

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

**Wednesday, April 24, 2024**

**Hearing Room 201**

10:00 AM

9: -

**Chapter**

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Docket 0

**Tentative Ruling:**

4/24/2024 8:22:56 AM

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**CONT...**

**Chapter**

- NONE LISTED -

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**9:22-10379 Gift Theory, Inc.**

**Chapter 7**

Adv#: 9:23-01027 Sandra K. McBeth, Chapter 7 Trustee v. Discover Financial Services, Inc.

**#1.00 Hearing RE: [25] STIPULATION TO AMEND THE OCTOBER 19, 2023  
SCHEDULING ORDER**

Docket 25

**Tentative Ruling:**

**April 23, 2024**

**Appearances required, in-person.**

Before the Court is that *Stipulation to Amend the October 19, 2023 Scheduling Order* (the "Stipulation"), filed on March 28, 2024. *See* Docket No. 25. Through the Stipulation, the parties are requesting that the Court extend by sixty (60) days, the litigation deadlines and dates set forth in that *Scheduling Order*. *See id.* at p. 2, lines 1-7. The reason for the extension of the litigation dates, according to the parties, is that they "are in discussions to determine whether they may resolve this matter without further litigation..." *See id.* at lines 24-28. On April 3, 2024, the Court entered that *Order Setting Stipulation to Amend the October 19, 2023 Scheduling Order for In-Person Hearing* (the "Hearing Notice"). *See* Docket No. 26. In the Hearing Notice the Court raised the fact that the Stipulation was filed two (2) business days prior to the discovery cutoff date, meaning discovery should have largely been complete in that the discovery cutoff date included the last day to receive discovery responses. *See id.* at p. 2, lines 12-14. The discovery cutoff was established on October 19, 2023, so discovery should have been ongoing for more than five (5) months at the time the Stipulation was filed. The Court was unclear why an extension of a date that was nearly lapsed needed to be extended to allow for settlement discussions. The Court was also confused as to why the trial date, which is more than four (4) months away, needs to be continued to allow the parties to continue settlement discussions that have been ongoing for many months, at least according to the parties.

Pursuant to Fed. R. Bankr. P. 7016(a), "Rule 16 F.R.Civ.P. applies in adversary proceedings." Pursuant to Fed. R. Civ. P. 16(b), a judge "must issue a scheduling

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**CONT... Gift Theory, Inc.**

**Chapter 7**

order." A scheduling order issued under Fed. R. Civ. P. 16(b) "must limit the time to [] complete discovery, and file motions," and may "set dates for pretrial conference and for trial." *See* Fed. R. Civ. P. 16(b)(3)(A) and (B)(vi). Pursuant to Fed. R. Civ. P. 16(b)(4), "[a] schedule may be modified *only for good cause* and with the judge's consent." (emphasis added). Regarding "good cause," the "standard requires the parties to demonstrate that 'noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding [the parties'] diligent efforts to comply, because of the development of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference..." *Scarlett v. Doe*, 2020 WL 13517858 \*1 (W.D. Wash. 2020)(citing *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999) and *Marcum v. Zimmer*, 163 F.R.D. 250, 254 (S.D. W. Va. 1995)). "Courts within this circuit consider the following four factors when evaluating whether to deny or grant a request for a continuance: (1) the extent of the moving party's diligence in preparing for the case for trial; (2) the usefulness of the continuance, or the likelihood 'that the need for a continuance could have been met if the continuance had been granted'; (3) the extent to which granting the continuance would inconvenience the Court, the opposing party, and the witnesses; and (4) the extent to which the moving party might suffer prejudice from the Court denying the request for a continuance." *AK Futures LLC v. LCF Labs Inc.*, 2022 WL 18142530 \*1 (C.D. Cal. 2022)(citing *U.S. v. Flynt*, 756 F.2d 1352, 1358-59 (9th Cir. 1985)). "Courts have 'broad discretion' in denying or granting a requested continuance, and this 'will not be disturbed on appeal absent clear abuse of that discretion.'" *Id.* at 1358.

The Court will inquire with the parties as to why the Stipulation is needed at this juncture solely so the parties may continue with months' long settlement discussions, as well as what "good cause" exists for this Court to continue the current litigation dates and deadlines.

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

Gift Theory, Inc.

Represented By  
William E. Winfield

**Defendant(s):**

Discover Financial Services, Inc.

Represented By  
Alan J Watson

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**CONT... Gift Theory, Inc.**

**Chapter 7**

Justin Adofina

**Movant(s):**

Discover Financial Services, Inc.

Represented By  
Alan J Watson  
Justin Adofina

**Plaintiff(s):**

Sandra K. McBeth, Chapter 7

Represented By  
Beth Ann R. Young  
Zachary Page

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo  
Todd M Arnold  
Carmela Pagay  
Zachary Page

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10:00 AM

**9:22-10469 Jon Travis Burnett**

**Chapter 7**

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

**#2.00** HearingRE: [56] Motion Notice Of Motion And Motion In Limine To Exclude (1) Documents Not Produced In Response To Discovery And Not Identified During The Deposition Of Jerry Namba; (2) Trial Testimony Of Jerry Namba Inconsistent With Testimony Given During Deposition; (3) Factual Allegations And Documents Of Matters Arising In The Bankruptcy Case Of In Re Burnett Family Farms Not Plead In The Second Amended Complaint, Included In Discovery Responses, Or Attested To By Jerry Namba During His Deposition; Points And Authorities; Request For Judicial Notice; Declaration Louis J. Esbin In Support [FRBP Rules 7026 and 7037, LBR 9013-1] [Motion In Limine No. 1] (with Proof of Service)

Docket 56

**Tentative Ruling:**

**April 24, 2024**

**Appearances waived. This matter is continued to May 22, 2024, at 10:00 a.m.**

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

**Debtor(s):**

Jon Travis Burnett

Represented By  
Louis J Esbin

**Defendant(s):**

Jon Travis Burnett

Represented By  
Louis J Esbin

Burnett Financial Services, Inc.

