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 11:00 A.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.

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.

9:00 AM

CONT... **Chapter 0**

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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 -

9:00 AM

9:25-10094 **Kim Marie Martel** **Chapter 7**

Adv#: 9:25-01021 Shelley McConnell, solely in her capacity as Trust v. Martel

#1.00 HearingRE: [39] Motion For Summary Judgment with proof of service

Docket 39

Tentative Ruling:

August 12, 2026

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Kim Marie Martel	Represented By Edwin J Rambuski

Defendant(s):

Kim Marie Martel	Pro Se

Plaintiff(s):

Shelley McConnell, solely in her	Represented By William C Beall

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

Wednesday, August 12, 2026 **Hearing Room 201**

9:00 AM

9:25-10245 Sandra Michelle Studner **Chapter 7**

Adv#: 9:25-01023 Marvin Drabinsky & Associates v. Studner

#2.00 Pre-Trial Conference re: [53] Counterclaim against plaintiff Marvin Drabinsky & Associates; and attorney Leslie Schwaebe Akins for violation of the automatic stay; Counterclaim by Sandra Michelle Studner against Marvin Drabinsky & Associates; Third-Party complaint by Sandra Michelle Studner against Leslie Schwaeve Akins

Docket 53

***** VACATED *** REASON: Complaint and Counterclaim dismissed 5/07/2026.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Michelle Studner	Represented By Jeremy Faith

Defendant(s):

Sandra Michelle Studner	Represented By Jeremy Faith

Plaintiff(s):

Marvin Drabinsky & Associates	Represented By Leslie Schwaebe Akins

Trustee(s):

Amy L Goldman (TR)	Pro Se

9:00 AM

9:25-10245 Sandra Michelle Studner **Chapter 7**

Adv#: 9:25-01023 Marvin Drabinsky & Associates v. Studner

#3.00 CONT'D Status Conference re: Counterclaim Against Plaintiff Marvin Drabinsky & Associates, and Attorney Leslie Schwaebe Akins for Violation of the Automatic Stay, Counterclaim by Sandra Michelle Studner against Marvin Drabinsky & Associates; Third-Party Complaint by Sandra Michelle Studner against Leslie Schwaeve Akins

fr. 1-28-26,

Docket 53

***** VACATED *** REASON: Complaint and Counterclaim dismissed 5/07/2026.**

Tentative Ruling:

January 28, 2026

Appearances required.

The proceeding appears to be at issue. The Court has reviewed that *Joint Status Report*. *See* Docket No. 61.

The Court is inclined to set the following litigation dates:

February 27, 2026 – Deadline to add parties

May 29, 2026 – Deadline to complete discovery, including receipt of discovery responses

July 29, 2026, at 9:00 a.m. – Last day for the Court to hear dispositive motions

August 12, 2026, at 9:00 a.m. - Continued status conference, in-person appearances

August 12, 2026, at 9:00 a.m. – Pretrial Conference, appearances of counsel, in-person

9:00 AM

CONT... Sandra Michelle Studner Chapter 7

August 27, 2026, at 9:00 a.m. – Trial, in-person, witnesses and counsel

Regarding mediation, would discovery advance the efficacy of any ordered mediation?

Plaintiff shall lodge a scheduling order within 7 days.

Party Information

Debtor(s):

Sandra Michelle Studner	Represented By Jeremy Faith

Defendant(s):

Sandra Michelle Studner	Represented By Jeremy Faith

Movant(s):

Sandra Michelle Studner	Represented By Jeremy Faith
Sandra Michelle Studner	Represented By Jeremy Faith

Plaintiff(s):

Marvin Drabinsky & Associates	Represented By Leslie Schwaebe Akins

Trustee(s):

Amy L Goldman (TR)	Pro Se

9:00 AM

9:24-11382 Christopher Darrell Mitchell **Chapter 7**

Adv#: 9:25-01030 Bragar v. Mitchell

#4.00 CONT'D Hearing re: [38] Plaintiff's motion for default judgment under LBR 7055-1

fr. 4-8-26, 4-22-26, 6-17-26, 7-08-26,

Docket 38

Tentative Ruling:

August 12, 2026

Appearances required.

Background

"On October 21, 2024, [Michael Bragar (the "Plaintiff")] obtained a judgment of [$774,996.75, the "Judgment"] as against [Christopher Darrell Mitchell (the "Defendant")], Westlake Capital Partners, Inc. and Bitcoin Advizers, LLC in the [] Los Angeles Superior Court Case No. 22STCV34243 []." *See* Docket No. 1, *Adversary Complaint to 1. Determine Non-Dischargeability of Debt, Pursuant to 11 U.S.C. §523(a)(2); and 2. Determine Non-Dischargeability of Debt, Pursuant to 11 U.S.C. § 523(a)(6)* (the "Complaint"), p. 2, lines 4-7. The State Court found in favor of the Plaintiff on the claims of "fraud, fraudulent concealment, negligent representation, conversion in violation of Penal Code section 496 and recission." *See* Docket No. 46, *Supplemental Declaration of Michael Bragar in Support of Plaintiff's Motion for Default Judgment*, p. 80, *Exhibit M*. The Judgment was broken down as follows: (1) $50,000, which "represents the $100,000 amount of which Plaintiff was defrauded, less the $50,000 returned to him by Larren Marrisett;" (2) $328,000 which was the loss of employment due to the fraud;" (3) $56,996.75 in attorney's fees, which are recoverable under Penal Code section 496;" (4) "$40,000 in emotional distress damages" associated with the fraud; (5) "$300,000 in punitive damages." *See id.* at pp. 80-81.

On December 4, 2024, the Defendant filed a voluntary petition for relief under

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CONT... Christopher Darrell Mitchell **Chapter 7**

Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, p. 2, lines 26-27.

On July 23, 2025, the Plaintiff filed the Complaint against the Defendant, seeking to except the Judgment from the Defendant's discharge pursuant to 11 U.S.C. §§ 523(a)(2) and 523(a)(6). *See* Docket No. 1.

On September 18, 2025, the Court's Clerk entered the Defendant's default pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "First Default"). *See* Docket No. 8, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On November 24, 2025, the Court issued that *Order Granting Defendant's Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* setting aside the First Default. *See* Docket No. 25.

On December 30, 2025, the Court's Clerk for the second time entered the Defendant's default pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "Second Default"). *See* Docket No. 31, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*. The Defendant has never moved the Court to set aside the Second Default.

On January 12, 2026, the Defendant filed that *Answer to Adversary Complaint*. *See* Docket No. 33.

On March 18, 2026, the Plaintiff filed *Plaintiff's Motion for Default Judgment* (the "Motion"), in which the Plaintiff sought, *inter alia*, entry of judgment on the Complaint. *See* Docket No. 38.

On May 27, 2026, the Plaintiff supplemented the Motion with that *Supplemental Declaration of Michael Bragar in Support of Plaintiff's Motion for Default Judgment* and that *Supplemental Declaration of David A. Duben in Support of Plaintiff's Motion for Default Judgment*. *See* Docket Nos. 46 and 45, respectively.

Notice and Service

Pursuant to this Court's Local Rule 7055-1(b)(1)(E), notice of a motion for default judgment must be served on the defaulting party. On March 17, 2026, that *Notice of Motion for: Plaintiff's Motion for Default Judgment Under LBR 7055-1* (the "Notice") was served on the Defendant by way of first-class mail. *See* Docket No. 39, *Proof of Service of Document*, p. 3. The Notice informed the Defendant that any opposition to the Motion must be in written form, and filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.* at p. 2. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Defendant has filed nothing in response to the Motion. The Court therefore takes the default of the Defendant.

Analysis

A default by a party to an adversary proceeding does not automatically entitle the plaintiff to entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2), as made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. "Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy proceedings by Rule 7055." *In re McGee*, 359 B.R. 764, 770 (9th Cir. BAP 2006). "Federal Rule of Bankruptcy Procedure 7055(b)(2) governing the granting of default judgments provides the court with broad discretion to conduct such hearings and receive evidence that it deems proper before entering a default judgment." *In re Trevisan*, 300 B.R. 708, 713 (Bankr. E.D. Wis. 2003) (internal citations omitted). "Entry of a default judgment is discretionary with the trial court and may be denied where there are insufficient facts to support the claim." *In re Sziel*, 206 B.R. 490, 495 (Bankr. N.D. Ill. 1997).

"Default judgments are not mandatory." *In re Fuentes*, 474 B.R. 497, 501. "Under Rule 7055, the Court may require proof or necessary facts to support a valid cause of action." *Id.* "If such facts are lacking, the Court may not enter the judgment." *Id.* (citing *Peerless Indus., Inc. v. Herrin Illinois Café, Inc.*, 593 F.Supp. 1339, 1341 (E.D. Mo. 1984)). "Bankruptcy courts have broad discretion in considering whether a default judgment is warranted in dischargeability actions." *Id.* at 502 (citing *In re Beltran*, 182 B.R. 820, 823 (9th Cir. BAP 1995); *In re Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991)). "Notably, this discretion is often exercised when the plaintiff's complaint has questionably pleaded § 523(a)(2)(A) allegations." *Id.*

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"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.*; *see also* 10A Fed. Prac. & Proc. Civ. 3D, § 2685 (factors include whether there are material issues of fact and whether the grounds for default have been clearly established).

Collateral Estoppel

"[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*,

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CONT... **Christopher Darrell Mitchell** **Chapter 7**

182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996).

Here, the Judgment was actually litigated between the Plaintiff and the Defendant, necessarily decided, and is final. Issue preclusion applies to the Complaint.

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 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)).

In the instant case, the Judgment specifically found the Defendant liable to the Plaintiff under the theories of fraud and conversion. Both fraud and conversion are "nondischargeable under either § 523(a)(2) or § 523(a)(6)…" *In re Giangrasso*, 145 B.R. 319, 323 (9th Cir. BAP 1992).

The Court grants the Plaintiff judgment under 11 U.S.C. § 523(a)(2)(A) in the amount of $476,624. Punitive damages are not subject to 11 U.S.C. § 523(a)(2)(A). *See In re Giangrasso*, 145 B.R. at 323.

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 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 also In re Tomkow,* 563 B.R. 716, 729 (9th Cir. BAP 2017) (under California law conversion can support the malicious injury element of 11 U.S.C. § 523(a)(6) and punitive damages with a finding of fraud and malice can satisfy the willful injury element).

Here, in issuing the Judgment, the state court found that the Defendant defrauded the Plaintiff, and awarded punitive damages. All the damages including the punitive damages, as well as the award of the attorney's fees were related to the fraud committed by the Defendant and for the receipt of stolen property.

The Court grants the Plaintiff judgment under 11 U.S.C. § 523(a)(6) in the amount of $776,624.

Conclusion

The Plaintiff is to lodge a conforming order and form of judgment consistent

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CONT... Christopher Darrell Mitchell Chapter 7

herewith, attaching this tentative ruling as the Court’s findings of fact and conclusions of law.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

April 22, 2026

Appearances required.

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

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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 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, the State Court issued an order (the "MSJ Order") on a *Motion for Summary Adjudication* filed by the Plaintiff, and as against the Defendant and Westlake Capital Partners, Inc. *See* Docket No. 41. The State Court found that the Defendant represented:

1. "[T]o Plaintiff that [Larin Marrisett] had previous experience with lead generation and would be making instrumental contributions to Westlake's lead generation process;"

2. "[T]hat Plaintiff's investment would be used to purchase or develop better quality leads for gold and silver sales;"
3. "[T]hat he planned to dedicate his time selling for Westlake;"
4. "[T]hat other investors were looking to put money into Westlake as of that date;"
5. "[T]hat Westlake would hire at least six new employees if Plaintiff invested in Westlake;"
6. "[T]hat Westlake would set up dialers for prospective clients if Plaintiff invested in Westlake.

See id. at p. 6.

The State Court found that the Defendant "knew that the representations were false at the time he made them to Plaintiff," and that "Plaintiff relied on the representations and financial documents provided to him by [the Defendant] when entering into the Membership Interest Purchase Agreement." *See id.; see also Id.* at p. 8. The State Court found all elements of fraud to be satisfied. *See id.* at p. 9. The State Court issued an award to Plaintiff and as against the Defendant in the amount of $774,996.75. *See* Docket No. 38, p. 101.

However, the State Court appears to have based these facts on requests for admission that were deemed admitted by way of the Plaintiff's motion requesting the same. *See* Docket No. 41, p. 5. "[W]here issues are deemed admitted due to a party's failure to comply with discovery requests, the 'actually litigated' element of collateral estoppel is unsatisfied." *In re Pizante*, 186 B.R. 484, 489 (9th Cir. BAP 1995).

The Court will hear from the Plaintiff regarding the applicability of collateral estoppel to the State Court judgment, here.

April 8, 2026

Appearances required.

Background

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CONT... Christopher Darrell Mitchell **Chapter 7**

On December 4, 2024, Christopher Darrell Mitchell (the "Debtor" or the "Defendant") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Case"). *See* Case 9:24-bk-11382-RC, Docket No. 1.

On July 23, 2025, Michael Bragar (the "Plaintiff") filed that *Adversary Complaint to: 1. Determine Dischargeability of Debt Under 11 U.S.C. §§523(a)(2); and 2. Determine Non-Dischargeability of Debtor Pursuant to 11 U.S.C. § 523(a)(6)* (the "Complaint"), seeking to determine a debt from a state court judgment be excluded from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a)(2) and 523(a)(6). *See* Case No. 9:25-ap-01032-RC **[FN1]**, Docket No. 1. More specifically, a judgment in favor of the Plaintiff for $777,624.00 (the "Judgment") was entered in the Superior Court of the County of Los Angeles (the "LA Court") in that case styled 22STVC34243 (the "State Court Action"). *See id.* at p. 2 ¶ 2 and *Exhibit B*, pp. 23-25.

On September 18, 2025, the Court's Clerk entered default against the Debtor pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "First Default"). *See* Docket No. 8, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On November 24, 2025, the Court issued that *Order Granting Defendant's Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* (the "Order") setting aside the First Default. *See* Docket No. 25.

On December 30, 2025, the Court's Clerk entered default against the Debtor pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "Second Default"). *See* Docket No. 31, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On January 12, 2026, the Debtor filed that *Answer to Adversary Complaint* (the "Answer"). *See* Docket No. 33.

Before the Court is that *Plaintiff's Notice of Motion & Motion for Default Judgment* (the "Motion") filed by the Plaintiff on March 18, 2026, in which the Plaintiff seeks, *inter alia*, entry of judgment on the Complaint. *See* Docket No. 38. Among the documents attached to the Motion, is the complaint in the LA Court Action, the Judgment, and the minute order (the "Minute Order") in the LA Court Action granting judgment in favor of the Plaintiff. *See id.* at *Exhibit C*, *Exhibit D*, and *Exhibit F*, respectively.

The Plaintiff alleged nine causes of action in the State Court Action including fraud, fraudulent concealment, negligent misrepresentation, breach of contract, conversion, and breach of fiduciary. *See id.* at *Exhibit C*, pp. 26-43. The Judgment awarded the Plaintiff $776,624 consisting of $418,000.00 of damages, $56,996.75 of attorney fees, $1,627.25 of costs, and $300,000.00 of punitive damages all against defendants – the Defendant, Westlake Capital Partners, Inc. dba "Lexi Cpaital", a California corporation, and Bitcoin Advizers, LLC, a California limited liability company. *See id.* at *Exhibit D*, pp. 56-58.

The Minute Order states that the LA Court "granted summary adjudication in favor of the Plaintiff [] on the following claims: fraud, fraudulent concealment, negligent misrepresentation, conversion in violation of Penal Code section 496 and rescission." *See id.* at *Exhibit D*, p. 100. The LA Court awarded the Plaintiff (1) $50,000 for money he was defrauded of, (2) "$328,000 which was the loss of employment due to the fraud," (3) "$56,996.75 in attorney's fees, which are recoverable under Penal Code section 496 subdivision (c)," (4) $40,000.00 in emotional distress damages which the LA Court found were caused by the Defendant's fraud, (5) $300,000.00 in punitive damages because the Defendant "acted with fraud." *See id.* at *Exhibit F*, pp. 100-101.

Notice and Service

Pursuant to this Court's Local Rule 7055-1(b)(1)(E), notice of a motion for default judgment must be served on the defaulting party. On January 24, 2026, the Motion and notice thereof were mailed to the Debtor. *See* Docket No. 38, *Proof of Service of Document*, p. 103. **[FN2]**

Analysis

A default by a party to an adversary proceeding does not automatically entitle the plaintiff to entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2), as made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. "Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy proceedings by Rule 7055." *In re McGee*, 359 B.R. 764, 770 (9th Cir.

BAP 2006). "Federal Rule of Bankruptcy Procedure 7055(b)(2) governing the granting of default judgments provides the court with broad discretion to conduct such hearings and receive evidence that it deems proper before entering a default judgment." *In re Trevisan*, 300 B.R. 708, 713 (Bankr. E.D. Wis. 2003) (internal citations omitted). "Entry of a default judgment is discretionary with the trial court and may be denied where there are insufficient facts to support the claim." *In re Sziel*, 206 B.R. 490, 495 (Bankr. N.D. Ill. 1997).

"Default judgments are not mandatory." *In re Fuentes*, 474 B.R. 497, 501. "Under Rule 7055, the Court may require proof or necessary facts to support a valid cause of action." *Id.* "If such facts are lacking, the Court may not enter the judgment." *Id.* (citing *Peerless Indus., Inc. v. Herrin Illinois Café, Inc.*, 593 F.Supp. 1339, 1341 (E.D. Mo. 1984)). "Bankruptcy courts have broad discretion in considering whether a default judgment is warranted in dischargeability actions." *Id.* at 502 (citing *In re Beltran*, 182 B.R. 820, 823 (9th Cir. BAP 1995); *In re Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991)). "Notably, this discretion is often exercised when the plaintiff's complaint has questionably pleaded § 523(a)(2)(A) allegations." *Id.*

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.*; *see also* 10A Fed. Prac. & Proc. Civ. 3D, § 2685 (factors include whether there are material issues of fact and whether the grounds for default have been clearly established).

Here, the lack of entry of default judgment will prejudice the Plaintiff significantly because the Plaintiff will not be able to fully determine his claim against the Defendant nondischargeable and obtain such a judgment to be able to pursue the Defendant outside of bankruptcy. The Defendant has refused to participate in this litigation despite being provided two separate opportunities to respond to the Complaint. The Defendant has filed the Answer, but the Answer was filed after the Second Default was entered, and the Defendant never moved the Court to set aside the Second Default.

9:00 AM
CONT... **Christopher Darrell Mitchell** **Chapter 7**
Collateral Estoppel

"Issue preclusion applies in dischargeability proceedings to preclude relitigation of state court findings relevant to exceptions to discharge. *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991); *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). And a bankruptcy court may apply the doctrine to an existing state court judgment as the basis for granting summary judgment. *See In re Khaligh*, 338 B.R. 817, 832 (9th Cir. BAP 2006), *aff'd*, 506 F.3d 956 (9th Cir. 2007). 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. *Lucido v. Super. Ct.*, 51 Cal. 3d 335, 341 (1990). Even if all five threshold requirements are satisfied, California law requires that application of the doctrine be consistent with the public policies of 'preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.' *Id.* at 342-43.

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). Reasonable doubts about what was decided in the prior action will weigh against applying issue preclusion. *Id." In re Mann,* 2020 Bankr. LEXIS 1542, *12-13 (9th Cir. BAP 2020) (cleaned up).

Here, the Judgment and Minute Order were actually litigated between the Plaintiff and the Defendant. However, the findings of the LA Court related to the summary judgment order are not included, at least not that this Court can locate. It is not clear to this Court what findings create the underpinnings of the Judgment. The Plaintiff should appear, and be ready to testify about the facts it seeks this Court to adjudge unless the LA Court factual findings are lodged.

