

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

**Wednesday, April 9, 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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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 -

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

**Chapter 7**

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

**#1.00** Hearing re: order to show cause why the adversary proceeding  
should not be dismissed for lack of prosecution

Docket 21

**Tentative Ruling:**

**April 9, 2025**

**Appearances waived.**

There has been no response to that *Order to Show Cause Why the Adversary Complaint Should Not be Dismissed for Lack of Prosecution*. See Docket No. 21.  
The adversary proceeding is dismissed for failure to prosecute. The Court will enter its own 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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**9:24-10004 Jharett Bondoc Siron**

**Chapter 7**

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

**#2.00** 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; 01-15-25, 3-12-25

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances waived.**

The status conference is vacated given the Court's dismissal of the adversary proceeding.

**March 12, 2025**

**Appearances required.**

The Court has reviewed that *Unilateral Status Report*. See Docket No. 19. It is not clear to this Court that the plaintiff desires to advance the instant proceeding. No status report was filed by the plaintiff, and the defendant has not been able to contact the plaintiff.

**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

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**Chapter 7**

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**

**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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**CONT...      Jharett Bondoc Siron**

**Chapter 7**

**Debtor(s):**

Jharett Bondoc Siron

Pro Se

**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

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:23-10061 South Bay Property Homes LLC**

**Chapter 11**

Adv#: 9:24-01021 South Bay Property Home, LLC v. J.P. Morgan Chase Bank, NA

**#3.00** CONT'D hearing re: [11] Motion for remand to state court or, in the alternative,  
motion to transfer to federal district court

fr. 9-25-24, 11-6-24, 2-12-25

Docket 11

**\*\*\* VACATED \*\*\* REASON: Order Dismissing Adversary Proceeding  
Entered 3/3/25; Docket No. 34**

**Tentative Ruling:**

- NONE LISTED -

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

South Bay Property Homes LLC

Represented By  
Leslie A Cohen  
Zacky P Rozio

**Defendant(s):**

J.P. Morgan Chase Bank, NA

Represented By  
Matthew S Henderson

**Plaintiff(s):**

South Bay Property Home, LLC

Represented By  
Zacky P Rozio

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**9:23-10061 South Bay Property Homes LLC**

**Chapter 11**

Adv#: 9:24-01021 South Bay Property Home, LLC v. J.P. Morgan Chase Bank, NA

**#4.00** CONT'D Hearing re: [6] Motion to dismiss adversary proceeding

fr. 9-25-24, 11-6-24, 2-12-25

Docket 6

**\*\*\* VACATED \*\*\* REASON: Order Dismissing Adversary Proceeding  
Entered 3/3/25; Docket No. 34**

**Tentative Ruling:**

- NONE LISTED -

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

South Bay Property Homes LLC

Represented By  
Leslie A Cohen

**Defendant(s):**

J.P. Morgan Chase Bank, NA

Represented By  
Matthew S Henderson

**Movant(s):**

J.P. Morgan Chase Bank, NA

Represented By  
Matthew S Henderson

**Plaintiff(s):**

South Bay Property Home, LLC

Pro Se



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**9:23-10061 South Bay Property Homes LLC**

**Chapter 11**

Adv#: 9:24-01021 South Bay Property Home, LLC v. J.P. Morgan Chase Bank, NA

**#5.00** CONT'D Status hearing re: [1] Adversary case 9:24-ap-01021. Notice of Removal of State Court Action Under 28 U.S.C. §§ 1332(a), 1441(a)-(b), and 1452(a) by South Bay Property Home, LLC

fr. 9-11-24, 11-6-24, 2-12-25

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order Dismissing Adversary Proceeding  
Entered 3/3/25; Docket No. 34**

**Tentative Ruling:**

- NONE LISTED -

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

South Bay Property Homes LLC

Represented By  
Leslie A Cohen

**Defendant(s):**

J.P. Morgan Chase Bank, NA

Represented By  
Matthew S Henderson

**Plaintiff(s):**

South Bay Property Home, LLC

Pro Se

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**9:24-10572 Thomas Anthony Ferro**

**Chapter 7**

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

**#6.00** CONT'D Hearing re: [12] Plaintiffs motion for summary judgment  
or partial adjudication of the issues

fr. 12-4-24, 1-29-25, 3-12-25,

Docket 12

**Tentative Ruling:**

**April 9, 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. (the "Plaintiff"), as successor-in-interest to Arthur Huerth and Joan Huerth (the "Huerths"), both individually and d/b/a Huerth Financial Leasing, AJ Partners, and Leslie Huerth, 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* Case 9:24-ap-01022-RC Docket No. 1. [FN1] Through the Complaint, the Plaintiff 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 (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.

Plaintiff asserts 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' various loans to EPD to improve the quality of his receivable from EPD. *See* Docket No. 12, *Motion for Summary Judgment or*

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*Partial Adjudication of the Issues* (the "Motion"), pp. 2-3; and Docket No. 15, p. 35 ¶¶ 37-38.

On October 25, 2012, the Magistrate Judge in the Illinois Matter issued that *Report and Recommendation* (the "Report"), providing that, *inter alia*, the Debtor "be held liable for compensatory damages in the amount of \$924,000" based on "admitted facts" due to the Debtor's default on the Huerths' "counts for consumer fraud and/or fraudulent concealment. *See* Docket No. 1, *Exhibit A*. The District Court in the Illinois Matter accepted the Report, and granted default judgment as against, among others, the Debtor in the amount of \$924,000 on November 26, 2012 (the "Judgment"). *See* Docket No. 12, p. 9 lines 19-21; and Docket No. 15, p. 121, *Exhibit 4*. [FN2]

Through the Complaint, Plaintiff seeks to have the \$924,000 Judgment determined non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(6). *See* Docket Nos. 1 and 12.

Before the Court is the Motion filed by the Plaintiff. *See* Docket No. 12. The Plaintiff argues that it is entitled to summary judgment because the Judgment, through issue preclusion, establishes all facts and elements of non-dischargeability under 11 U.S.C. § 523(a)(2)(A). *See id.* The Motion does not move for summary judgment under any other theory other than the Judgment having preclusive effect on the Complaint at issue. *See id.*

On November 13, 2024, the Debtor filed that *Opposition by Defendant/Debtor to Plaintiff's Motion for Summary Judgment or Partial Adjudication of the Issues* (the "Opposition") opposing the Motion. *See* Docket No. 18. The Debtor argues that the Judgment does not satisfy the requirements of issue preclusion and that the Plaintiff is judicially estopped from advancing the Complaint. *See id.* [FN3] On November 20, 2024, the Plaintiff filed that *Plaintiff's Reply to Opposition by Defendant/Debtor to Plaintiff's Motion for Summary Judgment* (the "Reply"). *See* Docket No. 25.

*Analysis*

*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

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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. 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. 2016) ("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts"); *Del Puerto Water Dist. v. U.S. Bureau of Reclamation*, 271 F.Supp.2d 1224, 1234 (E.D. Cal. 2003) ("Judicial [n]otice is taken of the existence and authenticity of the public and quasi public documents listed. To the extent their contents are in dispute, such matters of controversy are not appropriate subjects for judicial notice.") *See Dicey v. Pickens*, 506 Fed. Appx. 647, 648 (9th Cir. 2013) (the court examined the purpose of the judicial notice stating denial of the judicial notice was proper as the party sought the document admitted for the truth of the facts contained within); and *In re Align Technology, Inc.*, 2022 WL 18460717, \*2 n.3, (C.D. Cal. 2022) ("[F]acts alleged in an unverified complaint [are not] proper subject of judicial notice.")

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."

**Plaintiff's RJN**

On October 23, 2024, the Plaintiff filed that *Request for Judicial Notice in Support of Plaintiff's Motion for Summary Judgment of Partial Adjudication of the Issues* (the "Plaintiff's RJN"). *See* Docket No. 14. Through the Plaintiff's RJN, Plaintiff requests that this Court take judicial notice of: (1) the *Civil Docket for Case #: 1:10-cv-05049* for the Illinois Matter (the "Illinois Matter Docket"); (2) the Huerths' *First Amended Complaint* in the Illinois Matter (the "Illinois Amended Complaint"); (3) the Huerths' *Memorandum in Support of Plaintiffs' Prove-Up of Damages* filed in the Illinois Matter (the "Illinois Prove-Up Motion"); (4) the Report; (5) the Judgment; (6) the Debtor's motion to vacate the Judgment in the Illinois Matter (the "Motion to Vacate"); (7) the *Civil Docket for Case #: 2:13-cv-02667-GW-RAO* (the "California Matter Docket"); (8) the Plaintiff's *Assignment of Judgment* filed in the California

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Matter (the "Assignment"); (9) the *Renewal of Judgment by Clerk* filed in the California Matter (the "Renewal"); (10) the *Docket for Adversary Proceeding* #: 9:24-ap-01022-RC (the "Docket"); and (11) the Complaint. *See id.*

On November 20, 2024, the Plaintiff filed *Plaintiff's Request for Judicial Notice in Support of Plaintiff's Reply to Opposition by Defendant/Debtor to Plaintiff's Motion for Summary Judgment* (the "Plaintiff's RJN #2"). *See* Docket No. 26. The Plaintiff's RJN #2 seeks judicial notice of (1) that Chapter 13 Plan filed in the bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Chapter 13 Plan"); (2) that *Order Confirming the Chapter 13 Plan* (the "Confirmation Order"); and (3) the claims register in the bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Claims Register"). *See id.* [FN4]

Here, there has been no objection Plaintiff's RJN or Plaintiff's RJN #2. The Illinois Matter Docket, the Illinois Amended Complaint, the Illinois Prove-Up Motion, the Report, the Judgment, the Motion to Vacate, the California Matter Docket, the Assignment, the Renewal, the Docket, the Complaint, the Chapter 13 Plan, the Confirmation Order, and the Claims Register are of the type of documents that are appropriate to be judicially noticed, are not subject to reasonable dispute, and are thus judicially noticed. However, the facts contained within the Illinois Amended Complaint, the Illinois Prove-Up Motion, the Motion to Vacate, and the Complaint are not judicially noticed; instead, the Court merely judicially notices that these documents were filed in their respective cases as it is unclear what other purpose these documents are offered.

**Debtor's RJN**

On November 13, 2024, the Debtor filed 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. 19. Through the Debtor's RJN, Debtor requests that this Court take judicial notice of: (1) Debtor's *Voluntary Petition for Individuals Filing for Bankruptcy* (the "Petition"); (2) the Huerths' original complaint in Illinois against EPD (the "Illinois Complaint"); (3) EPD's *Involuntary Chapter 7 Petition* (the "EPD Petition") in Case No. 2:10-bk-62208-VZ; (4) the Illinois Amended Complaint; (5) the voluntary petition in the

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bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Huerth Petition"); (6) the Huerths' *Motion for Entry of Default Judgment* in the Illinois Matter (the "Motion for Default"); (7) the Huerths' *Motion for Order of Default* in the Illinois Matter (the "Motion for Order of Default"); (8) the Huerth discharge order in the bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Discharge Order"); (9) the final report in the bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Final Report"); (10) the docket in the bankruptcy matter of *In re Arthur R. Huerth and Joan N. Huerth* in the Middle District of Florida (the "Huerth Bankruptcy Docket"); (11) docket no. 74 in the Illinois Matter (the "Illinois Joint Affidavit"); and (12) the Report (collectively, the "Debtor's RJN Documents"). *See id.*

Here, there has been no objection Debtor's RJN and the Debtor's RJN Documents are of the type of documents that are appropriate to be judicially noticed, are not subject to reasonable dispute, and are thus judicially noticed.

*Motion for Summary Judgment / Adjudication*

Under Fed. R. Civ. P. 56(a), made applicable herein by Fed R. Bankr. P. 7056, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine "if the evidence such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Id.* at 324. The substantive law will identify which facts are material. *Id.* Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Id.* A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on

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the motion in the light most favorable to the opposing party. *Id.* "Therefore, at summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party: if direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987) (internal citations omitted). In the absence of any disputed material facts, the inquiry shifts to whether the moving party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323. Furthermore, where intent is at issue, summary judgment is seldom granted. *See Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996), cert. denied, 118 S. Ct. 48 (1997).

In determining whether genuine issues of material fact exist, the evidence must be viewed in light most favorable to the nonmoving party. *Tarin v. County of Los Angeles*, 123 F.3d 1259, 1263 (9th Cir. 1997). A party seeking summary judgment always bears the initial burden of establishing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by presenting evidence that negates an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to the party's case on which that party will bear the burden of proof at trial. *Id.* at 322–23. If the moving party fails to discharge this initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

If the moving party meets this initial burden, the nonmoving party cannot defeat summary judgment merely by demonstrating "that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmoving party cannot "withstand a motion for summary judgment merely by making allegations. *In re Ikon Office Solutions, Inc., Sec. Lit.*, 277 F.3d 658, 666 (3d Cir. 2002). Rather, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by 'the depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). "The mere existence of a scintilla of evidence in support of the non-moving party's



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position is not sufficient. [Citation omitted.]" *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir.1995). To meet this burden, the Ninth Circuit requires that the nonmoving party "produce at least some significant probative evidence tending to support the complaint." *Id.*, at 1222. If the nonmoving party fails to establish a triable issue on an essential element of its case and upon which it will bear the burden of proof at trial, the moving party is entitled to judgment as a matter of law. *In re Wellman*, 2007 WL 4105275, \*1, 3-4 (B.A.P. 9th Cir. 2007) (internal citations omitted).

*Issue Preclusion of a Prior Federal Judgment*

Issue preclusion applies to actions to except a debt from discharge under 11 U.S.C. § 523. *In re Comer*, 723 F.2d 737, 740 (9th Cir. 1984).

"The preclusive effect of a prior federal district court judgment is determined by federal law." *In re Wright*, 355 B.R. 192, 203-204 (Bankr. C.D. Cal. 2006) (citing *In re Daily*, 47 F.3d 365, 368 (9th Cir. 1995); *In re Bowen*, 198 B.R. 551, 555 (9th Cir. BAP 1996)). See 18 *Moore's Federal Practice* – Civil § 130.30 (2024); *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001) ("federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity"); and *Taylor v. Sturgell*, 553 U.S. 880, 891 (2008).

The party that asserts the applicability of a prior federal judgment bears the burden to proving each element of issue preclusion. *Garity v. APWU Nat'l Labor Org.*, 828 F.3d 848, 855 (9th Cir. 2016). However, "[r]easonable doubts about what was decided in a prior judgment are resolved against applying issue preclusion." *In re Frye*, 2008 WL 8444822, at \*4 (9th Cir. BAP 2008) (citing *In re Lopez*, 367 B.R. 99, 107-08 (9th Cir. BAP 2007)).

Federal issue preclusion requires that "(1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action." *In re Wright, supra*, at 203-204 (citing *In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000); and *Pena v. Gardner*, 976 F.2d 469, 472 (9th Cir. 1992)).



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"[T]he 'actual litigation' requirement is satisfied if the party had a full and fair opportunity to litigate the issue in the prior proceeding and, despite substantial participation in the action, chose not to do so. *Id.* However, "a default judgment is generally not entitled to collateral estoppel effect because there is no actual litigation of issues. *In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000) (citing *In re Gottheiner*, 703 F.2d 1136, 1140 (9th Cir. 1983); *In re Raynor*, 922 F.2d 1146, 1150 (4th Cir. 1991); *Lombard v. Axtens*, 739 F.2d 499, 502 (10th Cir. 1984)); *U.S. v. Bailey*, 957 F.2d 439, 443 (7th Cir. 1992); and *Grip-Pak, Inc. v. Ill. Tool Works, Inc.*, 694 F.2d 466, 469 (7th Cir. 1982). *See V.V.V. & Sons Edible Oils Ltd. V. Meenakshi Overseas LLC*, 2022 U.S. Dist. LEXIS 1425, at \*11-12 ("Any attempt to apply collateral estoppel to a default judgment in this Circuit would clearly be unfounded") (citations and quotations omitted).

However, a federal default judgment may satisfy the actual litigation "requirement [] by [a party's] substantial participation in an adversary contest in which the party is afforded a reasonable opportunity to defend himself on the merits but choose not to do so." *In re Daily*, 47 F.3d 365, 368 (9th Cir. 1995). *See La Preferida, Inc. v. Cerveceria Modelo*, 914 F.2d 900, 906 (7th Cir. 1990). Thus, "consistent with the Restatement (Second) of Judgments...an issue is actually litigated when an issue is raised, contested, and submitted for determination." *Janjua v. Neufeld*, 933 F.3d 1061, 1066 (9th Cir. 2019). Such default judgments that satisfy the actually litigated element generally occur when the "defendants participated actively and with full opportunities to present their cases, but then frustrated efforts to bring the cases to trial." *In re Pender*, 2012 Bankr. LEXIS 2156, at \*10-11 (Bankr. S.D. Ind. 2012).

