below), and to set a **deadline of 9/21/22 at noon** for filing responses by any parties in interest who were not previously served with the order (with any reply orally at the hearing), and a **deadline of 9/8/22** for Debtor to serve notice of those deadlines.

Meanwhile, the tentative ruling is not to issue any interim order at this time, with respect to the Berger firm's fee application.

(b) Fee application of Kelley Drye & Warren LLP (Committee Counsel) (dkt. 369); no objection on file

Allow \$183,350.00 in fees and \$1,179.39 in expenses, for a total of \$184,529.39, and authorize *pro rata* payment (from the applicable voluntary carve-out provided by Cathay Bank) once all fee awards against such carve-out are final, and the balance owed (if any) from the bankruptcy estate, as funds allow (as determined by the Trustee).

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

(c) Fee application of Province, LLC in its capacity as financial advisor to the Committee (dkt. 372); no objection on file

Allow \$102,327.50 in fees and \$1,311.25 in expenses, for a total of \$103,638.75, and authorize *pro rata* payment (from the applicable voluntary carve-out provided by Cathay Bank) once all fee awards against such carve-out are final, and the balance owed (if any) from the bankruptcy estate, as

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funds allow (as determined by the Trustee).

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

(2) **Dates/procedures.** This case was filed on 3/17/22.

(a) **Bar date:** TBD.

(b) **Procedures Order:** dkt. 9 (served on 4/11/22, dkt. 109)

(c) **Plan/Disclosure Statement:** TBD

(d) **Continued status conference:** 9/20/22 at 2:00 p.m. concurrent with other matters. No written status report is 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.

[EXCERPTS FROM PRIOR TENTATIVE RULINGS ARE REPRODUCED BELOW (relevant to Berger firm's fee application)]

Tentative Ruling for 3/22/22 [Cash Collateral motion]:

The tentative ruling is to grant the motion (dkt. 21) on an interim basis, subject to any objection and reply at the hearing, and with the caveats and subject to the conditions set forth below, with a final hearing on 4/12/22 at 1:00 p.m., and a deadline of 3/23/22 for the movant to file and serve a notice of the final hearing.

Service issues

Debtor's motion and notice were served via email and facsimile (see dkt. 21, 23, 24). The tentative ruling is that, absent consent, this is ineffective for service. See Rules 4001(b)(1)(C), 7004 (manner of serving summons and complaint), 9014(b) (service must be in same manner as summons and complaint), 9036(c)&(e) (electronic transmission sometimes permitted, but not when service is required per Rule 7004) (Fed. R. Bankr. P.) *and* Rule 4(d) (Fed. R. Civ. P., incorporated by Rule 7004(a)(1), Fed. R. Bankr. P.) (procedures for consent to waive formal service).

* * *

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1:00 PM

CONT... Cherry Man Industries, Inc.

Chapter 11

Interim relief, to avoid immediate and irreparable harm

Notwithstanding the foregoing service issues, the tentative ruling is that, pursuant to 11 U.S.C. 102(1), 363(c)(2)&(e), and Rule 4001(b)(2) and (d) (4) (Fed. R. Bankr. P.), it is appropriate to authorize limited, interim use of "that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Rule 4001(b)(2) (emphasis added). Specifically, the tentative ruling is that it is critical to maintain Debtor's going concern value through at least the continued hearing on this motion, and that the proposed budget (dkt. 21, Ex. 1, at PDF p. 15) appears to reflect expenditures that are appropriate to maintain such going concern value (Lin Decl., dkt. 21, para. 11, at PDF p. 13:3-10), with the following caveats.

Caveats:

(1) Historical comparison

At the hearing, Debtor is directed to make an offer of proof regarding how the proposed postpetition budget compares with Debtor's prepetition budget, including whether, on a line by line basis, there is any proposed increase or decrease of greater than 20%, and whether there is any change at all (even 1%) in the proposed payments to Cathay Bank as compared with the contractual monthly dollar amount.

