

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

9: -

Chapter 0

#0.00

**PLEASE TAKE NOTE:**

**THE 10:00 A.M. REAFFIRMATION HEARING CALENDAR  
WILL BE IN-PERSON ONLY.**

**THE ZOOM INSTRUCTIONS APPLY TO 9:00 A.M. AND 1:00 P.M.  
CALENDARS ONLY.**

Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 201 at 1415 State Street, Santa Barbara, California, 93101**, by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

All parties making an appearance via ZoomGov video and audio connection **must** have their video on. Proper court attire is required of all parties appearing via ZoomGov video. Any virtual backgrounds are to be of a solid color, without pictures, videos, or scenes. No party may appear by ZoomGov from any place other than a quiet room in an office or home. Parties may not appear via ZoomGov from a vehicle of any kind, moving or not.

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**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

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9:00 AM

CONT...

**Chapter 0**

You may obtain the ZoomGov connection details by clicking the hyperlink below or copying and pasting the web address into your browser.

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Neither a Zoom nor a ZoomGov account is necessary to participate, and no preregistration is required. The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing, or imaging Court proceedings by any means is strictly prohibited.

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:22-10134 Codie Place**

**Chapter 7**

Adv#: 9:23-01010      McBeth v. Davis, III

**#1.00** CONT'D Status Hearing RE: [1] Adversary case 9:23-ap-01010. Complaint by Sandra McBeth against Richard M. Davis, III. (\$350.00 Fee Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(21 (Validity, priority or extent of lien or other interest in property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Beall, William)

FR. 1-10-24, 2-21-24, 5-22-24, 7-10-24

Docket 1

**\*\*\* VACATED \*\*\* REASON: Adversary Proceeding dismissed via court order on stipulation on 12/13/2024.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Codie Place

Represented By  
Karen L Grant

**Defendant(s):**

Richard M. Davis, III

Represented By  
Felicita A Torres

**Plaintiff(s):**

Sandra McBeth

Represented By  
William C Beall

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
William C Beall

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10542 Brahn Philip Centineo**

**Chapter 7**

Adv#: 9:23-01060      Losey v. Centineo

**#2.00**      CONT'D Status Hearing RE: [1] Adversary case 9:23-ap-01060. Complaint by Michele Losey against Brahn Philip Centineo. Nature[s] of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Winfield, William)

FR. 12-13-23, 4-10-24, 6-5-24, 7-24-24

Docket      1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

Has the settlement payment cleared? If so, is this matter to be dismissed by stipulation?

**July 24, 2024**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 29. Is the adversary proceeding to be dismissed given the settlement of the matter, and this Court's approval of that settlement?

**April 10, 2024**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 19. Has this matter settled? If the matter has not settled, the Court will set the following litigation dates:

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Brahn Philip Centineo**

**Chapter 7**

July 1, 2024 - Deadline to complete discovery, including receiving responses

September 25, 2024, at 9:00 a.m. - Deadline to have dispositive motions heard

October 23, 2024, at 9:00 a.m. - Pretrial conference (in-person)\*

October 23, 2024, at 9:00 a.m. - Status conference

November 14, 2024, at 1:00 p.m. - Trial (in-person, including witnesses)

\*A pre-trial stipulation and proposed order in conformance with Local Rule 7016-1(b) not less than 14 days prior to the pre-trial conference.

Plaintiff is to upload a scheduling order with these dates within 7 days.

**December 13, 2023**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 9. The Court is inclined to adopt the following litigation schedule:

January 15, 2024 - Deadline for parties to amend pleadings

March 6, 2024, at 10:00 a.m. - Continued status conference

April 1, 2024 - Discovery cutoff, including the deadline to receive responses

April 24, 2024, at 10:00 a.m. - Deadline to have dispositive motions heard

May 21, 2024, at 10:00 a.m. - Pretrial conference

June 6, 2024, at 9:00 a.m. - Trial

Plaintiff is to upload a conforming scheduling order.

**Party Information**

**Debtor(s):**

Brahn Philip Centineo

Represented By  
Daniel A Higson

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Brahn Philip Centineo**

**Chapter 7**

**Defendant(s):**

Brahn Philip Centineo

Pro Se

**Plaintiff(s):**

Michele Christina Losey

Represented By  
William E. Winfield

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:20-10359 Clayton Dow Hunt**

**Chapter 7**

Adv#: 9:23-01070 Hunt et al v. INTERNAL REVENUE SERVICE

**#3.00** CONT'D Status Hearing RE: [1] Adversary case 9:23-ap-01070. Complaint by Clayton Dow Hunt, Autumn Sweetsage Hunt against INTERNAL REVENUE SERVICE. (\$350.00 Fee Not Required). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) (Faucher, John)

FR. 2-21-24, 4-10-24, 5-8-24

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing adversary proceeding was entered on 8/2/24.**

**Tentative Ruling:**

**May 8, 2024**

**In-person appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 16. The Court is inclined to set the following litigation schedule:

May 31, 2024 - Deadline to join parties and amend pleadings

October 4, 2024 - Discovery cutoff, including deadline to receive responses

December 11, 2024, at 9:00 a.m. - Deadline to have dispositive motions heard

January 2, 2025 - Deadline to file pretrial stipulation and proposed order

January 15, 2025, at 9:00 a.m. - Continued status conference

January 15, 2025, at 9:00 a.m. - Pre-trial Conference

January 23, 2025, at 1:00 p.m. - Trial

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Clayton Dow Hunt**

**Chapter 7**

Plaintiff to upload a scheduling order within 7 days. This scheduling order will only be modified on a showing of good cause and with the Court's consent.

**April 10, 2024**

**In-person appearances required.**

Those *Adversary Proceeding Status Conference Procedures* [for] Judge Ronald A. Clifford III require that "[a] joint status report prepared using Local Form F 7016-1.STATUS.REPORT must be filed fourteen (14) days before each status conference." See Docket No. 4, p. 1. This Court's Local Rule 7016-1(a)(2) provides that "[u]nless otherwise ordered by the court, at least 14 days before the date set for each status conference the parties are required to file a joint status report using mandatory form F 7016-1.STATUS.REPORT."

The Court finds no status report filed by the parties in preparation for the upcoming status conference as required by this Court's adversary procedures and its Local Rules. The Court therefore assumes that Plaintiff is either (1) abandoning this proceeding, in which case a stipulation dismissing the proceeding should have been filed, or, (2) the parties simply ignored the requirements of this Court in its preparation for status conferences, in which case monetary sanctions against each party would be appropriate. The parties are to appear, in-person, to explain to this Court why they have not prepared a status conference report to allow this Court to prepare for the upcoming status conference, and to prevent the waste of judicial resources holding a status conference that the Court is largely unable to prepare for.

**February 21, 2024**

**Appearances waived.**

On January 31, 2024, the Court entered that *Order Approving Stipulation to Extend Time for Defendant United States of America to File and Answer* (the "Order"). See Docket No. 8. The Order extends the defendant's answer deadline to March 21, 2024. See *id.* at p. 2, lines 1-2. The Court will continue the status conference to April 10, 2024, at 10:00 a.m.



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

CONT... Clayton Dow Hunt

Chapter 7

**Party Information**

**Debtor(s):**

Clayton Dow Hunt

Represented By  
Reed H Olmstead

**Defendant(s):**

INTERNAL REVENUE SERVICE

Represented By  
Angela Gill

**Joint Debtor(s):**

Autumn Sweetsage Hunt

Represented By  
Reed H Olmstead

**Plaintiff(s):**

Clayton Dow Hunt

Represented By  
John D Faucher

Autumn Sweetsage Hunt

Represented By  
John D Faucher

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

9:20-10359 Clayton Dow Hunt

Chapter 7

Adv#: 9:23-01070 Hunt et al v. INTERNAL REVENUE SERVICE

**#4.00** Pre-Trial Conference RE: [1] Adversary case 9:23-ap-01070. Complaint by Clayton Dow Hunt, Autumn Sweetsage Hunt against INTERNAL REVENUE SERVICE. (\$350.00 Fee Not Required). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) (Faucher, John)

Docket 1

\*\*\* VACATED \*\*\* REASON: Order dismissing adversary proceeding was entered on 8/2/24.

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Clayton Dow Hunt

Represented By  
Reed H Olmstead

**Defendant(s):**

INTERNAL REVENUE SERVICE

Represented By  
Angela Gill

**Joint Debtor(s):**

Autumn Sweetsage Hunt

Represented By  
Reed H Olmstead

**Plaintiff(s):**

Clayton Dow Hunt

Represented By  
John D Faucher

Autumn Sweetsage Hunt

Represented By  
John D Faucher

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Clayton Dow Hunt**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:24-10090 Edward Ned Li**

**Chapter 11**

Adv#: 9:24-01015 Skillern et al v. Li

**#5.00** CONT'D Pre-Trial Conference RE: [1] Adversary case 9:24-ap-01015. Complaint by C. Shawn Skillern, CSS Enterprises, Inc. against Edward Ned Li. Nature[s] of Suit: (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Winthrop, Rebecca)

FR. 12-11-24

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Edward Ned Li

Represented By  
Stella A Havkin

**Defendant(s):**

Edward N Li

Represented By  
Stella A Havkin

**Plaintiff(s):**

C. Shawn Skillern

Represented By  
Rebecca J Winthrop

CSS Enterprises, Inc.

Represented By  
Rebecca J Winthrop

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:24-10004 Jharett Bondoc Siron**

**Chapter 7**

Adv#: 9:24-01018 Siron v. United States Department of Education Mohela et al

**#6.00** CONT'D Status Hearing RE: [1] Adversary case 9:24-ap-01018. Complaint by Jharett Bondoc Siron against United States Department of Education Mohela . (\$350.00 Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

FR. 7-10-24, 9-11-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

The Court is inclined to set litigation dates unless the matter has been resolved.

January 31, 2025 - Deadline to complete discovery, including receiving responses

March 26, 2025, at 9:00 a.m. - Last day for the Court to hear dispositive and pre-trial motions

April 16, 2025 - Parties are to deliver to chambers four copies of their exhibit binders. Plaintiff's exhibits are to be numbered numerically, and defendant's exhibits are to be alphanumerically numbered.

April 17, 2025, at 1:00 p.m. - In-person trial, both counsel, parties and witnesses

April 17, 2025, at 1:00 p.m. - Continued status conference

Defendant is to upload a scheduling order.

**September 11, 2024**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Jharett Bondoc Siron**

**Chapter 7**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 13. The Court will adopt the following litigation schedule:

January 31, 2025 - Deadline to complete discovery, including receiving responses

March 26, 2025, at 9:00 a.m. - Last day for the Court to hear dispositive and pre-trial motions

April 16, 2025 - Parties are to deliver to chambers four copies of their exhibit binders. Plaintiff's exhibits are to be numbered numerically, and defendant's exhibits are to be alphanumerically numbered.

April 17, 2025, at 1:00 p.m. - In-person trial, both counsel, parties and witnesses

April 17, 2025, at 1:00 p.m. - Continued status conference

Defendant is to upload a scheduling order.

<b>Party Information</b>
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**Debtor(s):**

Jharett Bondoc Siron	Pro Se
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**Defendant(s):**

United States Department of	Pro Se
U.S. Department of Education	Represented By
	Elan S Levey
	Najah J Shariff

**Plaintiff(s):**

Jharett Siron	Pro Se
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**Trustee(s):**

Sandra McBeth (TR)	Pro Se
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**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Jharett Bondoc Siron**

**Chapter 7**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:22-11001 Alan Rashkin**

**Chapter 7**

Adv#: 9:24-01032 Namba v. Naimi et al

**#7.00** CONT'D Status Hearing RE: [1] Adversary case 9:24-ap-01032. Complaint by Jerry Namba against Haleh C. Naimi, Advocate Solutions, Inc.. (\$350.00 Fee Charge To Estate). Complaint for Damages for Professional Negligence (Legal Malpractice), with Adversary Proceeding Cover Sheet Nature of Suit: (14 (Recovery of money/property - other)) (Steinberg, Peter)

FR. 11-6-24, 12-4-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**December 4, 2024**

**Appearances waived.**

The Ninth Circuit has held, "[a] valid right to a Seventh Amendment jury trial in the district court does not mean the bankruptcy court must instantly give up jurisdiction and that the action must be transferred to the district court. Instead, we hold, the bankruptcy court may retain jurisdiction over the action for pre-trial matters." *In re Healthcentral.com*, 504 F.3d 775, 788 (9th Cir. 2007). The Court will do so here. To that end, the Court will establish a litigation schedule after the parties comply with the Court's *Adversary Proceeding Status Conference Procedures* regarding the filing of joint status reports prior to each status conference. See Docket No. 3.

The status conference is continued to January 15, 2025, at 9:00 a.m. to allow the parties to file a joint status conference report.



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

CONT... Alan Rashkin  
November 6, 2024

Chapter 7

**Appearances waived.**

The Court has reviewed that *Joint Status Report*. See Docket No. 13. The Court will continue the status conference to December 4, 2024, at 9:00 a.m.