Represented By  
Louis J Esbin

**Movant(s):**

Jon Travis Burnett

Represented By  
Louis J Esbin

Burnett Financial Services, Inc.

Represented By

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**CONT...      Jon Travis Burnett**

**Chapter 7**

Louis J Esbin

**Plaintiff(s):**

Jerry Namba

Represented By  
Carissa N Horowitz

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Carissa N Horowitz  
William C Beall

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**9:22-10911 Thomas W. Clark**

**Chapter 7**

Adv#: 9:23-01008      McBeth v. Clark

**#3.00**      Hearing  
RE: [22] Motion For Summary Judgment Notice of Motion and Motion For  
Summary Judgment, and Declaration of Christine Clark, with Proof of Service  
(Lally, David)

FR. 1-24-24, 3-20-24

Docket      22

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 7/10/24 at  
9:00AM.**

**Tentative Ruling:**

**March 20, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 10:00 a.m.

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

**Debtor(s):**

Thomas W. Clark

Represented By  
Brent D George

**Defendant(s):**

Christine Clark

Represented By  
Marc Weitz

**Movant(s):**

Christine Clark

Represented By  
Marc Weitz

**Plaintiff(s):**

Sandra K. McBeth

Represented By  
Carmela Pagay



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**CONT... Thomas W. Clark**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Carmela Pagay

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**9:22-10911 Thomas W. Clark**

**Chapter 7**

Adv#: 9:23-01008      McBeth v. Clark

**#4.00**      CONT'D Status Hearing

RE: [1] Adversary case 9:23-ap-01008. Complaint by Sandra K. McBeth against Christine Clark. (\$350.00 Fee Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)), (14 (Recovery of money/property - other)) (Pagay, Carmela)

FR. 4-19-23, 12-12-23, 4-10-24

Docket      1

**\*\*\* VACATED \*\*\* REASON: Continued by stipulation to 7/10/24 at 9:00AM.**

**Tentative Ruling:**

**April 10, 2024**

**Appearances waived.**

The Court will continue the status conference to April 24, 2024, at 10:00 a.m.

**December 12, 2023**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 21. The Court is inclined to set a pretrial conference for April 10, 2024, at 10:00 a.m., and trial for May 6, 2024, at 1:00 p.m. Both the pre-trial conference and trial will require in-person appearances by counsel and the parties.

The status conference is continued to April 10, 2024, at 10:00 a.m.

Plaintiff is to file and serve a scheduling order with the pre-trial conference and trial dates, including the requirement of the parties to timely file a pre-trial stipulation and proposed order in conformance with this Court's Local Rule 7016-1.

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**CONT... Thomas W. Clark  
April 19, 2023**

**Chapter 7**

**Appearances required.**

In reviewing the *Joint Status Report*, it appears that the parties are agreeable to mediating the matter. *See* Docket No. 11. Have the parties discussed private mediation, or do the parties seek to mediate the matter with the Court's mediation program?

The Court is inclined to set a discovery cutoff of August 30, 2023, and to continue the status conference to September 13, 2023, at 10:00 a.m.

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

Thomas W. Clark

Represented By  
Brent D George

**Defendant(s):**

Christine Clark

Pro Se

**Plaintiff(s):**

Sandra K. McBeth

Represented By  
Carmela Pagay

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:22-10934 Bonita T. Moore**

**Chapter 13**

Adv#: 9:23-01019 Moore v. Bruetsch et al

**#5.00** Hearing  
RE: [33] Motion to Dismiss Adversary Proceeding (Weber, Edward)

FR. 2-21-24, 3-20-24

Docket 33

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

The Court understands that counsel to Plaintiff is experiencing health issues, and is unable to attend the hearing on the motion to dismiss. The Court is uncertain whether counsel is withdrawing from the case due to their health, or rather simply requires time to recover so that they may appear and argue the motion and continue with the case in general.

**March 20, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 10:00 a.m.

**February 21, 2024**

**Appearances waived. This matter is continued to March 20, 2024, at 10:00 a.m.**

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

Bonita T. Moore

Represented By  
Nathan A Berneman

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**CONT... Bonita T. Moore**

**Chapter 13**

**Defendant(s):**

Wayne Kim

Represented By  
Matthew D. Resnik  
Edward T Weber

Karen J Wyman

Represented By  
Edward T Weber

Timothy J Wyman

Represented By  
Edward T Weber

Vark Investments, LLC

Represented By  
Edward T Weber

DOES 1-10

Pro Se

Joelynn Warner

Represented By  
Edward T Weber

Todd Warner

Represented By  
Edward T Weber

Capital Benefit, Inc.

Represented By  
Edward T Weber

Marcel Bruetsch

Represented By  
Edward T Weber

Polycomp Trust Company

Represented By  
Edward T Weber

**Movant(s):**

Marcel Bruetsch

Represented By  
Edward T Weber

Capital Benefit, Inc.

