

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

Tuesday, April 8, 2025

Hearing Room

5B

10:30 AM

8:00-00000

Chapter

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Chapter

completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:19-10198 Allan Eli Gindi and Carol June Gindi

Chapter 11

**#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-11-25 per order approving stip. to cont. hrg entered 2-07-25 -
see doc #675)
(cont'd from 3-04-25 per order approving stip. to cont. hrg entered 2-28-25
see doc #684)**

**NEWREZ LLC DBA SHELLPOINT MORTGAGE SERVICING FOR
THE BANK OF NEW YORK MELLON
Vs.
DEBTOR**

Docket 669

***** VACATED *** REASON: CONTINUED TO 5-06-25 AT 10:30 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 4
-07-25 - SEE DOC #689**

Tentative Ruling:

Party Information

Debtor(s):

Allan Eli Gindi

Represented By
Michael G Spector
Vicki L Schennum
R Gibson Pagter Jr.
M. Candice Bryner
Stephen J Newman

Joint Debtor(s):

Carol June Gindi

Represented By
Michael G Spector
Vicki L Schennum
M. Candice Bryner

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CONT... Allan Eli Gindi and Carol June Gindi

Chapter 11

Movant(s):

NewRez LLC dba Shellpoint

Represented By
Wendy A Locke

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10:30 AM

8:23-11791 Michelle Lavoy Filbrun

Chapter 13

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-04-25)**

**HSBC BANK USA, NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 52

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY - SETTLED BY
STIPULATION - SEE DOC #69**

Tentative Ruling:

Tentative for March 4, 2025

Continue to coincide with Motion to Modify. *Appearance required.*

Party Information

Debtor(s):

Michelle Lavoy Filbrun

Represented By
Anthony B Vigil

Movant(s):

HSBC BANK USA, NATIONAL

Represented By
Dane W Exnowski
Sean C Ferry
Joseph C Delmotte

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:25-10635 Trinna Mong Trinh Nguyen

Chapter 13

#3.00 Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate 9149 McBride River Ave. Fountain Valley, CA 92708 .

Docket 13

Tentative Ruling:

Tentative for April 8, 2025

Grant as unopposed. *Appearance is optional.*

Party Information

Debtor(s):

Trinna Mong Trinh Nguyen

Represented By

Christopher J Langley

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:24-12580 Patricia Elaine Anderson Hooper

Chapter 7

#3.10 Notice Of Lodgment: Order After Hearing [DN 95] And Notice Of Lodgment Of Order In Bankruptcy Case Re: Order Granting Motion For Relief From The Automatic Stay Under 11 U.S.C. § 362 [DN 101]

Docket 0

Tentative Ruling:

Tentative for April 8, 2025

The Order lodged was significantly embroidered to include various forms of relief not part of the motion. The Order will be reformed to narrow relief only to that specifically requested in the motion. The court is not inclined to revisit the motion, as the Trustee requests, as relief of stay to pursue the receivership is an alternative means of liquidating the subject property, and the court does not want to indulge the dubious practice of "after the fact" revisiting of motions. *Appearance required.*

Party Information

Debtor(s):

Patricia Elaine Anderson Hooper

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
Melissa Davis Lowe

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11:00 AM

8:25-10446 DI Overnite LLC, a Nevada limited liability compan

Chapter 7

#4.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition Against A Non-Individual.

Docket 1

Tentative Ruling:

Tentative for April 8, 2025

Deadline for completing discovery: May 5, 2025

Last date for filing pre-trial motions: May 13, 2025

Pre-trial conference on: June 5, 2025 at 10:00 a.m.

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

Appearance required.

Party Information

Debtor(s):

DI Overnite LLC, a Nevada limited

Pro Se

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11:00 AM

8:25-10446 DI Overnite LLC, a Nevada limited liability compan

Chapter 7

#5.00 Emergency Motion For An Interim Order (I) Authorizing Lender To Continue Pre-Petition Financing During The Gap Period (II) Scheduling A Final Hearing Pursuant to Bankruptcy Rule 4001(b); And (III) Granting Related Relief
(OST Signed 3-06-25)
(cont'd from 3-11-24) - Final Hearing

Docket 11

Tentative Ruling:

Tentative for April 8, 2025
Grant as unopposed. *Appearance is optional.*

Tentative for March 11, 2025
Opposition due at hearing. *Appearance required.*

Party Information

Debtor(s):