<b>Party Information</b>
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**Debtor(s):**

Alan Rashkin Pro Se

**Defendant(s):**

Haleh C. Naimi Represented By  
Dave Shenian  
David Brandon

Advocate Solutions, Inc. Represented By  
Dave Shenian  
David Brandon

**Joint Debtor(s):**

Rochelle Rashkin Pro Se

**Plaintiff(s):**

Jerry Namba Represented By  
Peter T Steinberg

**Trustee(s):**

Jerry Namba (TR) Represented By  
Carissa N Horowitz  
William C Beall

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10672 S&W Blue Jay Way, LLC**

**Chapter 11**

Adv#: 9:24-01033 Beverly Cohen, Ernest Cohen, Eleda Cohen and Miche v. Sohaili et al

**#8.00** CONT'D Hearing RE: [10] Motion for Remand Notice Of Motion And Plaintiffs' Motion To Remand Or Abstain From Hearing Removed State Court Action; Memorandum Of Points And Authorities In Support Thereof (with Proof of Service)

FR. 10-23-24, 11-6-24, 12-4-24

Docket 10

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

*Background*

S&W Blue Jay Way, LLC (the "Debtor") was organized in 2013, and has, as its managing members, HS Blue Jay Way, LLC (whose principal is Hushmand Sohaili ("Sohaili")) and 1966 BJW, LLC. *See* Docket No. 118, *First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Liquidating Plan*, p. 4, lines 26-28. The Debtor was formed for the purpose of developing a parcel of real property in Los Angeles (the "Property"). *See id.* at pp. 4-5. A member of the Debtor, Robert Cohen as Trustee of the Cohen Family Trust Dated March 13, 1986 as Restated December 31, 2005 (the "Cohen Trust") made a loan to the Debtor in connection with its efforts to develop the Property, which rights were assigned by the Cohen Trust to Blue Jay 180, LLC ("Blue Jay") in 2023. *See id.* at p. 5, lines 3-11.

After foreclosure efforts of the Cohen Trust and the Debtor's senior secured lender began on the Property, on August 4, 2023, the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1.

On October 13, 2023, Blue Jay filed a proof of claim in the amount of \$2,759,775.10, secured by the Property (the "Claim"). *See* Claim No. 2. On November 10, 2023, the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

Debtor filed that *Objection to Claim No. 2-1 of Blue Jay 180, LLC, A California Limited Liability Company* (the "Claim Objection"). See Docket No. 90. The Claim Objection asserts that the Claim should be \$0 due to the application of usury laws to the underlying loan's interest rate. See *id.* The Claim Objection is scheduled for hearing on January 14, 2025. See Docket No. 226.

On May 9, 2024, the Debtor filed *Debtor's First Modified First Amended Chapter 11 Liquidating Plan* (the "Plan"). See Docket 180. The Plan provides that confirmation "vests all Assets of the Estate in the Reorganized Debtor..." See *id.* at p. 26, lines 8-10. The Plan is a liquidating plan whereby the Property was sold to HRBJW2, LLC for \$4 million. See *id.* at p. 15, lines 18-21. Of the \$4 million purchase price, \$1 million was to be paid by the effective date of the Plan, and the balance, \$3 million, within eight (8) months of the effective date of the Plan. See *id.* at pp. 15-16. A "carve out" of the senior lienholder's claim against the Property in the amount of \$500,000 was to be retained by the Debtor's bankruptcy estate for the payment of allowed claims other than the senior lienholder's claim. See *id.* at p. 16, lines 16-20. The Plan provides that the Reorganized Debtor retains the exclusive right to pursue certain litigation claims, including claims against the Cohen Trust and Blue Jay for breaches of contract and fiduciary duties, and the equitable subordination of the Claim. See *id.* at pp. 16-18.

On May 24, 2024, the Court entered that *Order Confirming Debtor's First Modified First Amended Chapter 11 Liquidating Plan*, confirming the Plan. See Docket No. 188. On June 17, 2024, the Debtor filed that *Notice of Effective Date of Debtor's First Modified First Amended Chapter 11 Liquidating Plan*, denoting that the effective date of the Plan was June 13, 2024. See Docket No. 198.

On July 24, 2024, the Cohen Trust, Ernest Cohen, and Eleda Cohen (collectively, the "Plaintiffs") filed that *Complaint for 1) Legal Malpractice 2) Breach of Fiduciary Duty 3) Elder Abuse (Cal. Welf. & Inst. Code, §15610.30)* (the "Complaint") in the Los Angeles Superior Court against Sohaili. See Docket No. 216, *Defendant's Notice of Removal of Civil Action Pursuant to 28 U.S.C. § 1452* (the "Notice of Removal"), *Exhibit A*. The Complaint alleges that Sohaili and the Cohen Trust "had a longstanding attorney-client relationship" at the time that the Cohen Trust began discussions about loaning monies to the Debtor. See *id.* at p. 10, lines 12-14. The Plaintiffs allege that Sohaili caused a conflict-of-interest letter to be signed by the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

Plaintiffs due to the fact that the loan transaction with the Debtor, "created a potential or actual conflict between Sohaili and the Cohen Trust" because the transaction was as between the Cohen Trust and an entity owned or controlled by Sohaili. *See id.* at p. 12, lines 2-5. The Plaintiffs allege that the Cohen Trust was provided one day to review the conflict-of-interest letter. *See id.* at p. 20, lines 8-17.

The Plaintiffs allege that Sohaili, as one that owned or controlled the Debtor, "never disclosed to or advised [the Cohen Trust] that Sohaili and [the Debtor] would later contend that 12% annual interest under the Cohen Loan is usurious under California law and that no exception to California usury law applies." *See id.* at lines 10-15. The Plaintiffs also allege that Sohaili's law firm's mandatory procedures when lawyers of the firm enter into business transactions with clients were not followed by Sohaili in connection with the Cohen Trust's loan to the Debtor, which procedures were aimed at testing the ethics of such transactions. *See id.* at pp. 12-13. Had those procedures been followed, allege the Plaintiffs, Sohaili's law firm would not have approved of the Cohen Trust's loan to the Debtor. *See id.*

The Plaintiffs further allege that Sohaili failed to "disclose that by agreeing to take only [a junior position on the Property] in the event the Cohen Loan and Note went unpaid the Cohen Trust would have no recourse to collect on the loan other than on a junior deed of trust on an over-leveraged property that would result in a large deficiency." *See id.* at p. 19, lines 21-25. Further to that point, the Plaintiffs allege that Sohaili failed to disclose or "obtain any written consent at all from the Cohen Trust in connection with the East West Takeout Loan." *See id.* at pp. 19-20.

Finally, the Plaintiffs allege that Robert Cohen, who at all relevant times the trustee of the Cohen Trust, was over the age of 65, and so California's elder abuse laws are triggered. *See id.* at pp. 20-22.

On September 13, 2024, Sohaili filed the Notice of Removal, removing the Complaint to this Court. *See* Docket No. 216. The Notice of Removal contends that this Court has "related to jurisdiction" over the Complaint in that the Complaint "seeks relief for actions taken by the Debtor, and because the outcome of the claims in the Complaint would affect the Debtor's rights, liabilities, options, or freedom of action and can impact the handling and administration of the bankruptcy estate [as] the Debtor's business transactions constitutes a breach of fiduciary duties [and] the Complaint

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

substantially overlaps with the various factual issues [in the Objection]." *See id.* at pp. 3, lines 14-23.

On October 2, 2024, the Plaintiffs filed that *Notice of Motion and Plaintiffs' Motion to Remand or Abstain from Hearing Removed State Court Action* (the "Motion") seeking remand of the Complaint for lack of subject matter jurisdiction, or that this Court abstain from hearing the Complaint. *See* Case No. 9:24-ap-01033-RC, Docket No. 10.

On October 9, 2024, Sohaili filed that *Opposition to Motion to Remand or Abstain from Hearing Removed State Court Action* (the "Opposition"). *See id.* at Docket No. 14. The Opposition provides that the Complaint involves the same issue as that of the Claim Objection, which is whether the interest rate charged under the Cohen Trust's loan to the Debtor was usurious. *See id.* at p. 2, lines 12-13. The Opposition also raises the merits of some of the allegations in the Complaint, including whether the Cohen Trust was ever in-fact a client of Sohaili. *See id.* at pp. 4-6.

On October 16, 2024, the Plaintiffs filed *Plaintiffs' Reply to Opposition to Motion to Remand or Abstain from Hearing Removed State Court Action*. *See* Docket No. 24.

On October 21, 2024, Sohaili filed that *Defendant's Notice of Motion and Motion for Leave to File Sur-Reply in Further Opposition to Motion to Remand or Abstain from Hearing Removed State Court Action*. *See* Docket No. 25.

*Analysis*

Pursuant to 28 U.S.C. § 157(c)(1), "a bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11." Pursuant to 28 U.S.C. § 1334 "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *See also In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir. 2005)("The bankruptcy court also has jurisdiction over a much broader set of cases: those proceedings that are 'related to' a bankruptcy case.").

"After confirmation of a reorganization plan, retention of bankruptcy jurisdiction may be problematic." *In re Resorts Intern., Inc.*, 3725 F.3d 154, 164 (3rd Cir. 2004).

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

Regarding related-to jurisdiction, the Ninth Circuit has held that "post-confirmation bankruptcy court jurisdiction is necessarily more limited than pre-confirmation jurisdiction." *In re Pegasus Gold Corp.*, 394 F.3d at 1194. Post-confirmation, related-to jurisdiction is confined to matters with a "close nexus" to the bankruptcy plan or proceeding, and that "'the interpretation, implementation, consummation, execution, or administration of the confirmed plan'" are issues typical of the close nexus requirement. *See id.*; *see also In re Ray*, 624 F.3d 1124, 1134 (9th Cir. 2010) (post confirmation, the holder of a pre-petition right of first refusal sued the reorganized debtor in state court, but the bankruptcy court did not have related to jurisdiction, as the suit did not depend upon the resolution of a substantial question of bankruptcy law); *In re Int'l Mfg. Grp., Inc.*, 574 B.R. 717, 720-21 (Bankr. E.D. Cal. 2017) (no related to jurisdiction as "present case will not require interpretation or affect the implementation, execution, or administration of the confirmed plan" and no related to jurisdiction even though complaint could conceivably increase recovery to creditors).

Generally, the "party invoking the removal statute bears the burden of establishing federal jurisdiction. Furthermore, the removal statute is strictly construed against removal jurisdiction." *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th Cir. 1988); *see also In re Blanchard*, 545 B.R. 18, 28 (Bankr. C.D. Cal. 2016) ("It is presumed that federal courts lack jurisdiction, which places the burden on the party asserting federal jurisdiction").

In the instant case, the Complaint was removed solely under the theory that the Court has related-to jurisdiction over the Complaint. *See* Docket No. 216, p. 3, lines 14-23. As the Plan was confirmed, the more restrictive "close-nexus" test applies to the Notice of Removal. The Notice of Removal provides as the basis of its close-nexus argument that "the outcome of the claims in the Complaint would affect the Debtor's rights, liabilities, options, or freedom and can impact the handling and administration of the bankruptcy estate." *See id.* at lines 16-19.

First, the Debtor is not a party to the Complaint. In fact, no creditor of the Debtor is a party to the Complaint. It is the Debtor and Blue Jay that are the parties to the Claim Objection, and not the Cohen Trust or Sohaili.

Second, whether the Claim is in-fact subject to California's usury laws is not at issue

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

in the Complaint as it is in the Claim Objection. As noted *supra*, the Claim Objection seeks to reduce the Claim based specifically and solely on the application of California's usury laws. The Complaint does not seek a determination as to whether the usury laws apply to the Claim. Rather, the Complaint alleges that Sohaili failed, as counsel to the Cohen Trust, and as was his alleged duties under California law, to counsel the Cohen Trust that the rate the Cohen Trust charged the Debtor "could be usurious under California law if an exception did not apply," and that Sohaili and the Debtor "could or would later contend that 12% annual interest under the Cohen Loan is usurious under California law and that no exception to California usury law applies." *See id.* at p. 16, lines 2-9. On the one hand, the Claim Objection relies on a finding that the 12% interest rate was unlawful. The Complaint's causes of action, however, rely on faulty legal advice, or legal advice plagued by duplicity. The Plaintiffs allege that they were "tricked" by Sahaili to extend the loan to the Debtor through various non-disclosures regarding the interest rate to be charged, among other issues. There is no required finding that the interest rate charged to the Debtor by the Cohen Trust was usurious.

Third, there has been no showing that the Complaint requires any interpretation of the Plan. Again, the Complaint does not involve the Debtor or any creditor of the Debtor. The Plan contains no discussion about the causes of action that comprise the Complaint. The Plan discusses the retention by the Debtor (Reorganized Debtor) of claims against the Cohen Trust and Blue Jay for breaches of contract and fiduciary duties, and equitable subordination of the Claim, however, as noted, the Complaint involves no similar claims, as the Debtor is not a party to the Complaint, and neither is Blue Jay.

Fourth, there has been no showing that the Complaint has any effect on the implementation or consummation of the Plan. The Plan has been confirmed, and the effective date has occurred. The sale of the Property is to be fully consummated in February 2025. No monies flow from a judgment on the Complaint to the bankruptcy estate. The Plan does not depend on the outcome of the Complaint one way or the other.

Fifth, there has been no showing that the Complaint has any effect on the administration of the Plan. Other than litigation involving the Claim, and perhaps between the Debtor, the Cohen Trust and Blue Jay, there remains nothing more to do

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

under the Plan. There has been no showing that any outcome of litigating the Complaint would have any impact on the bankruptcy estate.

The Court is inclined to grant the Motion.

**November 6, 2024**

**Appearances waived.**

This matter is continued to December 4, 2024, at 9:00 a.m.

**October 23, 2024**

**Appearances waived.**

This matter is continued to November 6, 2024, at 9:00 a.m. The written record is closed.

<b>Party Information</b>
--------------------------

**Debtor(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Defendant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

DOES 1 through 100, inclusive

Pro Se

**Movant(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**Plaintiff(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10672 S&W Blue Jay Way, LLC**

**Chapter 11**

Adv#: 9:24-01033 Beverly Cohen, Ernest Cohen, Eleda Cohen and Miche v. Sohaili et al

**#9.00** CONT'D Hearing RE: [25] Motion for Leave to File Sur-Reply in Further Opposition to Motion to Remand (Cave, Matthew)

FR. 11-20-24

Docket 25

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

<b>Party Information</b>
--------------------------

**Debtor(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Defendant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

DOES 1 through 100, inclusive

Pro Se

**Movant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

**Plaintiff(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10672 S&W Blue Jay Way, LLC**

**Chapter 11**

Adv#: 9:24-01033 Beverly Cohen, Ernest Cohen, Eleda Cohen and Miche v. Sohaili et al

**#10.00** CONT'D Hearing RE: [6] Motion to Dismiss Adversary Proceeding (Cave, Matthew)

FR. 11-6-24, 12-4-24

Docket 6

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**November 6, 2024**

**Appearances waived.**

This matter is continued to December 4, 2024, at 9:00 a.m.