Represented By  
Edward T Weber

Todd Warner

Represented By  
Edward T Weber  
Edward T Weber

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**CONT... Bonita T. Moore**

**Chapter 13**

Joelynn Warner

Represented By  
Edward T Weber  
Edward T Weber

Polycomp Trust Company

Represented By  
Edward T Weber  
Edward T Weber

Vark Investments, LLC

Represented By  
Edward T Weber

Timothy J Wyman

Represented By  
Edward T Weber  
Edward T Weber

Karen J Wyman

Represented By  
Edward T Weber  
Edward T Weber

**Plaintiff(s):**

Monique Moore

Represented By  
Walter H Hackett III

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:22-10934 Bonita T. Moore**

**Chapter 13**

Adv#: 9:23-01019 Moore v. Bruetsch et al

**#6.00** CONT'D Status Hearing

RE: [1] Adversary case 9:23-ap-01019. Complaint by Monique Moore against Marcel Bruetsch, Capital Benefit, Todd Warner, Joelynn Warner, Polycomp Trust Company, Vark Investments, LLC, Timothy J Wyman, Karen J Wyman, Wayne Kim. (21 (Validity, priority or extent of lien or other interest in property)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (91 (Declaratory judgment)) (Hackett, Walter)

FR. 8-9-23, 9-27-23, 10-11-23, 11-8-23, 2-7-24, 2-21-24, 3-20-24

Docket 1

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**March 20, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 10:00 a.m.

**February 21, 2024**

**Appearances waived. This matter is continued to March 20, 2024, at 10:00 a.m.**

**February 7, 2024**

**Appearances required.**

The Court has reviewed the *Joint Status Report*. See Docket No. 35. It appears that an amended complaint was filed, and a motion to dismiss that amended complaint is

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**CONT... Bonita T. Moore**

**Chapter 13**

scheduled to be heard on February 21, 2024. *See* Docket Nos. 33 and 34. The Court is inclined to continue the status conference to trail the motion to dismiss.

**November 8, 2023**

**In-person appearances required.**

The *Adversary Proceeding Status Conference Procedures* provide that "[a] joint status report prepared using Local Form F\_7016-1.STATUS.REPORT must be filed fourteen (14) days before each status conference." *See* Docket No. 2. "Failure to file a joint status report may result in the imposition of monetary sanctions and/or the status conference being continued." *Id.* This Court's Local Rule 7016-1(a)(2) provides that "[u]nless otherwise ordered by the court, at least 14 days before the date for each status conference the parties are required to file a joint status report using mandatory court form F\_7016-1.STATUS.REPORT."

The Court finds no status conference reports filed within the times prescribed by both this Court's Local Rules and its adversary proceeding procedures. Unless the Court excused the parties from filing status reports, the Court will impose sanctions against counsel for each of the parties that have appeared in this adversary proceeding in the amount of \$1,000.

**October 11, 2023**

**Appearances required.**

**September 27, 2023**

**Appearances waived.**

The status conference is continued to October 11, 2023, at 10:00 a.m.

**August 9, 2023**

**Appearances required.**

<b>Party Information</b>
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**CONT... Bonita T. Moore**

**Chapter 13**

**Debtor(s):**

Bonita T. Moore

Represented By  
Nathan A Berneman

**Defendant(s):**

Marcel Bruetsch

Pro Se

Capital Benefit, Inc.

Pro Se

Todd Warner

Pro Se

Joelynn Warner

Pro Se

Polycomp Trust Company

Pro Se

Vark Investments, LLC

Pro Se

Timothy J Wyman

Pro Se

Karen J Wyman

Pro Se

Wayne Kim

Pro Se

DOES 1-10

Pro Se

**Plaintiff(s):**

Monique Moore

Represented By  
Walter H Hackett III

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

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**9:23-10098 Nicholas Matthew Ciari**

**Chapter 7**

Adv#: 9:23-01069 Ciari et al v. INTERNAL REVENUE SERVICE

**#7.00** Status Hearing  
RE: [1] Adversary case 9:23-ap-01069. Complaint by Angela Ferreria Ciari, Nicholas Matthew Ciari against INTERNAL REVENUE SERVICE. (\$350.00 Fee Not Required). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) (Faucher, John)

FR. 2-21-24

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order approving stipulation resolving all claims in the complaint was entered on 4/11/24.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Nicholas Matthew Ciari

Represented By  
John D Faucher

**Defendant(s):**

INTERNAL REVENUE SERVICE

Pro Se

**Joint Debtor(s):**

Angela Ferreria Ciari

Represented By  
John D Faucher

**Plaintiff(s):**

Angela Ferreria Ciari

Represented By  
John D Faucher

Nicholas Matthew Ciari

Represented By  
John D Faucher

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**CONT... Nicholas Matthew Ciari**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Pro Se

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**9:23-10601 Ampersand Publishing, LLC**

**Chapter 7**

Adv#: 9:23-01067 Namba v. 715 Anacapa, LLC, a California limited liability c

**#8.00** HearingRE: [16] Motion to Dismiss Adversary Proceeding Pursuant to Rule 12(b)(6)  
(Lin, Ashlee)

Docket 16

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

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

Ampersand Publishing, LLC

Represented By  
Anthony A. Friedman

**Defendant(s):**

715 Anacapa, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

725 Kellogg, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

**Movant(s):**

715 Anacapa, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

725 Kellogg, LLC, a California

Represented By  
Ashlee N Lin  
Zachary Truman Elsea

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**CONT... Ampersand Publishing, LLC**

