

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Scott Clarkson, Presiding  
Courtroom 126 Calendar**

Wednesday, February 6, 2019

Hearing Room 126

10:00 AM

**6:18-18096 Jose Rolando Lemus and Sandra Luz Lemus**

**Chapter 7**

**#1.00**

Hrg. on approval of reaffirmation Agreement filed 12/28/18 Between Debtor and JPMorgan Chase Bank, N.A., in the amount of \$22,360.63

Re: 2017 Jeep Cherokee

Docket 10

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order  
entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

Jose Rolando Lemus

Represented By  
Yolanda Flores-Burt

**Joint Debtor(s):**

Sandra Luz Lemus

Represented By  
Yolanda Flores-Burt

**Trustee(s):**

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Riverside  
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Wednesday, February 6, 2019

Hearing Room 126

10:00 AM

**6:18-18329 Gabriel Alfredo Acuna and Blanca Estella Salser-Acuna**

**Chapter 7**

**#2.00**

Hrg. on approval of Reaffirmation Agreement filed 1/2/19, Between Debtor and Arrowhead Credit Union, in the amount of \$23,382.37

Re: 2016 Nissan Maxima

Docket 11

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

Gabriel Alfredo Acuna

Represented By  
Neil R Hedtke

**Joint Debtor(s):**

Blanca Estella Salser-Acuna

Represented By  
Neil R Hedtke

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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10:00 AM

**6:18-18592 Jose Garcia Garcia and Jaqueline Janeth Huezo Asencio**

**Chapter 7**

**#3.00**

Hrg. on approval of Reaffirmation Agreement filed 1/10/19, Between Debtor and Cab West, LLC, in the amount of \$1872.60

Re: 2016 Ford Fusion

Docket 12

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

Jose Garcia Garcia Pro Se

**Joint Debtor(s):**

Jaqueline Janeth Huezo Asencio Pro Se

**Trustee(s):**

Larry D Simons (TR) Pro Se

**United States Bankruptcy Court  
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**6:18-19043 Donald Meredith Dible**

**Chapter 7**

**#4.00**

Hrg. on approval of Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, in the amount of \$12,906.11

Re: 2015 Kia Sportage

Docket 19

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order  
entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Donald Meredith Dible

Represented By  
Stephen H Darrow

**Trustee(s):**

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court  
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**Hearing Room 126**

10:00 AM

**6:18-19288 Allen Kozakovsky and Amy N Kozakovsky**

**Chapter 7**

**#5.00**

Hrg. on approval of Reaffirmation Agreement filed 1/15/19 Between Debtor and Ultura Credit Union, in the amount of \$7,815.29

Re: 2014 Harley Davidson

Docket 12

**\*\*\* VACATED \*\*\* REASON: Notice of Withdrawal of Reaffirmation agreement filed by creditor, Altura, on 1/23/19 - jc**

**Tentative Ruling:**

- NONE LISTED -

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

Allen Kozakovsky

Represented By  
Sundee M Teeple

**Joint Debtor(s):**

Amy N Kozakovsky

Represented By  
Sundee M Teeple

**Trustee(s):**

Lynda T. Bui (TR)

Pro Se

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6:18-19288 Allen Kozakovsky and Amy N Kozakovsky

Chapter 7

#6.00

Hrg. on Approval of Reaffirmation Agreement filed 1/15/19 Between Debtor and Altura Credit Union, in the amount of \$25,657.47

Re: 2016 Hyundai Santa Fe

Docket 14

**\*\*\* VACATED \*\*\* REASON: Notice of Withdrawal of Reaffirmation agreement filed by creditor, Altura, on 1/23/19 - jc**

**Tentative Ruling:**

- NONE LISTED -

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

Allen Kozakovsky

Represented By  
Sundee M Teeple

**Joint Debtor(s):**

Amy N Kozakovsky

Represented By  
Sundee M Teeple

**Trustee(s):**

Lynda T. Bui (TR)

Pro Se

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10:00 AM

6:18-20132 Mario Edgardo Escalante Lopez

Chapter 7

#7.00

Hrg. on Approval of Reaffirmation Agreement filed 1/14/19 Between Debtor and Toyota Motor Credit Corporation, in the amount of \$15,944.99

Re: 2013 Toyota Highlander

Docket 12

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

Mario Edgardo Escalante Lopez

Represented By  
Marlin Branstetter

**Trustee(s):**

Larry D Simons (TR)

