

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9: -

Chapter 0

#0.00 Judge Clifford will take the bench in Courtroom 5D in the Santa Ana Division (at Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, California 92701) for the hearings on calendar for today.

Unless ordered otherwise, appearances for the matters on calendar today may be made in-person in Courtroom 5D in the Santa Ana Division or in-person in Courtroom 201 in Santa Barbara (Northern Division). Appearances made in-person in Santa Barbara will be videoconferenced via ZoomGov into the Santa Ana Courtroom and Judge Clifford will appear via ZoomGov in the Santa Barbara Courtroom. Appearances may also be made by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

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

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

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT...

Chapter 0

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

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 5D Calendar**

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-10710 Hector Aguirre and Norma Margarita Aguirre

Chapter 7

#1.00 Hearing re: [36] Motion to avoid lien under 11 U.S.C. § 522(f) (Real Property) with NDS, LLC

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguirre

Represented By
John K Rounds

Joint Debtor(s):

Norma Margarita Aguirre

Represented By
John K Rounds

Movant(s):

Hector Aguirre

Represented By
John K Rounds
John K Rounds

Norma Margarita Aguirre

Represented By
John K Rounds

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-10710 Hector Aguirre and Norma Margarita Aguirre

Chapter 7

#2.00 Hearing re: [37] Motion to avoid lien under 11 U.S.C. § 522(f) (Real Property)
with American Contractors Indemnity Company

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguirre

Represented By
John K Rounds

Joint Debtor(s):

Norma Margarita Aguirre

Represented By
John K Rounds

Movant(s):

Hector Aguirre

Represented By
John K Rounds
John K Rounds

Norma Margarita Aguirre

Represented By
John K Rounds

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-10710 Hector Aguirre and Norma Margarita Aguirre

Chapter 7

#3.00 Hearing re: [38] Motion to avoid lien under 11 U.S.C. § 522(f) (Real Property)
with Unifund CCR Partners

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguirre

Represented By
John K Rounds

Joint Debtor(s):

Norma Margarita Aguirre

Represented By
John K Rounds

Movant(s):

Hector Aguirre

Represented By
John K Rounds
John K Rounds

Norma Margarita Aguirre

Represented By
John K Rounds

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-10710 Hector Aguirre and Norma Margarita Aguirre

Chapter 7

#4.00 Hearing re: [39] Motion to avoid lien under 11 U.S.C. § 522(f) (Real Property)
with Unifund CCR Partners

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguirre

Represented By
John K Rounds

Joint Debtor(s):

Norma Margarita Aguirre

Represented By
John K Rounds

Movant(s):

Hector Aguirre

Represented By
John K Rounds
John K Rounds

Norma Margarita Aguirre

Represented By
John K Rounds

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-10710 Hector Aguirre and Norma Margarita Aguirre

Chapter 7

#5.00 Hearing re: [40] Motion to avoid lien under 11 U.S.C. § 522(f) (Real Property)
with National Credit Adjusters, LLC

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Aguirre

Represented By
John K Rounds

Joint Debtor(s):

Norma Margarita Aguirre

Represented By
John K Rounds

Movant(s):

Hector Aguirre

Represented By
John K Rounds
John K Rounds

Norma Margarita Aguirre

Represented By
John K Rounds

Trustee(s):

Sandra McBeth (TR)

Pro Se

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

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,

#6.00 CONT'D Status Conference re: RE: [1] Adversary case 9:24-ap-01038.
Complaint by Jerry Namba, Chapter 7 Trustee for the Estate of
40800SEGC LLC against Makat Investments, LLC.

fr. 12-4-24, 5-7-25, 6-4-25,

Docket 1

Tentative Ruling:

June 27, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. See Docket No. 50. The Court will confirm with Defendant that it has paid to Plaintiff the \$3,720 sanctions award that was due by June 11, 2025. See Docket No. 45, *Order as to Order to Show Cause Why Defendant Makat Investments, LLC, Should Not be Held in Contempt and Sanctioned*.