**Chapter 7**

**Plaintiff(s):**

Jerry Namba

Represented By  
Michael G D'Alba  
Eric P Israel

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Brad Krasnoff  
Michael G D'Alba  
Eric P Israel

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**9:23-10601 Ampersand Publishing, LLC**

**Chapter 7**

Adv#: 9:23-01067 Namba v. 715 Anacapa, LLC, a California limited liability c

**#9.00 Status Hearing**

RE: [1] Adversary case 9:23-ap-01067. Complaint by Jerry Namba against 715 Anacapa, LLC, a California limited liability company, 725 Kellogg, LLC, a California limited liability company. (\$350.00 Fee Charge To Estate). Trustee's Complaint to Avoid and Recover Voidable Transfers; For Declaratory Relief; For Turnover; For Resulting Trust; For Injunctive Relief; For Constructive Trust Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(72 (Injunctive relief - other)) (D'Alba, Michael)

FR. 2-21-24, 3-20-24

Docket 1

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

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

Ampersand Publishing, LLC

Represented By  
Anthony A. Friedman

**Defendant(s):**

715 Anacapa, LLC, a California

Pro Se

725 Kellogg, LLC, a California

Pro Se

**Plaintiff(s):**

Jerry Namba

Represented By  
Michael G D'Alba

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**CONT... Ampersand Publishing, LLC**

**Chapter 7**

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Brad Krasnoff  
Michael G D'Alba

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**9:23-10863 Sergio E. Torres**

**Chapter 7**

Adv#: 9:23-01068 Torres v. Torres

**#10.00** CONT'D Status Hearing  
RE: [1] Adversary case 9:23-ap-01068. Complaint by Gabriela Torres against Sergio Torres. divorce/sep property settlement/decree)),(61 (Dischargeability - 523(a)(5), domestic support)),(41 (Objection / revocation of discharge - 727(c),(d),(e))), (91 (Declaratory judgment)) (Kwasigroch, Michael)

FR. 2-21-24

Docket 1

**Tentative Ruling:**

**April 24, 2024**

**Appearances waived.**

The Court has reviewed that *Joint Status Report*. See Docket No. 12. The Court will continue the status conference to June 5, 2024, at 10:00 a.m.

**February 21, 2024**

**Appearances required.**

The Court finds no status report as required by those *Adversary Proceeding Status Conference Procedures* (see Docket No. 5) and this Court's Local Rule 7016-1(a)(2). The Court will continue the status conference for an in-person status conference and require the parties to timely prepare and file a joint status report.

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

Sergio E. Torres

Represented By  
Kenumi T Maatafale

**Defendant(s):**

Sergio E. Torres

Pro Se



**United States Bankruptcy Court  
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Northern Division  
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Courtroom 201 Calendar**

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10:00 AM

**CONT... Sergio E. Torres**

**Chapter 7**

**Plaintiff(s):**

Gabriela Torres

Represented By  
Michael D Kwasigroch

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**9:23-11095 FGH, LLC**

**Chapter 11**

Adv#: 9:24-01009 FGH, LLC v. Officemax, Inc. et al

**#11.00 Status Hearing**

RE: [1] Adversary case 9:24-ap-01009. Complaint by FGH, LLC against Officemax, Inc., Hajoca Corporation, Mel Giffin, Inc., GMH, Inc., Independent Concrete Cutting, Byrd Electrical Contractors Inc, Omniduct, Spring Valley Insulation Contractors, Sunbelt Rentals, Inc., Pacific Low Voltage, Anytime Drywall, Inc., PGS Westside I, Inc., Vince Volk Plumbing, Inc., James H. Bryd & Laura F. Byrd Trust. (\$350.00 Fee Charge To Estate) CORRECTION: Fee Not Charged. Deferment not applicable as plaintiff is debtor. Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (14 (Recovery of money/property - other)) (Beall, William)

Docket 1

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

The Court's Clerk has not taken the default of Sunbelt Rentals, Inc., Anytime Drywall, Inc., Omniduct, Spring Valley Insulation Contractors, Concrete Cutting, Inc., Mel Griffin, Inc., and Officemax, Inc. See Docket Nos. 24-30.

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

FGH, LLC

Represented By  
William C Beall  
Carissa N Horowitz

**Defendant(s):**

Officemax, Inc.

Pro Se

Hajoca Corporation

Pro Se

Mel Giffin, Inc.