Pro Se

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**6:18-20135 Sylvia Garcia**

**Chapter 7**

**#8.00**

Hrg. on Approval of Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation, in the amount of \$25,703.79

Re: 2017 Toyota RAV4

Docket 13

**\*\*\* VACATED \*\*\* REASON: Continued to 3/6/19 at 10:00 am per order  
entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Sylvia Garcia

Represented By  
Marlin Branstetter

**Trustee(s):**

Larry D Simons (TR)

Pro Se



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**6:16-21137 Carroll Ann Vandre**

**Chapter 7**

Adv#: 6:18-01230 Whitmore v. Scott et al

**#13.00**

STATUS CONFERENCE re: Complaint by Robert S. Whitmore against Darbie Vandre Scott, Carroll Ann Vandre. (Charge To Estate). (\$350.00) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

EH\_\_\_\_\_

Docket 1

**\*\*\* VACATED \*\*\* REASON: Continued to 3/20/19 at 10:00 am per order entered 1/25/19 - slh**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Caroll Ann Vandre

Represented By  
Gene P Killian

**Defendant(s):**

Darbie Vandre Scott

Pro Se

Caroll Ann Vandre

Pro Se

**Plaintiff(s):**

Robert S. Whitmore

Represented By  
Douglas A Plazak

**Trustee(s):**

Robert Whitmore (TR)

Represented By  
Douglas A Plazak

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**6:17-17638 Wendy Carrillo**

**Chapter 7**

Adv#: 6:17-01254 Baumgartner et al v. Carrillo

**#14.00**

Pre-Trial CONFERENCE re: Complaint by Brett Baumgartner, Margaret  
Baumgartner against Wendy Carrillo - 523(a)(4), (a)(6)

(cont. from 11/28/18)

EH\_\_\_\_\_

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order Granting Stipulation to dismiss case  
with prejudice - jc**

**Tentative Ruling:**

- NONE LISTED -

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

Wendy Carrillo

Represented By  
Paul Y Lee

**Defendant(s):**

Wendy Carrillo

Pro Se

**Plaintiff(s):**

Brett Baumgartner

Represented By  
Laura Blumenstein

Margaret Baumgartner

Represented By  
Laura Blumenstein

**Trustee(s):**

Todd A. Frealy (TR)

Pro Se

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Central District of California  
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**6:17-19913 Thomas John Forrest**  
Adv#: 6:18-01197 Simons (TR) v. Forrest

**Chapter 7**

**#15.00**

Hrg. on Plaintiff's Motion for Default Judgment filed 1/8/19

EH\_\_\_\_\_

Docket 20

**Tentative Ruling:**

Tentative for 2/6/19:

Movant seeks default judgment on the Complaint's Fifth, Sixth, Seventh, Eighth, Eleventh, and Thirteenth Causes of Action, and states that Movant will dismiss the remaining causes of action provided the transfer at issue is avoided. As set forth below, the Motion may be GRANTED and default judgment may be entered in favor of the Plaintiff and against Defendant Sarah Forrest on Plaintiff's Fifth, Sixth, Seventh, Eighth, and Eleventh Causes of Action ("Avoidance Causes of Action"), provided Movant DISMISSES all other allegations and causes of action in the Complaint. To the extent the Motion seeks an order requiring turnover, the Motion is DENIED.

Plaintiff's Fifth, Sixth, Seventh, Eighth, and Eleventh Causes of Action

Debtor acquired real property ("Property") on August 1, 2012 via grant deed which described the Property as Debtor's "sole and separate property" ("2012 Deed"). Debtor and Wife contemporaneously recorded an interspousal transfer deed on August 1, 2012 in which Wife quitclaimed any interest in the Property to the Debtor ("2012 Quitclaim Deed"). On July 31, 2014, Debtor recorded a grant deed ("2014 Deed") that transferred a joint tenancy interest in the Property to Wife for "no consideration" ("Transfer"). Movant has proved adequate evidence that, *inter alia*, the Transfer was a transfer of all or substantially all of Debtor's assets, made to an insider, within 4 years of the petition date, for no consideration, when substantial debts had been incurred, and that Debtor retained possession of the Property after the Transfer.