**Party Information**

**Debtor(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Defendant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

DOES 1 through 100, inclusive

Pro Se

**Movant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

**Plaintiff(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10672 S&W Blue Jay Way, LLC**

**Chapter 11**

Adv#: 9:24-01033 Beverly Cohen, Ernest Cohen, Eleda Cohen and Miche v. Sohaili et al

**#11.00** CONT'D Hearing RE: [12] Emergency motion Plaintiffs' Emergency Motion To Continue (I) Status Conference And (II) Motion To Dismiss Complaint From November 6, 2024, To November 20, 2024, Due To Pending Motion To Remand Or Abstain From Hearing Removed State Court Action; Memorandum Of Points And Authorities; Declaration Of Daniel A. Lev In Support Thereof (with Proof of Service)

FR. 10-17-24, 10-23-24, 11-6-24, 12-4-24

Docket 12

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**November 6, 2024**

**Appearances waived.**

This matter is continued to December 4, 2024, at 9:00 a.m.

**October 23, 2024**

**Appearances waived.**

This matter is continued to November 6, 2024, at 9:00 a.m. The written record is closed.

**Party Information**

**Debtor(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

**Defendant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

DOES 1 through 100, inclusive

Pro Se

**Movant(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**Plaintiff(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Ernest Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

Eleda Cohen

Represented By  
Ronald N Richards  
Geoffrey S. Long  
Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**9:23-10672 S&W Blue Jay Way, LLC**

**Chapter 11**

Adv#: 9:24-01033 Beverly Cohen, Ernest Cohen, Eleda Cohen and Miche v. Sohaili et al

**#12.00** CONT'D Status Hearing RE: [1] Adversary case 9:24-ap-01033. Notice of Removal by Beverly Cohen, Ernest Cohen, Eleda Cohen and Michelle Lerman as Co-Trustees of the Cohen Family Trust Dated March 13, 1986, as Restated December 31, 2005, Ernest Cohen, Eleda Cohen. Matthew)

FR. 11-6-24, 12-4-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**November 6, 2024**

**Appearances waived.**

This matter is continued to December 4, 2024, at 9:00 a.m.

**Party Information**

**Debtor(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Defendant(s):**

Hushmand Sohaili

Represented By  
Matthew Cave

DOES 1 through 100, inclusive

Pro Se

**Plaintiff(s):**

Beverly Cohen, Ernest Cohen, Eleda

Represented By  
Ronald N Richards



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... S&W Blue Jay Way, LLC**

**Chapter 11**

	Geoffrey S. Long Daniel A Lev
Ernest Cohen	Represented By Ronald N Richards Geoffrey S. Long Daniel A Lev
Eleda Cohen	Represented By Ronald N Richards Geoffrey S. Long Daniel A Lev

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

9:24-10647 Pamela Jeannette LaRosa

Chapter 7

Adv#: 9:24-01036 Molloy v. LaRosa

#13.00 Hearing RE: [10] Motion to Dismiss Adversary Proceeding Defendant Pamela Jeannette Larosas Motion to Dismiss Plaintiffs First Amended Complaint (Fed. R. Civ. P. 12(b)(6), Fed. R. Bank. P. 7012(b)); Alternatively for a More Definite Statement (Fed. R. Civ.p. 12(e), Fed. R. Bank. P. 7012(b))

Docket 10

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**Background**

On June 5, 2024, Pamela Jeannette LaRosa (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code. See Case 9:24-bk-10647-RC Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

On November 20, 2024, Joetta Molloy, in their capacity as Executor of the Estate of Joseph Bienek Deceased (the "Estate"), and Joetta Molloy, as an individual ("Molloy" and collectively with the Estate, the "Plaintiffs") filed against the Debtor that *First Amended Complaint for Non-Dischargeability and To Declare Property Not Property of the Bankruptcy Estate* (the "Complaint"). See Case 9:24-ap-01036-RC Docket No. 6. [FN1] The Complaint alleges that Molloy "is the daughter of the decedent, Joseph Bienek, and [the Debtor] is his stepdaughter." *Id.* at p. 3, lines 4-5. The Complaint further alleges that the Debtor, "with undue influence and by improper means, caused [Bienek] to transfer property to [the Debtor] inappropriately," and which actions were "done with malice and actual knowledge that defendant would harm the other heirs of [Bienek]." *Id.* at lines 6-9. The Complaint alleges that the Debtor "has great animosity against Plaintiffs due to their ongoing strife," and that the Debtor "took extensive actions to manipulate [Bienek] to obtain property and get it away from [Molloy]." *Id.* at lines 16-21.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Pamela Jeannette LaRosa**

**Chapter 7**

The Complaint asserts two (2) causes of action: (1) non-dischargeability under 11 U.S.C. § 523(a)(6); and (2) declaratory relief. *See id.* at pp. 3-4.

As to the 11 U.S.C. § 523(a)(6) cause of action, the Complaint alleges that "[t]he actions of [the Debtor] were malicious and should be declared non-dischargeable." *See id.* at p. 3, lines 25-26. Regarding the cause of action for declaratory relief, the Complaint alleges that a "declaration is necessary to determine if the property transferred to [the Debtor] by [Bienek] was proper, by undue influence or other improper means, such that it is not property of this bankruptcy estate." *See id.* at p. 4, lines 1-8.

Before the Court is *Defendant Pamela Jeannette LaRosa's Motion to Dismiss Plaintiff's First Amended Complaint (Fed. R. Civ. P. 12(b)(6), Fed. R. Bank. P. 7012(b)); Alternatively for a More Definite Statement (Fed. R. Civ. P. 12(E), Fed. R. Bank. P. 7012(b))* (the "Motion"), seeking dismissal of the Complaint pursuant to Fed. R. Civ. P. 12(b), or, in the alternative, more definite statements pursuant to Fed. R. Civ. P. 12(e). *See* Docket No. 10.

On January 2, 2025, the Plaintiffs filed that *Opposition of Plaintiff Joetta Molloy to Defendants Motion to Dismiss Under FRCP 12(b)* (the "Opposition") in which the Plaintiffs "simply ask[] for leave to amend to satisfy any assertion of need to amend." *See* Docket No. 13, p. 4, lines 1-2.

*Analysis*

*Rule 12(b)(6) and 12(e)*

"A motion to dismiss [pursuant to Fed. R. of Civ. P. 12(b)(6)] will only be granted if the complaint fails to allege 'enough facts to state a claim to relief that is plausible on its face.' 'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully.' 'We accept factual allegations in the complaint as true and construe the pleadings in

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

CONT... **Pamela Jeannette LaRosa**

Chapter 7

the light most favorable to the non-moving party.’ Although factual allegations are taken as true, we do not ‘assume the truth of legal conclusions merely because they are cast in the form of factual allegations.’ Therefore, ‘conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.’” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)).

In evaluating a motion to dismiss, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint, as well as matters of public record, may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). "A court may [also] consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice— without converting the motion to dismiss into a motion for summary judgment." *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation by reference" doctrine, a court may look beyond the four corners of the complaint to take consider documents whose contents are alleged in a complaint, but not physically attached, and may do so without converting a Rule 12(b)(6) motion into a motion for summary judgment. *See Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012). The court "may treat the referenced document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *Id.* (quoting *U.S. v. Richie*, 342 F.3d 903, 908 (9th Cir. 2003)). State court pleadings, orders and judgments are subject to judicial notice under Federal Rule of Evidence 201. *See McVey v. McVey*, 26 F.Supp.3d 980, 983-84 (C.D. Cal. 2014) (aggregating cases) and *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 742, 746 n.6 (9th Cir. 2006) ("We may take judicial notice of court filings and other matters of public record.").

Pursuant to Fed. R. Civ. P. 12(e) a "party may move for a more definite statement of a pleading to which a responsive pleading is allowed, but which is so vague or ambiguous that the party cannot reasonably prepare a response." Granting a motion for a more definite statement is within the trial court’s discretion and primarily granted when a more "detailed pleading will enable the defendant to provide a more

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

9:00 AM

**CONT... Pamela Jeannette LaRosa**

**Chapter 7**

enlightening or accurate response." *In re Hanford Nuclear Reservation Litig.*, 780 F.Supp. 1551, 1583 (E.D. Wash. 1991) (stating 12(e) motion are disfavored). *See Federal Deposit Ins. Corp. v. Wise*, 758 F.Supp. 1414, 1418 (D. Colo. 1991).

*11 U.S.C. § 523(a)(6)*

Pursuant to 11 U.S.C. § 523(a)(6), "[a] discharge under section 727 [] of this title does not discharge an individual debtor from any debt [] for willful and malicious injury by the debtor to another entity or to the property of another entity." "In prosecuting its case, a creditor must separately plead and prove both willfulness and maliciousness." *In re Mbunda*, 484 B.R. 344, 357 (9th Cir. BAP 2012) (citing *In re Barboza*, 545 F.3d 702, 706 (9th Cir. 2008)).

The willful element requires that "the debtor had a 'subjective motive to inflict injury' or a subjective belief that injury was 'substantially certain to result' from the debtor's conduct." *See id.* (citing *In re Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010)). In other words, "[t]he debtor must have intended the consequences of the action, not just the action itself. The willfulness standard focuses on the debtor's state of mind and precludes application of §523(a)(6)'s nondischargeability provision short of the debtor's actual knowledge that harm to the creditor was substantially certain." *In re Ang*, 589 B.R. 165, 178 (Bankr. S.D. Cal. 2018) (citations and quotations omitted); *see also In re Plyam*, 530 B.R. at 463 ("The injury was deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury,' "[t]hus, 'debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)').

The malicious injury elements require "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *In re Mbunda*, 484 B.R. at 358. "This is an objective standard. Malice may be inferred based on the nature of the wrongful act. Before malice may be inferred, however, the willful injury must be established." *In re Ang*, 589 B.R. at 179 (citations and quotations omitted).

*Failure to State a Claim*

Here, the Complaint falls short of the requisite pleading standard in Federal courts.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

9:00 AM

CONT... **Pamela Jeannette LaRosa**

Chapter 7

The "property" alluded to in both the Complaint's causes of action is not described with any particularity. Moreover, the Complaint is bare of facts that surround the elements of 11 U.S.C. § 523(a)(6). The Complaint merely states that the Debtor's actions were "done with malice and actual knowledge that [the Debtor] would harm the other heirs of [Beinek]." *See* Docket No. 6, p. 3, lines 7-9. This is not more than a recitation of certain of the elements of 11 U.S.C. § 523(a)(6). In short, the Court has no understanding in reviewing the Complaint of what property was allegedly transferred, when it was transferred, and the factual underpinnings of the scienter required under 11 U.S.C. § 523(a)(6).

Lastly, the Plaintiffs, through the Opposition, appear to concede that the Complaint either fails to state a claim or is in need of a more definite statement, as the Plaintiffs only request leave to file an amended complaint.

*Conclusion*

The Court is inclined to grant the Motion and dismiss the Complaint with the Plaintiffs being granted leave to file an amended complaint within 30 days.

[FN1]

Unless otherwise noted, all citations to the docket refer to case 9:24-ap-01036-RC.

**Party Information**

**Debtor(s):**

Pamela Jeannette LaRosa

Represented By  
Mark T Jessee

**Defendant(s):**

Pamela Jeannette LaRosa

Represented By  
Mark T Jessee

**Movant(s):**

Pamela Jeannette LaRosa

Represented By  
Mark T Jessee

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

---

9:00 AM

**CONT... Pamela Jeannette LaRosa**

**Chapter 7**

**Plaintiff(s):**

Joetta Molloy

Represented By  
Michael D Kwasigroch

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11027 Eduardo Asuncion and Mary Ambriz Asuncion**

**Chapter 7**

**#14.00** Hearing RE: [14] Reaffirmation Agreement Between Debtor  
and Wells Fargo Auto

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Eduardo Asuncion

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Mary Ambriz Asuncion

Represented By  
Daniel A Higson

**Trustee(s):**

Sandra McBeth (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11035 Martin Barboza, Jr. and Brenda Gonzalez**

**Chapter 7**

**#15.00** Hearing RE: [10] Reaffirmation Agreement Between Debtor  
and Volvo Car Financial Services LLC

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Martin Barboza Jr.

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Brenda Gonzalez

Represented By  
Daniel A Higson

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11070 Carmen Cornejo**

**Chapter 7**

**#16.00** Hearing RE: [11] Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company, LLC

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carmen Cornejo

Represented By  
Daniel A Higson

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11083 Monica Marie Lauterio**

**Chapter 7**

**#17.00** Hearing RE: [11] Reaffirmation Agreement Between Debtor and  
Capital One Auto Finance, a division of Capital One, N.A.

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Monica Marie Lauterio

Represented By  
Michael B Clayton

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11088 Linda Marie Danzi**

**Chapter 7**

**#18.00** Hearing RE: [10] Reaffirmation Agreement Between Debtor  
and VW Credit, Inc

Docket 10

**Tentative Ruling:**

**January 15, 2025**

**No appearance required.**

No court approval of the reaffirmation agreement is required. *See In re Ong*, 461 B.R.  
559 (9th Cir. BAP 2011).