Pro Se

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**CONT...      FGH, LLC**

**Chapter 11**

GMH, Inc.	Pro Se
Independent Concrete Cutting, Inc.	Pro Se
Byrd Electrical Contractors, Inc.	Pro Se
Omniduct	Pro Se
Spring Valley Insulation Contractors	Pro Se
Sunbelt Rentals, Inc.	Pro Se
Pacific Low Voltage	Pro Se
Anytime Drywall, Inc.	Pro Se
PGS Westside I, Inc.-Chatsworth	Pro Se
Vince Volk Plumbing, Inc.	Pro Se
James H. Bryd & Laura F. Byrd	Pro Se

**Plaintiff(s):**

FGH, LLC

Represented By  
William C Beall

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**9:22-11001    Alan Rashkin and Rochelle Rashkin**

**Chapter 7**

**#12.00    Hearing**  
RE: [72] Motion to Withdraw as Attorney with Proof of Service

Docket      72

**Tentative Ruling:**

**April 24, 2024**

**Appearances required, in person.**

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

Alan Rashkin

Represented By  
Haleh C Naimi

**Joint Debtor(s):**

Rochelle Rashkin

Represented By  
Haleh C Naimi

**Movant(s):**

Alan Rashkin

Represented By  
Haleh C Naimi  
Haleh C Naimi

Rochelle Rashkin

Represented By  
Haleh C Naimi

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Carissa N Horowitz  
William C Beall

**United States Bankruptcy Court  
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Northern Division  
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10:00 AM

**9:22-11001    Alan Rashkin**

**Chapter 7**

Adv#: 9:23-01037      Namba v. Rashkin et al

**#13.00    Hearing**  
**RE: [29] Motion to Withdraw as Attorney with Proof of Service**

Docket      29

**Tentative Ruling:**

**April 24, 2024**

**Appearances required, in person.**

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

**Debtor(s):**

Alan Rashkin

Represented By  
Haleh C Naimi

**Defendant(s):**

Alan Rashkin

Represented By  
Haleh C Naimi

Rochelle Rashkin

Represented By  
Haleh C Naimi

Ellye B Rashkin

Represented By  
Haleh C Naimi

**Joint Debtor(s):**

Rochelle Rashkin

Represented By  
Haleh C Naimi

**Movant(s):**

Alan Rashkin

Represented By  
Haleh C Naimi

Rochelle Rashkin

Represented By

**United States Bankruptcy Court  
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**CONT... Alan Rashkin**

**Chapter 7**

Haleh C Naimi

Ellye B Rashkin

Represented By  
Haleh C Naimi

**Plaintiff(s):**

Jerry Namba

Represented By  
Carissa N Horowitz

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Carissa N Horowitz  
William C Beall

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Central District of California  
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**Wednesday, April 24, 2024**

**Hearing Room 201**

2:00 PM

**9:22-10278 James E Goldstein**

**Chapter 11**

**#14.00** HearingRE: [154] Disclosure Statement with proof of service

Docket 154

**Tentative Ruling:**

**April 24, 2024**

*Background*

Before the Court is *Debtor's Chapter 11 Original Disclosure Statement Describing Chapter 11 Original Plan of Reorganization* (the "Disclosure Statement") filed by individual Chapter 11 debtor James Goldstein (the "Debtor") on March 13, 2024. *See* Docket No. 154.

On April 10, 2024, two (2) objection to the Court's approval of the Disclosure Statement under 11 U.S.C. § 1125(b) were filed as follows: (1) *Limited Conditional Objection to Disclosure Statement and Confirmation of Chapter 11 Plan* filed by Lakeview Loan Servicing, LLC (the "Lakeview Objection"); and (2) *Limited Conditional Objection to Disclosure Statement and Confirmation of Chapter 11 Plan* filed by Wilmington Trust National Association, Not In Its Individual Capacity but Solely In Its Capacity as Trustee for the Benefit of the Holders of the Certificates Issued by Flagstar Mortgage Trust 2021-8 (the "Wilmington Objection"). *See* Docket Nos. 163 and 164, respectively.

*Analysis*

Pursuant to 11 U.S.C. § 1125(b), "[a]n acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." "Adequate information" means "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan

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**CONT...**

**James E Goldstein**

**Chapter 11**

to the debtor [] and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a)(1).

The Lakeview and Wilmington Objections appear to argue that their claims are impaired because the Disclosure Statement does not describe the status of the automatic stay upon the Debtor's post-confirmation default of their obligations. The Disclosure Statement provides that "[o]nce the Estate has been fully administered [] and payment of all obligations under the Plan has been completed [], the Debtor shall receive a discharge of all pre-confirmation debts..." See Docket No. 154, p. 30 of 38, lines 2-7. The Disclosure Statement further provides that "[a]ll property of the Estate [] shall remain property of the Estate notwithstanding confirmation of the Plan; as such, the automatic stay will remain in effect in this bankruptcy post-confirmation pursuant to 11 U.S.C. § 362(a)," "[c]reditors wishing to take action with respect to property of the Estate shall be required to first file motions seeking relief from the automatic stay." See *id.* at p. 25, lines 11-16.

Pursuant to 11 U.S.C. § 1141(d)(5)(A), "[i]n a case in which the debtor is an individual [] unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan." Pursuant to 11 U.S.C. § 362(c)(2), "the stay of any other act under subsection (a) of this section continues until the earliest of [,] if the case is a case [] under chapter [11] of this title, the time a discharge is granted or denied." According to the Disclosure Statement, apparently, property of the estate remains property of the estate until a discharge is entered at the conclusion of payments to creditors. At least as to the implication and application of the automatic stay post-confirmation, it is the Bankruptcy Code that governs, and the Plan restates what the Bankruptcy Code provides for. Under these circumstances, such a provision does not impair the creditor for purposes of plan confirmation and voting. See *In re Energy Future Holdings Corp.*, 540 B.R. 109, 122



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**CONT...**

**James E Goldstein**

**Chapter 11**

(Bankr. D. Del. 2015). The Disclosure Statement does, however, confirm that a lifting of the stay remains available post-confirmation to Lakeview and Wilmington. The Court will inquire with Lakeview and Wilmington as to what more they seek in terms of disclosure.

