

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

Thursday, February 15, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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ZoomGov meeting number: 161 531 6718

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:20-12416 Michele Lynn Stover

Chapter 7

Adv#: 8:21-01013 Bidoglio v. Stover

- #1.00 STATUS CONFERENCE RE: Complaint To Determine Nondischargeability Of Debt
(cont'd from 5-27-21 per another summons issued on 3-26-21)
(cont'd from 12-14-23)**

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

Deadline for completing discovery is August 1, 2024.

Last date for filing pre-trial motions is August 16, 2024.

Pre-trial conference is on Spetember 12, 2024 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by Plaintiff within 10 days. One day of mediation to be completed by July 1, 2024.

Appearance required.

Tentative for December 14, 2023

Status of negotiations. Appearance required.

Tentative for September 14, 2023

Debtor's counsel has moved to withdraw. An appeal of a state proceeding implicating some but not all issues is pending. In the interest of collateral estoppel there is a request for a continuance into August of 2024. The court would request a report on how all the parts interact and whether a delay of that magnitude is the most efficient.

Appearance required.

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CONT... Michele Lynn Stover

Chapter 7

Tentative for 8/24/23

It would seem that collateral estoppel might obtain unless there is an appeal, the filing of which should be known shortly. Perhaps the better part of valor is to take up the question of setting deadlines in around 60 days? Appearance required.

Tentative for 5/25/23:

Status? Is the state proceeding still pending? Why no report?

Appearance: required

Tentative for 3/16/23:

Status conference continued to: May 25, 2023 @ 10:00 a.m. A further status report is required.

Appearance: optional

Tentative for 12/15/22:

Status regarding the state court matter and how it affects our case?

Appearance: required

Tentative for 9/8/22:

Continue at parties' request to Nov. 10, 2022 @ 10:00AM

Appearance: optional

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CONT... Michele Lynn Stover

Chapter 7

Tentative for 7/8/21:
Deadline for completing discovery: September 30, 2021
Last date for filing pre-trial motions: Oct. 15, 2021
Pre-trial conference on: Nov. 4, 2021

Appearance: required

Tentative for 6/10/21:
What is the status following denial of motion for more definite statement?
Continue about 30 days.

Party Information

Debtor(s):

Michele Lynn Stover

Represented By
Christopher J Langley

Defendant(s):

Michele Lynn Stover

Pro Se

Plaintiff(s):

Ana L Bidoglio

Represented By
Henry J Josefsberg

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:22-11556 Stonebridge Ventures, LLC

Chapter 11

Adv#: 8:22-01093 Lewis et al v. Stonebridge Ventures, LLC et al

**#2.00 STATUS CONFERENCE RE: Complaint For Removal Of State Court Action
(cont'd from 9-07-23)
(cont'd from 11-02-23 per court's own mtn)
[Stonebridge Ventures, LLC is dismissed from adversary see document #
31]
(cont'd from 1-11-24)**

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

The court needs an order closing adversary proceeding per the settlement.
Appearance suggested or at least contact chambers as when order can be
expected.

Tentative for January 11, 2024

Settlement status? Appearance required.

Tentative for November 9, 2023

Has the 9019 motion granted 10/31 resolved this case? Appearance is
suggested.

Tentative for September 7, 2023

Continue to November 2, 2023 at 10:00 a.m.

Appearance is only required if date does not work.

Tentative for 6/29/23:

Settlement still pending? How long a continuance?

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CONT... Stonebridge Ventures, LLC

Chapter 11

Tentative for 5/25/23:
Paragraph G in the status report suggests that settlement discussions are underway, but no timeline is given. While the court encourages settlement sometimes arbitrary deadlines help focus the discussions, and continuances are not unlimited. Are those necessary or advisable here?

Appearance: required

Tentative for 3/16/23:
Parties are still discussing the lien claim issue? Do the parties prefer the setting of discovery deadlines and scheduling of a pretrial conference at this time? Or is another continuance preferred?

Appearance: required

Tentative for 1/12/23:
It is not clear to the court why this matter should be tried in bankruptcy court instead of its original jurisdiction, the Riverside County Superior Court. Although title of estate property might be affected, adjudication of any legal issue affecting title and as to non-debtor parties could as well be determined there; no unique Title 11 issue appears. There is, however, the possibility of a §544 strongarm question regarding any "special lien" claim; but that is only hypothetical at this point. Moreover, the title issues may be at the threshold of mootness as the Trustee has moved to sell the subject property free of liens. There was no reply filed to this court's OSC re Remand/Abstention. Therefore, this court abstains from these issues and remands to Riverside Superior Court, but with the admonitions as described above. Mr. Polis is to submit an order.