The Court is inclined to reset the dispositive motion deadline, the pretrial conference, and trial.

June 4, 2025

See calendar item 17.

May 7, 2025

Appearances required. In person appearance of Defendant's counsel required.

The Court has reviewed that *Joint Status Report*. See Docket No. 23. The Court is inclined to vacate the dispositive motion deadline, pre-trial conference, and trial dates,

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT... **Makat Investments, LLC**

Chapter 12

and reset those dates due to the Defendant's failure to respond to discovery. The Court will also need to set a new discovery cutoff. The Court will hear from the parties as to what those continued dates should be.

December 4, 2024

Appearances required.

The Court has reviewed that *Joint Status Report*. See Docket No. 6. The Court will issue the following litigation deadlines and dates:

March 3, 2025 – Last day to conduct discovery, including receipt of responses

April 9, 2025, at 9:00 a.m. – Last day to have dispositive motions heard

April 23, 2025, at 9:00 a.m. – Pre-trial conference

April 23, 2025, at 9:00 a.m. – Continued status conference

May 8, 2025, at 9:00 a.m. - Trial

Party Information

Debtor(s):

Makat Investments, LLC

Represented By
Reed H Olmstead

Defendant(s):

Makat Investments, LLC

Represented By
Reed H Olmstead

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

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT...

Makat Investments, LLC

Chapter 12

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:24-11375 Cynthia Joan Marcus

Chapter 11

#7.00 CONT'D Chapter 11 Status Conference

fr. 6-18-25,

Docket 31

Tentative Ruling:

June 27, 2025

Appearances required.

The Court will confirm with the Office of the United States Trustee that the Debtor is in full compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

June 18, 2025

Appearances required.

The Court has reviewed that *Chapter 11 Status Report*. See Docket No. 43. The Court finds no employment application for general insolvency counsel, special litigation counsel, or an accountant. See 11 U.S.C. § 327. The Court entered that *Order on Debtor's Motion to Convert Case Under 11 U.S.C. § 1307(d)* on April 24, 2025. See Docket No. 31. The Court finds no operating report for April or May.

If the Debtor is not in full compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*, the Court will either convert this case to Chapter 7, or dismiss this case.

If the Debtor is in full compliance, the Court will establish a bar date, set a deadline to file a disclosure statement and plan, and set a disclosure statement hearing.

Party Information

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT...

Cynthia Joan Marcus

Chapter 11

Debtor(s):

Cynthia Joan Marcus

Represented By

Reed H Olmstead

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:23-10157 Baron Brothers Nursery, Inc.

Chapter 7

Adv#: 9:25-01009 Sandra K. McBeth, Chapter 7 Trustee v. JPMorgan Chase Bank, National

#8.00 Hearing re: [18] Motion of Defendant JPMorgan Chase Bank, N.A. for leave to file a third-party complaint against Richard Baron and Sandra Baron

Docket 18

Tentative Ruling:

June 27, 2025

Appearances waived.

The hearing on the motion is continued to July 8, 2025, at 1:00 p.m. The record is closed.

Party Information

Debtor(s):

Baron Brothers Nursery, Inc.

Represented By
William E. Winfield

Defendant(s):

JPMorgan Chase Bank, National

Represented By
Matthew S Henderson
Bryant S Delgadillo

Movant(s):

JPMorgan Chase Bank, National

Represented By
Matthew S Henderson
Bryant S Delgadillo

Plaintiff(s):

Sandra K. McBeth, Chapter 7

Represented By
Samuel Mushegh Boyamian

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT... Baron Brothers Nursery, Inc.

Chapter 7

Trustee(s):

Sandra McBeth (TR)

Represented By
Samuel Mushegh Boyamian
Jeremy Faith

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:23-10057 Unlikely Heroes, Inc.

Chapter 7

Adv#: 9:25-01027 McBeth v. Greve

#9.00 Hearing re: [2] Plaintiff's application for temporary restraining order
and preliminary injunction

Docket 2

Tentative Ruling:

June 27, 2025

Appearances required.