The Court has its own issues with the Disclosure Statement.

First, the Disclosure Statement provides addresses for the two (2) homes that the Debtor own that do not match the addresses for those properties on the Debtor's schedules. *See* Docket No. 154, p. 7, lines 5-9.

Second, the Disclosure Statement should now discuss the resolution with the CDFTA.

Third, the treatment of administrative claims is wholly unclear. The amount owed to Taylor Nelson Amitrano, LLP ("Taylor") is listed as being \$100,000 in the chart in Section III.B.1 of the Disclosure Statement. *See id.* at p. 12, lines 23-24. Exhibit 2 to the Disclosure Statement provides that Taylor will have a total estimated amount of \$195,000, but that it "has agreed to limit its fees to approximately \$118,000 less the amount paid on account of any payment received as a Class 4 unsecured." *See id.* at *Exhibit 2*. Taylor has been paid \$18,000, leaving \$100,000 to be paid as a Class 4 unsecured claim. *See id.* The list of general unsecured claims, however, leaves Taylor with a Class 4 claim of \$15,825.50. *See id.* at *Exhibit 3*. Total payments to administrative expense creditors are total \$128,000. *See id.* at *Exhibit 4*. Assuming the \$128,000 goes to pay the last column in Exhibit 2, does that not leave a claim of \$77,000 to Taylor? If so, does this not further increase the amount that will go to Class 4 creditors?

Lastly, the Court is having difficulty with the Debtor's liquidation scenario. First, it is not possible for creditors to complete an analysis under 11 U.S.C. § 1129(a)(15)(B) due to the limited timeline provided in the plan projections. Second, an analysis under 11 U.S.C. § 1129(a)(15)(A) cannot be completed because certain critical information is lacking. The valuation for the two (2) parcels of real estate are the values prescribed to those properties as of the petition date, more than two (2) years ago. The liquidation values of the vehicles are provided without any support. Where did the Debtor arrive at the liquidation values?

<b>Party Information</b>
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**CONT... James E Goldstein**

**Chapter 11**

**Debtor(s):**

James E Goldstein

Represented By  
Michael G Spector  
Vicki L Schennum  
Jin Soo Lee

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2:00 PM

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

**Chapter 11**

**#15.00** CONT'D Hearing RE: Auction of Debtor's Real Property (Notice of Modified Bidding Procedures)

FR. 3-6-24, 4-10-24

Docket 128

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

**March 6, 2024**

**Appearances required.**

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

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**Wednesday, April 24, 2024**

**Hearing Room 201**

2:00 PM

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

**Chapter 11**

**#16.00** CONT'D Hearing  
RE: [135] Stipulation By S&W Blue Jay Way, LLC and Third Stipulation Between Debtor and Senior Lienholders Regarding Sale of Debtor's Real Property

FR. 3-6-24, 4-10-24

Docket 135

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

**March 6, 2024**

**Appearances required.**

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Movant(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

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2:00 PM

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

**Chapter 11**

**#17.00 Hearing**

RE: [149] Motion to Modify Plan Notice of Motion and Motion for Authority to Modify the Debtor's Proposed Chapter 11 Plan; Memorandum of Points and Authorities in support thereof

FR. 4-10-24

Docket 149

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**Background**

Before the Court is S&W Blue Jay Way, LLC's (the "Debtor") *Motion for Authority to Modify the Debtor's Proposed Chapter 11 Plan* (the "Motion to Modify"). *See* Docket No. 149. Through the Motion to Modify, the Debtor seeks "an order authorizing the Debtor to modify its proposed Chapter 11 plan and [a determination] that the proposed modification of the plan does not require resolicitation thereof." *See id.* at p. 2 of 50, lines 3-6. The proposed modifications are to *Debtor's First Amended Chapter 11 Liquidating Plan* (the "Plan"). *See id.* at lines 11-12. The Motion to Modify lists several modifications to the Plan.

First, the effective date of the Plan is to be modified from "the first Business Day occurring at least seven (7) days after entry of the closing of the sale of the Property," to "the first Business Day occurring at least twenty (20) days after entry of the Confirmation Order." *See id.* at *Exhibit 2*, p. 25, lines 24-25. The closing date for the sale of the property in the Plan was "no later than 20 days after the entry of an order by the Court approving the sale." *See* Docket No. 118, *Exhibit 1, First Amended Disclosure Statement Describing Debtor's First Amended Chapter 11 Liquidating Plan* at *Exhibit 1*, p. 64. So, under the Plan, the effective date was to take place 27 days after the order on confirmation. The proposed modification to the Plan decreases

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**Chapter 11**

that time by approximately seven (7) days.