(2) Moving warehouses

In addition, Debtor is directed to make an offer of proof regarding the component parts of the \$563,000.00 line item entitled "One Time Freight & Labor (Moving Warehouses)." Cash Collateral Motion, Ex. 1 (dkt. 21, at PDF p. 15).

(3) Identification of all entities that might assert an interest in cash collateral

The Cash Collateral Motion mentions three holders of liens on Debtor's property - Cathay Bank, the Small Business Administration (the "SBA"), and HYG Financial Services, Inc. ("HYG") - but is unclear about which of them might assert any interest in Debtor's cash collateral. See Lin Delc. (dkt. 24), para. 7 at p. 12:10-13. It appears that the SBA has a UCC lien and that any payments are deferred pursuant to the terms of the SBA loan (*id.*, para. 8) and that HYG is an equipment financier with a UCC lien that Debtor proposes to continue paying per the prepetition equipment lease terms (*id.*, para. 9). At the hearing, Debtor is directed to address which of these entities might assert any interest in the cash that Debtor proposes to use.

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CONT... Cherry Man Industries, Inc.

Chapter 11

Subject to all of the foregoing, the tentative ruling is to approve the use of cash collateral with a 15% variance, by both line item and in the aggregate, as requested in the Cash Collateral Motion (dkt. 24, p. 7:9-13), but to limit such variance to a monthly basis, rather than a cumulative basis. In addition, the tentative ruling is to apply the following conditions.

* * *

Tentative Ruling for 3/22/22 [Status Conference/all motions]:

(1) Current issues

This Chapter 11 case was filed on 3/17/22, and a Procedures Order setting the principal status conference was entered on 3/18/22 (dkt. 9). Also on 3/18/22, chambers received a telephonic request for an order shortening time ("OST") for hearings on forthcoming emergency motions regarding Debtor's cash collateral and payroll, which this Court granted (dkt. 11, 13).

(a) [Intentionally omitted]

(b) Emergency Motion for Order Authorizing Payment of Wages and Related Expenses (dkt. 22, the "Payroll Motion")

The Payroll Motion appears to have the same problems regarding service as the Cash Collateral Motion. See Tentative Ruling for calendar #2 (3/22/22 at 1:00 p.m.). Nevertheless, for the same reasons and subject to any opposition and reply at the hearing, the tentative ruling is to grant the Payroll Motion (dkt. 22) as being "necessary to avoid immediate and irreparable harm" within the meaning of Rule 6003 (Fed. R. Bankr. P.), except that as to CEO Frank Lin, whose gross pay is listed as \$17,706.01 (see dkt. 22 at PDF p. 20), the tentative ruling is that, in addition to the restrictions on insider compensation, payment must not be made (to any employee, and in particular to CEO Frank Lin) above the cap of \$13,650.00 in 11 U.S.C. 507(a) (4) (plus any additional amounts allowable for benefits under 11 U.S.C. 507(a)(5)).

* * *

(c) Service of Procedures Order

This Court's Procedures Order (dkt. 9, entered 3/18/22) directs Debtor to serve a copy of that order on all parties in interest and file a proof of service no later than two Court days after that order was entered on the docket. That deadline is today. Debtor is directed to address whether a proof of service will be filed by the end of the day, and whether it will reflect service via proper means (not via email or facsimile, unless creditors consent).

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CONT... **Cherry Man Industries, Inc.**

Chapter 11

Tentative Ruling for 4/12/22:

(1) Current issues

(a) [Cash Collateral Motion]

Caveat: At the hearing on 4/7/22 this Court orally ordered that Debtor's authority to use cash collateral would be continued through today's hearing date, and this Court directed Debtor to lodge a proposed written order memorializing that oral ruling. But Debtor has not done so.

Instead, counsel for Debtor have had numerous communications with this Court's staff, including at least three separate staff members: Miranda, Sandy, and Dina (last names withheld for privacy/security reasons). These staff members have attempted to assist Debtor's counsel with lodging the proposed order, but as of the preparation of this tentative ruling no such order has been lodged.