Party Information

Debtor(s):

Unlikely Heroes, Inc.

Represented By
Richard P Towne

Defendant(s):

Erica Greve

Pro Se

Plaintiff(s):

Sandra McBeth

Represented By
Ryan W Beall
William C Beall

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall
Carissa N Horowitz
Ryan W Beall

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

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

Chapter 11

#10.00 CONT'D Hearing re: [286] Motion for order compelling Michelle Lerman to appear at a continued deposition and to produce responsive documents

fr. 5-20-25, 6-17-25, 6-25-25,

Docket 286

Tentative Ruling:

June 27, 2025

Appearances waived.

The hearing on this motion is continued to July 8, 2025, at 1:00 p.m.

June 25, 2025

Appearances required.

May 20, 2025

Appearances waived.

This matter is continued to June 3, 2025, at 1:00 p.m.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC

Represented By
Royce Zur
Lauren N Gans

Movant(s):

S&W Blue Jay Way, LLC

Represented By

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT...

S&W Blue Jay Way, LLC

Roye Zur
Lauren N Gans

Chapter 11

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:25-10820 SEN Fitness Group

Chapter 11

#11.00 Hearing re: [10] Emergency motion in Chapter 11 case for order authorizing use of cash collateral (11 U.S.C. § 363)

Docket 10

Tentative Ruling:

June 27, 2025

Appearances required.

Before the Court is that *Notice of Motion and Motion in Chapter 11 Case for Order Authorizing Use of Cash Collateral* [11 U.S.C. § 363] (the "Motion"). See Docket No. 10. Through the Motion, SEN Fitness Group (the "Debtor") seeks authority to use cash collateral of Navitas Credit Corp., Transportation Alliance Bank, Inc., and CT Corp. Systems, on an interim basis, through and including July 31, 2025. *Id.*

First, the Court finds no notice of the hearing on the Motion filed on the docket, which the Court required as a condition to setting the Motion on emergency basis.

Second, the Court has trouble comprehending the Motion. The Court finds no budget for the interim period. Rather, the Court finds annual "Fest" projections for years 2024 through 2028, not broken into month format, and a balance sheet ending April 30, 2025, nearly two (2) months prior to the Debtor's filing Chapter 11. See *id.* at Exhibits B and C. The Court is unable to appreciate what cash collateral amounts the Debtor seeks to utilize, for what purposes, or the collateral base of the creditors whose cash collateral the Debtor seeks to utilize, both before the Debtor's proposed use of cash collateral, and after.

Party Information

Debtor(s):

SEN Fitness Group

Represented By
Eric Bensamochan

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

9:25-10820 SEN Fitness Group

Chapter 11

#12.00 Hearing re: [9] Emergency motion in Chapter 11 case for order authorizing debtor-in-possession to: (1) pay prepetition payroll; (2) honor prepetition employment procedures; and (3) continue paying taxes [LBR 2081-1(A)(6)]

Docket 9

Tentative Ruling:

June 27, 2025

Appearances required.

Background

Before the Court is that *Notice of Motion and Motion in Chapter 11 Case for Order Authorizing Debtor-in-Possession to: (1) Pay Prepetition Payroll; (2) Honor Prepetition Employment Procedures; and (3) Continuing Paying Taxes* (the "Motion"). See Docket No. 9. Through the Motion, SEN Fitness Group (the "Debtor") seeks to make payments to certain employees related to prepetition payroll owed those employees, continue to pay payroll taxes, and to, perhaps, assume that *UFC Gym Management Agreement* (the "Agreement") with UG Management Company, LLC ("UG") to, in part, manage its payroll obligations. See *id.* Altogether, approximately 52 employees are affected by the Motion. See *id.* at *Exhibit A*.