Second, the sale of the Property has been modified. The total sale price is \$4 million. *See* Docket No. 143, *Exhibit A*. One-million dollars of the sale price of the Property is to be paid on the effective date of the Plan (the "Deposit"). *See* Docket No. 149, p. 15, lines 15-18. Within eight (8) months of the effective date of the Plan, the proposed purchaser of the Property is to pay a further \$3 million, plus interest at the rate of 8%, with monthly interest only payments to the senior lienholders on the first business day of each month. *See id.* at lines 22-26. From the Deposit, \$500,000 remains as the "carve-out." The senior lienholders filed a secured claim in the amount of \$4,318,318.05. *See* Claim No. 4. Ergo, other than litigation claims, which the Debtor has no means of funding unless the carve-out is used, the carve-out is the sole remaining asset of the Debtor's estate with which to pay creditors other than the senior lienholders. From the Deposit must first come administrative expense priority claims, which are estimated to now total \$224,500, and a \$357.67 priority tax claim of the Franchise Tax Board. *See id.* at pp. 29-30. Deducting the administrative expense claims and the priority unsecured claims from the carve-out leaves \$275,142.33 for general unsecured, non-priority creditors. Excluding the junior secured creditor there are \$316,507.45 in general unsecured non-priority claims, and including the junior secured creditor there are \$3,076,282.55 in general unsecured non-priority claims. The payout to general unsecured creditors from the carve-out is between 8.9% and 86.9% of their claims. This, of course, assumes the full carve-out is paid out on the claims as laid out, and without regards to any costs in litigating the post-confirmation litigation claims or claims objections. The Plan has not changed as to the treatment of general unsecured creditors, as the Plan always called for them to receive (1) a pro rata share of the net carve-out proceeds after paying administrative expense claims and priority unsecured claims, and (2) a pro rata share of any post-confirmation litigation recoveries. *See* Docket No. 118, pp. 10-11.

Third, the sale of the Property to the proposed purchaser provides the senior lienholders with in-rem relief from the automatic stay. *See* Docket No. 149, p. 35, lines 21-22. The point here seems to be that the Property will either be sold or foreclosed upon no later than eight (8) months from the effective date of the Plan.

On March 27, 2024, Blue Jay 180, LLC ("Blue Jay") filed *Blue Jay 180, LLC's Opposition to Motion for Authority to Modify Debtor's Proposed Chapter 11 Plan*

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

**Chapter 11**

(the "Opposition"). See Docket No. 158. On April 3, 2024, the Debtor filed *Debtor's Reply in Support of Motion for Authority to Modify the Debtor's Proposed Chapter 11 Plan*. See Docket No. 161.

Analysis

Pursuant to 11 U.S.C. § 1127(a), "[t]he proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of section 1122 and 1123 of this title."

"Material plan modifications require a formal disclosure statement and court approval." *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (9th Cir. BAP 1988). "A modification is material if it so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance." *In re American Solar King Corp.*, 90 B.R. 808, 824 (W.D. Tex. 1988) (citing 8 *Collier on Bankruptcy*, ¶¶ 3019.03 and 3019-3 (15th ed. 1987)). "The severity of the modification need not be such as would motivate a claimant to *change* their vote—only that they would be apt to *reconsider* acceptance." *Id.*

Blue Jay's argument to the Motion to Modify, as the Court understands it, is that the full Deposit is not guaranteed to be made, and so "there is no guaranty that the Debtor will ever be able to use the balance of this sum to pay any creditor..." See Docket No. 158, p. 6, lines 5-9. It seems this concern has been resolved. Pursuant to that *Declaration of Anthony R. Bisconti Regarding Effective Date Payment by HRBJW2, LLC*, counsel to HRBJW2, LLC is in possession of \$900,000, which monies are to be disbursed to the Debtor upon confirmation of the Plan. See Docket No. 163.

The Court's concern is that the Deposit does not appear to be non-refundable. Put another way, it is not clear to the Court what transpires if the sale of the Property does not close. If the Debtor is essentially ridding itself of the Property in exchange for \$500,000, is the \$500,000 non-refundable, and out of the reach of the senior lienholders and the proposed purchaser? The proposed purchaser is paying the Debtor's estate \$500,000 for a property it may never own. The Court will want to hear from the proposed purchaser, the Debtor and the senior secured lenders that this is the intent of the payment of the carve-out on the effective date of the Plan.

What is more, the Court is not certain how all general, non-priority unsecured claims can be paid on the effective date of the Plan. The Debtor seems to concede that Blue

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

**Chapter 11**

Jay currently has an unsecured claim that shared *pari passu* with other general unsecured, non-priority claims. *See* Docket No. 161, p. 2, lines 15-18. Blue Jay's claim is \$2,759,775.10. *See* Claim No. 2. Until the objection to the Blue Jay claim is resolved, at best, a few cents on the dollar of each general unsecured claim may be paid on the effective date on the Plan.

If the \$500,000 is to be paid to the estate on the effective date of the Plan, and if that \$500,000 is not subject to claw back by the senior secured lenders or the proposed purchaser of the Property, it seems to the Court that the modifications to the Plan are not only immaterial in terms of requiring further disclosure and voting, but marginally may improve the position of those creditors. Subject to confirmation of these points, the Court is inclined to grant the Motion to Modify.

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Movant(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur



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

**Chapter 11**

**#18.00 Hearing**

RE: [152] Motion to Seal Document. Motion for an Order Authorizing HRBJW2, LLC to File Under Seal Unredacted Versions of Supplemental Declarations of Hushmand Sohaili and Richard Weintraub in Further Support of Confirmation of Debtor's First Amended Chapter 11 Liquidating Plan and Reply to Objection to Confirmation of Plan (Bisconti, Anthony)

FR. 4-10-24

Docket 152

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Movant(s):**

HRBJW2, LLC

Represented By  
Anthony Bisconti

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

**Chapter 11**

**#19.00 CONT'D Confirmation Hearing RE: Chapter 11 Plan of Reorganization**

FR. 3-6-24, 4-10-24

Docket 75

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

The Court has reviewed *Blue Jay 180, LLC's Supplement to Objections to Confirmation of Debtor's First Amended Chapter 11 Liquidating Plan* (the "Opposition"). See Docket No. 160. At bottom, Blue Jay 180, LLC ("Blue Jay") argues that the critical issue that prohibits confirmation of S&W Blue Jay Way, LLC's (the "Debtor") *First Amended Chapter 11 Liquidating Plan* (the "Plan") is feasibility. As Blue Jay argues, "as opposed to showing a plan that will go effective, the evidence, such as it is, reveals the complete opposite, a plan that is incapable of ever going effective." See *id.* at p. 17, lines 4-6.

