

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

Wednesday, March 27, 2024

Hearing Room

5B

10:00 AM

8:00-000000

Chapter

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ZoomGov meeting number: 160 185 7416

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- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

**#1.00 STATUS CONFERENCE RE: Motion to Keep Bankruptcy Case Open Pending Resolution of Adversary Case No. 8:23-ap-1094-TA
(cont'd from 10-03-23 re: mtn to keep bk case open pending resolution of adv case no. 8:23-ap-1094 TA)**

Docket 366

Tentative Ruling:

Tentative for March 27, 2024
Granted as unopposed. Appearance is required.

Tentative for October 3, 2023
Grant as unopposed. Appearance optional.

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad
Karen S. Naylor

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8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

Adv#: 8:23-01094 The Grand Theater, Inc. v. Alimadadian et al

**#2.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief Bankruptcy P. 7001(9)
(cont'd from 11-30-23 per another summons issued re: counterclaims and crossclaims on 11-09-23)
(cont'd from 1-25-24)**

Docket 1

Tentative Ruling:

Tentative for March 27, 2024

Continue to coincide with the Motion for Judgment on the Pleadings scheduled March 28 at 11:00 a.m. Appearance required.

Tentative for January 25, 2024

It is unclear to the court the status of this case. It appears the court has abstained by Order entered October 30, 2023. But perhaps that order did not specify adequately regarding crossclaims. Also, mention is made of a motion to reconsider abstention, or similar. Until all of this is clarified it would be premature to set dates. Please be prepared to explain where we are going and why any of this should be adjudicated in bankruptcy court. *Appearance required.*

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By

Robert P Goe

Ryan S Riddles

Carl J Pentis

Defendant(s):

Cyrus Alimadadian

Pro Se

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CONT... M3Live Bar & Grill, Inc.

Chapter 7

IRA Resources, Inc.

Pro Se

Plaintiff(s):

The Grand Theater, Inc.

Represented By
Thomas S Gruenbeck

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad
Karen S. Naylor

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8:23-12077 Juice Roll Upz, Inc.

Chapter 11

**#3.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc.
(cont'd from 2-28-24)**

Docket 1

Tentative Ruling:

Tentative for March 27, 2024
Is a disclosure statement needed?
Set deadlines for plan confirmation?
Appearance required.

Tentative for February 28, 2024
Explain status of the ADP/priority tax claim issue and how close we are to a resolution. Is it premature to schedule a confirmation date with associated deadlines? The court expects, but hasn't seen yet, the plan which is due by February 28, 2024. Appearance required.

Tentative for January 10, 2024
Is a disclosure statement needed? Plan is promised but was it only recently filed? A continuance of about 45 days would seem in order. *Appearance recommended.*

Tentative for November 8, 2023
Should a confirmation date be set in anticipation of a plan filing before the deadline? Appearance required.

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CONT... Juice Roll Upz, Inc.

Chapter 11

Debtor(s):

Juice Roll Upz, Inc.

Represented By
Anerio V Altman

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:23-12077 Juice Roll Upz, Inc.

Chapter 11

#4.00 Objection To The Claim Of The Internal Revenue Service Filed As Proof Of Claim #3
(cont'd from 2-28-24 per order approving stip. to cont. the objection to the clm of Internal Revenue Service entered 2-26-24)

Docket 74

***** VACATED *** REASON: CONTINUED TO 5-29-24 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE THE
OBJECTION TO THE CLAIM OF THE INTERNAL REVENUE SERVICE
FILED AS PROOF CLAIM #3 ENTERED 3-20-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juice Roll Upz, Inc.

Represented By
Anerio V Altman

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:23-11421 Juan Manuel Bernal

Chapter 11

#5.00 Debtor and Debtor in Possession's Emergency Motion for Order Authorizing Interim Use of Cash Collateral Pursuant to 11 U.S.C. Sections 363(c)(2) and 363(b)(1) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure; Memorandum of Points and Authorities; and Declaration of Juan Manuel Bernal in Support with Proof of Service
(OST Signed 7-21-2023)
(cont'd from 1-24-24 per order approving stip. to cont. use of case collateral entered 1-22-24)

Docket 22

Tentative Ruling:

Tentative for March 27, 2024

Authority is granted on the same terms through August 2024? Appearance required.

Tentative for December 6, 2023

Interim use of cash collateral was authorized until Dec. 6 but through confirmation was discussed at that last hearing. When is confirmation likely to be? Appearance required.

Tentative for August 30, 2023

Opposition? Appearance required.

Party Information

Debtor(s):

Juan Manuel Bernal

Represented By
Robert P Goe
Reem J Bello

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros

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Juan Manuel Bernal

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8:23-11421 Juan Manuel Bernal

Chapter 11

**#6.00 Confirmation Of Chapter 11 Subchapter V Plan
(set from s/c hrg held on 8-23-23)
(cont'd from 1-24-24 per order approving stip. to cont. hrg on confirmation
of debtor's ch 11 plan entered 1-17-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-29-24 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON CONFIRMATION OF DEBTOR'S CHAPTER 11 PLAN ENTERED 3-
11-24**

Tentative Ruling:

Tentative for August 23, 2023
Separate disclosure statement not needed? Plan to be filed by 90th day.
Confirmation to be scheduled approximately 45 days thereafter. Particulars
at hearing. Appearance is required.

Party Information

Debtor(s):

Juan Manuel Bernal

Represented By
Robert P Goe

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros

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8:15-15311 Freedom Communications, Inc.