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CONT... Stonebridge Ventures, LLC

Chapter 11

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw

Defendant(s):

Stonebridge Ventures, LLC

Pro Se

Joshua Raymond Pukini

Pro Se

Ryan Justin Young

Pro Se

Calpac Management, Inc

Pro Se

Edmund Valasquez, Jr.

Pro Se

Luna Construction Management,

Pro Se

Plaintiff(s):

Darryl Lewis

Represented By
Thomas J Polis

Sanna Akhtanova

Represented By
Thomas J Polis

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith
William Malcolm

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8:21-12330 Sophia Santos Ramos

Chapter 7

Adv#: 8:22-01046 Kosmala v. Ramos

- #3.00** PRE-TRIAL CONFERENCE RE: Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 548(a)(1)(A); (2) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 548(a)(1)(B); (3) For Recovery Of Avoided Transfers Under 11 U.S.C. § 550; (4) To Preserve Transfer For The Benefit Of The Estate Pursuant To 11 U.S.C. § 551; (5) For Authorization To Sell Real Property In Which Co-Owner Holds Interest Pursuant To 11 U.S.C. § 363(h); And (6) For Turnover Of Property Of The Estate
(cont'd from 8-04-22 per court's own mtn)
(cont'd from 10-05-23 per court's own mtn)
(set from s/c hrg held on 10-12-23)

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

Plaintiff suggests she will file a motion to strike the answer. An alternative might be a unilateral version of the pretrial statement of the offered pretrial statement. Under either approach the court will give the parties sufficient time to accomplish this before judgment can be entered. Continue about 45 days or as counsel suggests. Appearance suggested.

Tentative for October 12, 2023

There has not been a hearing on this matter since the initial status report was filed one year ago. Status? *Appearance required.*

Tentative for 12/1/22:

Assigned to mediation. Continue as a status conference to February 16, 2023 @ 10:00AM.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by January 31, 2023.

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CONT... Sophia Santos Ramos

Chapter 7

Appearance: required

Party Information

Debtor(s):

Sophia Santos Ramos

Represented By
A Mina Tran

Defendant(s):

Edwin Joaquin Ramos

Pro Se

Plaintiff(s):

Weneta M.A. Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden

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10:00 AM

8:22-11686 Triet Minh Dinh

Chapter 7

Adv#: 8:23-01002 G & L Seafood Inc. et al v. Dinh

**#4.00 PRE-TRIAL CONFERENCE RE: Complaint Objecting To Discharge Based On False Oath Pursuant To 11 USCA Section 727(4)(A)
(set from s/c hrg held 3-30-23)
(cont'd from 12-14-23)**

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

Continue to coincide with hearing on approval of stipulation approving dismissal set for March 14, 2024 at 11:00 a.m. Appearance is optional.

Tentative for December 14, 2023

The unilateral "pretrial order" (consisting of a transcription of 341a testimony) is unorthodox to say the least. Defendant did not apparently participate in preparing anything. So, is the defense of this case abandoned?

Appearance required and the answer may be stricken absent explanation.

Tentative for October 12, 2023

Why no pretrial stipulation? Appearance required.

Tentative for 3/30/23:

Deadline for completing discovery: September 1, 2023
Last date for filing pre-trial motions: September 22, 2023
Pre-trial conference on: October 12, 2023 @ 10:00AM
Joint pre-trial stipulation and/or order due per local rules.

Appearance: required

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CONT... **Triet Minh Dinh**

Chapter 7

Party Information

Debtor(s):

Triet Minh Dinh

Represented By
Andrew Edward Smyth

Defendant(s):

Triet Minh Dinh

Pro Se

Plaintiff(s):

G & L Seafood Inc.

Represented By
Peter J Ryan

Anne-Marie Giang Trustee of the

Represented By
Peter J Ryan

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:22-12090 Vincent J Sweeney, III

Chapter 7

Adv#: 8:23-01024 Cox-Novak Construction, Inc. v. Sweeney, III

#5.00 PRE-TRIAL CONFERENCE RE: Complaint by Cox-Novak Construction, Inc. against Vincent J Sweeney III. false pretenses, false representation, actual fraud)
(set from s/c hrg held on 7-13-23)
(cont'd from 12-07-23)

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

Is there a Joint Pre Trial Statement? Is one expected as is usual?
Appearance required.