9:00 AM

CONT... Christopher Darrell Mitchell **Chapter 7**

Party Information

Debtor(s):

Christopher Darrell Mitchell — Pro Se

Defendant(s):

Christopher D. Mitchell — Pro Se

Movant(s):

Michael Bragar — Represented By
Richard Sherman

Plaintiff(s):

Michael Bragar — Represented By
Richard Sherman

Trustee(s):

Jerry Namba (TR) — Represented By
Bradford Barnhardt

9:00 AM

9:24-11382 Christopher Darrell Mitchell **Chapter 7**

Adv#: 9:25-01030 Bragar v. Mitchell

#5.00 CONT'D Status Conference re: [1] Adversary case 9:25-ap-01030. Complaint by Michael Bragar against Christopher D. Mitchell,false pretenses, false representation, actual fraud)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 1-14-26, 3-11-26, 4-22-26, 6-17-26, 7-08-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

April 22, 2026

Appearances required.

9:00 AM
CONT... **Christopher Darrell Mitchell** **Chapter 7**

March 11, 2026

Appearances required.

On December 30, 2025, the Court's Clerk issued that *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*. *See* Docket No. 31. The Court finds no motion for default judgment, now more than two (2) months since default was taken.

January 14, 2026

Appearances waived.

The Court's Clerk issued another summons (the "Summons") on November 24, 2025. *See* Docket No. 24-1, *Another Summons and Notice of Status Conference in Adversary Proceeding [LBR 7004-1*]. The Summons required a response to that *Adversary Complaint to 1. Determine Non-Dischargeability of Debt, Pursuant to 11 U.S.C. §523(a)(2); and 2. Determine Non-Dischargeability of Debt, Pursuant to 11 U.S.C. §523(a)(6)* (the "Complaint") by December 24, 2025. *See id.* at p. 1. The Court finds no response to the Complaint as of December 29, 2025. Absent a response to the Complaint, this proceeding is not yet at issue. The Court will continue the status conference to allow a default to be taken, and a motion for judgment by default to be filed.

The status conference is continued to March 11, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Christopher Darrell Mitchell	Pro Se

Defendant(s):

Christopher D. Mitchell	Pro Se

Plaintiff(s):

Michael Bragar	Represented By

9:00 AM
CONT... **Christopher Darrell Mitchell** **Chapter 7**

Richard Sherman

Trustee(s):

Jerry Namba (TR) Represented By
Bradford Barnhardt

9:00 AM
9:24-11382 Christopher Darrell Mitchell **Chapter 7**
Adv#: 9:25-01031 Offill v. Mitchell

#6.00 HearingRE: [60] Motion For Summary Judgment and Memorandum in Support

Docket 60

Tentative Ruling:

August 12, 2026

Appearances required.

Background

On July 24, 2025, Todd Ray Offill ("Plaintiff") filed against Christopher D. Mitchell ("Defendant") that *Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6), and General Objection to Discharge Under 11 U.S.C. § 727(a)* (the "Complaint"). *See* Docket No. 1. As its title indicates, through the Complaint, Plaintiff sought to together except their obligations against Defendant from Defendant's discharge pursuant to 11 U.S.C. §§ 523(a)(2), (4) and (6), and challenge Defendant's discharge *omnino* under 11 U.S.C. § 727(a). *See id.*

On July 2, 2026, Plaintiff filed *Plaintiff's Motion for Summary Judgment and Memorandum in Support* (the "Motion"), through which Plaintiff sought judgment on all the Complaint's causes of action under the auspices of, *inter alia*, Fed. R. Bankr. P. 7056. *See* Docket No. 65.

Analysis

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 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.]"'

9:00 AM

CONT... **Christopher Darrell Mitchell** **Chapter 7**

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).

"[M]otions for summary judgment must be supported by specific facts set forth in declarations, depositions, answers to interrogatories, or authenticated documents." *Briggs v. Blomkamp*, 2014 WL 12567155 *1 (N.D. Cal. 2014); *see also* Fed. R. Civ. P. 56(c). "'A trial court can only consider admissible evidence in ruling on a motion for summary judgment.'" *Id.* (quoting *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002)).

In the case at bar, the Motion contains any number of facts that are being advanced in support of the relief entreated. Alas, the Court struggles to discover any admissible evidence in support of these facts. The Court finds no declaration of Plaintiff to support any fact, or any request that the Court judicially notice a fact. The Motion partly, if not fully rests on requests for admission that Plaintiff asserts Defendant did not respond to. The Court does not, however, locate any declaration as to Defendant's failure to respond to these requests for admission. This fact is simply baked into the Motion's points and authorities. "While Rule 36 may be self-executing, a memorandum of points and authorities itself has no evidentiary significance. Absent some declaration indicating that the Requests for Admissions had been served but no response had been received, there is no admissible evidence of the facts admitted." *Carrasco v. Metro Police Dept.*, 4 Fed.Appx. 414, 416 (9th Cir. 2001).

Party Information

Debtor(s):

Christopher Darrell Mitchell — Pro Se

Defendant(s):

Christopher Darrell Mitchell — Pro Se

Plaintiff(s):

Todd Ray Offill — Represented By

9:00 AM

CONT... Christopher Darrell Mitchell **Chapter 7**

Brian M Rothschild

Trustee(s):

Jerry Namba (TR) Represented By
Bradford Barnhardt

9:00 AM
9:24-11382 Christopher Darrell Mitchell **Chapter 7**
Adv#: 9:25-01031 Offill v. Mitchell

#7.00 CONT'D Status Conference re: [1] Adversary case 9:25-ap-01031. Complaint by Todd Offill against Christopher Darrell Mitchell. 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)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))

fr. 12-03-25, 1-14-26, 3-11-26, 5-06-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

The Court has reviewed that *Unilateral Status Report*. *See* Docket No. 66. A pre-trial conference is set for September 10, 2026. *See* Docket No. 52, *Status Conference and Scheduling Order Pursuant to LBR 7016-1(a)(4)*, p. 1. Trial is set for September 17, 2026. *See id.* at p. 2. The Court is tentatively denying *Plaintiff's Motion for Summary Judgment and Memorandum in Support*. *See* Docket No. 65; *see also* Tentative Ruling for August 12, 2026.

The Court will hear from Plaintiff.

May 6, 2026

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 54. It appears that the parties are interested in mediating the matter. *See id.* at p. 3. The discovery cutoff is July 15, 2026. *See* Docket No. 47. The Court will hear from the parties about the timing of mediation.

9:00 AM

CONT... Christopher Darrell Mitchell **Chapter 7**

The Court is inclined to continue the status conference to August 12, 2026, at 9:00 a.m.

March 11, 2026

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 43. The Court will set the following litigation dates:

March 20, 2026 – Deadline to add parties

July 15, 2026 – Deadline to complete discovery, including receipt of responses

August 12, 2026, at 9:00 a.m. – Deadline for dispositive motions to be heard

September 10, 2026, at 9:00 a.m. - Pretrial conference, in-person appearances only

September 17, 2026, at noon – Trial, in-person, counsel and witnesses

Plaintiff is to lodge a scheduling order within 7 days, and serve the entered order on Defendant within 7 days of entry.

January 14, 2026

Appearances required. Plaintiff may appear remotely. Defendant is to appear, in-person.

The Court here begins with its reminder of the tentative ruling issued in relation to the prior status conference. On November 19, 2025, the Court's Docket entry 29 required Plaintiff to lodge an order denying that *Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* by November 26, 2025. No such order has been lodged.

Those *Adversary Proceeding Status Conference Procedures* (the "Procedures") provide that "[a] joint status report prepared using Local Form F

9:00 AM
CONT... Christopher Darrell Mitchell Chapter 7

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.* 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."

Here, counsel to Plaintiff attests that between November 19, 2025 and December 20, 2025, three (3) emails were forwarded to Defendant with a form joint conference statement, with Plaintiff's portion of the statement completed. *See* Docket No. 31, *Unilateral Status Report* (the "Report"), pp. 5-9. According to counsel for Plaintiff, Defendant did not respond to any of the emails. In accordance with this Court's Local Rule 7016-1(a)(3), Plaintiff filed the Report. *See* Docket No. 31. Defendant has filed nothing, standing in violation of this Court's Local Rule 7016-1(a)(3) and the Procedures.

The Court is inclined to (1) issue a show cause order as to why Defendant's answer should not be stricken, and default entered in favor of Plaintiff, and/or (2) order monetary sanctions in favor of Plaintiff for attorneys' fees.

December 3, 2025

Appearances waived.

On November 3, 2025, defendant Christopher Darrell Mitchell filed that *Answer to Adversary Complaint* (the "Answer"). *See* Docket No. 27. The Answer was filed in

9:00 AM

CONT... **Christopher Darrell Mitchell** **Chapter 7**

response to a substitute summons issued on October 2, 2025, and served on October 7, 2025. *See* Docket Nos. 19 and 24. On November 19, 2025, the Court denied that *Notice of Motion and Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* (the "Motion"), as no default had been entered. *See* Docket No. 29.

The Court reminds plaintiff Todd Ray Offill that they are directed to lodge an order denying the Motion within seven (7) days of the hearing on the Motion. *See id.*

This matter appears to be at issue. The Court will continue the initial status conference to January 14, 2026, at 9:00 a.m. The Court directs the parties to those *Adversary Proceeding Status Conference Procedures* (Docket No. 19), this Court's Local Rule 7016-1(a), Fed. R. Bankr. P. 7026, and Fed. R. Civ. P. 26(f).

Party Information

Debtor(s):

Christopher Darrell Mitchell	Pro Se

Defendant(s):

Christopher Darrell Mitchell	Pro Se

Plaintiff(s):

Todd Ray Offill	Represented By Brian M Rothschild

Trustee(s):

Jerry Namba (TR)	Represented By Bradford Barnhardt

9:00 AM

9:24-11382 Christopher Darrell Mitchell **Chapter 7**

Adv#: 9:25-01032 Ellis v. Mitchell

#8.00 CONT'D Hearing re: [53] Plaintiff's motion for default judgment under LBR 7055-1

fr. 2-25-26, 4-8-26, 6-17-26, 7-08-26,

Docket 53

Tentative Ruling:

August 12, 2026

Appearances required.

Background

On December 4, 2024, Christopher Darrell Mitchell (the "Defendant") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Case"). *See* Case 9:24-bk-11382-RC, Docket No. 1.

On July 25, 2025, Terry Ellis (the "Plaintiff") filed that *Adversary Complaint to Determine Dischargeability of Debt Under 11 U.S.C. §§523(a)(2), (a)(4), and (a)(6)* (the "Complaint"), seeking to liquidate and determine a debt to be excluded from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). *See* Case No. 9:25-ap-01032-RC **[FN1]**, Docket No. 1.

On September 11, 2025, the Court's Clerk entered default against the Defendant pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "First Default"). *See* Docket No. 6, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On November 24, 2025, the Court entered that *Order Granting Defendant's Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* (the "Order"), setting aside the First Default. *See* Docket No. 39.

9:00 AM
CONT... **Christopher Darrell Mitchell** **Chapter 7**

On January 12, 2026, the Court's Clerk entered default against the Defendant pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "Second Default"). *See* Docket No. 49, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On January 20, 2026, the Defendant filed that *Answer to Adversary Complaint* (the "Answer"), but has not moved the Court to set aside the Second Default. *See* Docket No. 52.

Before the Court is *Plaintiff's Amended Notice and Motion for Default Judgment* (the "Motion") filed by the Plaintiff on May 26, 2026, in which the Plaintiff seeks, *inter alia*, entry of judgment on the Complaint, awarding the Plaintiff the value of bitcoin that the Defendant informed the Plaintiff that Plaintiff owned, and that the amount of that judgment be determined to be excepted from the Defendant's discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6). *See* Docket No. 64.

Analysis

A default by a party to an adversary proceeding does not automatically entitle the plaintiff to entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2), as made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. "Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy proceedings by Rule 7055." *In re McGee*, 359 B.R. 764, 770 (9th Cir. BAP 2006). "Federal Rule of Bankruptcy Procedure 7055(b)(2) governing the granting of default judgments provides the court with broad discretion to conduct such hearings and receive evidence that it deems proper before entering a default judgment." *In re Trevisan*, 300 B.R. 708, 713 (Bankr. E.D. Wis. 2003) (internal citations omitted). "Entry of a default judgment is discretionary with the trial court and may be denied where there are insufficient facts to support the claim." *In re Sziel*, 206 B.R. 490, 495 (Bankr. N.D. Ill. 1997).

"Default judgments are not mandatory." *In re Fuentes*, 474 B.R. 497, 501. "Under Rule 7055, the Court may require proof or necessary facts to support a valid cause of action." *Id.* "If such facts are lacking, the Court may not enter the judgment." *Id.* (citing *Peerless Indus., Inc. v. Herrin Illinois Café, Inc.*, 593 F.Supp. 1339, 1341 (E.D. Mo. 1984)). "Bankruptcy courts have broad discretion in considering whether a default judgment is warranted in dischargeability actions." *Id.* at 502 (citing *In re Beltran*, 182 B.R. 820, 823 (9th Cir. BAP 1995); *In re Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991)). "Notably, this discretion is often exercised when the plaintiff's complaint has questionably pleaded § 523(a)(2)(A) allegations." *Id.*

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.*; *see also* 10A Fed. Prac. & Proc. Civ. 3D, § 2685 (factors include whether there are material issues of fact and whether the grounds for default have been clearly established).

Here, the lack of entry of default judgment will prejudice the Plaintiff significantly, largely because of delay, and now, sunk costs in the instant litigation. The Defendant has not meaningfully participated in this litigation. Instead, the Defendant has only caused unreasonable delay without excusable neglect by failing to answer the Complaint after setting aside the First Default.

Further, the Complaint is well pled and supported by sufficient evidence. The Complaint alleges that the Plaintiff and the Defendant entered into that *Digital Asset Management Agreement* (the "Agreement") in which the Defendant would manage and invest the Plaintiff's monies in the form of various cryptocurrencies. The Complaint alleges that the Defendant made a number of material false representations regarding the Agreement, including: (1) the Defendant would provide the Plaintiff with an application that would show "real time" accurate information about the Plaintiff's investments; (2) the Defendant had the expertise and systems necessary to safely manage cryptocurrency assets; (3) the Defendant would act in a fiduciary capacity; and (4) the Defendant would trade and manage cryptocurrency through digital currency exchanges on behalf of the Plaintiff. Despite making these representations, the Complaint alleges that the Defendant converted, misappropriated, and embezzled the Plaintiff's funds and cryptocurrency assets for his own use and benefit.

Although there is a strong policy in favor of making decisions on the merits and there may be disputes as material facts in this matter, these concerns are outweighed by the delay to the Plaintiff and the sufficiency of the evidence presented with the Motion.

11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), "a discharge under section [11 U.S.C. § 1328(b)] 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 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 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)).

Here, the Defendant made several false, material misrepresentations, as set forth in the Complaint. *See* Docket No. 1, pp. 3-5. The Plaintiff has proven that $420,000 was wired to Bitcoin Advizers LLC, which the Defendant controlled, and that rather than use those monies as called for in the Agreement, the Defendant absconded with the monies or failed to invest the monies as required by the Agreement. In the end, the monies have been completely lost. The application that Bitcoin Advizers LLC provided to the Plaintiff was of no use. The Defendant called the application an "estimator." The application gave a picture of an investment that did not exist, bitcoin, as if the investment did exist.

Further, the Motion sufficiently evidences that the Defendant knew that the statement he made to the Plaintiff were false when they were made, never had any intention on making good on those representations, and that the Plaintiff was harmed because of those representations.

The Court will enter judgment in favor of the Plaintiff, and as against the Defendant under 11 U.S.C. § 523(a)(2)(A). The judgment will be for $420,000, plus prejudgment interest. The Plaintiff seeks a judgment for the amount of bitcoin the

9:00 AM
CONT... Christopher Darrell Mitchell **Chapter 7**

Defendant's application informed the Plaintiff was in Plaintiff's account, but as the Plaintiff's evidence provides, the entire relationship was built on a farce. By all accounts, the Plaintiff's money was never converted into any investment. The Plaintiff is out their initial investment, but it is unclear to the Court the theory being advanced by the Plaintiff that justifies a judgment for the current value of an investment vehicle that the Defendant never had any intent on purchasing for the Plaintiff. It is not even clear to the Court what number of bitcoins the $420,000 would have theoretically purchased on July 1, 2022.

As the Court is granting judgment on the 11 U.S.C. § 523(a)(2)(A) cause of action, it need not go any further.

Conclusion

The Court grants the Motion and will enter judgment in favor of the Plaintiff as to the 11 U.S.C. § 523(a)(2)(A) cause of action. The Plaintiff is to lodge a conforming form order and judgment.

[FN1]
Unless otherwise noted, all references to the docket refer to case # 9:25-ap-01032-RC.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

April 8, 2026

Appearances required.

Background

On December 4, 2024, Christopher Darrell Mitchell (the "Defendant") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Case 9:24-bk-11382-RC, Docket No. 1.

On July 25, 2025, Terry Ellis (the "Plaintiff") filed that *Adversary Complaint to Determine Dischargeability of Debt Under 11 U.S.C. §§523(a)(2), (a)(4), and (a)(6)* (the "Complaint"), seeking to liquidate and determine a debt to be excluded from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). *See* Case No. 9:25-ap-01032-RC **[FN1]**, Docket No. 1. The Defendant was served with that *Summons and Notice of Status Conference in Adversary Proceeding [LBR 7004-1]* and the Complaint on July 30, 2025. *See* Docket No. 4, p. 23, *Proof of Service of Document*.

On September 11, 2025, the Court's Clerk entered default against the Debtor pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "First Default"). *See* Docket No. 6, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*. On November 24, 2025, the Court issued that *Order Granting Defendant's Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* (the "Order") setting aside the First Default. *See* Docket No. 39.

On November 21, 2025, the Plaintiff served the Complaint and *Another Summons and Notice of Status Conference in Adversary Proceeding [LBR 7004-1]* on the Defendant. *See* Docket No. 36. On January 12, 2026, the Court's Clerk entered default against the Defendant pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "Second Default"). *See* Docket No. 49, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On January 20, 2026, the Defendant filed that *Answer to Adversary Complaint* (the

"Answer"). *See* Docket No. 52.

Before the Court is that *Plaintiff's Notice of Motion & Motion for Default Judgment* (the "Motion") filed by the Plaintiff on January 24, 2026, in which the Plaintiff seeks, *inter alia*, entry of judgment on the Complaint in the amount of $1.2 million. *See* Docket No. 53. On March 19, 2026, the Plaintiff filed that *Supplemental Declaration of Plaintiff Terry Ellis in Support of Motion for Default Judgment* (the "Supplement"), supplementing the Motion. *See* Docket No. 58.

Notice and Service

Pursuant to this Court's Local Rule 7055-1(b)(1)(E), notice of a motion for default judgment must be served on the defaulting party. On January 24, 2026, the Motion and notice thereof were served on the Defendant via U.S. Mail, first class, postage prepaid. *See* Docket No. 53, *Proof of Service of Document*, p. 11. On March 19, 2026, the Supplement was served on the Defendant via U.S. Mail, first class, postage prepaid. **[FN2]** There has been no response to the Motion and the Supplement.

Analysis

The Answer Is Ineffective

To begin, the Defendant filed the Answer after the Second Default was entered. Fed. R. Civ. P. 55(c) provides that "[t]he court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)." Fed. R. Civ. P. 55(c) is triggered through a motion requesting that a default be set aside. *See Brandt v. American Bankers Inc. Co. of Fla.*, 653 F.3d 1108, 1110 (9th Cir. 2011). "A defaulted defendant cannot answer the complaint unless and until the default is vacated." *Jules Jordan Video, Inc. v. 144942 Canada, Inc.*, 617 F.3d 1146, 1159 (9th Cir. 2010).

There has been no motion advanced requesting that the Second Default be set aside.

Default Judgment

A default by a party to an adversary proceeding does not automatically entitle the plaintiff to entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2), as made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. "Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy proceedings by Rule 7055." *In re McGee*, 359 B.R. 764, 770 (9th Cir. BAP 2006). "Federal Rule of Bankruptcy Procedure 7055(b)(2) governing the granting of default judgments provides the court with broad discretion to conduct such hearings and receive evidence that it deems proper before entering a default judgment." *In re Trevisan*, 300 B.R. 708, 713 (Bankr. E.D. Wis. 2003) (internal citations omitted). "Entry of a default judgment is discretionary with the trial court and may be denied where there are insufficient facts to support the claim." *In re Sziel*, 206 B.R. 490, 495 (Bankr. N.D. Ill. 1997).