Chapter 11

#6.10 CONT'D POST CONFIRMATION STATUS CONFERENCE RE: (1) Status Of Chapter 11 Case; And (2) Requiring Report On Status Of Chapter 11 case (Petition filed 11/1/15)
(Set at 7-7-21 Confirmation Hrg)
(cont'd from 7-13-22 per order continuing ch 11 status conference entered 8-03-22)
(cont'd from 10-04-23)
(cont'd from 3-27-24 at 11:00 a.m. to 10:00 a.m. per court's own mtn)

FR: 1-13-16; 3-2-16; 4-13-16; 7-27-16; 12-7-16; 4-19-17; 8-30-17; 12-13-17; 4-9-18; 8-1-18; 11-14-18; 4-8-19; 8-12-19; 11-13-19; 4-15-20; 9-9-20; 9-23-20; 3-17-21; 4-28-21; 9-15-21; 11-10-21; 2-7-22

Docket 1784

Tentative Ruling:

Tentative for March 27, 2024

Continued to May 29, 2024 at 10:00 a.m. while we wait to hear from the CDTFA Appeals Bureau. Appearance waived. Should we schedule trial before we hear from CDTFA Appeals Bureau? Appearance required.

Tentative for October 4, 2023

Obviously, the "effective date" of this Chapter 11 Plan has been extremely delayed, beyond all precedent. The status report suggests that litigation on the taxes can occur in early 2024 to force a determination other than what has already been achieved in administrative appeal, but an important motion for abstention on the litigation is item #20. Win, lose or draw this case must be concluded promptly. The court will hear argument as to whether one final status conference should be scheduled in 2024, perhaps to coincide with a conversion motion.

Appearance required.

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Chapter 11

Tentative for 6/28/23:

When we recently had a hearing perhaps in an adversary proceeding there was discussion about possibly converting to Chapter 7. What is the status?

Appearance: required

Tentative for 12/8/22:

It would appear that some stipulated discovery and motion deadlines on the CDTF tax matter expire in January and March, 2023 respectively, and that no distributions allegedly can be/should be accomplished before that tax issue is resolved, which resolution is not forecast for many months maybe years yet. Why that is the case is not fully explained except the delay in disbursements may have something to do with the extraordinary definition of "effective date." The court refrains from criticism at this point (this was originally Judge Wallace's case and was confirmed before the case was reassigned) so a continuance for about 120 days of the status conference until after those deadlines seems, reluctantly, unavoidable at this point. However, the parties should know that the general slow motion approach which has heretofore apparently prevailed on this 7 year old case is not well received by this court and must accelerate absent compelling reasons to be articulated in the next report. For example, why is it, exactly, that no payments at all can be made until the tax matter is fully resolved? What is the status of the various items of litigation very briefly described but not explained in the status report? What is a realistic timetable?

Continue about 120 days. A more fulsome report is expected next time focused on when payments can commence and a final decree be entered? If more delay is required, that report should explain and justify.

Tentative for 9/15/22:

As reported, the parties are awaiting an administrative appeal on a contested tax issue. Further, a request is made to forbear from expending

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litigation costs before the appeal is determined. As recited in the status report, parties have already agreed to deadlines for completing discovery and the like, which no one seems inclined to extend at this time, so they are confirmed. Consequently those deadlines remain but a status conference on both this and the adversary proceeding is continued to December 8, 2022 @ 10. A timely report in advance is requested.

Appearance: optional

Tentative for 7/13/22:

According to the post confirmation status report the plan payments cannot even begin until some litigation with the taxing authorities is resolved. It would appear that might not be until next year? Is there anything that can be done to expedite resolution?

APPEARANCES NOT REQUIRED.

The status report was quite helpful and brought the Court up to date on the status of this case.

Next status conference: July 13, 2022 at 10:00 a.m. An updated status report is due June 30, 2022.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By
William N Lobel
Beth Gaschen
Alan J Friedman
Christopher J Green

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Caroline Djang
Scott D Fink
Reed M Mercado
Jeffrey W Dulberg

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8:15-15311 Freedom Communications, Inc.

Chapter 11

Adv#: 8:21-01034 Freedom Communications Inc. et al v. California Department of Tax and Fee

#6.20 CONT'D STATUS CONFERENCE Hearing RE: Complaint to 1) Determine Amount of Taxes Owed to California Department of Tax and Fee Administration (CDTFA) Under Bankruptcy Code §505(a)(1), and 2) Determine Amounts of Refunds Owed by CDTFA Pursuant to Bankruptcy Code §505(a)(2); Objection to Pre-petition Claims and Administrative Claims of the CDTFA (Complaint filed 6-17-21)
(cont'd from 9-14-22 Wallace Cal)
(cont'd from 12-08-22 per order granting stip. to extend discovery cutoff, deadline to hear discovery motions and deadline to hear pretrial motions entered 11-23-22)
(cont'd from 10-04-23)
(cont'd from 3-27-24 at 11:00 to 10:00 per court's own mtn)

FR: 9-8-21

Docket 1

Tentative Ruling:

Tentative for March 27, 2024
Continued to May 29, 2024 at 10:00 a.m. while we wait to hear from the CDTFA Appeals Bureau. Appearance waived. It looks like a continuance to hear from the Appeals Bureau of the CDTFA is appropriate. Appearance required.

Tentative for October 4, 2023
See #20. Appearance required.