<b>Party Information</b>
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**Debtor(s):**

Linda Marie Danzi

Represented By  
Stephen Parry

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11198 Victor Manuel Ramirez Martinez**

**Chapter 7**

**#19.00** Hearing RE: [11] Pro se Reaffirmation Agreement Between Debtor and OneMain

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Victor Manuel Ramirez Martinez                      Pro Se

**Trustee(s):**

Jerry Namba (TR)    Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11219 Ricky Wayne Barton and Claudia Taylor Barton**

**Chapter 7**

**#21.00** Hearing RE: [12] Pro se Reaffirmation Agreement Between Debtor and AmeriCredit Financial Services, Inc. dba GM Financial

Docket 12

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ricky Wayne Barton

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Claudia Taylor Barton

Represented By  
Daniel A Higson

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11225 Liliana Rodriguez Navarro**

**Chapter 7**

**#22.00** Hearing RE: [9] Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Company LLC fka Nissan Motor Acceptance Corporation

Docket 9

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Liliana Rodriguez Navarro

Represented By  
Daniel A Higson

**Trustee(s):**

Sandra McBeth (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11230 Laura Daniela Aguilar Garcia**

**Chapter 7**

**#23.00** Hearing RE: [9] Reaffirmation Agreement Between Debtor  
and Nissan Motor Acceptance Corp.

Docket 9

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Laura Daniela Aguilar Garcia

Represented By  
Daniel A Higson

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11243 Maria Isabel Magallanes**

**Chapter 7**

**#24.00** Hearing RE: [11] Amended Motion for Approval of Reaffirmation Agreement with Wescom Credit Union

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Maria Isabel Magallanes

Represented By  
Daniel A Higson

**Movant(s):**

Wescom Central Credit Union

Represented By  
Letty Ildefonso

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11254 Jesus Garcia Ramos and Laura R Garcia Romo**

**Chapter 7**

**#25.00** Hearing RE: [14] Pro se Reaffirmation Agreement Between Debtor and OneMain

Docket 14

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Garcia Ramos

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Laura R Garcia Romo

Represented By  
Michael B Clayton

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11254 Jesus Garcia Ramos and Laura R Garcia Romo**

**Chapter 7**

**#26.00** CONT'D Hearing RE: [11] Reaffirmation Agreement Between Debtor  
and American Honda Finance Corporation

FR. 12-11-24

Docket 11

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Garcia Ramos

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Laura R Garcia Romo

Represented By  
Michael B Clayton

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11254 Jesus Garcia Ramos and Laura R Garcia Romo**

**Chapter 7**

**#27.00** Hearing RE: [20] Reaffirmation Agreement Between Debtor  
and Toyota Motor Credit Corporation

Docket 20

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jesus Garcia Ramos

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Laura R Garcia Romo

Represented By  
Michael B Clayton

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11287 Anthony Ryan Grijalva and Hayley Rose Grijalva**

**Chapter 7**

**#28.00** Hearing RE: [10] Reaffirmation Agreement Between Debtor  
and CoastHills Credit Union

Docket 10

**Tentative Ruling:**

**January 15, 2025**

**No appearance required.**

No court approval of the reaffirmation agreement is required. *See In re Ong*, 461 B.R. 559 (9th Cir. BAP 2011).

**Party Information**

**Debtor(s):**

Anthony Ryan Grijalva

Represented By  
Nicholas M Wajda

**Joint Debtor(s):**

Hayley Rose Grijalva

Represented By  
Nicholas M Wajda

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11309 Victoria Debra Randolph**

**Chapter 7**

**#29.00** Hearing RE: [10] Reaffirmation Agreement Between Debtor  
and CoastHills Credit Union

Docket 10

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victoria Debra Randolph

Represented By  
Michael B Clayton

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11318 Michael Martinez Smith**

**Chapter 7**

**#30.00** Hearing RE: [7] Pro se Reaffirmation Agreement Between Debtor  
and Driveway Finance Corporation

Docket 7

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michael Martinez Smith

Represented By  
Michael B Clayton

**Trustee(s):**

Sandra McBeth (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11343 Omar De La Rosa Hernandez and Lurdez Luquin**

**Chapter 7**

**#31.00** Hearing RE: [7] Reaffirmation Agreement Between Debtor  
and Golden 1 Credit Union

Docket 7

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Omar De La Rosa Hernandez

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Lurdez Luquin

Represented By  
Michael B Clayton

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10572 Thomas Anthony Ferro

Chapter 7

Adv#: 9:24-01022 Cal-West Equities, Inc. v. Ferro

#32.00 CONT'D Hearing RE: [21] Motion to Amend Defendant's Motion for Order Granting Leave to Amend Answer to Add Affirmative Defenses

FR. 12-11-24

Docket 21

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

*Background*

On May 22, 2024, Thomas Ferro (the "Debtor") filed a voluntary petition under Chapter 7 of Title 11 of the United States Code. *See* Case 9:24-bk-10572-RC Docket No. 1.

On July 18, 2024, Cal-West Equities, Inc. ("Cal-West"), as the successor-in-interest to Arthur Huerth and Joan Huerth, both individually and d/b/a Huerth Financial Leasing, AJ Partners and Leslie Huerth (the "Huerths"), filed that *Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A), and § 523(a)(6)* (the "Complaint") against the Debtor. *See* Adversary Proceeding 9:24-ap-01022-RC Docket No. 1. [FN1] Through the Complaint, Cal-West alleges that the Huerths filed a federal diversity lawsuit in the Northern District of Illinois, Case #1:10-cv-05049, against the Debtor, EPD Investment Co. LLC ("EPD"), and several other defendants, including the Debtor (the "Illinois Matter"). *See id.* at pp. 4-5 ¶¶ 11-12. The Huerths specifically plead R.I.C.O. violations, consumer fraud, and fraudulent concealment against the Debtor. *See id.* at p. 5 ¶ 13.

In brief, the Huerths through the Illinois Matter alleged that from 2004 to 2006, the Huerths loaned over \$1,191,000 to EPD and that the Debtor, as a major investor in EPD, made false statements about EPD's finances and the status of the Huerths'

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Thomas Anthony Ferro**

**Chapter 7**

various loans to EPD. *See* Docket No. 12, pp. 2-3; and Docket No. 15, p. 35 ¶¶ 37-38. Among other things, the Huerths obtained a default judgment awarding the Huerths compensatory damages of \$924,000 against the Debtor (the "Judgment"). *See* Docket No. 12, p. 9 lines 19-21; and Docket No. 15, p. 121, *Exhibit 4*. [FN2] Through the Complaint, Cal-West, as the assignee of the Judgment, seeks to have the Judgment declared non-dischargeable pursuant to 11 U.S.C. § 523(a). *See* Docket Nos. 1 and 12.

On October 23, 2024, in relation to the Complaint, Cal-West filed that *Motion for Summary Judgment or Partial Adjudication of the Issues* (the "MSJ"). *See* Docket No. 12. The Debtor opposed the MSJ. *See* Docket No. 18. The MSJ is scheduled to be heard on January 29, 2025.

The Court set the following scheduling dates regarding the Complaint: (1) the discovery cut off is April 1, 2025; (2) the deadline for dispositive motions to be heard is May 21, 2025; and (3) a pre-trial conference is to be held on June 18, 2025. *See* Docket No. 10.

Before the Court is *Defendant's Motion for Order Granting Leave to Amend Answer to Add Affirmative Defenses* (the "Motion") in which the Debtor seeks leave to file an amended answer to the Complaint, adding two affirmative defenses – unclean hands and judicial estoppel. *See* Docket No. 21. Filed with the Motion was that *Request for Judicial Notice in Support of Opposition by Defendant/Debtor to Plaintiff's Motion for Summary Judgment or Partial Adjudication of the Issues* (the "Debtor's RJN"). *See* Docket No. 23.

On November 27, Cal-West filed *Plaintiff's Opposition to Defendant's Motion for Order Granting Leave to Amend Answer to Add Affirmative Defenses* (the "Opposition") and *Plaintiff's Request for Judicial Notice in Support of Plaintiff's Opposition to Defendant's Motion for Order Granting Leave to Amend Answer to Add Affirmative Defenses* (the "Cal-West RJN"). *See* Docket Nos. 27 and 28, respectively. The Opposition argues that leave should not be granted because the proposed amendments would be futile, and because the Motion is untimely. *See id.*

On December 4, 2024, the Debtor filed that *Reply to Plaintiff's Opposition to Defendant's Motion for Order Granting Leave to Amend Answer to Add Affirmative*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Thomas Anthony Ferro**

**Chapter 7**

*Defenses (the "Reply"). See Docket No. 29.*

*Discussion*

*Requests for Judicial Notice*

Pursuant to Fed. R. Evid. 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Judicial notice may be taken "of bankruptcy records in the underlying proceeding..." *In re Tuma*, 916 F.2d 488, 491 (9th Cir. 1990); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *Minden Pictures, Inc. v. Excitant Group, LLC*, 2020 WL 80525311 \* 2 (C.D. Cal. December 14, 2020)("A court may take judicial notice of 'court records available to the public through the PACER system.'"); *Neylon v. County of Inyo*, 2016 WL 6834097 \*2 (E.D. Cal. November 21, 2016)("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts.").

Pursuant to Fed. R. Evid. 201(e), "[o]n timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed."

Through the Debtor's RJN, the Debtor seeks judicial notice of the complaint, amended complaint, a default motion, declarations in support of the default motion, and order on the default motion in the Illinois Matter, EPD's bankruptcy petition, the Huerths' bankruptcy petition, the Huerths' bankruptcy discharge, the chapter 13 trustee's final report in the Huerths' bankruptcy case, and the docket sheet for the Huerths' bankruptcy case. *See Docket No. 23, pp. 1-3.*

Through the Cal-West RJN, Cal-West seeks to have the following documents judicially noticed: (1) the Complaint; (2) the Debtor's answer to the Complaint; (3) the Chapter 13 plan filed by the Huerths' in their bankruptcy (the "Plan"); (4) the order confirming the Plan; and (5) the claims register in the Huerths' bankruptcy case. *See Docket No. 28, p. 2.*

The documents that the Debtor's RJN and the Cal-West RJN seek judicial notice of are the types of documents that may be judicially noticed. Furthermore, no objection

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Thomas Anthony Ferro**

**Chapter 7**

has been filed. As such, the Court takes judicial notice of the documents listed in the Debtor's RJN and the Cal-West RJN.

*Fed. R. Civ. P. 15(a)*

Fed. R. Civ. P. 15 is applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7015.

Pursuant to Fed. R. Civ. P. 15(a)(2) "a party may amend its pleading only with the opposing party's written consent or the court's leave. The Court should freely give leave when justice so requires." Courts have applied this policy of granting leave to amend liberally. *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989). See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*) (FRCP 15(a) should be applied with "extreme liberality").

"A bankruptcy court [considers] the following factors in determining whether a motion to amend should be granted: (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party." *Hurn v. Retirement Fund Trust of Plumbing, Etc.*, 648 F.2d 1252, 1254 (9th Cir. 1981). "[T]he Ninth Circuit has held that in determining whether or not leave to amend is appropriate, the 'crucial factor is the resulting prejudice to the opposing party.'" *Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.*, 2003 WL 27383395 \*1 (C.D. Cal. 2003)(citing *Howey v. U.S.*, 481 F.2d 1187, 1190 (9th Cir. 1973)).

"Absent a showing of prejudice or a strong showing of any of the remaining factors, there is a presumption that leave to amend should be granted." *Hawkins v. Resort*, 2023 U.S. Dist. LEXIS 230635, at \*2 (D. Nev. 2023) (citing *Eminence Capital, LLC, supra*, at 1051). Moreover, the opposing party bears the burden of showing why leave should be denied. See *Desert Protective Council v. U.S. Dept. of the Interior*, 927 F.Supp.2d 949, 962 (S.D. Cal. 2013); and *Miramontes v. Mills*, 2015 U.S. Dist. LEXIS. 192573, at \*6 (C.D. Cal. 2015).

As noted, Cal-West in opposing the Motion has argued undue delay and futility.

*Undue Delay*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT...

**Thomas Anthony Ferro**

**Chapter 7**

"In evaluating undue delay, we ask 'whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading.'" *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 445 F.3d 1132, 1137 (9th Cir. 2006). Additionally, an amendment does not cause undue delay when done early in a case prior to substantial discovery being conducted and the discovery period closing. *See Miramontes v. Mills, supra*, at \*12 ("At the time Plaintiffs filed the Motion to Amend, little to no discovery had yet occurred. Therefore, this is not a case where the 'parties have engaged in voluminous and protracted discovery' prior to amendment...")

[] In circumstances like those here – i.e., where a motion for summary judgment is filed early in the litigation before substantial discovery has taken place – courts routinely conclude that granting leave to amend is appropriate, notwithstanding the fact that a motion seeking leave to amend was filed while a motion for summary judgment was pending. This is because, under such circumstances, granting leave to amend will not prejudice the defendant").

In the instant matter, although the MSJ is pending, the MSJ was filed early in this case and the discovery period has yet to close. Further, the Motion states that the Debtor and his attorneys were not aware of the facts supporting the affirmative defenses he wishes to add to his answer until opposing the MSJ. *See* Docket No. 21, p. 2 lines 8-12. Cal-West argues that the subject bankruptcy filings are public records, and thus the Debtor is deemed to know of them. Plaintiff offers no other argument or evidence to show undue delay by the Debtor. The Court is not persuaded by Cal-West that there was undue delay in the Debtor seeking to amend his answer.

*Bad Faith*

Cal-West does not argue that the Motion was brought in bad faith, and the Court finds no facts to suggest that the Debtor is acting in bad faith in advancing the Motion.

*Futility*

"Futility of amendment can, by itself, justify the denial of motion for leave to amend. If no amendment would allow the complaint to withstand dismissal as a matter of law, courts consider amendment futile." *Kroessler v. CVS Health Corp.* 977 F.3d 803, 815 (9th Cir. 2020) (citations and quotations omitted). *See Bonin v. Calderon*, 59 F3d. 815, 845; and *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **Thomas Anthony Ferro**

Chapter 7

(9th Cir. 1999) ("Where the legal basis for a cause of action is tenuous, futility supports the refusal to grant leave to amend").

However, "[c]ourts do not generally deny leave to amend on [futility grounds]. Ordinarily, courts will defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed. Deferring ruling on the sufficiency of the allegations is preferred in light of the more liberal standards applicable to motions to amend and the fact that the parties' arguments are better developed through a motion to dismiss." *Hawkins, supra*, at \*2 (citing *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003); *Underwood v. O'Reilly Auto Enter., LLC*, 342 F.R.D. 338, 346-47 (D. Nev. 2022); and *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 536 F.Supp.2d 1129, 1135-36 (N.D. Cal. 2008)). See *Labrador v. Seattle Mortg. Co.*, 681 F.Supp.2d 1106, 1108 (N.D. Cal. 2010); *Clarke v. Upton*, 703 F.Supp.2d 1037, 1043 (E.D. Cal. 2010); and *Duhn Oil Tool, Inc. v. Cooper Cameron Corp.*, 2010 U.S. Dist. LEXIS 20862, at \*39 (E.D. Cal. 2010) (the Court deferred addressing arguments about merits of the claim on motion for leave to amend). *But see In re DiBenedetto*, 560 B.R. 531, 536 (Bankr. C.D. Cal. 2016) ("Futility alone is sufficient to deny leave to amend" and decided the motion for leave only on futility).

In this matter, the Debtor seeks to amend his affirmative defenses to include unclean hands and judicial estoppel. "Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position." *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778, 782 (9th Cir. 2001)(internal citations omitted). "In the bankruptcy context, a party is judicially estopped from asserting a cause of action not raised in a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements." *Id.* at 783. "'The interests of both the creditors, who plan their actions in the bankruptcy proceeding on the basis of information supplied in the disclosure statements, and the bankruptcy court, which must decide whether to approve the plan of reorganization on the same basis, are impaired when the disclosure provided by the debtor is incomplete." *In re Coastal Plains*, 179 F.3d 197, 208 (5th Cir. 1999)(internal citation omitted).

The Debtor alleges that the Huerths failed to list the Illinois Matter in their bankruptcy schedules and statement of financial affairs, thereby triggering judicial estoppel in the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Thomas Anthony Ferro**

**Chapter 7**

instant case. The Debtor alleges that the Huerths' creditors were not paid in full, and that a discharge was granted to the Huerths, in part, based on the non-disclosure of the Illinois Matter to the bankruptcy court, creditors, and the chapter 13 trustee. Cal-West argues otherwise, alleging that all of the Huerths' creditors were in-fact paid, and that disclosure of the Illinois Matter in the Huerths' schedules was less than full, but sufficient.

Albeit important, and perhaps key to the resolution of this matter, this issue would be better developed and decided through a motion to dismiss, motion for summary judgment, or at trial.

*Prejudice to Cal-West*

Cal-West has not advanced the prejudice it would suffer with the granting of the Motion. This being Cal-West's burden, and Cal-West failing to meet its burden, the Court finds no facts or argument to suggest prejudice to Cal-West in granting the Motion.

*Conclusion*

The Court is inclined to grant the Motion as Cal-West has not carried its burden of demonstrating that granting leave to amend is improper. The Debtor is to amend its answer within 14 days of an order granting the Motion. An order granting the Motion is to be uploaded by the Debtor within 7 days.

**[FN1]**

Unless otherwise noted, all citation to the docket refer to Adversary Proceeding 9:24-ap-01022-RC.

**[FN2]**

The Debtor was found liable under Illinois fraudulent concealment law "and/or" Illinois consumer fraud law. *See* Docket No. 15, pp. 127-128. However, the Debtor was not found liable under R.I.C.O. *See id.*



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Thomas Anthony Ferro**

**Chapter 7**

**December 11, 2024**

**Appearances waived.**

This matter is continued to January 15, 2025, at 1:00 p.m.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Thomas Anthony Ferro

Represented By  
Robert M Yaspan

**Defendant(s):**

Thomas Anthony Ferro

Represented By  
Robert M Yaspan

**Movant(s):**

Thomas Anthony Ferro

Represented By  
Robert M Yaspan

**Plaintiff(s):**

Cal-West Equities, Inc.

Represented By  
Vanessa M Haberbusch

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Timothy J Yoo

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:23-10945 Jeffrey Dennis Peppard

Chapter 11

#33.00 Chapter 11 Confirmation Hearing

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**In-person appearances of the Debtor and IRS are required.**

IRS Objections to Confirmation

- The IRS's issue regarding the DIP facility and the priming liens over the Ashley and Kenwood properties is moot, as the Debtor is now selling the Ashley Property instead of obtaining a loan with the Ashley and Kenwood properties serving as collateral. *See* Docket No. 144, p. 4, lines 9-10.
- The IRS's issue regarding a waiver of setoff rights under 11 U.S.C. § 553 is moot, as the Debtor agrees that he is "happy to make the suggested changes [] and add the suggested *set off* exception for the IRS []." *See id.* at p. 5, lines 22-26.
- The IRS's issue regarding its secured lien attaching to the Ashley Property sales proceeds is moot. The Debtor is paying, in order of priority, the net sale proceeds to Nancy Bull and the IRS. *See* Docket No. 144, p. 4, lines 6-8. The sale proceeds will be fully exhausted after payments to the lienholders.
- The IRS's issue related to the avoidance of any of its liens is moot in that the Debtor has made it clear that the Plan "does not seek to avoid any lien of the IRS..." *See id.* at p. 4, lines 6-8.
- The IRS argues that the Debtor is selling the Ashley property, and only providing the IRS with \$675,000. *See* Docket No. 139, p. 11, lines 15-18. The Debtor is selling the Ashley property, and "after costs of sale and the senior mortgage," the remaining amounts will be paid to the IRS. *See* Docket

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Jeffrey Dennis Peppard**

**Chapter 11**

No. 144, p. 4, lines 6-8. If the costs of sale are 8%, and with a sale price at \$1.2 million, \$1,104,000 will be the net proceeds. After payment to Nancy Bull of \$363,612.41, the IRS would be paid \$740,387.59.

- Payment to the IRS of \$740,387.59 would lower its secured claim to approximately \$887,553.41. At 8%, over 44 months, and with the monthly plan payments of \$6,000, the secured claim would total \$883,437.18 in October 2028.
- The value of the Debtor's dental practice remains as an issue. The Debtor declares that "I am informed and I believe that practices like mine sell for between 1.5 and 3 times gross revenues..." See Docket No. 144, p. 8, lines 24-27. The Debtor asserts that based on his dental practice's gross income since 2021, the dental practice, as a going concern, "could be sold for between \$1,350,000 and \$2,700,000." See Docket No. 133, p. 34. The IRS argues that "a review of dental practices recently listed for sale in the nearby areas were well under \$1,000,000." See Docket No. 139, 0. 13, lines 23-26. It seems to the Court that there must be some evidence provided of the Debtor's dental practice's value other than a conclusory statement by the Debtor.
- The owner of the Debtor's dental practice's goodwill remains as an issue. That is, is it the Debtor, or the Debtor's suspended corporation, Jeff D. Peppard, D.D.S., Inc., that owns the goodwill of the Debtor's dental practice? To go further, is the goodwill of the dental practice what the Debtor refers to when he discusses the sale of his dental practice? Or, rather, is it other assets, such as client files? And if it is client files and the like, do those files "belong" to the Debtor, his suspended corporation, the clients, or some other entity? In short, what can the Debtor sell? What is the \$1.35 to \$2.7 million comprised of?
- The secured vs. priority portions of the IRS claim remains an issue. The IRS seems to argue that a portion of its secured claim is also a priority claim. See Docket No. 139, p. 16, lines 4-8. The IRS argues that \$272,669.49 of its secured claim is a penalty that should be paid as a priority claim over 5 years from the petition date. This payment, argues the IRS, would be \$10,440.17 per month. See *id.* at p. 16, lines 22-26. At bottom, the entirety of the IRS's

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT...

**Jeffrey Dennis Peppard**

**Chapter 11**

claim is to be paid at the conclusion of the case through the sale of the Debtor's dentistry practice. May the Debtor not comply with 11 U.S.C. § 1129(a)(9)(C), assuming for the moment that this Code section applies, by making a lump sum payment prior to the expiration of the statutorily mandated repayment period? *See In re Gregory Boat Co.*, 144 B.R. 361, 364 (Bankr. E.D. Mich. 1992)("Nothing in the language of § 1129(a)(9)(C) suggests that payments on priority tax claims must be either periodic or equal. Indeed nothing in the statutory language prohibits a single payment of principal and interest at the end of the six year time period.").

- The IRS raises the Debtor's gambling, suggesting that the Debtor gambled as recently as mid-September 2024. *See* Docket No. 139, pp. 10-12. The Court agrees with the IRS that any gambling by the Debtor moving forward could disrupt the success of the Plan. Yet, the Debtor asserts that he is treating his gambling, is no longer gambling, and is committed to foregoing any gambling for the duration of the term of the Plan.
- The Debtor admits that he pays college costs for his children. It is not clear how these costs affect feasibility, or, if they do not, why they should be paid on a go-forward basis. These payments do not appear to be to repay the Debtor's creditors, but are rather payments on the part of adult children.
- The Debtor's ability to rent the Kenwood property for \$6,000 per month remains an issue. The Debtor attests that he can "easily generate \$6,000 per month" by renting 70% of the Kenwood property. *See* Docket No. 144, p. 7, lines 16-21. This seems to the Court to be a non-issue. Renting all but one of the rooms of the Kenwood property, which property is located in Santa Barbara proper, would seem to the Court to be less than market rate for this area.
- Under the Plan, if the Debtor has insufficient monies to repay creditors in full after the sale of his dental practice, the Debtor intends on refinancing the Kenwood property to make up the difference. *See* Docket No. 134, p. 14, lines 25-27. The IRS argues that the Debtor has not shown his "ability to get a home equity loan against the Kenwood Road Property in October 2028." *See* Docket No. 139, p. 22, lines 15-18. The Court does not find a challenge as to

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Jeffrey Dennis Peppard**

**Chapter 11**

the value of the Kenwood property, or the first position lien against said property. The Debtor enjoys more than \$2 million in equity in the Kenwood property, absent the lien of the IRS. *See* Docket No. 134, pp. 9-10. Assuming \$500,000 for the Debtor's dental practice, and assuming the dental practice is an asset of the Debtor's estate, there appears to be a significant equity cushion for the IRS, and all creditors that would remain to be paid from the property for that matter, in the Kenwood property.

- As to tax liabilities, the Debtor asserts that taxes will be paid as they become due post-confirmation
- The IRS's issue regarding the administrative claims bar date as to the IRS is moot. The Debtor agrees that "[a]s to the administrative claims bar date, the Debtor agrees that the plan confirmation order will provide that administrative tax claims will not be time barred by the professional fees and trade claims bar date." *See* Docket No. 144, p. 5, lines 19-21.
- The IRS's issue regarding the discharge language in the Plan is moot. The Debtor "is happy" to make the IRS's suggested revisions. *See* Docket No. 144, p. 5, lines 22-26.
- The IRS's issue as to the purported third-party releases is a bit confusing. *See* Docket No. 139, pp. 24-25. Does not the IRS's proposed language make the proposed non-release overly broad as to the IRS, thereby carving out the IRS from the release language altogether?
- Regarding the IRS's issue as to 11 U.S.C. § 1129(a)(7)(A), the IRS argues that for all the reasons it has set forth in its opposition, the Plan does not pay creditors at least as much as they would receive in a Chapter 7 liquidation. *See id.* at p. 27. The Debtor argues that the IRS fails to take into account gains taxes on the sale of the Kenwood property, the fact that the Ashley property is being sold, rather than the Debtor obtaining a DIP facility, and that his dental practice can in-fact be sold for more than what claims will total in October 2028. What is more, all creditors that did vote regarding the Plan, support confirmation. *See* Docket No. 144, p. 6, lines 3-12.

**Party Information**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Jeffrey Dennis Peppard**

**Chapter 11**

**Debtor(s):**

Jeffrey Dennis Peppard

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

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1:00 PM

9:23-10945 Jeffrey Dennis Peppard

Chapter 11

#34.00 CONT'D Hearing RE: Chapter 11 Status Conference

FR. 12-12-23, 2-20-24, 4-10-24, 4-19-24, 6-5-24, 7-10-24, 9-25-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**July 10, 2024**

**Appearances required.**

**June 5, 2024**

**Appearances required.**

The Court has reviewed *Debtor's Chapter 11 Status Conference Report & Request for Continuance to Hearing on Disclosure Statement*. See Docket No. 95. The Court will confer with the Office of the U.S. Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**April 10, 2024**

**Appearances required.**

**February 20, 2024**

**Appearances required.**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Jeffrey Dennis Peppard**

**Chapter 11**

The Court has reviewed *Debtor's Chapter 11 Status Conference Report*, and that *First Interim Report of Patient Care Ombudsman Pursuant to 11 U.S.C. § 333(b)(2)*. See Docket Nos. 58 and 64, respectively.

On February 9, 2024, Jeffrey D. Peppard (the "Debtor") filed that *Original Chapter 11 Plan* (the "Plan") and that *Original Disclosure Statement Describing Original Chapter 11 Plan* (the "Disclosure Statement"). See Docket Nos. 60 and 59, respectively. On their face, the Disclosure Statement and the Plan have disclosure and confirmation issues. The descriptions of which classes of creditors are impaired, and which are not under the Plan differ in the Disclosure Statement as compared to the Plan. This is significant in that impairment determines the voting rights of creditors. The interest holders are described as Class 8 when in-fact the Debtor's interests comprise Class 10. It is unclear why there are two (2) separate classes of unsecured creditors, Classes 8 and 9, only one of which will be paid in full under the Plan. The Debtor runs a dental practice with employees, but the Debtor shows wages as being stagnant for the life of the Plan. Perhaps there is an explanation, but it seems odd that there are no increases in wages over the life of the Plan. This is significant because even a modest increase of 3% year over year has a material impact on feasibility of the Plan.

The Court will set the Disclosure Statement for hearing as to its adequacy for April 10, 2024, at 2:00 p.m. The Disclosure Statement and Plan, and notice of the hearing on the approval of the adequacy of the Disclosure Statement must be served on or before February 28, 2024. The notice of the hearing on the Disclosure Statement, with proof of service, must be filed on or before February 28, 2024, and said proof of service shall include proof of the proper service of the Disclosure Statement and Plan. The notice of the hearing on the adequacy of the Disclosure Statement shall include notice of the opposition deadlines contained in this Court's Local Rule 3017-1.

The Court will inquire with the Office of the U.S. Trustee as to the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**December 12, 2023**



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **Jeffrey Dennis Peppard**  
**Appearances required.**

**Chapter 11**

The Court has reviewed the *Debtor's Chapter 11 Status Conference Report* (the "Report"). See Docket No. 41. In reviewing the Debtor's past and projected income, it appears to the Court that the Debtor loses money each month. See *id.* at *Exhibit 1*. What is more, the past and projected income does not seem to account for the accruing of the fees and expenses of general insolvency counsel to the Debtor, an ombudsman, or the to-be employed insolvency accountant. The quarterly payments due to the Office of the United States Trustee appear lower than required. It is unclear to the Court whether the estate is currently administratively insolvent, but all signs point to the affirmative, and unless there are facts not highlighted in the Report, any current administrative insolvency will only deepen in the coming months.

Perhaps the Court is unaware of assets or an income stream that will allow the Debtor to fund its exit strategy from Chapter 11, but at this stage the Court is inclined to convert or dismiss this case to prevent what the Court understands to be an administratively insolvent debtor.

<b>Party Information</b>
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**Debtor(s):**

Jeffrey Dennis Peppard

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#35.00 CONT'D Hearing RE: [119] Motion Debtors Notice Of Motion And Motion Under Bankruptcy Code § 502(C) To Estimate Claim Of Paige Gesualdo; Memorandum Of Points And Authorities; And Declaration Of John A. Ruskey Iii In Support Thereof

FR. 7-10-24, 10-23-24

Docket 119

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Movant(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger  
Michael Jay Berger  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#36.00 CONT'D Hearing RE: [146] Motion RE: Objection to Claim Number 9 by Claimant Paige Gesualdo. Notice of Objection to Claim and Debtor's Objection to Proof of Claim of Paige Gesualdo; Memorandum of Points and Authorities; Declaration of John A. Ruskey III In Support Thereof

FR. 8-6-24, 10-23-24

Docket 146

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Movant(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger  
Michael Jay Berger  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**9:24-10044 FRINJ Coffee, Incorporated.**

**Chapter 11**

**#37.00** CONT'D Hearing RE: [68] Confirmation of Chapter 11 Plan  
(RE: [227] Amended Chapter 11 Small Business Plan)

FR. 7-10-24, 10-23-24

Docket 227

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#38.00 CONT'D Chapter 11 Status Conference

FR. 3-6-24, 5-8-24, 5-22-2, 6-5-24, 7-10-24, 10-23-24

Docket 1

**Tentative Ruling:**

**June 5, 2024**

**Appearances required.**

**May 22, 2024**

**Appearances required.**

**May 8, 2024**

**Appearances required.**

The Court has reviewed the *Subchapter V Status Report*. See Docket No. 75. The Court is inclined to set the following confirmation dates:

July 10, 2024, at 1:00 p.m. - Continued status conference

July 10, 2024, at 1:00 p.m. - Confirmation Hearing

June 10, 2024 - Deadline to serve the plan, ballots and notice of confirmation hearing

June 25, 2024 - Deadline to submit ballots and file objections to confirmation of the plan

July 3, 2024 - Deadline to submit confirmation brief and ballot tally

The Debtor is to submit a scheduling order with these dates.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... FRINJ Coffee, Incorporated.**

**Chapter 11**

The Court will inquire with the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**March 6, 2024**

**Appearances required.**

The Court has reviewed that *Subchapter V Status Report*. See Docket No. 49. The Court will inquire with the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**Party Information**

**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#39.00 CONT'D Hearing (**As a Holding Date**) Objection (related document(s): [155] Motion - Request for Payment of Administrative Expense with proof of service filed by Creditor SUN BZL, LLC) Debtor's Objection to Administrative Expense Claim of BZL, LLC; Memorandum of Points and Authorities; Declaration of John A. Ruskey III In Support Thereof Filed by Debtor FRINJ Coffee, Incorporated. (Berger, Michael)

FR. 12-3-24; 01-14-25

Docket 205

**Tentative Ruling:**

**January 14, 2025**

**Appearances required.**

The parties have resolved the Motion. *See* Docket No. 246, *Motion to Confirm Debtor's Amended Subchapter V Chapter 11 Plan of Reorganization Dated November 1, 2024*, pp. 12-13. A stipulation allowing the purported administrative expense claim is to be filed prior to the hearing on the Motion. No such stipulation has yet been filed. The Court will inquire with the parties as to next steps regarding the Motion.

**December 3, 2024**

**Appearances required.**

On April 16, 2024, FRINJ Coffee, Inc. (the "Debtor") filed that *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (the "SOFA") in which the Debtor asserted that it was in possession of the property of SUB BZL LLC's ("Sun") consisting of 827.8 pounds of processed coffee (the "Coffee"). *See* Docket No. 71, p. 23. Apparently, the Debtor would process coffee harvested by Sun, sell the processed coffee, and share in the proceeds of the sold coffee with Sun. As it pertains to the Coffee, the Debtor asserts that of the 827.8 pounds in the Debtor's possession when the SOFA was filed, 382.7 pounds comprised sellable coffee "[a]fter sorting, and

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **FRINJ Coffee, Incorporated.**

**Chapter 11**

removal of defects..." See Docket No. 205, *Debtor's Objection to Administrative Expense Claim of BZL, LLC* (the "Opposition"), p. 4, lines 20-21. As Sun notes, however, the SOFA description of the Coffee considers that the 827.8 pounds was processed coffee, meaning "sorted, fermented, dried, and quality sampling." See Docket No. 71, p. 23. However, utilizing the 382.7 pounds figure, the Debtor asserts that it sold 103.61 pounds and returned the balance to Sun.

On July 10, 2024, Sun filed that *Request for Payment of Administrative Expense* (the "Motion"). See Docket No. 155. Sun asserts that the agreement between it and the Debtor was that "for coffee sold, the Debtor and [Sun] would share equally in the proceeds." See *id.* at p. 1, lines 23-24. Sun asserts that 76.8 pounds of the Coffee was sold, and 115.9 pounds returned. See *id.* at p. 2, lines 5-9. According to Sun, the Debtor's "literature" provides that the Debtor "averages \$200 per pound for coffee sales." See *id.* at p. 3, *Declaration of Chris McCausland*, lines 6-8. With 635.1 pounds of the Coffee unaccounted for, at \$200 per pound, Sun seeks an administrative expense priority claim in the amount of \$63,510, representing 50% of the value of the remaining 635.1 pounds of the Coffee. See *id.* at p. 2, lines 11-14.

There are a number of facts that are not clear to the Court. First, it is not clear how much of the Coffee has been returned to Sun by the Debtor. The Debtor asserts that a total of 330.18 pounds of the Coffee was returned to the Debtor. See Docket No. 205, p. 4, lines 15-18. Exhibit 3 to the Opposition contains a page showing 329.7 pounds of the Coffee having been returned to the Debtor, and with a "Customer Signature" dated May 21, 2024, to that point. See *id.* at p. 17, *Exhibit 3*. Sun asserts that it only ever received 115.9 pounds of the Coffee back from the Debtor. The parties disagree about whether 213.8 pounds of the Coffee was ever returned to Sun by the Debtor.

Second, the parties disagree about the agreement as to the sale proceeds from the sale of the Coffee. As noted, Sun asserts that the agreement was that the parties "would share equally in the proceeds," and that the amount that the Coffee was to be sold for was to "average" \$200 per pound. See Docket No. 155, p. 1, lines 22-24. The Debtor asserts that it "did not guarantee a \$200/lb. sale price for [the Coffee]." See Docket No. 205, p. 5, lines 5-7. The amount of the Coffee that the Debtor sold averaged \$145.31/lb. according to the Debtor. See *id.* at lines 3-7.

Lastly, the parties appear to disagree on how much of the Coffee remained at the time



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... FRINJ Coffee, Incorporated.**

**Chapter 11**

the balance of the Coffee was returned to Sun in May 2024. Sun argues that 827.8 pounds, less the amount sold and returned remained, and must be paid for. The Debtor argues that of the 827.8 pounds, all that was not sold or returned, was lost to quality control, samples and moisture loss. *See* Docket No. 205, p. 5, lines 7-10. Oddly enough, while the SOFA provides that the Coffee was processed, taking into account sorting and removal of defects, an invoice was sent to Sun to "process" the remaining Coffee in May 2024, which processing included milling and sorting. *See id.* at *Exhibit 5*.

The Court is inclined to set an evidentiary hearing on the Motion to take place on April 17, 2025, at noon.

<b>Party Information</b>
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**Debtor(s):**

FRINJ Coffee, Incorporated.

Represented By  
Michael Jay Berger

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**9:24-10191 AC Fabrication, Inc.**

**Chapter 11**

**#40.00** CONT'D Hearing on Confirmation of Chapter 11 Plan (Subchapter V Case)

FR. 7-24-24, 8-21-24, 10-23-24

Docket 38

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

<b>Party Information</b>
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**Debtor(s):**

AC Fabrication, Inc.

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

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10191 AC Fabrication, Inc.

Chapter 11

#41.00 CONT'D Chapter 11 Status Conference (Subchapter V Case)

FR. 4-10-24, 6-5-24, 7-24-24, 8-21-24, 10-23-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**June 5, 2024**

**Appearances required.**

The Court has reviewed the *Debtor's Status Report*. See Docket No. 9. The Court will set *Debtor's Chapter 11 Plan of Reorganization* for a confirmation hearing to take place on July 24, 2024, at 1:00 p.m. The Court will confer with the Office of the U.S. Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**April 10, 2024**

**Appearances required.**

The Court has reviewed the *Subchapter V Status Report*. See Docket No. 19. The Court will inquire with the Office of the U.S. Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

The Court is inclined to continue the status conference to June 5, 2024, at 2:00 p.m.

**Party Information**

**Debtor(s):**

AC Fabrication, Inc.

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

---

1:00 PM

**CONT... AC Fabrication, Inc.**

**Chapter 11**

Matthew D. Resnik  
Roksana D. Moradi-Brovia

**Trustee(s):**

John-Patrick McGinnis Fritz (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**9:24-10578 Underground Solutions LLC**

**Chapter 11**

**#42.00 Hearing RE: [106] Disclosure Statement Describing Original Chapter 11 Plan**

Docket 106

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**Party Information**

**Debtor(s):**

Underground Solutions LLC

Represented By  
Steven R Fox

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10578 Underground Solutions LLC

Chapter 11

#43.00 CONT'D Chapter 11 Status Conference

FR. 7-24-24, 9-25-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**September 25, 2024**

**Appearances required.**

The Court has reviewed that *Status Report for Status Conference*. See Docket No. 83. The Court will inquire with the Office of the U.S. Trustee regarding the Debtor's compliance with the *Guidelines and Requirements of Chapter 11 Debtors-In-Possession*. Assuming the Debtor is in full compliance, the Court will set the deadline for the debtor to file and serve a disclosure statement and plan of November 1, 2024. The Court will set a disclosure statement hearing for December 4, 2024, at 1:00 p.m. The Court will continue the status conference to December 4, 2024, at 1:00 p.m. The Debtor is to upload a scheduling order within 7 days.

**July 24, 2024**

**Appearances waived.**

The Court has reviewed that *Initial Status Report for Initial Status Conference*. See Docket No. 42. The Court will continue the status conference to September 25, 2024, at 1:00 p.m.

**Party Information**

**Debtor(s):**

Underground Solutions LLC

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Underground Solutions LLC**

Steven R Fox

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10682 MaddieBrit Products, LLC

Chapter 11

#44.00 CONT'D Hearing (Status Conference) RE: [170] Motion of Debtor and Debtor in Possession to Determine the Value of the Collateral and the Secured Claim of Bright Plastics LLC; Memorandum of Points and Authorities in Support; and Declaration of Michael Edell, Chief Executive Officer of the Debtor

FR. 12-10-24

Docket 170

**Tentative Ruling:**

**January 15, 2025**

**Appearances waived.**

The Court has reviewed *Debtor and Debtor-in-Possession Maddiebrit Products, LLC's and Secured Creditor Bright Plastics, LLC's Joint Status Report in Advance of Chapter 11 SubChapter V Status Conference* (the "Report"). See Docket No. 200. While there remain some moving parts, the Report suggests that there may soon be a resolution of that *Motion of Debtor and Debtor in Possession to Determine the Value of the Collateral and the Secured Claim of Bright Plastics, LLC*. The Court vacates the status conference. Should a resolution be reached, the Court will hear any such motion requesting approval of the resolution under Fed. R. Bankr. P. 9019 or otherwise. Absent a resolution of the motion the Court will hear the merits of the motion on February 7, 2025, at 9:00 a.m.

**Party Information**

**Debtor(s):**

MaddieBrit Products, LLC

Represented By  
Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Movant(s):**

MaddieBrit Products, LLC

Represented By



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... MaddieBrit Products, LLC**

**Chapter 11**

Craig G Margulies  
Jeremy Faith  
Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10682 MaddieBrit Products, LLC

Chapter 11

#45.00 CONT'D Chapter 11 Status Conference (Subchapter V Case)

FR. 8-7-24, 10-23-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

The Court will hear from the Office of the U.S. Trustee (the "OUST") regarding the Debtor's compliance with the OUST's *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

**August 7, 2024**

**Appearances required.**

The Court has reviewed that *Subchapter V Status Report*. See Docket No. 69.

The Court will hear from the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession* (the "Guidelines"). The Court will also hear from the SubChapter V Trustee.

The Debtor's deadline to file a plan of reorganization is September 16, 2024. See 11 U.S.C. § 1189(b). The Court will set a confirmation hearing for October 23, 2024, at 1:00 p.m. The Debtor is to serve notice of the confirmation hearing, ballots, and the plan on required parties-in-interest on or before September 23, 2024. Any opposition to confirmation of the plan proposed by the Debtor must be filed on or before October 9, 2024. A ballot tally and memorandum in support of confirmation of the to-be filed Plan is to be filed by the Debtor on or before October 16, 2024.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... MaddieBrit Products, LLC**

**Chapter 11**

Assuming full compliance with the Guidelines, the Court will continue the status conference to October 23, 2024, at 1:00 p.m.

The Debtor is to upload a scheduling order within 7 days.

<b>Party Information</b>
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**Debtor(s):**

MaddieBrit Products, LLC

Represented By

Craig G Margulies

Jeremy Faith

Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**9:24-10682 MaddieBrit Products, LLC**

**Chapter 11**

**#46.00 Chapter 11 Plan Confirmation Hearing**

Docket 120

**\*\*\* VACATED \*\*\* REASON: Continued to March 12, 2025, at 1:00 p.m.  
(at hearing held on 11/26/24)**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

MaddieBrit Products, LLC

Represented By

Craig G Margulies

Jeremy Faith

Samuel Mushegh Boyamian

**Trustee(s):**

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

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1:00 PM

9:24-10693 Shaffiq Salim Rahim and Naseem Sayani

Chapter 11

#47.00 CONT'D Hearing RE: [35] Stipulation By Shaffiq Salim Rahim, Naseem Sayani and Newtek Small Business Finance, LLC Regarding Treatment of Claim of Newtek Small Business Finance, LLC [Claim No 15]

FR. 9-24-24, 10-23-24

Docket 35

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**October 23, 2024**

**Appearances required.**

**September 24, 2024**

**Appearances required.**

On June 20, 2024, Shaffiq Salim Rahim and Naseem Sayani (collectively, hereinafter, the "Debtors") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtors scheduled Newtek Small Business Finance ("Newtek") as having a secured claim in the amount of \$465,492.25. *See* Docket No. 18, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. On July 26, 2024, Newtek filed Claim No. 15 as a secured claim in the amount of \$531,464.97 (the "Claim"). *See* Claim No. 15.

On August 22, 2024, the Debtors filed that *Stipulation Regarding Treatment of Claim of Newtek Small Business Finance, LLC* (the "Stipulation"). *See* Docket No. 35. The Stipulation, at bottom, resolves the treatment of the Claim for purposes of the Debtors' future filed plan of reorganization. Relating to the pre-confirmation

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Shaffiq Salim Rahim and Naseem Sayani**

**Chapter 11**

treatment of the Claim, the Stipulation provides in part that "[p]ayments of interest only (i.e., \$2,657.32/month) will be due and payable by the Debtors to Newtek under the 3<sup>rd</sup> DOT beginning on September 15, 2024..." *See id.* at p. 3, lines 13-15. On September 13, 2024, the Court entered that *Order Setting Stipulation Regarding Treatment of Claim of Newtek Small Business Finance, LLC for Hearing*. *See* Docket No. 41.

A confirmation hearing on any plan filed by the Debtors will take place on October 23, 2024. *See* Docket No. 31, *Scheduling Order After Status Conference*.

"A chapter 11 debtor generally may not make any payments or other distributions on account of prepetition claims except through a confirmed plan of reorganization or court-authorized liquidation." *In re Pioneer Health Services, Inc.*, 570 B.R. 228, 232 (Bankr. S.D. Miss. 2017).

Here, the Debtors request that the Court approve of payments concerning a prepetition claim, post-petition, and in advance of confirmation of any plan of reorganization. The Court will inquire with the Debtors as to the authority the Court has to approve of such payments.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shaffiq Salim Rahim

Represented By  
Summer M Shaw

**Joint Debtor(s):**

Naseem Sayani

Represented By  
Summer M Shaw

**Movant(s):**

Shaffiq Salim Rahim

Represented By  
Summer M Shaw

Naseem Sayani

Represented By  
Summer M Shaw

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

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1:00 PM

**CONT... Shaffiq Salim Rahim and Naseem Sayani**

**Chapter 11**

**Trustee(s):**

John-Patrick McGinnis Fritz (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10693 Shaffiq Salim Rahim and Naseem Sayani

Chapter 11

#48.00 CONT'D Chapter 11 Plan Confirmation Hearing

FR. 10-23-24

Docket 45

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

The Court has reviewed the *Subchapter V Debtors' Third Status Report*. See Docket No. 75. It appears that the Debtors have at least two (2) issues to resolve before their plan of reorganization will be confirmation ready. The Court is comfortable that all parties-in-interest are working diligently and effectively towards confirmation. The Court will hear from the Debtors about the length of continuance they require for the confirmation hearing.

**October 23, 2024**

**Appearances required.**

**Party Information**

**Debtor(s):**

Shaffiq Salim Rahim

Represented By  
Summer M Shaw

**Joint Debtor(s):**

Naseem Sayani

Represented By  
Summer M Shaw

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10693 Shaffiq Salim Rahim and Naseem Sayani

Chapter 11

#49.00 CONT'D Chapter 11 Status Conference (Subchapter V Case)

FR. 8-7-24, 10-23-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**October 23, 2024**

**Appearances required.**

**August 7, 2024**

**Appearances required.**

The Court has reviewed that *SubChapter V Status Report*. See Docket No. 24. The last day for the Debtors to file a plan of reorganization is September 18, 2024. See 11 U.S.C. § 1189(b). The Court will set a plan confirmation hearing for October 23, 2024, at 1:00 p.m. The deadline for the Debtors to file and serve a notice of the confirmation hearing, ballots, and the to-be filed plan of reorganization will be September 23, 2024. The last day for parties-in-interest to file any opposition to confirmation of the to-be filed plan of reorganization will be October 9, 2024. The last day for the Debtors to file a ballot tally and memorandum in support of confirmation of the to-be filed plan of reorganization will be October 16, 2024.

The Court will hear from the Office of the U.S. Trustee regarding the Debtors' compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession* (the "Guidelines"). The Court will also hear from the SubV Trustee.

Assuming full compliance with the Guidelines, the Court will continue the status

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Shaffiq Salim Rahim and Naseem Sayani**  
conference to October 23, 2024, at 1:00 p.m.

**Chapter 11**

The Debtors are to upload a scheduling order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Shaffiq Salim Rahim

Represented By  
Summer M Shaw

**Joint Debtor(s):**

Naseem Sayani

Represented By  
Summer M Shaw

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10813 Raul Leopoldo Molina, Jr.

Chapter 11

#50.00 Hearing RE: [58] Disclosure Statement Debtor's Disclosure Statement  
Describing Chapter 11 Plan of Reorganization

Docket 58

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

*Background*

Raul Leopoldo Molina, Jr. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on July 22, 2024. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtor scheduled as an asset, a parcel of real property located at 2261 Hillsbury Rd., Westlake Village, CA 91361 (the "Property"), with a value of \$2.399 million. *See id.* at p. 15, *Schedule A/B: Property*. The Debtor scheduled creditors with liens against the Property as follows: (1) Montelongo Enterprises, Inc. - \$250,000; and (2) New Era Agency, Inc. - \$389,900. *See id.* at pp. 23-26, *Schedule D: Creditors Who Have Claims Secured by Property*. Neither claim was scheduled as being disputed, unliquidated, or contingent. *See id.* Proofs of claim were filed as secured by the Property as follows: (1) Scott W. Biggs and Danna Biggs, Trustees of the Biggs Family Revocable Trust Dated February 10, 2009- \$343,288.57; and (2) U.S. Bank Trust National Assoc. - \$1,487,736.90. *See* Claim Nos. 2 and 10, respectively. Altogether, including scheduled and filed claims regarding the Property, the Property is subject to secured claims totaling \$2,470,925.47. Even excluding costs of sale, the Debtor lacks equity in the Property.

On December 27, 2024, the Court entered that *Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362*, which Order granted the Biggs Trust relief from stay to foreclose on the Property. *See* Docket No. 67.

On November 22, 2024, the Debtor filed *Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization* (the "Disclosure Statement"). *See* Docket No. 58.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Raul Leopoldo Molina, Jr.**

**Chapter 11**

Before the Court is the Debtor's request for approval of the Disclosure Statement pursuant to 11 U.S.C. § 1125(b).

*Analysis*

Pursuant to 11 U.S.C. § 1125(b), "[a]n acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." "[A]dequate information means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records [] that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan..." 11 U.S.C. § 1125(a)(1). "[I]n determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." *Id.* "[T]he determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brothy*, 303 B.R. 177, 193 (9th Cir. BAP 2003)(citing *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988)). "The purpose of a disclosure statement is to give all creditors a source of information which allows them to make an informed choice regarding the approval or rejection of a plan." *In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (9th Cir. BAP 1996).

The Disclosure Statement provides that "[t]his is a plan which provides for debtor to sell (liquidate) his residence and pay all creditors in full." *See* Docket No. 58, p. 6, lines 15-16. It is not clear how the Debtor intends to pay his creditors in full with the sale of the Property when he lacks equity in the Property. The Disclosure Statement provides that the Property "is encumbered by five consensual liens totaling no more than \$2,221,710. *See id.* at p. 11, lines 16-17. The Debtor's schedules list liens against the Property totaling \$2,398,260.49. *See* Docket No. 1, pp. 23-26. Assuming a low cost of sale of 5%, the costs to sell the Property would be \$119,950, which leaves \$2,279,050 to pay secured claims of more than \$2,398,260.49. Again, taking into account the filed and scheduled claims, the total secured claims against the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Raul Leopoldo Molina, Jr.**

**Chapter 11**

Property are no less than \$2,470,925.47. There are also administrative expense claims estimated at \$20,250, and other unsecured claims totaling \$196,563.92. The Debtor's exit strategy appears to be unrealizable.

The Disclosure Statement should be amended to disclose the stay having been lifted regarding the Property.

Given the amount of the tax liabilities, it appears to the Court that moving forward at all with the Plan would be senseless in that there appears to be no means by which the filed proofs of claim regarding tax liability could be paid in any amount.

The Disclosure Statement discusses filed secured claims against the Property, but not the scheduled secured claims. *See* Docket No. 58, pp. 14-16.

The Debtor ended October 2024 with \$269 in cash, and the Debtor almost immediately defaulted on the adequate protection agreement entered into with the Biggs Family Revocable Trust Dated February 10, 2009. *See* Docket Nos. 51 and 66, respectively. It also appears that the Debtor has not filed an operating report since the October 2024 report was filed.

There seems cause to dismiss the instant case for the Debtor's failure to comply with the guidelines of the Office of the United States Trustee for Chapter 11 debtors-in-possession. The Court also struggles to appreciate how the Debtor will propose a confirmable plan given his net income, the value of the Property, and his outstanding secured and unsecured claims.

<b>Party Information</b>
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**Debtor(s):**

Raul Leopoldo Molina Jr.

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-10813 Raul Leopoldo Molina, Jr.

Chapter 11

#51.00 CONT'D Chapter 11 Status Conference

FR. 9-11-24, 9-11-24, 11-6-24, 11-20-24, 12-4-24, 12-11-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

**December 11, 2024**

**Appearances required.**

**December 4, 2024**

**Appearances required.**

Unless there are any outstanding issues of the Office of the U.S. Trustee, the Court continue the status conference to December 11, 2024, at 1:00 p.m.

**November 20, 2024**

**Appearances required.**

The Court will inquire with the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*. Assuming full compliance, the Court is inclined to continue the status conference to December 11, 2024, at 1:00 p.m.

**November 6, 2024**

**Appearances waived.**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Raul Leopoldo Molina, Jr.**

**Chapter 11**

The Court has reviewed that *Debtor-in-Possession Status Conference Report*. See Docket No. 41. The Court will continue the status conference to November 20, 2024, at 1:00 p.m.

**September 11, 2024**

**Appearances required, in-person for Debtor and counsel to the Debtor.**

The Court has reviewed that *Debtor-In-Possession Status Conference Report*. See Docket No. 17. There has been no application of the Debtor to employ insolvency counsel. The Court also finds no monthly operating reports as required by those *Guidelines and Requirements for Chapter 11 Debtors in Possession* (the "Guidelines"). The Court will hear from the Office of the U.S. Trustee as to the Debtor's compliance with the Guidelines.

If the Court does not dismiss the case at the status conference, it will set November 22, 2024 as the deadline for the Debtor to file a plan and disclosure statement. A disclosure statement hearing will be set for January 15, 2025, at 1:00 p.m. A claims bar date will be set for November 1, 2024, with the Debtor providing notice of the bar date on or before September 16, 2024. The status conference will be continued to November 6, 2024, at 1:00 p.m.

<b>Party Information</b>
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**Debtor(s):**

Raul Leopoldo Molina Jr.

Represented By  
Thomas B Ure

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-11032 El Chilito Mexican Food, Inc.

Chapter 11

#52.00 CONT'D Chapter 11 Status Conference (Subchapter V)

FR. 11-6-24

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances waived. The status conference is continued to January 29, 2025, at 1:00 p.m. The Court waives the requirements of a status conference report.**

**November 6, 2024**

**Appearances waived.**

The Court has reviewed that *SubChapter V Report*. See Docket No. 27. The Court will set a hearing to confirm the Debtor's to-be-filed plan of reorganization for January 29, 2025, at 1:00 p.m. The Debtor shall file and serve its plan of reorganization, ballots and notice of the confirmation hearing on parties-in-interest on or before December 9, 2024. Parties-in-interest shall have until January 10, 2025 to return ballots and file any opposition to confirmation of the Debtor's to-be-filed plan of reorganization. The Debtor shall have until January 15, 2025 to file a ballot tally and confirmation brief in support of confirmation of its to-be-filed plan of reorganization, including any response to any opposition to confirmation of the Debtor's to-be-filed plan of reorganization. The status conference is continued to January 15, 2025, at 1:00 p.m. The Debtor is to upload a scheduling order that includes the aforementioned dates within 7 days.

**Party Information**

**Debtor(s):**

El Chilito Mexican Food, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Nina Z Javan



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... El Chilito Mexican Food, Inc.**

**Chapter 11**

**Trustee(s):**

John-Patrick McGinnis Fritz (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#53.00 CONT'D Hearing RE: [13] Motion to Use Cash Collateral Emergency Motion for Use Of Cash Collateral; Memorandum of Points And Authorities In Support Thereof, with Proof of Service

FR. 12-18-24

Docket 13

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

Since the emergency hearing on the Cash Collateral Motion, Matthew Van Steenwyk ("Steenwyk"), an unsecured creditor of the Debtor, has filed that *Response and Reservation of Rights With Respect to Debtor's Motion for Use of Cash Collateral* (the "Response"). See Docket No. 38.

Through the Response, Steenwyk promotes a multitude of issues concerning the Cash Collateral Motion, and more broadly the Debtor's operations, the viability of the Debtor's bankruptcy case, and whether the prolongation of the Debtor's bankruptcy case is in the best interest of the Debtor's creditors. Steenwyk's core concern surrounds the Debtor's projected cash burn for the initial fourteen (14) weeks of the instant case. See *id.* at p. 2, lines 10-12. "[T]he Debtor is projecting that it will burn through almost \$800,000 in cash in the first 3 months of the case, leaving it with almost no cash." See *id.* at p. 3, lines 14-17. Assuming the Court approves the employment of Sheppard Mullin Richter & Hampton LLP, the Debtor may very well have no cash on hand at the end of the initial 14-week period. See Docket No. 39, *Status Report for Initial Status Conference*, p. 4, lines 15-20. Steenwyk also questions the Debtor's need to employ a chief restructuring officer at a projected cost of \$250,000-\$500,000. See Docket No. 38, p. 3, lines 21-27. Lastly, Steenwyk raises the knowledge gap currently present in these early days of the Debtor's bankruptcy case. See *id.* at lines 3-23.

Absent attendance at the 341(a) meeting of creditors, a review of the Debtor's yet-to-

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Adelaida Cellars, Inc.**

**Chapter 11**

be filed schedules and statement of financial affairs, and the Debtor's submission of a longer-range budget, Steenwyk argues that it is unable to fully respond to the Cash Collateral Motion. *See id.* To this end, Steenwyk requests that the Cash Collateral Motion be granted on a 3-to-4-week term, that the Court not approve any payments to insiders, and that the Court not approve of the payment of any monies to the Debtor's proposed chief restructuring officer. *See id.* at pp. 5-6.

Steenwyk's Response principally echoes the sentiments of the Court pronounced at the emergency hearing on the Cash Collateral Motion. To address Steenwyk's Response directly, the Court agrees that any approval of the Cash Collateral Motion will be for an additional interim period, explicitly, through and including February 26, 2025. To the extent the Court authorizes the Debtor's continued use of cash collateral, the Court is inclined to place the same restrictions on the Debtor's use of cash collateral as it did in connection with that *Order Granting Emergency Motion for Use of Cash Collateral and Scheduling Final Hearing*, apart from the extension of period within which the Debtor is authorized to utilize cash collateral. Granting the Cash Collateral Motion through February 26, 2025 will allow time for the 341(a) meeting and the filing of schedules and the statement of financial affairs to pass.

The Court appreciates the concerns of Steenwyk as they relate to the payment of rent to insiders. However, at this juncture, the Debtor must pay rent, and the Court has no information that such rent should not be properly paid. Ergo, the Court will approve of the payment of rent for the continued interim period to the extent the Court grants the Debtor the further use of cash collateral.

The Court shares Steenwyk's concerns over the employment of a chief restructuring officer at the cost projected here. The Court is not altogether opposed to the employment of chief restructuring officers by debtors-in-possession. In fact, at times the Court finds it appropriate. The issue presented here is the cost associated with the chief restructuring officer, and the Debtor's ability to carry that cost. Between the independent board member's cost and the chief restructuring officer's cost, even if the Debtor could turn a marginal profit operationally, it is difficult at this juncture appreciate how the reorganization costs would not consume any such profit, or worse. Yet, as Steenwyk points out, the parties and this Court are not yet armed with a full understanding of the Debtor's operations, projected cashflow and exit strategy from Chapter 11. To decide the Debtor's ability to pay for a chief restructuring officer at

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **Adelaida Cellars, Inc.**

**Chapter 11**

this juncture would be premature, done without a complete understanding of the underlying facts and circumstances surrounding employment. What is more, the Debtor has filed that *Motion for Entry of An Order (I) Authorizing the Debtor to Retain Force Ten Partners, LLC to Provide Nicholas Rubin as Chief Restructuring Officer and Restructuring Advisor Personnel, as Necessary, Effective as of December 13, 2024; (II) Approving the Retention Agreement; and (III) Granting Related Relief* (the "CRO Motion"). See Docket No. 42. All parties will have the opportunity to comment on the CRO Motion, allowing the Court to more fully develop an understanding of the need and ability of the Debtor to employ the chief restructuring officer.

**December 18, 2024**

**Appearances required.**

Background

Adelaida Cellars, Inc. (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code on December 13, 2024. See Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Before the Court are three (3) motions, which motions the Court set for hearing on an emergency basis pursuant to this Court's Local Rule 9075-1(a); (1) *Emergency Motion for Use of Cash Collateral* (the "Cash Collateral Motion"); (2) *Emergency Motion to Pay Prepetition Payroll and To Honor Paid Time Off* (the "Payroll Motion"); and (3) *Debtor's Emergency Motion for Order: (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Deeming Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366* (the "Utilities Motion," and collectively with the Cash Collateral Motion and the Payroll Motion, the "Motions"). See Docket Nos. 13, 14 and 17, respectively.

Notice

As the Motions were filed, and are being heard on an emergency basis, the Court

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Adelaida Cellars, Inc.**

**Chapter 11**

obligated the Debtor to afford telephonic and written notice of the emergency hearings concerning the Motions to the Office of the U.S. Trustee and all secured creditors by December 16, 2024, at noon, and that the moving papers be filed and served on the Office of the U.S. Trustee and all secured creditors by noon on December 17, 2024. On December 16, 2024, at 1:19 p.m., the Debtor filed that *Notice of Hearing on Emergency Motion for: (1) Use of Cash Collateral; (2) Authorization to Pay Prepetition Payroll and Continue to Honor Paid Time Off; and (3) An Order (A) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (B) Determining Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366 (the "Notice").* See Docket No. 9. The twenty largest unsecured creditors were served with the Notice via priority mail. See Docket No. 10, *Supplemental Proof of Service*. Telephonic notice of the hearings and an email of the Notice were provided by the Debtor on December 16, 2024, prior to noon. See Docket No. 11, *Declaration of Ja'Nita Fisher Regarding Telephonic Notice of Hearing on Emergency Motions*. The Motions were served via email and NEF on the Office of the U.S. Trustee and secured creditors on December 17, 2024. See Docket Nos. 13, 14 and 17, at *Proof of Service of Document*.

Notice substantially comports with the Court's instructions.

Preliminary Matters

The Court will firstly want to learn from the Debtor as to whether it is subject to any growers or producer's liens, or PACA claims. If so, the Court will mean to understand how any such lien(s)/trust(s) affect the Motions.

As the Motions are being heard on an emergency basis, any approval will be for such time and for such relief as is essentially needed to maintain the business through and including January 15, 2025.

The Court ought to note here that it has some unease with the viability of this case. The Debtor burns through most of its cash through at least the first 14 weeks of the case. See Docket No. 12, *Exhibit 3*. Perhaps there is some seasonality to the Debtor's business that is not readily apparent in reviewing the first 14 weeks of the year, but the Court at this occasion maintains some apprehension about a business that is projected to lose \$700,000 over the coming months. During the time of this operational loss,

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **Adelaida Cellars, Inc.**

**Chapter 11**

the Debtor appears to be paying rent to insider landlords, and acting as the purchasing arm, at least in part, for crops of insider vineyards. *See* Docket No. 12, p. 2, lines 26-28. These are plain observations at the moment, but significant to raise at present.

Cash Collateral

It is not entirely evident to the Court what portion of the Debtor's cash on hand the Debtor supposes to be subject to liens, but the Debtor does seem to intimate that some of its cash on hand may possibly be subject to certain liens, avoidable or otherwise. Of the cash collateral sought to be utilized, approximately \$5,812.83 relates to pre-petition obligations to vendors, service providers, and taxing and licensing authorities. *See* Docket No. 13, p. 9, lines 5-13. The Debtor states that it "believes that having these checks returned by the bank will cause more disruption than it is worth given the minimal dollar amount." *See id.* at lines 11-12. The Court does not follow, at least wholly. If the Court appreciates the Cash Collateral Motion correctly, these are pre-petition claims that the Debtor seeks to pay post-petition. The use of the term "disruption" suggests that these claims represent, in part, critical vendors of the Debtor. Has the Ninth Circuit not rejected, other than in railroad cases, the "necessity of payment rule" under which most courts in the country have relied on in granting critical vendor requests? *See In re B & W Enterprises, Inc.*, 713 F.2d 534 (9th Cir. 1983); *see also In re MacMillan*, 652 B.R. 812 (Bankr. D. Or. 2023). Even if the Ninth Circuit had not spoken on this subject, it is not clear to the Court why payment of these claims is critical to the Debtor's survival in this case. The Court strains to find in the Motion the appropriate grounds to allow the payment of these pre-petition claims.

The budget included with the moving papers provides a line item for "503(b) (9)/Adequate Assurance" payments totaling \$9,947. *See* Docket No. 12, *Exhibit 3*. Perhaps these payments are explained in the Motion, but at first glance the Court does not place a discussion about these claims, and the justification to pay pre-petition administrative expense claims prior to plan confirmation.

Payroll Motion

The Court presupposes but will verify that no insiders are included in the request to pay pre-petition wages of employees through the Payroll Motion preceding compliance

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

CONT... **Adelaida Cellars, Inc.**

Chapter 11

with the Office of the U.S. Trustee's insider compensation procedure.

Pursuant to this Court's Local Rule 2081-1(a)(6)(A), regarding a motion to pay prepetition payroll, "[t]he motion must be supported by evidence that establishes [t]he employees are still employed." The Debtor provides that it "terminated four employees on December 13, 2024." *See* Docket No. 14, p. 3, lines 26-27. The Court finds no analysis as to why it would be appropriate to pay these terminated employees their priority claims post-petition, and prior to a plan being confirmed. However, it appears to the Court that the Debtor may have in-fact paid these employees without prior Court approval. *See id.* at p. 4, lines 1-2 ("These four employees have received their checks. The total paid to them was \$20,352.22..."). The Court will hear from the Debtor to confirm or correct the Court on this point, but if these employees were in-fact paid post-petition on the part of pre-petition claims, would a chief restructuring officer not have recognized this as an issue and halted such payments prior to their being made?

The Debtor requests that its winemaker be reimbursed for \$2,500 that they paid to one of the Debtor's vendors, pre-petition. It is not clear to the Court how this expense fits within the confines of 11 U.S.C. § 507(a)(4). The aforementioned expense does not comprise "wages, salaries, or commissions." This, it seems to the Court, is a prepetition general unsecured non-priority obligation. The Court will hear from the Debtor on this point.

Orders

Assuming the Court grants the Motions, approval will be on an interim basis, with continued hearings to be held on January 15, 2025, at 1:00 p.m., with notice to be served of the continued hearings, as well as all of the Motions on or before December 24, 2024.

**Party Information**

**Debtor(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Kyra E Andrassy

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Adelaida Cellars, Inc.**

**Chapter 11**

**Movant(s):**

Adelaida Cellars, Inc.

**Represented By**

Hamid R Rafatjoo

Hamid R Rafatjoo

Kyra E Andrassy

Kyra E Andrassy



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#54.00 CONT'D Hearing RE: [14] Emergency motion Emergency Motion to Pay Prepetition Payroll and to Honor Paid Time Off; Memorandum of Points and Authorities, with Proof of Service

FR. 12-18-24

Docket 14

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

Having received no opposition, the Court is inclined to grant the Payroll Motion in a final basis.

**December 18, 2024**

See Matter 1.

**Party Information**

**Debtor(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Kyra E Andrassy

**Movant(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Hamid R Rafatjoo  
Kyra E Andrassy  
Kyra E Andrassy

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Wednesday, January 15, 2025

Hearing Room 201

1:00 PM

9:24-11409 Adelaida Cellars, Inc.

Chapter 11

#55.00 CONT'D Hearing RE: [17] Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b) Debtor's Emergency Motion for Order: (A) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service; (B) Deeming Utilities Adequately Assured of Future Performance; and (C) Establishing Procedures for Determining Adequate Assurance of Payment Under 11 U.S.C. § 366; Memorandum of Points and Authorities, with Proof of Service

FR. 12-18-24

Docket 17

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

Having received no opposition, the Court is inclined to grant the Utilities Motion on a final basis.

**December 18, 2024**

See Matter 1.

**Party Information**

**Debtor(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Kyra E Andrassy

**Movant(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Hamid R Rafatjoo

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Adelaida Cellars, Inc.**

Kyra E Andrassy  
Kyra E Andrassy

**Chapter 11**

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Wednesday, January 15, 2025**

**Hearing Room 201**

1:00 PM

**9:24-11409 Adelaida Cellars, Inc.**

**Chapter 11**

**#56.00** Status Hearing Re: Chapter 11 Voluntary Petition Non-Individual.

Docket 1

**Tentative Ruling:**

**January 15, 2025**

**Appearances required.**

The Court has reviewed that *Status Report for Initial Status Conference*. See Docket No. 39. The Court will hear from the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

<b>Party Information</b>
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**Debtor(s):**

Adelaida Cellars, Inc.

Represented By  
Hamid R Rafatjoo  
Kyra E Andrassy