"Default judgments are not mandatory." *In re Fuentes*, 474 B.R. 497, 501. "Under Rule 7055, the Court may require proof or necessary facts to support a valid cause of action." *Id.* "If such facts are lacking, the Court may not enter the judgment." *Id.* (citing *Peerless Indus., Inc. v. Herrin Illinois Café, Inc.*, 593 F.Supp. 1339, 1341 (E.D. Mo. 1984)). "Bankruptcy courts have broad discretion in considering whether a default judgment is warranted in dischargeability actions." *Id.* at 502 (citing *In re Beltran*, 182 B.R. 820, 823 (9th Cir. BAP 1995); *In re Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991)). "Notably, this discretion is often exercised when the plaintiff's complaint has questionably pleaded § 523(a)(2)(A) allegations." *Id.*

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.*; *see also* 10A Fed. Prac. & Proc. Civ. 3D, § 2685 (factors include whether there are material issues of fact and whether the grounds for default have been clearly established).

Here, the lack of entry of default judgment will prejudice the Plaintiff because the Plaintiff will not be able to fully liquidate his claim against the Defendant and obtain a judgment to be able to pursue the Defendant. The Defendant has refused to properly participate in this litigation despite being provided two separate opportunities to timely respond to the Complaint. The Defendant filed a late answer, after the Second Default was entered, and without filing a motion to vacate the Second Default. Even after being served with the Motion and the Supplement the Defendant has done nothing to vacate the Second Default.

As will be detailed below, the Court finds the Complaint meritorious, and the Complaint to be sufficiently pled. According to the Defendant, 12.11 bitcoins are at stake, which could be as much as $1.2 million. Taking account of all circumstances, the Court finds it appropriate to enter default judgment. Although there is a strong policy in favor of making decisions on the merits, and there may in-fact be disputes as to material facts in this matter, these concerns are outweighed by the delay to the Plaintiff and the sufficiency of the evidence presented in the Supplement.

11 U.S.C. § 523(a)(2)(A)

Pursuant to 11 U.S.C. § 523(a)(2)(A), "a discharge under section [11 U.S.C. § 1328(b)] 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 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 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)).

Here, the entirety of the Complaint hinges on purported representations made by the Defendant to the Plaintiff as the principal of Bitcoin Advizers. At bottom, the Plaintiff alleges that the Defendant absconded with $420,000 of the Plaintiff's money through an investment ruse. On or about July 22, 2022, the Plaintiff entered into that *Digital Asset Management Agreement* (the "Agreement") with Bitcoin Advizers. *See* Docket No. 1, p. 2, lines 21-25; *see also* Docket No. 58, pp. 8-23. Through the Agreement, the Plaintiff was to invest monies into a "digital currency account" that

Bitcoin Advizers was to manage for the Plaintiff. *See* Docket No. 1, p. 2, lines 26-28; *see also* Docket No. 58, p. 9. The aim of the Agreement was for Bitcoin Advizers to trade the digital currency in the "digital currency account" at a profit, over time, which profits Bitcoin Advizers and the Plaintiff would share in.

The problem, alleges the Plaintiff, is that rather than invest the monies that were to be deposited into the Plaintiff's "digital currency account" in crypto currency, the Defendant absconded with the Plaintiff's money. *See* Docket No. 1, p. 4, lines 12-19; *see also* Docket No. 58, p. 4, lines 16-20. The Plaintiff alleges that proof of their "digital currency account" was to be made through a mobile application. *See* Docket No. 1, p. 3, lines 24-28; *see also* Docket No. 58, p. 3, lines 1-5. The Plaintiff alleges that the mobile application was in-fact a charade, "displaying false and inflated balances and was not functioning as a genuine real-time account monitoring tool." *See* Docket No. 58, p. 4, lines 4-9. Ultimately, alleges the Plaintiff, demand was made by Plaintiff to the Defendant to return the monies in the "digital currency account" in November 2024, and in response the Defendant allegedly informed the Plaintiff that "the assets had been lost or stolen due to a cyber hack." *See id.* at pp. 4-5.

The Plaintiff has made out a claim under 11 U.S.C. § 523(a)(2)(A). The Plaintiff alleges that the Defendant made statements to the Plaintiff in order to cause the Plaintiff to deposit monies with the Defendant's company, Bitcoin Advizers. The Defendant informed the Plaintiff that Bitcoin Advizers would manage monies deposited into the Plaintiff's "digital currency account." The Defendant informed the Plaintiff that a mobile application existed to allow the Plaintiff to track their "digital currency account." Both statements were untrue, as there is no evidence that there ever existed a true "digital currency account," there is no evidence that digital currency was ever purchased for the Plaintiff, and the mobile application that was to be in place to allow the Plaintiff to track their investment provided misleading information. These representations were all made by the Defendant to the Plaintiff, under the guise of a Bitcoin Advizers transaction, and the Plaintiff relied on these representations in providing Bitcoin Advizers with $420,000. In the end, the Plaintiff's $420,000 was used by the Defendant for purposes other than those set forth in the Agreement, and the Plaintiff is now out that investment.

Where the Court has questions for the Plaintiff is the damages that are to be excepted from the Defendant's discharge. The allegation appears to be that the entire transaction was a farce. That the Defendant simply made off with the Plaintiff's money. The Plaintiff, however, claim that 12.11 bitcoins are owed to the Plaintiff, or the value thereof, because that balance appeared in the mobile application, which the Plaintiff also alleges was a fraud. Is the amount owed to the Plaintiff not the amount that the Plaintiff claims was converted by the Defendant, $420,000?

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. BankrChampaign, N.A.*, 569 U.S. 267, 275 (2013)). **[FN3]**

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.* "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)).

Here, the Plaintiff willfully provided the Defendant $420,000.00 to invest in cryptocurrency. Thus, the Plaintiff's funds rightfully came into the possession of the Defendant, a nonowner. Further, the Defendant misappropriated the funds. However, despite this alleged theft the Defendant made no police report and made no effort to inform law enforcement – all circumstances that indicate fraud.

The Motion and Supplement have made out a claim under 11 U.S.C. § 523(a)(4) claim, however, the Court will inquire with the Plaintiff as to the exact amount of damages that the Plaintiff has suffered, referring back to its discussion on this topic under 11 U.S.C. § 523(a)(2)(A).

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 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).

Here, the Defendant's actions were clearly to a certain end. The Defendant, as alleged by the Plaintiff, created a company whose sole purpose was to defraud people, including the Plaintiff, out of money. The fraudulent scheme was carried out from the moment of the Agreement, and continued through a series of misrepresentations, from the mobile application to the statement that the monies had been "lost" or "stolen" by a cyber hack, which cyber hack the Defendant never reported to the police. The Court finds both malicious and willful injury.

Again, the issue is that of damages as described *supra*.

Conclusion

The Court is inclined to grant the Motion and enter judgment by default in favor of the Plaintiff as to the 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) and 523(a)(6) causes of action, but the Court will inquire with the Plaintiff as to his damages.

[FN1]
Unless otherwise noted, all references to the docket refer to case # 9:25-ap-01032-RC.

[FN2]

The *Proof of Service of Document* indicates that the Supplement was served over a year ago in March 2025, but the Court will inquire if this was a typographical mistake and March 19, 2026, was when the Supplement was served.

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CONT... **Christopher Darrell Mitchell** **Chapter 7**

[FN3] _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)).

"[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 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 Houng*, 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.

<u>February 25, 2026</u>

Appearances required.

On December 4, 2024, Christopher Darrell Mitchell (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Case"). *See* Case 9:24-bk-11382-RC, Docket No. 1. On May 29, 2025, the Court issued that *Order Granting Motion by RHM Law, LLP to Withdraw as General Bankruptcy Counsel to the Debtor* allowing the Debtor's counsel to withdraw from representing the Debtor in the Bankruptcy Case. *See id.* at Docket No. 104.

On July 25, 2025, Terry Ellis (the "Plaintiff") filed that *Adversary Complaint to Determine Dischargeability of Debt Under 11 U.S.C. §§523(a)(2), (a)(4), and (a)(6)* (the "Complaint"), seeking to liquidate and determine a debt to be excluded from the Debtor's discharge pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). *See* Case No. 9:25-ap-01032-RC **[FN1]**, Docket No. 1.

On September 11, 2025, the Court's Clerk entered default against the Debtor pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "First Default"). *See* Docket No. 6, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On November 24, 2025, the Court issued that *Order Granting Defendant's Motion to Set Aside Entry of Default Pursuant to Federal Rule of Civil Procedure 55(c)* (the "Order") setting aside the First Default. *See* Docket No. 39.

On September 19, 2025, the Plaintiff filed that *Amended Plaintiff's Motion for Default Judgment Under LBR 7055-1*, seeking a judgment by default on the Complaint. *See* Docket No. 10.

On January 12, 2026, the Court's Clerk entered default against the Debtor pursuant to this Court's Local Bankruptcy Rule 7055-1(a) (the "Second Default"). *See* Docket No. 49, *Notice that Clerk Has Entered Default Against Defendant(s) Under Local Bankruptcy Rule 7055-1(a)*.

On January 20, 2026, the Debtor filed that *Answer to Adversary Complaint* (the "Answer"). *See* Docket No. 52.

Before the Court is that *Plaintiff's Notice of Motion & Motion for Default Judgment* (the "Motion") filed by the Plaintiff on January 24, 2026, in which the Plaintiff seeks, *inter alia*, entry of judgment on the Complaint in the amount of $1.2 million. *See*

Docket No. 53.

Notice and Service

Pursuant to this Court's Local Rule 7055-1(b)(1)(E), notice of a motion for default judgment must be served on the defaulting party. On January 24, 2026, the Motion and notice thereof were mailed to the Debtor. *See* Docket No. 53, *Proof of Service of Document*, p. 11.

Analysis

A default by a party to an adversary proceeding does not automatically entitle the plaintiff to entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2), as made applicable to adversary proceedings pursuant to Fed. R. Bankr. P. 7055. "Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to bankruptcy proceedings by Rule 7055." *In re McGee*, 359 B.R. 764, 770 (9th Cir. BAP 2006). "Federal Rule of Bankruptcy Procedure 7055(b)(2) governing the granting of default judgments provides the court with broad discretion to conduct such hearings and receive evidence that it deems proper before entering a default judgment." *In re Trevisan*, 300 B.R. 708, 713 (Bankr. E.D. Wis. 2003) (internal citations omitted). "Entry of a default judgment is discretionary with the trial court and may be denied where there are insufficient facts to support the claim." *In re Sziel*, 206 B.R. 490, 495 (Bankr. N.D. Ill. 1997).

"The factors to be considered for entry of a default judgment include (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.*; *see also* 10A Fed. Prac. & Proc. Civ. 3D, § 2685 (factors include whether there are material issues of fact and whether the grounds for default have been clearly established).

Here, the Court does not have any evidence other than the Plaintiff counsel's declaration, which is partially based on hearsay. The Court has not been presented

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CONT... Christopher Darrell Mitchell Chapter 7

with sufficient evidence as to the veracity of the allegations in the Complaint. Without more the Court is unwilling to enter default judgment.

The Court is inclined to continue the Motion so that the Plaintiff can supplement the Motion with admissible evidence towards the merits.

[FN1]
Unless otherwise noted, all references to the docket refer to case # 9:25-ap-01032-RC.

Party Information	
Debtor(s):	
Christopher Darrell Mitchell	Pro Se
Defendant(s):	
Christopher Darrell Mitchell	Pro Se
Movant(s):	
Terry Ellis	Represented By Sanaz Sarah Bereliani
Plaintiff(s):	
Terry Ellis	Represented By Sanaz Sarah Bereliani
Trustee(s):	
Jerry Namba (TR)	Represented By Bradford Barnhardt

9:00 AM

9:24-11382 Christopher Darrell Mitchell **Chapter 7**

Adv#: 9:25-01032 Ellis v. Mitchell

#9.00 CONT'D Status Conference re: [1] Adversary case 9:25-ap-01032. Complaint by Terry Ellis against Christopher Darrell Mitchell. (a)(4), and (a)(6) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 1-14-26, 3-11-26, 4-8-26, 6-17-26, 7-08-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

April 8, 2026

Appearances required.

9:00 AM
CONT... **Christopher Darrell Mitchell** **Chapter 7**

March 11, 2026

Appearances waived.

The hearing on *Plaintiff's Motion for Default Judgment Under LBR 7055-1* is set to be heard on April 8, 2026. *See* Docket No. 56. The Court will continue the status conference to April 8, 2026, at 9:00 a.m.

January 14, 2026

Appearances waived.

The Court's Clerk issued another summons (the "Summons") on November 20, 2025. *See* Docket No. 32-1, *Another Summons and Notice of Status Conference in Adversary Proceeding [LBR 7004-1]*. The Summons required a response to that *Adversary Complaint to Determine Dischargeability of Debt Under 11 U.S.C. §§ 523(a)(2), (a)(4) and (a)(6)* (the "Complaint") by December 22, 2025. *See id.* at p. 1. The Court finds no response to the Complaint as of December 29, 2025. Absent a response to the Complaint, this proceeding is not yet at issue. The Court will continue the status conference to allow a default to be taken, and a motion for judgment by default to be filed.

The status conference is continued to March 11, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Christopher Darrell Mitchell Pro Se

Defendant(s):

Christopher Darrell Mitchell Pro Se

Plaintiff(s):

Terry Ellis Represented By

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CONT... **Christopher Darrell Mitchell** **Chapter 7**

Sanaz Sarah Bereliani

Trustee(s):

Jerry Namba (TR) Represented By
Bradford Barnhardt

9:00 AM

9:26-10354 David R Thorpe **Chapter 13**

Adv#: 9:26-01011 Thorpe et al v. Internal Revenue Service et al

#10.00 Status Confernece re: [1] Adversary case 9:26-ap-01011. Complaint by David R Thorpe, Melina C Thorpe against Internal Revenue Service, FRANCHISE TAX BOARD. (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims))

FR. 6-03-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 10. Through the Report, Plaintiffs provide that they are providing documentation to Defendants, "informally," which documents may, or may not narrow or resolve the issues set forth in the Complaint altogether. The parties request a 120-day continuance of the status conference to allow this exchange of information. The Court will continue the status conference to November 18, 2026, at 9:00 a.m. The parties are to submit a joint status conference statement with proposed litigation dates within fourteen (14) days of the continued status conference.

Party Information

Debtor(s):

David R Thorpe	Represented By John D Faucher

Defendant(s):

Internal Revenue Service	Pro Se
FRANCHISE TAX BOARD	Pro Se

Joint Debtor(s):

Melina C Thorpe	Represented By

9:00 AM
CONT... **David R Thorpe** **Chapter 13**

John D Faucher

Plaintiff(s):

David R Thorpe	Represented By John D Faucher
Melina C Thorpe	Represented By John D Faucher

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:26-10274 Brent Ian Smith **Chapter 7**

Adv#: 9:26-01017 Nextgear Capital, Inc. v. Smith

#11.00 Status HearingRE: [1] Adversary case 9:26-ap-01017. Complaint by Nextgear Capital, Inc., a Delaware Corporation, against Brent Ian Smith. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Quall, Matthew)

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required, in-person. No remote appearances will be taken.

On May 21, 2026, Nextgear Capital, Inc. ("Plaintiff") filed as against Brent Ian Smith ("Defendant") that *Complaint to Determine Dischargeability of a Debt* (the "Complaint"). *See* Docket No. 1. On June 2, 2026, the Court's Clerk issued with *Another Summons and Notice of Status Conference in Adversary Proceeding [LBR 7004-1]* (the "Summons") those *Adversary Proceeding Status Conference Procedures – Judge Ronald A. Clifford III* (the "Procedures"). *See* Docket Nos. 5 and 5-1, respectively. The Summons informed parties that an initial status conference on the Complaint would be held on August 12, 2026. *See* Docket No. 5-1, p. 1. On June 2, 2026, Plaintiff served the Complaint, the Summons and the Procedures on Defendant. *See* Docket No. 8, *Proof of Service of Document*, p. 3. On June 29, 2026, Defendant filed *Defendant Brent Ian Smith's Answer to Complaint to Determine Dischargeability of Debt*. *See* Docket No. 9.

Pursuant to the Procedures, served on both Plaintiff and Defendant, "[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. 5-1, p. 1. "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, "[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

9:00 AM
CONT... **Brent Ian Smith** **Chapter 7**

form F 7016-1.STATUS.REPORT []." Pursuant to this Court's Local Rule 7016-1(f), "if a status conference statement [] is not filed [], 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." Pursuant to this Court's Local Rule 9011-3(a), "[t]he 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."

"There is no question that a bankruptcy court has the power to sanction for violations of local rules." *In re Singh*, 2016 WL 770195 *4 (9th Cir. BAP 2016)(citing *Miranda v. S. Pac. Transp. Co.*, 710 F.2d 516, 519 (9th Cir. 1983)).

The Court finds no status report as required by the Procedures and this Court's Local Rules.

Party Information

Debtor(s):

Brent Ian Smith	Represented By Edwin J Rambuski

Defendant(s):

Brent Ian Smith	Pro Se

Plaintiff(s):

Nextgear Capital, Inc.	Represented By Matthew W Quall

Trustee(s):

Nancy J Zamora (TR)	Pro Se

9:00 AM

9:25-10444 Diversified Panels Systems, Inc. **Chapter 7**

Adv#: 9:26-01019 Goldman v. Bell et al

#12.00 CONT'D Hearing
RE: [9] Motion for Remand

FR. 7-08-26,

Docket 9

Tentative Ruling:

August 12, 2026

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Diversified Panels Systems, Inc.	Represented By William E. Winfield

Defendant(s):

Richard C. Bell	Represented By William E. Winfield
JP MORGAN CHASE BANK, N.A.	Pro Se
NEWREZ LLC	Represented By

9:00 AM
CONT... **Diversified Panels Systems, Inc.** **Chapter 7**

	Robert W Norman Jr
Graystone Partners	Pro Se
Maya Tuli	Pro Se
DOES 1-50	Pro Se

Plaintiff(s):

Amy L Goldman	Represented By Jay M Spillane

Trustee(s):

Amy L Goldman (TR)	Represented By Jeremy Faith Jonathan Serrano Jay M Spillane

9:00 AM

9:25-10444 Diversified Panels Systems, Inc. **Chapter 7**

Adv#: 9:26-01019 Goldman v. Bell et al

#13.00 Status HearingRE: [1] Adversary case 9:26-ap-01019. Notice of Removal of Lawsuit Pending in State Court to Bankruptcy Court (28 U.S.C. § 1452); Declaration of William E. Winfield by Richard C. Bell. Nature of Suit: (01 (Determination of removed claim or cause)),(13 (Recovery of money/property - 548 fraudulent transfer)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Winfield, William) Modified on 6/3/2026 (ES9).