Tentative for December 7, 2023

In view of Defendant's passing will this case be dismissed? Appearance required.

Party Information

Debtor(s):

Vincent J Sweeney III

Represented By
Julie J Villalobos

Defendant(s):

Vincent J Sweeney III

Represented By
Julie J Villalobos

Plaintiff(s):

Cox-Novak Construction, Inc.

Represented By
Timothy J Silverman

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CONT... Vincent J Sweeney, III

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01141 East West Bank v. Kim et al

- #5.10** PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt, in objection to debtor's discharge pursuant to 11 U.S.C. Section 523(a)(2) (A) and (B), and 727(a)(2)(A; or alternatively for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Section 547(b), and 550]; (2) Avoidance and recovery of fraudulent transfers [11 U.S.C. Section 548, and 550]; (3) Preservation of avoided transfers [11 U.S.C. Section 551]; (4) Disallowance of any claims held by defendants [11 U.S.C. Section 502(d); and (5) California voidable transactions act [Civil Code Section 3439-3439.14]
(set from s/c hrg held on 12-17-20)
(cont'd from 7-6-23)
(cont'd from 2-01-24)

Docket 1

Tentative Ruling:

Tentative for February 15, 2024
See #5.2. Appearance required.

Tentative for February 1, 2024
See #8. Appearance required.

Tentative for November 30, 2023
See 3.1. Appearance required.

Tentative for October 12, 2023
Order approving settlement is in process. Continue to November 20, 2023 at 10:00 a.m. as a holding date. Appearance is optional.

Tentative for 7/6/23:

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CONT... Katie Ki Sook Kim

Chapter 7

Settled? Status?

Appearance: required

Tentative for 4/27/23:

Set a continued pretrial conference in view of ongoing settlement discussions?

Appearance: required

Tentative for 1/12/23:

Status? Still no pre-trial stipulation but notes indicate parties were discussing settlement.

Appearance: required

Tentative for 10/27/22:

Set trial date approximately 90 days out. Week of March 20?

Appearance: required

Tentative for 12/17/20:

Deadline for completing discovery: November 23, 2021

Last date for filing pre-trial motions: December 2, 2021

Pre-trial conference on: December 16, 2021@ 10:00AM

Joint pre-trial order due per local rules.

Party Information

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CONT... Katie Ki Sook Kim

Chapter 7

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Kiddo's E3, Inc.

Pro Se

Chrysanthemum by Eileen LLC

Pro Se

SMT Apparel, Inc.

Pro Se

Verna Fashion, Inc.

Pro Se

Plaintiff(s):

East West Bank

Represented By
Clifford P Jung

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:20-10545 Katie Ki Sook Kim

Chapter 7

#5.20 East West Bank's Motion For Order Approving Settlement And Compromise Of Disputes Regarding Chrysanthemum By Eileen LLC, SMT Apparel, Inc. and Verna Fashion, Inc.
(cont'd from 2-01-24)

Docket 93

Tentative Ruling:

Tentative for February 15, 2024

Assuming no creditor opposition is filed compromise is granted and clerk's office will proceed to vacate the previous discharge. Appearance required.

Tentative for February 1, 2024

The standing issue was apparently resolved by stipulation with Trustee. But the reformation of the docket to deal with wrongly entered discharge on March 17, 2023 is still outstanding. The court had requested plaintiff to give notice of this, but the docket does not reflect it. See also #7. *Appearance required.*

Tentative for November 30, 2023

There are complications.

First, there is a glaring question of standing which is not answered in the papers. Avoidance actions under §§547 and 548 belong to the estate. In re United Energy Corp, 944 F.2d 589, 594 (9th Cir. 1999); see also In re Wolf & Vine, 825 F.2d 197, 199 (9th Cir. 1987) ("Section 547 of the Bankruptcy Code gives the bankruptcy trustee the power to avoid "preferential" transfers by the debtor to creditors when the transfers are made within a certain period of time before the filing of the bankruptcy petition.") Normally the estate's avoidance actions are prosecuted for the estate by its trustee. The court notes that

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Katie Ki Sook Kim

Chapter 7

trustee Marshack at one time had his own avoidance action adv. 22-01039 pending but then that was apparently dismissed and a "no asset" report was filed 12/05/2022. Although there is some authority suggesting a private party can prosecute an avoidance action for the estate by agreement normally that is accompanied by an approved arrangement whereby some of the proceeds are shared with the estate. In re Parmetex, Inc., 199 F.3d 1029, 1030 (9th Cir. 1999) (where the court found that where a trustee stipulated that the creditors could sue on his behalf and the bankruptcy court approved that stipulation, the creditors had standing to bring the suit.). No such understanding appears on the docket that the court can find. This raises a dilemma which the court needs answered. To be clear, there is nothing wrong with the proposed settlement and its terms seem eminently reasonable, but some kind of answer or arrangement resolving the standing question must be addressed. Even a modest sum might cure the problem. Or, it could be that East West Bank is only proceeding on select theories not involving the avoidance powers. But this record is unclear.

In reviewing the docket the court also notes the possible discrepancy between the general discharge entered 3/17/23 and the judgment favoring East West Bank entered in its adversary proceeding 20-01141 TA on October 15, 2021, since that action involved allegations under §727(a)(2) and the judgment includes a pronouncement that "discharge is denied." Should an order issue correcting the docket that the discharge is in fact denied?

An appearance by the trustee Mr. Marshack would be useful and it might be that the case needs to be reopened and he reappointed.

Appearance required and the former trustee is strongly invited to appear.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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Chapter 7

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8:12-19446 Pearl Li-Chu Huang

Chapter 7

Adv#: 8:13-01040 Iorio v. Huang et al

#6.00 Motion For Assignment Order

Docket 190

Tentative Ruling:

Tentative for February 15, 2024
Grant. Appearance required.

Party Information

Debtor(s):

Pearl Li-Chu Huang

Represented By
Ken Liang - DISBARRED -
Bert Briones

Defendant(s):

Pearl Li-Chu Huang

Represented By
David B Lally

Roy Huei-Ming Huang

Represented By
David B Lally

Joint Debtor(s):

Roy Huei-Ming Huang

Represented By
Ken Liang - DISBARRED -

Plaintiff(s):

Kelly Iorio

Represented By
David M Reeder
Allan Herzlich

Trustee(s):

John M Wolfe (TR)

Represented By
Richard L Barnett

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11:00 AM

8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

#7.00 Motion To Be Relieved As Counsel To Joshua Pukini, Edmund Valasquez, 108 Avenida Serra, LLC and Luna Construction Management, LLC.

Docket 173

Tentative Ruling:

Tentative for February 15, 2024
Grant. Appearance suggested.

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
LUNA CONSTRUCTION	Pro Se
LIVING ART WORKS LLC	Pro Se
CALPAC MORTGAGE FUND,	Pro Se
CALPAC MANAGEMENT, INC.	Pro Se
CAL-PAC DISTRESSED REAL	Pro Se
BDP DEVELOPMENT	Pro Se
ABC 2260 SAN YSIDRO LLC	Pro Se
AB CAPITAL LFD, INC.	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se
31831 SUNSET LLC	Pro Se

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CONT...	AB Capital, LLC, a California limited liability co	Chapter 7
	1034 W BALBOA, LLC	Pro Se
	108 AVENIDA SERRA, LLC	Represented By Anerio V Altman
	Edmund Valasquez, Jr.	Pro Se
	Ryan Young, individually and as	Represented By Anthony Bisconti
	Joshua R. Pukini, individually and as	Represented By Anerio V Altman
	AB CAPITAL HOLDINGS I, LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By James C Bastian Jr Ryan D O'Dea Shane M Biornstad Rika Kido
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays Alan W Forsley Ryan D O'Dea Kristine A Thagard James C Bastian Jr Marc A Lieberman Rika Kido
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8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

#8.00 Motion For Order Modifying And Extending The Preliminary Injunction

Docket 176

Tentative Ruling:

Tentative for February 15, 2024
Grant as unopposed. Appearance suggested.

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
LUNA CONSTRUCTION	Pro Se
LIVING ART WORKS LLC	Pro Se
CALPAC MORTGAGE FUND,	Pro Se
CALPAC MANAGEMENT, INC.	Pro Se
CAL-PAC DISTRESSED REAL	Pro Se
BDP DEVELOPMENT	Pro Se
ABC 2260 SAN YSIDRO LLC	Pro Se
AB CAPITAL LFD, INC.	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se
31831 SUNSET LLC	Pro Se
1034 W BALBOA, LLC	Pro Se

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CONT... AB Capital, LLC, a California limited liability co Chapter 7

108 AVENIDA SERRA, LLC Represented By
Anerio V Altman

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Represented By
Anthony Bisconti

Joshua R. Pukini, individually and as Represented By
Anerio V Altman

AB CAPITAL HOLDINGS I, LLC Pro Se

Plaintiff(s):

Richard A. Marshack Represented By
James C Bastian Jr
Ryan D O'Dea
Shane M Biornstad
Rika Kido

Trustee(s):

Richard A Marshack (TR) Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea
Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido

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8:22-11039 Craig Chang

Chapter 7

Adv#: 8:22-01087 Fransen v. Chang

#9.00 Motion To Compel Plaintiff's Arthur Fransen To Appear For And Provide
Testimony At Deposition

Docket 47

Tentative Ruling:

Tentative for February 15, 2024
See #10 and 10.1. Appearance required.

Party Information

Debtor(s):

Craig Chang

Represented By
John M Boyko

Defendant(s):

Craig Chang

Represented By
John M Boyko

Plaintiff(s):

Arthur Fransen

Represented By
Mary Liu

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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

Thursday, February 15, 2024

Hearing Room 5B

11:00 AM

8:22-11039 Craig Chang

Chapter 7

Adv#: 8:22-01087 Fransen v. Chang

#10.00 Motion For Relief From Scheduling Order Entered On March 9, 2023 And To Continue Discovery And Related Cases

Docket 50

Tentative Ruling:

Tentative for February 15, 2024

The new discovery cutoff is 5/12/24 and last day to file pre-trial motions is 5/29/24 per the stipulation filed by the parties and order entered on 2/9/24. Deposition of Franzen is compelled to occur upon reasonable notice; whether virtual or in person is at discretion of Defendant. Further continuances should not be expected and refusal to give discovery may result in dismissal of the complaint or other sanction. Appearance required.

Party Information

Debtor(s):

Craig Chang

Represented By
John M Boyko

Defendant(s):

Craig Chang

Represented By
John M Boyko

Plaintiff(s):

Arthur Fransen

Represented By
Mary Liu

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
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- #10.10** PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Pursuan To 11 USC Section 523(a)(2)(A)
(cont'd from 2-2-23)
(set from s/c hrg held on 3-09-23)
(cont'd from 2-01-24)

Docket 1

Tentative Ruling:

Tentative for February 15, 2024

Continue about 90 days to accommodate extension of discovery and pretrial motion deadline extensions. Appearance required.

Tentative for February 1, 2024

Nothing has been filed in connection with this pretrial conference. Continue to hearing on Motions to compel and for relief of scheduling order 2/15.
Appearance required.

Tentative for 3/9/23:

Particularly in view of the motion to dismiss, do any deadlines already established need to change?

Tentative for 2/2/23:

Deadline for completing discovery: September 1, 2023
Last date for filing pre-trial motions: September 8, 2023
Pre-trial conference on: September 28, 2023 @ 10:00AM

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CONT... Craig Chang
Appearance: required

Chapter 7

Tentative for 12/15/22:
In view of recent hearing on motion to dismiss, and expected amendment,
continue about 45 days?

Appearance: required

Party Information

Debtor(s):

Craig Chang

Represented By
John M Boyko

Defendant(s):

Craig Chang

Pro Se

Plaintiff(s):

Arthur Fransen

Represented By
Robert P Goe

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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11:00 AM

8:22-11556 Stonebridge Ventures, LLC

Chapter 7

Adv#: 8:23-01013 A. Cisneros v. Colangelo et al

#11.00 Chapter 7 Trustee's Motion To Dismiss Counterclaimant's Counterclaims 12(b)6

Docket 53

Tentative Ruling:

Tentative for February 15, 2024

A. Background

This is Chapter 7 Trustee Arturo Cisneros's ("Trustee") motion to dismiss Plaintiff Monika Jensen's ("Plaintiff") counterclaims against him for: (1) Breach of Contract and (2) Unjust Enrichment. The motion to dismiss is brought allegedly because (a) the counterclaim fails to state a claim upon which relief can be granted against Trustee under FRCP 12(b)(6), and (b) Jensen failed to name a necessary party, Escrow Experts, Inc. Further, Trustee submits that the complaint should be dismissed with prejudice because leave to amend would be futile.

On April 23, 2020, Joe Colangelo ("Colangelo"), Plaintiff, and Debtor Stonebridge Ventures, LLC ("Debtor") entered into a purchase agreement whereby Plaintiff (and Colangelo) agreed to pay Debtor \$2,595,000 in exchange for the property located at 2 Makena Lane, Rancho Mirage, California 92270 ("Property"). Plaintiff wired approximately \$550,034.58 to Escrow Experts, Inc. ("Escrow Experts") comprised of \$50,034.58 in August 2020 and the remaining \$500,000 in December 2020. Debtor's chapter 11 was filed on September 9, 2022 and converted to chapter 7 on April 3, 2023. Plaintiff and Colangelo were apparently in residence at the Property for much of the time until mid-2023.

Trustee filed a complaint against Colangelo and Plaintiff for turnover of the Property and unjust enrichment on February 9, 2023. A First Amended Complaint was filed on October 17, 2023, and Plaintiff filed her answer to the FAC and the counterclaims against Trustee on November 16, 2023. On June 13, 2023, moved to sell the Property for \$3.16 million, which was granted by

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this court (despite opposition from Colangelo) to the winning overbidder for \$3,332,000. On August 5, 2023, Plaintiff filed her counterclaim against Defendants Debtor, Brentwood Finance Company, LLC, Renewable Farms, AB Capital LFD, Inc., and Trustee ("Defendants") and Colangelo. The court granted Trustee's motion to dismiss that counterclaim but granted leave to amend. Plaintiff filed her amended counterclaim on December 7, 2023. Trustee now brings this motion to dismiss the amended counterclaim.

B. Legal Standard

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.*

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C. Breach of Contract Claim

In California to state a claim for breach of contract the plaintiff must state: "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011); *Gautier v. General Tel. Co.*, 234 Cal. App. 2d 302, 305 (1965).

Plaintiff alleges in the amended counterclaim that Debtor breached the Purchase Agreement by failing to convey title to the Property to her after she allegedly paid \$550,034.58 to Escrow Experts. Plaintiff also alleges that Debtor "failed to cover various costs and supply many fixtures, fittings, and furnishings" despite "many requests."

Trustee argues that Plaintiff fails to explain why Debtor had a contractual obligation to convey title to the Property to her for over \$2 million less than the price set forth in the Purchase Agreement, as though the mere restatement of the proposition makes it so preposterous as to need no further elaboration. Further, Trustee contends that Plaintiff failed to allege with specificity what Debtor failed to "cover" or "supply" or how her alleged damages were proximately caused by Debtor's alleged breach. She also allegedly fails to state that she complied with the terms of the purchase agreement or that her performance was excused. Plaintiff asserts in the opposition that she did meet the pleadings standards under Rule 8 because: (1) she admits entering into the purchase agreement; (2) Plaintiff was required to pay Debtor \$2,595,000 in exchange for title to the Property by July 1, 2020; (3) Plaintiff alleges that Debtor breached the Purchase Agreement by failing to convey title to her and failure to make necessary repairs as required by the Purchase Agreement; and (4) Plaintiff alleges damages in the amount of \$550,034.78 plus the amounts paid to improve the property as a result of Debtor's breach. Trustee rebuts these arguments by arguing that the Purchase Agreement required Plaintiff to pay \$2,595,000, not \$550,034.78, so Debtor could not have been under any obligation to convey title to the Property because the Purchase Agreement required her to pay more than what she did. But this argument ignores entirely the concepts of material

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breach excusing counter performance.

Trustee seems to focus on the factual allegation that Plaintiff had only paid \$550,034.78 when \$2,595,000 was required by the Purchase Agreement. The court recalls that there were other parties who also contributed to the overall payment in the purchase agreement and Plaintiff's \$550,034.78 was a portion of it, and she was not necessarily responsible for paying the entirety of the purchase price. Further, it seems likely that Plaintiff is arguing that her partial performance by wiring a portion of the price combined with alleged defaults by Debtor in "failure to cover various and supply many fixtures" excused counter performance, thus fulfilling the second element for breach of contract action as held in cases like *Oasis W. Realty*. Of course, it would have been helpful to have alleged specifically that such unreimbursed costs plus partial performance excused counter performance. While both parties make arguments, they forget that the 12(b)(6) standard is a low one and it is clear that a plaintiff is only required to state sufficient factual allegations to state a *plausible* claim for relief. A detailed recitation of every fact and argument is not necessary at this stage. Also, this is not a fraud case governed by Rule 9, so excruciating detail is not required. Accordingly, in the court's view all elements of breach of contract have been adequately alleged within Rule 8, including sufficient facts to state a plausible claim for Breach of Contract on Plaintiff's counterclaim under *Iqbal* and *Twombly*.

D. Unjust Enrichment

The elements of unjust enrichment are: (1) the receipt of a benefit, and (2) the unjust retention of the benefit at the expense of another. *Petersen v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008). Trustee argues unjust enrichment does not apply where the parties have an enforceable express contract. *California Medical Assn v. Aetna U.S. Healthcare of California, Inc.*, 94 Cal.App.4th 151, 172 (2001). But this *California Medical* principle has important exceptions.

Plaintiff alleges in the counterclaim that she spent time and money

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making the Property habitable. Trustee contends that Plaintiff's claims are unsupported by any specific allegations concerning how much she paid to "make the Property habitable". Trustee also argues that her claim fails as a matter of law because she admits that an enforceable express contract with Debtor existed under *California Medical Assn*. However, Plaintiff argues that there is an exception to the law as stated in *California Medical Assn*, in that she can plead unjust enrichment *in the alternative*. *Clear Channel Outdoor, Inc. v. Bently Holdings Cal. L.P.*, No. 11-2573 EMC, 2011 WL 6099394, at *9 (N.D. Cal. Dec. 7, 2011). In order to plead in the alternative, among other things, Plaintiff must plead that her unjust enrichment claim is not based solely upon the contract. *Rai Indus. Fabricators, LLC v. Fed. Ins. Co.* 2018 U.S. Dist. LEXIS 74612 [*19-20] (N.D. Cal. 2018). This is also supported by Rule 8(d)(2), which provides that if a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. Fed. R. Civ. P. 8(d)(2). Plaintiff contends that the exception applies here because her claim for unjust enrichment is not based on the express Purchase Agreement, but on the retention of profits from the sale of the Property at her expense. The present bankruptcy and the sale of the Property were not contemplated in any agreement. The court agrees. The claim as alleged is not solely based on the Purchase Agreement, but on the profits from the sale of the Property after the bankruptcy filing. This court also finds that the breach of contract counterclaim meets the *Iqbal* and *Twombly* standard, so unjust enrichment can also be applied in the alternative. The court finds that enough facts are alleged to state an alternative claim for unjust enrichment within the standards of Rule 8, *Iqbal* and *Twombly*.

E. Failure to Name Necessary Party

A defendant may move to dismiss an action for "failure to join a party under Rule 19." Fed. R. Civ. P. 12(b)(7). To determine whether to grant a motion to dismiss under Rule 12(b)(7), a court conducts a three-part inquiry: First, the court determines whether the party must be joined under Rule 19(a). If so, the court next determines whether joinder is feasible. If the party is necessary but joinder is infeasible, the court then "determines whether, in

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equity and good conscience, the action should proceed among the existing parties or should be dismissed. *Klamath Irrigation Dist. V. U.S. Bureau of Reclamation*, 48 F.4th 934, 943 (9th Cir. 2022). A party must be joined under Rule 19(a) if, in its absence, "the court cannot accord complete relief among the parties," or if that party "claims an interest relating to the subject of the action" and its absence would inhibit its ability to protect the interest or "leave an existing party subject to a substantial risk of incurring multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 12(a)(1).

Plaintiff allegedly paid \$550,034.58 to Escrow Experts in connection with the Purchase Agreement. Although she seeks to recover \$550,034.58 from Trustee as damages for breach of contract, she failed to name Escrow Experts. The parties remark how the court has apparently already ruled on this issue in a related proceeding (*Jensen v. Stonebridge Ventures, LLC* 8:23-ap-01086-TA) and found the following:

"Plaintiff failed to name Escrow Experts, the entity to which the \$550,034.58 was paid, as a party in this suit. Escrow Expert's direct involvement with the sum at issue indicates that its absence could leave other parties in the suit subject to inconsistent obligations because of their need to navigate the relationship with Escrow Experts. However, there is nothing in the record indicating that joining Escrow Experts is not still feasible. Considering the nature of Escrow Experts' relation to this case, it appears to be in the interest of all parties for Escrow Experts to be added to these proceedings. Trustee's argument that failure to join Escrow Experts as a party warrants dismissal is inconsistent with the record." [Hearing Held on November 9, 2023 at 11:00 a.m.]

Way too much is invested in this comment. While the court made this statement in a tentative decision, it never conclusively determined that Escrow Experts was in fact indispensable or even necessary, or even advisable (depending on the facts) for that matter, such that its absence here warranted a dismissal because complete relief cannot be granted. The court only determined that joining it as a defendant seemed entirely feasible. Moreover, it seems to the court that the Trustee *must know the threshold*

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question, i.e. whether the \$550,034.58 was turned over to the estate. If that is so then there is little reason to include this party within this lawsuit, or any of the related litigation, at needless further inconvenience and expense. But of course, if the funds were not turned over, then the converse is also true, Escrow Experts must be joined. Spare us, please, the needless heartache and brain surgery by simply answering this basic question. If the funds are not turned over then leave will be granted to join Escrow Experts as a necessary party, as should be obvious.

F. Leave to Amend

There is great liberality afforded to pleadings in the Ninth Circuit. See *Carvalho v. Equifax Info. Servs. LLC.*, 629 F.3d 876, 892 (9th Cir. 2010); Fed. R. Civ. P. 15(a.). However, "If a complaint is dismissed for failure to state a claim upon which relief can be granted, leave to amend may be denied, even if prior to a responsive pleading, if amendment of the complaint would be futile." *Albrecht v. Lund*, 845 F. 2d 193, 195 (9th Cir. 1988) (internal citation omitted). But there is nothing futile about what is alleged here and it is entirely possible to afford relief.

As the court finds that the counterclaim meets the *Iqbal* and *Twombly* standards, there is no need for leave to amend on those counterclaims for unjust enrichment and breach of contract and so the motion will be denied. But even if it were granted in whole or in part, leave to amend would certainly be granted if, for example, Plaintiff wanted to clean up her allegations concerning the point of her unreimbursed costs as excusing counter performance or excuse from fulfilling the contract price. Regarding the joinder of Escrow Experts, the court finds leave to amend would be appropriate here (only if needed) for the purpose of joining Escrow Experts, *but the court admonishes the parties, and Trustee particularly, not to indulge in useless waste of time and resources if a simple answer to the threshold question would avoid it.*

*Deny, but leave is granted to join Escrow Experts only if needed.
Appearance required.*

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Party Information

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw
Diana Torres-Brito

Defendant(s):

Joe Colangelo

Represented By
Christopher Hewitt

Monika Jensen

Represented By
Nicholas W Gebelt
Robert M. Aronson
Robert M Aronson

Plaintiff(s):

A. Cisneros

Represented By
Nathan F Smith

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith
William Malcolm

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8:22-11989 Nesrine F Omari

Chapter 7

Adv#: 8:23-01009 Omari v. California Department of Tax and Fee Administratio

#12.00 CA Dept Of Tax And Fee Administration's Motion For Summary Judgment

Docket 13

Tentative Ruling:

Tentative for February 15, 2024

This is Defendant California Department of Tax and Fee Administration's ("Defendant") motion for summary judgment because the taxes owed by Plaintiff Nesrine F. Omari ("Plaintiff") for tax periods beginning second quarter of 2018 through second quarter of 2019 are not dischargeable under §523(a)(1)(B)(i) since Plaintiff failed to file sale tax returns for those tax periods. Plaintiff has not filed an opposition to the motion for summary judgment and Defendant filed a reply, pointing out the lack of opposition and reemphasizing that the motion should be granted. Accordingly, there is no genuine dispute as to any material fact and the absence of a response can be interpreted as acceptance of the facts alleged. LBR 7056-1(f). All that remains will be whether Defendant is entitled to judgment as a matter of law.

Plaintiff operated a restaurant and failed to file sales tax returns for her sole proprietorship, doing business as Kareem's Restaurant, for 2Q/2018 through 2Q/2019. Defendant subsequently audited Plaintiff for these tax periods and issued its audit results and findings on July 14, 2020. Defendant also issues a Notice of Determination for these tax periods, which was not appealed by Plaintiff, and finalized on August 17, 2020. The next day, Defendant issued a Demand for Immediate Payment for 2Q/2017 through 2Q/2019.

Plaintiff filed her chapter 7 petition on November 18, 2022. On January 20, 2023, Plaintiff commenced an adversary proceeding. Plaintiff seeks discharge of the sales tax liability owed to Defendant for periods 2Q/2017 through 2Q/2019 pursuant to Sections 523 and 507. Plaintiff currently owes Defendant a total balance of \$41,469.14, \$26,313.59 of which (2Q/2018 through 2Q/2019) is argued by Defendant as nondischargeable under Section 523(a)(1)(B)(i). That amount will be determined non dischargeable as prayed.

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Defendant to submit a form of judgment.

The court will rule on the papers without oral argument in view of the absence of any written opposition or response.

Grant. Appearance is waived.

Party Information

Debtor(s):

Nesrine F Omari

Represented By
Bruce A Boice

Defendant(s):

California Department of Tax and

Represented By
Brian D Wesley
Anna Barsegyan

Plaintiff(s):

Nesrine F Omari

Represented By
Bruce A Boice

Trustee(s):

Karen S Naylor (TR)

Pro Se