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CONT... Thomas John Forrest

Chapter 7

Thus, provided Movant dismisses all other allegations and causes of action in the Complaint, default judgment may be entered in favor of the Plaintiff and against Defendant Sarah Forrest on the Avoidance Causes of Action.

Thirteenth Cause of Action

Movant has not established he is entitled to default judgment for the Thirteenth Cause of Action seeking declaratory relief. It appears that Movant seeks declaratory relief that the Property is community property.

Generally, all property acquired during marriage is presumed to be community property. Cal. Fam. Code. § 760. Spouses may change the character of their property by executing a transmutation agreement, which must be an express declaration by the spouse whose interest in the property is adversely affected. See Cal. Fam. Code § 852; *In re Marriage of Valli*, 324 P.3d 274, 276 (Cal. 2014); *In re Marriage of Haines*, 33 Cal.App.4th 277, 39 Cal.Rptr.2d 673, 681 (1995). The transmutation requirements apply even when the form of the title suggests a beneficial interest other than community property (such as joint tenancy or one spouse as his sole and separate property) in the context of a marital dissolution. See *Valli*, 324 P.3d at 280 (ruling that the common law presumption that the holder of legal title owns full beneficial title, as codified in Cal. Evid. Code § 662, does not apply when it conflicts with the transmutation statutes). However, the law regarding competing title and community property presumptions in the context of a bankruptcy is not settled. See *In re Brace*, 908 F.3d 531, 540 (9th Cir. 2018) (recognizing the lack of controlling California precedent addressing the "applicability of the community property presumption in suits between a married person and a third party creditor" and certifying the following question to the Supreme Court of California: "Does the form of title presumption set forth in section 662 of the California Evidence Code overcome the community property presumption set forth in section 760 of the California Family Code in Chapter 7 bankruptcy cases where: (1) the debtor husband and non-debtor wife acquire property from a third party as joint tenants; (2) the deed to that property conveys the property at issue to the debtor husband and non-debtor wife as joint tenants; and (3) the interests of the debtor and non-debtor spouse are aligned against the trustee of the bankruptcy estate?").

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CONT... Thomas John Forrest

Chapter 7

Here, Debtor acquired the Property during marriage, so the community property presumption applies. However, Movant has not demonstrated that the 2012 Quitclaim Deed did not effect a valid transmutation that defeats the community property presumption, so Movant is not entitled to declaratory relief that the Property was community property prior to the execution of the 2014 Deed. See *In re Marriage of Kushesh and Kushesh-Kaviani*, 238 Cal. Rptr. 3d 174, 180 (Cal. Ct. App. 2018) (finding an interspousal transfer grant deed was sufficient to meet § 852's transmutation requirements). Since the 2014 Deed may be avoided and recovered pursuant to the Avoidance Causes of Action, the Court denies as moot any request to analyze the effect of the Transfer on the characterization of the property.

Thus, the evidence and legal argument provided by Movant is not sufficient to establish he is entitled to default judgment in his favor on the Thirteenth Cause of Action. Accordingly, the Motion is DENIED as to the Thirteenth Cause of Action.

Turnover

To the extent that the Motion seeks turnover under § 542, the Motion is DENIED, without prejudice. Turnover was not sought in the Complaint (only avoidance and recovery). Therefore, default judgment requiring turnover may not now be entered against Ms. Forrest. To the extent the Motion seeks turnover from the Debtor, this Motion does not provide adequate notice that this relief was requested. The Motion is in the adversary, and not the main bankruptcy case. Turnover is not included in either the Notice or the title of the Motion, and is only discussed at pg. 11-12 of the points and authorities and at ¶ 26 of counsel's declaration. The Court will not enter an order requiring turnover absent the appropriate due process.

Appearances required.

**Party Information**

**Debtor(s):**

Thomas John Forrest

Represented By  
Michael F Chekian

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**CONT... Thomas John Forrest**

**Chapter 7**

**Defendant(s):**

Sarah E. Forrest

Pro Se

**Plaintiff(s):**

Larry D. Simons (TR)

Represented By  
Wesley H Avery

**Trustee(s):**

Larry D Simons (TR)

Represented By  
Wesley H Avery

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**6:18-14917 Hao Wang**

**Chapter 7**

Adv#: 6:18-01175 Huang v. Wang

**#16.00**

Hrg. on Plaintiff's Motion filed 11/13/18 for Default Judgment Under LBR 7055-1

EH\_\_\_\_\_

(Cont. from 12/19/18)

Docket 12

**Tentative Ruling:**

Tentative for 2/06/19:

The Court has reviewed the supplemental pleadings filed 1/14/19 [Dk. 19] and will GRANT the motion. Plaintiff is to lodge two orders: (1) one granting the motion for default judgment; and (2) a proposed judgment.