Docket 1

Tentative Ruling:

August 12, 2026

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Diversified Panels Systems, Inc.	Represented By William E. Winfield

Defendant(s):

Richard C. Bell	Represented By William E. Winfield
JP MORGAN CHASE BANK, N.A.	Pro Se
NEWREZ LLC	Pro Se
Graystone Partners	Pro Se
Maya Tuli	Pro Se
DOES 1-50	Pro Se

9:00 AM

CONT... **Diversified Panels Systems, Inc.** **Chapter 7**

Plaintiff(s):

Amy L Goldman	Pro Se

Trustee(s):

Amy L Goldman (TR)	Represented By Jeremy Faith Jonathan Serrano Jay M Spillane

9:00 AM

9:25-11740 Sancho Loco Inc. **Chapter 11**

Adv#: 9:26-01020 Loco, Inc. v. LENDSPARK CORPORATION, a California corporation

#14.00 Status Hearing
RE: [1] Adversary case 9:26-ap-01020. Complaint by Sancho Loco, Inc. against LENDSPARK CORPORATION, a California corporation. ($350.00 Fee Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(81 (Subordination of claim or interest)) (Moradi-Brovia, Roksana)

Docket 1

***** VACATED *** REASON: Adversary proceeding dismissed per order on stipulation entered 7/22/2026.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sancho Loco Inc. — Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Defendant(s):

LENDSPARK CORPORATION, a — Pro Se

Plaintiff(s):

Sancho Loco, Inc. — Represented By
Roksana D. Moradi-Brovia

Trustee(s):

Caroline Renee Djang (TR) — Pro Se

9:00 AM

9:25-11740 Sancho Loco Inc. **Chapter 11**

Adv#: 9:26-01021 Loco, Inc. v. ITRIA VENTURES LLC

#15.00 Status Hearing
RE: [1] Adversary case 9:26-ap-01021. Complaint by Sancho Loco, Inc. against ITRIA VENTURES LLC, a Delaware limited liability company, d/b/a Biz2Credit. ($350.00 Fee Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)),(81 (Subordination of claim or interest)) (Moradi-Brovia, Roksana)

Docket 1

***** VACATED *** REASON: Continued to 9/09/2026 at 9:00AM per order on stipulation entered 7/06/2026.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sancho Loco Inc.	Represented By Matthew D. Resnik Roksana D. Moradi-Brovia

Defendant(s):

ITRIA VENTURES LLC	Pro Se

Plaintiff(s):

Sancho Loco, Inc.	Represented By Roksana D. Moradi-Brovia

Trustee(s):

Caroline Renee Djang (TR)	Pro Se

9:00 AM

9:26-10132 Nicholas Brooks **Chapter 7**

Adv#: 9:26-01022 Brooks v. Brooks et al

#16.00 Status HearingRE: [1] Adversary case 9:26-ap-01022. Complaint by Natalia Brooks against Nicholas Brooks , Steve Brooks , New Rez Shellpoint Mortgage , Nancy Zamora . ($350.00 Fee Not Required). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(13 (Recovery of money/property - 548 fraudulent transfer)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(72 (Injunctive relief - other)) ,(21 (Validity, priority or extent of lien or other interest in property))(ES9)

Docket 1

Tentative Ruling:

<u>August 12, 2026</u>

Appearances required.

On June 11, 2026, Natalia Brooks filed as against Nicholas Brooks and Steve Brooks that *First Amended Complaint for Objection to Claims, Avoidance of Fraudulent Transfers, Turnover of Estate Property, Recovery of Exempt Assets, Declaratory Relief, and Injunctive Relief* (the "Amended Complaint"). *See* Docket No. 7. Neither the Amended Complaint nor a summons has been served on either Nicholas Brooks or Steve Brooks. *See* Docket No. 18, *Joint Status Report*, pp. 1-2.

The Court is inclined to enter an order to show cause why the Amended Complaint should not be dismissed for lack of prosecution. If the Amended Complaint is to be advanced, it must be appropriately served along with a summons on the defendants.

Party Information

<u>Debtor(s):</u>

Nicholas Brooks — Represented By
Todd J Mannis

9:00 AM

CONT... **Nicholas Brooks** **Chapter 7**

Defendant(s):

Nicholas Brooks	Pro Se
Steve Brooks	Pro Se
New Rez Shellpoint Mortgage	Pro Se
Nancy Zamora	Pro Se

Joint Debtor(s):

Natalia Brooks	Represented By Todd J Mannis

Plaintiff(s):

Natalia Brooks	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Pro Se

9:00 AM

9:26-10196 Tanya Deanette Castro **Chapter 7**

Adv#: 9:26-01023 Castro v. Sallie Mae Bank

#17.00 Status HearingRE: [1] Adversary case 9:26-ap-01023. Complaint by Tanya Castro, Sallie Mae Bank against Sallie Mae Bank. ($350.00 Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Warriner, Martha) CORRECTED DOCKET ENTRY: To reflect "No Fee Required" instead of "Fee Charged to Estate". Modified on 6/10/2026 (ES9).

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required, in-person. No remote appearances will be taken.

Those *Adversary Proceeding Status Conference Procedures* (the "Procedures") provide that "[a] joint status report prepared using Local Form F 7016-1.STATUS.REPORT must be filed fourteen 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.* 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."

The Court finds no status conference statement.

Party Information

9:00 AM

CONT... **Tanya Deanette Castro** **Chapter 7**

Debtor(s):

Tanya Deanette Castro	Pro Se

Defendant(s):

Sallie Mae Bank	Pro Se

Plaintiff(s):

Tanya Castro	Represented By Martha A. Warriner

Trustee(s):

Amy L Goldman (TR)	Pro Se

9:00 AM

9:26-10335 Harold Joseph Arsenault **Chapter 7**

Adv#: 9:26-01024 Arsenault v. U.S. Department of Education et al

#18.00 Status Hearing
RE: [1] Adversary case 9:26-ap-01024. Complaint by Harold Joseph Arsenault against U.S. Department of Education. ($350.00 Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Higson, Daniel)

Docket 1

***** VACATED *** REASON: Continued to 12/09/2026 at 9:00AM per order on stipulation entered 6/24/2026.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harold Joseph Arsenault	Represented By Daniel A Higson

Defendant(s):

U.S. Department of Education	Pro Se
DOES 1 through 10, inclusive	Pro Se

Joint Debtor(s):

Mary Arsenault	Represented By Daniel A Higson

Plaintiff(s):

Harold Joseph Arsenault	Represented By Daniel A Higson

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

9:00 AM
9:24-10572 Thomas Anthony Ferro **Chapter 7**

#19.00 CONT'D (as a Status Conference) re: [9] Motion to Avoid Lien Judicial Lien with Cal-West Equities, Inc.

fr: 9-10-24; 01-14-25, 3-25-25, 4-22-25, 5-6-25, 6-17-25, 8-5-25, 9-30-25, 10-22-25, 11-19-25, 12-10-25, 1-14-26, 4-8-26, 5-06-26, 5-20-26, 6-17-26, 7-08-26,

Docket 9

Tentative Ruling:

<u>August 12, 2026</u>

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

<u>July 8, 2026</u>

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

<u>June 17, 2026</u>

Appearances waived.

The status conference hearing is continued to July 8, 2026, at 9:00 a.m.

<u>May 20, 2026</u>

9:00 AM

CONT... **Thomas Anthony Ferro** **Chapter 7**

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 8, 2026

Appearances waived.

The hearing on the motion is continued to May 6, 2026, at 9:00 a.m.

January 14, 2026

Appearances required.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

November 19, 2025

Appearances waived.

The status conference is continued to December 10, 2025, at 9:00 a.m.

9:00 AM
CONT... **Thomas Anthony Ferro** **Chapter 7**

November 5, 2025

Appearances waived.

The status conference is continued to November 19, 2025, at 9:00 a.m. due to the government shutdown.

October 22, 2025

The status conference is continued to November 5, 2025, at 9:00 a.m. due to the Government Shutdown.

September 30, 2025

Appearances waived.

The hearing is continued to October 22, 2025, at 9:00 a.m.

August 5, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 142. The Court will hear from the parties, but the Court is inclined to deny the motion for failure to prosecute the motion, without prejudice to the motion being refiled. The Motion was filed more than a year ago, and is still not yet ripe for resolution.

July 17, 2025

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 136. The hearing

9:00 AM

CONT... Thomas Anthony Ferro Chapter 7

on the motion is continued to August 5, 2025, at 1:00 p.m. A status conference report regarding the motion is to be filed 14 days prior to the continued hearing.

May 6, 2025

Appearances required.

Background

On May 22, 2024, Thomas Anthony Ferro (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On July 3, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"). *See* Docket No. 9. Through the Motion, the Debtor seeks to avoid the judgment lien assigned to Cal-West Equities, Inc. ("Cal-West") pursuant to 11 U.S.C. § 522(f) as impairing the Debtor's homestead exemption in a parcel of real property located at 23448 W. Moon Shadows Drive, Malibu, CA 90265 (the "Property"). *See id.*

On July 17, 2024, Cal-West filed that *Notice of Opposition and Request for a Hearing* (the "Opposition"). *See* Docket No. 18. Through the Opposition, Cal-West argues that the Motion must be denied in that (1) the Debtor's spouse's joint tenancy interest in the Property must be included in the Debtor's estate as community property, (2) Cal-West must first conduct discovery as to other alleged consensual liens on the Property, which liens may be inferior to that of Cal-West's lien, (3) the Debtor's homestead exemption should be reduced to $175,000 based on the Debtor's bad faith, and (4) Cal-West's lien cannot be avoided because its underlying claim is non-dischargeable. *See id.*

On September 3, 2024, the Debtor filed *Debtor's Reply to Opposition of Cal-West Equities, Inc.'s to [sic] Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f)*. *See* Docket No. 40.

On March 11, 2025, Cal-West filed that *Second Supplemental Opposition to Debtor's Motion to Avoid Lien of Cal-West Equities, Inc. Under 11 U.S.C. § 522(f)* (the "Second Supplemental Opposition"). *See* Docket No. 89. Through the Second

Supplemental Opposition, Cal-West argues that "Debtor and his wife took a number of actions that not only demonstrate that the Property is community property, but demonstrate that the presumption of community property should and does apply." *See id.* at p. 4, lines 9-12. Cal-West also argues that it filed "objections to the claim of Geringer [] that would create additional equity in the Property" and that the deadline to object to "the homestead exemption has not yet passed." *See id.* at lines 14-17. Lastly, Cal-West argues that the home on the Property recently succumbed to a fire, and that there are issues regarding what portion of the Property remains to satisfy Cal-West's lien. *See id.* at lines 17-23.

The Non-Dischargeability of Cal-West's Claim

Cal-West argues that the hearing on the Motion should be continued to "allow a determination of nondischargeability to be made…" *See* Docket No. 18. The Court does not follow. "Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt." *In re Hunnicutt*, 457 B.R. 463, 464 (Bankr. D.S.C. 2011)(internal citations omitted). "Lien avoidance and dischargeability of debts are not dependent on each other." *In re Sirikanjanachai*, 628 B.R. 562, 570 (1st Cir. BAP 2021)(citations omitted). "The 'avoidance of a lien does not destroy the underlying debt but rather changes the status of a creditor from a secured creditors to an unsecured position.'" *Id.* at 569. "Thus, a creditor whose judgment lien has been avoided under § 522(f), but whose claim is nondischargeable, may seek to recover from non-exempt property after the debtor's discharge." *Id.*

Cal-West seems to agree that a determination of the dischargeability of its claim by this Court has no bearing on the Debtor's ability to avoid Cal-West's lien under 11 U.S.C. § 522(f). *See* Docket No. 18, fn 6. Cal-West, however, argues that "equity demands that the Court not allow Debtor to avoid the Cal-West lien." *Id.* Again, the Court does not follow. "[E]quitable considerations do not allow a bankruptcy court to contravene express provisions of the Bankruptcy Code." *In re Betteroads Asphalt, LLC*, 594 B.R. 516, 560 (Bankr. D. P.R. 2018)(citing *Law v. Siegel*, 571 U.S. 415 (2014)).

The Debtor's Claimed Exemption

"'When a debtor files for bankruptcy, it creates an estate that includes virtually all the debtor's assets.'" *In re Masingale*, 108 F.4th 1195, 1197 (9th Cir. 2024)(internal citations omitted). "But to help debtors get back on their feet, the Bankruptcy Code permits them to exempt interests in specified property from the estate…" *Id.* "The debtor 'shall file a list of property that the debtor claims as exempt' under § 522(b), and '[u]nless a party in interest objects, the property claimed as exempt on such list is exempt.'" *Id.* "'The effect of an exemption is that the debtor's interest in the property is withdrawn from the estate (and hence from the creditors) for the benefit of the debtor.'" *Id.* "Under the Bankruptcy Rules, a party in interest (such as a trustee or creditor) has thirty days from the date of the creditors' meeting to object to the claimed homestead exemption." *Id.* at 1198; *see also* Fed. R. Bankr. P. 4003(b)(1) ("a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.").

In the instant case, the Debtor claimed as exempt, $699,426 in the Property pursuant to Cal. Code of Civ. P. § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*. The meeting of creditors under 11 U.S.C. § 341(a) concluded on April 28, 2025. *See* Docket Nos. 98 and 11. The deadline for parties-in-interest to object to the Debtor's claimed exemption has not yet lapsed. At the moment, the Debtor has a valid exemption in the Property, but subject to any objection to the claimed exemption.

Damage to Property Post-Petition

"'Absent conversion from one chapter to another, the nature and extent of a debtor's exemption rights are determined as of the date of the petition…Thus, any post-petition disposition of the property or post-petition change in the identity of the property into proceeds has no impact upon the exemption analysis.'" *In re Kim*, 257 B.R. 680, 685 (9th Cir. BAP 2000)(citing *In re Herman*, 120 B.R. 127, 130 (9th Cir. BAP 1990)). "Under the so-called 'snapshot' rule, bankruptcy exemptions are fixed at the time of the bankruptcy petition." *In re Jacobson*, 676 F.3d 1193, 1199 (9th Cir. 2012)(citing *White v. Stump*, 266 U.S. 310, 313 (1924)). "Those exemptions must be determined in accordance with the state law 'applicable on the date of filing.'" *Id.*

The Court is unclear as to Cal-West's argument that damage to the Property post-petition affects its analysis here. If the Court is to determine the exemptions of the

Debtor in the Property as of the date of the petition, what difference does erosion of value post-petition make in the analysis? In fact, a lower value would only further bolster the Debtor's Motion.

The Nature of the Debtor's Interest in the Property

"As a general principle, a debtor's property rights that become part of the bankruptcy estate under § 541 are determined by applicable nonbankruptcy law." *In re Khalil*, 2015 WL 2213696 *6 (9th Cir. BAP 2015).

"California is a community property state, which characterizes marital property as either community property or separate property." *In re Brace*, 908 F.3d 531, 536 (9th Cir. 2018)(internal citations omitted). Pursuant to Cal. Fam. Code § 760, "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." "'Property that a spouse acquired before the marriage is that spouse's separate property.'" *Id.* at 537. "[F]or property acquired on or after January 1, 1985, married persons may change – i.e., transmute – the character of property from community to separate, or vice versa, if the transmutation is 'made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.'" *In re Brace*, 470 P.3d 15, 20 (2020); *see also* Cal. Fam. Code § 852(a). "[A] valid transmutation under Family Code 852, subdivision (a), can be divided into two basic components: (1) a writing that satisfies the statute of frauds; and (2) an expression of intent to transfer a property interest." *In re Bibb*, 87 Cal.App.4th 461, 468 (2001). Specifically, Cal. Fam. Code. § 852(a) "require(s) that a writing effecting a transmutation of property contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence." *Id.* A grant deed signed by the party adversely affected by the purported transmutation constitutes a writing "made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." *Id.* A deed that purports to transmute separate property of one spouse into the separate property of both spouses as joint tenants is satisfied when the deed reads, "[Separate Property Holding Spouse] hereby grant(s) to [themselves and their spouse], as joint tenants the following described real property…" *Id.* Use of the word "grant" in the deed "satisfies the express declaration requirement of section 852, subdivision (a)." *Id.*

Under California law, as to real property, "[i]f the debtor holds property in joint tenancy, only his one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 979 F.3d 1228, 1230 (9th Cir. 2020)(citing *In re Reed*, 940 F.2d 1317, 1332 (9th Cir. 1991)); *see also In re Brace*, 470 P.3d at 21 ("joint tenants typically have separate property interests in the property.").

Here, the deed of the Property reads, "THOMAS FERRO, A MARRIED MAN WHO ACQUIRED TITLE AS THOMAS FERRO, AND UNMARRIED MAN hereby GRANT(S) to THOMAS FERRO AND ROSA FERRO, HUSBAND AND WIFE AS JOINT TENANTS." *See* Docket No. 9, *Exhibit B*. The Debtor testified that he "acquired title to [the Property] in 1986," "as an unmarried man," and then, after his 2006 marriage to Rosa Ferro, conveyed a joint tenancy interest in the Property to he and his wife, Rosa Ferro, recording a grant deed regarding the same in 2012. *See* Docket No. 9, p. 7, lines 6-15. Ergo, the Property was separate property of the Debtor, and then conveyed by the Debtor to he and his spouse as joint tenants. This conveyance effected a valid transmutation of the Property.

Cal-West argues, citing *In re Brace*, that as to "real property [] acquired after January 1, 1975, the form of title does not govern the character of the property; instead, the general community property presumption applies." *See* Docket No. 18, p. 14, lines 24-26. Cal-West also argues, citing *In re Bibb*, that "a grant deed signed by a husband conveying separate real property to himself and his wife as 'joint tenants' meets the express declaration requirement for transmitting [sic] the property from separate property to community property." *See id.* at p. 15, lines 8-18. Cal-West then argues that the aforementioned deed of trust transmuted the Property to community property. *See id.* at lines 19-21. Lastly, Cal-West argues, citing *In re Bibb*, that since Rosa Ferro obtained her interest in the Property after the marriage, her interest is presumed to be community property, and because there was no written transmutation, the Property is in-fact community property. *See id.* at lines 21-24. The Court disagrees.

The Court in *In re Bibb* held just the opposite from Cal-West's final conclusion. There, a spouse that held separate property, transmuted their separate property to them and their spouse as joint tenants. This was held to meet the strictures of Cal. Fam. Code. § 852(a). This same analysis applies to the instant case, as Cal-West seems to

9:00 AM
CONT... Thomas Anthony Ferro Chapter 7

agree, at least in part. The Debtor transmuted their separate property to them and their spouse as joint tenants. The Ninth Circuit has held that "[u]nder California law, if the property at issue is held in joint tenancy, only the debtor's one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 908 F.3d at 537. Cal-West appears to be arguing that after the Debtor executed the deed of trust titling the Property into a joint tenancy, the spouse's interest in-fact became community property, presumptively, and a further writing would need to be produced proving that the Property was transmuted into the Debtor's spouse's separate property as a joint tenant. This seems to the Court to cut against the *In re Bibb* holding.

In the *In re Brace* matter, the monies used to purchase the property after the marriage were community property. Title in the property was taken as a joint tenancy. The California Supreme Court held that "when a married couple uses community funds to acquire property with joint tenancy title on or after January 1, 1975, the property is presumptively community property under Family Code section 760 in a dispute between the couple and a bankruptcy trustee." *In re Brace*, 470 P.3d at 18. This is not the factual scenario here. Here, this was separate property of the Debtor, obtained prior to the marriage, and transmuted to the spouses as joint tenants after the marriage. The California Supreme Court specifically held that "we do not address interspousal deeds by which one spouse conveys his or her separate property to both spouses as joint tenants, as in *Bibb*." *See id.* at 936.

Through the Second Supplemental Opposition, Cal-West takes a new position. Cal-West now argues that the Property was always community property because the deed for the Property reads that "[t]his conveyance confirms a community property interest, which was purchased with Community Property Funds, R & T 11911.'" *See* Docket No. 89, p. 7, lines 2-8. The Debtor has testified that he "acquired title to the Property [] on September 25, 1986 as an unmarried man. [] *See* Docket No. 43, p. 2, lines 1-3. On May 14, 1998, the Debtor "granted the Property to [himself] as an unmarried man after [his] divorce from [his] former wife." *See id.* at lines 4-8. Not until May 2, 2012, did the Debtor execute a deed "transferring joint tenancy interest in the Property to Rose for no consideration." *See id.* at lines 12-16. The evidence shows that the Property was the Debtor's sole property until he executed the 2012 deed that gave his current wife, Rosa Ferro, an interest in the Property as a joint tenant.

Cal-West also argues that the Debtor intended the Property to be community property with Rosa Ferro because of his actions regarding the Property and statements made at the 11 U.S.C. § 341(a) meeting. *See* Docket No. 89, p. 7, lines 9-16. Cal-West argues that the Debtor testified at the 11 U.S.C. § 341(a) hearing that he placed Rosa Ferro on title because she was older than he is, they have young children, and he "didn't want her to have to go through probate." *See id.* Cal-West also argues that the Debtor and Rosa Ferro live together in the Property, and that "they used the Property as community property, for their mutual benefit, and Debtor's actions related to it show precisely that his intention was to treat the Property as community property and transmute it to community property through the Grant Deed." *See id.* at p. 8, lines 1-5. Cal-West also argues that the outstanding loans against the Property were used for the community, and that the Geringer loan was executed by both the Debtor and Rosa Ferro. *See id.* at lines 6-19.

Cal-West also leaves out critical parts of holdings and the law in its argument in the Supplemental Opposition. Cal-West appears to summarize Cal. Civ. Code § 5110 in citing *In re Marriage of Tucker*, 141 Cal.App.3d 128 (1983). *See* Docket No. 89, p. 13, lines 5-14. Specifically,

Cal-West cites *In re Marriage of Tucker*, 141 Cal.App.3d 128 (1983), as providing that "if title to real property is taken in joint tenancy during marriage, it is presumed to be community property." *See id.* at lines 9-14. In fact, the Tucker court held that "[u]nder Civ. Code § 5110, when property is *acquired* and title taken in joint tenancy during marriage the presumption that the property is community property can be rebutted only by a showing of an agreement or understanding to the contrary." *In re Marriage of Tucker*, 141 Cal.App.3d at 129. (emphasis added). The California Supreme Court in *In re Brace* provided the same. 9 Cal.5th 903 (2020). "'The presumption, … that property acquired during the marriage is community, is perhaps the most fundamental principle of California's community property law.'" *Id.* at 914. The presumption at play in Cal. Fam. Code § 760 and Cal. Evid. Code § 662 is that property "acquired" after marriage is community. It is not simply taking title to property during marriage that triggers the presumption.

Lastly, Cal-West argues in the Second Supplemental Opposition that "[w]hile the First and Second [mortgages on the Property] were obtained prior to the marriage, Debtor and his wife paid them during marriage with community funds and with loans obtained against the Property." *See* Docket No. 89, p. 15, lines 8-10. However, monies of the community property used to pay obligations on a separate property mortgage only creates a monetary right between spouses upon dissolution. *See In re Fadel*, 492 B.R. 1 (9th Cir. BAP 2013).

Cal-West has failed to advance a valid argument illustrating that the Property is not owned by the Debtor and Rosa Ferro as joint tenants, and thus only the Debtor's interest in the Property constitutes property of the Debtor's bankruptcy estate.

Value of the Property

On August 27, 2024, Cal-West filed that *Supplemental Opposition to Debtor's Motion to Avoid Lien of Cal-West Equities, Inc. Under 11 U.S.C. 525(f)* (the "First Supplemental Opposition"). *See* Docket No. 38. Through the First Supplemental Opposition, Cal-West argues that the Property's value is $2.6 million instead of $2.3 million. Unless one or more of the consensual liens on the Property is avoided, the increased valuation matters not.

Next Steps

The deadline for parties to object to the exemptions of the Debtor has indeed not passed.

April 22, 2025

Appearances required.

March 25, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 93. The Court maintains some confusion about where this matter stands. What precisely is ripe for determination, and what must be decided through an evidentiary hearing?

9:00 AM

CONT... **Thomas Anthony Ferro** **Chapter 7**

January 14, 2025

Appearances required.

Background

On May 22, 2024, Thomas Anthony Ferro (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On July 3, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"). *See* Docket No. 9. Through the Motion, the Debtor seeks to avoid the judgment lien assigned to Cal-West Equities, Inc. ("Cal-West") pursuant to 11 U.S.C. § 522(f) as impairing the Debtor's homestead exemption in a parcel of real property located at 23448 W. Moon Shadows Drive, Malibu, CA 90265 (the "Property"). *See id.*

On July 17, 2024, Cal-West filed that *Notice of Opposition and Request for a Hearing* (the "Opposition"). *See* Docket No. 18. Through the Opposition, Cal-West argues that the Motion must be denied in that (1) the Debtor's spouse's joint tenancy interest in the Property must be included in the Debtor's estate as community property, (2) Cal-West must first conduct discovery as to other alleged consensual liens on the Property, which liens may be inferior to that of Cal-West's lien, (3) the Debtor's homestead exemption should be reduced to $175,000 based on the Debtor's bad faith, and (4) Cal-West's lien cannot be avoided because its underlying claim is non-dischargeable. *See id.*

On September 3, 2024, the Debtor filed *Debtor's Reply to Opposition of Cal-West Equities, Inc.'s to [sic] Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f)*. *See* Docket No. 40.

The Non-Dischargeability of Cal-West's Claim

Cal-West argues that the hearing on the Motion should be continued to "allow a determination of nondischargeability to be made…" *See* Docket No. 18. The Court does not follow. "Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt." *In re Hunnicutt*, 457 B.R. 463, 464 (Bankr. D.S.C. 2011)(internal citations omitted). "Lien avoidance and dischargeability of debts are not dependent on each other." *In re Sirikanjanachai*, 628

9:00 AM
CONT... **Thomas Anthony Ferro** **Chapter 7**

B.R. 562, 570 (1st Cir. BAP 2021)(citations omitted). "The ‘avoidance of a lien does not destroy the underlying debt but rather changes the status of a creditor from a secured creditors to an unsecured position.’" *Id.* at 569. "Thus, a creditor whose judgment lien has been avoided under § 522(f), but whose claim is nondischargeable, may seek to recover from non-exempt property after the debtor’s discharge." *Id.*

Cal-West seems to agree that a determination of the dischargeability of its claim by this Court has no bearing on the Debtor’s ability to avoid Cal-West’s lien under 11 U.S.C. § 522(f). *See* Docket No. 18, fn 6. Cal-West, however, argues that "equity demands that the Court not allow Debtor to avoid the Cal-West lien." *Id.* Again, the Court does not follow. "[E]quitable considerations do not allow a bankruptcy court to contravene express provisions of the Bankruptcy Code." *In re Betteroads Asphalt, LLC*, 594 B.R. 516, 560 (Bankr. D. P.R. 2018)(citing *Law v. Siegel*, 571 U.S. 415 (2014)).

The Court will inquire with Cal-West about the authority this Court has to contravene the auspices of 11 U.S.C. § 522(f) based on what Cal-West believes to be the non-dischargeable nature of its claims against the Debtor under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6). *See* Docket No. 21.

The Debtor’s Claimed Exemption

"’When a debtor files for bankruptcy, it creates an estate that includes virtually all the debtor’s assets.’" *In re Masingale*, 108 F.4th 1195, 1197 (9th Cir. 2024)(internal citations omitted). "But to help debtors get back on their feet, the Bankruptcy Code permits them to exempt interests in specified property from the estate…" *Id.* "The debtor ‘shall file a list of property that the debtor claims as exempt’ under § 522(b), and ‘[u]nless a party in interest objects, the property claimed as exempt on such list is exempt.’" *Id.* "’The effect of an exemption is that the debtor’s interest in the property is withdrawn from the estate (and hence from the creditors) for the benefit of the debtor.’" *Id.* "Under the Bankruptcy Rules, a party in interest (such as a trustee or creditor) has thirty days from the date of the creditors’ meeting to object to the claimed homestead exemption." *Id.* at 1198; *see also* Fed. R. Bankr. P. 4003(b)(1) ("a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.").

In the instant case, the Debtor claimed as exempt, $699,426 in the Property pursuant to Cal. Code of Civ. P. § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*. The meeting of creditors under 11 U.S.C. § 341(a) is to take place on February 24, 2025. *See* Docket No. 66. The deadline for parties-in-interest to object to the Debtor's claimed exemption has not yet lapsed. At the moment, the Debtor has a valid exemption in the Property, but subject to any objection to the claimed exemption.

The Nature of the Debtor's Interest in the Property

"As a general principle, a debtor's property rights that become part of the bankruptcy estate under § 541 are determined by applicable nonbankruptcy law." *In re Khalil*, 2015 WL 2213696 *6 (9th Cir. BAP 2015).

"California is a community property state, which characterizes marital property as either community property or separate property." *In re Brace*, 908 F.3d 531, 536 (9th Cir. 2018)(internal citations omitted). Pursuant to Cal. Fam. Code § 760, "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." "'Property that a spouse acquired before the marriage is that spouse's separate property.'" *Id.* at 537. "[F]or property acquired on or after January 1, 1985, married persons may change – i.e., transmute – the character of property from community to separate, or vice versa, if the transmutation is 'made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.'" *In re Brace*, 470 P.3d 15, 20 (2020); *see also* Cal. Fam. Code § 852(a). "[A] valid transmutation under Family Code 852, subdivision (a), can be divided into two basic components: (1) a writing that satisfies the statute of frauds; and (2) an expression of intent to transfer a property interest." *In re Bibb*, 87 Cal.App.4th 461, 468 (2001). Specifically, Cal. Fam. Code. § 852(a) "require(s) that a writing effecting a transmutation of property contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence." *Id.* A grant deed signed by the party adversely affected by the purported transmutation constitutes a writing "made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely

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CONT... **Thomas Anthony Ferro** **Chapter 7**

affected." *Id.* A deed that purports to transmute separate property of one spouse into the separate property of both spouses as joint tenants is satisfied when the deed reads, "[Separate Property Holding Spouse] hereby grant(s) to [themselves and their spouse], as joint tenants the following described real property…" *Id.* Use of the word "grant" in the deed "satisfies the express declaration requirement of section 852, subdivision (a)." *Id.*

Under California law, as to real property, "[i]f the debtor holds property in joint tenancy, only his one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 979 F.3d 1228, 1230 (9th Cir. 2020)(citing *In re Reed*, 940 F.2d 1317, 1332 (9th Cir. 1991)); *see also In re Brace*, 470 P.3d at 21 ("joint tenants typically have separate property interests in the property.").

Here, the deed of the Property reads, "THOMAS FERRO, A MARRIED MAN WHO ACQUIRED TITLE AS THOMAS FERRO, AND UNMARRIED MAN hereby GRANT(S) to THOMAS FERRO AND ROSA FERRO, HUSBAND AND WIFE AS JOINT TENANTS." *See* Docket No. 9, *Exhibit B*. The Debtor testified that he "acquired title to [the Property] in 1986," "as an unmarried man," and then, after his 2006 marriage to Rosa Ferro, conveyed a joint tenancy interest in the Property to he and his wife, Rosa Ferro, recording a grant deed regarding the same in 2012. *See* Docket No. 9, p. 7, lines 6-15. Ergo, the Property was separate property of the Debtor, and then conveyed by the Debtor to he and his spouse as joint tenants. This conveyance effected a valid transmutation of the Property.

Cal-West argues, citing *In re Brace*, that as to "real property [] acquired after January 1, 1975, the form of title does not govern the character of the property; instead, the general community property presumption applies." *See* Docket No. 18, p. 14, lines 24-26. Cal-West also argues, citing *In re Bibb*, that "a grant deed signed by a husband conveying separate real property to himself and his wife as 'joint tenants' meets the express declaration requirement for transmitting [sic] the property from separate property to community property." *See id.* at p. 15, lines 8-18. Cal-West then argues that the aforementioned deed of trust transmuted the Property to community property. *See id.* at lines 19-21. Lastly, Cal-West argues, citing *In re Bibb*, that since Rosa Ferro obtained her interest in the Property after the marriage, her interest is presumed to be community property, and because there was no written transmutation, the

Property is in-fact community property. *See id.* at lines 21-24. The Court disagrees.

The Court in *In re Bibb* held just the opposite from Cal-West's final conclusion. There, a spouse that held separate property, transmuted their separate property to them and their spouse as joint tenants. This was held to meet the strictures of Cal. Fam. Code. § 852(a). This same analysis applies to the instant case, as Cal-West seems to agree, at least in part. The Debtor transmuted their separate property to them and their spouse as joint tenants. The Ninth Circuit has held that "[u]nder California law, if the property at issue is held in joint tenancy, only the debtor's one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 908 F.3d at 537. Cal-West appears to be arguing that after the Debtor executed the deed of trust titling the Property into a joint tenancy, the spouse's interest in-fact became community property, presumptively, and a further writing would need to be produced proving that the Property was transmuted into the Debtor's spouse's separate property as a joint tenant. This appears to the Court to cut against the *In re Bibb* holding.

In the *In re Brace* matter, the monies used to purchase the property after the marriage were community property. Title in the property was taken as a joint tenancy. The California Supreme Court held that "when a married couple uses community funds to acquire property with joint tenancy title on or after January 1, 1975, the property is presumptively community property under Family Code section 760 in a dispute between the couple and a bankruptcy trustee." *In re Brace*, 470 P.3d at 18. This factual scenario would partially support Cal-West's argument. That is not the factual scenario here. Here, this was separate property of the Debtor, obtained prior to the marriage, and transmuted to the spouses as joint tenants after the marriage. The California Supreme Court specifically held that "we do not address interspousal deeds by which one spouse conveys his or her separate property to both spouses as joint tenants, as in *Bibb*." *See id.* at 936.

Cal-West has failed to advance a valid argument illustrating that the Property is not owned by the Debtor and Rosa Ferro as joint tenants, and thus only the Debtor's interest in the Property constitutes property of the Debtor's bankruptcy estate.

Value of the Property

On August 27, 2024, Cal-West filed that *Supplemental Opposition to Debtor's Motion to Avoid Lien of Cal-West Equities, Inc. Under 11 U.S.C. 525(f)* (the "Supplement").

9:00 AM

CONT... Thomas Anthony Ferro **Chapter 7**

See Docket No. 38. Through the Supplement, Cal-West argues that the Property's value is $2.6 million instead of $2.3 million. Unless one or more of the consensual liens on the Property is avoided, the increased valuation matters not.

Next Steps

With the above analysis in mind, the Court will meet with the parties about next steps regarding the resolution of the Motion.

Party Information

Debtor(s):

Thomas Anthony Ferro	Represented By Debra Brand Joseph Gerard McCarty

Movant(s):

Thomas Anthony Ferro	Represented By Debra Brand Debra Brand Joseph Gerard McCarty Joseph Gerard McCarty

Trustee(s):

Jerry Namba (TR)	Represented By Timothy J Yoo John N Tedford IV Carmela Pagay

9:00 AM
9:24-10572 Thomas Anthony Ferro **Chapter 7**

#20.00 CONT'D (as a Status Conference) re: Objection to Claim #12 by Claimant Geringer Capital, Inc., successor-in-interest to Miller Carbonic, Inc., in the amount of $541,917.01

fr. 5-6-25, 6-17-25, 9-9-25, 9-30-25, 10-22-25, 11-5-25, 11-19-25, 12-10-25, 1-14-26, 4-8-26, 5-06-26, 5-20-26, 6-17-26, 7-08-26,

Docket 100

Tentative Ruling:

August 12, 2026

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

July 8, 2026

Appearances waived.

The hearing is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The status conference hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

9:00 AM

CONT... Thomas Anthony Ferro Chapter 7

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 8, 2026

Appearances waived.

The hearing on the motion is continued to May 6, 2026, at 9:00 a.m.

January 14, 2026

Appearances required.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

November 19, 2025

Appearances waived.

The hearing on the objection is continued to December 10, 2025, at 9:00 a.m.

November 5, 2025

Appearances waived.

The hearing is continued to November 19, 2025, at 9:00 a.m. due to the government shutdown.

October 22, 2025

The status conference is continued to November 5, 2025, at 9:00 a.m. due to the Government Shutdown.

September 30, 2025

Appearances waived.

The hearing is continued to October 22, 2025, at 9:00 a.m.

May 6, 2025

Appearances waived.

The hearing is continued to June 17, 2025, pursuant to that *Stipulation to Continue Hearing on Objection to Proof of Claim of Geringer Capital, Inc., Successor-In-Interest to Miller Carbonic, Inc. [Claim Number 12]*. *See* Docket No. 112.

Party Information

Debtor(s):

Thomas Anthony Ferro	Represented By Debra Brand Joseph Gerard McCarty

Trustee(s):

Jerry Namba (TR)	Represented By

9:00 AM

CONT... **Thomas Anthony Ferro** **Chapter 7**

Timothy J Yoo
John N Tedford IV
Carmela Pagay

9:00 AM

9:23-10601 Ampersand Publishing, LLC **Chapter 7**

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

#21.00 CONT'D Hearing
RE: [152] Motion Notice of Motion and Plaintiff's Motion Compelling the Appearance of Wendy McCaw for Deposition; Joint Stipulation Regarding Discovery Dispute, with Proof of Service (Hearing: July 29, 2026 at 9:00 a.m.)

FR. 7-29-26,

Docket 152

Tentative Ruling:

August 12, 2026

Appearances waived.

The hearing on the motion is continued to September 9, 2026, at 9:00 a.m.

July 29, 2026

Appearances required.

Party Information

Debtor(s):

Ampersand Publishing, LLC	Represented By Anthony A. Friedman

Defendant(s):

715 Anacapa, LLC, a California	Represented By Chase Aleksander Stone Byron Z Moldo
725 Kellogg, LLC, a California	Represented By

9:00 AM

CONT... **Ampersand Publishing, LLC** **Chapter 7**

Chase Aleksander Stone
Byron Z Moldo

Wendy McCaw — Represented By
Chase Aleksander Stone
Byron Z Moldo

Plaintiff(s):

Jerry Namba — Represented By
Tinho Mang
D Edward Hays
Kristine A Thagard

Trustee(s):

Jerry Namba (TR) — Represented By
Tinho Mang
D Edward Hays

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01044 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#22.00 CONT'D Hearing re: [73] Motion for leave to intervene and file an answer in intervention

FR. 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 73

Tentative Ruling:

August 12, 2026

Appearances required.

July 29, 2026

Appearances waived.

The hearing on the motion is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

9:00 AM
CONT... **Makat Investments, LLC** **Chapter 12**

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01044 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#23.00 CONT'D Hearing re: [70] Plaintiff's motion for default judgment under LBR 7055-1

fr. 4-8-26, 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 70

Tentative Ruling:

August 12, 2026

Appearances required.

July 29, 2026

Appearances waived.

The hearing on the motion is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

9:00 AM

CONT... Makat Investments, LLC **Chapter 12**

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 8, 2026

Appearances waived.

The hearing on the motion is continued to May 6, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Movant(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01044 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#24.00 CONT'D Hearing re: [35] Plaintiff's motion for summary judgment

fr. 12-10-25, 1-14-26, 1-28-26, 4-22-26, 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 35

Tentative Ruling:

August 12, 2026

Appearances required.

July 29, 2026

Appearances waived.

The hearing on the motion is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

9:00 AM
CONT... Makat Investments, LLC **Chapter 12**

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 22, 2026

Appearances waived.

The hearing is continued to May 6, 2026, at 9:00 a.m.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Movant(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By

9:00 AM

CONT... **Makat Investments, LLC** **Chapter 12**

Michael G D'Alba

Trustee(s):

Elizabeth (ND) F Rojas (TR) Pro Se

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01044 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#25.00 CONT'D Status Conference re: [1] Adversary case 9:24-ap-01044. Complaint by Sandra K. McBeth, Chapter 7 Trustee For The Estate Of Live Oak Rentals, LLC against Makat Investments, LLC. ($350.00 Fee Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

fr. 1-29-25, 3-26-25, 4-23-25, 6-18-25, 10-22-25, 11-19-25, 12-10-25, 1-14-26, 4-22-26, 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

July 29, 2026

Appearances waived.

The hearing on the motion is continued to August 12, 2026, at 9:00 a.m.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

9:00 AM

CONT... Makat Investments, LLC **Chapter 12**

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 22, 2026

Appearances waived.

The hearing is continued to May 6, 2026, at 9:00 a.m.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

November 19, 2025

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 44. The Court is also aware that a motion for summary adjudication has been filed, and is set to be heard by the Court on December 10, 2025. *See* Docket No. 35, *Plaintiff's Notice of Motion and Motion for Summary Judgment*. Lastly, the Court on November 13, 2025, entered that *Order Approving Second Stipulation Under LBR 7016-1(a)(5) to Extend Scheduling Order*. *See* Docket No. 45.

The status conference is continued to December 10, 2025, at 9:00 a.m.

October 22, 2025

The status conference is continued to November 19, 2025, at 9:00 a.m.

June 18, 2025

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 26. With discovery seemingly back on track, the Court will continue the status conference to October 22, 2025, at 9:00 a.m.

April 23, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 19. The Plaintiff, given delays in the Defendant providing discovery responses, seeks to extend the current discovery cutoff date of May 30, 2025, and the deadline for this Court to hear dispositive motions of July 9, 2025. It is unclear to the Court how much more time the Plaintiff is requesting for each of these deadlines.

March 26, 2025

Appearances required. The Defendant shall appear, through counsel or otherwise, in-person.

The Court has reviewed that *Unilateral Status Report* (the "Report"). *See* Docket No. 11. Despite efforts to meet with, and obtain Makat Investments, LLC's (the "Defendant") input for the Report, the Defendant has gone radio silent. *See id.* at p. 4. Those *Adversary Proceeding Status Conference Procedures* and this Court's Local Rule 7016-1(a)(2) require all parties to an adversary proceeding to participate in the formulation of the joint status reports prior to each status conference. *See* Docket No.