DI Overnite LLC, a Nevada limited

Represented By
Ori Katz

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11:00 AM

8:24-11723 Cristelle Steenson Arenal

Chapter 11

**#6.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual
(cont'd from 8-14-24 per scheduling order entered 8-19-24 - see doc # 42)
(cont'd from 10-23-24)
(cont'd from 1-08-25)
(cont'd from 2-12-25)
(cont'd from 4-02-25 per court's own mtn)
(cont'd from 4-09-25 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for April 8, 2025
See #7. *Appearance required.*

Tentative for February 12, 2025
See #5. *Appearance required.*

Tentative for January 8, 2025
Continue to coincide with adequacy of disclosure February 12, 2025 at 10:00
a.m. *Appearance required.*

Tentative for October 23, 2024

Debtor does not want a deadline for filing a plan be set at this time, but offers
no proposed timeline. Vague reference is made of prospective refinancing but
again, no timeline. The court will hear argument as to where debtor thinks this
case is going and when. *Appearance required.*

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CONT... Cristelle Steenson Arenal

Chapter 11

Tentative for August 14, 2024

Deadline for filing plan and disclosure statement: to be determined at continued status conference October 9, 2024.

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of the deadline by September 1, 2024

Appearance required.

Party Information

Debtor(s):

Cristelle Steenson Arenal

Represented By
Michael G Spector

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8:24-11723 Cristelle Steenson Arenal

Chapter 11

#7.00 Debtor's Chapter 11 Disclosure Statement Describing Chapter 11 Plan Of Reorganization
(cont'd from 2-12-25)
(cont'd from 4-02-25 per court's own mtn)
(cont'd from 4-09-25 per court's own mtn)

Docket 114

Tentative Ruling:

Tentative for April 8, 2025

The proposed Disclosure Statement still does not contain important information as to costs of litigation and appraised value of property.

Appearance required.

Tentative for February 12, 2025

Creditor Sridhar Capital Advisors, L.P. ("Creditor") filed an opposition to the Disclosure Statement on 1/29/25. On 10/24/24, Creditor filed a proof of claim, asserting a secured claim in the amount of \$1,047,783.78 based on a (a) promissory note entered on 9/6/23 and a second deed of trust recorded on 9/28/23; and (b) a Settlement Agreement and Mutual Release entered into between the parties on 2/4/24.

Creditor argues that the Disclosure Statement contains inadequate information and deficiencies:

(a)Contemplates potential litigation against Creditor and provides estimated administrative fees for special counsel to pursue litigation. No information describing the potential litigation, length and cost to pursue it, and how it will affect Debtor's ability to consummate a plan is provided.

(b)Debtor states that she is in the process of procuring refinancing to pay in full the allowed claims for all junior lienholders but not details or prospects are

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CONT... Cristelle Steenson Arenal

Chapter 11

given, but the DS fails to provide explanation or analysis as to whether refinance is realistic. No evidence is submitted to show that she can obtain a loan and the DS fails to provide any explanation as to why she is waiting a full year after the effective date to attempt to obtain a refinance or even when Debtor intends to obtain the loan.

(c)Debtor states that Classes 2-6 will be paid in full through sale or refinance, presumably the one Iready mentioned, but Debtor fails to provide information as to a potential sale, including potential capital gains taxes, real estate market, comparable sales. No timeline is provided regarding the sale including when the property will be listed, to find a buyer, and to close escrow.

(d)There is one sentence that describes the potential capital gains taxes as a result of the sale of the property but no explanation or description as to how the taxes might affect escrow closing or the junior lienholders being paid in full. No declaration from a CPA or tax expert is attached to DS providing these explanations.

(e)Debtor suggests review of schedules and monthly operating reports (MORs) but the MORS on average do not show enough to support the refinance proposed. if Debtor seeks refinance before a sale, Debtor's post petition financial situation will factor heavily on whether a loan can be obtained and the amount of that loan.

(f)Debtor provides no specific description of the available assets and their value. No appraisal with a from an appraiser is attached.

Creditor contends that the plan is patently unconfirmable. In order to fund the plan prior to obtaining a finance or sale, Debtor assets that her household income will be no less than \$19,000 starting in March 2025 and increase by \$1000 every couple of months. These increases are critical for the plan to work. The plan projections provide no room for error, and if the household income for a month is less than projected or Debtor has some emergency, Debtor will not have sufficient funds to make the plan payments, and the plan will fail prior to the refinance or sale of the property.

Finally, Creditor highlights consequences of Debtor initiating litigation with

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CONT... Cristelle Steenson Arenal

Chapter 11

Creditor. It will allegedly prolong and delay Debtor's ability to close escrow from refinance/sale as the litigation's outcome will determine how much Creditor will get from the proceeds. Escrow must hold the proceeds during this litigation before disbursing to the other junior lienholders as escrow has to determine what needs to be paid out and to whom. Another consequence is that Debtor will drastically increase her attorney fees to litigate and ultimately jeopardize her ability to make other plan payments as there will be less funds available to use.

The Trustee has not stated a position on the Disclosure Statement, and Creditor is the only opposing party . The following issues appear:

(a) Inadequate information including details of the potential litigation with Debtor; realistic analysis over whether obtaining refinance is reasonable is lacking; details regarding the marketing and sale of the property should be given; current and historical financial conditions beyond documents in the schedules and monthly operating reports; no description or appraisal of the value of the property.

(b) Creditor argues the plan is patently unconfirmable because it relies heavily on the increases to Debtor's household income. If the income is less during one month or an emergency occurs, Debtor will not have enough to make the plan payments. There is no room for error here.

(c) The adversary proceeding (filed on 1/13/25) has consequences that could have a negative impact on the feasibility of the plan including (1) prolonging and delaying Debtor's ability to close escrow due to the holding of proceeds until Creditor's share is determined; and (2) increasing Debtor attorney's fees jeopardizing her ability to make plan payments (less funds to use).

Until Debtor amends these discrepancies/ provides more details to the above stated sections, and provides further reassurance to the court as to how she will be able to make plan payments while in the midst of an adversary proceeding, the disclosure statement should not be approved.

Appearance required.

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CONT... Cristelle Steenson Arenal

Chapter 11

Debtor(s):

Cristelle Steenson Arenal

Represented By
Michael G Spector
Vicki L Schennum

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11:00 AM

8:24-13197 Chantilly Road, LLC

Chapter 11

**#8.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 1-29-25)
(cont'd from 4-09-25 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for April 8, 2025

Is it appropriate to keep the June 1, 2025 deadline for filing a plan? Continue to June 24, 2025 at 10:00 a.m. *Appearance required.*

Tentative for January 29, 2025

Deadline for filing plan and disclosure statement: July 1, 2025

Claims bar: 60 days after dispatch of notice to creditors advising of bar date.

Debtor to give notice of the deadline by: February 12, 2025

Appearance required.

Party Information

Debtor(s):

Chantilly Road, LLC

Represented By
Michael R Totaro

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11:00 AM

8:25-10358 Jeffrey Scott Rauch and Becky Ann Rauch

Chapter 11

**#9.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition
Individual.
(cont'd from 4-09-25 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for April 8, 2025

No disclosure statement required. Continue status conference to June 24, 2025 at which time it is expected the plan will be filed. *Appearance required.*

Party Information

Debtor(s):

Jeffrey Scott Rauch

Represented By
R Gibson Pagter Jr.
Misty A Perry Isaacson

Joint Debtor(s):

Becky Ann Rauch

Represented By
R Gibson Pagter Jr.
Misty A Perry Isaacson

Trustee(s):

Mark M Sharf (TR)

Pro Se

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11:00 AM

8:25-10364 Allen V Petrossian

Chapter 11

**#10.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Individual.
(cont'd from 4-09-25 per court's own mtn)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER DISMISSING
CASE WITH A BAR TO REILING ENTERED 3-04-25 - SEE DOC #15**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allen V Petrossian

Pro Se

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8:25-10403 Herms Lumber Sales, Inc.

Chapter 11

**#11.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 4-09-25 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for April 8, 2025

See #12. Deadline for filing of a plan, July 30, 2025. Claims bar is 60 days after dispatch of notice which is to occur not later than May 1, 2025.

Appearance required.

Party Information

Debtor(s):

Herms Lumber Sales, Inc.

Represented By
Aaron E. De Leest

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8:25-10403 Herms Lumber Sales, Inc.

Chapter 11

**#12.00 Debtor's Motion For Order Authorizing Use of Cash Collateral
(cont'd from 2-24-25)
(cont'd from 4-09-25 per court's own mtn)**

Docket 3

Tentative Ruling:

Tentative for April 8, 2025

Any opposition to cash collateral use? *Appearance required.*

Party Information

Debtor(s):

Herms Lumber Sales, Inc.