Appearances are excused.

\*\*\*\*\*

Tentative for 12/19/18 is to CONTINUE to February 6, 2019 at 1:30 p.m. to allow Plaintiff to supplement the motion for default judgment, as set forth below.

The entry of default against a defendant does not automatically entitle a plaintiff to judgment. See *Valley Oak Credit Union v. Villegas (In re Villegas)*, 132 B.R. 742, 746 (9th Cir. BAP 1991). Rule 55(b)(2) requires a plaintiff to apply to the court for a default judgment. The court has broad discretion under Rule 55(b)(2) to "conduct such hearings . . . as it deems necessary and proper" in order to "establish the truth of any averment by evidence. . . ." Under this rule, the court may require a plaintiff to demonstrate a *prima facie* case by competent evidence in a prove-up trial to obtain a default judgment. See *Villegas*, 132 B.R. at 746; *TeleVideo Systems Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The court has wide discretion under Rule 55 to consider whether the evidence

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CONT...

**Hao Wang**

Chapter 7

presented supports a claim and warrants judgment for the plaintiff. See *Wells Fargo Bank v. Beltran (In re Beltran)*, 182 B.R. 820, 823–24 (9th Cir. BAP 1995); *Villegas*, 132 B.R. at 746; see generally 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil* § 2685 (3d ed.1998).

Here, first, the Plaintiff may not rely on the collateral estoppel effect of the underlying state court action because the underlying state court action included breach of contract and negligent causes of action. The state court judgment did not specify or apportion the damages and, while Plaintiff has asserted that all damages were fraud-based, there is no evidence in the record supporting that contention. For instance, the declarations submitted in support of the state court judgment, or a transcript of the hearing, which would have indicated what the state court considered when awarding its judgment, were not provided.

Second, the allegations in the adversary complaint are not specific enough to warrant a nondischargeability judgment in the amount sought. FRCP 9(b) requires when alleging fraud "a party must state with particularity the circumstances constituting fraud..." *Fed. R. Civ. P. 9(b)*. "Rule 9(b) demands that the circumstances constituting the alleged fraud 'be 'specific enough to give defendants notice of the particular misconduct...so that they can defend against the charge and not just deny that they have done anything wrong.'" Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged. A party alleging fraud must 'set forth more than the neutral facts necessary to identify the transaction." *Kearns v. Ford Motor Co.*, 567 F.3d 1120 (9th Cir. 2009) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003) and *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994), *superceded by statute on other grounds*). "'While statements of the time, place and nature of the alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are insufficient.'" *Moore v. Kayport Package Express*, 885 F.2d 531, 540 (9th Cir. 1989). *Hudson v. Sherwood Sec. Corp.*, 1991 U.S. App. LEXIS 30612, 5-6 (9th Cir. Dec. 24, 1991).



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**Hao Wang**

**Chapter 7**

The Complaint makes broad descriptions of statements or omissions made by Defendant to Plaintiff. For example, "Defendant Wang made multiple misrepresentations to Plaintiff regarding the progress of the restaurant venture; concealed material facts regarding restaurant-related finances, the termination of the restaurant lease, and failed to disclose his use of Plaintiff's funds for other than the restaurant venture, that he was withdrawing her funds without authorization, and that the lessor had terminated the lease for failure to submit required restaurant construction plans" and "misleading statements to Plaintiff about his expertise in the restaurant business, the progress of the restaurant venture. . ." Complaint, pg. 7:23-10, 13-15.

However, while the parties involved and the *general* nature of statements or omissions are described, the specific misrepresentations and their timing are not clear. In fact, the majority of the misrepresentations and omissions alleged appear to have occurred *after* Plaintiff paid Defendant, i.e. after reliance. The only representations that clearly occurred before Plaintiff paid Defendant are regarding Defendant's expertise in the restaurant industry, but there are no allegations indicating these statements are false. Without more specific information regarding when the false representations upon which Plaintiff relied were made, the Court cannot effectively evaluate whether Defendant had fraudulent intent at the time the representation was made.