9:00 AM

CONT... Makat Investments, LLC **Chapter 12**

2. The failure to do so "may result in the imposition of monetary sanctions and/or the status conference being continued." *See id.* at p. 1. In fact, this Court's Local Rule 7016-1(f)(4) provides that if a status conference statement is not filed, "[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" may be ordered by the Court.

By all accounts, the Defendant has lost interest in advancing the case. Beyond the Defendant's, and counsel to the Defendant's, failure to respond to requests to meet and confer regarding the Report, the Defendant has failed to provide initial disclosures as required by Fed. R. Civ. P. 16(a)(1), made applicable to adversary proceedings by Fed. R. Bankr. P. 7026. *See* Docket No. 9, *Plaintiff's Notice of Motion and Motion to Compel Initial Disclosures and Payment of Expenses* (the "Motion"). The Defendant has not complied with this Court's Local Rule 7016-1(c). Sandra McBeth (the "Plaintiff"), the Chapter 7 Trustee for the bankruptcy estate of Live Oak Rentals LLC, 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 Defendant to do what the Rules of Civil Procedure applicable to this adversary proceeding require, absent any prompting of the Plaintiff. The Defendant has not responded to the Motion. The Court is inclined to resolve the Motion in two stages. First, the Court will grant the Motion, requiring the Defendant to provide full disclosures as required under Fed. R. Civ. P. 26(a)(1) on or before April 4, 2025. Second, the Court will issue an order to show cause as to why the Court should not issue terminating sanctions, striking the answer and entering judgment for the Plaintiff, for the Defendant's failure to provide its input for the Report and to timely provide initial disclosures, and to issue monetary sanctions in the amount of $1,500 against the Defendant and the Defendant's counsel, jointly and severally. The Court will hold a hearing on the show cause order on April 23, 2025, at 10:00 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 Plaintiff submit evidence in support of their expenses and fees incurred in bringing the Motion to be filed on or before April 2, 2025.

9:00 AM

CONT... **Makat Investments, LLC** **Chapter 12**

January 29, 2025

Appearances required.

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. 2, *Adversary Proceeding Status Conference Procedures* (the "Procedures Order"). The Court finds no status report, and so is unable to prepare for a meaningful status conference in this matter.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01045 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#26.00 CONT'D Hearing re: [35] Plaintiff's motion for summary judgment

fr. 12-10-25, 1-14-26, 1-28-26, 4-22-26, 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 35

Tentative Ruling:

August 12, 2026

Appearances waived.

As the Court has entered judgement, this matter is vacated.

July 29, 2026

Appearances required.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

May 20, 2026

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

9:00 AM

CONT... **Makat Investments, LLC** **Chapter 12**

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 22, 2026

Appearances waived.

The hearing is continued to May 6, 2026, at 9:00 a.m.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Movant(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

9:00 AM

CONT... **Makat Investments, LLC** **Chapter 12**

Trustee(s):

Elizabeth (ND) F Rojas (TR) Pro Se

9:00 AM

9:24-10319 Makat Investments, LLC **Chapter 12**

Adv#: 9:24-01045 Sandra K. McBeth, Chapter 7 Trustee For The Estate v. Makat Investments,

#27.00 CONT'D Status Conference re: [1] Adversary case 9:24-ap-01045. Complaint by Sandra K. McBeth, Chapter 7 Trustee For The Estate Of Live Oak Rentals, LLC against Makat Investments, LLC. ($350.00 Fee Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

fr. 1-29-25, 3-26-25, 4-23-25, 6-18-25, 10-22-25, 11-19-25, 12-10-25, 1-14-26, 1-28-26, 4-22-26, 5-06-26, 5-20-26, 6-17-26, 7-29-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances waived.

As the Court has entered judgement, this matter is vacated. The Court will close the matter.

July 29, 2026

Appearances required.

June 17, 2026

Appearances waived.

The hearing is continued to July 8, 2026, at 9:00 a.m.

9:00 AM
CONT... **Makat Investments, LLC** **Chapter 12**

May 20, 2026

Appearances waived.

The hearing is continued to June 17, 2026, at 1:00 p.m.

May 6, 2026

Appearances waived.

The hearing is continued to May 20, 2026, at 9:00 a.m.

April 22, 2026

Appearances waived.

The hearing is continued to May 6, 2026, at 9:00 a.m.

December 10, 2025

Appearances waived.

The hearing on the motion is continued to January 14, 2026, at 9:00 a.m.

November 19, 2025

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 46. The Court is also aware that a motion for summary adjudication has been filed, and is set to be heard by the Court on December 10, 2025. *See* Docket No. 35, *Plaintiff's Notice of Motion and Motion for Summary Judgment*. Lastly, the Court on November 13, 2025, entered that *Order Approving Second Stipulation Under LBR 7016-1(a)(5) to Extend*

Scheduling Order. See Docket No. 47.

The status conference is continued to December 10, 2025, at 9:00 a.m.

October 22, 2025

The status conference is continued to November 19, 2025, at 9:00 a.m.

June 18, 2025

Appearances waived.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 26. With discovery seemingly back on track, the Court will continue the status conference to October 22, 2025, at 9:00 a.m.

April 23, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. *See* Docket No. 19. The Plaintiff, given delays in the Defendant providing discovery responses, seeks to extend the current discovery cutoff date of May 30, 2025, and the deadline for this Court to hear dispositive motions of July 9, 2025. It is unclear to the Court how much more time the Plaintiff is requesting for each of these deadlines.

March 26, 2025

Appearances required. The Defendant shall appear, through counsel or otherwise, in-person.

The Court has reviewed that *Unilateral Status Report* (the "Report"). *See* Docket No.

9:00 AM

CONT... Makat Investments, LLC **Chapter 12**

11. Despite efforts to meet with, and obtain Makat Investments, LLC's (the "Defendant") input for the Report, the Defendant has gone radio silent. *See id.* at p. 4. Those *Adversary Proceeding Status Conference Procedures* and this Court's Local Rule 7016-1(a)(2) require all parties to an adversary proceeding to participate in the formulation of the joint status reports prior to each status conference. *See* Docket No. 2. The failure to do so "may result in the imposition of monetary sanctions and/or the status conference being continued." *See id.* at p. 1. In fact, this Court's Local Rule 7016-1(f)(4) provides that if a status conference statement is not filed, "[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" may be ordered by the Court.

By all accounts, the Defendant has lost interest in advancing the case. Beyond the Defendant's, and counsel to the Defendant's, failure to respond to requests to meet and confer regarding the Report, the Defendant has failed to provide initial disclosures as required by Fed. R. Civ. P. 16(a)(1), made applicable to adversary proceedings by Fed. R. Bankr. P. 7026. *See* Docket No. 9, *Plaintiff's Notice of Motion and Motion to Compel Initial Disclosures and Payment of Expenses* (the "Motion"). The Defendant has not complied with this Court's Local Rule 7016-1(c). Sandra McBeth (the "Plaintiff"), the Chapter 7 Trustee for the bankruptcy estate of Live Oak Rentals LLC, 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 Defendant to do what the Rules of Civil Procedure applicable to this adversary proceeding require, absent any prompting of the Plaintiff. The Defendant has not responded to the Motion. The Court is inclined to resolve the Motion in two stages. First, the Court will grant the Motion, requiring the Defendant to provide full disclosures as required under Fed. R. Civ. P. 26(a)(1) on or before April 4, 2025. Second, the Court will issue an order to show cause as to why the Court should not issue terminating sanctions, striking the answer and entering judgment for the Plaintiff, for the Defendant's failure to provide its input for the Report and to timely provide initial disclosures, and to issue monetary sanctions in the amount of $1,500 against the Defendant and the Defendant's counsel, jointly and severally. The Court will hold a hearing on the show cause order on April 23, 2025, at 10:00 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

9:00 AM
CONT... Makat Investments, LLC **Chapter 12**

levying, but the Court requires evidence of those fees and expenses, and so the Court will require that the Plaintiff submit evidence in support of their expenses and fees incurred in bringing the Motion to be filed on or before April 2, 2025.

January 29, 2025

Appearances required.

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. 2, *Adversary Proceeding Status Conference Procedures* (the "Procedures Order"). The Court finds no status report, and so is unable to prepare for a meaningful status conference in this matter.

Party Information

Debtor(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Defendant(s):

Makat Investments, LLC	Represented By Reed H Olmstead

Plaintiff(s):

Sandra K. McBeth, Chapter 7	Represented By Michael G D'Alba

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:25-11210 **Matthew Nash** **Chapter 7**

Adv#: 9:25-01045 Reed v. Nash

#28.00 CONT'D Hearing
RE: [34] Motion to Compel Discovery Responses and To Impose Sanctions Against Defendant Matthew Nash

FR. 7-29-26,

Docket 34

Tentative Ruling:

August 11, 2026

Appearances required.

Background

On December 9, 2025, Robert Reed ("Plaintiff") filed that *Complaint to Determine Non-Dischargeability Pursuant to 11 U.S.C. § 523(a)(2), (4), and (6)* (the "Complaint") as against Matthew Nash ("Defendant"). *See* Docket No. 1. After input from the parties, on February 23, 2026, the Court entered that *Scheduling Order* (the "Order"). *See* Docket No. 25. The Order provided that the "[l]ast day to conduct discovery, including receipt of responses" was May 29, 2026 (the "Discovery Cutoff"). *See id.* at p. 2, line 1. Trial was set for September 17, 2026. *See id.* at line 5. On April 8, 2026, the Court entered that *Order on Stipulation to Extend Times*, which extended the Discovery Cutoff to July 15, 2026. *See* Docket No. 30.

On June 16, 2026, Plaintiff filed that *Motion to Compel Discovery Responses and to Impose Sanctions Against Defendant Matthew Nash* (the "Motion"). *See* Docket No. 34. The Motion seeks to compel discovery responses from Defendant regarding discovery that was served on or about March 11, 2026. *See id.* at p. 3, lines 22-24. More specifically, the Plaintiff served the Defendant special interrogatories, requests for production of documents, and requests for admissions. *See id.* at *Declaration of*

9:00 AM
CONT... **Matthew Nash** **Chapter 7**

Robert D. Reed, p. 6 lines 8-13.

Defendant has not provided responses to any of the propounded discovery. *See id.* at lines 14-15.

No opposition to the Motion has been filed.

Analysis

LBR 7026-1

Pursuant to Local Bankruptcy Rule ("LBR") 7026-1(c), unless excused by court order, "a party must seek to resolve any dispute arising under FRBP 7026-7037" in accordance with LBR 7026-1. LBR 7026-1(c)(1).

Pursuant to LBR 7026-1(c)(2), prior to filing a discovery motion, "the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute." LBR 7026-1(c)(2). The moving party bears the responsibility to arrange the meeting, and "unless altered by agreement of the parties or by order of the court for cause shown, the opposing party must meet with the moving party within 7 days of service upon the opposing party of a letter requesting such meeting and specifying the terms of the discovery order to be sought." LBR 7026-1(c)(2).
Pursuant to LBR 7026-1(c)(3), "[i]f the parties are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion together with a written stipulation by the parties. [] (C) In the absence of such stipulation or a declaration of a party of noncooperation by the opposing party, the court will not consider the discovery motion."

Here, the Plaintiff has complied with the LBR 7026-1(c) with the declaration stating the Defendant have failed to cooperate in resolving the discovery dispute. *See* Docket No. 39.

Fed. R. Civ. P. 33 and 34

Pursuant to Fed. R. Civ. P. 33(b), made applicable by Fed. R. Bankr. P. 7033, "(1) The interrogatories must be answered: (A) by the party to whom they are directed []. (2) The responding party must serve its answers and any objections within 30 days after being served with the interrogatories."

Pursuant to Fed. R. Civ. P. 34(a), made applicable by Fed. R. Bankr. P. 7034, "[a] party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party [] to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control: (A) any designated documents or electronically stored information…"

Pursuant to Fed. R. Civ. P. 37(a)(3)(B), made applicable by Fed. R. Bankr. P. 7037, "[a] party seeking discovery may move for an order compelling an answer, [] production, or inspection. This motion may be made if: [] (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents [] as requested under Rule 34." "It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection." *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (citing *Davis v. Fendler,* 650 F.2d 1154, 1160 (9th Cir. 1981)).

Here, Defendant failed to respond to the propounded discovery, and as such has waived all objections to the special interrogatories and the requests for production of documents. The Court will compel Defendant to produce the requested documents and answer the special interrogatories.

Fed. R. Civ. P. 36

Pursuant to Fed. R. Civ. P. 36(a)(3), made applicable by Fed. R. Bankr. P. 7036, "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." "Failure to timely respond to requests for admissions results in automatic admission of the matters requested. [] No motion to establish the admissions is needed because [Fed. R. Civ. P. 36(a)] is self executing." *F.T.C. v. Medicor LLC*, 217 F.Supp.2d 1048, 1053 (C.D. Cal. 2002).

The requests for admission at bar are deemed at admitted without the need for further response by Defendant.

Conclusion

The Court grants the Motion insofar as it seeks to compel Defendant to produce documents and answer the special interrogatories. Additionally, the Court finds that the requests for admission at issue are deemed admitted. The admissions deemed admitted should be attached to the order granting the Motion. The document production is to be made within five (5) business days of the order granting the Motion being entered.

Further, the Court would award, pursuant to Fed. R. Civ. P. 37(a)(5), Plaintiff's reasonable expenses and costs, however, the Motion does not contain information about Plaintiff's expenses and costs related to the Motion.

Plaintiff is to upload a conforming order within 7 days.

July 29, 2026

Appearances required.

Background

On December 9, 2025, Robert Reed ("Plaintiff") filed that *Complaint to Determine Non-Dischargeability Pursuant to 11 U.S.C. § 523(a)(2), (4), and (6)* (the "Complaint") as against Matthew Nash ("Defendant"). *See* Docket No. 1. After input from the parties, on February 23, 2026, the Court entered that *Scheduling Order* (the "Order"). *See* Docket No. 25. The Order provided that the "[l]ast day to conduct discovery, including receipt of responses" was May 29, 2026 (the "Discovery Cutoff"). *See id.* at p. 2, line 1. Trial was set for September 17, 2026. *See id.* at line 5. On April 8, 2026, the Court entered that *Order on Stipulation to Extend Times*, which extended the Discovery Cutoff to July 15, 2026. *See* Docket No. 30.

On June 16, 2026, Plaintiff filed that *Motion to Compel Discovery Responses and to Impose Sanctions Against Defendant Matthew Nash* (the "Motion"). *See* Docket No.

34. The Motion seeks to compel discovery responses from Defendant regarding discovery that was served on or about March 11, 2026. *See id.* at p. 3, lines 22-24.

Pursuant to this Court's Local Rule ("LBR") 7026-1(c)(2):

> Prior to the filing of any motion relating to discovery, the parties must meet in person or by telephone in a good faith effort to resolve a discovery dispute. It is the responsibility of the moving party to arrange the conference. Unless altered by agreement of the parties or by order of the court for cause shown, the opposing party must meet with the moving party within 7 days of service upon the opposing party of a letter requesting such meeting and specifying the terms of the discovery order to be sought.

Pursuant to LBR 7026-1(c)(3) (which applies to any dispute arising under Fed. R. Bankr. P. 7026-7037):

> If the parties are unable to resolve the dispute, the party seeking discovery must file and serve a notice of motion <u>*together with a written stipulation by the parties*</u>. (A) The stipulation must be contained in 1 document and must identify, separately and with particularity, each disputed issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue. (B) The stipulation must not simply refer the court to the document containing the discovery request forming the basis of the dispute. For example, if the sufficiency of an answer to an interrogatory is in issue, the stipulation must contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated. (C) <u>*In the absence of such stipulation or a declaration of a party of noncooperation by the opposing party, the court will not consider the discovery motion*</u>.

(emphasis added).

Here, the Court cannot determine when, or if a telephonic or in-person discovery conference in conformance with LBR 7026-1(c)(2) was requested by Plaintiff, and what the results of that discovery conference were if it was had. Rather, the Court finds a letter from Plaintiff to Defendant, rather than Defendant's counsel of record, demanding a repair of purported discovery deficiencies, and notice that the Motion

9:00 AM

CONT... **Matthew Nash** **Chapter 7**

would be filed absent said repair. *See* Docket No. 34, p. 35. Where can the Court find Plaintiff's request for a discovery conference with counsel to Defendant before the Motion was filed, as this Court's Local Rules require? Again, this Court's Local Rules do not allow for an email or text message campaign between the parties to sort discovery issues. A telephonic or in-person meeting must be had prior to filing a discovery motion. If a party fails to cooperate, a declaration stating as much must be submitted. If Defendant did not participate in a requested discovery conference, where may the Court find a declaration that comports with LBR 7026-1(c)(3)?

Absent proof of Plaintiff's compliance with this Court's Local Rules regarding discovery disputes, the Court will deny the Motion.

Party Information

Debtor(s):

Matthew Nash	Represented By William C Beall

Defendant(s):

Matthew Nash	Represented By William C Beall

Plaintiff(s):

Robert Reed	Pro Se

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

9:00 AM

9:26-10154 Darius Balys Mikenas **Chapter 13**

#29.00 CONT'D Hearing on Confirmation of Chapter 13 Plan

fr. 4-16-26, 6-11-26,

Docket 26

Tentative Ruling:

August 12, 2026

Appearances waived.

The confirmation hearing is continued to September 9, 2026, at 9:00 a.m.

Party Information		
Debtor(s):		
Darius Balys Mikenas	Represented By Kevin T Simon	
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, August 12, 2026 **Hearing Room** **201**

10:00 AM

9:26-10517 **Bryan Huerta** **Chapter 7**

#30.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Fifth Third Bank, National Association

Docket 8

Tentative Ruling:

August 12, 2026

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).

Party Information

Debtor(s):

Bryan Huerta — Represented By Monica Robles

Trustee(s):

Jeremy W. Faith (TR) — Pro Se

10:00 AM

9:26-10517 **Bryan Huerta** **Chapter 7**

#31.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and VW Credit, Inc.

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bryan Huerta	Represented By Monica Robles

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

Wednesday, August 12, 2026 **Hearing Room 201**

10:00 AM

9:26-10572 Daniel Covarrubias and Jeanette Farias **Chapter 7**

#32.00 Reaffirmation Hearing Date SetRE: [17] Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Covarrubias	Represented By Michael B Clayton

Joint Debtor(s):

Jeanette Farias	Represented By Michael B Clayton

Trustee(s):

Nancy J Zamora (TR)	Pro Se

10:00 AM

9:26-10582 **Miguel Angel Murillo and Darlene Marie Murillo** **Chapter 7**

#33.00 Reaffirmation Hearing Date SetRE: [22] Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.

Docket 22

Tentative Ruling:

August 12, 2026

No appearance required.

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

Party Information

Debtor(s):

Miguel Angel Murillo	Represented By Roy M Holland

Joint Debtor(s):

Darlene Marie Murillo	Represented By Roy M Holland

Trustee(s):

Nancy J Zamora (TR)	Pro Se

10:00 AM

9:26-10669 Susan Elizabeth Lustig **Chapter 7**

#34.00 Reaffirmation Hearing Date SetRE: [14] Reaffirmation Agreement Between Debtor and CoastHills Credit Union

Docket 14

Tentative Ruling:

August 12, 2026

No appearance required.

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

Party Information

Debtor(s):

Susan Elizabeth Lustig	Represented By Edwin J Rambuski

Trustee(s):

Amy L Goldman (TR)	Pro Se

10:00 AM

9:26-10694 **Torrie Ramsbottom** **Chapter 7**

#35.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and EXETER FINANCE LLC

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Torrie Ramsbottom	Represented By Steven Abraham Wolvek

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

10:00 AM

9:26-10706 Kevin Andrew Rodriguez **Chapter 7**

#36.00 Reaffirmation Hearing Date SetRE: [18] Pro se Reaffirmation Agreement Between Debtor and VW Credit inc

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin Andrew Rodriguez Pro Se

Trustee(s):

Jeremy W. Faith (TR) Pro Se

10:00 AM

9:26-10697 Brendan John McNulty **Chapter 7**

#37.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and LendingClub Bank

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brendan John McNulty	Represented By Daniel A Higson

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

10:00 AM

9:26-10697 **Brendan John McNulty** **Chapter 7**

#38.00 Reaffirmation Hearing Date SetRE: [12] Reaffirmation Agreement Between Debtor and OceanAir Federal Credit Union

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brendan John McNulty	Represented By Daniel A Higson

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

11:00 AM

9:26-10164 M&B Services, Inc. **Chapter 11**

#39.00 Hearing
RE: [84] Motion for approval of chapter 11 disclosure statement

Docket 84

Tentative Ruling:

August 12, 2026

Appearances required.