Represented By
Aaron E. De Leest

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8:24-11012 Sunmeadows, LLC

Chapter 11

**#13.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 9-11-24)
(cont'd from 12-05-24 at 10:00 a.m. per court's own mtn)
(cont'd from 12-5-24)
(cont'd from 1-08-25 per order approving stip to cont. hrg on debtor's
second mtn for an order extending plan exclusivity periods s/c entered
12-30-24 - see doc #127)
(cont'd from 2-12-25 per order approving stip. to cont. hrg on debtor's
second mtn for order extending plan exclusivity period and s/c entered
2-05-25 - see doc #133)
(cont'd from 3-12-25 per order apprvng stip. to cont. hrg on debtor's second
mtn for order extending plan exclusivity periods and s/c entered 2-026-25 -
see doc #151)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-25 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONT. HRG ON
DEBTOR'S SECOND MTN FOR AN ORDER EXTENDING PLAN
EXCLUSIVITY PERIODS & STATUS CONFERENCE ENTERED 3-26-25
- SEE DOC #172**

Tentative Ruling:

Tentative for December 5, 2024
Continue to coincide with hearing on January 8, 2025. *Appearance required.*

Tentative for September 11, 2024
The court believes (but is unsure) that this was continued for a status
conference at the hearing on the adversary Rule 12 motion until December 5
at 10:00 a.m. It is expected in meantime the complaint will be revised and
finalized, an answer or other response filed and efforts toward mediation will
get underway. A revised status conference report is requested. *Appearance
not required unless parties disagree with either the continuance or any aspect
of the above.*

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CONT... Sunmeadows, LLC

Chapter 11

Tentative for August 14, 2024

In the Debtor's status report it reports general compliance with the usual requirements but it asks for more time in filing a plan and disclosure statement. Debtor believes it will first be necessary to conclude the litigation with RR1050 pending in adversary proceeding No. 8:24-ap-01070-TA. But no timeline is given and one supposes this might take years. Moreover, as stated in the court's tentative published in that proceeding on the Rule 12(b) Motion to Dismiss, it remains very unclear (at least to this court) just what rights the debtor actually holds in the Colton property. When, exactly, is an "Option to Purchase", repeatedly stated in writing as a true option, really something else? The Debtor was given leave to amend. But the court is reluctant to give an open-ended extension to filing a plan at this point. Further, it is not necessarily true that a plan cannot provide for contingency as the litigation winds its way through trial and potentially appellate courts.

Further discussion on this point is invited at the hearing.
Appearance required.

Tentative for May 22, 2024

Deadline for filing plan and disclosure statement: Does debtor propose that no plan be filed until the adversary proceeding is resolved? Even if that might take years? Isn't a plan that proposes reorganization or sale contingent upon title resolution more appropriate? Claims bar: 60 days after dispatch of notice to creditors advising of bar date. Debtor to give notice of the deadline by: May 28, 2024. Appearance required.

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker

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8:24-11012 Sunmeadows, LLC

Chapter 11

**#14.00 Debtor's Second Motion For An Order Extending Plan Exclusivity Periods (cont'd from 1-08-25 per order approving stip to cont. hrg on debtor's second mtn for an order extending plan exclusivity period & s/c entered 12-30-24 - see doc #127)
(cont'd from 2-12-25 per order approving stip. to cont. hrg on debtor's second mtn for an order extending plan exclusivity periods & s/c entered 2-05-25 - see doc #133)
(cont'd from 3-12-25 per order apprvng stip. to cont. hrg on debtor's second mtn for an order extending plan exclusivity periods & s/c entered 2-26-25 - see doc #151)**

Docket 117

***** VACATED *** REASON: CONTINUED TO 5-13-25 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONT. HRG ON
DEBTOR'S SECOND MTN FOR AN ORDER EXTENDING PLAN
EXCLUSIVITY PERIODS & STATUS CONFERENCE ENTERED 3-26-25
- SEE DOC #172**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe

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8:24-11012 Sunmeadows, LLC

Chapter 11

Adv#: 8:24-01070 Sunmeadows, LLC v. RR1050, LLC

#15.00 STATUS CONFERENCE RE: Complaint For: (1) Declaratory Relief To Recharacterize Option Agreement And Entitlement Services Agreement Collectively As A Disguised Purchase And Sale Agreement/Loan Transaction; And (2) Disallowance Of Claim For Usurious Interest [Cal. Const. Art. XV §1; 11 U.S.C. §§ 502(b)(1), 506]
(set from hrg held on 9-05-24 re: mtn to dsm first amended complt)
(cont'd from 12-05-24 at 10:00 a.m. per court's own mtn)
(cont'd from 12-05-24)
(cont'd from 1-08-25 per order approving stip. to cont. s/c entered 12-30-24 - see doc #71)
(cont'd from 2-12-25 per order approving stip. to cont. s/c entered 2-05-25 - see doc #75)
(another summons issued on 2-18-25 re: counter-claim)
(cont'd from 3-12-25 per order approving stip. to cont. s/c entered 2-26-25 - see doc #85)

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-25 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN SUNMEADOWS,
LLC AND RR1050, LLC TO CONTINUE STATUS CONFERENCE
ENTERED 3-26-25 - SEE DOC #89**

Tentative Ruling:

Tentative for December 5, 2024
Deadline for completing discovery: May 30, 2025
Last date for filing pre-trial motions: June 20, 2025
Pre-trial conference on: July 31, 2025
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe

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CONT... Sunmeadows, LLC

Chapter 11

Defendant(s):

RR1050, LLC

Represented By
Melissa Davis Lowe
Ryan D O'Dea

Plaintiff(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker
Mike D Neue

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11:00 AM

8:24-11046 MASHindustries, Inc.

Chapter 11

#16.00 Application For Final Fees And/Or Expenses For Period: 4/25/2024 to 1/15/2025:

(cont'd from 4-02-25 per court's own mtn)

(cont'd from 4-09-25 per court's own mtn)

GREGORY KENT JONES, SUBCHAPTER V TRUSTEE:

FEE: \$21,552.50

EXPENSES: \$209.61

Docket 224

Tentative Ruling:

Tentative for April 8, 2025

Allow as prayed. *Appearance is optional.*

Party Information

Debtor(s):

MASHindustries, Inc.

Represented By
Susan K Sefflin
Jessica Wellington
David M Poitras

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
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8:24-11046 MASHindustries, Inc.

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#17.00 First and Final Application for Compensation and Reimbursement of Expenses
For Period: 6/26/2024 to 1/28/2025:

BROADWAY ADVISORS, LLC, AS FINANCIAL ADVISOR TO THE DEBTOR:

FEE: \$93,350.50

EXPENSES: \$0.00

Docket 233

Tentative Ruling:

Tentative for April 8, 2025
Grant. *Appearance is optional.*

Party Information

Debtor(s):

MASHindustries, Inc.

Represented By
Susan K Seflin
Jessica Wellington
David M Poitras

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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8:24-11046 MASHindustries, Inc.

Chapter 11

#18.00 First and Final Application for Compensation of Services and Reimbursement of Expenses for the Period April 24, 2024 Through February 28, 2025:

BG LAW LLP, DEBTOR'S ATTORNEY:

FEE: \$217,226.50

EXPENSES \$2,821.49

Docket 235

Tentative Ruling:

Tentative for April 8, 2025
Allow as prayed. *Appearance is optional.*

Party Information

Debtor(s):

MASHindustries, Inc.

Represented By
Susan K Seflin
Jessica Wellington
David M Poitras

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

**United States Bankruptcy Court
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8:24-10717 Henry George Brennan and Lisa Anne Brennan

Chapter 11

**#19.00 Motion To Convert Case From Chapter 11 To 7
(set from order approving stipulation - see doc #162)
(cont'd from 1-29-25)
(cont'd from 4-09-25 per court's own mtn)**

Docket 153

Tentative Ruling:

Tentative for April 8, 2025

See #20. The court sees no persuasive reason why the case should continue in Chapter 11 inasmuch as the proceeds of property sales or litigation can as well be realized by the efforts of a Chapter 7 trustee. No tentative.

Appearance required.

Tentative for January 29, 2025

This is Creditors Acclaim Recovery, LLC's ("Acclaim") and Colin McClintock's ("McClintock") (collectively "Movants") motion for order converting this Subchapter V Chapter 11 case to one under Chapter 7 pursuant to Section 1112(b) of the Bankruptcy Code. The motion is opposed by Debtors Henry George Brennan and Lisa Anne Brennan ("Debtors").

A. Background

The debtor is an 86-year-old cosmetic surgeon who practices through this medical corporation H. George Brennan, M.D., Inc. ("HGB Inc."). George also operated a surgery center through Newport Beach Center for Surgery, LLC ("NBCS"). George has been married to Lisa ("Lisa") since 2007 but decided in 2023 to separate and have commenced marital dissolution proceedings. From 2007 to 2023, Lisa worked for HGB Inc., serving as its business/officer manager and was primarily responsible for managing the

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Debtor's personal finances, which included those of NBCS.

1. Acclaim Judgment

On April 4, 2018, Acclaim obtained a California Superior Court judgment against NBCS ("Acclaim Judgment"), which was later amended to be a total principal sum of \$369,676.75. The Acclaim Judgment has since earned interest at the California rate of 10% per annum. Debtors did not pay the Acclaim Judgment, but instead allegedly transferred the assets and operations of NBCS to Newport Multi-Specialty Surgery Center, LLC ("NMSSC") and Newport Surgery Center ("NSC"), entities allegedly owned by Lisa and a partner. George allegedly served as the medical director of NMSSC and NSC.

The surgery center operated until April 2021, at which point Debtors sold all of the assets of HBG Inc. to United Medical Doctors ("UMD") for \$150,000 and all of Lisa's ownership interest in NMSSC and NSC to Dr. John Hong ("Hong") for \$850,000. The proceeds from the sale to UMD and Hong were placed in accounts controlled by Lisa. These accounts were allegedly used to make payments to or on behalf of George and HBG Inc., and to pay joint living expenses of George and Lisa. Neither George nor Lisa is a judgment debtor to the Acclaim Judgment, but Acclaim filed a proof of claim in this bankruptcy asserting that Debtors were liable on the Acclaim Judgment. The balance of the judgment on that date was \$608,084, which does not include the attorney's fees since 2018 Acclaim is reportedly entitled to by contract. It is disputed by the parties whether Acclaim's proof of claim is valid as it was concededly filed three days after the deadline to file a proof of claim. The court notes that Debtors' suspicious pre-petition actions will not be analyzed to determine the outcome of this motion, which considers only post-petition conduct, but serves as contextual information of how the Acclaim Judgment came to be.

2. McClintock Secured Claim

Sandy McClintock ("Sandy") transferred to Lisa the beneficiary interest in life insurance policy on his life. When Sandy died on October 18, 2018,

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Lisa received \$200,000 in life insurance benefits. Sandy's son, Colin McClintock, brought suit claiming elder abuse and undue influence. Lisa paid \$245,104 to a law firm Daily Aljian, LLP from the proceeds of the sale of the surgery center to defend the action. However, due to a damaging document, judgment was entered in favor McClintock in the sum of \$523,580. McClintock recorded abstracts of judgment to secure his judgment in Riverside and Orange Counties, and later filed a proof of claim in the bankruptcy in the sum of \$590,382, which includes judgment interest through that date. The debtors have filed an appeal of the judgment and have asked for expedited briefing due to George's advanced age. They also filed an action for attorney malpractice against the Daily Aljian law firm, which has since been settled for \$150,000 in Debtors' favor. Unless the appeal indicates otherwise, it is undisputed that the McClintock claim is valid and secured.

3. Bankruptcy Filing & Summary of Assets/Liabilities

Debtors sold their home in Orange County in April 2022 and used the proceeds to purchase a property located at 56378 Palms Drive in La Quinta ("Palms Drive Property"), which was held as community property. On the eve of bankruptcy, Lisa moved to the condominium located at 54141 Oak Tree in La Quinta ("Oak Tree Property") which she had purchased as separate property and where she claimed a homestead exemption that wiped out its equity.

Debtors filed a Chapter 11 petition in bankruptcy on March 24, 2024. Creditors currently dispute the motive behind filing the bankruptcy. Debtors contend that the petition was filed as a "breathing spell" to resolve claims and maximize the value of their properties. Movants argue that the filing was to keep litigation and accrual of liability proceeding on all fronts: the McClintock appeal, the Aljian malpractice suit, the defense in the bankruptcy of the Acclaim Judgment, and the cost of the bankruptcy itself. This argument is made based on the following information: there are only \$10,288 in priority claims not including Acclaim and assuming McClintock is fully secured, only \$54,278 in general unsecured claims. The primary assets are Palms Drive Property (valued at \$999,000), the Oak Tree Property (wiped out by homestead exemption), and the property located at 22081 Broken Bow Drive

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in Lake Forest, Orange County ("Broken Bow Property") (which is allegedly being used as rental property and is currently occupied by a tenant). Debtors also have a membership with the Big Canyon Country Club valued at \$275,000; \$150,000 in settlement money from Daily Aljian; a car valued at \$23,529; and a \$15,000 boat later taken off schedules (though periodic payments of \$2,500 made to Balboa Bay Club?).