Tentative for 6/7/23:

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Results of mediation?

Appearance: required

Tentative for 3/16/23:

In view of recent abstention decision, should the proposed and existing deadlines be further extended?

Appearance: suggested

Tentative for 9/15/22:

See # 5.

APPEARANCES REQUIRED.

The Court will issue the following scheduling order:

All discovery shall close on June 30, 2022.

All discovery motions shall be heard before July 31, 2022.

All pretrial motions (except motions in limine) shall be heard before August 31, 2022.

A status conference is set for September 14, 2022 at 10:00 a.m.

COURT TO PREPARE ORDER.

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Chapter 11

Debtor(s):

Freedom Communications, Inc.

Represented By

William N Lobel

Beth Gaschen

Alan J Friedman

Christopher J Green

Caroline Djang

Scott D Fink

Reed M Mercado

Jeffrey W Dulberg

Rika Kido

Jonathan T Amitrano

Defendant(s):

California Department of Tax and

Pro Se

Plaintiff(s):

Freedom Communications Inc.

Represented By

Jonathan T Amitrano

Freedom Communications Holding,

Represented By

Jonathan T Amitrano

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Adv#: 8:21-01034 Freedom Communications Inc. et al v. California Department of Tax and Fee

#6.30 Motion for Abstention Pursuant to 28 U.S.C. § 1334(c) and 11 U.S.C. § 505(a)
(1)
[Affects Freedom Communications, Inc and Freedom Communications
Holdings, Inc ONLY]
**[cont'd from 2-16-23 Amended Notice Of Motion and Supplemental Notice
Of Hearing filed 2/3/2023, dkt#31]**
(cont'd from 10-04-23)
(cont'd from 3-27-24 at 11:00 a.m to 10:00 a.m. per court's own mtn)

Docket 25

Tentative Ruling:

Tentative for March 27, 2024

Continued to May 29, 2024 at 10:00 a.m. while we wait to hear from the
CDTFA Appeals Bureau. Appearance waived. Since the parties anticipate a
ruling by the Appeals Bureau in about April 2024, it makes more sense to
continue this abstention motion yet again a month or two. Appearance
required.

Tentative for October 4, 2023

The motion to continue was denied by order entered on October 2, 2023.
Except for the retirement of a key employee of CDTFA nothing new is raised
on the abstention question. Consequently, the court adopts from the tentative
posted for the hearing 3/9/23 and grants the abstention request. Appearance
required.

Tentative for 6/7/23:
Mediation results?

Appearance: required

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Tentative for 3/9/23:

This is defendant, California Department of Tax and Fee Administration's (FKA California Board of Equalization) ("CDTFA") motion for abstention from this adversary proceeding. The motion is opposed by debtors/plaintiffs, Freedom Communications, Inc. ("FCI"), Freedom Communications Holdings, Inc. ("FCHI") and related entities (collectively "Debtors").

Basic Background

Debtors filed petitions for Chapter 11 relief in November 2015. During their bankruptcy case, Debtors filed amended sales tax returns for every quarterly period from tax year 2012 through 2016 (collectively, the "Amended Sales and Use Tax Returns"). As a result of the Amended Sales and Use Tax Returns, Debtors seek total tax refunds of \$6,309,122 for FCI, and \$1,131,534 for FCHI (i.e., sum of refunds for each quarterly period). Thereafter, CDTFA commenced comprehensive audits of all relevant quarterly periods. CDTFA concluded the audits in October 2020 by issuing, in part, CDTFA Form 836-A (collectively, the "Audit Findings"). Form 836-A identifies and summarizes Debtors' main contentions along with the findings reached by CDTFA. On November 5, 2020, Debtors filed Petitions for Redetermination, each of which commence an administrative tax appeal of the Audit Findings (collectively, "Administrative Tax Appeal").

While the Administrative Tax Appeal was pending, Debtors sought to confirm a Chapter 11 Plan. In the months leading up to confirmation, Debtors commenced this Adversary Proceeding on June 17, 2021. The Adversary Proceeding continues to run parallel to the Administrative Tax Appeal. CDTFA asserts that the Adversary Proceeding concerns issues of pure state sales tax law, and the tax issues to be litigated in this Adversary Proceeding are identical to those at issue in the Administrative Tax Appeal.

Debtors confirmed their "Second Amended Plan of Liquidation Proposed by Debtors and Official Committee of Unsecured Creditors" on July

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16, 2021 (the "Plan"). However, the Plan is not effective unless certain conditions precedent are met, one of which is whether the sales tax litigation with CDTFA generates sufficient cash "to pay all Allowed Administrative Expenses, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims."

CDTFA's asserts that its Appeals Bureau conducted a hearing on September 7, 2021, where Debtors, reportedly represented by the same counsel as in the Adversary Proceeding, presented evidence and extensive briefing to an independent hearing officer on the identical issues that are at issue in this Adversary Proceeding. On November 23, 2022(?), the Appeals Bureau issued two lengthy decisions, one for FCI and one for FCHI (the "Appeals Bureau Decisions"). As result, CDTFA was ordered to conduct a reaudit to make certain audit adjustments in Debtors' favor. On January 11, 2023, CDTFA completed the reaudits (the "Reaudit Results").

If Debtors disagree with the Appeals Bureau and reaudit results, CDTFA asserts, they have two serviceable options: The first is to submit a written request for reconsideration to the Appeals Bureau identifying the specific issue(s) for which they seek reconsideration and explaining the reasons they disagree with the decision. Cal. Code Regs. tit. 18, § 35065(e) (1). The second is to appeal to the California Office of Tax Appeals (the "OTA"), an independent state agency established to hear such appeals. *Id.* at (e)(2).

Legal Standards

The issue of abstention is governed by 28 U.S.C. §1334(c), which states in pertinent part:

- (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
- (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in

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a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

In the Ninth Circuit, the court considers the following factors in its determining whether abstention is appropriate:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and
- (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Additionally, when a case involves a tax issue under 11 U.S.C. § 505(a), courts rely on a six-factor test to determine whether abstention is appropriate. Those factors are as follows:

- (1) the complexity of the tax issue;
- (2) the need to administer the bankruptcy case in an orderly and efficient manner;

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- (3) the burden on the bankruptcy court's docket;
- (4) the length of time required for trial and decision;
- (5) the asset and liability structure of the debtor;
- (6) the prejudice to the debtor and the potential prejudice to the taxing authority.

See In re New Haven Projects Ltd. Liability Co., 225 F.3d 283, 289 (2d Cir. 2000); *Lavoie v. U.S.*, 191 B.R. 818, 819 (D. Ariz. 1995).

Because of the substantial overlap in the factors for permissive abstention under both 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 505(a)(1), the analysis as it relates to this Adversary Proceeding is much the same, and so the court will consider the motion under the more traditional *Tucson Estates* factors. The court also preliminarily notes that not all of the *Tucson Estates* factors are clearly implicated, but also notes that certain of these factors warrant greater weight on these facts.

Efficient Administration

The first factor requires the court to consider the effect of abstention on the efficient administration of the bankruptcy case. All parties agree that resolution of the tax issues attending the Adversary Proceeding is a condition precedent to effectuate the Chapter 11 Plan. What is less clear is why resolving those tax issues in this court would be more efficient than in a highly specialized state proceeding. The court understands Debtors' skepticism of the state's objectivity, but that is not at issue in this motion. Debtors also argue that adjudication outside this court will likely result in undue delay, especially if appeals follow any decision. However, the same could be said for having the case adjudicated here. After all, if unsatisfied with a judgment issued by this court, either party could also appeal, which could be followed by a stay pending appeal, resulting in lengthy delays given the centrality of the issues with respect to the Chapter 11 Plan. Therefore, the court finds this factor neutral on the issue of abstention.

Extent To Which State Laws Predominate

The second factor requires the court to consider whether state law predominates over bankruptcy issues. This factor likely weighs heavily in favor of abstention. The issues in the Adversary Proceeding are of state law, but it seems that the success of the Chapter 11 Plan likely hinges on the

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outcome of those state law issues. Though this is a court of competent jurisdiction, the court would aver that it seldom is called upon to resolve esoteric issues of state tax law. This is likely because such procedures already exist at the state level. The court believes that the highly specialized state agencies and administrations are better positioned to resolve the dispute given their expertise, and this court's relative lack thereof. Therefore, this court finds this factor heavily (probably decisively) weighs in favor of abstention.

Difficulty of the Issues

The third factor requires the court to consider the difficulty or unsettled nature of the applicable law. CDTFA argues that this case involves complex and highly technical interpretations of California tax law, which is likely best left to the state experts, rather than this court, which only intermittently confronts such complex tax issues. Debtors argue, by contrast, that the case is only complex factually, but that the legal issues are relatively straight forward. At this point the court does not know who is properly characterizing the difficulty of the dispute. Thus, the court agrees with Debtors that this factor is not determinative.

Presence of a Related Proceeding In State Court

The fourth factor requires the court to consider the presence of a related proceeding in the state court. Here, it is obvious that there is a related administrative proceeding, but Debtors argue, it is not a court proceeding. For example, Debtors point out that the Office of Tax Appeals is unlike this court as it has no formal discovery, has limited authority to require the disclosure of witnesses and evidence, and does not follow the Federal Rules of Evidence or California Evidence Code. Therefore, Debtors argue, abstention at this stage, with its side effect of halting formal discovery, will hinder the interests of justice and unfairly prejudice Debtors. However, Debtors do not explicitly argue that the results of the state proceeding are not binding or do not carry preclusive effect. The court is not inclined or equipped to make findings as to the relative tactical disadvantages each party may encounter if this court abstains. Without a fulsome understanding of how full adjudication by the state agencies might/will affect whether the Chapter 11 Plan takes full effect, the court is not ideally situated to assess this element. The court will hear further argument on this point. However, as noted above, the court would still

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prefer that a highly specialized state agency preside over the esoteric state tax issues.

The Court's Jurisdictional Basis

The fifth factor requires the court to consider its jurisdictional basis, if any, other than 28 U.S.C. § 1334. Here, as Debtors argue, there is an independent basis for federal jurisdiction — namely, 11 U.S.C. § 505(a) and 28 U.S.C. § 157. In the court's view, this factor is not determinative.

Degree of Relatedness To The Main Bankruptcy Case

The sixth factor requires the court to consider the degree of relatedness or remoteness of the proceeding to the main bankruptcy case. Here, as noted, the state proceeding is intertwined with the main bankruptcy case, with the bankruptcy case being dependent on the state proceeding for its own progress. This factor is neutral in this case.

Substance Over Form Of "Core" Proceeding

The seventh factor requires the court to consider the substance rather than form of an asserted "core" proceeding. Here again, issues of purely state law govern both the state proceeding and Adversary Proceeding, though claim allowance and dischargeability are undeniably also implicated. Again, this factor is neutral.

Severing State Law Claims From Core Bankruptcy Issues

The eighth factor requires the court to consider the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court. Again, the court is unclear as to how enforceability of state adjudication would affect this bankruptcy case. If the state proceeding resolves all current substantial issues concerning administration of this case, the court believes this factor favors abstention. However, the court will hear further argument on this point.

Burden On This Court's Docket

The ninth factor requires the court to consider the burden of this court's docket if it does not abstain. CDTFA argues persuasively that a trial in this case, due to its complex factual and legal features, would require at least several weeks, if not months, to complete. In the meantime, this court would

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maintain its regular caseload, but would also need to set aside ample time to conduct the trial and issue a final judgment. This, CDTFA persuasively argues, would be a significant impact on this court's docket. Debtors argue that at least some of the issues have already been resolved by the Appeals Bureau, thus, the trial would not be as extensive as initially presented. Debtors also argue that, depending on how matters resolve in the state proceeding, the weight off this court's docket, if it abstains, might only be temporary. Again, this court needs to fully understand whether adjudication in the state proceeding would allow the bankruptcy case to move forward or whether further substantial involvement from this court would likely be required. At this juncture, the court is inclined to find that this factor favors abstention. It does so in deference to the efficient administration of its many other cases. The court is legitimately concerned about being disproportionately weighed down or distracted by a trial, which might take weeks or even months to complete, when another highly specialized state government entity is capable of resolving the issues.

Forum Shopping?

The tenth factor requires the court to consider the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties. Here, CDTFA argues that the filings of the bankruptcy case and the adversary proceeding are litigation tactics to see how many bites at the proverbial apple Debtors can get. Instead, CDTFA argues, Debtors should be required to rely on their efforts in the Administrative Tax Appeal, where they have been for much of the last two years. By contrast, Debtors argue, this court is the only forum where all claims can be pursued.

The court does not find obvious evidence of forum shopping by either party. The court understands that the parties perceive tactical disadvantages attend either outcome of this motion. But the court cannot take sides in that regard. The court is still unclear how the state proceedings being allowed to continue materially prejudice Debtors. After all, these types of proceedings appear to be exactly those contemplated by the state legislature.

The last two factors: right to a jury trial and presence of nondebtor entities are either not implicated (no party requests a jury trial), or are not

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particularly significant to the outcome of this motion (CDTFA is a nondebtor).

In sum, although arguments based on the *Tucson Estates* factors can be summoned by both sides, the court is largely persuaded by the fact that litigation on esoteric issues of state law is already of long standing before a specialized state tribunal. This court has seen no compelling reason to change that at this late date.

Grant.

Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By
William N Lobel
Beth Gaschen
Alan J Friedman
Christopher J Green
Caroline Djang
Scott D Fink
Reed M Mercado
Jeffrey W Dulberg
Rika Kido
Jonathan T Amitrano

Defendant(s):

California Department of Tax and

Represented By
Donny P Le

Plaintiff(s):

Freedom Communications Inc.

Represented By
Jonathan T Amitrano

Freedom Communications Holding,

Represented By
Jonathan T Amitrano

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Adv#: 8:21-01034 Freedom Communications Inc. et al v. California Department of Tax and Fee

#7.00 CONT'D STATUS CONFERENCE Hearing RE: Complaint to 1) Determine Amount of Taxes Owed to California Department of Tax and Fee Administration (CDTFA) Under Bankruptcy Code §505(a)(1), and 2) Determine Amounts of Refunds Owed by CDTFA Pursuant to Bankruptcy Code §505(a)(2); Objection to Pre-petition Claims and Administrative Claims of the CDTFA (Complaint filed 6-17-21)
(cont'd from 9-14-22 Wallace Cal)
(cont'd from 12-08-22 per order granting stip. to extend discovery cutoff, deadline to hear discovery motions and deadline to hear pretrial motions entered 11-23-22)
(cont'd from 10-04-23)

FR: 9-8-21

Docket 1

***** VACATED *** REASON: RESCHEDULED TO 3/27/24 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for October 4, 2023
See #20. Appearance required.

Tentative for 6/7/23:
Results of mediation?

Appearance: required

Tentative for 3/16/23:
In view of recent abstention decision, should the proposed and existing

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deadlines be further extended?

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Appearance: suggested

Tentative for 9/15/22:
See # 5.

APPEARANCES REQUIRED.

The Court will issue the following scheduling order:

All discovery shall close on June 30, 2022.

All discovery motions shall be heard before July 31, 2022.

All pretrial motions (except motions in limine) shall be heard before August 31, 2022.

A status conference is set for September 14, 2022 at 10:00 a.m.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By
William N Lobel
Beth Gaschen
Alan J Friedman
Christopher J Green
Caroline Djang
Scott D Fink
Reed M Mercado

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Jeffrey W Dulberg
Rika Kido
Jonathan T Amitrano

Defendant(s):

California Department of Tax and

Pro Se

Plaintiff(s):

Freedom Communications Inc.