Accordingly, Plaintiff may file supplemental papers by no later than January 16, 2019, with appropriate evidence of the basis for the state court's ruling or evidence that more clearly describes the specific statements made upon which Plaintiff relied, the timing of those statements, and the intent with which Defendant made those statements.

Appearances are excused.

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

Hao Wang

Represented By

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**CONT... Hao Wang**

**Chapter 7**

Sam X J Wu

**Defendant(s):**

Hao Wang

Pro Se

**Plaintiff(s):**

Sufen Huang

Represented By  
Ronald J Sokol

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

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**6:18-14917 Hao Wang**

**Chapter 7**

Adv#: 6:18-01175 Huang v. Wang

**#17.00**

STATUS CONFERENCE re: Complaint by Sufen Huang against Hao Wang - 523(a)(2)

EH\_\_\_\_\_

(Cont from 12/19/18)

Docket 1

**Tentative Ruling:**

Tentative for 2/06/19:

This matter will go off calendar in light of the Court's tentative on #16 to grant the motion for default judgment.

Appearances are excused.

\*\*\*\*\*

Tentative for 12/19/18 is to CONTINUE to February 6, 2019 at 1:30 p.m.

Appearances are excused.

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

Hao Wang

Represented By  
Sam X J Wu

**Defendant(s):**

Hao Wang

Pro Se

**Plaintiff(s):**

Sufen Huang

Represented By

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**CONT... Hao Wang**

Ronald J Sokol

**Chapter 7**

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

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**6:18-14917 Hao Wang**

**Chapter 7**

Adv#: 6:18-01177 Shao v. Wang

**#18.00**

Hrg. on Plaintiff's Motion filed 11/26/18 for Default Judgment under LBR 7055-1

EH\_\_\_\_\_

(Cont. from 1/23/19)

Docket 8

**Tentative Ruling:**

Revised tentative for 2/06/19 is to GRANT the motion for default judgment under § 523(a)(4) in light of Plaintiff's dismissal of its §§ 523(a)(2) and (a)(6) claims filed January 31, 2019 [Dk. 12].

Plaintiff is to lodge two orders: (1) one granting the motion for default judgment; and (2) a proposed judgment.

Appearances are excused.

\*\*\*\*\*

Tentative for 2/06/19 is to DENY without prejudice as set forth below.

The Court could grant the motion for default judgment under § 523(a)(4), but is unable to grant default judgment under § 523(a)(2) or (a)(6) because the elements of those claims have not been sufficiently demonstrated. If the plaintiff wishes to file a dismissal of the claims under § 523(a)(2) and (a)(6), the court will enter default judgment under § 523(a)(4). However, absent a dismissal of these claims, the court will deny the Motion, without prejudice to amendment of the complaint to include more detailed allegations and/or filing a second motion for default judgment with additional evidence.

Appearances required.

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CONT... Hao Wang

Chapter 7

**Analysis**

The entry of default against a defendant does not automatically entitle a plaintiff to judgment. See *Valley Oak Credit Union v. Villegas (In re Villegas)*, 132 B.R. 742, 746 (9th Cir. BAP 1991). Rule 55(b)(2) requires a plaintiff to apply to the court for a default judgment. The court has broad discretion under Rule 55(b)(2) to "conduct such hearings . . . as it deems necessary and proper" in order to "establish the truth of any averment by evidence. . . ." Under this rule, the court may require a plaintiff to demonstrate a *prima facie* case by competent evidence in a prove-up trial to obtain a default judgment. See *Villegas*, 132 B.R. at 746; *TeleVideo Systems Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The court has wide discretion under Rule 55 to consider whether the evidence presented supports a claim and warrants judgment for the plaintiff. See *Wells Fargo Bank v. Beltran (In re Beltran)*, 182 B.R. 820, 823–24 (9th Cir. BAP 1995); *Villegas*, 132 B.R. at 746; see generally 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil* § 2685 (3d ed.1998).

Here, as to Plaintiff's claims under 11 U.S.C. § 523(a)(4), Plaintiff has adequately plead and provided sufficient evidence to support default judgment in her favor in the amount of \$150,000. Therefore, the Motion could be granted with respect to Plaintiff's claims under § 523(a)(4).

However, Plaintiff has not adequately plead or has not provided sufficient evidence to establish the elements required to prove a claim is nondischargeable under § 523(a)(2) or (a)(6).

§ 523(a)(2)(A)

With respect to Plaintiff's claims under 11 U.S.C. § 523(a)(2), the allegations in the adversary complaint are not sufficient to warrant a nondischargeability judgment in the amount sought. § 523(a)(2)(A) provides that a debt for money, property, services, or an extension, renewal, or refinancing of credit will not be discharged to the extent obtained by "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's

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**Chapter 7**

financial condition." 11 U.S.C. § 523(a)(2). A promise to perform acts in the future that is subsequently breached is not, by itself, a fraudulent representation that can give rise to a conclusion of nondischargeability under either path of § 523(a)(2)(A). For instance, the promise to timely pay, or to provide a deed of trust as security, in of itself, is not a fraudulent representation.

For a debtor's representation to be a "false representation or false pretense," it must have been "(1) a knowing and fraudulent falsehood, (2) describing past or current facts, (3) that was relied upon by the other party." *RecoverEdge v. Pentecost*, 44 F.3d 1284, 1292-93 (5th Cir. 1995) (citations omitted); *see also Field v. Mans*, 516 U.S. 59, 73-75 (1995). A debtor's misrepresentations of his intention to repay a debt may constitute a false representation within the meaning of the dischargeability provision if, when the representation is made, the debtor has no intention of performing as promised.

Here, Plaintiff alleges that Defendant falsely represented that he entered into the Agreement in good faith, that he had read the entire agreement, agreed with all of its provisions, intended to abide by it in its entirety, and entered into it voluntarily. Dk. 8-1, pg. 3. However, Plaintiff provides no evidence that these representations were false at the time Defendant made these representations, or that Defendant knew they were false; i.e., that Defendant entered into the Agreement with no intention of ever complying with the agreement. Accordingly, Plaintiff is not entitled to default judgment under § 523(a)(2).

§ 523(a)(6)

With respect to Plaintiff's claims under 11 U.S.C. § 523(a)(6), the allegations in the adversary complaint are not sufficient to warrant a nondischargeability judgment in the amount sought. § 523(a)(6) excepts from discharge debts resulting from willful and malicious injury by a debtor to another entity and states in relevant part, "for willful and malicious injury by the debtor to another entity or to the property of another entity..." To prevail under this section a party must prove three elements: (1) willful conduct, (2) malice, and (3) causation. The malicious injury requirement is separate from the willful injury requirement. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002); *Albarran v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 705 (9th Cir. 2008).

**United States Bankruptcy Court  
Central District of California  
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CONT...

**Hao Wang**

**Chapter 7**

A "willful" injury is a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *In re Barboza*, 545 F.3d 702, 706 (9th Cir. 2008). The defendant must intend both the act and the consequences of the act. *Kawaauhau v. Geiger*, 523 U.S. 57, 61(1998). "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *In re Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010) (citing *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir.2002))

"A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *In re Ormsby*, 591 F.3d 1199, 1207 (9th Cir. 2010).

Neither simple nor intentional breach of contract is the type of injury intended to be covered by § 523(a)(6). *In re Jercich*, 238 F.3d 1202, 1205 (9th Cir. 2001) (noting intentional breach of contract must be accompanied by tortious conduct that results in a willful and malicious injury).

While Plaintiff alleges and provides evidence of damage to the property she leased to Defendant, Plaintiff does not provide evidence that Defendant deliberately damaged her property, rather than merely performing acts that resulted in damage to her property. In short, even if the Court accepts the allegations in the Complaint and the statements in Plaintiff's declaration as true, Plaintiff has not alleged or provided evidence that Defendant acted with the requisite intent to establish the debt is nondischargeable under § 523 (a)(6).

### **Conclusion**

As set forth in detail above, Plaintiff is entitled to default judgment under § 523(a) (4) in the amount of \$150,000, but is not entitled to judgment as to the other claims in the Complaint. However, because Plaintiff is not entitled to default judgment on all claims in the Complaint at this time, the Court cannot and will not enter piecemeal judgments. Therefore, the Motion is DENIED. Plaintiff may file an amended Complaint or a second motion for default judgment providing



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**CONT...**     **Hao Wang**  
additional evidence.

**Chapter 7**

Appearances required.

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

**Debtor(s):**

Hao Wang

Represented By  
Sam X J Wu

**Defendant(s):**

Hao Wang

Pro Se

**Plaintiff(s):**

Tingting Shao

Represented By  
Meei-Ling Chen

**Trustee(s):**

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Scott Clarkson, Presiding  
Courtroom 126 Calendar**

**Wednesday, February 6, 2019**

**Hearing Room 126**

1:30 PM

**6:18-16626 Judy Zhuang**

**Chapter 7**

Adv#: 6:18-01217 Liao v. Zhuang

**#19.00**

STATUS CONFERENCE re Complaint to determine non-dischargeability of debt; (1) False Pretenses, False Representations, or Actual Fraud; (2) Willful and Malicious Injury and (3) Non-Dischargeability of Debt

EH \_\_\_\_

(Cont. from 1/23/19)

Docket 1

**Tentative Ruling:**

Tentative for 2/06/19 is to set the following dates/deadlines:

1. Discovery cutoff: March 15, 2019 Note: this date includes the date by which all discovery motions must be heard and resolved.
2. Motion cutoff: April 30, 2019. Note: this date includes the date by which all non-discovery motions must be heard and resolved.
4. Pretrial conference: May 15, 2019 at 1:30 p.m.

The parties are specifically advised to cooperate and follow all local and federal rules. The failure to do so may result in the imposition of sanctions, including the striking of the answer and dismissal of the complaint.

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

**Debtor(s):**

Judy Zhuang

Represented By  
Todd L Turoci

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Scott Clarkson, Presiding  
Courtroom 126 Calendar**

**Wednesday, February 6, 2019**

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**CONT... Judy Zhuang**

**Chapter 7**

**Defendant(s):**

Judy Zhuang

Pro Se

**Plaintiff(s):**

Chih Ling Liao

Represented By  
Sam X J Wu

**Trustee(s):**

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Riverside  
Judge Scott Clarkson, Presiding  
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**Wednesday, February 6, 2019**

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1:30 PM

**6:18-16626 Judy Zhuang**

**Chapter 7**

Adv#: 6:18-01217 Liao v. Zhuang

**#20.00**

Hrg. on Order to Show Cause why Counsel Should not be Sanctioned

EH\_\_\_\_\_

(Cont. from 1/23/19)

Docket 0

**Tentative Ruling:**

Tentative for 2/06/19:

Appearances required.

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

**Debtor(s):**

Judy Zhuang

Represented By  
Todd L Turoci

**Defendant(s):**

Judy Zhuang

Pro Se

**Plaintiff(s):**

Chih Ling Liao

Represented By  
Sam X J Wu

**Trustee(s):**

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

Wednesday, February 6, 2019

Hearing Room 5C

11:00 AM

**8:17-11085 Suzon Hashemi**

**Chapter 7**

Adv#: 8:17-01110 Hashemi v. U.S. Department of Education et al

**#9.00**

CONT'D PRE-TRIAL CONFERENCE Hearing RE: First Amended Complaint For:  
Determination That Student Loan Debt Is Dischargeable Pursuant To 11 U.S.C.  
Section 523(a)(8)

(Complaint filed 6/27/17) (Another Summons issued 7/14/17)

(PTC set at S/C held 10/18/17)

(S/C set per Order Entered 5-30-18)

**(J.P. Morgan Chase Bank, N.A. - Dismissed - See docket no. [14])**

**(Judgment Pursuant To Stipulation - U.S. Department of Education - See  
docket No. [34])**

**[Navient Solutions, LLC - Dismissed - See docket no. [102]**

FR: 3-14-18; 5-30-18; 7-18-19

Docket 48

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER VACATING  
PRE-TRIAL HEARING ENTERED 1-25-19 - (Docket No. [105])**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Suzon Hashemi

Represented By  
Christine A Kingston

**Defendant(s):**

U.S. Department of Education

Represented By  
Elan S Levey

PNC Bank, N.A.

Pro Se

Deutsche Bank ELT Navient & SLM

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

**Wednesday, February 6, 2019**

**Hearing Room 5C**

---

11:00 AM

**CONT... Suzon Hashemi**

**Chapter 7**

**Plaintiff(s):**

Suzon Hashemi

Represented By  
Christine A Kingston

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

Wednesday, February 6, 2019

Hearing Room 5C

11:00 AM

**8:17-11085 Suzon Hashemi**

**Chapter 7**

Adv#: 8:17-01110 Hashemi v. U.S. Department of Education et al

**#10.00**

CONT'D STATUS CONFERENCE Hearing RE: First Amended Complaint For:  
Determination That Student Loan Debt Is Dischargeable Pursuant To 11 U.S.C.  
Section 523(a)(8)

(Complaint filed 6/27/17) (Another Summons issued 7/14/17)

(PTC set at S/C held 10/18/17)

(S/C set per Order Entered 5-30-18)

**(J.P. Morgan Chase Bank, N.A. - Dismissed - See docket no. [14])**

**(Judgment Pursuant To Stipulation - U.S. Department of Education - See  
docket No. [34])**

FR: 3-14-18; 5-30-18; 7-18-18

Docket 48

**\*\*\* VACATED \*\*\* REASON: CONTINUED TO APRIL 3, 2019 AT 11:00  
A.M. PER ORDER CONTINUING STATUS CONFERENCE ENTERED 1-  
25-19 - (Docket No. [105])**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Suzon Hashemi

Represented By  
Christine A Kingston

**Defendant(s):**

U.S. Department of Education

Represented By  
Elan S Levey

PNC Bank, N.A.

Pro Se

Deutsche Bank ELT Navient & SLM

Pro Se

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

**Wednesday, February 6, 2019**

**Hearing Room 5C**

11:00 AM

**CONT... Suzon Hashemi**

**Chapter 7**

**Plaintiff(s):**

Suzon Hashemi

Represented By  
Christine A Kingston

**Trustee(s):**

Richard A Marshack (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

Wednesday, February 6, 2019

Hearing Room 5C

11:00 AM

**8:18-10969 Luminance Recovery Center, LLC**

**Chapter 7**

**#11.00**

Hearing RE: Motion For Approval Of Chapter 7 Trustee's Sale And Settlement Agreement With V&G Associates, COV, Inc. And Luminance Yuba, LLC, Pursuant To 11 U.S.C. Sections 363(b) And 105, And Rules 2002, 6004, And 9019 Of The Federal Rule Of Bankruptcy Procedure (Motion filed 1/16/19)

Docket 355

**Tentative Ruling:**

Updated Tentative for 2/06/19 is to GRANT.

Note: This matter appears to be uncontested. Accordingly, no court appearance by Movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Movant will be so notified.

Movant to lodge an order within seven (7) days.

**Party Information**

**Debtor(s):**

Luminance Recovery Center, LLC

Represented By  
Jeffrey I Golden  
Beth Gaschen

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
D Edward Hays  
David Wood  
Kyra E Andrassy  
Jeffrey I Golden  
Beth Gaschen  
Matthew Grimshaw

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

Wednesday, February 6, 2019

Hearing Room 5C

11:00 AM

8:18-13285 Wiebke Bultmann

Chapter 7

#12.00

Hearing RE: Chapter 7 Trustee's Motion For Order: (1) Authorizing The Trustee To Sell Real Property (21872 Calabaza, Mission Viejo, California) Pursuant To 11 U.S.C. Section 363(b); (2) Approving Overbid Procedures; (3) Approving Compensation Of Real Estate Broker; (4) Authorizing Distribution Of Sale Proceeds; And (5) Waiving 14 Day Stay Imposed By Federal Rules Of Bankruptcy Procedure 6004(h)  
(Motion filed 1/11/19)

Docket 55

**Tentative Ruling:**

Tentative for 2/6/19:

The Court is inclined to approve the Motion; however, the Court is concerned that the requirement that overbids be all cash may chill bidding and unnecessarily limit otherwise qualified bids. The Trustee should be prepared to present evidence that either (1) he has entertained bids with financing equivalent to an all cash bid or (2) that the requirement for all cash bids has not chilled the bidding.

As to the conditional non-opposition filed by creditor WFB on January 18, 2019 [Dk. 64], the Court will approve the Motion with only the requested modifications that the Trustee agreed to in his reply filed January 25, 2019 [Dk. 67] ("Reply"), for the reasons set forth in the Reply.

Appearances required.

**Party Information**

**Debtor(s):**

Wiebke Bultmann

Represented By  
Michael N Nicaastro

**Trustee(s):**

Thomas H Casey (TR)

Represented By

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Scott Clarkson, Presiding  
Courtroom 5C Calendar**

**Wednesday, February 6, 2019**

**Hearing Room 5C**

11:00 AM

**CONT...**

**Wiebke Bultmann**

Karen S. Naylor

**Chapter 7**