

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 8, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

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ZoomGov meeting number: 161 039 9402

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Hearing Room 5B

10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01074 Marshack v. American Express National Bank

- #1.00** STATUS CONFERENCE RE: Complaint (1) To Avoid and Recover Intentionally Fraudulent Transfers Pursuant to 11 U.S.C. Sections 544(b), 548(a)(1)(A) and 550, and Cal. Civ. Code sections 3439.04(a)(1) and 3439.07; (2) To Avoid and Recover Constructively Fraudulently Transfers Pursuant to 11 U.S.C. Sections 544, 548(a)(1)(B) and 550, and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05(a) and 3439.07; and (3) To Preserve the Transfers Pursuant to 11 U.S.C. Section 551
(cont'd from 10-05-23 per order approving stip. to cont. s/c & for extension of time to respond to complaint entered 8-10-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 11-09-23 per order apprvg third stip. to cont. status conference and for extension of time to answer complaint entered 10-10-23)
(cont'd from 12-7-23 per order approving stip to cont. s/c entered 11-28-23)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-11-24 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 1-25-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

Defendant(s):

American Express National Bank

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
David M Goodrich

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Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

**United States Bankruptcy Court
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10:00 AM

8:23-11248 Inder Jeet Sharma

Chapter 7

Adv#: 8:23-01106 Kosmala v. Sharma et al

- #2.00** STATUS CONFERENCE RE: Complaint For Judgment: (1) To Avoid Preferential Transfer Pursuant To 11 USC Section 547; (2) For Recovery Of Avoided Transfers Under 11 USC Section 550; and (3) To Preserve Transfer For The Benefit Of The Estate Pursuant To 11 USC Section 551
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 12-14-23)

Docket 1

Tentative Ruling:

Tentative for February 8, 2024
Deadline for completing discovery is April 1, 2024
Last date for filing pre-trial motions is April 19, 2024
The Pre-trial conference is on May 23, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.

Appearance required.

Tentative for December 14, 2023
No status report? Appearance required.

Tentative for November 9, 2023
Since the case is not yet at issue, continue status conference to December 14 at 10:00 a.m. Appearance is suggested but only if the continuance is not acceptable.

Party Information

Debtor(s):

Inder Jeet Sharma

Represented By
A Mina Tran

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CONT... Inder Jeet Sharma

Chapter 7

Defendant(s):

Ravi Sharma Pro Se

Amy Sharma Pro Se

Joint Debtor(s):

Rama Sharma Represented By
A Mina Tran

Plaintiff(s):

Weneta M.A. Kosmala Represented By
Jeffrey I Golden

Trustee(s):

Weneta M.A. Kosmala (TR) Pro Se

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10:00 AM

8:23-11248 Inder Jeet Sharma

Chapter 7

Adv#: 8:23-01107 Kosmala v. Cal-Top Realty and Investments Inc.

- #3.00** STATUS CONFERENCE RE: Complaint For Judgment: (1) To Avoid Preferential Transfer Pursuant To 11 USC Section 547; (2) For Recovery Of Avoided Transfers Under 11 USC Section 550; and (3) To Preserve Transfer For The Benefit Of The Estate Pursuant To 11 USC Section 551
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 12-14-23)

Docket 1

Tentative Ruling:

Tentative for February 8, 2024
Deadline for completing discovery is April 1, 2024
Last date for filing pre-trial motions is April 19, 2024
The Pre-trial conference is on May 23, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.

Appearance required.

Tentative for December 14, 2023
No status report? Appearance required.

Tentative for November 9, 2023
Status conference continued to December 14 at 10:00 a.m. to allow for processing of default. Appearance is optional.

Party Information

Debtor(s):

Inder Jeet Sharma

Represented By
A Mina Tran

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CONT... Inder Jeet Sharma

Chapter 7

Defendant(s):

Cal-Top Realty and Investments Inc. Pro Se

Joint Debtor(s):

Rama Sharma Represented By
A Mina Tran

Plaintiff(s):

Weneta M.A. Kosmala Represented By
Jeffrey I Golden

Trustee(s):

Weneta M.A. Kosmala (TR) Pro Se

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8:23-11393 Gregory P. Sorensen

Chapter 13

Adv#: 8:23-01115 Roley et al v. Sorensen et al

#4.00 STATUS CONFERENCE RE: Complaint To Determine Nondischargeability Of Debt Pursuant To 11 USC Section 523 (cont'd from 1-04-24)

Docket 1

Tentative Ruling:

Tentative for February 8, 2024
Status of service/default? *Appearance required.*

Tentative of January 4, 2024
If dischargeability is not in question but only specific performance, the court would likely abstain. Can the parties so stipulate? The trustee should attend the conference. *Appearance required.*

Party Information

Debtor(s):

Gregory P. Sorensen

Represented By
Christopher J Langley

Defendant(s):

Gregory P Sorensen

Pro Se

Leah K. Kingston

Pro Se

Joint Debtor(s):

Leah K. Kingston

Represented By
Christopher J Langley

Plaintiff(s):

Aja Roley

Represented By
Michael A Wallin

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CONT... Gregory P. Sorensen

Chapter 13

Jordan van Durme

Represented By
Michael A Wallin

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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10:00 AM

8:23-11672 Hugo Fabian Flores Flores

Chapter 7

Adv#: 8:23-01135 Reyes Falcon v. Flores Flores

#5.00 STATUS CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt And Remedies

Docket 1

Tentative Ruling:

Tentative for February 8, 2024
Status of service/default? *Appearance required.*

Party Information

Debtor(s):

Hugo Fabian Flores Flores Pro Se

Defendant(s):

Hugo Fabian Flores Flores Pro Se

Plaintiff(s):

Alejandra H Reyes Falcon Pro Se

Trustee(s):

Thomas H Casey (TR) Pro Se

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8:22-11359 Massoud Hajnabi

Chapter 13

Adv#: 8:22-01095 Hajnabi v. Oye et al

#6.00 Motion To Dismiss First Amended Complaint For Violation Of The Automatic Stay 11 USC § 362; Declaratory Relief; Injunctive Relief
[Fed R. Bankr. Proc. 7012(b); Fed. R. Civ. Proc. 12(b)(6)]

Docket 104

Tentative Ruling:

Tentative for February 8, 2024

A. Background

This is Defendants U.S. Bank Trust National Association, as Collateral Trust Trustee of First Key Master Funding 2021 – A Collateral Trust and Select Portfolio Servicing, Inc.'s ("SPS") (collectively "Loan Defendants") Motion to Dismiss the First Amended Complaint ("FAC") filed by Debtor Massoud Hajnabi ("Debtor"). This Motion is brought under FRCP 12(b)(6). It is also joined by Rodger Oye, the Owens Trust #279, Vecchio Real Estate Corporation, John Rampello ("Joining Defendants") and National Default Servicing Corporation ("NDSC").

The real property that is the subject of the FAC is located at 279 South Owens Drive, Anaheim, CA 92808 ("Property"). On October 17, 2005, a Deed of Trust was recorded reflecting a \$750,000 loan from Bank of America, N.A. to Debtor, secured by the Property ("First Deed of Trust"). On June 16, 2006, another Deed of Trust was recorded, reflecting a line of credit with Bank of America N.A. in the maximum amount of \$150,000 that was also secured by the Property ("HELOC Deed of Trust"). The HELOC Deed of Trust was later modified and recorded, and the credit limit was increased to \$252,504. SPS serviced the loan secured by the HELOC Deed of Trust.

On December 21, 2020, a Notice of Default was recorded due to default on the HELOC Deed of Trust. Notices of Trustee's Sale were recorded on September 14, 2021 and March 24, 2022. On June 28, 2022, a trustee's sale took place because of default on the loan secured by the

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HELOC Deed of Trust. John Rampello allegedly submitted the bid, and the vesting information indicated "The Owens Trust #279, Vecchio Real Estate Corp., as Trustee." Debtor states the next day someone from Vecchio Real Estate Corp. sent an email to trustee NDSC seeking to change the name of the bidder to Rodger Oye, as Trustee, and it submitted an Affidavit that Mr. Oye intended to be an owner occupant. Debtor states that on July 14, 2022, NDSC sent a Trustee's Deed upon Sale to Rodger Oye, who returned it on July 18, 2022, and he attempted to rescind his Affidavit that he was to be an owner-occupant.

Debtor filed his chapter 13 bankruptcy petition on August 12, 2022 to gain the benefit of the automatic stay and stall the recording of the trustee's deed following the pre-petition trustee's sale. Rodger Oye recorded the Trustee's Deed Upon Sale on August 16, 2022 representing that the Property sold to The Owens Trust #279, Rodger Oye, as Trustee. Debtor filed this adversary proceeding on November 4, 2022 against third party purchaser, Rodger Oye, the Owens Trust #279, Rodger Oye as Trustee ("Oye") for recording the trustee's deed in violation of the stay. Oye filed an answer on December 12, 2022. Debtor filed a First Amended Complaint adding SPS and NDSC as Defendants. Debtor alleges in the FAC that the trustee's sale was not "final" when he filed his bankruptcy petition on August 12, 2022, and that the Loan Defendants improperly conducted the sale through the foreclosure trustee, NDSC. Debtor's Plan was confirmed on September 7, 2023. On October 12, 2023, this court denied Loan Defendants' motion to dismiss the FAC. The Loan Defendants answered the complaint on October 23, 2023.

On December 20, 2023, this court entered an order dismissing Debtor's bankruptcy case because of Debtor's material default for failure to cure delinquent plan payments. The Loan Defendants now request that the motion to dismiss should be granted because the underlying bankruptcy case has been dismissed. Defendants Oye and Rampello echo the arguments of the Loan Defendants and also provide additional argument in their joinder that the FAC lacks sufficient factual allegations to support a claim for willful violation of the automatic stay.

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B. Legal Standard of a 12(b)(6) Motion

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007). A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

C. Procedural Issues of Loan Defendants

Debtor argues in his opposition that the Motion to Dismiss is untimely because the Loan Defendant have already answered the FAC. Procedurally, a 12(b)(6) motion is generally a mechanism brought before filing a responsive pleading, not after. However, Loan Defendants assert that this court may construe this motion as either one for judgment on the pleadings under Rule 12(c), or as one for summary judgment. Rule 12(c) provides, "after the

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pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings."

The issue here, as Debtor points out, is that this Motion to Dismiss was brought under Rule 12(b)(6), not 12(c), and Debtor is correct that a 12(b)(6) motion at this point is untimely since Loan Defendants and Joining Defendants have answered the FAC. This puts the court in a difficult position because on one hand, the court would be ruling on a motion brought under the wrong statute and one that is procedurally flawed. On the other hand, continuing the matter so that the parties can file the correct motion with oppositions and replies would waste resources and cause further delay. Further, the underlying bankruptcy case has already been dismissed.

D. Procedural Issues of Joining Defendants

The Joining Defendants have created similar procedural issues as they have joined the Motion to Dismiss pursuant to Rule 12(b)(6) and asserted dismissal under 12(b)(1). Debtor argues that this court cannot treat a Rule 12(b)(6) motion (which is already untimely) as a Rule 12(b)(1) motion when that is not how the motion was brought, because Debtor has a right to fair notice of the legal basis for dismissal which was not properly provided for in the initial motion to dismiss.

E. Granting of Motion Due to Dismissal of Bankruptcy

Loan Defendants request dismissal of the FAC given that the related and underlying bankruptcy case has been dismissed. "[B]ankruptcy courts are not automatically divested of jurisdiction over related cases when the underlying bankruptcy case is dismissed." *In re Carraher*, 971 F.2d 327, 328 (9th Cir.1992). The court considers certain factors in determining whether to dismiss a related case, including judicial economy, convenience and fairness to the parties, and comity. *Carraher*, 971 F.2d at 328. The Ninth Circuit has also affirmed that where there has not been significant delay or significant

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expense, and the case involves intricate state law, an adversary proceeding was properly dismissed in the face of an underlying bankruptcy case dismissal. See *In re Casamont Investors, Ltd.*, 196 B.R. 517, 524-526 (9th Cir. BAP 1996).

Here, Debtor's underlying bankruptcy case was dismissed on December 20, 2023 and he is no longer seeking administration of his plan. Debtor claims that Oye violated the stay by recording the trustee's deed after the bankruptcy petition. There are no allegations that Loan Defendants had control over that, and their sale occurred pre-petition. The factors in *Carraher* also support dismissal of the FAC as this adversary has only been pending for one year, a dismissal would conserve costs and resources, and the state court is better suited for determination of some of the arcane issues of California presented. The parties can still litigate and have the issues heard in state court and a dismissal would respect comity as the state court is better positioned to determine issues of nonjudicial foreclosure law, specifically Civil Code §2924m, recently amended by the California Legislature. This court has been heard to publicly proclaim its grave concerns about the structure and intent behind Civil Code §2924m, and its wisdom at any level. The concept of injecting a "not final" label upon what otherwise would traditionally have governed the effect of trustee's sales injects a disturbing level of uncertainty and opens a door to assorted mischief, similar, perhaps to what may have occurred here. Traditionally, trustee sales have fixed a pinpoint in time where title has passed or it hasn't. And such certainty is in keeping with the purposes and functioning of Commercial Law generally. Now, apparently, we have a class of foreclosures in California where no one can quite tell, potentially for weeks, as to whether the title has passed and little or nothing can be determined based only upon the recorded documents.

Aside from the procedural issues concerning Loan Defendants, Debtor does not provide opposition specifically as to Loan Defendants' arguments. While the procedural issues cannot be overlooked, as this motion was brought under Rule 12(b)(6), and not 12(c), the reasons for construing the motion as one for judgment on the pleadings are strong and any countervailing purposes for this court in keeping the adversary proceeding are weak. *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 954 (9th Cir.

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2004) (holding that "where the Defendants filed their motion to dismiss after filing their answer ... the motion should have been treated as a motion for judgment on the pleadings, pursuant to [Civil] Rule 12(c) or 12(h)(2)" (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980))). This is particularly so when at the center is interpretation of a new California statute which this court regards as of dubious advisability. But the court believes in the end it there is a better remedy; it should simply abstain from hearing this case entirely, which preserves the party's opportunity to litigate the matter in state court where it belongs. See 28 USC §1334(c).

With respect to the Joining Defendants, they admit in their joinder that a claim for willful violation of the automatic stay may survive dismissal of the underlying bankruptcy case. *In re Davis*, 177 B.R. 908, 911 (B.A.P 9th Cir. 1995). Debtor opposes most of Joining Defendants' arguments, citing to *40235 Washington Street Corp. v. Lusardi*, 329 F.3d 1076 (9th Cir. 2003). In *Lusardi*, "Federal courts have jurisdiction over matters in which a federal question is presented on the face of the well-pleaded complaint". *Lusardi*, 329 F.3d at 1079-80. *Lusardi* makes clear that federal courts can retain jurisdiction to remedy violations of the automatic stay beyond willful violations. *Id.* The *Lusardi* court retained jurisdiction after dismissal of the bankruptcy, in a stay violation claim for quieting title and declaratory relief. *Id.* at 1080. There was no willful violation claim in that case. Additionally, Debtor argues that public policy concerns favor federal bankruptcy courts retaining jurisdiction in automatic stay violation claims because not retaining would allow creditors to avoid accountability for their actions.

Although *Lusardi* is not as applicable to these facts as *Davis*, it does demonstrate that violation of the stay may not have to be "willful" in order for the court to consider its implications. Moreover, this court has previously ruled on this issue of whether Debtor had pled sufficient facts in the FAC to show that there was a willful violation. In fact, there has already been a denial of a motion to dismiss this case prior to the dismissal of the bankruptcy case, to which the court found generally that Debtor pled sufficient claims under the *Iqbal* and *Twombly* standard. But the court is also concerned that in the end

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vindicating Federal concerns over the integrity of the automatic stay post-bankruptcy case dismissal, while not a *di minimus* consideration, is perhaps insufficient to warrant the expense and inconvenience of continuing this litigation as separate and parallel from that which may be undertaken in state court. Moreover, in the court's view issues here about the propriety of the foreclosure sale and its compliance with Civil Code 2924(c), the Joining Defendants' role therein and consequently whether the stay was violated, are all coming back ultimately to that question of state law,.

The court exercises broad discretion to abstain from hearing adversary proceedings pursuant to 28 USC §1334(c)(1). *In re Pineda*, 2013 WL 1749554 (2013) (the lower court held that it was authorized to abstain *sua sponte* under 28 USC §1334 (c)(1)); See also *In re Tucson Estates, Inc.*, 912 F.2d. 1162, 1166-68 (9th Cir. 1990) (bankruptcy courts have discretion to abstain in favor of state court adjudication when it is in the interest of justice or in the interest of comity); *Gober v. Terra + Corp.*, 100 F.3d 1195, 1207 (5th Cir.1996) ("Permissive abstention may be raised by the court *sua sponte*."). The real question is whether, on balance, there is enough transcendent concern here regarding the stay for this court to retain jurisdiction. That is not at all clear. The court also observes that Debtor has brought a motion for summary judgment scheduled for February 29, 2024 on the question of stay violation. So, the better part of valor is to continue resolution of this motion to be combined with that hearing. The court requests that the parties augment their pleadings in response to that Rule 56 motion to also address the question of whether, even if there were a violation of the stay other concerns preponderate in favor of avoiding a ruling in favor of abstention.

Abstain under 28 USC §1334 (c)(1) as to Loan Defendants. Continue as to Joining Defendants to coincide with Rule 56 motion on calendar February 29, 2024. Appearance required.

Party Information

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Chapter 13

Debtor(s):

Massoud Hajnabi

Represented By
Norma Duenas

Defendant(s):

Rodger Oye

Represented By
John P. Ward
Brett Ramsaur

U.S. Bank Trust National

Represented By
Peter J Barrett

John Rampello

Represented By
Brett Ramsaur

National Default Servicing

Represented By
Brandon J. Mika
Chad L Butler

Select Portfolio Servicing Inc.

Represented By
Peter J Barrett

Vecchio Real Estate Corporation

Represented By
Brett Ramsaur

The Owens Trust #279, Rodger Oye

Represented By
Brett Ramsaur

Plaintiff(s):

Massoud Hajnabi

Represented By
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #7.00 STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 11-09-23 per order apprvng stip. for cont. of s/c & mtns to dsm
of Matthew Browndorf & Andrew Corcoran entered 11-09-23)**

Docket 1

Tentative Ruling:

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the reference was still pending before the District Court. The November 9, 2023 status conference was continued to this date. What to do? *Appearance suggested.*

Tentative for November 9, 2023
Status of withdrawal of reference? Appearance required.

Tentative for 7/27/23:
According to a stipulation filed April 26, 2023, a motion to withdraw the reference was still pending before the District Court. The April 27 hearing was continued to this date by stipulation of the parties. Updated status?

Appearance: required

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Tentative for 4/27/23:

The court is aware of a stipulation to continue these hearings for a further 90 days. The court will adopt the stipulation unless there is some reason not to do so.

Appearance: optional

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:

Where are we on withdrawal of the reference?

Appearance: suggested

Tentative for 4/14/22:

Where do we stand on the motion for withdrawal of the reference? The court would appreciate a written update.

Appearance: optional

Tentative for 10/28/21:

Continue to January 6, 2022 at 11:00 a.m. Appearance waived.

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Chapter 7

Tentative for 6/24/21:
See #s 17 and 18. What is status on withdrawal of reference? Continue to
August 26 @ 11:00 a.m.

Tentative for 4/22/21:
Continue to June 23 @ 10:00AM to allow district court's ruling.

Tentative for 12/10/20:
Continue to April 22, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It would appear there are several preliminary questions concerning jurisdiction
and proper venue. It makes sense to sort these out first before discovery
commences and deadlines are imposed. Consequently, the status
conference will be continued to December 10, 2020 @ 2020. In meantime,
the parties are ordered to file such motions as are necessary and appropriate
to resolve the questions about proper venue and /or withdrawal of reference.
By the continued status conference the court expects those issues to be
resolved.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 8, 2024

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Defendant(s):

BP Fisher Law Group, LLP	Pro Se
LF Runoff 2, LLC	Pro Se
Matthew Browndorf	Pro Se
Andrew Corcoran	Pro Se
Shannon Kreshtool	Pro Se
Ditech Financial, LLC	Pro Se
SELECT PORTFOLIO	Pro Se
BP Peterman Legal Group, LLC	Pro Se

Plaintiff(s):

Peleus Insurance Company	Represented By Linda B Oliver Andrew B Downs
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays David Wood Tinho Mang Marc C Forsythe Charity J Manee
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**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 8, 2024

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #8.00** Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 11-09-23 per order apprvng stip. for cont. of s/c & mtns to dsm
of Matthew Browndorf & Andrew Corcoran entered 11-09-23)

Docket 38

Tentative Ruling:

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the reference was still pending before the District Court. The November 9, 2023 status conference was continued to this date. What to do? *Appearance suggested.*

November 9, 2023

Status of withdrawal of reference? Appearance required.

Tentative for 7/27/23:

Status of withdrawal of reference?

Appearance: optional

Tentative for 4/27/23:

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 8, 2024

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11:00 AM

CONT... BP Fisher Law Group, LLP
See #19.

Chapter 7

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:
See #9.

Tentative for 4/14/22:
See #5.

Appearance: optional

Tentative for 10/28/21:
See #8.

Tentative for 6/24/21:
Status of withdrawal of reference?

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Thursday, February 8, 2024

Hearing Room 5B

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CONT... BP Fisher Law Group, LLP

Chapter 7

Tentative for 4/22/21:

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference. By that time, the District Court in Maryland will likely have ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including revisiting this motion.

Stay proceedings pending a renewed status conference in approximately 45 days.

Tentative for 12/10/20:

This is a Motion to Dismiss this adversary proceeding based on lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), or in the alternative, to stay or transfer this adversary proceeding, of defendant Andrew Corcoran joined by Defendant Matthew Browndorf (collectively "Defendants"). The motion is opposed by plaintiff, Peleus Insurance Company ("Plaintiff").

1. Defendants' Alternative Remedy of Staying This Adversary Proceeding Is Warranted

The parties report that there is a matter currently pending in Maryland District Court that involves the substantially the same parties and subject matter. Furthermore, that matter was initiated several months prior to this adversary proceeding. Plaintiff believes that this court is the proper venue as it argues that this court can exercise personal jurisdiction over all necessary parties. Plaintiff also reports that there is a motion to dismiss in the Maryland matter based on an alleged failure to join a necessary party under Rule 12(b)(7). Plaintiff believes that motion to dismiss will succeed. Defendants believe the Maryland motion to dismiss will fail and assert that this court cannot properly exercise personal jurisdiction.

**United States Bankruptcy Court
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CONT...

BP Fisher Law Group, LLP

Chapter 7

According to the status report filed on 12/3, Plaintiff reports that the Maryland motion to dismiss is expected to be fully briefed by 12/14 (just after the hearing on this motion). The hearing date for the Maryland motion to dismiss is unknown, but likely not too long after the completion of the briefing. Plaintiff has also filed a motion with the District Court of the Central District of California to withdraw the reference. That motion is set for hearing before Judge Kronstadt on March 29, 2021.

There is a lot going on in this case to say the least. The motion and subsequent papers indicate that the threshold issue of personal jurisdiction is likely to be complex and hotly contested. There are also two pending motions that could have a major impact on this adversary proceeding, but the outcome of those motions is obviously uncertain at present. Matters will clarify one way or another soon. Thus, for reasons of judicial economy, comity, deterrence of potential forum shopping, and the need to avoid parallel litigation and/or inconsistent rulings, this court will grant a stay of proceedings as an alternative form of relief as suggested in the motion. This relief can likely be justified under the "First to File" doctrine, a discretionary rule in which the court must consider whether a complaint containing the same issues and parties has already been filed in another district. *Alltrade, Inc. v. Uniweld Prods.*, 946 F.2d 622, 625 (1991). This rule is not to be applied mechanically or too rigidly and the policy underlying the rule should not be disregarded lightly. *Id.* at 625, 627-28. In other words, the rule does not require perfect identity of issues and parties. See *Audio Entertainment Network, Inc. v. AT&T*, 1999 U.S. App. LEXIS 34500 at *3. "[I]t is not an abuse of discretion, and therefore not reversible error, for a district court judge to weigh the facts and conclude that the rule should apply." *Alltrade*, 946 F.2d at 628.

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference in late March or early April. By that time, the District Court in Maryland will likely have also ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including potentially revisiting this motion.

**United States Bankruptcy Court
Central District of California
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CONT... **BP Fisher Law Group, LLP**

Chapter 7

Grant a temporary stay of proceedings pending the outcome of both the Maryland motion to dismiss and the motion to withdraw the reference. A continued status conference is scheduled April 8, 2021 at which time the court requires a full update and, if then appropriate consistent with other rulings, will establish deadlines.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, February 8, 2024

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

**United States Bankruptcy Court
Central District of California
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11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #9.00** Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 11-09-23 per order apprvng stip. for cont. of s/c & mtns to dsm of Matthew Browndorf & Andrew Corcoran entered 11-09-23)

Docket 43

Tentative Ruling:

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the reference was still pending before the District Court. The November 9, 2023 status conference was continued to this date. What to do? *Appearance suggested.*

Tentative for November 9, 2023

Status on withdrawal of reference? Appearance required.

Tentative for 7/27/23:

See #11.

Appearance: optional

**United States Bankruptcy Court
Central District of California
Santa Ana
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Thursday, February 8, 2024

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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Tentative for 4/27/23:
See #19.

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:
See #9.

Tentative for 4/14/22:
See #5.

Appearance: optional

Tentative for 10/28/21:
See #8.

Tentative for 6/24/21:
Status of withdrawal of reference?

**United States Bankruptcy Court
Central District of California
Santa Ana
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11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Tentative for 4/22/21:
See #7

Tentative for 12/10/20:
See #12.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

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Plaintiff(s):

Peelus Insurance Company

Represented By
Linda B Oliver

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CONT... BP Fisher Law Group, LLP

Chapter 7

Andrew B Downs

Trustee(s):

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Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee