

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

9: -

Chapter

#0.00 Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 5D in the Santa Ana Division (at 411 West Fourth Street, Santa Ana, California 92701)**, 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.

Regarding remote access to hearings, members of the public may NOT observe any hearing via ZoomGov web address or app. Members of the public may ONLY **listen to** non-evidentiary hearings, where no live testimony is being taken, via ZoomGov telephone conference line or in-person at the address listed above. If members of the public attempt to observe hearings remotely in any manner other than via ZoomGov telephone conference line, the Court will remove them from ZoomGov for the hearing(s). No members of the public will be permitted to observe, via telephone line or otherwise, trials, evidentiary hearings, hearings where live testimony will be taken, and hearings where sensitive information is being disseminated that may not be adequately safeguarded.

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

<https://forms.office.com/g/d3SqfMtsuv>

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:

1/26/2024 8:33:51 AM

Page 1 of 9

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT...

Chapter

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#1.00 Hearing
RE: [20] Motion to Use Cash Collateral Debtors Motion For Order Authorizing Use Of Cash Collateral; Memorandum Of Points And Authorities; Declaration Of John A. Ruskey lii In Support Thereo

Docket 20

Tentative Ruling:

January 26, 2024

Appearances required.

Before the Court is *Debtor's Motion for Order Authorizing Use of Cash Collateral* (the "Motion") filed by Frinj Coffee, Incorporated (the "Debtor"). See Docket No. 20. The Motion, among other things, seeks approval of that *Stipulation for Adequate Protection and Use of Cash Collateral* (the "Stipulation"). See Docket No. 21.

The Court at the hearing will discuss with the Debtor the following:

As to the "Legal/Prof Fees" line item in the budget, does this include the fees and expenses of the SubChapter V Trustee? Are the amounts sufficient to encompass all legal/professional fees and costs forecasted for the time period that the budget covers?

Do the agreements between the Debtor and the SBA regarding the validity, priority and extent of the SBA's liens in the Stipulation bind any other party-in-interest?

The Default section of the Stipulation provides that conversion of the instant case to Chapter 7 constitutes an event of default, "entitling SBA to seek an Order for Relief from Stay, without a hearing, to exercise its rights and remedies against the Personal Property Collateral." See Docket No. 21, p. 5, lines 4-12. The Court is unclear here. Is the stay terminated upon default? The same section provides that the SBA may seek a lifting of the stay upon dismissal of the instant case, but, of course, there would be no stay to lift.

Party Information

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT... FRINJ Coffee, Incorporated.

Chapter 11

Debtor(s):

FRINJ Coffee, Incorporated.

Represented By
Michael Jay Berger

Movant(s):

FRINJ Coffee, Incorporated.

Represented By
Michael Jay Berger
Michael Jay Berger

Trustee(s):

Mark M Sharf (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

9:22-10469 Jon Travis Burnett

Chapter 7

Adv#: 9:23-01006 Namba v. Burnett et al

#2.00 CONT'D Hearing
RE: [46] Motion to Continue Discovery Cut-Off Deadline and Last Day for
Dispositive Motions to be Heard with Proof of Service

FR. 1-24-24

Docket 46

Tentative Ruling:

January 24, 2024

Appearances required.

On March 14, 2023, Jerry Namba, Chapter 7 Trustee (the "Trustee") filed against Jon T. Burnett (the "Debtor") and Burnett Financial Services, Inc. (the "Corporation," and collectively with the Debtor, the "Defendants") that *Amended Complaint to Deny Discharge, Recover Avoidable Transfer, and for Turnover* (the "Amended Complaint"). See Docket No. 4. On March 28, 2023, the Defendants filed *Defendants' Motion to Dismiss Amended Complaint to Deny Discharge, Recover Avoidable Transfer, and for Turnover; To Strike Request for Attorney Fees; Points and Authorities; Declarations in Support [FRBP Rule 12(b)(6)]* (the "First Motion to Dismiss"). See Docket No. 9. On May 17, 2023, the Court issued a tentative ruling (the "Ruling") on the First Motion to Dismiss, and on May 22, 2023, the Court entered that *Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Amended Complaint to Deny Discharge, Recover Avoidable Transfer, and for Turnover; to Strike Request for Attorney Fees [FRBP Rule 12(b)(6)]* (the "Order"). See Docket No. 23. The Order granted the First Motion to Dismiss as it related to the First Claim for Relief of the Amended Complaint and the request that the prayer of the Amended Complaint strike the request for attorneys' fees. See *id.* at p. 2. "[A]ll other requests for relief made in the [Motion to Dismiss were] denied without prejudice." See *id.* The Order granted the Trustee leave to file an amended complaint. See *id.*

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT...

Jon Travis Burnett

Chapter 7

On May 26, 2023, the Trustee filed against the Defendants that *Second Amended Complaint to Deny Discharge, Recover Avoidable Transfer, and for Turnover* (the "Second Amended Complaint"). See Docket No. 25. The Amended Complaint and the Second Amended Complaint are materially similar. The difference between the two (2) complaints appears to be the addition of two (2) causes of action in the Second Amended Complaint. Specifically, whereas the Amended Complaint pled as the First Claim for Relief a denial of discharge pursuant to 11 U.S.C. § 727 generally, the Second Amended Complaint pleads three (3) separate claims for relief under 11 U.S.C. § 727 (i.e., First Claim for Relief (Denial of Discharge, 11 U.S.C. § 727(a)(2)) and Second and Third Claim for Relief (Denial of Discharge, 11 U.S.C. § 727(a)(4) (A) and (D)). See Docket No. 4, pp. 4-5 and Docket No. 25, pp. 5-6.

On June 16, 2023, the Defendants filed *Defendants' Motion to Dismiss Second Amended Complaint to Deny Discharge, Recover Avoidable Transfer, and for Turnover; Request for Judicial Notice [FRBP Rule 12(b)(6), FRE Rule 201]* (the "Second Motion to Dismiss"). See Docket No. 26. On September 13, 2023, a hearing was held where the Court dismissed the Second Motion to Dismiss and further ordered the Trustee to upload a conforming order within seven (7) days. See Docket No. 38. The case docket does not reflect that the order denying the Second Motion to Dismiss has been lodged or entered on the docket as of January 11, 2024.

Pursuant to that *Scheduling Order* entered on September 19, 2023, the Court set the following litigation deadlines:

1. The discovery cutoff date, including the last day to receive responses, is December 29, 2023.
2. The deadline for designation of expert witnesses and other requirements under FRCP 26 is November 15, 2023.
3. The deadline for disclosure of rebuttal expert witnesses is December 15, 2023.
4. The deadline for dispositive motions to be heard is January 24, 2024, at 10:00 a.m.
5. The deadline to file a pretrial stipulation and proposed order is

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT...

Jon Travis Burnett

Chapter 7

February 20, 2024.

6. A pretrial conference (in-person) is set for March 6, 2024, at 10:00 a.m.

7. The trial is set for March 21, 2024, at 9:00 a.m. at the United States Bankruptcy Court located at 1415 State Street, Courtroom 201 in Santa Barbara, California.

See Docket No. 39.

On December 13, 2023, a status conference was held and continued to March 21, 2024. At the status conference the Court denied the Trustee's oral motion for an extension of litigation deadlines pertaining to the discovery and dispositive motions.

On December 25, 2023, that *Defendant's Jon Travis Burnett and Burnett Financial Servces, Inc., Notice of Continued Deposition of Plaintiff Jerry Namba, Following Nonappearance at Continued Deposition on December 20, 2023* was filed. *See* Docket No. 45. It appears that the Trustee failed to attend the deposition scheduled on December 20, 2023 and the deposition was continued to December 28, 2023. *See id.*

On December 26, 2023, the Trustee filed that *Motion to Continue Discovery Cut-Off Deadline and Last Day for Dispositive Motions; Declaration of Carissa N. Horowitz In Support Thereof* (the "Motion") requesting that the discovery deadline and the last day for dispositive motions to be heard be extended by 45-60 days. *See* Docket No. 46. The Trustee seeks an extension of the discovery deadlines on the grounds that the Defendants have failed to fully respond and or failed to fully produce the information requested by the Trustee in connection with Burnett's deposition held on December 11, 2023. *See id.* at p. 3. It appears that the Trustee has served Defendants with three (3) sets of interrogatories and request for production of documents over the course of the case. The Trustee alleges that the first request was served upon on June 28, 2023 and the Defendants served their responses on July 28, 2023 objecting to each request but also responding to some requests that "Defendant will produce those documents it believes are responsive to this RPF." The Trustee asserts that Defendants produced none of the documents. *See id.* at p. 2, lines 10-13.

On November 1, 2023, the Trustee served a second request to produce documents based upon a review of the documents produced up to that time, although Defendants

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT...

Jon Travis Burnett

Chapter 7

had not fully responded to the prior request. On November 29, 2023, the Trustee served a third request to produce documents in response to the documents produced on November 2, 2023. Defendants served their responses to the second request on December 1, 2023, and stated they would produce the requested documents. *See id.* at lines 23-28 citing Exhibit B *Response of Defendant Burnett Financial Service, Inc. to Amended Request for Production of Documents*. The Trustee asserts that the Defendants failed to produce most of the requested documents and have ignored the Trustee's two requests to meet and confer. The Trustee states that he attempted to obtain the same documents as set forth in the third request through a document demand in connection with the Defendants' deposition, which occurred on December 11, 2023 but the Defendants failed to provide the requested information. *See id.* at p. 3, lines 1-5.

On January 8, 2023, that *Defendants' Response In Opposition to Motion to Continue Discover Cut-Off Deadline and Last Day for Dispositive Motions; Points and Authorities; Declaration In Support* (the "Opposition") was filed. *See* Docket No. 49. Through the Opposition, the Defendant's oppose the Motion for lack of cause shown under FRBP 9006(b)(1) and on the grounds that the Motion is not supported by admissible evidence as required by LBR 9013-1(c). *See id.* at p. 3. The Defendants further argue that the Trustee failed to provide 30 days notice with the November 29, 2023 production request as required under FRCP Rule 30(b)(2). *See id.* at p. 7. The Defendants further claim that the Trustee has not been cooperative with their discovery efforts. *See id.* at p. 8.

It is not clear whether the Defendants produced the requested information by December 29, 2023.

Party Information

Debtor(s):

Jon Travis Burnett

Represented By
Louis J Esbin

Defendant(s):

Jon Travis Burnett

Represented By
Louis J Esbin

Burnett Financial Services, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Ronald A Clifford III, Presiding
Courtroom 5D Calendar**

Friday, January 26, 2024

Hearing Room

5D

9:00 AM

CONT...

Jon Travis Burnett

Louis J Esbin

Chapter 7

Movant(s):

Jerry Namba

Represented By
Carissa N Horowitz

Plaintiff(s):

Jerry Namba

Represented By
Carissa N Horowitz

Trustee(s):

Jerry Namba (TR)

Represented By
Carissa N Horowitz
William C Beall