*See In re Daily, supra* at 368 (the matter was actually litigated because the debtor actively participated in the adversary process for almost two years); *In re Gottheiner*, 703 F.2d 1136, 1140 (9th Cir. 1983) (Gottheiner actually litigated the matter by actively participating in litigation for sixteen months prior to no longer pursuing the matter); *In re Bowen*, 198 B.R. 551, 556 (9th Cir. BAP 1996) (actually litigated when debtor participated in pre-trial discovery and did not enter into the stipulated judgment until four weeks prior to trial); and *In re Palmer*, 207 F.3d 566, 569 (9th Cir. 2000) (not actually litigated because the debtor had abandoned the case at the outset).

Not only does a debtor have to actively participate in the prior litigation sought to be used preclusively, but the debtor must participate in litigating (or have an opportunity

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to participate in) the issue that is sought to be precluded. *See In re Antonakis*, 207 B.R. 201 (Bankr. E.D. Cal. 1997). For example, in *In re Antonakis*, the bankruptcy Court did not allow a prior federal default judgment have preclusive effect on the non-dischargeability suit despite the debtor having filed an appeal and a motion to dismiss in the prior action. *Id.* In the prior lawsuit, the plaintiff obtained a preliminary injunction shortly after filing its complaint. *Id.* at p. 203. The debtor appealed the injunction and had it vacated. *Id.* Next, the debtor filed a motion to dismiss, which was denied, asserting there was no subject matter jurisdiction. *Id.* Shortly after, the debtor, unable to further fund the litigation, failed to answer the complaint and as such his default was taken. *Id.*

Despite litigating the preliminary injunction and subject matter jurisdiction, the Court in *In re Antonakis* found that the default judgment was not actually litigated as "the litigation [] never addressed the substance of [plaintiff's] complaint." *Id.* at p. 205 ("Because the Debtor failed to answer or otherwise defend, the court held that [plaintiff's] allegation must be deemed true [and thus plaintiff's] claims were never tested in actual litigation; instead, the allegations of fraud, as drafted by [plaintiff] entered the court's findings of fact by default ...[and] were never tested by the adversarial process"). The Court also reasoned that the purposes of issue preclusion would not be served as requiring the plaintiff "to address the elements of a nondischargeability claim would subject [plaintiff] to very little cumulative or duplicative litigation." *Id.* at p. 206.

Here, the Judgment explicitly states that "Ferro [, the Debtor,] has not made an appearance in this case, and was defaulted by the District Court on April 18, 2012." *See* Docket No. 15-4, p. 122, *Exhibit 4*. The Plaintiff has not offered any other evidence to the contrary to support any finding that the Debtor participated in litigating the Judgment and the issues that are sought to be precluded. Although the Debtor filed that Motion to Vacate the Judgment, such a motion does not substitute the adversarial process for litigating the underlying Judgment and the factual findings therein. Moreover, the Plaintiff has not demonstrated how the purposes of the issue preclusion will be served as it has not litigated any facts or issues against the Debtor.

As such, here, the Court will not apply issue preclusion to the Judgment.

*Conclusion*

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The Court is inclined to deny the Motion as the Judgment does not have preclusive effect as the Illinois Matter was not actually litigated by the Debtor. The Plaintiff is to upload a conforming order within 7-days.

**[FN1]**

Unless otherwise noted, all citation to the docket refer to Case # 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.*

**[FN3]**

The Opposition argues that Plaintiff is judicially estopped from advancing the Complaint because the Huerths committed "bankruptcy fraud by intentionally failing to disclose [the Illinois Matter] in their own Chapter 13 case [and then] misrepresented the status of their bankruptcy to the District Court of Illinois in order to try to recover damages because of the filing of their bankruptcy." *See* Docket No. 18, p. 5 lines 17-23.

**[FN4]**

Here, the Plaintiff's RJN, Plaintiff's RJN #2, and the Debtor's RJN, excluding the judicial notice of the Judgment, are not needed to decide this Motion as the Motion hinges on the Judgment having preclusive effect, which it does not, *infra*. Additionally, the various request for judicial notice primarily related to Debtor's judicial estoppel argument, yet this argument does not need to be addressed for this Motion even though it has yet to be properly plead.

**March 12, 2025**

**Appearances waived.**

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This matter is continued to March 26, 2025, at 9:00 a.m.

**January 29, 2025**

**Appearances waived.**

This matter is continued to March 12, 2025, at 9:00 a.m.

**December 4, 2024**

**Appearances waived.**

This matter is continued to January 29, 2025, at 9:00 a.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):**

Cal-West Equities, Inc.

Represented By  
Vanessa M Haberbusch

**Plaintiff(s):**

Cal-West Equities, Inc.

Represented By  
Vanessa M Haberbusch

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Timothy J Yoo

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**9:24-10572 Thomas Anthony Ferro**

**Chapter 7**

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

**#7.00** CONT'D Status hearing re: [1] Adversary case 9:24-ap-01022. Complaint by Cal-West Equities, Inc. against Thomas Anthony Ferro. and § 523(a)(6) (Attachments: # 1 Exhibit A # 2 Exhibit B) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)), (68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-25-24, 2-12-25, 2-26-25, 3-12-25,

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**April 9, 2025**

**Appearances required.**

**March 12, 2025**

**Appearances waived.**

This matter is continued to March 26, 2025, at 9:00 a.m.

**February 26, 2025**

**Appearances waived.**

The Court has reviewed that *Joint Status Report*. See Docket No. 42. The status conference is continued to March 12, 2025, at 9:00 a.m.

**September 25, 2024**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 7. The Court is

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inclined to set the following litigation dates:

October 1, 2024 – Last day to amend pleadings and join other parties

April 1, 2025 – Last day to complete discovery, including receiving responses

February 12, 2025, at 9:00 a.m. – Continued status conference

May 21, 2025, at 9:00 a.m. – Deadline for dispositive motions to be heard

June 4, 2025 – Deadline to file joint pre-trial conference stipulation and proposed order

June 18, 2025, at 9:00 a.m. – Pre-trial conference (in-person)

July 17, 2025, at 9:00 a.m. – Trial (in-person)

Plaintiff is to lodge a scheduling order with the above dates within 7 day

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

**Debtor(s):**

Thomas Anthony Ferro

Represented By  
Keith S Dobbins

**Defendant(s):**

Thomas Anthony Ferro

Pro Se

**Plaintiff(s):**

Cal-West Equities, Inc.

Represented By  
Vanessa M Haberbush

**Trustee(s):**

Jerry Namba (TR)

Pro Se

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**9:24-10485 Eric Corbett**

**Chapter 7**

Adv#: 9:24-01025 Norris v. Corbett

**#8.00** CONT'D Status Hearing re: [1] Adversary case 9:24-ap-01025. Complaint by Jon Norris against Eric Corbett. 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))

fr. 10-23-24

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**Tentative Ruling:**

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**In-person appearances of the parties is required.**

On October 23, 2024, the Court held a status conference in the instant adversary proceeding, and set litigation dates thereat. *See* Docket No. 6. Among other things, the Court set a pre-trial conference and continued the status conference for April 9, 2025, at 9:00 a.m. *See id.*

Pursuant to those Adversary Proceeding Status Conference Procedures, "[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. 2, p. 1. "A failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.*

Pursuant to this Court's Local Rule 7016-1(b)(1)(B), "[u]nless otherwise ordered by the court, the pretrial stipulation must be filed or lodged [] and served not less than 14 days before the date set for the pretrial conference (if one is ordered) or trial." This Court's Local Rule 7016-1(f) provides that "[i]n addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may [] award [] monetary sanctions [and/or award] non-monetary sanctions against the party at fault including entry of judgment

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**Chapter 7**

or dismissal or the entry of an order striking the answer and entering a default."

No status report or pretrial stipulation has been filed with the Court. The Court will issue monetary sanctions on each party and/or counsel, and set an order to show cause why this matter should not be dismissed, with prejudice, for the failure to prosecute and to follow this Court's orders.

**October 23, 2024**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 5. The Court will set the following litigation dates:

November 15, 2024 - Last day to add parties

February 1, 2025 - Deadline to complete discovery, including receipt of responses

March 12, 2025, at 9:00 a.m. - Deadline to have dispositive motions heard

April 9, 2025, at 9:00 a.m. - Pretrial Conference

April 9, 2025, at 9:00 a.m. - Status Conference

April 17, 2024, at noon - Trial, in person.

Plaintiff to upload a scheduling order within 7 days.

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

**Debtor(s):**

Eric Corbett

Represented By  
Todd J Mannis

**Defendant(s):**

Eric Corbett

Represented By



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Reed H Olmstead

**Joint Debtor(s):**

Jennifer L. Corbett

Represented By  
Todd J Mannis

**Plaintiff(s):**

Jon Norris

Represented By  
Anthony Cartee

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:24-10485 Eric Corbett**

**Chapter 7**

Adv#: 9:24-01025 Norris v. Corbett

**#9.00** Pre-Trial Conference re: [1] Adversary case 9:24-ap-01025. Complaint by Jon Norris against Eric Corbett. 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))

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See Calendar Item 8.

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

**Debtor(s):**

Eric Corbett

Represented By  
Todd J Mannis

**Defendant(s):**

Eric Corbett

Represented By  
Reed H Olmstead

**Joint Debtor(s):**

Jennifer L. Corbett

Represented By  
Todd J Mannis

**Plaintiff(s):**

Jon Norris

Represented By  
Anthony Cartee

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:24-10608 Brian Morgan Heit**  
Adv#: 9:24-01029 Love v. Heit

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**#10.00** CONT'D Status Hearing re: [1] Adversary case 9:24-ap-01029. Complaint by Deidre Love against Brian Morgan Heit. 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))

fr. 11-6-24, 11-20-24

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**Appearances waived.**

The Court has reviewed that *Joint Status Report*. See Docket No. 19. The deadlines to complete discovery and for dispositive motions to be heard have lapsed. See Docket No. 15, *Status Conference and Scheduling Order Pursuant to LBR 7016-1(a)(4)*. The parties should note that a pretrial conference is scheduled for May 7, 2025, at 9:00 a.m.

The status conference is continued to May 7, 2025, at 9:00 a.m.

**November 20, 2024**

**In-person appearances required of counsel of record. Appearance counsel may not appear.**

On September 3, 2024, Deidre Love ("Plaintiff") filed that *Complaint to Object to Discharge of Debt 11 USC §§ 523(a)(2), 523(a)(4), and 523(a)(6)* (the "Complaint"). See Docket No. 1. On October 29, 2024, Plaintiff and Brian Morgan Heit (the "Debtor") filed that *Joint Status Report* (the "Report"). See Docket No. 11. Pursuant to the Report, "[t]he Parties agree to stay this adversary proceeding while Plaintiff

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seeks relief from the automatic stay to continue litigation in state court." *See id.* at p. 2.

The parties do not decide whether this matter is to be stayed. What is more, the Court finds no motion filed regarding the automatic stay in the nearly three (3) months since the Complaint was filed. Lastly, in violation of those *Adversary Proceeding Status Conference Procedures* (the "Procedures"), no status conference report was filed in preparation for the instant status conference. *See* Docket No. 2.

The Court is inclined to enter an order to show cause as to why this adversary proceeding should not be dismissed for the failure to prosecute, and to comply with the Procedures and this Court's Local Rules. The Court is further inclined to issue monetary sanctions for the parties' failure to file a joint status report.

**November 6, 2024**

**Appearances waived.**

The Court has reviewed that *Joint Status Report*. *See* Docket No. 6. The status conference is continued to November 20, 2024, at 1:00 p.m.

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

Brian Morgan Heit

Represented By  
Marcus G Tiggs  
Rachel M Sposato

**Defendant(s):**

Brian Morgan Heit

Represented By  
Rachel M Sposato

**Plaintiff(s):**

Deidre Love

Represented By  
Jacob Harker

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**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:24-10608 Brian Morgan Heit**

**Chapter 7**

Adv#: 9:24-01030 Reynolds v. Heit

**#11.00** CONT'D Status Hearing re: [1] Adversary case 9:24-ap-01030. Complaint by Nace Reynolds against Brian Morgan Heit. 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))

fr. 11-6-24, 11-20-24

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**Appearances waived.**

The Court has reviewed that *Joint Status Report*. See Docket No. 19. The deadlines to complete discovery and for dispositive motions to be heard have lapsed. See Docket No. 15, *Status Conference and Scheduling Order Pursuant to LBR 7016-1(a)(4)*. The parties should note that a pretrial conference is scheduled for May 7, 2025, at 9:00 a.m.

The status conference is continued to May 7, 2025, at 9:00 a.m.

**November 20, 2024**

**In-person appearances required of counsel of record. Appearance counsel may not appear.**

On September 3, 2024, Nace Reynolds ("Plaintiff") filed that *Complaint to Object to Discharge of Debt 11 USC §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6)* (the "Complaint"). See Docket No. 1. On October 29, 2024, Plaintiff and Brian Morgan Heit (the "Debtor") filed that *Joint Status Report* (the "Report"). See Docket No. 11. Pursuant to the Report, "[t]he Parties agree to stay this adversary proceeding while

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Plaintiff seeks relief from the automatic stay to continue litigation in state court." *See id.* at p. 2.

The parties do not decide whether this matter is to be stayed. What is more, the Court finds no motion filed regarding the automatic stay in the nearly three (3) months since the Complaint was filed. Lastly, in violation of those *Adversary Proceeding Status Conference Procedures* (the "Procedures"), no status conference report was filed in preparation for the instant status conference. *See* Docket No. 2.

The Court is inclined to enter an order to show cause as to why this adversary proceeding should not be dismissed for the failure to prosecute, and to comply with the Procedures and this Court's Local Rules. The Court is further inclined to issue monetary sanctions for the parties' failure to file a joint status report.

**November 6, 2024**

**Appearances waived.**

The Court has reviewed that *Joint Status Report*. *See* Docket No. 6. The status conference is continued to November 20, 2024, at 1:00 p.m.

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

**Debtor(s):**

Brian Morgan Heit

Represented By  
Marcus G Tiggs  
Rachel M Sposato

**Defendant(s):**

Brian Morgan Heit

Represented By  
Rachel M Sposato

**Plaintiff(s):**

Nace Reynolds

Represented By  
Jacob Harker

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**Trustee(s):**

Sandra McBeth (TR)

Pro Se



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**9:23-10950 Lorena Mayra Ortiz**

**Chapter 7**

Adv#: 9:24-01005      McBeth v. Ortiz et al

**#12.00** CONT'D Status Hearing re: [1] Adversary case 9:24-ap-01005. Complaint by Sandra K. McBeth against Benjamin Ortiz, Kerin R Ortiz. (\$350.00 Fee Charge To Estate). Complaint for Avoidance of Actual Fraudulent Transfer Pursuant to 11 U.S.C §548(a)(1)(A) Constructive Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(B) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))

fr. 4-10-24, 6-5-24, 10-23-24

Docket 1

**Tentative Ruling:**

**April 9, 2025**

See calendar item 13.

**October 23, 2024**

**Appearances required.**

See matter 10 on the calendar. The Court is inclined to sanction the parties after a further in-person hearing, and to dismiss this proceeding.

**June 5, 2024**

**Appearances required.**

The Court has reviewed that *Joint Status Report*. See Docket No. 16. Plaintiff's responses are confusing. Plaintiff asserts that they will be ready for trial in September 2024, but require six (6) months to complete discovery. The Court is inclined to set the following litigation dates:

Discovery cutoff, including receiving responses - July 31, 2024

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Last day for pretrial motions to be heard - September 11, 2024, at 9:00 a.m.

Continued status conference -September 25, 2024, at 9:00 a.m.

Pre-trial conference - September 25, 2024, at 9:00 a.m.

Trial -October 17, 2024, at 1:00 p.m.

**April 10, 2024**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 12. It appears that Defendant was/is awaiting initial disclosures from Plaintiff. The Court will inquire if the disclosures were made, and if so, when Defendant will complete discovery efforts and be ready for trial. The Court will further inquire with the parties regarding mediation. Specifically, the Court will inquire about the timing of mediation (prior to, during, or after discovery) and whether mediation should be with this Court's mediation panel, or whether the parties prefer private mediation.