Before the Court is that *Chapter 11 Debtor's Disclosure Statement Describing Plan of Reorganization Dated June 30, 2026* (the "Disclosure Statement"), filed by M&B Services, Inc. (the "Debtor"). *See* Docket No. 83.

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

11:00 AM
CONT... M&B Services, Inc. Chapter 11

an informed choice regarding the approval or rejection of a plan." *In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (9th Cir. BAP 1996).

The Court has a few comments about the Disclosure Statement.

- The Disclosure Statement provides that the equity interests in the Debtor are "cancelled" upon the effective date. *See* Docket No. 83, p. 18, lines 8-11. The Court is unclear on the ownership structure as of the effective date. If all interests are cancelled, are new shares to be issued, or does the Debtor simply provide the same interests to its current shareholders?

- The Disclosure Statement describes a new value contribution by Martin J. Alvarez ("Alvarez"). *See id.* at pp. 18-19. A part of the new value contribution will be "deferred compensation" of $745 per month for 60 months. *See id.* at p. 18, lines 23-26. How much precisely is Alvarez to be paid throughout the life of the plan of reorganization as compensation? Is the Debtor counting the $159,393 in "Officer Health Insurance" in this calculation? The Disclosure Statement describes deferred and decreased rent on an unexpired lease. The Debtor did not schedule any leases. *See* Docket No. 31, *Schedule G: Executory Contracts and Unexpired Leases*, p. 22. If there was a commercial lease as of the petition date, has that lease not now been deemed rejected? *See* 11 U.S.C. § 365(d)(4). Alvarez is to transfer to the Debtor certain vehicles that "have approximately $12,600 in equity," but are valued at $29,290. *See* Docket No. 83, p. 19, lines 7-8. Does this mean that there amounts owed on the vehicles? If so, is the Debtor to assume these liabilities? If the Debtor is not to assume these liabilities, what authority, contractual or otherwise, does Alvarez have to transfer the vehicles to the Debtor?

- The Disclosure Statement provides that the Debtor has no leases or executory contracts that will be assumed. *See id.* at p. 20, lines 15-18. What of the lease described with Alvarez?

- The Disclosure Statement provides that "there should be no tax implication to Debtor" from the Debtor's income. *See id.* at p. 21, lines 18-20. Is Alvarez committing to indemnify the Debtor for any and all income tax liability? If the

11:00 AM
CONT... **M&B Services, Inc.** **Chapter 11**

Debtor accrues no tax liability, why did the IRS file a proof of claim? *See* Claim No. 1.

- On page 83 of the Disclosure Statement, it should be made clear that the Debtor is not simply paying $6,000 per month towards its plan of reorganization, but also all of the amounts under Classes 1-4.

Party Information

Debtor(s):

M&B Services, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

11:00 AM

9:26-10164 **M&B Services, Inc.** **Chapter 11**

#40.00 CONT'D Chapter 11 Status Conference

fr. 3-25-26, 6-17-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

The Court has reviewed that *Chapter 11 Status Report*. *See* Docket No. 90. The Court will hear from the parties-in-interest, including the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

June 17, 2026

Appearances required.

The Court has reviewed that *Chapter 11 Status Report*. *See* Docket No. 76. The Court will hear from the parties-in-interest, including the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

Assuming no compliance issues, or any other issues, the Court will continue the status conference to August 12, 2026, at 11:00 a.m.

March 25, 2026

Appearances required.

11:00 AM
CONT... M&B Services, Inc. **Chapter 11**

The Court has reviewed that *Chapter 11 Status Report*. *See* Docket No. 59. 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*.

Assuming compliance, the Court will set the following dates:

June 30, 2026 – Deadline for the Debtor to file and serve a disclosure statement and plan of reorganization

June 30, 2026 – Deadline for the Debtor to file and serve notice of disclosure statement hearing

August 12, 2026, at 1:00 p.m. – Hearing on to-be filed disclosure statement

June 17, 2026, at 1:00 p.m. – Continued status conference

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

Party Information

Debtor(s):

M&B Services, Inc. — Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

11:00 AM

9:26-10922 Robert Joseph Smith **Chapter 11**

#41.00 Chapter 11 Status Conference; Voluntary Petition Individual

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

The Court has reviewed *Debtor's Initial Status Report* (the "Report"). *See* Docket No. 40. Through the Report, Robert Joseph Smith (the "Debtor") provided that he "does not believe he can propose a feasible Plan of Reorganization under Chapter 11," principally due to the Debtor's inability to earn sufficient income to fund a plan of reorganization. *See id.* at p. 3, lines 8-9 and 15-16. The statement in the Report conflicts with the Debtor's statements in that *Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion"), wherein the Debtor stated that he "accepted a consulting job in Arizona and will earn approx. $8,000.00 per month starting in mid August," and "Debtor will also rent out part or all of his current residence and anticipates collecting $6,500.00 per month in rent for the property." *See* Docket No. 24, p. 5. Stated differently, two weeks prior to filing the Report, the Debtor made representations to the Court that he had, or would soon have sufficient income to confirm a plan of reorganization. What changed? Or, rather, is it that the Debtor was untruthful with the Court in his statements found in the Motion, solely in an effort to stall the foreclosure of his home?

This is not the only conflicting statement by the Debtor the Court observes. In his petition, the Debtor listed a mailing address in Arizona, but stated that he lives in Ojai. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*, p. 2. He scheduled a utility claim by Arizona Public Service and claims for medical services by healthcare providers in Arizona, the last of which medical services claims accrued in 2025. *See* Docket No. 22, *Schedule E/F: Creditors Who Have Unsecured Claims*, pp. 22, 25, and 28.

11:00 AM

CONT... Robert Joseph Smith **Chapter 11**

The Court is inclined to dismiss the instant case. The question the Debtor must answer is why the Court should not dismiss the case with a bar to re-filing, based on the issues raised herein.

Party Information

Debtor(s):

Robert Joseph Smith — Represented By Michael Jay Berger

Movant(s):

Robert Joseph Smith — Represented By Michael Jay Berger

11:00 AM

9:25-11740 **Sancho Loco Inc.** **Chapter 11**

#42.00 CONT'D Hearing
RE: [85] Stipulation By Sancho Loco Inc. and U.S. Small Business Administration Re Chapter 11 Plan Treatment, with Proof of Service

FR. 6-17-26,

Docket 85

Tentative Ruling:

August 12, 2026

Appearances required.

June 17, 2026

Appearances required.

See calendar item 33.

Party Information

Debtor(s):

Sancho Loco Inc. — Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

Caroline Renee Djang (TR) — Pro Se

11:00 AM

9:25-11740 **Sancho Loco Inc.** **Chapter 11**

#43.00 Hearing re: [50] Confirmation of debtor's chapter 11 plan of reorganization

fr. 4-22-26, 5-20-26, 6-17-26,

Docket 50

Tentative Ruling:

August 12, 2026

Appearances required.

See calendar item 44.

June 17, 2026

Appearances required.

See calendar item 33.

Party Information

Debtor(s):

Sancho Loco Inc. — Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Trustee(s):

Caroline Renee Djang (TR) — Pro Se

11:00 AM

9:25-11740 Sancho Loco Inc. **Chapter 11**

#44.00 CONT'D Chapter 11 Subchapter V Status Conference

fr. 2-11-26, 3-11-26, 4-22-26, 5-20-26, 6-17-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

On March 20, 2026, Sancho Loco, Inc. (the "Debtor") filed *Debtor's Chapter 11 Plan of Reorganization* (the "Plan"). *See* Docket No. 50. After continuances of the hearing on confirmation of the Plan, and the Debtor's filing of certain adversary proceedings, the resolution of which are critical to the Debtor's plan confirmation efforts, the Court entered that *Scheduling Order After Status Conference* (the "Order") on June 24, 2026. *See* Docket No. 101. Among other things, the Order required the Debtor, LendSpark Corporation, and Itria Ventures LLC to partake in a half-day mediation session with the SubChapter V trustee on or before July 31, 2026. *See id.* at p. 2, lines 12-16. The Order follows the oral ruling issued on June 17, 2026. *See* Docket No. 97.

On July 29, 2026, the Debtor filed *Debtor's Status Report* (the "Report"). *See* Docket No. 114. The Debtor provided in the Report that "[d]ue to scheduling limitations, the Debtor, Trustee and Itria Ventures LLC were unable to meet by July 31, 2026, but are scheduled to meet in person [] at the Trustee's office on August 11, 2026…" *See id.* at p. 5, lines 8-11.

The parties were ordered to meet with the SubChapter V Trustee by July 31, 2026, on June 17, 2026. The Court will want to understand why in a 44 day period, the parties were unable to do what this Court ordered the parties to do, meet with the SubChapter V Trustee regarding the objections to confirmation of the Plan and the pending

11:00 AM

CONT... Sancho Loco Inc. Chapter 11

adversary proceedings.

Pursuant to this Court's Local Rule 1001-1(f), "[t]he failure of counsel or of a party to comply [] with any order of the court may be grounds for the imposition of sanctions pursuant to applicable law, including the Bankruptcy Code, the F.R. Civ. P., the FRBP, and the inherent powers of the court."

June 17, 2026

Appearances required.

The Court has reviewed *Debtor's Status Report*. *See* Docket No. 93. At bottom, the Debtor is not prepared, it seems to the Court, to proceed with confirmation of a plan of reorganization.

The instant case was filed on December 12, 2025, with the Debtor electing to proceed under Subchapter V. *See* Docket No. 1. The Debtor's deadline to file a confirmable Chapter 11 plan of reorganization was March 22, 2026. A confirmation hearing date of April 22, 2026, was established by the Court. *See* Docket No. 38, *Scheduling Order After Status Conference*, p. 2, lines 15-16.

On February 24, 2026, Itria Ventures, LLC ("Itria") filed Claim No. 6, a secured claim in the amount of $153,805.19. *See* Claim No. 6. On January 27, 2026, Lendspark Corporation ("Lendspark") filed Claim No. 3, a secured claim in the amount of $31,853.75. *See* Claim No. 3.

On March 20, 2026, the Debtor filed *Debtor's Chapter 11 Plan of Reorganization* (the "Plan"). *See* Docket No. 50. The Plan treats the claim of the Small Business Administration as being secured in the amount of $37,831.60, with the balance as being unsecured, although this was subject to "a business valuation report from an appraiser." *See id.* at p. 15, lines 2-26. The balance of the claims, absent administrative claims, are priority tax claims and non-priority unsecured claims. *See id.* at pp. 14 and 16-17. The Plan provides for no treatment of the Itria and Lendspark claims. *See id.* at lines 8-11. The Plan provides that the Debtor intended to object to the Claims of Itria and Lendspark "prior to the confirmation hearing." *See id.* at p. 12, lines 2-7.

On June 5, 2026, the Debtor filed not claim objections, but rather adversary proceeding complaint against both Itria and Lendspark. *See* Docket Nos. 87-88.

Without any treatment of the Itria or Lendspark claims in the Plan, it seems to the Court that the Plan was never confirmable, and remains unconfirmable absent the resolution of adversary proceeding complaint against each of these claimants.

March 11, 2026

Appearances required.

The Court has reviewed *Debtor's Status Report* (the "Report"). *See* Docket No. 44. Other than a monthly operating report for January 2026, the Court will want to understand what other obligations the Debtor "is admittedly behind" with.

February 11, 2026

Appearances required.

The Court has reviewed that *Subchapter V Status Report Number 2*. *See* Docket No. 30. The Court will hear from the Office of the United States Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

The Court will set a confirmation hearing to take place on April 22, 2026, at 1:00 p.m. The Debtor is to serve its plan of reorganization, notice of the confirmation hearing, and any ballots on or before March 23, 2026. Any responses to confirmation of the Debtor's plan and the return of any ballots are to be filed/submitted on or before April 8, 2026. The Debtor will have until April 15, 2026, to file a memorandum in support of confirmation of its to-be filed plan of reorganization, including responding to any

11:00 AM
CONT... **Sancho Loco Inc.** **Chapter 11**

oppositions to confirmation, and a ballot tally.

The Court will hold a continued status conference on April 22, 2026, at 1:00 p.m.

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

Party Information

Debtor(s):

Sancho Loco Inc.	Represented By Matthew D. Resnik Roksana D. Moradi-Brovia

Trustee(s):

Caroline Renee Djang (TR)	Pro Se

11:00 AM

9:24-10954 Ronald E. Sweeney **Chapter 11**

#45.00 CONT'D Hearing re: [146] Debtor's motion for order authorizing: (1) the employment and payment upon closing of Harcourts Blue Water pursuant to 11 U.S.C. §§ 327 and 328(a) as auctioneer; (2) the terms of auction; and (3) the sale of the real property located at 31532 Victoria Point Rd., Malibu, CA 90265, free and clear of liens and interests pursuant to 11 U.S.C. § 363(b), (f), (m) and (n)

fr. 2-11-26, 5-06-26, 7-08-26, 8-11-26,

Docket 146

Tentative Ruling:

August 11, 2026

Appearances waived.

This matter is continued to August 12, 2026, at 11:00 a.m.

July 8, 2026

Appearances required.

What impact on the balance of the Motion does the Court's approval of that *Notice of Motion and Motion for Order Authorizing Further Extension of Key Dates of Process for Sale of the Real Property Located at 31532 Victoria Point Rd., Malibu, California 90265* (Docket No. 194) have?

February 11, 2026

Appearances required.

Background

On August 21, 2024 (the "Petition Date"), Ronald E. Sweeney (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. The Debtor scheduled as an asset a parcel of real property located at 31532 Victoria Point Rd., Malibu, CA 90265 (the "Property"), with a value of $12 million. *See id.* at p. 16, *Schedule A/B: Property*. The Property has a number of liens claimed against it. Cenlar FSB claims a lien against the Property in the amount of $5,534,699.90, at an interest rate of 6.75% as of the Petition Date. *See* Claim No. 7. The IRS claims a lien against the Property in the amount of $3,020,630.46. *See* Claim No. 6. The FTB claims a lien against the Property in the amount of $167,273.36. *See* Claim No. 5. According to the Debtor, Los Angeles County Tax Assessor's Office claims a lien against the Property in the amount of $28,591.78. *See* Docket No. 146, *Debtor's Notice of Motion and Motion for Order Authorizing: (1) the Employment and Payment Upon Closing of Harcourts Blue Water Pursuant to 11 U.S.C. §§ 327 and 328(a) as Auctioneer; (2) the Terms of Auction; and (3) the Sale of the Real Property Located at 31532 Victoria Point Rd., Malibu, California 90265, Free and Clear of Liens and Interests Pursuant to 11 U.S.C. §§ 363(b), (f), (m) and (n)* (the "Motion"), p. 13, lines 7-8.

The Debtor claimed a homestead exemption of $699,421 in the Property. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*, p. 23.

On November 18, 2024, the Court entered that *Order re Motion in Individual Chapter 11 Case to Authorize Debtor-In-Possession to Employ Professional Other than General Counsel*, approving the Debtor's request to employ Compass as the real property broker for the Property. *See* Docket No. 52.

Now, more than a year after Compass was employed to sell the Property, the Debtor files the Motion to employ a different broker to market, stage, and sell the Property via online auction. Specifically, the Debtor, through the Motion, seeks to employ Harcourts Blue Water ("HBW") to sell the Property through an April 16, 2026, online auction, pursuant to 11 U.S.C. §§ 363(b), (f), and (m). *See* Docket No. 146.

11:00 AM

CONT... Ronald E. Sweeney Chapter 11

Analysis

Whilst the Motion appears postured at the instant hearing to be one simply requesting approval of sale procedures, the Court addresses issues that may impede that analysis.

Employment

Pursuant to 11 U.S.C. § 327(a), "the trustee, with the court's approval, may employ one or more [] auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a); *see also* 11 U.S.C. § 1107(a) (granting the debtor-in-possession full authority as representative of the estate typical of a trustee). Pursuant to 11 U.S.C. § 328(a), "[t]he trustee . . . , with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . of this title . . . on any reasonable terms and conditions of employment . . . ." 11 U.S.C. § 328(a). Section 11 U.S.C. § 504(a) provides that "a person receiving compensation or reimbursement under section 503(b)(2) [] of this title may not share or agree to share – (1) any such compensation or reimbursement with another person; or (2) any compensation or reimbursement received by another person under such sections."

Here, the Debtor has previously employed Compass to market and sell the Property. "[N]o formal written offers were ever received," and "the Debtor's prior listing agreement with Compass expired in or about April of last year." *See* Docket No. 146, p. 12, lines 19-22. According to that *Residential Listing Agreement*, Compass agreed to market and attempt to sell the Property through and including January 23, 2025. *See* Docket No. 47, *Motion to Employ Professional Other Than General Bankruptcy Counsel*, p. 20.

Yet, the Motion provides that, if approved, HBW will "share[]" 1% of its commission with Compass. *See* Docket No. 146, p. 3, lines 5-6. That *Residential Listing Agreement* attached to the Motion aptly refers to this 1% sharing as a "referral fee." *See id.* at p. 36. The Court's questions for the Debtor are: (1) why would Compass be entitled to any of the proceeds of HBW's efforts to market, stage and sell the Property; and (2) would this sharing not be violative of 11 U.S.C. § 504? Removal of the referral fee would reduce the commissions related to a sale of the Property to 3.5%, would it not?

11:00 AM
CONT... **Ronald E. Sweeney** **Chapter 11**

11 U.S.C. § 363(f)

Section 363(f) of the Bankruptcy Code permits a sale of property of the bankruptcy estate "free and clear of any interest in such property of an entity other than the estate" if any one of the following five conditions is met:

> (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is a bona fide dispute; or
>
> (5) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

"Section 363(f)(3) recognizes that a lien holder has an interest in a sale of its collateral, and can successfully oppose the sale if the proceeds do not pay the full amount of debt secured by the property being sold." *In re Popp*, 323 B.R. 260, 266 (9th Cir. BAP 2005). The Ninth Circuit BAP has held that 11 U.S.C. § 363(f)(3) "does not authorize the sale free and clear of a lienholder's interest if the price of the estate property is equal to or less than the aggregate amount of all claims held by creditors who hold a lien or security interest in the property being sold." *In re PW, LLC*, 391 B.R. 25, 41 (9th Cir. BAP 2008).

In the case at bar, the Motion's analysis appears to focus on 11 U.S.C. § 363(f)(3) to allow the Property to be sold free and clear of all liens and encumbrances. *See* Docket No. 146, pp. 22-23. So starts and ends the Court's analysis. The Debtor discloses $8,738,674 in liens against the Property. *See id.* at p. 13, lines 1-18. As some of these liens may be overencumbered, with interest, fees, and costs, the total amount of liens could be, and is likely larger

11:00 AM
CONT... **Ronald E. Sweeney** **Chapter 11**

than this number. *See* 11 U.S.C. § 506(b). This speaks nothing of the Debtor’s claimed homestead exemption in the Property or the commission of HBW.

Since this is an auction, and assuming a floor, or reserve, would initial bids not need to exceed the value of all liens against the Property, taking into account 11 U.S.C. § 506(b), the value of the commission at the reserve price, plus the Debtor’s homestead exemption? At $6 million, the opening bid amount, the Court could not provide the Debtor’s deliverable to the buyer, a free and clear order.

Overbid Procedures

"Although there is a strong argument in support of prior court approval of bid procedures, and in most circumstances such approval is appropriate, there is no section under the Bankruptcy Code that requires the Court to establish bid procedures under Section 363." *In re President Casinos, Inc.*, 314 B.R. 784, 786 (Bankr. E.D. Mo. 2004). "Structured bid procedures should provide a vehicle to enhance the bid process and should not be a mechanism to chill prospective bidders’ interests." *Id.* The aim of the auction process is to obtain the "highest and best" offer for the assets, which in turn maximized the proceeds to the estate. *In re Abbots Dairies of PA, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986).

Here, the bid procedures appear to provide the Debtor’s estate with an opportunity to obtain the highest and best price for the Property, assuming the 11 U.S.C. § 363(f) and commission issues are resolved. The Court will make further findings on the bidding procedures once the remaining issues raised herein are addressed.

Party Information

Debtor(s):

Ronald E. Sweeney	Represented By David B Zolkin

11:00 AM

CONT... **Ronald E. Sweeney** **Chapter 11**

James R Selth

Movant(s):

Ronald E. Sweeney	Represented By David B Zolkin David B Zolkin David B Zolkin James R Selth James R Selth James R Selth

11:00 AM
9:24-10954 Ronald E. Sweeney **Chapter 11**

#46.00 CONT'D Hearing
RE: [203] Motion to Dismiss Debtor Notice of Auction Results and Motion to Dismiss Chapter 11 Case; Declarations of Kathy Clark, Ronald E. Sweeney and David B. Zolkin in Support Thereof

FR. 8-11-26,

Docket 203

Tentative Ruling:

August 11, 2026

Appearances waived.

This matter is continued to August 12, 2026, at 11:00 a.m.

Party Information

Debtor(s):

Ronald E. Sweeney	Represented By David B Zolkin James R Selth

11:00 AM
9:24-10954 Ronald E. Sweeney **Chapter 11**

#47.00 CONT'D Chapter 11 Status Conference

fr. 10-9-24, 10-22-24, 11-19-24, 1-29-25,
3-26-25, 7-16-25, 9-10-25, 12-10-25,
1-14-26, 2-11-26, 4-8-26, 5-20-26, 7-29-26,

Docket 1

Tentative Ruling:

August 12, 2026

Appearances required.

Background

On August 21, 2024 (the "Petition Date"), Ronald E. Sweeney (the "Debtor") filed a voluntary petition pursuant to Chapter 11 of Title 11 of the United States Code (this "Case"). *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. Among the scheduled assets by the Debtor were a home in Malibu, California (the "Malibu Property") valued at $12 million, and a home in New York (the "New York Property") valued at $5.8 million. *See id.* at pp. 16-17, *Schedule A/B: Property*. The Debtor further scheduled personal property assets totaling $2,729,200, and a lawsuit against a former client of the Debtor, which the Debtor values at $20 million (the "Litigation"). *See id.* at pp. 17-19 and 21. The Debtor claimed a homestead exemption in the Malibu Property. *See id.* at p. 23, *Schedule C: The Property You Claim as Exempt*. A total of $9,398,289.46 in secured claims, $487,857.41 in unsecured priority claims, and $363,415.48 in general unsecured non-priority claims have been filed in this Case. *See* Claim Nos. 1-12.

On February 18, 2026, the Court entered that *Order Regarding Debtor's Motion for Order Authorizing: (1) the Employment and Payment Upon Closing of Harcourts Blue Water Pursuant to 11 U.S.C. §§ 327 and 328(a) as Auctioneer; (2) the Terms of Auction; and (3) the Sale of the Real Property Located at 31532 Victoria Point Rd.,* *Malibu, California 90265 Free and Clear of Liens and Interests Pursuant to 11 U.S.C. – 363(b), (f), (m) and (n)* (the "Auction Order"). *See* Docket No. 159. The Auction Order approved certain auction procedures concerning the sale of the Malibu Property. *See id.* at p. 2, lines 20-21; *see also* Docket No. 146, *Debtor's Notice of Motion and Motion for Order Authorizing: (1) the Employment and Payment Upon Closing of Harcourts Blue Water Pursuant to 11 U.S.C. §§ 327 and 328(a) as Auctioneer; (2) the Terms of Auction; and (3) the Sale of the Real Property Located at 31532 Victoria Point Rd., Malibu, California 90265 Free and Clear of Liens and Interests Pursuant to 11 U.S.C. – 363(b), (f), (m) and (n)*. The auction approved through the Auction Order was to be held on July 16, 2026, at noon. *See* Docket No. 200, *Second Order Extending Key Dates of Process for Sale of the Real Property Located at 31532 Victoria Point Rd., Malibu, California 90265*, p. 2, lines 14-16.

On July 21, 2026, the Debtor filed that *Notice of Auction Results and Motion to Dismiss Chapter 11 Case* (the "Motion to Dismiss"). *See* Docket No. 203. The Debtor provided through the Motion to Dismiss that "[d]espite substantial and good-faith efforts to market the Malibu residence, the Auction did not proceed." *See id.* at p. 2, lines 11-12. The Debtor requested that "at the August 11, 2026 hearing, the Court dismiss this chapter 11 Case." *See id.* at p. 5, lines 22-23.

On July 31, 2026, Reitler Kailas & Rosenblatt LLP filed that *Opposition to Motion to Dismiss Chapter 11 Case* (the "Opposition"), through which special litigation counsel for the Debtor opposed the Motion to Dismiss. *See* Docket No. 208.

<u>*Notice*</u>

Pursuant to Fed. R. Bankr. P. 2002(a)(4), a movant "must give the debtor, the trustee, all creditors, and all indenture trustees at least 21 days' notice by mail of [] a hearing on a motion to dismiss a Chapter [] 11 [] case or to convert it to another chapter…"

On July 21, 2026, the Debtor filed, and served on all creditors and the Office of the United States Trustee that *Notice of Motion for: Notice of Auction Results and Motion to Dismiss Chapter 11 Case* (the "Notice"), which Notice informed parties-in-interest of the filing of the Motion to Dismiss, and the deadline to oppose the same. *See*

Docket No. 204. No response to the Motion to Dismiss was filed beyond the Opposition. The Motion to Dismiss was properly noticed, and the Court takes the default of all non-responding parties served with the Notice.

Analysis

Pursuant to 11 U.S.C. § 1112(b)(1), "[e]xcept as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause…"

A motion to dismiss or convert a Chapter 11 case under 11 U.S.C. § 1112(b) normally requires a two-step analysis: (1) determine whether "cause" exists to dismiss or convert; and (2) then determine which option is in the best interest of creditors and the estate. *See* 11 U.S.C. § 1112(b); *see also In re Marciano*, 459 B.R. 27, 48 (9th Cir. BAP 2011).

The burden of establishing "cause" for dismissal under 11 U.S.C. § 1112(b) rests with the party seeking dismissal. *See In re Rosenblum*, 608 B.R. 529, 536 (Bankr. D. Nev 2019). The movant must show "cause" by a "preponderance of the evidence." *In re Woodbrook Assocs.*, 19 F.3d 317 (7th Cir. 1994).

Section 1112(b)(4) of the Bankruptcy Code sets forth a non-exhaustive list of sixteen (16) circumstances amounting to "cause." "The bankruptcy court has broad discretion in determining what constitutes 'cause' under section 1112(b)." *In re Sullivan*, 522 B.R. 604, 614 (9th Cir. BAP 2014).

Further, "the 9th Circuit Court of Appeals created a test for voluntary dismissals by holding that 'unless dismissal will cause some plain legal prejudice to the creditors, it normally will be proper.'" *In re Hall*, 15 B.R. 913, 917 (9th Cir. BAP 1981); *see also In re Kimble*, 96 B.R. 305, 308 (Bankr. D. Mont. 1988) (case dismissed pursuant to 11 U.S.C. § 1112(b) because the DIP requested the dismissal and there was no prejudice to the creditor).

This Court's *Amended Order Setting Initial Status Conference* (the "Status

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Conference Order") provided that "based upon the Court's records and evidence presented at the status conference, the Court may do one or more of the following at the status conference (or at any continued hearing) without further notice: [] B. Convert the case to another chapter." *See* Docket No. 6, pp. 1-2. The Status Conference Order is a show cause order, of sorts. It warns debtors-in-possession that each status conference presents opportunity, and obstruction. At each status conference, proof that a chapter 11 case remains the best viable exit strategy for the debtor-in-possession's bankruptcy estate is the debtor-in-possession's raison d'etre under the Status Conference Order.

"Cause"

Initially the Court must analyze, both under the Motion to Dismiss and the Status Conference order, whether cause exists to dismiss this Case, or to convert this Case to Chapter 7. First, this Case is nearly two (2) years old and is nowhere near confirmation of any plan of reorganization. In fact, no plan of reorganization has been filed to date. Second, the Debtor has insufficient monthly income to meet their monthly obligations. *See e.g.* Docket No. 206, *Monthly Operating Report*, p. 9. Third, by filing the Motion to Dismiss, the Debtor admits that Chapter 11 is not a viable go-forward strategy, and believes cause exists under 11 U.S.C. § 1112(b). The Court finds cause to exist under 11 U.S.C. § 1112(b).

Conversion vs. Dismissal

The Debtor requests that this Case be dismissed, rather than converted. The Motion to Dismiss focuses primarily on the Malibu Property and the Litigation as assets of the Debtor's bankruptcy estate, and how those assets may be more effectively and efficiently liquidated outside of this Case, be it Chapter 11 or Chapter 7. The Motion to Dismiss fails to address the other scheduled assets of the Debtor's bankruptcy estate. There are millions of dollars of assets that were scheduled outside of the Malibu Property and the litigation claims, including the New York Property. The liquidation value of these other assets, and the liens, if any against these assets is unclear to the Court. However, even assuming a reduced value for the Malibu Property, it seems possible that a significant distribution could be made to unsecured creditors in a Chapter 7 case. The $60,000 in scheduled vehicles and $1 million in artwork appear to be wholly unencumbered assets, with exemptions claimed against these assets in the amount of $17,025. Surely these assets could be monetized. At bottom, there are any number of assets that should be monetized for the benefit of creditors, including, perhaps, the Malibu Property and the New York Property.

What is more, the Debtor's largest administrative expense creditor opposes dismissal of this Case. That creditor's view is that dismissal of this Case would place them in an inferior position than, presumably, conversion of this Case to Chapter 7. A post-petition administrative creditor's loss of priority with dismissal of a bankruptcy case appears to the Court to constitute plain legal prejudice to that creditor.

The Debtor continues to trust that the Litigation is the Debtor's *albus miles*. A triumph in the matter will cure all the Debtor's financial woes, claims the Debtor. Now, two (2) years into this Case, and with the Litigation having been pending much longer, it is not clear that the Litigation is any closer to resolution than it was on the Petition Date.

There are simply too many claims, and too many assets to satisfy those claims for the Court to make a finding that dismissal is in the best interest of the Debtor's bankruptcy estate as compared to conversion of this Case to Chapter 7. A Chapter 7 trustee will be able to liquidate assets with all haste to distribute to creditors as much as those assets will bear.

The Motion to Dismiss is denied insofar as it seeks dismissal of this Case. The Court will convert this Case to Chapter 7 based on its Status Conference Order.

August 12, 2026

Appearances required.

July 29, 2026

Appearances required.

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The Court has reviewed *Debtor's Eleventh Chapter 11 Status Conference Report*. *See* Docket No. 202. The Court has further briefly reviewed that *Notice of Auction Results and Motion to Dismiss Chapter 11 Case*. *See* Docket No. 203.

The Debtor wishes to dismiss the instant case. Reviewing just the filed claims, there are unsecured, non-priority claims totaling $347,745, priority claims of $487,857.41, and secured claims totaling $9,398,289.46. *See* Claim Nos. 1-12. The administrative expense priority claims exceed $543,553.96. The Debtor scheduled $40,580,188.50 in assets. *See* Docket No. 1, *Schedule A/B: Property*, pp. 16-22. The Court will hear the Motion as scheduled, but at this juncture is inclined to convert the case to Chapter 7 given the amount of assets scheduled, and the liabilities of the bankruptcy estate.

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 full compliance, the Court will continue the status conference to August 12, 2026, at 11:00 a.m.

May 20, 2026

Appearances required.

The Court has reviewed *Debtor's Tenth Chapter 11 Status Conference Report*. *See* Docket No. 186.

April 8, 2026

Appearances required.

The Court has reviewed *Debtor's Ninth Chapter 11 Status Conference Report*. *See* Docket No. 172.

February 11, 2026

Appearances required.

The Court has reviewed *Debtor's Eighth Chapter 11 Status Conference Report*. *See* Docket No. 152.

Pursuant to that *Amended Monthly Operating Report*, the Debtor, as of December 31, 2025, had $93 in cash. *See* Docket No. 153. For the month of December 2025, the Debtor had social security income of $2,530, but the Debtor had expenses of $11,841 in expenses. *See* Docket No. 153-1, p. 1. The Debtor reported that $11,840 in disbursements for the month were "made by third party for the benefit of the estate." *See* Docket No. 153, p. 2. Was the $11,840 a loan, gift, or something else? That much cannot be gleaned from the operating report.

January 14, 2026

Appearances required.

The Court has reviewed *Debtor's Seventh Chapter 11 Status Conference Report*. *See* Docket No. 142. The Debtor has not filed an operating report for the month of November 2025. The Debtor exited October 2025 with $33 in cash. *See* Docket No. 133, *Monthly Operating Report*, p. 2. By all accounts, the Debtor has worked to advance the instant case, but the case at this juncture, and for at least a few months now, appears to be one better suited for conversion to Chapter 7. The Debtor lacks the income, at least in recent months, to maintain and secure the homes in Malibu, California, and New York, New York, much less to pay the accruing legal and other administrative expenses of the Chapter 11 case and the pending litigation in other forums. There has been no plan of reorganization filed to date, and the Court has no cause to expect that one would be filed forthwith. The sale of the Malibu and/or the New York property(ies) appear(s) to be the only means by which creditors will be paid in this case, and with the case headed into its second year, that end goal seems to be no closer than when the case was filed. The Court will convert the case to Chapter

7 to allow a trustee to liquidate the assets of the Debtor for the benefit of the Debtor's bankruptcy estate.

December 10, 2025

Appearances required.

The Court has reviewed *Debtor's Sixth Chapter 11 Status Conference Report*. *See* Docket No. 130. By the Court's measure, the Debtor has not filed an operating report for the months of August, September or October 2025. The Court will hear from the Office of the United States Trustee.

September 10, 2025

Appearances required.

The Court is unaware of the Debtor's cash position. The Court does not find an operating report having been filed since the report filed for the month of May 2025. *See* Docket No. 91. The Debtor had $65,083 in cash at the end of May. The Debtor has professional fees that are owed of $257,107.57, a number that is only growing. For all the Court is aware, the Debtor is administratively insolvent on a cash basis, unable to pay his administrative expenses as they become due.

Now past the one-year anniversary of the instant case, the Debtor does not appear close to an exit. If the Debtor's secured creditors are in-fact oversecured, those claims may be increasing by the day due to accrued interest, costs, and/or attorneys' fees. The Debtor has been seeking take out financing since at least July 2, 2025, but apparently has been unable to secure any such loan. The initial exit strategy of liquidating the Malibu residence seems to be fading. The sale price has been lowered precipitously alongside the lack of interest, and, given the state of the area since the fires, it is not clear that a sale anywhere near the current asking price is realizable. The

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Debtor is now considering becoming a landlord with the property.

The Debtor is doing what he can do to secure a successful exit from Chapter 11, but the Court has some level of discomfort with the case proceeding. There exists a lack of transparency due to the failure of the Debtor to file operating reports. The Debtor does not appear at this point to have a clear exit strategy, due in part to circumstances beyond the Debtor's control. Has this case reached its end, at least in its current posture? The Court will want to hear from the Office of the United States Trustee on thoughts on the case.

July 16, 2025

Appearances required.

The Court has reviewed *Debtor's Fourth Chapter 11 Status Conference Report*. *See* Docket No. 90. 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*.

The Court is inclined to continue the status conference to September 10, 2025, at 1:00 p.m.

March 26, 2025

Appearances required.

The Court has reviewed *Debtor's Third Chapter 11 Status Conference Report*. *See* Docket No. 73. The Court will hear from creditors, and the Office of the U.S. Trustee regarding the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*. Given the recent fires that have affected the property located in Malibu, and other of the Debtor's representations, the Court, subject to hearing from parties-in-interest, is inclined to continue the status conference

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CONT... Ronald E. Sweeney Chapter 11

for 90 days.

January 29, 2025

Appearances required.

The Court has reviewed *Debtor's Second Chapter 11 Status Conference Report*. *See* Docket No. 65. 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*.

November 19, 2024

Appearances required.

Pursuant to that *Amended Order Setting Initial Status Conference*, "[n]ot less than fourteen calendar days prior to the date scheduled for every initial or continued status conference, the debtor-in-possession shall file and serve a written status report on the parties identified in paragraph 1, unless the Court has expressly relieved the debtor-in-possession of the obligation to file a written status report." *See* Docket No. 6, p. 3, lines 3-6. "Failure to timely file a status report may result in sanctions including dismissal, conversion, or the appointment of a trustee." *See id.* at lines 7-9. "Subsequent status reports must highlight changes and developments since the previous chapter 11 status report(s) were filed." *See id.* at p. 6, lines 3-4.

The Court finds no status report filed in preparation for the instant status conference.

Pursuant to the *Debtor's Chapter 11 Status Conference Report* filed in relation to the prior status conference, the Debtor's gross income for September was estimated at $52,116.20, and $87,116.20 for the five (5) months thereafter. *See* Docket No. 34, *Exhibit 2*. The *Monthly Operating Report* for September 2024 shows total receipts of $11,390 for September 2024, and gross income of $31,088. *See* Docket No. 45, pp. 2 and 9.

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The Debtor has filed applications to employ a real property broker and special litigation counsel. *See* Docket No. 47, *Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ Professional*; *see also* Docket No. 48, *Application of Chapter 11 Debtor and Debtor in Possession to Employ Reitler Kailas & Rosenblatt LLP, as Special Litigation Counsel*.

October 22, 2024

Appearances required.

The Court has reviewed *Debtor's Chapter 11 Status Conference Report* (the "Report"). *See* Docket No. 34. The Court is concerned with the insurance of certain assets, including the $60,000 in luxury vehicles, the $2-$3 million in artwork, and the $5.8 million home in New York City. *See id.* at p. 6, lines 19-24. Pursuant to 11 U.S.C. § 1112(b)(1), "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause…" For "cause" includes "failure to maintain appropriate insurance that poses a risk to the estate…" *See* 11 U.S.C. § 1112(b)(4)(C); *see also In re Pryor*, 2016 WL 6835372 *5 (9th Cir. BAP 2016). If the estate's assets are not insured by the time of the status conference, the Court will grant *United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case*. *See* Docket No. 30; *see also Amended Order Setting Initial Status Conference*, pp. 1-2.

The Court is concerned with the Debtor's ability to meet its obligations on a go-forward basis absent an immediate liquidation of assets. The income and expense projections attached to the Report do not include the costs of special litigation counsel to continue litigating the state court matter in New York, or account for any reorganization items. The payments on the New York home begin to reduce by approximately $6,000 starting in October, but only if the lender agrees. The Court is uncertain about the status of that agreement. The reason for the $4,600 per month for Avalon Bay Communities is not clear to the Court. On the income side, the Debtor's income is scheduled to increase by 41% without explanation.

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If the Court does not convert or dismiss the case, the Court will set a claims bar date of December 2, 2024, with a deadline of October 25, 2024 for the Debtor to provide notice of the claims bar date in conformance with this Court's Local Rules. The Court will set a deadline for the Debtor to file and serve a disclosure statement and plan of reorganization of December 20, 2024. The Court will set a disclosure statement hearing for February 12, 2025, at 1:00 p.m. A continued status conference will be set for November 20, 2024, at 1:00 p.m. Again, absent dismissal or conversion, the Court will burden the Debtor will submitting a scheduling order with the aforementioned dates within 7 days.

October 9, 2024

Appearances waived.

The status conference is continued to October 22, 2024, at 1:00 p.m.

Party Information

Debtor(s):

Ronald E. Sweeney — Represented By
David B Zolkin
James R Selth

1:00 PM

9:26-10164 M&B Services, Inc. **Chapter 11**

#48.00 Hearing
RE: [84] Motion for approval of chapter 11 disclosure statement

Docket 84

***** VACATED *** REASON: Advanced by the Court to 8/12/2026 at 11:00AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M&B Services, Inc.

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush