

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

Thursday, April 3, 2025

Hearing Room

5B

10:00 AM

8:00-000000

Chapter

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ZoomGov meeting number: 160 001 6031

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:18-10486 Ron S Arad

Chapter 7

Adv#: 8:23-01108 Kosmala v. Brownstein et al

- #1.00** STATUS CONFERENCE RE: Complaint For: (1) Legal Malpractice (Professional Negligence), (2) Breach Of Fiduciary Duty; (3) Breach Of Contract; (4) Actual Fraud; (5) Constructive Fraud; (6) Conversion; (7) Unjust Enrichment; (8) Breach Of The Implied Covenant Of Good Faith And Fair Dealing
(cont'd from 8-01-24)
(cont'd from 10-03-24 per order continuing case status conference entered 9-19-24)
(cont'd from 11-14-24)
(cont'd from 3-6-25 per court's own mtn)
(cont'd from 3-13-25)

Docket 1

Tentative Ruling:

Tentative for April 3, 2025

The court read with dismay the report that although ostensibly settled at the mediation, issues have cropped up since regarding scope of releases. That hardly seems a reason to continue litigating this adversary proceeding under these circumstances. Mr. Brannan seems to articulate a very narrow question that he contends is unresolved, something about affecting other clients' rights, but if resolved he can sign. The court will hear argument but the parties should articulate their best, most helpful positions as this is otherwise a huge waste of resources. The court may rule upon oral argument as to whether there was or was not a comprehensive settlement that binds all parties.

Appearance required.

Tentative for March 13, 2025

Is there a settlement? Per the February 28, 2025 Status Report the court had expected to see an agreement. *Appearance required.*

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CONT... Ron S Arad

Chapter 7

Tentative for November 14, 2024

Continue to Feb. 5, 2025 at 10:00 a.m. per Trustee's request with the expectation that a Rule 9019 motion and settlement documents will be filed in meantime, perhaps set for hearing on that date. *Appearance is optional.*

Tentative for August 1, 2024

Continue as a status conference to October 3, 2024 at 10 a.m. *Appearance is optional unless the date is unacceptable.*

Tentative for April 25, 2024

Based on report concerning the mediation, continue as further status conference to August 1, 2024 at 10:00 a.m. Appearance is optional.

Tentative for March 28, 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 September 26, 2024 at 10:00 a.m.

Joint pre-trial stipulation and/or order due per local rules

A mediation is reportedly already underway. It should be complete not later than June of 2024.

Appearance required.

Tentative for January 4, 2024

The deadline for completing discovery is May 1, 2024.

The last date for filing pre-trial motions is May 24, 2024.

The pre-trial conference is on June 6, 2024 at 10:00 a.m.

Joint pre-trial stipulation and/or order due per local rules.

Appearance required.

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Ron S Arad

Chapter 7

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

William H Brownstein

Pro Se

G Bryan Brannan

Pro Se

William H Brownstein & Associates,
Brannan Law Offices

Pro Se
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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8:23-11672 Hugo Fabian Flores Flores

Chapter 7

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

**#2.00 STATUS CONFERENCE RE: Complaint To Determine Non-Dischargeability Of
Debt And Remedies
(cont'd from 4-11-24)
(cont'd from 5-30-24)
(cont'd from 6-13-24 per court's own mtn)
(cont'd from 10-03-24 per order cont. case status conference entered
9-19-24)
(cont'd from 11-21-24)
(cont'd from 1-30-25)
(cont'd from 3-06-25)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DEFAULT
JUDGMENT ENTERED 3-28-25 - SEE DOC #58**

Tentative Ruling:

Tentative for March 6, 2025
See #5. *Appearance required.*

Tentative for January 30, 2025
Status of entry of default? *Appearance required.*

Tentative for November 21, 2024
Status? *Appearance required.*

Tentative for June 27, 2024
See #11. *Appearance required.*

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CONT... **Hugo Fabian Flores Flores**

Chapter 7

Tentative for May 30, 2024
See #3.1. *Appearance required.*

Tentative for April 11, 2024
We apparently are awaiting processing of default and prove up. Status?
Appearance required.

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

Party Information

Debtor(s):

Hugo Fabian Flores Flores	Pro Se
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Defendant(s):

Hugo Fabian Flores Flores	Pro Se
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Plaintiff(s):

Alejandra H Reyes Falcon	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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8:23-11672 Hugo Fabian Flores Flores

Chapter 7

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

#3.00 Order To Show Cause Why Case Should Not Be Dismissed For Failure To Prosecute RE: Complaint
(cont'd from 3-06-25)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - DEFAULT
JUDGMENT ENTERED 3-28-25 - SEE DOC #58**

Tentative Ruling:

Tentative for March 6, 2025

Petitioner claims that a default has been entered. Then what is the delay in proving up a judgment? Once an order on claim for relief is entered a trustee will be appointed to liquidate the estate. This should be pursued with all speed since this case is already quite old. Continue one last time to April 3, 2025 at 10:00 a.m. *Appearance required.*

Party Information

Debtor(s):

Hugo Fabian Flores Flores	Pro Se
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Defendant(s):

Hugo Fabian Flores Flores	Pro Se
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Plaintiff(s):

Alejandra H Reyes Falcon	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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8:24-10717 Henry George Brennan

Chapter 11

Adv#: 8:24-01069 Brennan et al v. Daily Aljian, LLP et al

**#3.10 STATUS CONFERENCE RE: Complaint For Legal Malpractice
(cont'd from 8-01-24)
(cont'd from 10-24-24)
(cont'd from 11-07-24)
(cont'd from 1-09-25)
(cont'd from 2-13-25)
(cont'd from 3-06-25)
(cont'd from 3-13-25)
(cont'd from 3-27-25)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER GRANTING STIPULATION TO DISMISS ADVERSARY
COMPLAINT WITH PREJUDICE ENTERED 4-02-25 - SEE DOC #46**

Tentative Ruling:

Tentative for April 3, 2025

A stipulation to dismiss is expected? *Appearance required.*

Tentative for March 27, 2025

A dismissal was expected after the Rule 9019 motion was granted.
Appearance required.

Tentative for March 13, 2025

See #4.2. *Appearance required.*

Tentative for March 6, 2025

See #6.2. *Appearance is optional.*

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CONT... Henry George Brennan

Chapter 11

Tentative for February 13, 2025
No status report? *Appearance required.*

Tentative for January 9, 2025
Continue to coincide with a settlement 9019 hearing. *Appearance required.*

Tentative for November 7, 2024
Status of mediator appointment? Mediation prospects?
Appearance required.

Tentative for October 24, 2024
Update on mediation? *Appearance required.*

Tentative for August 1, 2024
Continue status conference about 90 days. Order to mediation, one day of
which is to be completed by October 15, 2024. *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan

Represented By
Michael R Totaro

Defendant(s):

Daily Aljian, LLP

Pro Se

Reed Aljian

Pro Se

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Chapter 11

Joint Debtor(s):

Lisa Anne Brennan

Represented By
Michael R Totaro

Plaintiff(s):

Lisa Ann Brennan

Represented By
M. Candice Bryner

Henry George Brennan

Represented By
M. Candice Bryner

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8:24-10717 Henry George Brennan

Chapter 11

Adv#: 8:24-01069 Brennan et al v. Daily Aljian, LLP et al

#3.20 Order To Show Cause Why Case Should Be Dismissed For Failure To
Prosecute RE: Complaint
(cont'd from 3-06-25)
(cont'd from 3-13-25)
(cont'd from 3-27-25)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER GRANTING STIPULATION TO DISMISS ADVERSARY
COMPLAINT WITH PREJUDICE ENTERED 4-02-25 - SEE DOC #46**

Tentative Ruling:

Tentative for April 3, 2025
Stipulation to dismiss expected? *Appearance required.*

Tentative for March 27, 2025
A 9019 motion was granted and a dismissal stipulation was expected.
Dismiss? *Appearance required.*

Tentative for March 13, 2025
Where is the promised stipulation to dismiss? *Appearance required.*

Tentative for March 6, 2025
Continue to March 13, 2025 at 10:00 a.m. *Appearance is optional.*

Party Information

Debtor(s):

Henry George Brennan

Represented By
M. Candice Bryner

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Chapter 11

Craig G Margulies

Defendant(s):

Daily Aljian, LLP

Represented By
William C. Haggerty

Reed Aljian

Pro Se

Joint Debtor(s):

Lisa Anne Brennan

Represented By
M. Candice Bryner
Craig G Margulies

Plaintiff(s):

Lisa Ann Brennan

Represented By
M. Candice Bryner
Michael R Totaro

Henry George Brennan

Represented By
M. Candice Bryner
Michael R Totaro

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:24-10717 Henry George Brennan

Chapter 11

Adv#: 8:24-01130 Acclaim Recovery Management, LLC., v. Brennan et al

#4.00 STATUS CONFERENCE RE: Complaint Objecting To The Debtors' Discharge (Bankruptcy Code subsections 727(a)(2)(B), (a)(3),(a)(4)(A), and (a)(5) And To The Dischargeability Of Debtors' Debt To Plaintiff (Bankruptcy Code subsections 523(A)(2)(a), (A)(4), and (A)(6)
(cont'd from 1/09/25 per order approving stip. to cont. s/c, mtn to convert & objection to proof of claim entered 12-23-24)
(cont'd from 1-29-25)

Docket 1

Tentative Ruling:

Tentative for April 3, 2025

Matter is sent to mediation, one day of which is to conclude not later than June 13, 2025. Status conference continued to June 26, 2025 at 10:00 a.m.
Appearance required.

Tentative for January 29, 2025

Status of service/default? *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan

Represented By
M. Candice Bryner
Craig G Margulies

Defendant(s):

Henry George Brennan

Pro Se

Lisa Ann Brennan

Pro Se

Joint Debtor(s):

Lisa Anne Brennan

Represented By

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Chapter 11

M. Candice Bryner
Craig G Margulies

Plaintiff(s):

Acclaim Recovery Management,

Represented By
James A Dumas Jr

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:24-10717 Henry George Brennan and Lisa Anne Brennan

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**#5.00 Debtors' Objection To Claim #9 By Acclai Recovery Management LLC
(cont'd from 10-23-24 - treat as adversary proceeding)
(cont'd from 1-09-24 per order approving stip to cont. s/c, mtn to convert
ch 11 case & objection to proof of claim entered 12-23-24)
(cont'd from 1-29-25)**

Docket 119

Tentative Ruling:

Tentative for April 3, 2025
See #11. *Appearance required.*

Tentative for January 29, 2025
Are we to have an evidentiary hearing? *Appearance required.*

Tentative for October 23, 2024

A. Background

Henry George Brennan ("George") and Lisa Anne Brennan ("Lisa") (collectively, "Debtors") contend that Acclaim Recovery Management, LLC ("Acclaim") failed to establish *prima facie* validity for its \$608,084.43 claim against Debtors because the proof of claim ("POC") was untimely, lacked sufficient support, and the judgment wasn't entered against Debtors individually, but rather against Newport Beach Center for Surgery, LLC.

Debtors filed their Chapter 11 case on March 24, 2024 and the deadline to file a POC was July 5, 2024. Acclaim was properly served with a notice of the claim bar date on May 3, 2024. However, Acclaim filed the POC on July 8, 2024 with the aforementioned claim amount purportedly owed by the Debtors. The basis for the POC is a judgment in a state court action that

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was entered on April 4, 2018 with an amended judgment date of July 6, 2018 against Newport Beach Cetner for Surgery, LLC. Debtor argues that the judgment does not mention Debtors' names and the POC lacks sufficient support to constitute *prima facie* evidence of the claim's validity. For these reasons, Debtor argues that the court disallow Acclaim's POC in its entirety.

Acclaim filed this opposition on October 8, 2024 in response to Debtors' claim objection. Acclaim states that Debtors made no effort to address the substance of the claim, but rather confined their claim objection to (1) whether the claim was filed timely; and (2) whether the POC itself provides adequate support for the substance of the claim.

Acclaim attached an amended POC with this opposition. Acclaim has also filed an adversary proceeding to have certain aspects of its claim declared nondischargeable. Acclaim also proposes that the matter at hand be treated as a contested matter and consolidated with the adversary proceeding for the purposes of trial. The adversary proceeding has an initial status conference for January 9, 2025. On July 5, 2024, Acclaim filed a POC for \$608,084.03, attaching a statement of itemized interest and charges. The entry of the judgment was on April 4, 2018 and the principal amount of debt is \$369,676.70 with a legal interest rate of 10%. The daily interest amounts to \$101.28 and the total interest due as of 7/5/24 is \$231,424.80.

As the basis the POC states that it is for a judgment entered/fraudulent conveyance with only an attachment of the judgment and an amended judgment dated July 6, 2018 in the Los Angeles County Superior Court case of *Acclaim Recovery Management, LLC v. Newport Beach Center for Surgery, LLC*. Acclaim states that the judgment debtor on the judgments was an entity known as Newport Beach Center for Surgery, LLC ("NBCS") and that George was the managing member of NBCS which has been in existence and operating a surgery center in George's office suite since 2002. See Dumas Declaration, Exhibit A and Exhibit C. The declaration of Joseph Kar establishes that the judgment was amended again on October 4, 2023 to add debtor George as a judgment debtor. This was possible upon a showing by Acclaim that NBCS was the alter ego of George and the motion was preceded by two judgment debtor examinations wherein George was the

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witness and failed to appear. The amended judgment was vacated on January 11, 2024, less than two months before the bankruptcy filing because George claims that he had not been served with the motion to amend. Acclaim states that the evidence presented in the 2023 motion to vacate judgment did not include the specific evidence that is now included in its amended POC in the bankruptcy.

B. Legal Standard

Section 502(a) provides that a proof of claim that is filed under § 501 is deemed allowed unless a party in interest objects. To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Contr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). Under Local Bankruptcy Rule 3007-1(c)(2), a copy of the complete proof of claim, including attachments or exhibits, must be attached to the objection to claim, together with the objector's declaration stating that the copy of the claim attached is a true and complete copy of the proof of claim on file with the court, or, if applicable, of the informal claim to which objection is made.

In the Ninth Circuit, a burden-shifting framework is established when evaluating whether to uphold or reject a claim objection, as articulated in *In re Hargrove*, 36 B.R. 625 (Bankr. C.D. Cal. 1984). See also *In re Holm*, 931 F.2d 620 (1991). Once a claimant files a proper proof of claim, it receives *prima facie* validity, which means the initial burden rests with the objector to present compelling evidence that the claim is invalid. *Holm*, 931 F.2d at 623. Should the objector meet this initial burden, the responsibility then shifts back to the claimant to prove the claim's validity. This establishes that the proof of claim constitutes sufficient evidence regarding its legitimacy and amount, effectively overcoming a simple objection without additional substantiation. *Hargrove*, 36 B.R. at 628, which reinforces that a properly filed proof of claim is presumed valid unless successfully challenged. *In re Rodriguez*, 2014 WL 1378428, at 3 (9th Cir. BAP 2014) affirms that the objector must present evidence that is not merely speculative to disprove the claim.

Additionally, Rule 3002 governs the timely filing of a proof of claim

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("POC") . Rule 3002(c) provides that a POC must be filed no later than 70 days after the order for relief under the chapter or date of conversion. While there are specific exceptions that permit late filings, such as for governmental units or under certain equitable considerations.

C. Timeliness of Filing POC

Acclaim filed the POC on July 8, 2024, three days after the claims bar date of July 5, 2024. This raises concerns regarding the timeliness of the claim, as adherence to the filing deadline is a key component of ensuring fairness and finality in the bankruptcy process. Late filings generally face disallowance unless the Acclaim can demonstrate that extraordinary circumstances or excusable neglect justify the delay. In this context, Rule 3002(c)(6) as adopted by Rule 3003(c) could potentially provide grounds for extending the claims bar date if the Acclaim could show that they did not receive sufficient notice of the bankruptcy or the claims bar date. However, it seems likely that the Acclaim was given adequate notice regarding the bankruptcy proceedings and the associated deadlines but whether other factors apply is unclear.

Although there is a presumption of validity that is usually afforded to a POC, Acclaim simply did not file timely and although Rule 3002 as adopted in Rule 3003(c) does provide some exceptions for late filings, none appear to apply in this case (or at least not obviously so). On the other hand, if this would otherwise be a surplus case, which seems to be suggested in the facts, other equitable considerations must come into play such as in a liquidation a tardily filed claim is paid, albeit at a lower level than timely claims. See 11 USC §726(a)(3)

Furthermore, Acclaim has filed an adversary proceeding that is the same in substance and the factual contentions are based on the information available in that proceeding. For this reason, Acclaim argues persuasively that questions about whether and under what circumstances an untimely claim should be addressed are best left in connection with plan confirmation and other downstream proceedings in the case with the current claim

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objection proceedings focusing only on the substance of the claim.

D. Adequacy of Acclaim's POC

Under § 502(a), a claim is generally allowed unless a party in interest objects. Following a notice and a hearing, the Court is tasked with determining the claim's amount. However, as stated in 11 U.S.C. § 502(b), a claim will not be permitted if it is unenforceable against the debtor under any agreement or applicable law. In this case, the Debtors, as parties in interest, have objected and assert that the claim should be entirely disallowed due to procedural deficiencies in accordance with FRBP 3001. Specifically, Debtor is arguing that the Claimant failed to file a POC with adequate support as required under FRBP 3001(c) and (f). See *In re Kade*, 2020 WL 1166045 (9th Cir. BAP 2020)(court emphasized that failure to provide sufficient supporting documentation with a proof of claim renders the claim objectionable and unenforceable against the debtor).

Here, Debtor contends that the POC lacks sufficient support. Although Debtor's motion does not fully articulate the specific shortcomings of the POC, it raises a somewhat persuasive point that more than just the judgment and an itemized statement of interest is necessary. Furthermore, since the claim is predicated on a fraudulent conveyance, the absence of any supporting documentation or evidence from the Acclaim weakens the overall strength of the claim. Debtors argue that the claim is not *prima facie* valid and should be disallowed because Claimant failed to attach copies of writings upon which claims are based in order to carry its burden of establishing a *prima facie* case against the debtor. See *In re King Investments, Inc.* 219 B.R. 848, 858 (BAP 9th Cir. 1998). Although the POC is supported by FRBP 3001(f), the absence of supporting documentation does not justify disallowing the claim in its entirety. The Ninth Circuit Bankruptcy Appellate Panel has consistently held that failure to attach supporting documentation to a POC does not compel disallowance, but rather strips the claim of its *prima facie* validity, shifting the burden back to the Acclaim to establish the claim's legitimacy. *In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005). In *Heath*, the court emphasized that noncompliance with Rule 3001 is not listed as a statutory

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ground for disallowance under 11 U.S.C. § 502(b), reinforcing the principle that disallowance must rest on substantive objections, not mere procedural deficiencies. Moreover, in *In re Medina*, BAP No. CC-11-1633 (9th Cir. BAP 2012), the court emphasized that while missing documentation may affect the *prima facie* validity of a claim, the ultimate disallowance still requires substantive evidence to challenge the claim's legitimacy. The lack of attachments does not, by itself, warrant automatic disallowance if the underlying debt remains valid .

Additionally, disallowance of the claim would not negate any lien rights the claimant possesses, as lien avoidance requires an adversary proceeding under FRBP 7001, consistent with due process protections. This was similarly affirmed in *In re Campbell*, 336 B.R. 430 (9th Cir. BAP 2005), where the court reiterated that the absence of documentation alone is insufficient to disallow a claim without further substantive objections.

However, Acclaim has filed an amended POC and Debtor will likely file an objection to this. Acclaim and Debtor agree that the adversary and claim objection overlap and should be consolidated. In Acclaim's amended POC, it states that a judgment was initially entered against NBCS in 2018 with George as the managing member. In 2023, Acclaim successfully amended the judgment to add George as a debtor, alleging that NBCS was his alter ego. However, George claims he has not served with the motion to amend, and thus the judgment was vacated in January 2024, just before the bankruptcy filing. Acclaim argues that NBCS's assets were fraudulently transferred to entities controlled by Lisa, and these entities later sold the surgery center for \$1,000,000 in 2021. Acclaim further maintains that the fraudulent transfer deprived them and other creditors of the assets that should have been available to satisfy NBCS's debts. According to Acclaim, George and Lisa acted as alter egos of NBCS, transferring its assets to protect them from creditors while continuing the surgery center's operations under new entities. Despite the sale of the surgery center for \$1,000,000 in 2021, Acclaim argues that Lisa and George personally benefitted from the proceeds, with much of the money used for their personal expenses, rather than being available for creditors. The transferred assets included accounts receivable, equipment, and leasehold improvements, and Acclaim contends

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CONT... Henry George Brennan and Lisa Anne Brennan

Chapter 11

that George and Lisa orchestrated these transactions to hinder, delay, and defraud creditors, including Acclaim.

As discussed above, there are a number of issues that must be sorted through, and it does not appear appropriate for determination in a summary claims allowance proceeding. Consequently, the contested matter will be consolidated with the adversary proceeding and await determine thereunder, including argument on equitable issues such as whether strict adherence to Rules 3002(c) and 3003 (c) should be enforced, or int the alternative, equitably relaxed in the interest of justice.

Consolidate for trial with pending adversary proceeding. *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan

Represented By

M. Candice Bryner

Craig G Margulies

Joint Debtor(s):

Lisa Anne Brennan

Represented By

M. Candice Bryner

Craig G Margulies

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:24-12498 David Allen McMillon

Chapter 7

Adv#: 8:25-01003 McMillon v. United States Department of Education, [et al.]

#6.00 STATUS CONFERENCE RE: Complaint Re: Attestation Of David McMillon In Support Of Request For Stipulation Conceding Dischargeability Of Student Loans

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-24-25 AT 10:00 A.M.
PER ANOTHER SUMMONS ISSUED ON 1-29-25 - SEE DOC #5**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Allen McMillon	Pro Se
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Defendant(s):

United States Department of	Pro Se
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Plaintiff(s):

David Allen McMillon	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

**#7.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability
Of Debt Under 11 USC §§ 523(a)(2)(A) And 523(a)(2)(B); Fraud
(set from s/c hrg held on 12-15-22)
(cont'd from 10-05-23 per court's own motion)
(cont'd from 3-28-23)
(cont'd from 6-27-24 per order granting mtn for continuance entered
6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for
pre-trial entered 8-14-24)
(cont'd from 12-5-24)
(cont'd from 1-30-25)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-08-25 AT 11:00 A.M.
PER ORDER GRANTING MOTION FOR CONTINUANCES ENTERED 3
-27-25 - SEE DOC #115**

Tentative Ruling:

Tentative for January 30, 2025
See #6. *Appearance required.*

Tentative for December 5, 2024
See #18. *Appearance required.*

Tentative for March 28, 2024
What's the status on mediation? *Appearance required.*

Tentative for November 9, 2023

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CONT... Janet Ann Lutz

Chapter 7

What is the court to do with the attempt to amend the complaint (see #22)?
Can any of the unilateral pretrial stipulation be used in view of new issues
interjected by the amendment, assuming it is allowed? Why did defendant not
participate in preparation of what was supposed to be a joint pretrial
stipulation? Appearance required.

Tentative for 6/29/23:

See #10. When are we going to see a pretrial stipulation?

Appearance: required

Tentative for 12/15/22:

Mediation results?

Tentative for 8/25/22:

Status conference continued to: December 15, 2022 @ 10a.m. Refer to
mediation. One day of mediation to occur by November 17, 2022. Plaintiff to
submit an order appointing a mediator within 10 days.

Appearance: required

Tentative for 7/7/22:

Why no status conference report?

Appearance: required

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

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CONT... Janet Ann Lutz

Chapter 7

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

#8.00 Plaintiff's Motion For Default Judgment Against Defendant Janet Ann Lutz
(cont'd from 3-14-24)
(cont'd from 6-27-24 per order granting motion for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)
(cont'd from 12-5-24)
(cont'd from 1-30-25)

Docket 65

***** VACATED *** REASON: CONTINUED TO 5-08-25 AT 11:00 A.M.
PER ORDER GRANTING MOTION FOR CONTINUANCES ENTERED 3
-27-25 - SEE DOC #115**

Tentative Ruling:

Tentative for January 30, 2025

6-9: Did the mediation occur? Status? *Appearance required.*

Tentative for December 5, 2024

See #18. *Appearance required.*

Tentative for March 14, 2024

Motion to Set Aside Default Judgment was filed on March 11, 2024 by Ms. Lutz. However, she was informed that notice was short/not provided. Continue for a combined hearing? *Appearance required.*

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

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CONT... Janet Ann Lutz

Chapter 7

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Represented By
Allan Litovsky

Trustee(s):

Karen S Naylor (TR)

Pro Se

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10:00 AM

8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

#9.00 Defendant's Motion To Set Aside Entry Of Default And, If Necessary, Default Judgment, For Mistake, Inadvertence, And Excusable Neglect; Points And Authorities; Declaration Of Defendant
(set from hrg held on 3-14-24, plaintiff's mtn for default judgment - doc #65)
(cont'd from 6-27-24 per order granting motion for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)
(cont'd from 12-5-24)
(cont'd from 1-30-25)

Docket 71

***** VACATED *** REASON: CONTINUED TO 5-08-25 AT 11:00 A.M.
PER ORDER GRANTING MOTION FOR CONTINUANCES ENTERED 3
-27-25 - SEE DOC #115**

Tentative Ruling:

Tentative for January 30, 2025
See #6. *Appearance required.*

Tentative for December 5, 2024
See #18. *Appearance required.*

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

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CONT... Janet Ann Lutz

Chapter 7

Plaintiff(s):

Allan Litovsky

Represented By

Allan Litovsky

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

#10.00 Order To Show Cause Why Case Should Not Be Dismissed For Failure To Prosecute
(cont'd from 6-27-24 per order granting motion for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)
(cont'd from 12-5-24)
(cont'd from 1-30-25)

Docket 0

***** VACATED *** REASON: CONTINUED TO 5-08-25 AT 11:00 A.M.
PER ORDER GRANTING MOTION FOR CONTINUANCES ENTERED 3
-27-25 - SEE DOC #115**

Tentative Ruling:

Tentative for January 30, 2025
See #6. *Appearance required.*

Tentative for December 5, 2024

##18-21

The court received the motion for continuance from the defendant, allegedly to permit completion of aa mediation that had been delayed by scheduling issues of the mediator. The court reluctantly granted the continuance but notes that this matter has been continued again and again for one reason or another. No more continuances. When the matter is hear in January a trial date will be set absent a stipulation.

Appearance required.

Party Information

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CONT... Janet Ann Lutz

Chapter 7

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Represented By
Allan Litovsky

Trustee(s):

Karen S Naylor (TR)

Pro Se

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11:00 AM

8:24-10717 Henry George Brennan

Chapter 11

Adv#: 8:24-01130 Acclaim Recovery Management, LLC., v. Brennan et al

#11.00 Defendant's Motion For Judgment On The Pleadings Regarding Plaintiff/Creditor
Acclaim Recovery Management, LLC's Proof Of Claim #9

Docket 14

Tentative Ruling:

Tentative for April 3, 2025

This is Henry George Brennan and Lisa Ann Brennan's ("Debtors/Defendants") Motion for Judgment on the Pleadings as to Plaintiff/Creditor Recovery Management, LLC's ("Plaintiff/Creditor") Proof of Claim #9 ("POC") and Amended Proof of Claim #9 ("Amended POC").

The Motion is made pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, made applicable by Rule 7012 of the Federal Rules of Bankruptcy Procedure on the ground that the Proof of Claim ("POC") fails to state a claim upon which relief can be granted. More particularly, Defendants argue that Plaintiff/Creditor's Proof of Claim was filed late, and late filed claims are disallowed in a Chapter 11 bankruptcy case. Further, Defendants contend that the claims are barred by the four-year statute of limitations for fraudulent transfer under Cal. Civil Code §3439.09(c). Plaintiff/Creditor filed a timely opposition on March 20, 2025, arguing that the motion should be denied due to ambiguity and improper use of Rule 12(c), or continued to April 9, 2025, when related matters (plan confirmation and motion to convert) will be heard, and the statute of limitations issue should be addressed separately at trial or via summary judgment. Debtors/Defendants filed a timely reply on March 27, 2025. Debtors/Defendants argue that Plaintiff/Creditor's POC was filed after the bar date without justification and is therefore disallowed. Debtors/Defendants further contend that Plaintiff/Creditor's POC and Amended POC do not satisfy the heightened pleading requirements applicable to its fraudulent transfer theory.

A. Background

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In the Debtors' Chapter 11 bankruptcy case, filed on March 24, 2024, Plaintiff/Creditor filed a POC on July 8, 2024, three days late from the claims bar date of July 5, 2024. After Defendant filed an objection to the POC on September 20, 2024, Plaintiff/Creditor filed an Amended POC on October 8, 2024, based on a 2018 state court judgment and a fraudulent transfer theory. A related adversary proceeding was filed by Plaintiff/Creditor on October 8, 2024. The court heard the objection to claim on October 23, 2024 and consolidated the objection to claim and related adversary proceeding into one action, although apparently no order was submitted as requested by the court. Debtors filed a Motion to Dismiss the adversary case on November 4, 2024, to which the court stayed as to Section 727 claims until a Motion to Convert was heard and ruled on by the court as Section 727 does not apply in Chapter 11 cases. If the court converts, then the Section 727 claims would be permitted unless Defendants filed a successful motion to dismiss under alternative theories. Debtors filed an answer to the complaint on February 5, 2025, and this Motion for Judgment on the Pleadings on March 12, 2025, on alternative theories that the POC fails to state a claim, that the POC was filed late and should be disallowed, and/or that the claims are barred by the statute of limitations.

The court continued the hearing for the Motion to Convert on April 9, 2023, and the status conference related to this adversary proceeding to April 3, 2025, to be heard at the same time as this Motion for Judgment on the Pleadings.

B. Legal Standard

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), is made applicable to adversary proceedings through Bankruptcy Rule 7012. Rule 12(c) of the Federal Rules of Civil Procedure provides that "after the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings." (Fed.R.Civ.P. 12(c).) Judgment on the pleadings is appropriate when, even if all material facts in the pleading under attack are true, the moving party is entitled to judgment as a matter of law. (*Hal Roach Studios v. Richard Feiner & Co.*, 883 F.2d 1429, 1436 (9th Cir. 1989).) If matters outside the pleadings

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are considered, the motion shall be treated as one for summary judgment. (Fed. R. Civ. Pro. 12(c).) However, the court may consider the full text of documents referred to in the complaint without converting the motion to a motion for summary judgment, provided that the document is central to the plaintiff's claim and no party questions the authenticity of the document. (*Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).)

1. Timeliness

Debtors/Defendants argue that Plaintiff/Creditor's claim was filed three days after the Chapter 11 claims bar date and must therefore be disallowed under FRBP 3003(c)(2), particularly because no motion for leave to file a late claim was made under FRBP 9006(b) or under FRBP 3003(c)(3) to extend time. In response, Plaintiff/Creditor concedes that the claim was late but asserts that the consequence under FRBP 3003(c)(2) is subordination—not disallowance—and that it remains entitled to payment if the case is converted to Chapter 7 or if a surplus exists. Debtors/Defendants, in their reply, reiterate that Plaintiff/Creditor's late claim would only be allowed if it shows "cause" or "excusable neglect" under Rule 9006(b). Under § 502(b)(9) of the Bankruptcy Code, a claim shall be disallowed "except to the extent tardily filed as permitted under the Federal Rules of Bankruptcy Procedure." Therefore, if the Bankruptcy Rules permit a tardy claim, then disallowance is not mandatory under § 502(b)(9). *In re Barker*, 839 F.3d 1189, 1194 (9th Cir. 2016) (noting that a bankruptcy court may disallow a claim for various reasons, including if the proof of claim was untimely filed under § 502(b)(9)). Rule 3003(c)(2) states that "any creditor who fails to file a proof of claim [...] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." Rule 3003(c)(2) does not permit a late claim. It imposes a penalty (loss of voting/distribution rights). The Federal Rules of Bankruptcy Procedure exception in § 502(b)(9) generally refers to rules that allow late claims, such as those under Rule 9006(b)(1). However, Plaintiff/Creditor never filed a motion to extend the claims bar date. Debtors contend that they expressed their objection to Plaintiff's late filed claim since September 2024 when they filed their initial Objection to Claim. Therefore, Plaintiff/Creditor's claim would be disallowed under § 502(b)(9) and FRBP 3003(c)(2). However, as will be explained below, the court has not yet ruled

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on the Motion to Convert, scheduled for approximately one week after this hearing, which if converted to Chapter 7, may extend allowance of tardy claims and the issue may be moot.

2. Statute of Limitations

Debtors/Defendants argue that Plaintiff/Creditors fraudulent transfer claim is time-barred under Cal. Civ. Code § 3439.04(a) because the transfer occurred in 2019 and Plaintiff/Creditor did not file its POC until 2024. They assert Plaintiff/Creditor had the ability to discover the transfer earlier through financial records, judgment debtor exams, and other discovery tools. Plaintiff/Creditor counters that whether it had actual or constructive notice of the transfer before January 2024 is a factual question inappropriate for resolution on a Rule 12(c) motion. Courts have consistently held that factual disputes cannot be resolved at judgment on the pleadings stage. See, e.g. *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). Because Plaintiff/Creditor has alleged it first learned of the transfer in January 2024, and the factual record is contested, this issue is more properly resolved through a summary judgment motion or at trial.

3. Fraudulent Transfer Claim Does Not Fail Under Rule 9(b)

Debtors/Defendants argue that Plaintiff/Creditor's fraudulent transfer claim fails under Rule 9(b) due to lack of particularity. Under Federal Rule of Civil Procedure Rule 9(b), heightened pleading requirement apply to claims based on fraud. Further, where, as here, the allegations in the POC show that a claim is barred by the statute of limitations, the plaintiff "must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made an earlier discovery despite reasonable diligence." *Mendez v. Bank of America, N.A.* (C.D. Cal. 2013) 2013 U.S. Dist. LEXIS 203506, at * 19.

However, Plaintiff/Creditor identifies the transferor and transferee (NBCS and entities controlled by Debtors/Creditors), the approximate timing (spring or summer 2019), the nature of the transfer (assets and operations), and the efforts made to discover it—thereby satisfying the "who, what, when, where, and how" standard outlined in *Vess v. Ciba Geigy Corp. USA*. 17 F.3d

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1097, 1106 (9th Cir. 2003). So, this is not a persuasive ground for granting the motion.

4. Consolidation and Ambiguity

Plaintiff/Creditors argues, and the court agrees, that the motion improperly blurs the distinction between the claim objection and the adversary proceeding—especially since no formal order consolidating the two was entered. While the court issued a tentative ruling to consolidate, the procedural posture remains unclear. Further, Debtors' reliance on voluminous exhibits and facts outside the pleadings suggests the motion may be more appropriate for summary judgment or to be adjudicated at trial. See *Hal Roach Studios, Inc.* 896 F.2d at 1550.

Given the Motion to Convert set for hearing on April 8, this motion was likely brought in haste. Perhaps a one week continuance to allow for the court to rule on that motion will clear up some issues, and anything that remains is better resolved in a summary judgment motion or at trial.

Continue to April 8, 2025 at 11:00 a.m. *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan

Represented By
M. Candice Bryner
Craig G Margulies

Defendant(s):

Henry George Brennan

Represented By
M. Candice Bryner

Lisa Ann Brennan

Represented By
M. Candice Bryner

Joint Debtor(s):

Lisa Anne Brennan

Represented By

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M. Candice Bryner
Craig G Margulies

Plaintiff(s):

Acclaim Recovery Management,

Represented By
James A Dumas Jr

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:23-12480 Francesca Silva Morales

Chapter 7

Adv#: 8:24-01034 Lopez v. Morales

#12.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability of Debt [11 USC §523 (a)(2)(A), (a)(2)(B), (a)(4), (a)(6), and (a)(7); and § 727 (a)(2), (a)(3), (a)(4), and (a)(5)]
(cont'd from 9-05-24)
(cont'd from 1-30-25)

Docket 1

Tentative Ruling:

Tentative for April 3, 2025

See #13, continue until July 10, 2025 at 10:00 a.m., after any amended complaint. *Appearance required.*

Tentative for January 30, 2025

The case does not appear to be at issue as no answer has been filed. Continue status conference to March 6, 2025 at 10:00 a.m. *Appearance required.*

Tentative for September 5, 2024

See #5. *Appearance required.*

Tentative for August 1, 2024

A motion to dismiss portions of the complaint is scheduled 9/5/24 at 11:00 a.m. Continue this hearing to coincide. *Appearance is optional.*

Tentative for May 23, 2024

See #17 at 11:00 a.m. *Appearance required.*

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CONT... Francesca Silva Morales

Chapter 7

Party Information

Debtor(s):

Francesca Silva Morales

Represented By
Moses S Bardavid

Defendant(s):

Francesca Silva Morales

Pro Se

Plaintiff(s):

Carmen Lopez

Represented By
Link W Schrader

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:23-12480 Francesca Silva Morales

Chapter 7

Adv#: 8:24-01034 Lopez v. Morales

#13.00 Motion To Dismiss Portions So The Second Amended Complaint Of Carmen Lopez For Failure To State A Claim Upon Which Relief Can Be Granted **-12b**

Docket 43

Tentative Ruling:

Tentative for April 3, 2025

This is Defendant/Debtor Francesca Silva Morales' ("Debtor" or "Defendant") Motion to Dismiss Portions of Plaintiff Carmen Lopez's ("Plaintiff") Second Amended Complaint ("SAC") for failure to state a claim upon which relief can be granted under Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, made applicable by FRBP 7012.

A. Background from the Second Amended Complaint

The court has comprised a summary of the alleged facts from those alleged in the Second Amended Complaint, which parallels the court's tentative on September 5, 2024:

Defendant hired Plaintiff through Defendant's business, Spire Management Group ("Spire") which did business as Agape Care Services ("Agape") in March 2015 to provide caregiver services. Defendant allegedly misclassified Plaintiff as an independent contractor though Defendant incongruously paid Plaintiff an hourly rate. After some time, Plaintiff became aware that she was not receiving overtime wages for the entire twelve hour shift, all seven days of the week, to which she was entitled. Plaintiff sought legal counsel. Agape dissolved in December 2017, and Spire incorporated on June 26, 2017. On December 28, 2018, Plaintiff through Attorney Bean initiated a Wage and Labor Lawsuit ("State Court Lawsuit") against Defendant and Spire by filing Plaintiff's Complaint for: 1. Misclassification of Employees; 2. Failure to Pay Overtime Wages; 3. Failure to Provide Meal Breaks; 4. Failure to Provide Rest Breaks; 5. Failure to Provide Accurate Wage Statements; 6. Failure to Pay All Wages Earned and Due; 7. Failure to

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Provide Day of Rest; 8. Failure to Provide Employee Records; 9. Unfair Competition; and 10. Private Attorney General Act (the "State Complaint") in the Superior Court of California for the County of Los Angeles.

On July 17, 2019, Plaintiff, Defendant, and Spire entered into a confidential settlement and release agreement ("Settlement Agreement"), where Defendant would pay Plaintiff the gross sum of \$70,000 through ten payments of \$7,000 each. The Settlement Agreement was allegedly breached by Defendant between September 12, 2019 and November 22, 2019. After numerous attempts to get Defendant to comply with the Settlement Agreement, the Superior court entered final judgment in favor of Plaintiff in the amount of \$56,852.26 against Defendant. Several requests for production and special interrogatories were served on Spire and Defendant to which neither complied. On May 7, 2021, the Superior Court entered an order compelling Spire to serve responses to Plaintiff's requests for production and produce all responsive documents, without objections, within twenty (20) days of the order and granting Plaintiff's motion for monetary sanctions, ordering Spire to pay sanctions of \$1,530, within (20) days of the Order. Prior to this entry of this Order, Defendant filed her chapter 13 bankruptcy on April 29, 2021, which was later dismissed on February 10, 2022. Plaintiff made no collection efforts from the dismissal of Debtor's bankruptcy until January 19, 2023, when she filed a Memorandum of Costs after Judgment, Acknowledgement of Creditor, and Declaration of Accrued Interest which credited Defendant's debt to Plaintiff for the payment received in the first bankruptcy. Plaintiff also obtained on January 19, 2023 a Writ of Execution in the superior court listing the total amount due as \$66,873.16 (which includes accrued interest of \$9,980.90). In February 2023, the Superior Court ordered Defendant and Spire to appear for examination, but they did not comply. On March 7, 2023, the Amended Judgment was entered. Further attempts to get Defendant and Spire to appear for judgment debtor examinations were made, but both continued each examination each time until November 27, 2023, by which time the second bankruptcy was already filed the day before.

There were alleged discrepancies in Debtor's schedules which state that she is an employee of Spire and receives monthly compensation of \$6,000 and Defendant's income declaration which states she is not paid as

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CONT...

Francesca Silva Morales

Chapter 7

an employee. Defendant allegedly contends that she is an employee, but also "self-employed" because she is the sole owner of Spire. However, the amount she receives does not apparently deduct taxes as for a typical employee. Further, Defendant's tax returns from 2022 reflect no income or loss, which conflicts with her representations that she had been employed by Spire.

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.*

C. Discovery Issues

The discovery issues between Plaintiff and Defendant impact the court's separate analysis of the motion to dismiss, so the court will make on a determination on this point first.

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Defendant, in the motion to dismiss, argues that any deficiencies in the factual allegations stem from Plaintiff's own failure to obtain necessary discovery. Defendant contends that any missing or incomplete information is "not Defendant's fault" and should not be grounds to maintain the suit. Defendant further argues that her prior discovery responses were code-compliant and complete, and that Plaintiff is not entitled to any further discovery.

Plaintiff acknowledges an inaccuracy in the SAC—specifically, the erroneous assertion that no documents were produced by Defendant. Plaintiff clarifies that 158 pages of documents were produced on August 21, 2024. These included leases, tax returns, profit/loss statements, insurance declarations, and a docket from a civil lawsuit. However, Plaintiff asserts that the production was incomplete and omitted critical financial documents, such as full business financials, K-1 forms, and bank statements dating back to 2016. Plaintiff further notes that although her counsel initially overlooked the partial production, the error was acknowledged and corrected through correspondence with defense counsel (January 14, 2025) and a subsequent update to the Court (January 30, 2025).

Upon review, Plaintiff highlights three documents from the production that raise concerns warranting further discovery: (1) a business lease confirming Defendant's ownership of Spire/Agape Care Services; (2) profit/loss statements showing significant income not disclosed in bankruptcy filings; and (3) insurance documents evidencing Agape's operational status since 2018—again, contrary to Defendant's claimed income levels. Plaintiff also contends that substantial efforts were made in good faith to resolve discovery disputes. Counsel reduced the number of contested issues from 82 to 7 and trimmed a 72-page discovery stipulation down to 14 pages. Multiple meet-and-confer sessions were held in early 2025, and a protective order proposed by Defendant may further resolve outstanding concerns.

The court acknowledges both parties' positions. It is undisputed that Defendant produced requested discovery and that Plaintiff's original assertion in the SAC that no documents were produced was incorrect. Plaintiff's

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counsel has since corrected the record and informed both opposing counsel and the court. The court agrees that the documents identified by Plaintiff do raise questions about Defendant's financial disclosures and that further discovery is likely needed and should be conducted here. However, the court cautions the parties that further discovery issues remain between Defendant and Plaintiff and the parties should avoid involving the court and resolve any disputes like professionals so as not to waste any more time. As explained below, this may impact the outcome of motion to dismiss.

D. First Cause of Action Under Section 523(a)(2)(A)

Plaintiff's first cause of action in the SAC is brought under Section 523(a)(2)(A). At the September 5 motion to dismiss hearing, the court found that enough was pled to assert a claim for fraud, but not under second theory applying *Husky International Electronics, Inc. v. Ritz*, 578 U.S. 355, 361 (2016) (where the court held that "actual fraud" in Section 523(a)(2) encompasses forms of fraud like fraudulent conveyance schemes that can be effectuated without false representation, as they are acts of concealment and hindrance). The court granted the motion with leave to amend as to that second theory but denied as to the first.

Section 523(a)(2)(A) excepts from discharge debts incurred under false pretenses, based on false representations, or based on actual fraud. To establish fraud, Plaintiff must prove the following elements by a preponderance of evidence: (1) that the debtor made the representation(s); (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *In re Eashai*, 87 F.3d 1082, 1086 (9th Cir. 1996). Regarding the third element, intent to deceive can also include reckless disregard for the truth. *In re Gertsch* 237 B.R. 160, 167 (B.A.P. 9th Cir. 1999).

Defendant contends that the first claim to the extent is based on the *Husky International* theory, fails to state a claim because it lacks particularity under Rule 9, and fails to state facts that support a claim for fraud. Specifically, Plaintiff does not and cannot allege that the debt derived from

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the state court judgment is traceable to transfers made well after employment. The state court judgment upon which Plaintiff relies is judgment obtained against Debtor and Spire Management Group, Inc. ("Spire") jointly and severally. Plaintiff alleges that "money was secreted away in Defendant's wholly owned corporation, Spire, a co-defendant. However, Defendant argues that Plaintiff provides no specifics as to how money was secreted away, or the existence and transfer of funds between the two.

The court's tentative at the last hearing indicated concerns that the FAC lacked specific facts about when and how the alleged fraudulent transfers occurred. It was also unclear whether the Defendant's draws were salary or fraudulent conveyances, or where the connection was between the state court judgment and the alleged asset concealment. In this SAC and the opposition, Plaintiff attempts to address these concerns by providing more specifics regarding Defendant's inconsistencies in reporting employment. In her first bankruptcy case, the Defendant initially claimed she had been employed by Spire for two weeks with a monthly gross income of \$9,000, later amending it to two months and \$15,986 in gross income. In her current bankruptcy case, filed about 2.5 years later, she claimed to have worked at Spire for six years with a net monthly income of \$6,000. However, no business records support this income. At a creditors' meeting in January 2024, her counsel explained that her income from Spire was simply "a draw." The funds from Spire are considered both an asset of her bankruptcy estate and a significant, mostly undisclosed, source of income relevant to the case. Plaintiff then draws direct comparisons to *Husky*, asserting that the way that the Chapter 7 debtor in *Husky*, Ritz, was in financial control of the company that had purchase components from the creditor, Defendant was in financial control of Spire which purchased components from Plaintiff. Further, in the same way that Ritz drained assets from the company he controlled which it could have used to pay its debts to creditors like Husky, Defendant allegedly drained assets from Spire, which she controlled that Spire could have used to pay debts to creditors like Plaintiff. The only element left to establish Defendant's liability under *Husky* is proving that she "obtained" assets through her involvement in the fraud. This allegedly occurred when she received draws or income from Spire, as admitted during her 341 Meeting of

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Creditors and reflected in her bankruptcy filings.

While there is more detail presented by Plaintiff in the SAC and the court acknowledges that the inconsistent reporting of income does create a question of some fraudulent activity, Plaintiff fails to allege once again how a fraudulent conveyance exists here by providing specifically when and how the transfers occurred. Perhaps the further discovery that was needed as discussed above was meant to fill in these gaps, so the court will give Plaintiff one more opportunity to do so. Again, the court denies the motion as to the general theory of fraud under Section 523(a)(2)(A), and grants with leave to amend the theory under *Husky International*.

E. Fifth Cause of Action Under Section 727(a)(2)

Plaintiff's fifth claim for relief is brought under Section 727(a)(2). Defendant argues that like the other causes of action, this claim lacks specificity, and Plaintiff fails to point to any transfer or transaction that occurred a year prior to filing the bankruptcy. Like before, the facts alleged are based only on "information and belief". Plaintiff must plead to specifics: (1) what was transferred, removed or concealed; (2) when was this done and by whom?. Plaintiff argues that in the court's tentative on Defendant's argument to dismiss in the September 5, 2024, the court granted with leave to amend to allow for discovery to provide a full background necessary to allow the claim to survive. As detailed above, discovery is ongoing, and Plaintiff requests, here, only that the door not be shut on this cause of action and that Plaintiff continue to have leave to amend after discovery has closed.

For the reasons stated in the above discovery section, the court will grant the motion with leave to amend for the last time, to allow for further discovery.

F. Sixth Cause of Action Under Section 727(a)(3)

Finally, Plaintiff's sixth cause of action is brought under Section 727(a)(3). Again, Defendant contends that this cause of action is based upon only information and belief and conclusory in nature. The crux of Plaintiff's allegations in this cause of action is that because Debtor filed bankruptcy and the civil actions and discovery were stayed, Debtor violated Section 727(a)(3).

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If this were to be enforced as a theory, any Debtor involved in litigation or post-judgment matters would be violate this Section 727(a)(3). Plaintiff makes the same argument as the fifth cause of action, that discovery is ongoing and Plaintiff requests that the door not be shut and Plaintiff continue to have leave to amend after discovery has closed. For this cause of action and the others stated above, the court will give Plaintiff one last opportunity to assert plausible claims for relief. The parties should continue the discovery process in a professional and efficient way without court intervention, and Plaintiff should file an amended complaint that meets the Iqbal and Twombly standard as to these three claims for relief. Otherwise, the ruling at the next hearing will be to grant without leave to amend.

G. Conclusion

Deny as to the first cause of action under Section 523(a)(2)(A) but grant as to the theory under *Husky* with 30 days leave to amend; grant as to the remaining two causes of action with 30 days leave to amend. *Appearance required.*

Party Information

Debtor(s):

Francesca Silva Morales

Represented By
Moses S Bardavid

Defendant(s):

Francesca Silva Morales

Represented By
Moses S Bardavid

Plaintiff(s):

Carmen Lopez

Represented By
Link W Schrader

Trustee(s):

Thomas H Casey (TR)

Pro Se