When Blue Jay filed the Opposition, its argument was a valid one. It has become clear to all involved that the Debtor's real property is not worth the \$5.5 million it believed it was worth when the bankruptcy case was filed. The property has been marketed without success, and the brokers do not believe the property would attract an offer anywhere near the \$4 million that is to be paid by the proposed purchaser. The proposed purchaser's initial offer to purchase was not an all cash offer that would close near the effective date of the Plan, and the \$500,000 carve-out for the estate was anything but certain.

However, on April 10, 2024, the proposed purchaser, HRBJW2, LLC, filed that *Declaration of Anthony R. Bisconti Regarding Effective Date Payment by HRBJW2, LLC* wherein counsel to HRBJW2, LLC confirms that the monies sufficient to pay the carve-out to the estate is sitting in their client-trust account, and those monies are to be paid to the Debtor upon confirmation of the Plan. See Docket No. 163. That *Stipulation Among Debtor, Senior Lienholders, and HRBJW2, LLC Regarding Sale of*

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

**Chapter 11**

*Debtor's Real Property* (the "Stipulation") essentially accomplishes four (4) goals. *See* Docket No. 149. First, the Stipulation provides that the deposit that HRBJW2, LLC must advance to purchase the Debtor's real property is increased to \$ 1million. *See id.* at p. 3, lines 15-18. Second, of that \$1 million deposit, \$500,000 is used for the carve-out. *See id.* at pp. 4-5. Third, the Stipulation gives HRBJW2, LLC eight (8) months to pay the remaining \$3 million of the \$4 million purchase price to the senior lienholders, with interest, and with monthly interest only payments to the senior lienholders in the interim. *See id.* at p. 3, lines 22-28. Lastly, should HRBJW2, LLC not close on the sale, the senior lienholders are granted in rem relief to sell the real property. *See id.* at p. 5, lines 4-6.

No party appears to question that the senior lienholders are undersecured, and that absent the sale of the real property as proposed, which includes the carve-out, there would be no return for other creditors in this bankruptcy case outside of litigation recoveries. So, Blue Jay's point is important, at least as to the carve-out. Since creditors other than the senior lienholders are out of the money, at least as to the real property, the carve-out is the focus of creditors of the Debtor outside of the senior lienholders. As the monies that will be used to fund the carve-out are now funded, the risk of the sale not closing now lies solely with the senior lienholders. This, it seems to the Court, meets Blue Jay's concerns.

Now, the Court will note, as it did in its discussion of the Motion to Modify, that it is concerned about whether the carve-out is sacrosanct. That is, whether it is subject to claw back for any reason, either by the senior lienholders or HRBJW2, LLC. If it is not, then the Court's concern is satisfied as to that issue.

The sale of the real property did not occur as quickly as Blue Jay wanted in this case, but the end result seems to have garnered the Debtor's estate more than it otherwise would have.

As Blue Jay's fundamental opposition has been resolved, the Court will focus its efforts at the conformation hearing on (1) whether the carve-out is untouchable by parties seeking to claw the amounts back for lack of the sale of the real property closing, and (2) whether the carve-out is to be used to fund litigation post-confirmation, including claims objections. Depending on the responses to these issues, the Court is inclined to confirm the Plan.

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

**Wednesday, April 24, 2024**

**Hearing Room 201**

2:00 PM

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

**Chapter 11**

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

**March 6, 2024**

**Appearances required.**

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

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

**Wednesday, April 24, 2024**

**Hearing Room      201**

2:00 PM

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

**Chapter 11**

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

FR. 9-27-23, 11-22-23, 12-13-23, 1-10-24, 3-6-24, 4-10-24

Docket      1

**Tentative Ruling:**

**April 24, 2024**

**Appearances required.**

**April 10, 2024**

**Appearances waived.**

This matter is continued to April 24, 2024, at 2:00 p.m.

**March 6, 2024**

**Appearances required.**

**January 10, 2024**

**Appearances required.**

**December 13, 2023**

**Appearances required.**

**November 22, 2023**

**Appearances waived.**

The Court has reviewed the *Chapter 11 Status Conference Report*. See Docket No.

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

**Wednesday, April 24, 2024**

**Hearing Room 201**

2:00 PM

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

**Chapter 11**

87. The Court will continue the status conference to December 13, 2023, at 2:00 p.m.

**September 27, 2023**

**Appearances required.**

The Court has reviewed the *Chapter 11 Status Conference Report (Initial)*. See Docket No. 56. The Court will inquire with the Office of the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*. The Court is inclined to continue the status conference to November 21, 2023, at 2:00 p.m.

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

S&W Blue Jay Way, LLC

Represented By  
Roye Zur

**Movant(s):**

S&W Blue Jay Way, LLC

Represented By  
Roye Zur