Represented By
Jonathan T Amitrano

Freedom Communications Holding,

Represented By
Jonathan T Amitrano

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#8.00 CONT'D POST CONFIRMATION STATUS CONFERENCE RE: (1) Status Of Chapter 11 Case; And (2) Requiring Report On Status Of Chapter 11 case (Petition filed 11/1/15)
(Set at 7-7-21 Confirmation Hrg)
(cont'd from 7-13-22 per order continuing ch 11 status conference entered 8-03-22)
(cont'd from 10-04-23)

FR: 1-13-16; 3-2-16; 4-13-16; 7-27-16; 12-7-16; 4-19-17; 8-30-17; 12-13-17; 4-9-18; 8-1-18; 11-14-18; 4-8-19; 8-12-19; 11-13-19; 4-15-20; 9-9-20; 9-23-20; 3-17-21; 4-28-21; 9-15-21; 11-10-21; 2-7-22

Docket 1784

***** VACATED *** REASON: RESCHEDULE TO 3-27-24 AT 10:00 A.M.
PER COURT'S OWN MOITON**

Tentative Ruling:

Tentative for October 4, 2023

Obviously, the "effective date" of this Chapter 11 Plan has been extremely delayed, beyond all precedent. The status report suggests that litigation on the taxes can occur in early 2024 to force a determination other than what has already been achieved in administrative appeal, but an important motion for abstention on the litigation is item #20. Win, lose or draw this case must be concluded promptly. The court will hear argument as to whether one final status conference should be scheduled in 2024, perhaps to coincide with a conversion motion.

Appearance required.

Tentative for 6/28/23:

When we recently had a hearing perhaps in an adversary proceeding there was discussion about possibly converting to Chapter 7. What is the status?

Appearance: required

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Tentative for 12/8/22:

It would appear that some stipulated discovery and motion deadlines on the CDTFA tax matter expire in January and March, 2023 respectively, and that no distributions allegedly can be/should be accomplished before that tax issue is resolved, which resolution is not forecast for many months maybe years yet. Why that is the case is not fully explained except the delay in disbursements may have something to do with the extraordinary definition of "effective date." The court refrains from criticism at this point (this was originally Judge Wallace's case and was confirmed before the case was reassigned) so a continuance for about 120 days of the status conference until after those deadlines seems, reluctantly, unavoidable at this point. However, the parties should know that the general slow motion approach which has heretofore apparently prevailed on this 7 year old case is not well received by this court and must accelerate absent compelling reasons to be articulated in the next report. For example, why is it, exactly, that no payments at all can be made until the tax matter is fully resolved? What is the status of the various items of litigation very briefly described but not explained in the status report? What is a realistic timetable?

Continue about 120 days. A more fulsome report is expected next time focused on when payments can commence and a final decree be entered? If more delay is required, that report should explain and justify.

Tentative for 9/15/22:

As reported, the parties are awaiting an administrative appeal on a contested tax issue. Further, a request is made to forbear from expending litigation costs before the appeal is determined. As recited in the status report, parties have already agreed to deadlines for completing discovery and the like, which no one seems inclined to extend at this time, so they are confirmed. Consequently those deadlines remain but a status conference on both this and the adversary proceeding is continued to December 8, 2022 @ 10. A timely report in advance is requested.

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Appearance: optional

Tentative for 7/13/22:

According to the post confirmation status report the plan payments cannot even begin until some litigation with the taxing authorities is resolved. It would appear that might not be until next year? Is there anything that can be done to expedite resolution?

APPEARANCES NOT REQUIRED.

The status report was quite helpful and brought the Court up to date on the status of this case.

Next status conference: July 13, 2022 at 10:00 a.m. An updated status report is due June 30, 2022.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By

William N Lobel

Beth Gaschen

Alan J Friedman

Christopher J Green

Caroline Djang

Scott D Fink

Reed M Mercado

Jeffrey W Dulberg

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8:15-15311 Freedom Communications, Inc.

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Adv#: 8:21-01034 Freedom Communications Inc. et al v. California Department of Tax and Fee

#9.00 Motion for Abstention Pursuant to 28 U.S.C. § 1334(c) and 11 U.S.C. § 505(a)
(1)
[Affects Freedom Communications, Inc and Freedom Communications
Holdings, Inc ONLY]
**[cont'd from 2-16-23 Amended Notice Of Motion and Supplemental Notice
Of Hearing filed 2/3/2023, dkt#31]
(cont'd from 10-04-23)**

Docket 25

***** VACATED *** REASON: RESCHEDULED TO 3-27-24 AT 10:00
A.M. PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for October 4, 2023

The motion to continue was denied by order entered on October 2, 2023.

Except for the retirement of a key employee of CDTFA nothing new is raised on the abstention question. Consequently, the court adopts from the tentative posted for the hearing 3/9/23 and grants the abstention request. Appearance required.

Tentative for 6/7/23:
Mediation results?

Appearance: required

Tentative for 3/9/23:

This is defendant, California Department of Tax and Fee Administration's (FKA California Board of Equalization) ("CDTFA") motion for abstention from this adversary proceeding. The motion is opposed by

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debtors/plaintiffs, Freedom Communications, Inc. ("FCI"), Freedom Communications Holdings, Inc. ("FCHI") and related entities (collectively "Debtors").

Basic Background

Debtors filed petitions for Chapter 11 relief in November 2015. During their bankruptcy case, Debtors filed amended sales tax returns for every quarterly period from tax year 2012 through 2016 (collectively, the "Amended Sales and Use Tax Returns"). As a result of the Amended Sales and Use Tax Returns, Debtors seek total tax refunds of \$6,309,122 for FCI, and \$1,131,534 for FCHI (i.e., sum of refunds for each quarterly period). Thereafter, CDTFA commenced comprehensive audits of all relevant quarterly periods. CDTFA concluded the audits in October 2020 by issuing, in part, CDTFA Form 836-A (collectively, the "Audit Findings"). Form 836-A identifies and summarizes Debtors' main contentions along with the findings reached by CDTFA. On November 5, 2020, Debtors filed Petitions for Redetermination, each of which commence an administrative tax appeal of the Audit Findings (collectively, "Administrative Tax Appeal").

While the Administrative Tax Appeal was pending, Debtors sought to confirm a Chapter 11 Plan. In the months leading up to confirmation, Debtors commenced this Adversary Proceeding on June 17, 2021. The Adversary Proceeding continues to run parallel to the Administrative Tax Appeal. CDTFA asserts that the Adversary Proceeding concerns issues of pure state sales tax law, and the tax issues to be litigated in this Adversary Proceeding are identical to those at issue in the Administrative Tax Appeal.

Debtors confirmed their "Second Amended Plan of Liquidation Proposed by Debtors and Official Committee of Unsecured Creditors" on July 16, 2021 (the "Plan"). However, the Plan is not effective unless certain conditions precedent are met, one of which is whether the sales tax litigation with CDTFA generates sufficient cash "to pay all Allowed Administrative Expenses, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims."

CDTFA's asserts that its Appeals Bureau conducted a hearing on September 7, 2021, where Debtors, reportedly represented by the same counsel as in the Adversary Proceeding, presented evidence and extensive

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briefing to an independent hearing officer on the identical issues that are at issue in this Adversary Proceeding. On November 23, 2022(?), the Appeals Bureau issued two lengthy decisions, one for FCI and one for FCHI (the "Appeals Bureau Decisions"). As result, CDTFA was ordered to conduct a reaudit to make certain audit adjustments in Debtors' favor. On January 11, 2023, CDTFA completed the reaudits (the "Reaudit Results").

If Debtors disagree with the Appeals Bureau and reaudit results, CDTFA asserts, they have two serviceable options: The first is to submit a written request for reconsideration to the Appeals Bureau identifying the specific issue(s) for which they seek reconsideration and explaining the reasons they disagree with the decision. Cal. Code Regs. tit. 18, § 35065(e) (1). The second is to appeal to the California Office of Tax Appeals (the "OTA"), an independent state agency established to hear such appeals. *Id.* at (e)(2).

Legal Standards

The issue of abstention is governed by 28 U.S.C. §1334(c), which states in pertinent part:

- (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
- (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

In the Ninth Circuit, the court considers the following factors in its determining whether abstention is appropriate:

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- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and
- (12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

Additionally, when a case involves a tax issue under 11 U.S.C. § 505(a), courts rely on a six-factor test to determine whether abstention is appropriate. Those factors are as follows:

- (1) the complexity of the tax issue;
- (2) the need to administer the bankruptcy case in an orderly and efficient manner;
- (3) the burden on the bankruptcy court's docket;
- (4) the length of time required for trial and decision;
- (5) the asset and liability structure of the debtor;
- (6) the prejudice to the debtor and the potential prejudice to the taxing authority.

See In re New Haven Projects Ltd. Liability Co., 225 F.3d 283, 289 (2d Cir. 2000); *Lavoie v. U.S.*, 191 B.R. 818, 819 (D. Ariz. 1995).

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Because of the substantial overlap in the factors for permissive abstention under both 28 U.S.C. § 1334(c)(1) and 11 U.S.C. § 505(a)(1), the analysis as it relates to this Adversary Proceeding is much the same, and so the court will consider the motion under the more traditional *Tucson Estates* factors. The court also preliminarily notes that not all of the *Tucson Estates* factors are clearly implicated, but also notes that certain of these factors warrant greater weight on these facts.

Efficient Administration

The first factor requires the court to consider the effect of abstention on the efficient administration of the bankruptcy case. All parties agree that resolution of the tax issues attending the Adversary Proceeding is a condition precedent to effectuate the Chapter 11 Plan. What is less clear is why resolving those tax issues in this court would be more efficient than in a highly specialized state proceeding. The court understands Debtors' skepticism of the state's objectivity, but that is not at issue in this motion. Debtors also argue that adjudication outside this court will likely result in undue delay, especially if appeals follow any decision. However, the same could be said for having the case adjudicated here. After all, if unsatisfied with a judgment issued by this court, either party could also appeal, which could be followed by a stay pending appeal, resulting in lengthy delays given the centrality of the issues with respect to the Chapter 11 Plan. Therefore, the court finds this factor neutral on the issue of abstention.

Extent To Which State Laws Predominate

The second factor requires the court to consider whether state law predominates over bankruptcy issues. This factor likely weighs heavily in favor of abstention. The issues in the Adversary Proceeding are of state law, but it seems that the success of the Chapter 11 Plan likely hinges on the outcome of those state law issues. Though this is a court of competent jurisdiction, the court would aver that it seldom is called upon to resolve esoteric issues of state tax law. This is likely because such procedures already exist at the state level. The court believes that the highly specialized state agencies and administrations are better positioned to resolve the dispute given their expertise, and this court's relative lack thereof. Therefore, this court finds this factor heavily (probably decisively) weighs in favor of abstention.

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Difficulty of the Issues

The third factor requires the court to consider the difficulty or unsettled nature of the applicable law. CDTFA argues that this case involves complex and highly technical interpretations of California tax law, which is likely best left to the state experts, rather than this court, which only intermittently confronts such complex tax issues. Debtors argue, by contrast, that the case is only complex factually, but that the legal issues are relatively straight forward. At this point the court does not know who is properly characterizing the difficulty of the dispute. Thus, the court agrees with Debtors that this factor is not determinative.

Presence of a Related Proceeding In State Court

The fourth factor requires the court to consider the presence of a related proceeding in the state court. Here, it is obvious that there is a related administrative proceeding, but Debtors argue, it is not a court proceeding. For example, Debtors point out that the Office of Tax Appeals is unlike this court as it has no formal discovery, has limited authority to require the disclosure of witnesses and evidence, and does not follow the Federal Rules of Evidence or California Evidence Code. Therefore, Debtors argue, abstention at this stage, with its side effect of halting formal discovery, will hinder the interests of justice and unfairly prejudice Debtors. However, Debtors do not explicitly argue that the results of the state proceeding are not binding or do not carry preclusive effect. The court is not inclined or equipped to make findings as to the relative tactical disadvantages each party may encounter if this court abstains. Without a fulsome understanding of how full adjudication by the state agencies might/will affect whether the Chapter 11 Plan takes full effect, the court is not ideally situated to assess this element. The court will hear further argument on this point. However, as noted above, the court would still prefer that a highly specialized state agency preside over the esoteric state tax issues.

The Court's Jurisdictional Basis

The fifth factor requires the court to consider its jurisdictional basis, if any, other than 28 U.S.C. § 1334. Here, as Debtors argue, there is an independent basis for federal jurisdiction — namely, 11 U.S.C. § 505(a) and 28 U.S.C. § 157. In the court's view, this factor is not determinative.

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Degree of Relatedness To The Main Bankruptcy Case

The sixth factor requires the court to consider the degree of relatedness or remoteness of the proceeding to the main bankruptcy case. Here, as noted, the state proceeding is intertwined with the main bankruptcy case, with the bankruptcy case being dependent on the state proceeding for its own progress. This factor is neutral in this case.

Substance Over Form Of "Core" Proceeding

The seventh factor requires the court to consider the substance rather than form of an asserted "core" proceeding. Here again, issues of purely state law govern both the state proceeding and Adversary Proceeding, though claim allowance and dischargeability are undeniably also implicated. Again, this factor is neutral.

Severing State Law Claims From Core Bankruptcy Issues

The eighth factor requires the court to consider the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court. Again, the court is unclear as to how enforceability of state adjudication would affect this bankruptcy case. If the state proceeding resolves all current substantial issues concerning administration of this case, the court believes this factor favors abstention. However, the court will hear further argument on this point.

Burden On This Court's Docket

The ninth factor requires the court to consider the burden of this court's docket if it does not abstain. CDTFA argues persuasively that a trial in this case, due to its complex factual and legal features, would require at least several weeks, if not months, to complete. In the meantime, this court would maintain its regular caseload, but would also need to set aside ample time to conduct the trial and issue a final judgment. This, CDTFA persuasively argues, would be a significant impact on this court's docket. Debtors argue that at least some of the issues have already been resolved by the Appeals Bureau, thus, the trial would not be as extensive as initially presented. Debtors also argue that, depending on how matters resolve in the state proceeding, the weight off this court's docket, if it abstains, might only be temporary. Again, this court needs to fully understand whether adjudication in

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the state proceeding would allow the bankruptcy case to move forward or whether further substantial involvement from this court would likely be required. At this juncture, the court is inclined to find that this factor favors abstention. It does so in deference to the efficient administration of its many other cases. The court is legitimately concerned about being disproportionately weighed down or distracted by a trial, which might take weeks or even months to complete, when another highly specialized state government entity is capable of resolving the issues.

Forum Shopping?

The tenth factor requires the court to consider the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties. Here, CDTFA argues that the filings of the bankruptcy case and the adversary proceeding are litigation tactics to see how many bites at the proverbial apple Debtors can get. Instead, CDTFA argues, Debtors should be required to rely on their efforts in the Administrative Tax Appeal, where they have been for much of the last two years. By contrast, Debtors argue, this court is the only forum where all claims can be pursued.

The court does not find obvious evidence of forum shopping by either party. The court understands that the parties perceive tactical disadvantages attend either outcome of this motion. But the court cannot take sides in that regard. The court is still unclear how the state proceedings being allowed to continue materially prejudice Debtors. After all, these types of proceedings appear to be exactly those contemplated by the state legislature.

The last two factors: right to a jury trial and presence of nondebtor entities are either not implicated (no party requests a jury trial), or are not particularly significant to the outcome of this motion (CDTFA is a nondebtor).

In sum, although arguments based on the *Tucson Estates* factors can be summoned by both sides, the court is largely persuaded by the fact that litigation on esoteric issues of state law is already of long standing before a specialized state tribunal. This court has seen no compelling reason to change that at this late date.

Grant.

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

Wednesday, March 27, 2024

Hearing Room

5B

11:00 AM

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Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By
William N Lobel
Beth Gaschen
Alan J Friedman
Christopher J Green
Caroline Djang
Scott D Fink
Reed M Mercado
Jeffrey W Dulberg
Rika Kido
Jonathan T Amitrano

Defendant(s):

California Department of Tax and

Represented By
Donny P Le

Plaintiff(s):

Freedom Communications Inc.

Represented By
Jonathan T Amitrano

Freedom Communications Holding,

Represented By
Jonathan T Amitrano