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

**Debtor(s):**

Lorena Mayra Ortiz

Represented By  
Michael B Clayton

**Defendant(s):**

Benjamin Ortiz

Represented By  
Janet A Lawson

Kerin R Ortiz

Represented By  
Janet A Lawson

**Plaintiff(s):**

Sandra K. McBeth

Represented By  
Paul F Ready

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**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

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**9:23-10950 Lorena Mayra Ortiz**

**Chapter 7**

Adv#: 9:24-01005      McBeth v. Ortiz et al

**#13.00** CONT'D Pre-Trial Conference re: [1] Adversary case 9:24-ap-01005. Complaint by Sandra K. McBeth against Benjamin Ortiz, Kerin R Ortiz. (\$350.00 Fee Charge To Estate). Complaint for Avoidance of Actual Fraudulent Transfer Pursuant to 11 U.S.C §548(a)(1)(A) Constructive Fraudulent Transfer Pursuant to 11 U.S.C. §548(a)(1)(B) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))

fr. 10-23-24

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Joint Pretrial Stipulation*. See Docket No. 41. The trial will take place on April 24, 2025, starting at 9:00 a.m. Appearances of parties, counsel, and witnesses will be in-person. There will be no remote option. The parties are to submit three (3) copies each of their exhibit binders to chambers at least 24 hours prior to trial. The binders may be routed to chambers through the first floor filing window. The parties should have copies of each of the other parties' binders. Beyond the lawyers, parties and witnesses should be dressed court appropriate. If a pretrial order has not already been lodged, one should be lodged within 7 days.

**October 23, 2024**

**Appearances required, in-person.**

The Court set a pretrial conference in this matter for October 23, 2024, at 9:00 a.m. See Docket No. 19, *Scheduling Order*. Pursuant to this Court's Local Rule 7016-1(b) (1)(A), "[i]n any adversary proceeding, unless otherwise ordered by the court (or if ordered in a contested matter), attorneys for the parties (or parties, if not represented

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**Lorena Mayra Ortiz**

**Chapter 7**

by counsel) must prepare a written pretrial stipulation approved by counsel for all parties." This Court's Local Rule 7016-1(b)(1)B) provides that "[u]nless otherwise ordered by the court, the pretrial stipulation must be filed or lodged (depending upon the procedures of the presiding judge) and served not less than 14 days before the date set for the pretrial conference (if one is ordered) or trial." Pursuant to this Court's Local Rule 7016-1(e)(2), "[a]ny party other than plaintiff who has not received plaintiff's proposed pretrial stipulation within the time limits set forth in subsection (c) of this rule must prepare, file, and serve at least 14 days prior to the trial or pretrial conference, if one is ordered, a declaration attesting to plaintiff's failure to prepare and serve a proposed pretrial stipulation in a timely manner." Pursuant to this Court's Local Rule 7016-1(f), the failure to timely file a pretrial stipulation may result in sanctions, including "[a]n award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault" and/or "[a]n award of non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default."

Here, the Court finds no timely filed pretrial stipulation and proposed order.

The Court is inclined to sanction the parties after a further in-person hearing, and to dismiss this proceeding.

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

Lorena Mayra Ortiz

Represented By  
Michael B Clayton

**Defendant(s):**

Benjamin Ortiz

Represented By  
Janet A Lawson

Kerin R Ortiz

Represented By  
Janet A Lawson

**Plaintiff(s):**

Sandra K. McBeth

Represented By  
Paul F Ready

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**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Paul F Ready

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**9:24-10319 Makat Investments, LLC**

**Chapter 12**

Adv#: 9:24-01038 Jerry Namba, Chapter 7 Trustee for the Estate of 4 v. Makat Investments,

**#14.00** Hearing re: [16] Plaintiff's motion to compel interrogatory answers and payment of expenses, and vacate discovery cut-off date

Docket 16

**Tentative Ruling:**

**April 9, 2025**

**Appearances required. Counsel to Defendant is to appear in-person.**

On September 27, 2024, the Trustee filed that *Complaint to: (1) Avoid Transfer; (2) Recover Avoided Transfer; (3) Obtain Turnover; and (4) Obtain Accounting* (the "Complaint") against the Debtor, and on October 28, 2024, the Debtor filed that *Answer to Complaint to: (1) Avoid Transfer; (2) Objecting to Entry of Discharge Pursuant to 11 U.S.C. §§ 523(a)(2); 523(a)(4) 523(a)(6) [sic]* (the "Answer"). See Docket Nos. 1 and 4, respectively.

On February 27, 2025, the Court issued that *Order Granting Plaintiff's Motion to Compel Initial Disclosures* (the "Order") ordering the Debtor to provide its Fed. R. Bankr. P. 7026 initial disclosures after the Trustee brought that *Motion to Compel Initial Disclosures* and the Debtor failed to respond. See Docket No. 12.

Before the Court is *Plaintiff's Notice of Motion and Motion to Compel Interrogatory Answers and Payment of Expenses, and Vacate Discovery Cut-Off Date* (the "Motion") in which Jerry Namba, the Chapter 7 trustee for Estate of 40800SEGC LLC, (the "Trustee") requests that the Court (1) compel Makat Investments, LLC (the "Debtor") to answer the Trustee's first set of interrogatories (the "Interrogatories") and pay Trustee's expenses related to the Motion, and (2) vacate the discovery cut-off date. See Docket No. 16.

On January 30, 2025, the Trustee served the Interrogatories upon the Debtor, and then on March 4, 2025, the Trustee's counsel wrote to the Debtor's counsel in an attempt to meet and confer regarding the Interrogatories, however, the Debtor's counsel failed

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to respond. *See id.* at p. 3 line 20 to p. 4 line 5.

Pursuant to Local Bankruptcy Rule (LBR) 7026-1(c)(4) "[t]he failure of any party either to cooperate [in discovery disputes], to attend the meeting of parties, or to provide the moving party the information necessary to prepare the stipulation required by this rule within 7 days of the meeting of parties will result in the imposition of sanctions, including the sanctions authorized by FRBP 7037 and LBR 9011-3.

Pursuant to Fed. R. Civ. P. 37(a)(5)(A) , made applicable by Fed. R. Bankr. P. 7037, "[i]f the motion is granted [] the court must, after giving an opportunity to be heard, require the party [] whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees."

Pursuant to LBR 9011-3(a), the "violation of, or failure to conform to, the FRBP or these rules may subject the offending party or counsel to penalties, including monetary sanctions, the imposition of costs and attorneys' fees payable to opposing counsel, and/or dismissal of the case or proceeding."

By all accounts, the Debtor has lost interest in advancing the case. The Debtor, and counsel to the Debtor, have failed to respond in any manner to requests to meet and confer regarding the Interrogatories.

The Trustee, and the plaintiff in the instant adversary proceeding, has now been placed in the position of having to incur the fees, expenses, and delays in filing the Motion in order to compel the Debtor to do what the Rules of Civil Procedure applicable to this adversary proceeding require. The Debtor has not responded to the Motion. The Court is inclined to resolve the Motion in two stages. First, the Court will grant the Motion, compelling the Debtor to respond to the Interrogatories and vacate the discovery deadline for cause. Answers to the Interrogatories will be due on or before April 16, 2025. The Court will vacate the discovery date, and at the hearing on the Motion, inquire with the Trustee about an extension of the discovery cutoff.

Second, the Court will issue an order to show cause as to why the Court should not (1) issue terminating sanctions, striking the Answer and entering judgment for the Trustee, for the Debtor's failure to provide responses to the Interrogatories and respond to the Motion, and (2) to issue monetary sanctions in the amount of \$1,500



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**Chapter 12**

against the Debtor and the Debtor's counsel, jointly and severally. The Court will hold a hearing on the show cause order on May 7, 2025, at 9:00 a.m.

The Motion requests fees and costs related to the drafting and arguing of the Motion, which the Court is inclined to grant as a part of the sanctions the Court intends on levying, but the Court requires evidence of those fees and expenses, and so the Court will require that the Trustee submit evidence in support of their expenses and fees incurred in bringing the Motion to be filed on or before April 30, 2025.

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

Makat Investments, LLC

Represented By  
Reed H Olmstead

**Defendant(s):**

Makat Investments, LLC

Represented By  
Reed H Olmstead

**Movant(s):**

Jerry Namba, Chapter 7 Trustee for

Represented By  
Timothy J Yoo  
Michael G D'Alba

**Plaintiff(s):**

Jerry Namba, Chapter 7 Trustee for

Represented By  
Timothy J Yoo  
Michael G D'Alba

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:18-11110 Vera Rozhko**

**Chapter 11**

**#15.00** Pre-Trial Conference re: Motion for sanctions/disgorgement motion for order to show cause why the Bank of New York Mellon and Shellpoint Mortgage Servicing should not be held in contempt of court for knowingly and continually violating the terms of reorganized debtors confirmed chapter 11 plan of reorganization

Docket 114

**Tentative Ruling:**

**April 9, 2025**

**In-person appearances required.**

The Court has reviewed that *Joint Pretrial Stipulation*. See Docket No. 159. It is unclear to the Court what the dispute here is. The creditor appears to have violated the terms of the plan's injunction. The Debtor accrued fees related to the violation. The Debtor is requesting payment of said fees. Have the parties not resolved this matter?

If the matter has not been resolved, the Court is considering holding a hearing on April 23, 2025, after the 1:00 p.m. calendar. This does not appear to be a lengthy hearing, and the Court's interest is in not blocking out a full day for this matter. The Court will require that the parties provide chambers with three (3) copies of each of the parties' exhibit binders no less than 24 hours prior to the hearing. The binders may be routed to chambers through the first floor filing window. The parties should exchange binders prior to the hearing. The hearing will be held in-person, both for parties and witnesses. There will be no remote appearances. Parties and witnesses are to appear in court appropriate attire. If an order approving the pretrial stipulation has not been lodged, one should be lodged within 7 days.

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

Vera Rozhko

Represented By  
Reed H Olmstead

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**Chapter 11**

**Movant(s):**

Vera Rozhko

Represented By  
Reed H Olmstead

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**9:23-10968    John Charles Thomas**  
Adv#: 9:24-01017      Saint v. Thomas

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**#16.00**    CONT'D Status Hearing re: [1] Adversary case 9:24-ap-01017. Complaint by Steve Saint against John Charles Thomas. willful and malicious injury)); Counter-Claim (Docket #[8])

fr. 7-10-24, 1-29-25, 2-12-25, 03-26-25,

Docket      1

**Tentative Ruling:**

**April 9, 2025**

**In-person appearances required of counsel for all parties.**

Pursuant to those *Adversary Proceeding Status Conference Procedures* (the "Procedures"), "[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. 3, p. 1. "A failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.* The requirement that the parties file a status conference report fourteen (14) days prior to a status conference can only be waived by action of this Court. *See id.*

Pursuant to this Court's Local Rule 7016-1(a)(2), "[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 []."

Pursuant to this Court's Local Rule 7016-1(b)(1)(A), "[i]n an adversary proceeding, unless otherwise ordered by the court [], attorneys for the parties [] *must* prepare a written pretrial stipulation approved by counsel for all parties." (emphasis added). This Court's Local Rule 7016-1(b)(1)(B) provides that "[u]nless otherwise ordered by the court, the pretrial stipulation *must* be filed or lodged [] and served not less than 14

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days before the date set for the pretrial conference []." (emphasis added).

This Court's Local Rule 7016-1(f) provides that "[i]n addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may [ ] award [ ] monetary sanctions [and/or award] non-monetary sanctions against the party at fault including entry of judgment or dismissal or the entry of an order striking the answer and entering a default."

Pursuant to this Court's Local Rule 7016-1(g), "[t]he failure of a party's counsel [ ] to appear before the court at a status conference or pretrial conference, or to complete the necessary preparations therefor [ ] may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party with respect to a specific issue or as to the entire proceeding, or the proceeding may be dismissed."

On April 29, 2024, Steve Saint ("Plaintiff") filed that *Complaint to Determine Nondischargeability of Debt Pursuant to 11 U.S.C. § 523* (the "Complaint") as against John Charles Thomas ("Defendant"). See Docket No. 1. On July 17, 2024, the Court entered that *Scheduling Order*, through which the Court set a continued status conference on the Complaint for January 29, 2025, at 9:00 a.m., and a pretrial conference for March 27, 2025. See Docket No. 18. The Court ordered the parties to mediate the Complaint "no later than January 15, 2025." See *id.* at p. 2.

On August 5, 2024, the Court entered that *Order Rescheduling of Pretrial Conference*, rescheduling the pretrial conference to March 26, 2025, at 9:00 a.m. See Docket No. 20. After Plaintiff's failure to appear at the status conference or file a status conference report fourteen (14) days prior to the status conference, on January 31, 2025, the Court entered that *Order to Show Cause Why: (1) The Adversary Complaint Should Not Be Dismissed for Failure to Prosecute, and (2) Sanctions Should Not Be Issued Against Plaintiff and/or Plaintiff's Counsel(s)*. See Docket No. 27. The Court vacated its show cause order on February 12, 2025. See Docket No. 30, *Order Vacating Order to Show Cause Why: (1) The Adversary Complaint Should Not Be Dismissed for Failure to Prosecute, and (2) Sanctions Should Not Be Issued Against Plaintiff and/or Plaintiff's Counsel(s)*. The Court continued the status

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conference to March 26, 2025. *See* Docket Entry at February 12, 2025.

On February 28, 2025, that *Mediator's Certificate Regarding Completion of Mediation Conference* was filed, denoting that the Complaint was mediated on February 26, 2026 [sic], after the date ordered by the Court, and that the Complaint settled. *See* Docket No. 33.

No timely and conforming status conference report or pretrial stipulation were filed prior to the status conference and pretrial conference.

On March 25, 2025, the day before the scheduled status conference and pretrial conference, Defendant filed that *Status Report*, informing the Court that the Complaint has settled, and graciously informing the Court "that the status conference may be taken off calendar." *See* Docket No. 34, p. 1, lines 21-22. Counsel to Defendant was also kind enough to the Court to inform the Court that "he will not appear at the status conference," as he would be instead traveling "to New York to celebrate a milestone birthday." *See id.* at pp. 1-2.

True to his word, neither counsel to Defendant nor Defendant appeared at the status conference or pretrial conference on March 26, 2025.

On March 26, 2025, Plaintiff appeared for the status conference and pretrial conference having filed not a single piece of paper to prepare the Court, in violation of this Court's Local Rules and the Procedures. Again, Defendant did not appear at all, and what Defendant did file less than 24 hours prior to the status conference and pretrial conference, a self-styled "status report," violated the Court's Local Rules and the Procedures requiring the use of this Court's mandatory local form, and was unacceptably untimely.

Assuming this matter has in-fact settled, and that settlement has been reduced to an agreed upon writing, it escapes the Court why the parties did not inform the Court of this fact fourteen (14) days prior to the status conference or pretrial conference. If the parties had an agreement in principle as early as February 26, 2025, a month prior to the status conference and pretrial conference, why would the parties not file a request to continue the trial date, and the status and pretrial conference shortly thereafter? Why would Defendant's counsel, knowing of the pretrial conference for months book a "birthday" vacation on a date that collided with one of the most important dates his

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client faced in this adversary proceeding? The Court, perhaps unwisely in this matter, allows parties to appear via Zoom.gov and by telephone. Could Defendant's counsel not have appeared for the hearings virtually no matter where he was in the country?

The parties, or at least their counsel, have wasted this Court's time in attempting to prepare for a status conference and pretrial conference that neither party intended advancing. This is not the first of such occasions in this proceeding. The parties, and their counsel, are in violation of both the Procedures and this Court's Local Rules. The Complaint is dismissed, with prejudice. Each party, and their counsel, jointly and severally, are each to pay sanctions to the Court in the amount of \$7,500. Neither counsels are to appear remotely in this Division for any matter in the future, including the instant matter, unless this Court orders otherwise.

**March 26, 2025**

**Appearances required.**

In reviewing *Mediator's Certificate Regarding Completion of Mediation Conference*, it appears that matter has settled. See Docket No. 33.

**February 12, 2025**

**In-person appearances required of Plaintiff and Plaintiff's counsel, Douglas A. Prutton**

Before the Court is the Court's *Order to Show Cause Why: (1) The Adversary Complaint Should Not Be Dismissed for Failure to Prosecute, and (2) Sanctions Should Not Be Issued Against Plaintiff and/or Plaintiff's Counsel(s)* (the "OSC"), issued on January 31, 2025, as to why (1) this adversary proceeding should not be dismissed for failure to prosecute, and/or (2) the Court should not issue monetary sanctions for Douglas A. Prutton's ("Prutton") failure to file a status conference report or appear at the status conference. See Docket No. 27. The OSC provides that any opposition to the dismissal of this adversary proceeding, or issuance of sanctions may

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be filed not later than February 5, 2025. *See id.* at p. 2, lines 6-8.

On January 30, 2025, Prutton, counsel to Plaintiff Steve Saint ("Plaintiff"), filed that *Response to Order to Show Cause by Plaintiff's Attorney Douglas A. Prutton* (the "Response") in which Prutton stated that he never calendared the status conference. *See* Docket No. 24, p. 2 ¶ 3. Prutton also stated that he alone is responsible for this adversary proceeding, whereas co-counsel Michael Wallin is handling the bankruptcy case. *See id.* at ¶ 6. Further, Prutton requested that the Court continue the hearing on the OSC to another day, as he will be traveling from February 12, 2025 to February 18, 2025. *See id.* at ¶ 7; *see also* Docket No. 26, *Letter to Judge Clifford III*.

Those *Adversary Proceeding Status Conference Procedures* (the "Procedures") provide that "[f]ailure to appear for a status conference may result in the imposition of monetary sanctions." *See* Docket No. 3, p. 1. The Procedures also provide that "[a] joint status report prepared using Local Form F 7016-1.STATUS.REPORT must be filed fourteen days before each status conference." *Id.* "Failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.* "Stipulations for extensions of time are ineffective unless approved by the Court." *Id.* This Court's Local Rule 7016-1(a)(1) requires appearance at status conferences by "the attorney [] who is responsible for trying the case..." If the Procedures did not provide sufficient notice, this Court's Local Rule 7016-1(a)(2) provides, "[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 court form F 7016-1.STATUS.REPORT." This Court's Local Rule 7016-1(f) provides that "if a status conference statement [] is not filed [] within the times set forth in subsection (a) [], the court may order [a]n award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault [and/or a]n award of non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default." Pursuant to this Court's Local Rule 7016-1(g), "[t]he failure of a party's counsel [] to appear before the court at the status conference [] may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or as to the entire proceeding, or the proceeding may be dismissed."



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Pursuant to Fed. R. Bankr. P. 7016(a), "Fed. R. Civ. P. 16 applies in an adversary proceeding." Pursuant to Fed. R. Civ. P. 16(f)(1)(A), "[o]n motion or its own, the court may issue any just orders, including those authorized by Rule 37(b),(2),(A),(ii)-(vii), if a party or its attorney [] fails to appear at a scheduling or other pretrial conference." Pursuant to Fed. R. Civ. P. 16(f)(2), "[i]nstead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust."

"The task of keeping track of necessary deadlines will involve some delegation," however, "[t]he responsibility for the error falls on the attorney regardless of whether the error was made by an attorney or a paralegal." *Pincay v. Andrews*, 389 F.3d 853, 856 (9th Cir. 2004)(citing Model Rules of Prof'l Conduct R. 5.5 cmt (2002)).

In the instant proceeding, the parties were aware of the status conference as of July 17, 2024. *See* Docket No. 18, *Scheduling Order* (the "Order"), p. 2, line 4. Plaintiff and Prutton failed to appear. What is more, the Court ordered the parties to mediate the matter no later than January 15, 2025, with an order assigning the matter to mediation to be uploaded no later than November 15, 2024. *See id.* at lines 10-13. The parties ignored the Order.

The Court now has an adversary proceeding that is set for trial to take place on April 10, 2025, where Plaintiff has not attended a status conference, which attendance was mandatory, failed to file the required status conference statement, and where neither party has complied with the Order regarding mediation. Instead, the parties filed that *Stipulation for Order Modifying Scheduling Order* without providing any reason why this Court should modify the Order. *See* Docket No. 22.

Monetary sanctions appear appropriate, likely for both parties, but non-monetary sanctions may also be appropriate. The parties have also failed to comply with a direct order of this Court concerning mediation. Thus, the Court, beyond monetary sanctions and non-monetary sanctions for their failure to file a status conference statement, and as against Plaintiff and/or Prutton for their failure to appear at the status conference, is inclined to issue a further order to show cause regarding why both parties should not be held in contempt of the Order.

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**January 29, 2025**

**In-person appearances required. No Zoom appearances will be taken.**

The Court set this matter for a continued status conference. *See* Docket No. 18, *Scheduling Order* (the "Scheduling Order"), p. 2. As the parties are aware, "[a] joint status report preparing using Local Form F 7016-1.STATUS.REPORT must be filed fourteen (14) days before each status conference." *See* Docket No. 3, *Adversary Proceeding Status Conference Procedures* (the "Procedures Order"). The Court also set a discovery cutoff of December 31, 2024, and required that the parties attend at least ½ day of mediation on or before January 15, 2025, lodging an order assigning the matter to mediation on or before November 15, 2024. *See id.*

Here, at the time of the continued status conference, no status report has been filed, as this Court has required through the Procedures Order. On January 17, 2025, the parties filed that *Stipulation for Order Modifying Scheduling Order* (the "Stipulation"). *See* Docket No. 22. The parties, through the Stipulation, seek to continue the trial date and other dates within the Scheduling Order. *See id.* The Court has some confusion. First, the parties seek to modify the discovery cutoff as March 31, 2025. *See id.* at p. 2, lines 1-3. Yet, the discovery cutoff has passed. Discovery was to be completed, including receipt of responses by December 31, 2024. Next, the parties seek to conduct a day of mediation by April 15, 2025. *See id.* at lines 11-13. This Court ordered that mediation in this matter take place by January 15, 2025, and that an order assigning the matter to mediation be uploaded by November 15, 2024, more than two (2) months ago. Lastly, the Court has no understanding why the Scheduling Order has not been, and in the future cannot be met.

Pursuant to Fed. R. Bankr. P. 7016(a), Fed. R. Civ. P. 16 applies in adversary proceedings. *See* Fed. R. Bankr. P. 7016(a). Pursuant to Fed. R. Civ. P. 16(b)(1)(B), "the district judge [] must issue a scheduling order [] after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference." Pursuant to Fed. R. Civ. P. 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." "The pretrial schedule may be modified 'if it cannot be reasonably met despite the diligence of the

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party  
seeking the extension.'" *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)(citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)).

"If the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted." *Id.* "The Ninth Circuit has also repeatedly and emphatically addressed the importance of scheduling orders as tools for district courts to manage their heavy caseloads.'" *Williams v. James River Grp. Inc.*, 627 F.Supp.3d 1172, 1177 (D. Nev. 2022)(citing *Desio v. State Farm Mut. Auto Ins. Co.*, 339 F.R.D. 632, 641 (D. Nev. 2021)).

The Ninth Circuit has "held that Rule 16(b)'s reference to 'good cause' was 'a close correlate' of 'extraordinary circumstances.'" *Matrix Motors Co., Inc. v. Toyota Jidosha Kabushiki Kaisha*, 218 F.R.D. 667, 674 (C.D. Cal. 2003)(citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)).

"When a request to extend case management deadlines is made by stipulation, courts may consider the joint nature of the request in deciding whether the circumstances warrant an amendment to the scheduling order. Nonetheless, courts addressing such requests are deciding at bottom whether to modify their own orders, an issue that need not be based necessarily on the promptings of the parties." *Id.* at 1178 (internal citations omitted). "That a request is made jointly neither mandates allowance of the extension sought nor exempts parties from making the necessary showings to justify that relief. Failure to provide such showings may result in denial of a stipulated request to extend the case management deadlines." *Id.*

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That *Complaint to Determine Nondischargeability of Debt Pursuant to 11 U.S.C. § 523* was filed on April 29, 2024. See Docket No. 1. With the matter at issue, the Court held an initial status conference on July 17, 2024, and after meeting with the parties issued the Scheduling Order. See Docket No. 18. It is unclear to the Court why it would modify the Scheduling Order, now six (6) months after it was issued, and without any reason provided. The Court ordered the matter to mediation, which order the parties seemingly have disregarded, and the discovery cutoff passed weeks ago. The parties did not as much as extend to the Court the good courtesy of complying with its Procedures Order regarding status conferences, thereby filing a report updating the Court as to the status of the matter. What efforts to comply with the Scheduling Order have been undertaken, and what prevented/prevents the parties from complying with the Scheduling Order? To this question, the Court has no answers.

**July 10, 2024**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 12. The Court is inclined to set the following litigation deadlines:

July 26, 2024 – Last day to amend pleadings and join other parties

December 31, 2024 – Last day to complete discovery, including receiving responses

January 29, 2025, at 9:00 a.m. – Continued status conference

February 26, 2025, at 9:00 a.m. – Deadline for dispositive motions to be heard

March 13, 2025 – Deadline to file joint pre-trial conference stipulation and proposed order

March 27, 2025, at 9:00 a.m. – Pre-trial conference (in-person)

April 10, 2025, at 9:00 a.m. – Trial (in-person)

Plaintiff is to lodge a scheduling order with the above dates within 7 days.

<b>Party Information</b>
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Courtroom 201 Calendar**

**Wednesday, April 9, 2025**

**Hearing Room      201**

9:00 AM

**CONT...      John Charles Thomas**

**Chapter 7**

**Debtor(s):**

John Charles Thomas

Represented By  
John D Faucher

**Defendant(s):**

John Charles Thomas

Represented By  
John D Faucher

**Plaintiff(s):**

Steve Saint

Represented By  
Michael A Wallin  
Douglas A Prutton

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Jeremy Faith  
Meghann A Triplett

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**9:23-10968 John Charles Thomas**  
Adv#: 9:24-01017 Saint v. Thomas

**Chapter 7**

**#17.00** CONT'D Pre-Trial Conference re: [1] Adversary case 9:24-ap-01017. Complaint by Steve Saint against John Charles Thomas. Nature[s] of Suit: (68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 03-26-25,

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**In-person appearances required of counsel for all parties.**

**March 26, 2025**

See Calendar Item 20.

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

**Debtor(s):**

John Charles Thomas

Represented By  
John D Faucher

**Defendant(s):**

John Charles Thomas

Represented By  
John D Faucher

**Plaintiff(s):**

Steve Saint

Represented By  
Michael A Wallin  
Douglas A Prutton

**Trustee(s):**

Jerry Namba (TR)

Represented By

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Central District of California  
Northern Division  
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**John Charles Thomas**

Jeremy Faith  
Meghann A Triplett

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**9:23-10174    Jonathan Alan Stein**

**Chapter 7**

Adv#: 9:23-01023      Gabrielino-Tongva Tribe v. Stein

**#18.00      CONT'D Hearing RE: [73] Motion to compel depositions and award sanctions**

FR. 5-8-24, 5-22-24, 6-18-24, 7-18-24, 8-20-24, 9-24-24, 10-22-24, 11-19-24  
1-28-25, 3-12-25,

Docket      73

**Tentative Ruling:**

**March 12, 2025**

**Appearances waived.**

This matter is continued to April 9, 2025, at 9:00 a.m. The record is closed.

**October 22, 2024**

**Appearances waived.**

This matter is continued to November 19, 2024, at 1:00 p.m.

**September 24, 2024**

**Appearances waived.**

This matter is continued to October 22, 2024, at 1:00 p.m.

**August 20, 2024**

**Appearances waived.**

This matter is continued to September 24, 2024, at 1:00 p.m.

**June 18, 2024**



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**Chapter 7**

**Appearances waived.**

This matter is specially set for July 18, 2024, at 1:00 p.m.

**May 22, 2024**

**Appearances waived.**

This matter is continued to June 18, 2024 at 1:00 p.m.

**May 8, 2024**

**Appearances waived.**

This matter is continued May 22, 2024, at 10:00 a.m.

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

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Defendant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Plaintiff(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

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**Chapter 7**

**Trustee(s):**

Jerry Namba (TR)

Represented By

Laila Masud

Sarah Rose Hasselberger

D Edward Hays

Sarah Cate Hays

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Central District of California  
Northern Division  
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**9:23-10174    Jonathan Alan Stein**

**Chapter 7**

Adv#: 9:23-01023      Gabrielino-Tongva Tribe v. Stein

**#19.00      CONT'D Hearing RE: [83] Motion for protective order**

fr. 5-22-24, 6-18-24, 7-18-24, 8-20-24, 9-24-24,  
10-22-24, 11-19-24, 1-28-25, 3-12-25,

Docket      83

**Tentative Ruling:**

**March 12, 2025**

**Appearances waived.**

This matter is continued to April 9, 2025, at 9:00 a.m. The record is closed.

**October 22, 2024**

**Appearances waived.**

This matter is continued to November 19, 2024, at 1:00 p.m.

**September 24, 2024**

**Appearances waived.**

This matter is continued to October 22, 2024, at 1:00 p.m.

**August 20, 2024**

**Appearances waived.**

This matter is continued to September 24, 2024, at 1:00 p.m.

**July 18, 2024**

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**CONT... Jonathan Alan Stein**

**Chapter 7**

**Appearances required.**

**June 18, 2024**

**Appearances waived.**

This matter is specially set for July 18, 2024, at 1:00 p.m.

**May 22, 2024**

**Appearances waived.**

This matter is continued to June 18, 2024 at 1:00 p.m.

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

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Defendant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

**Plaintiff(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian

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**CONT...**

**Jonathan Alan Stein**

Joseph Chora

**Chapter 7**

**Trustee(s):**

Jerry Namba (TR)

Represented By

Laila Masud

Sarah Rose Hasselberger

D Edward Hays

Sarah Cate Hays

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Adv#: 9:23-01023 Gabrielino-Tongva Tribe v. Stein

**#20.00** CONT'D Hearing RE: [98] Motion for summary judgment; memorandum of points and authorities in support of motion for partial summary adjudication

FR. 9-11-24, 9-24-24, 10-22-24, 11-19-24, 11-20-24, 1-28-25, 3-12-25,

Docket 98

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

**Background**

*The Debtor's Bankruptcy Case*

On March 10, 2023 (the "Petition Date"), Jonathan Alan Stein (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code (this "Bankruptcy Case"). *See* 9:23-bk-10174-RC, Docket No. 1. Jerry Namba is serving as the duly appointed Chapter 7 trustee in this Bankruptcy Case.

*The Tribe's Claims*

On April 18, 2023, the Tribe, *infra*, timely filed Claim No. 1 in this Bankruptcy Case in the amount of \$37,065,922.66 related to the Judgment, *infra*. *See id.*, Claim No. 1. There has been no objection to the Tribe's claim, and, as such, the Tribe has an allowed claim in the amount of \$37,065,922.66. *See* 11 U.S.C. § 502(a).

*The State Court Judgment*

The Gabrielino-Tongva Tribe (the "Tribe") relates to the indigenous people of the Los Angeles Basin known as the "Gabrielinos" due to their association with the San Gabriel Mission. *See* Case 9:23-ap-01023-RC (the "Tribe Adversary"), Docket No.

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100-4, *Exhibit D, St. Monica Development v. Gabrielino-Tongva Tribe, Court of Appeal of the State of California Second Appellate District Division Five, Case Number B302377 c/w B308161* (the "Appellate Opinion"), p. 6. [FN1] In 2006, the Tribe filed an action against the Debtor, the Law Offices of Jonathan Stein ("Law Offices"), and Santa Monica Development Company, LLC ("SMDC") (an entity formed by the Debtor "to develop casino gaming with the Tribe") in the Superior Court of California for the County of Los Angeles (the "LA State Court") alleging fifteen (15) causes of action, including fraud (the "State Court Action"). *See id.* at p. 20. On November 8, 2018, the LA State Court "ruled in favor of the Tribe and against [the Debtor], Law Offices, and SMDC, on all causes of action [in the State Court Action]" and found that the Debtor, Law Offices, and SMDC were all alter egos of each other. *See id.* at p. 34. The LA State Court found that the Debtor, Law Offices, and SMDC "acted with malice, oppression, and fraud." *See id.* As to the fraud findings, the LA State Court "found [the Debtor] had committed multiple acts of fraud against the Tribe." *See id.*

The LA State Court found that the Debtor "is a recidivist in targeting Native Americans for exploitation" and that the Debtor "preyed upon Native American groups." *See id.* at *Exhibit C, Statement of Decision*, p. 40, lines 1-12. Including \$7 million in punitive damages, the LA State Court awarded the Tribe, and as against the Debtor, Law Offices, and SMDC, jointly and severally, a total judgment of \$20,411,067.23 in the State Court Action (the "Judgment"). *See id.* at p. 84. Apart from a reduction in the amount of the Judgment from \$20,411,067.23 to \$19,161,067.23, the Court of Appeal of the State of California, Second Appellate District, Division Five affirmed the LA State Court's Judgment in the State Court Action through the Appellate Opinion. *See id.* at *Exhibit D*, generally. The California Supreme Court denied the Debtor's petition for review. *See id.* at *Exhibit F*.

*The Tribe Adversary Action*

On June 23, 2023, the Tribe filed that *Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523, and Denial of Discharge Under 11 U.S.C. § 727*. *See* Docket No. 1. On November 26, 2024, the Tribe filed that *First Amended Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523* (the "Complaint") seeking to exempt from the Debtor's discharge the Judgment pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6). *See*

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Docket No. 152. The Complaint, as amended, is identical to the first filed complaint, with the exception that unlike the initial complaint the Complaint does not allege any causes of actions under 11 U.S.C. § 727.

*The Motion for Summary Judgment / Adjudication*

On July 31, 2024, the Tribe filed that *Notice of Hearing on Motion for Partial Summary Adjudication* and that *Memorandum of Points and Authorities in Support of Motion for Partial Summary Adjudication* (the "Motion") in which the Tribe seeks judgment under 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6) determining the amounts of the Judgment to be excluded from the Debtor's discharge. *See* Docket Nos. 97 and 98, respectively.

On September 3, 2024, the Debtor filed *Debtor's Response to Tribe Motion for Partial Summary Adjudication [Dkts 97, 98, etc]* (the "Opposition"). *See* Docket No. 112. Through the Opposition, the Debtor argues the Motion should be denied because (1) the Tribe lacks capacity to sue as having been suspended by the California Secretary of State; (2) "there is no identity between the [Judgment] and the [Appellate Opinion]" on the one hand and the Complaint on the other hand; and (3) there are issues of material facts as to: (a) whether the Debtor "'obtained' any money or other property from fraudulent conduct" for judgment under § 523(a)(2)(A), (b) whether "specific funds were entrusted to [the Debtor] as a fiduciary" to find fiduciary defalcation, and (c) whether the Debtor had the requisite "'subjective intent'" and "acted 'without just cause or excuse,' [...and] 'wrongful intent.'" *See id.* at pp. 6-7. Also, the Debtor has attached to the Opposition that *Declaration Expert Pietro Canestrelli Re Murrell Property* (the "Canestrelli Declaration") as an expert opinion in support of the Opposition. *See id.* at pp. 111-120.

On September 10, 2024, the Tribe filed that *Reply to Response to Tribe's 523 MSA* (the "Reply") and that *Objection to Declaration of Pietro Canestrelli Re: Reply to Response to Tribe's 523 MSA* (the "Objection"). *See* Docket Nos. 119 and 121, respectively. The Objection requests the Court exclude the Canestrelli Declaration under Fed. R. Civ. P. 26(a) and 37(c)(1) because the Canestrelli Declaration had not been produced prior to the Motion. *See* Docket No. 121.

*Analysis*



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***Summary Judgment / Adjudication***

Under Fed. R. Civ. P. 56(a), made applicable herein by Fed R. Bankr. P. 7056, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Id.* at 324. The substantive law will identify which facts are material. *Id.* Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Id.* A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* "Therefore, at summary judgment, the judge must view the evidence in the light most favorable to the nonmoving party: if direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987) (internal citations omitted). In the absence of any disputed material facts, the inquiry shifts to whether the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. at 323. Furthermore, where intent is at issue, summary judgment is seldom granted. *See Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996), cert. denied, 118 S. Ct. 48 (1997).

"If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist." *Dokes v. Safeway, Inc.*, 2018 WL 1518562 \*3 (E.D. Cal. 2018)(internal citations omitted). Upon a shifting of the burden to the opposing party, the opposing

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party cannot defeat summary judgment merely by demonstrating "that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party cannot "withstand a motion for summary judgment merely by making allegations." *In re Ikon Office Solutions, Inc., Sec. Lit.*, 277 F.3d 658, 666 (3d Cir. 2002). Rather, the opposing party must "go beyond the pleadings and by her own affidavits, or by 'the depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient. [Citation omitted.]" *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221 (9th Cir.1995). To meet this burden, the Ninth Circuit requires that the opposing party "produce at least some significant probative evidence tending to support the complaint." *Id.* at 1222. If the opposing party fails to establish a triable issue on an essential element of its case and upon which it will bear the burden of proof at trial, the moving party is entitled to judgment as a matter of law. *In re Wellman*, 2007 WL 4105275, \*1, 3-4 (9th Cir. BAP 2007) (internal citations omitted).

*A) Objection to the Canestrelli Declaration*

Through the Objection, the Tribe requests the Court exclude the Canestrelli Declaration pursuant to Fed. R. Civ. P. 26(a) and 37(c)(1) because the Tribe received the declaration for the first time through the Opposition. *See* Docket No. 121, p. 2; and Docket No. 120, *Declaration of Nikko S. Stevens, Esq. Re: Reply to Response to Tribe's 523 MSA*, p. 2 ¶2 ("I represent on [September 3, 2024,] is the first time the prospective evidence of the Pietro Canestrelli is produced by [Debtor]").

"The last day for discovery to be completed, including receiving responses to discovery requests, is [July 15,] 2024." *See* Docket No. 71, *Amended Status Conference and Scheduling Order Pursuant to LBR 7016-1(a)(4)*, p. 2; and Docket No. 125, p. 2 (same).

Pursuant to Fed. R. Civ. P. 26, made applicable by Fed. R. Bankr. P. 7026, "a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705." Fed. R. Civ. P. 26(a)(2)(A). "A party must make these [expert witness] disclosures at the times and in

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the sequence that the court orders." Fed. R. Civ. P. 26(a)(2)(D).

Pursuant to Fed. R. Civ. P. 37(c)(1), made applicable by Fed. R. Bankr. P. 7037, "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) [], the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."

The exclusion of evidence due to failing to disclose has been referred to as the "'automatic' sanction of exclusion." *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001). And if a party fails to "properly disclose any expert witness [and] was not substantially justified or harmless [in doing so, then that party] would be precluded from using any undisclosed expert testimony to supply evidence in Opposition to Defendant's Motion for Summary Judgment or at trial." *Downing v. Pac. Gas & Elec. Co.*, 2018 U.S. Dist. LEXIS 180997, \*20 (C.D. Cal. 2018). Additionally, "[i]mplicit in Rule 37(c)(1) is that the burden is on the party facing sanctions to prove harmlessness." *Id.* [FN2]

Here, the Court originally set trial for September 12, 2024, and discovery cutoff was set for July 15, 2024. *See* Docket Nos. 55 and 71, respectively. The Debtor, on September 3, 2024 – 9 days before trial was originally scheduled and 50 days after the last day for discovery had run – disclosed for the first time his expert witness and expert report to the Tribe in the Tribe Adversary.

The Debtor has made no showing, nor has he offered anything to demonstrate that his failure to disclose the Canestrelli Declaration timely was substantially justified or harmless. Moreover, the Tribe is prejudiced by the Debtor failing to disclose the expert witness and expert witness report and the Debtor's springing the Canestrelli Declaration upon on the Tribe. If the "automatic sanction of exclusion" was not applied at this late stage of litigation, then the Tribe would not be provided with an opportunity to depose Canestrelli, nor be able to offer contrary evidence in the Motion, nor be able to fully prepare for questioning of Canestrelli at trial. *See Yeti by Molly, Ltd., supra*, at 1107 (citing *NutraSweet Co. v. X-L Eng'g Co.*, 227 F.3d 776, 786 (7th Cir. 2000)).

Furthermore, even if the Court was not to exclude the Canestrelli Declaration under

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Fed. R. Civ. P. 37(c)(1), the Court questions the relevance of the declaration, and thus its admissibility due to the Court's ruling against the Debtor's affirmative defense of capacity to sue, *infra*.

As such, the Canestrelli Declaration is excluded, and the Debtor may not offer it in support of the Opposition or at trial pursuant to Fed. R. Civ. P. 26(a) and 37(c)(1). Additionally, even if the Canestrelli Declaration were not excluded, it is of no import to the Court's ruling on the Motion.

*B) Collateral Estoppel / Res Judicata*

"[C]ollateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)." *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991); *see also In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). Federal courts "must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81(1984). In this case, we apply California law.

In California, the party asserting issue preclusion has the burden of establishing the following 'threshold' requirements: (1) the issue is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. *See Lucido v. Super. Ct.*, 51 Cal. 3d 335, 341 (1990). "A sixth element is a mandatory 'additional' inquiry into whether imposition of issue preclusion in the particular setting would be fair and consistent with sound public policy." *In re Khaligh*, 338 B.R. 817, 824-825 (9th Cir. BAP 2006)(citing *Luciso v. Super. Ct.*, 51 Cal. 3d at 341-43). "The doctrine of collateral estoppel bars parties or their privities from relitigating any issue necessarily decided in a prior proceeding, whether the issue is brought on the same or different causes of action." *Evans v. Celotex Corp.*, 194 Cal.App.3d 741, 744 (1987)(citing *Clemmer v. Hartford Ins. Co.* (1978)).

To meet its burden, the moving party must have pinpointed the exact issues litigated in the prior action and introduced a record revealing the controlling facts. *In re Kelly*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996).

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Here, the Judgment was litigated between the Tribe and the Debtor, necessarily decided by the LA State Court, and is final on the merits and not subject to any further review. The only issue remaining between the Complaint, on the one hand, and the Judgment on the other, is the issue of identity. "The 'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings." *In re Howell*, 623 B.R. 565, 572 (Bankr. C.D. Cal. 2020)(citing *Lucido v. Sup. Ct.*, 51 Cal. 3d at 342)).

The Court specifically finds that the application of collateral estoppel here would be fair and consistent with sound public policy.

*i. 11 U.S.C. § 523(a)(2)(A)*

Pursuant to 11 U.S.C. § 523(a)(2)(A), "a discharge under section 727 [] of this title does not discharge an individual debtor from any debt [] for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition..." "The determination of whether a debt is excepted from discharge under this category depends upon whether money, property or services, or an extension, renewal or refinancing of credit has been obtained, the character of the property, services or extension, renewal or refinancing of credit, and the character of the false pretenses or representations or actual fraud." 4 *Collier on Bankruptcy* ¶523.08[1] (Richard Levin & Henry J. Sommer eds., 16th ed.). "Before the exception applies, the debtor's fraud must result in a loss of property to the creditor." *Id.* "Most courts have held that it is not necessary that the property actually be gained for the direct benefit of the debtor." *Id.* "Property" "denotes something subject to ownership, transfer, or exclusive possession and enjoyment, which may be brought within the dominion and control of a court through some recognized process." *Id.* "A debtor's silence regarding a material fact can constitute a false representation under section 523(a)(2)(A)." *Id.* (citing *In re Van Horne*, 823 F.2d 1285 (8th Cir. 1987)).

The Ninth Circuit has consistently held that "making out a claim of non-dischargeability under § 523(a)(2)(A) requires the creditor to demonstrate five elements: (1) the debtor made...representations; (2) that at the time he knew they were

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false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; [and] (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made." *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010) (citing *In re Hashemi*, 104 F.3d 1122, 1125 (9th Cir. 1996)).

"The elements of fraud under § 523(a)(2)(A) match the elements of common law fraud and of actual fraud under California law. [] Accordingly, because the elements required to establish the nondischargeability of a claim under § 523(a)(2)(A) are the same as those required to establish fraud under California law, the Judgment's express finding of fraud against Defendant necessarily decided all the requirements to establish relief under § 523(a)(2)(A)." *In re Howell*, 623 B.R. at 575 (citing *In re Jung Sup Lee*, 335 B.R. 130, 136 (9th Cir. BAP 2005) and *Muegler v. Bening*, 413 F.3d 980, 983 (9th Cir. 2005)); *see also See In re Younie*, 211 B.R. 367, 373-74 (9th Cir. BAP 1997). "[T]o prevail under 11 U.S.C. § 523(a)(2)(A), a creditor must establish that a claim sought to be discharged arose from an injury proximately resulting from its reliance on a representation that was made with the intent to deceive." *In re Brown*, 217 B.R. 857, 863 (Bankr. S.D. Cal. 1998)(citing *In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991)). "The causation factor in a fraud analysis is essentially a 'but for' analysis..." *In re Del Valle*, 577 B.R. 789 (Bankr. C.D. Cal. 2017)(citing *In re Eashai*, 87 F.3d 1082, 1090-91 (9th Cir. 1996)).

Here, through the Opposition, the Debtor argues judgment under § 523(a)(2)(A) should not be granted because (1) none of his fraudulent conduct yielded any money to him and there is an issue of material fact of such, and (2) there is no identity of collateral estoppel between the Judgment on the one hand, and the elements of 11 U.S.C. § 523(a)(2)(A) on the other hand.

The LA State Court found that "[the Debtor] purposely lied to the Tribe that Otto was their lawyer in order to induce the Tribe to sign the [SDMC Agreement], without the benefit of counsel, and in order to take advantage of the Tribe." *See* Docket No. 100, p. 12, lines 19-22; *see also Id.* at p. 38, lines 19-24. The Debtor told "the Tribal Council who executed the SMDC Agreement in March of 2001 that Otto had agreed to review the Agreement and to act as their lawyer, and had approved of the SMDC Agreement as a transaction on their behalf when [the Debtor] knew that was a lie." *See id.* at p. 78, lines 13-17. The Debtor succeeded. "[T]he Tribe executed the



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SMDC Agreement in March of 2001, without the benefit of counsel (other than [the Debtor]) or understanding of it." *See id.* at p. 12, lines 3-5. The LA State Court found that had the Tribe actually had "independent counsel competent in the myriad complex matters covered by the SMDC Agreement [that counsel] would have provided different advice to the Tribe. Independent counsel would have pointed out that the twin goals of federal recognition and a casino were incompatible under the SMDC Agreement because of the sole proprietary interest rule." *See id.* at pp. 71-72. In other words, had an independent lawyer actually reviewed the SMDC Agreement, the SMDC Agreement would not have been executed by the Tribe in that its goal to include a profit sharing with the Debtor from any gaming profits violates the law.

This "fraud," as the LA State Court found it to be, allowed the Debtor, as the Tribe's executive officer, to obtain the membership records and a computer of the Tribe, which were kept in his law offices that also contained the Tribe's offices. *See id.* at p. 39, lines 6-10. These membership records and computer, both of which comprise property of the Tribe and its members, were used by the Debtor to "register[] a different group with the Secretary of State with the exact same name as the Tribe..." *See id.* The Debtor's use of, and failure to return "the Tribe's membership and family records [prevented] the Tribe from pursuing federal recognition." *See id.* at lines 21-23. The Debtor "damaged the Tribe by deceiving the Tribe's members about the split between [the Debtor] and the Tribe thereby causing the Libra investors, who had committed to supporting the Tribe, from withdrawing its financial support. The loss is more than \$18,000,000 which has been pledged by the Libra investors but was lost because of [the Debtor's] fraudulent conduct." *See id.* at pp. 75-76. The LA State Court, as to the Tribe's fifteenth cause of action for fraud, found the Debtor liable for damages in the amount of \$20,411,067.23, with additional punitive damages of \$7 million. *See id.* at pp. 84-85.

Regarding causation, the Tribe's entire point in entering into the SDMC Agreement was to "work to achieve formal federal recognition and development of a casino." *See id.* at p. 4, lines 9-11. Again, "competent" and "independent" counsel to the Tribe at the time of its executing the SMDC Agreement would have informed the Tribe that the Tribe's point in entering into the SMDC Agreement could not be met with the provision that allowed the Debtor to share in gaming profits. But for the SMDC Agreement, the Debtor would not have had access to the Tribe's membership records, and thereby the opportunity to cause the "imposter" tribe to be formed, resulting in the

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destruction of the Tribe's funding source in Libra.

The Court here, through collateral estoppel, finds that the debt owed to the Tribe is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). The LA State Court awarded the Tribe damages of \$20,411,067.23, and punitive damages of \$7,000,000. *See In re Bunga*, 33 F.3d 1054, 1058 (9th Cir. 1994)("We have interpreted section 523(a)(6), which contains language similar to that in section 523(a)(4), as barring discharge of punitive damages liability."). The compensatory damages were reduced to \$19,161,067.23.

*ii. 11 U.S.C. § 523(a)(4)*

Pursuant to 11 U.S.C. § 523(a)(4), "[a] discharge under section 727 [] of this title does not discharge an individual debtor from any debt [] for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." "In other words, because while acting in a fiduciary capacity does not modify embezzlement or larceny [] a debt is nondischargeable if it was incurred due to (1) fraud or defalcation while acting in a fiduciary capacity, (2) embezzlement, or (3) larceny." *In re Peltier*, 643 B.R. 349, 359 (9th Cir. BAP 2022) (citing *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 275 (2013)).

*Embezzlement*

"Embezzlement is defined as 'the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come.'" *In re Peltier*, 643 B.R. 349, 359 (9th Cir. BAP 2022)(citing *In re Littlejohn*, 942 F.2d 551, 555 (9th Cir. 1991)). "Thus, the proponent of the nondischargeability determination must prove: '(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud.'" *Id.* at 360. The Ninth Circuit BAP has "stated that 'circumstances indicating fraud, as an element of embezzlement, is not coterminous with an intent to defraud...'" *Id.* (internal citations omitted). "As for scienter, the U.S. Supreme Court has stated that 'embezzlement requires a showing of wrongful intent.'" *Id.* (citing *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 274 (2013)). "The Court noted that wrongful intent in this context has been described as 'moral turpitude or intentional wrong' or 'felonious intent.'" *Id.*



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"Felonious is defined as 'proceeding from an evil heart or purpose; malicious; villainous... Wrongful; (of an act) done without excuse of color or right.'" *Id.* at n. 4 (citing *In re Kiesewetter*, 391 B.R. 740, 748 (Bankr. W.D. Pa. 2008)). "Further, in the criminal context, the Ninth Circuit has relied on the Seventh Circuit's statement that 'cases indicate that the 'felonious' intent with which embezzlement is committed consists of the intent to appropriate or convert the property of the owner; the simultaneous intent to return the property or to make restitution does not make the offense any less embezzlement.'" *In re Peltier*, 643 B.R. at 360 (citing *U.S. v. Anderson*, 850 F.2d 563, 565 (9th Cir. 1988)).

The Complaint alleges a cause of action under 11 U.S.C. § 523(a)(4). The Tribe alleges that the Debtor "misappropriated property of [the Tribe]" with "the actual intent to deprive [the Tribe] of [the Tribe's] property rights," and that "the debt is for fraud and embezzlement as defined in Bankruptcy Code § 523(a)(4)." *See* Docket No. 152, p. 39, lines 1-7.

The LA Court's *Statement of Decision* provides that the Tribe compiled membership and family records that were kept at the Debtor's law offices, as the Debtor, an officer of the Tribe, "set up the Tribe's offices in his Law Offices..." *See* Docket No. 100, *Exhibit D*, p. 39, lines 12-15. "The Tribe's membership records were highly confidential documents, individually belonging to the members, but collectively belonging to the Tribe." *See id.* at p. 28, lines 22-23. The Debtor, after he "was fired/resigned," "kept the Tribe's membership and family records..." (emphasis added). *See id.* at p. 39, lines 18-23. "Despite his resignation, [the Debtor] refused to return all of the Tribe's documents, including Tribal birth and bloodline records, and kept the records at his Law Offices." (emphasis added). The Debtor then "used the Tribe's confidential membership list and converted it for his personal use (without the consent of the Tribal Council) to plead his case directly to membership." *See id.* at p. 24, lines 12-15. The Debtor "pretended that the Tribal Council had abandoned the Tribe and recruited a group of members so that they could [] start their own competing tribal group, using all of the tribal records he had withheld from the Tribe." *Id.* at p. 29, lines 18-21. The Debtor "took the identity of the Tribe using membership records without permission, and registered a different group with the Secretary of State with the exact same name as the Tribe, as an unincorporated association, and then tried to settle the instant lawsuit." *See id.* at p. 39, lines 5-10. "Stein engaged in oppressive and malicious conduct." *See id.* at line 12. The Debtor "is liable for the tort of

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conversion of the Tribe's property." *See id.* at p. 57, lines 16-17. "To this day, almost 15-20 years later, [the Debtor] has not returned the records." *See id.* at p. 39, lines 23-24.

The factual findings of the LA State Court in its Statement of Decision clearly make out all of the elements of embezzlement.

*Property Rightfully In the Possession of a Nonowner*

While the LA State Court found that the Debtor committed fraud in connection with the Tribe's entering into the SMDC Agreement, the LA State Court did find that the Tribe in-fact entered into the SMDC Agreement. The Debtor became an "executive officer of the Tribe," and was provided access to the membership records of the Tribe, which were held in his law offices. At least prior to his termination, the Debtor was in rightful possession of the Tribe's membership records.

*Nonowner's Appropriation of the Property To a Use Other than Which [It] Was Entrusted*

Once the Debtor was fired by the Tribe (or resigned) he kept the membership records of the Tribe, refusing to return those records to the Tribe, and used those records in a campaign to undermine the Tribe's efforts to sue him and to obtain federal recognition. The membership records were used by the Debtor to cause a group of members to "start their own competing tribal group." *See* Docket No. 100, *Exhibit D*, p. 29, lines 15-22. The LA State Court referred to this competing tribal group as an "imposter entity," and was "created by [the Debtor] and existed for the sole reason of attempting to deceive Tribal members and the public about the true identity of the Tribe, and to take all of the Tribe's legal rights and obligations." *See id.* at p. 30, lines 18-24. The LA State Court found these actions to constitute fraud by the Debtor against the Tribe. *See id.* at p. 39, lines 5-10.

The Debtor "acknowledged that after his relationship with the Tribe ended, he kept the Tribe's computer which contained all of the Tribe's relevant data, without the Tribe's permission. [The Debtor] also retained custody of the Tribe's email and web address." *See id.* at p. 68, lines 9-13. The Debtor "used the website for the benefit of the [imposter tribe], even though he knew that they had no legal right to it." *See id.* at

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The LA State Court found that the Debtor "used the Tribe's confidential membership list and converted it for his personal use." *See id.* at p. 24, lines 13-16. "'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.'" *Plummer v. Day/Eisenberg, LLP*, 184 Cal.App.4th 38, 45 (2010)(internal citations omitted).

*Circumstances Indicating Fraud*

As noted *supra*, the LA State Court specifically made a finding of fraud related to the Debtor's refusal to return the membership records to the Tribe, and their subsequent use by the Debtor. *See id.* at p. 39, lines 6-10. The LA State Court made a finding that the Debtor "engaged in oppressive and malicious conduct," including his actions regarding his "failure to return the Tribe's original birth and family records to the Tribe after [the Debtor] was fired/resigned." *See id.* at lines 18-21.

The LA State Court found that the Debtor's intent in refusing to return the membership records to the Tribe was to effectuate his fraud against the Tribe and the public. There are ample findings by the LA State Court as to the Debtor's intention to convert the property of the Tribe. The LA State Court also made a specific finding that the Debtor "is liable for the tort of conversion of the Tribe's property" related to the membership records of the Tribe. *See id.* at pp. 57-58.

The Court finds that the 11 U.S.C. § 523(a)(4) cause of action is subject to collateral estoppel. As the findings by the LA State Court bear out, the Tribe's membership and family records, including birth and bloodline records, were taken by the Debtor for the sole purpose of harming the Tribe. The LA State Court found the Debtor's actions in taking these records to not only constitute fraud, but were "oppressive and malicious." In the LA State Court's view, these actions were "among the worst things [the Debtor] did" to the Tribe in the "many incidences of fraud the Debtor committed against the Tribe." *See id.* at pp. 38-39.

The elements of embezzlement, factually, have been litigated in the State Court

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Action. The LA State Court's findings clearly set forth the conduct of the Debtor as it relates to the Tribe's property, and the malice, oppression, and fraud with which he acted.

The Motion is granted as to the Complaint's second cause of action under 11 U.S.C. § 523(a)(4), and the Court will enter judgment in favor of the Tribe, and against the Debtor, excepting from the Debtor's discharge the full amount of the Judgment, as modified by the Court of Appeals. The "imposter tribe" caused to be created by the Debtor, using the Tribe's membership records, and the actions taken by that "imposter tribe" at the Debtor's direction, caused the Tribe a loss of "more than \$18 million." *See id.* at pp. 75-76. The LA State Court awarded the Tribe damages of \$20,411,067.23, and punitive damages of \$7,000,000. *See In re Bunga*, 33 F.3d at 1058 (9th Cir. 1994)("We have interpreted section 523(a)(6), which contains language similar to that in section 523(a)(4), as barring discharge of punitive damages liability."). The compensatory damages were reduced to \$19,161,067.23.

*Fraud or Defalcation While Acting in a Fiduciary Capacity*

"Fraud or defalcation while acting in a fiduciary capacity under § 523(a)(4) requires that '1) an express trust existed, 2) the debt was caused by fraud or defalcation, and 3) the debtor acted as a fiduciary to the creditor at the time the debt was created.'" *Id.* (citing *In re Mele*, 501 B.R. 357, 363 (9th Cir. BAP 2013)). **[FN3]**

"[A]lthough 'state law is important in determining whether or not a trust obligation exists,' the scope of § 523(a)(4)'s fiduciary concept is a question of federal law. [...] [Under federal law f]raud as a fiduciary is different from other fraud theories. It does not require the same common law elements that actual fraud does." *In re Howley*, 2024 Bankr. LEXIS 260 \*30 (Bankr. N.D. Tex. 2024).

"Nevertheless, as a matter of federal law, the broad fiduciary relationship between an attorney and a client generally is not sufficient to establish a fiduciary relationship under § 523(a)(4). 'In the Ninth Circuit, a general fiduciary attorney-client relationship may rise to the level of a fiduciary relationship for purposes of § 523(a)(4) if there are client trust funds involved.'" *In re Janian*, 2019 Bankr. LEXIS 4029, \*24-25 (Bankr. C.D. Cal. 2019) (citing *In re Bigelow*, 271 B.R. 178, 187 (9th Cir. BAP 2001)). *See ColeMichael., L.L.C. v. Burke*, 436 B.R. 53, 60 (N.D. Ill. 2010) ("Not all

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debts arising out of the attorney-client relationship will be nondischargeable under § 523(a)(4), however, because nondischargeability is usually reserved for those situations where money or property has been entrusted to the attorney-debtor") (quotations omitted and cleaned up); *In re Banks*, 263 F.3d 862, 871 (9th Cir. 2001) ("debtor must have been a trustee in the strict or narrow sense through an expressed or technical trust"); and *In re Yin-Ching Houg*, 636 F. App'x 396, 398 (9th Cir. 2016). It is axiomatic that monies, funds, or other property given to an attorney from a client creates a trust.

Here, through the Opposition, the Debtor argues judgment under § 523(a)(4) should not be granted because (1) there is no identity between § 523(a)(4) and the Judgment, and (2) "there remains genuine issues of material fact as to whether there were any specific funds entrusted" to the Debtor. *See* Docket No. 112, p. 25.

First, the Debtor was entrusted with the Tribe's property. The Debtor was entrusted, as the Tribe's lawyer and executive officer, with the Tribe's membership, financial, and business records, including computers and various documents. The Tribe also entrusted the Debtor with trade secrets which the Debtor was found by the LA State Court to have misappropriated. Further, the Debtor was found liable for breach of confidences of the Tribe by the LA State Court for sharing and using the Tribe's confidential information for his own purposes adverse to the Tribe's interests. Most egregiously, according to the LA State Court, the Debtor was entrusted with the Tribe's "birth and family records" and the Debtor "kept [the Tribe's] membership and family records thus preventing [the Tribe] from pursuing federal recognition (a 25-30 year process)." *See* Docket No. 112-1, *Debtor's Statement of Genuine Issues of Fact* (SGIF) #43 (undisputed).

The Judgment found that the Debtor breached his fiduciary duties to the Tribe and owed such duties to the Tribe as the Tribe's attorney and executive officer. Further, the Debtor was found liable for, among other things, conversion, breach of confidence, and misappropriation of trade secrets, and the Tribe was awarded over \$20,000,000 for liability under these causes of action.

Again, the Debtor was entrusted with specific funds, property, and confidential information from the Tribe while acting as the Tribe's attorney and executive officer, and while owing the Tribe fiduciary duties. The Debtor used the information and

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property entrusted to him to help further defraud the Tribe.

As such, as the Tribe's lawyer entrusted with the Tribe's property, a trust existed between the Debtor and the Tribe.

The Court here, through collateral estoppel, finds that debt owed to the Tribe is nondischargeable pursuant to 11 U.S.C. § 523(a)(4). The LA State Court awarded the Tribe damages of \$20,411,067.23, and punitive damages of \$7,000,000. *See In re Bunga*, 33 F.3d at 1058 (9th Cir. 1994)("We have interpreted section 523(a)(6), which contains language similar to that in section 523(a)(4), as barring discharge of punitive damages liability."). The compensatory damages were reduced to \$19,161,067.23.

*iii. 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 requires "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *In re*



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*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).

"The legal issue determined by a California court in granting an award of punitive damages for fraud is the same presented to a bankruptcy court in a nondischargeability action under § 523(a)(6)." *In re Molina*, 228 B.R. 248, 252 (9th Cir. BAP 1998) (holding collateral estoppel precluded relitigation). *See In re Tomkow*, 563 B.R. 716, 729 (9th Cir. BAP 2017) (under California law conversion can support the malicious injury element of § 523(a)(6) and punitive damages with a finding of fraud and malice can satisfy the willful injury element).

Here, through the Opposition, the Debtor argues judgment under 11 U.S.C. § 523(a)(6) should not be granted because (1) there is no identity between 11 U.S.C. § 523(a)(6) and the Judgment.

The LA State Court found that the Debtor committed a multitude of frauds upon the Tribe, damaging the Tribe in excess of \$20,000,000, and awarded punitive damages of \$7 million. The LA State Court found that the Debtor's actions in lying to the Tribe to induce the Tribe to cause the Tribe to enter into the SMDC Agreement comprised fraud. *See* Docket No. 100, p. 38, lines 19-24. The LA State Court found that the Debtor committed fraud when he advised the Tribe that "they were state recognized" and that, despite the law stating otherwise, the Tribe could operate a casino in California with just state recognition. *See id.* at p. 39, lines 1-5. The LA State Court found that the Debtor defrauded the Tribe by "using membership records without permission, and registering a different group with the Secretary of State with the exact same name as the Tribe, as an unincorporated association, and then tried to settle the instant lawsuit." *See id.* at lines 6-10. Unauthorized use of the Tribe's membership records, the LA State Court found, was "oppressive and malicious conduct" by the Debtor. *See id.* at lines 12-24. The LA State Court found that after the Debtor caused to be created this "imposter" tribe, he "began making representations to the members of the Tribe which he knew were false," and "made these representations in order to defraud and confuse Gabrielinos who were members of [the Tribe] and Gabrielinos who were not in order to dissuade them from joining [the Tribe]." *See id.* at pp. 74-75. These intentional misrepresentations made by the Debtor after he caused to be

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created an "imposter" tribe by the unauthorized use of the Tribe's membership records "caus[ed] the Libra investors, who had committed to supporting the Tribe, from withdrawing its financial and other support. The loss is more than \$18,000,000 which had been pledged by the Libra investors but was lost because of [the Debtor's] fraudulent conduct." *See id.* at pp. 75-76.

As such there is complete identity for collateral estoppel between 11 U.S.C. § 523(a)(6) as all is required for its application is an adverse fraud judgment with an award of punitive damages for fraud, which the Tribe has against the Debtor.

The Court here, through collateral estoppel, finds that the debt owed to the Tribe is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). The LA State Court awarded the Tribe damages of \$20,411,067.23, and punitive damages of \$7,000,000. *See In re Bunga*, 33 F.3d at 1058 (9th Cir. 1994) ("We have interpreted section 523(a)(6), which contains language similar to that in section 523(a)(4), as barring discharge of punitive damages liability."). The compensatory damages were reduced to \$19,161,067.23.

*iv. Capacity as an Affirmative Defense and Applying the Judgment*

The Debtor, in any number of courts, has attempted to attack the Tribe's capacity to sue. In the LA State Court, the Debtor attempted to argue that his fraudulently created "imposter tribe" was the "real" tribe, and so he could settle the LA State Court Matter with his fraudulently created "imposter tribe." Meaning, essentially, the Debtor could settle the LA State Court Matter with himself. A jury determined otherwise. The Debtor has also previously argued, and argues again now that the Tribe is a suspended entity by the Federal Tax Board and/or the California Secretary of State due to unpaid taxes and other fees related to incorporation.