Instead, counsel for Debtor have reported problems attaching a large PDF exhibit, and they have twice emailed that exhibit to this Court's staff (Miranda, and then Dina), apparently for the purpose of having this Court's staff process it. That is not appropriate. Debtor's counsel should not ask this Court's staff to perform the tasks that counsel should be doing; and if that was not the intent then the emails should have been much more clear about the purpose of emailing the PDF.

More troubling, counsel for Debtor emailed one staff member (Dina) that another staff member (Miranda) had authorized this approach: "[w]e have Judge Bason's law clerk's approval" (Email from D. Reed to Dina, 4/11/22 at 12:28 p.m.) No such authorization was given by this Court. To the contrary, when the attachment had been emailed initially (to Miranda) she declined to accept the attachment and instead replied, "Please refer to section 4.2(g)(3) of the Court Manual, available at [link], for instructions on how to proceed." (Email from Miranda to Ms. Reed, 4/11/22 at 10:30 a.m.) Debtor's counsel is warned that, at best, the assertion that "[w]e have Judge Bason's law clerk's approval" appears to be a

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CONT...

Cherry Man Industries, Inc.

Chapter 11

lack of careful attention to what was actually communicated.

These problems echo the earlier problems with filing documents under seal. In that instance, Debtor's counsel again sought to have this Court's staff fix their non-compliance with the local rules and procedures.

This Court is empathetic to how difficult it is to deal with multiple "fires" at the start of any bankruptcy case, and how to navigate local rules, procedures, and computer problems. But counsel for Debtor must do better when it comes to use of this Court's limited resources, and not misstating or appearing to misstate what this Court's staff have or have not authorized.

Given these problems, this Court directs Debtor's counsel to limit communications with all Court staff to what is truly necessary and appropriate for *ex parte* communications. In addition, to avoid possible misstatements or misunderstandings, this Court directs Debtor's counsel that they must request *email confirmation* from any Court staff of any (alleged) authorizations from staff to depart from the usual rules or procedures.

(b) Critical Vendor Motion

(c) Creditor Matrix

Debtor very belatedly attempted to file a complete creditor matrix, but Debtor failed to pay the filing fee so that the matrix was not updated. See Notice (dkt. 79, 4/1/22). This Court reminded Debtor's counsel of that problem at the hearing on 4/7/22, with directions immediately to fix that issue. Debtor's counsel is directed to confirm whether they have (i) paid the missing fee, (ii) verified that the creditor matrix has now been updated, and (iii) verified whether a notice of this bankruptcy case has now been mailed to all parties in interest.

(d) Principal status conference (see Procedures Order, dkt. 9)

This case is not off to a good start. In addition to the problems identified above, Debtor has sought "emergency" relief on numerous occasions, but this Court has been unable to grant much of that relief because of lack of adequate evidence, notice, and other deficiencies; and allegations have been made that Debtor has paid prepetition debts without this Court's authorization. It is unclear to this Court how much to attribute these problems to Debtor's own recordkeeping, or unwillingness or inability to

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CONT... Cherry Man Industries, Inc.

Chapter 11

follow instructions, or other causes. But Debtor, its principals, and its counsel are cautioned that continued prosecution of this case in the same manner may lead to conversion or dismissal, a bar against filing any future bankruptcy case, personal liability for unauthorized postpetition transfers, or other remedies.

(2) Dates/procedures. * * *

(b) Procedures Order: dkt. 9 (no proof of service)

Tentative Ruling for 4/14/22:

(2) Dates/procedures. * * *

(b) Procedures Order: dkt. 9 (served on 4/11/22, dkt. 109)

Party Information

Debtor(s):

Cherry Man Industries, Inc.

Represented By
Michael Jay Berger

United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, September 6, 2022

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1:00 PM

2:21-17267 Lorna Jane USA, Inc.

Chapter 11

#7.00 Status Conference re: Post Confirmation
fr. 9/22/21, 10/12/21, 11/9/21, 1/25/22, 3/29/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

Continue to 12/6/22 at 1:00 p.m., with a *brief* status report due 11/22/22, based on Debtor's status report (dkt. 141, 142) all subject to being mooted if a final decree is issued before that time. Appearances are not required on 9/6/22. (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.")

(1) Current issues. This court has no issues to raise *sue sponte*.

(2) Dates/procedures. This case was filed on 9/16/21, and Debtor's plan was confirmed on 4/14/22 (dkt. 114).

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):

Lorna Jane USA, Inc.

Represented By
Richard H Golubow

United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
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Tuesday, September 6, 2022

Hearing Room 1545

1:00 PM

2:21-18392 Unified Security Services, Inc.

Chapter 11

#8.00 Cont'd Status Conference re: Chapter 11 Case
fr. 1/18/22, 3/1/22, 4/26/22, 5/31/22, 8/2/22,
8/9/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:

Continue as set forth below. Appearances are not required on 9/6/22. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

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

(1) Current issues

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

(2) Dates/procedures. This case was filed on 11/02/21 and reassigned to Judge Bason on 12/21/21 (dkt. 42). The petition was amended to elect Subchapter V on 8/1/22.

- (a) Bar date: 4/12/22 (dkt. 54) (timely served, dkt. 60)
- (b) Procedures Order: dkt. 44 (timely served, dkt. 46)
- (c) Plan/Disclosure Statement: confirmation denied (see dkt. 142);
deadline for new plan is 11/22/22 (see dkt. 137) (DO NOT SERVE - except on the U.S. Trustee). See Procedures Order.
- (d) Continued status conference: 9/20/22 at 1:00 p.m., concurrent with other matters. No written status report required.

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

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CONT... Unified Security Services, Inc.

Chapter 11

Debtor(s):

Unified Security Services, Inc.

Represented By
Michael Jay Berger
Michael Berger

United States Bankruptcy Court
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2:00 PM

2:22-14320 Golden Sphinx Limited

Chapter 15

#1.00 Hrg re: Foreign representatives' motion for (I)
Recognition of The Jersey Liquidation as a
Foreign Main Proceeding and (II) Certain related
relief

Docket 10

Tentative Ruling:

Appearances required. There is no tentative ruling. The parties are directed to address the issues raised in their papers and in this Court's order setting this hearing.

Key documents reviewed (in addition to motion papers): Order setting hearing (dkt. 16), Notice of hearing (dkt. 18), Declaration re service of recognition motion (dkt. 24, 26), Declaration re notice given in related litigation (dkt. 25, 27), opposition of Gary Y. Itkin (dkt. 37); Reply (dkt. 38)

Party Information

Debtor(s):

Golden Sphinx Limited

Represented By
Michael Zorkin

United States Bankruptcy Court
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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#2.00 Cont'd hrg re: Creditor Pravati Credit Fund III LP's Motion to Disallow
Claim by Acosta & Associates LLC as Scheduled by Debtor
fr. 4/12/22, 5/31/22, 6/21/22, 7/8/22, 7/26/22, 8/23/22

Docket 301

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer

Represented By
Michael S Kogan

Movant(s):

Pravati Credit Fund III LP

Represented By
Aram Ordubegian
Annie Y Stoops

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

United States Bankruptcy Court
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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#3.00 Cont'd hrg re: Creditor Pravati Credit Fund III LP's Motion to Disallow Claim by The Solender Group as Scheduled by Debtor
fr. 4/12/22, 5/31/22, 6/21/22, 7/8/22, 7/26/22, 8/23/22

Docket 302

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer

Represented By
Michael S Kogan

Movant(s):

Pravati Credit Fund III LP

Represented By
Aram Ordubegian
Annie Y Stoops

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

United States Bankruptcy Court
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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#4.00 Cont'd hrg re: Creditor Pravati Credit Fund III LP's Motion to Disallow to Proof of Claim No. 8-1 for Amicus Capital Group, LLC for Lack of Supporting Documentation
fr. 4/12/22, 5/31/22, 6/21/22, 7/8/22, 7/26/22, 8/23/22

Docket 299

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer

Represented By
Michael S Kogan

Movant(s):