The Agreement went effective December 7, 2019. See *id.* at *Exhibit B*. The Agreement was entered into as between UG and Slava Vilshtein ("Vilshtein"). See *id.* at p. 29. The full term of the Agreement, including renewal options expired on December 7, 2023. See *id.* at p. 31. If the Agreement was further extended, no proof of such extension was filed with the Motion. The Agreement provides that "[a]ll personnel employed at the Franchise will at all times be the employees of [UG] and not the employees of [Vilshtein]." *Id.* at p. 31. The "Franchise" is defined as "the UFC Gym business located at [451 West Esplanade Drive, Oxnard, CA 93036]." See *id.* at p. 29.

The Agreement includes a monthly management fee of \$10,000, a percentage of operating profits, and a \$3,000 back office support service fee. See *id.* at p. 32.

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT... SEN Fitness Group

Chapter 11

"Subject to [Vilshtein's] obligations under [a franchise agreement], [Vilshtein] may not assign [the Agreement] in any circumstance without the prior written consent of [UG]..." *Id.* at p. 38.

Analysis

In reviewing the Motion, the Court has more questions than it has answers.

11 U.S.C. § 507

Pursuant to 11 U.S.C. § 507(a)(4)(A), fourth priority is provided to "allowed unsecured claims, but only to the extent of \$15,150 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for [] wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual." "Section 507(a)(4) gives priority in distribution to claims of employees of the debtor for prepetition wages, salaries and commissions under subsection (a)(4)(A)..." *In re EcoSmart, Inc.*, 2015 WL 9274245 *2 (Bankr. C.D. Cal. 2015)(citing 4 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 507.06[3][b] (16th ed. 2015)).

This Court's Local Rule 2081-1(a)(6) provides that any motion to pay prepetition payroll must be supported by evidence that establishes that "[t]he employees are still employed."

Here, it is unclear to the Court that the employees sought to be paid under the Motion are in-fact employees of the Debtor. Under the terms of the Agreement, and assuming the Agreement has not expired, all personnel employed by the Franchise are employees of UG, and not Vilshtein or the Debtor. Second, the Debtor is not a party to the Agreement. The Agreement is as between UG and Vilshtein. Even if the Debtor were a party to the Agreement, it is UG that would have a prepetition claim against the Debtor for unpaid operational costs, but not the employees of UG.

The Court struggles to appreciate the applicability of 11 U.S.C. § 507(a)(4) on the instant record.

Assumption of the Agreement

Pursuant to 11 U.S.C. § 365(a), "the trustee, subject to the court's approval, may

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

Friday, June 27, 2025

Hearing Room

5D

9:00 AM

CONT...

SEN Fitness Group

Chapter 11

assume or reject any executory contract or unexpired lease of the debtor." "Unless relief is needed to avoid immediate and irreparable harm, the court must not, within 21 days after the petition is filed, grant an application or motion to [] assume or assign an executory contract or unexpired lease under § 365." Fed. R. Bankr. P. 6003(a)(4).

While not entirely clear, and assuming for the moment that the Agreement has not expired, it appears to the Court that the Debtor is seeking approval of the assumption of the Agreement, or at least a part of it. If the Court is correct, again, the Debtor does not appear to be a party to the Agreement. Second, even if the Debtor were a party to the Agreement, the Motion is a payroll motion, and not a motion under 11 U.S.C. § 365. The Debtor provides no analysis under 11 U.S.C. § 365.

Party Information

Debtor(s):

SEN Fitness Group

Represented By
Eric Bensamochan

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

Friday, June 27, 2025

Hearing Room

5D

12:00 PM

9:24-10717 Joe Angus McKenna and Ruth Allison McKenna

Chapter 13

#13.00 CONT'D Evidentiary Hearing re: [30] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 317 East Prune Avenue Lompoc CA 93436

fr. 4-22-25, 6-17-25, 6-23-25,

Docket 30

Tentative Ruling:

June 17, 2025

Appearances required, in-person for all parties and witnesses.

April 22, 2025

Appearances required.

Party Information

Debtor(s):

Joe Angus McKenna

Pro Se

Joint Debtor(s):

Ruth Allison McKenna

Pro Se

Movant(s):

Hollyvale Rental Holdings, LLC

Represented By
Sam Chandra

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se