It has already been held by the LA State Court, and as affirmed by the Court of Appeals, that the Tribe relates to the indigenous people of the Los Angeles Basin known as the "Gabrielinos" due to their association with the San Gabriel Mission. *See* Case No. 9:23-bk-10174-RC, Docket No. 71, *Notice of Issuance of Appellate Opinion, Attachment 1*, Bates stamped p. 6. "In 1994, the State of California recognized the Gabrielinos as 'the aboriginal tribe of the Los Angeles Basin.'" *Id.*



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"On December 17, 2006, at [the Debtor's] direction, a member of the Tribe named Linda Candelaria filed a statement of unincorporated association under the name 'Gabrielino-Tongva Tribe.' *Id.* at p. 21. "[The Debtor] committed fraud when he caused Candelaria to file a statement of unincorporated association claiming to be a representative of the Tribe, when he had no good basis to believe that she had a right to do so." *See id.* at p. 35. "[The Debtor] admitted that he was responsible for causing the new tribe to file a statement of unincorporated association usurping the Tribe's name." *See id.* at Docket No. 21, *Supplemental Declaration of Paul P. Young in Support of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362-Action in Nonbankruptcy Forum, Exhibit 4*, Bates stamped p. 30. In sum, the "Candelaria Group," the "imposter tribe," that was caused to be created by the Debtor, and at the Debtor's direction, fraudulently utilized the Tribe's name, and filed certain documents on the part of the "imposter tribe" with the Secretary of State.

To the extent the California Secretary of State lists as being "suspended" the "Gabrielino-Tongva Tribe," it was the "imposter tribe" that the Debtor caused to be formed, and based on the fraudulent filings by the "imposter tribe" with the California Secretary of State. It is not the Tribe that is suspended by the California Secretary of State. As the LA State Court put it, "[s]ince the Candelaria Faction was the only entity that ever filed records with or paid fees to the State of California, using the name 'Gabrielino-Tongva Tribe,' any alleged 'suspension' or 'outstanding fees' is the direct result of [the Debtor's] fraud." *See* Docket No. 111, *Exhibit 3*, Bates stamped p. 67. The Debtor committed a fraud against the Tribe by registering the "imposter tribe" in the Tribe's name with the Secretary of State, and now attempts to transmute the Secretary of State's suspension of the "imposter tribe" to the Tribe in the Debtor's defense of attempts by the Tribe to collect on its multi-million judgment.

As that *Entity Status Letter* previously filed with this Court provides, the Franchise Tax Board, has no "current information about the entity [i.e., the Tribe]."

All facts result in one conclusion, which is that the "suspended" tribe that the Debtor speaks of is his own created "imposter tribe."

Conclusion

The Court grants the Motion and judgment under 11 U.S.C. §§ 523(a)(2)(A), 523(a)

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**Chapter 7**

(4), and 523(a)(6) in favor of the Tribe, such that the debt owed to the Tribe is excluded from the Debtor's discharge.

The Tribe is to upload a conforming order within 7 days.

**[FN1]**

All citations to the docket hereafter, unless provided otherwise, refer to the Tribe Adversary, Case 9:23-ap-01023-RC, unless otherwise noted.

**[FN2]**

*See In re Old T.B.R., Inc.*, 2012 WL 2674485, at \*1 (Bankr. N.D. Cal. 2012) ("Under Rule 37(c), the court may impose a different sanction in addition to, or instead of, excluding the evidence"). "This Court gives particularly wide latitude to the district court's discretion to issue sanctions under Rule 37(c)(1) because subsection 37(c)(1) is a recognized broadening of the sanctioning power." *R & R Sails, Inc. v. Ins. Co. of the Pa.*, 673 F.3d 1240, 1245 (cleaned up and quotations omitted).

**[FN3]**

"Defalcation includes a culpable state of mind requirement akin to that which accompanies application of the other terms in the same statutory phrase. We describe that state of mind as one involving knowledge of, or gross recklessness in respect to, the improper nature of the relevant fiduciary behavior." *In re Peltier, supra*, at 359 (quotations and citations omitted). "To prevail on a nondischargeability claim under § 523(a)(4) the plaintiff must prove not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation. *Id.*

Larceny is the "felonious taking of another's personal property with intent to convert it or deprive the owner of the same" where "felonious is defined as proceeding from an evil heart or purpose." *Id.* (citations and quotations omitted).

**March 12, 2025**

**Appearances waived.**

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**Chapter 7**

This matter is continued to April 9, 2025, at 9:00 a.m. The record is closed.

**November 19, 2024**

**Appearances required.**

**Background**

On June 23, 2023, Gabrielino-Tongva Tribe (the "Tribe") filed that *Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523, and Denial of Discharge Under 11 U.S.C. § 727* (the "Complaint") as and against Jonathan Alan Stein (the "Debtor"), alleging three (3) causes of action under 11 U.S.C. § 523(a), and two (2) causes of action under 11 U.S.C. § 727(a). *See* Docket No. 1. On August 9, 2023, the Debtor filed *Debtor Stein's Answer to Initial Complaint*. *See* Docket No. 11. On July 31, 2024, the Tribe filed that *Notice of Hearing on Motion for Partial Summary Adjudication* (the "Tribe's MSJ"). *See* Docket No. 97.

On October 10, 2024, the Tribe filed that *Motion for Leave to Amend Tribe Complaint and Extend Deadline to File Dispositive Motions or, Alternatively, Continue Hearing on Debtor's Motion for Partial Summary Adjudication* (the "Motion to Amend"). *See* Docket No. 129. Through the Motion to Amend, the Tribe seeks leave to amend the Complaint "to dismiss the Tribe's Complaint's two § 727 causes" pursuant to Fed. R. Civ. P. 15. *See id.* at p. 7, line 26. The Tribe in amending the Complaint, however, is concerned with the Third Scheduling Order's deadline for dispositive motions to be heard. That is, the Tribe believes it will be successful on summary judgment, and seeks not to be deprived of an opportunity to have the Tribe's MSJ heard because of this Court granting the Motion to Amend. *See id.* at p. 12, lines 13-17. To that end, the Tribe requests that a fifth amended scheduling order be entered that extends the deadline to submit dispositive motions, which, according to the Tribe, would allow the Tribe's MSJ to be ruled upon. *See id.* Alternatively, the Tribe requests that the hearing on the Tribe's MSJ be continued to allow it to be heard.

In response to the Motion to Amend, on November 6, 2024, the Debtor filed *Debtor's Response to Judgment Creditor's Rule 15 Motion to Amend Complaint* (the

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**Jonathan Alan Stein**

**Chapter 7**

"Response"). *See* Docket No. 139. Through the Response, the Debtor provides that they "do[] not oppose granting leave to amend and allowing the First Amended Complaint to be filed." *See id.* at p. 4, lines 1-2. The Debtor, however, opposes any request to extend the deadline for dispositive motions to be heard in that such a request must be made by separate motion, and further that extending the trial date effects the Debtor's 'fresh start.' *See id.* at pp. 6-7.

On November 13, 2024, the Tribe filed that *Reply to Response to Motion for Leave to Amend Tribe Complaint and Extend Deadline to File Dispositive Motions or, Alternatively, Continue Hearing on Debtor's Motion for Partial Summary Adjudication* (the "Reply"). *See* Docket No. 140. Through the Reply, the Tribe essentially argues that cause exists to extend deadlines so that the Tribe MSJ may be heard. Again, the Tribe's argument is that it is critical that the Tribe's MSJ go forward so as to prevent the Tribe from taking to trial a matter that it believes should be dispensed with through summary judgment.

The Court is hearing the Motion to Amend on November 20, 2024. The Court is inclined to grant the Motion to Amend, which will allow the Debtor to file an amended answer if they so choose. The Court is also, in granting the Motion to Amend, inclined to enter a scheduling order that allows the Tribe's MSJ to be heard. To this end, the Court is inclined to continue this matter pending the outcome of the Motion to Amend, and, if granted, any response to an amendment to the Complaint.

**October 22, 2024**

**Appearances waived.**

This matter is continued to November 19, 2024, at 1:00 p.m.

**September 24, 2024**

**Appearances waived.**

This matter is continued to October 22, 2024, at 1:00 p.m.

<b>Party Information</b>
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**CONT... Jonathan Alan Stein**

**Chapter 7**

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Defendant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

**Plaintiff(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Laila Masud  
Sarah Rose Hasselberger  
D Edward Hays  
Sarah Cate Hays

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Northern Division  
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**9:23-10174 Jonathan Alan Stein**

**Chapter 7**

Adv#: 9:23-01023 Gabrielino-Tongva Tribe v. Stein

**#21.00** CONT'D Hearing RE: [99] Motion for partial summary adjudication of Claims 4 and 5

FR. 9-11-24, 9-24-24, 10-22-24, 11-19-24, 11-20-24, 1-28-25, 3-12-25,

Docket 99

**Tentative Ruling:**

**March 12, 2025**

**Appearances waived.**

This matter is continued to April 9, 2025, at 9:00 a.m. The record is closed.

**November 19, 2024**

**Appearances required.**

**Background**

On June 23, 2023, Gabrielino-Tongva Tribe (the "Tribe") filed that *Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523, and Denial of Discharge Under 11 U.S.C. § 727* (the "Complaint") as and against Jonathan Alan Stein (the "Debtor"), alleging three (3) causes of action under 11 U.S.C. § 523(a), and two (2) causes of action under 11 U.S.C. § 727(a). See Docket No. 1. On August 9, 2023, the Debtor filed *Debtor Stein's Answer to Initial Complaint*. See Docket No. 11.

On July 31, 2024, the Debtor filed *Debtor's Motion for Partial Summary Adjudication on Cause of Action #4 (§727(a)(3) Books and Records) and Cause of Action #5 (§ 727(a)(4) False Oath)* (the "Debtor's MSJ"). See Docket No. 99. The Debtor's MSJ "challenges the two Section 727 discharge actions" of the Complaint. See *id.* at p. 6, lines 20-23. "The Section 523 causes of action are not challenged by [the Debtor's

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MSJ]." *See id.* at lines 18-19.

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On October 10, 2024, the Tribe filed that *Motion for Leave to Amend Tribe Complaint and Extend Deadline to File Dispositive Motions or, Alternatively, Continue Hearing on Debtor's Motion for Partial Summary Adjudication* (the "Motion to Amend"). *See* Docket No. 129. Through the Motion to Amend, the Tribe seeks leave to amend the Complaint "to dismiss the Tribe's Complaint's two § 727 causes" pursuant to Fed. R. Civ. P. 15. *See id.* at p. 7, line 26. In response to the Motion to Amend, on November 6, 2024, the Debtor filed *Debtor's Response to Judgment Creditor's Rule 15 Motion to Amend Complaint* (the "Response"). *See* Docket No. 139. Through the Response, the Debtor provides that they "do[] not oppose granting leave to amend and allowing the First Amended Complaint to be filed." *See id.* at p. 4, lines 1-2. The Court is inclined to grant the Motion to Amend, which, as prayed for, will result in an amended complaint being filed that does not include any causes of action under 11 U.S.C. § 727(a).

Granting the Tribe leave to amend the Complaint, and with that amended complaint excluding any causes of action under 11 U.S.C. § 727(a), the Debtor's MSJ is moot. However, that will not be the case until the Complaint is in-fact amended. To this end, the Court is inclined to continue the Debtor's MSJ until a date by which the Complaint will be amended.

**October 22, 2024**

**Appearances waived.**

This matter is continued to November 19, 2024, at 1:00 p.m.

**September 24, 2024**

**Appearances waived.**

This matter is continued to October 22, 2024, at 1:00 p.m.

<b>Party Information</b>
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**CONT... Jonathan Alan Stein**

**Chapter 7**

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Defendant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Movant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Plaintiff(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Laila Masud  
Sarah Rose Hasselberger  
D Edward Hays  
Sarah Cate Hays



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9:00 AM

**9:23-10174 Jonathan Alan Stein**

**Chapter 7**

Adv#: 9:23-01023 Gabrielino-Tongva Tribe v. Stein

**#22.00** CONT'D Status Hearing RE: [1] Adversary case 9:23-ap-01023 - Amended Complaint by Gabrielino-Tongva Tribe against Jonathan Alan Stein. (d),(e)),(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))

fr. 1-28-25, 3-12-25,

Docket 152

**Tentative Ruling:**

**March 12, 2025**

**Appearances waived.**

This matter is continued to April 9, 2025, at 9:00 a.m. The record is closed.

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

**Debtor(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Defendant(s):**

Jonathan Alan Stein

Represented By  
Jonathan Stein

**Plaintiff(s):**

Gabrielino-Tongva Tribe

Represented By  
Paul P Young  
Nikko Salvatore Stevens  
Armen Manasserian  
Joseph Chora

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**CONT... Jonathan Alan Stein**

**Chapter 7**

**Trustee(s):**

Jerry Namba (TR)

Represented By

Laila Masud

Sarah Rose Hasselberger

D Edward Hays

Sarah Cate Hays

**United States Bankruptcy Court  
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**Wednesday, April 9, 2025**

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10:00 AM

**9:24-11292 Thayer Gowdy**

**Chapter 7**

**#23.00** Hearing re: [14] Reaffirmation agreement between debtor  
and Lakeview Loan Servicing, LLC

Docket 14

**Tentative Ruling:**

**April 9, 2025**

**No appearances required.**

Court approval of the agreement is not required to reaffirm a consumer debt secured by real property. *See* 11 U.S.C. § 524(c)(6)(B); *see also In re Grisham*, 436 B.R. 896, 905 n.6 (Bankr. N.D. Tex. 2010) (citing 4 COLLIER ON BANKRUPTCY ¶ 524.04, pp. 524-41 (16th ed. 2009)); *see also In re Rhodes*, 635 B.R. 849, 859-860 (Bankr. S.D. Cal. 2021) (citations omitted).

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

**Debtor(s):**

Thayer Gowdy

Represented By  
William C Beall

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room      201**

10:00 AM

**9:24-11366    Joy E. Candelaria**

**Chapter 7**

**#24.00**    Hearing re: [13] Reaffirmation agreement between debtor  
and Educational Employees Credit Union

Docket      13

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Joy E. Candelaria

Represented By  
Daniel A Higson

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
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Northern Division  
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**Hearing Room      201**

10:00 AM

**9:24-11372    Rigoberto Tafoya Cardona**

**Chapter 7**

**#25.00**    Hearing re: [13] Reaffirmation agreement between debtor  
and Golden 1 Credit Union

Docket      13

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Rigoberto Tafoya Cardona

Pro Se

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
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**201**

10:00 AM

**9:24-11393 Francis Peter Lagattuta, II and Norma Regino Lagattuta**

**Chapter 7**

**#26.00** Hearing re: [21] Reaffirmation agreement between debtor  
and Ally Bank

Docket 21

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Francis Peter Lagattuta II

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Norma Regino Lagattuta

Represented By  
Michael B Clayton

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:24-11395 Brian Sean Flanagan and Tamara Lynette Flanagan**

**Chapter 7**

**#27.00** Hearing re: [31] Reaffirmation agreement between debtor  
and Lakeview Loan Servicing, LLC

Docket 31

**Tentative Ruling:**

**April 9, 2025**

**No appearances required.**

Court approval of the agreement is not required to reaffirm a consumer debt secured by real property. *See* 11 U.S.C. § 524(c)(6)(B); *see also In re Grisham*, 436 B.R. 896, 905 n.6 (Bankr. N.D. Tex. 2010) (citing 4 COLLIER ON BANKRUPTCY ¶ 524.04, pp. 524-41 (16th ed. 2009)); *see also In re Rhodes*, 635 B.R. 849, 859-860 (Bankr. S.D. Cal. 2021) (citations omitted).