Pravati Credit Fund III LP

Represented By
Aram Ordubegian
Annie Y Stoops

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

United States Bankruptcy Court
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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#5.00 Cont'd Status Conference re: Chapter 11 Case
fr. 3/31/21, 4/27/21, 5/11/21, 6/15/21, 6/29/21,
7/6/21, 07/20/21, 07/22/21, 8/17/21, 09/14/21,
9/22/21, 10/26/21, 11/16/21, 11/30/21, 1/18/22,
2/15/22, 2/24/22, 3/15/22, 3/29/22, 4/12/22,
5/10/22, 5/31/22, 6/14/22, 7/8/22, 7/26/22, 8/23/22

Docket 1

Tentative Ruling:

Tentative Ruling for 9/6/22:
Appearances required.

(1) Current issues

The tentative ruling for the hearing on 8/23/22 was to excuse appearances and continue all matters to 12/6/22 at 2:00 p.m. But Mr. Berger appeared (as did Mr. Kogan) and informed this Court that the *Trejo* personal injury matter, which appeared likely to be by far the biggest asset of this bankruptcy estate, had been dismissed with prejudice.

Mr. Berger expressed a preference not to continue this status conference to 12/6/22, and instead to address the foregoing matter on a preliminary basis sooner rather than later. Mr. Berger disclosed that the Trustee and counsel for Pravati did not join him in requesting an earlier status conference, but this Court was persuaded that Mr. Berger and any other party in interest who might seek to be heard should have an opportunity to put any appropriate matters on the record and request that this Court set procedures for any matter that it may be necessary or appropriate for this Court to address (e.g., a briefing schedule on any pending or anticipated contested matter or adversary proceeding).

Accordingly, this Court directed Mr. Berger to provide notice of this rescheduled hearing, which he has done. See Notice (dkt. 532). As set forth in that Notice, although numerous matters are calendared for this hearing, it is just a "holding date" (except as to the status conference).

There is no tentative ruling, except to continue all matters as set forth below.

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CONT... **Law Offices of Brian D. Witzer**

Chapter 11

(2) Dates/procedures. This case was filed on 3/29/21.

- (a) Bar date: 7/6/21.
- (b) Procedures order: dkt. 4 (service cured, see dkt. 8, 82)
- (c) Plan/Disclosure Statement: TBD
- (d) Continued status conference: 12/6/22 at 2:00 p.m. No written status report required.

*Warning: special procedures apply (see order setting initial status conference).

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):

Law Offices of Brian D. Witzer

Represented By
Michael S Kogan

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#6.00 Cont'd hrg re: Creditor Pravati Credit Fund III LP's Motion to Disallow to Proof of Claim No. 10-1 for Harold Wrobel for Lack of Supporting Documentation
fr. 4/12/22, 5/31/22, 6/21/22, 7/8/22, 7/26/22, 8/23/22

Docket 300

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer

Represented By
Michael S Kogan

Movant(s):

Pravati Credit Fund III LP

Represented By
Aram Ordubegian
Annie Y Stoops

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#7.00 Cont'd hrg re: Application for Compensation Final
Fees and/or expenses of Jennifer M. Liu
fr. 7/8/22, 7/26/22, 8/23/22

Docket 418

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer	Represented By Michael S Kogan
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Movant(s):

Jennifer M. Liu	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Represented By Monica Y Kim
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2:00 PM

2:21-12517 Law Offices of Brian D. Witzer

Chapter 11

#8.00 Cont'd hrg re: Fourth and Final Application for Compensation and Reimbursement of Expenses of Michael Jay Berger
fr. 7/8/22, 7/26/22, 8/23/22

Docket 400

Tentative Ruling:

Tentative Ruling for 9/6/22:

Please see the tentative ruling for the status conference (Calendar No. 5, 9/6/22 at 2:00 p.m.).

[PRIOR TENTATIVE RULING(S) OMITTED]

Party Information

Debtor(s):

Law Offices of Brian D. Witzer	Represented By Michael S Kogan
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Movant(s):

Michael Jay Law Offices of Michael	Represented By Michael Jay Berger
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Trustee(s):

Timothy Yoo (TR)	Represented By Monica Y Kim
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