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

**Debtor(s):**

Brian Sean Flanagan

Represented By  
Michael B Clayton

**Joint Debtor(s):**

Tamara Lynette Flanagan

Represented By  
Michael B Clayton

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, April 9, 2025**

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10:00 AM

**9:24-11430    Brenna Nicole Spalding**

**Chapter 7**

**#28.00**    Hearing re: [11] Reaffirmation agreement between debtor  
and Ally Bank

Docket      11

**Tentative Ruling:**

**April 9, 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>
--------------------------

**Debtor(s):**

Brenna Nicole Spalding

Represented By  
Leslie A Tos

**Trustee(s):**

Sandra McBeth (TR)

Pro Se



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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10029 Jamie Lee Wilson and Rosaleah A Wilson**

**Chapter 7**

**#29.00** Hearing re: [14] Reaffirmation agreement between debtor  
and Navy Federal Credit Union (2014 Ford F350)

Docket 14

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jamie Lee Wilson

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Rosaleah A Wilson

Represented By  
Daniel A Higson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10029 Jamie Lee Wilson and Rosaleah A Wilson**

**Chapter 7**

**#30.00** Hearing re: [17] Reaffirmation agreement between debtor  
and Navy Federal Credit Union (2017 Nissan Versa)

Docket 17

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jamie Lee Wilson

Represented By  
Daniel A Higson

**Joint Debtor(s):**

Rosaleah A Wilson

Represented By  
Daniel A Higson

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room      201**

10:00 AM

**9:25-10053    Manuel Gutierrez**

**Chapter 7**

**#31.00**    Hearing re: [11] Reaffirmation agreement between debtor  
and Onslow Bay Financial LLC

Docket      11

**\*\*\* VACATED \*\*\*    REASON: Continued to May 7, 2025 at 10:00 a.m. by  
the court**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Manuel Gutierrez

Represented By  
Michael B Clayton

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10103 Jesse Gomez and Rosalinda Gomez**

**Chapter 7**

**#32.00** Hearing re: [14] Reaffirmation agreement between debtor  
and CoastHills Credit Union (2004 GMC Sierra 2500)

Docket 14

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jesse Gomez

Represented By  
Monica Robles

**Joint Debtor(s):**

Rosalinda Gomez

Represented By  
Monica Robles

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10103 Jesse Gomez and Rosalinda Gomez**

**Chapter 7**

**#33.00** Hearing re: [15] Reaffirmation agreement between debtor  
and CoastHills Credit Union (2014 Cadillac CTS)

Docket 15

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Jesse Gomez

Represented By  
Monica Robles

**Joint Debtor(s):**

Rosalinda Gomez

Represented By  
Monica Robles

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10104 Sermed S. Alkass**

**Chapter 7**

**#34.00** Hearing re: [8] Reaffirmation agreement between debtor  
and Logix Federal Credit Union

Docket 8

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sermed S. Alkass

Represented By  
Nathan A Berneman

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room      201**

10:00 AM

**9:25-10121    Steven Bruce Gentry**

**Chapter 7**

**#35.00**    Hearing re: [10] Reaffirmation agreement between debtor  
and Toyota Motor Credit Corporation

Docket      10

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Steven Bruce Gentry

Represented By  
Daniel A Higson

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, April 9, 2025**

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**201**

10:00 AM

**9:25-10137 Savannah Nicole Blecha**

**Chapter 7**

**#36.00** Hearing re: [10] Reaffirmation agreement between debtor  
and Logix Federal Credit Union

Docket 10

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Savanah Nicole Blecha

Represented By  
Nathan A Berneman

**Trustee(s):**

Sandra McBeth (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10167 Pedro Cruz Nicolas**

**Chapter 7**

**#37.00** Hearing re: [8] Reaffirmation agreement between debtor  
and Toyota Motor Credit Corporation

Docket 8

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Pedro Cruz Nicolas

Represented By  
Michael B Clayton

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
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**Wednesday, April 9, 2025**

**Hearing Room 201**

10:00 AM

**9:25-10167 Pedro Cruz Nicolas**

**Chapter 7**

**#38.00** Hearing re: [11] Reaffirmation agreement between debtor  
and Financial Partners Credit Union

Docket 11

**Tentative Ruling:**

- NONE LISTED -

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

Pedro Cruz Nicolas

Represented By  
Michael B Clayton

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:23-10314 Concrete Solutions & Supply**

**Chapter 11**

**#39.00 CONT'D Post Confirmation Status Conference**

fr. 10-9-24,

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Second Post-Confirmation Status Report*. See Docket No. 187. The Debtor asserts that all plan payment with the exception to payments to its insolvency counsel have been paid, and are current. See *id.* at pp. 1-2.

The Court is inclined to continue the post-confirmation status conference to August 6, 2025, at 1:00 p.m.

**October 9, 2024**

**Appearances required.**

The Court has reviewed that *First Post-Confirmation Status Report* (the "Report"). See Docket No. 184. Is the Debtor current on its plan payments? The Report seems to suggest that there is/was a delinquency as of August 2024.

Assuming the Debtor is current with payments under its plan, the Court is inclined to continue the post-confirmation status conference for six (6) months.

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

Concrete Solutions & Supply

Represented By  
Steven R Fox

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:24-10181 Alan J Cavaletto**

**Chapter 12**

**#40.00 CONT'D Chapter 12 Post Confirmation Status Conference**

fr. 11-20-24

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Status Report re Confirmed Plan*. See Docket No. 135.  
The Court will hear from the Chapter 12 trustee.

Assuming a satisfactory report by the Chapter 12 trustee, the Court is inclined to  
continue the status conference to October 8, 2025, at 1:00 p.m.

**November 20, 2024**

**Appearances required.**

The Court has reviewed that *Status Report re Confirmed Plan*. See Docket No. 111.  
Regarding the payment of administrative expense claims, the Court will inquire  
whether an employment application will be filed, or what other avenue will be taken  
for payment of counsel's fees and expenses. After hearing from the Chapter 12  
trustee, unless the report is otherwise, the Court will continue the status conference to  
April 9, 2025, at 1:00 p.m.

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

Alan J Cavaletto

Represented By  
William C Beall  
Carissa N Horowitz

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Alan J Cavaletto**

**Chapter 12**

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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

**Wednesday, April 9, 2025**

**Hearing Room      201**

1:00 PM

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

**Chapter 11**

**#41.00    Post Confirmation Status Conference**

Docket      107

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed *Reorganized Debtor's Postconfirmation Status Report*. See Docket No. 121. The Court is concerned that the Debtor is delinquent \$73,094.58 in payments due under its plan of reorganization. This is before a final application for approval of fees and expenses is filed by the Debtor's insolvency counsel.

<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, April 9, 2025**

**Hearing Room      201**

1:00 PM

**9:22-10278    James E Goldstein**

**Chapter 11**

**#42.00    CONT'D Post Confirmation Status Conference**

fr. 11-20-24, 12-4-24,

Docket      1

**\*\*\* VACATED \*\*\*    REASON: Order closing case was entered on 12/23/24.**

**Tentative Ruling:**

**December 4, 2024**

**Appearances required.**

Unless there are any outstanding issues of the Office of the U.S. Trustee, the Court will continue the post-confirmation status conference to April 9, 2025, at 1:00 p.m.

**November 20, 2024**

**Appearances required.**

The Court has reviewed that *Post-Confirmation Status Report in Chapter 11 Case*. See Docket No. 217. The Court will hear from the Office of the United States Trustee. Absent any issues raised at the status conference, the Court is inclined to continue the post-confirmation status conference to April 9, 2025, at 1:00 p.m.

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

James E Goldstein

Represented By  
Michael G Spector  
Vicki L Schennum  
Jin Soo Lee

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:23-10607 Beacon Coffee Company, Inc.**

**Chapter 11**

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

fr. 9-13-23, 11-8-23, 11-22-23, 12-13-23, 4-23-24, 10-23-24

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Post Confirmation Status Report*. See Docket No. 135. The Court will hear from the SubChapter V trustee and the Office of the United States Trustee. Absent satisfactory reports, the Court is inclined to continue the post-confirmation status conference to October 8, 2025, at 1:00 p.m.

**October 23, 2024**

**Appearances required.**

The Court has reviewed that *Post Confirmation Status Report*. See Docket No. 133. The Court will hear from the Office of the U.S. Trustee, but absent any issues the Court is inclined to continue the post-confirmation status conference to April 9, 2025, at 9:00 a.m., with a status report to be filed 14 days prior thereto.

**April 23, 2024**

**Appearances required.**

The Court has reviewed that *Status Report*. See Docket No. 132.

**December 13, 2023**

**Appearances required.**



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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**CONT... Beacon Coffee Company, Inc.**

**Chapter 11**

**November 22, 2023**

**Appearances waived.**

The Court has reviewed the *Subchapter V Status Report*. See Docket No. 88. The Court will continue the status conference to December 13, 2023, at 2:00 p.m.

**November 8, 2023**

**Appearances waived.**

The Court has reviewed the *Status Report* (the "Report"). See Docket No. 73. The Report does not comply with the *Order Setting Initial Status Conference* (the "Order"). See Docket No. 11. The status conference is continued to November 22, 2023, at 2:00 p.m. to allow the Debtor to file a status conference report in conformance with the Order.

**September 13, 2023**

**Appearances required.**

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

**Debtor(s):**

Beacon Coffee Company, Inc.

Represented By  
William C Beall  
Carissa N Horowitz

**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, April 9, 2025**

**Hearing Room      201**

1:00 PM

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

**Chapter 11**

**#44.00    CONT'D Chapter 11 Status Conference**

fr. 1-15-25, 2-11-25, 2-26-25, 3-26-25,

Docket      1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court does not find a status conference report as required by that *Order Setting Initial Status Conference*. See Docket No. 5. "Failure to timely file a status report may result in sanctions including dismissal, conversion, or the appointment of a trustee." See *id.* at p. 3, lines 7-9.

**March 26, 2025**

**Appearances waived.**

The status conference is continued to April 9, 2025, at 1:00 p.m.

**February 26, 2025**

**Appearances required.**

**February 11, 2025**

**Appearances waived.**

The status conference is continued to February 26, 2025, at 1:00 p.m.

**January 15, 2025**

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

**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>
--------------------------

**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, April 9, 2025**

**Hearing Room      201**

1:00 PM

**9:24-11404    Island View Ranch, LLC**

**Chapter 11**

**#45.00**    CONT' Hearing re: Order to show cause why bankruptcy case should not  
be dismissed due to the debtor's possible violation of federal law

fr. 2-26-25,

Docket      27

**Tentative Ruling:**

**February 26, 2025**

**Appearances required.**

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

Island View Ranch, LLC

Represented By  
John K Rounds

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:24-11404 Island View Ranch, LLC**

**Chapter 11**

**#46.00** CONT'D Chapter 11 Status Conference (Single Asset Real Estate)

fr. 1-29-25, 2-26-25,

Docket 1

**Tentative Ruling:**

**February 26, 2025**

**Appearances required.**

**January 29, 2025**

**Appearances required.**

The Court has reviewed that *Chapter 11 Status Conference Report (Initial)*. See Docket No. 18. The Court will confer with the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements of Chapter 11 Debtors-in-Possession*.

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

Island View Ranch, LLC

Represented By  
John K Rounds

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:25-10127 ReEnvision Aesthetics and Medspa, PC**

**Chapter 11**

**#47.00** CONT'D Hearing re: Chapter 11 Status Conference (Non-Individual  
Small business as defined in 11 U.S.C. § 101(51D))

fr. 3-26-25,

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Status Report for Initial Status Conference*. See Docket No. 49. The Court is also aware of that *Notice of Motion and Motion for Relief from the Automatic Stay* filed by MMP Capital regarding an Emsculpt Neo Workstation. See Docket No. 52.

**March 26, 2025**

**Appearances required.**

Pursuant to that *Order Setting Initial Status Conference* (the "Order"), "[n]ot less than fourteen (14) calendar days prior to the date scheduled for every initial or continued status conference, the debtor-in-possession shall serve a written status report..." See Docket No. 9, pp. 3-6. The Debtor has not filed a status conference statement to prepare parties-in-interest and this Court for the status conference. The Court will hear from the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements of Chapter 11 Debtors-in-Possession*. So that the Court may prepare for the status conference with the required reporting, the Court is inclined to continue the status conference to April 9, 2025, at 1:00 p.m.

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

**Debtor(s):**

ReEnvision Aesthetics and Medspa,

Represented By

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**ReEnvision Aesthetics and Medspa, PC**

Steven R Fox

**Chapter 11**

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:25-10187 Pacer Print**

**Chapter 11**

**#48.00** CONT'D Hearing re: [3] Motion for authority to use cash collateral  
on an interim and final basis

fr. 2-20-25,

Docket 3

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

Before the Court is that *Motion for Authority to Use Cash Collateral on an Interim and Final Basis* (the "Motion") filed by Pacer Print (the "Debtor"). See Docket No. 3; see also Docket No. 62, *Supplement to Debtor's Motion for Authority to Use Cash Collateral on an Interim and Final Basis*. Through the Motion, the Debtor seeks authority to use the cash collateral of the Small Business Administration, CHTD Company, Channel Partners Capital, and Itria Ventures through an including the first week of June 2025. See generally Docket No. 3; see also Docket No. 62, p. 2, lines 1-3.

Having found no opposition, the Court is inclined to grant the Motion, approving the Debtor's use of cash collateral through an including June 6, 2025, and continuing the hearing on the Motion to June 4, 2025, at 1:00 p.m. Any augmentations to the Motion and notice of the continued hearing on the Motion are to be filed and served by the Debtor on or before May 14, 2025.

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

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

**Debtor(s):**

Pacer Print

Represented By  
Steven R Fox



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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**CONT...      Pacer Print**

**Chapter 11**

**Movant(s):**

Pacer Print

Represented By  
Steven R Fox  
Steven R Fox

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:25-10187 Pacer Print**

**Chapter 11**

**#49.00** CONT'D Hearing re: [5] Emergency motion for interim and final orders: (I) approving the debtor's proposed adequate assurance of payment for future utility services; (II) prohibiting utility companies from altering, refusing, or discontinuing services; (III) approving the debtor's proposed procedures for resolving adequate assurance requests; and (IV) granting related relief  
  
fr. 2-20-25,

Docket 5

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

Before the Court is that *Emergency Motion for Interim and Final Orders (I) Approving the Debtor's Proposed Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services; (III) Approving the Debtor's Proposed Procedures for Resolving Adequate Assurance Requests; and (IV) Granting Related Relief* (the "Motion") filed by Pacer Print (the "Debtor"). See Docket No. 5.

Having found no opposition to the Motion, the Court is inclined to grant the Motion on a final basis. The Debtor is to upload a conforming order within 7 days.

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

Pacer Print

Represented By  
Steven R Fox

**Movant(s):**

Pacer Print

Represented By  
Steven R Fox  
Steven R Fox

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**CONT...**

**Pacer Print**

**Chapter 11**

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:25-10187 Pacer Print**

**Chapter 11**

**#50.00 Chapter 11 Status Conference**

Docket 1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Status Report for Initial Status Conference*. See Docket No. 70. The Court will hear from the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements of Chapter 11 Debtors in Possession*. Assuming a report of full compliance, the Court is inclined to continue the status conference to June 4, 2025, at 1:00 p.m. The Court is also inclined to set a deadline for the Debtor to file and serve a plan of reorganization and disclosure statement describing that plan of November 28, 2025. The Debtor is to upload a scheduling order with those two (2) dates within 7 days. The Court will set a disclosure statement hearing at a future status conference after its 2026 hearing dates are posted.

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

Pacer Print

Represented By  
Steven R Fox

**Movant(s):**

Pacer Print

Represented By  
Steven R Fox  
Steven R Fox

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

**Wednesday, April 9, 2025**

**Hearing Room 201**

1:00 PM

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

**Chapter 11**

**#51.00** CONT'D Chapter 11 plan confirmation hearing

fr. 1-29-25,

Docket 49

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

The Court has reviewed that *Status Report re Plan Confirmation*. See Docket No. 85. It appears that the Debtor seeks a further 45 days to complete payroll tax returns for 2016-2018, which may affect the IRS claim.

**January 25, 2025**

**Appearances required.**

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

**Debtor(s):**

El Chilito Mexican Food, Inc.

Represented By  
Matthew D. Resnik  
Roksana D. Moradi-Brovia  
Nina Z Javan

**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, April 9, 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, 01-15-25, 1-29-25,

Docket      1

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

**January 25, 2025**

**Appearances required.**

**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

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

**Wednesday, April 9, 2025**

**Hearing Room      201**

1:00 PM

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

**Chapter 11**

1:00 p.m. The Debtor is to upload a scheduling order that includes the  
aforementioned dates within 7 days.

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

**Debtor(s):**

El Chilito Mexican Food, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Nina Z Javan

**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, April 9, 2025**

**Hearing Room 201**

1:00 PM

**9:25-10005 VH Nutrition, LLC**

**Chapter 11**

**#53.00** Hearing re: [88] Confirmation of debtor's chapter 11 plan of reorganization

Docket 88

**Tentative Ruling:**

**April 9, 2025**

**Appearances required.**

Pursuant to Fed. R. Bankr. P. 2002(b)(2), creditors are to be provided "at least 28 days' notice by mail of [] the time to file an objection to-and the time of the hearing to consider whether to confirm a Chapter 9 or 11 plan."

On March 12, 2025, VH Nutrition, LLC (the "Debtor") filed and served that *Notice of Hearing on Chapter 11 Plan* (the "Notice"). See Docket No. 89. The Notice informed parties that they had until March 26, 2025, to file an objection to confirmation of Debtor's Chapter 11 Plan (the "Plan"). See *id.* at p. 2, lines 1-3.

The Debtor provided parties-in-interest with fifteen (15) days' notice of the deadline to file objections to the Plan, less than the required 28 days' notice.

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

**Debtor(s):**

VH Nutrition, LLC

Represented By  
William C Beall  
Carissa N Horowitz  
Ryan W Beall

**Trustee(s):**

Moriah Douglas Flahaut (TR)

Pro Se