4. Management of Bankruptcy

Movants contend that Debtors scheduling practices have been inconsistent and chaotic, as the schedules filed on September 30 have differed in serious respects from the original schedules filed at the outset of the case. Further, Debtors have been irresponsible in filings of monthly reports, which at a certain point prompted the United States Trustee to file a motion to dismiss or convert. This was later withdrawn when the reports were later filed. Moreover, Debtors struggled to close existing bank accounts and set up Debtor In Possession accounts as required in Chapter 11 and have allegedly failed to disclose certain income/expenditures in the monthly reporting. In ten months since the petition date, Debtors have reportedly only reduced the purchase price of the Palms Drive Property and settled with Daily Aljian. Movants do not seek to dismiss the case but convert it to Chapter 7 so that a trustee, as an independent fiduciary can take control of the estate and the litigation and determine whether to continue or settle it.

B. Legal Standard

Section 1112(b) of the Bankruptcy Code provides that the Court shall on request of a party in interest after notice and a hearing convert a Chapter 11 case to one under chapter 7 or dismiss the case, whichever is in the best interests of creditors and the estate, for cause unless the Court determines that the appointment of a trustee or examiner is in the best interests of creditors and the estate. Section 1112(b)(4) sets forth a non-exhaustive list of what constitutes "cause" to convert or dismiss a case under 1112(b)(1). *In re Consol. Pioneer Mortg. Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001). "For purposes of this subsection, the term "cause" includes – (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross

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mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(A)(B). "The movant bears the burden of establishing by preponderance of the evidence that cause exists." *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014) (citation omitted).

If the bankruptcy court finds that cause exists to grant relief under § 1112(b)(1), it must then: "decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate; and (2) identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interest of creditors and the estate." *In re Sullivan*, 522 B.R. at 612 (citing 1112(b)(1), (b)(2), and *In re Owens*, 552 F.3d 958, 961 (9th Cir. 2009)). In choosing between dismissal or conversion, a bankruptcy court must consider the interests of all creditors. *Id.* (citing *In re Owens*, 552 F.3d at 961).

C. Cause Under Section 1112(b)

1. Diminution of Estate/Reasonable Likelihood of Rehabilitation

Under Section 1112(b)(4)(A), "cause" exists to convert or dismiss the case where the movant can show that there is both a (1) substantial or continuing loss to or diminution of the estate and (2) the absence of a reasonable likelihood of rehabilitation. 11 U.S.C. § 1112(b)(4)(A). In determining whether a substantial or continuing loss exists, courts consider more than the financial records filed with the court and endeavor to understand a debtor's true financial position. See *In re USA Commercial Mortgage Co.*, 452 F. App'x 715, 724 (9th Cir. 2011). "A debtor lacks a reasonable likelihood of rehabilitation where, for example, it lacks income . . . lacks operating funds . . . or lacks employees, capital, or continuing revenue-generating activity." *In re Bay Area Material Handling, Inc.*, 76 F.3d 384, 384 (9th Cir. 1996). Reasonable likelihood of rehabilitation "is not the technical one of whether the debtor can confirm a plan, but, rather whether the debtor's business prospects justify continuance of the reorganization effort." *In re Khan*, 2012 WL 2043074, at *6 (B.A.P. 9th Cir. 2012).

Here, Movants argue in the motion and in the reply that there is a loss

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or diminution of the estate because Debtors fail to make payments on the Palms Drive Property, dues on the Big Canyon Country Club membership, and accrue significant attorneys' fees in litigating with McClintock, Acclaim, and until recently, Daily Aljian. Each month, there is an accrual of not only fees for the estate, but judgment interest and reimbursable attorneys' fees for Movants, which all constitute a "loss" to the estate. Debtors argue that Movants have failed to point to facts in the record to establish the Debtors' true financial position. Debtors also argue that there has been an increase in cash to the estate from the settlement with Daily Aljian. It is true that Movants bear the burden in establish a loss or diminution of the estate, but as cited by Debtors in *USA Commercial*, courts look to more than just financial records of the debtors and consider the present condition of the estate. It has been ten months since the bankruptcy petition was filed, and in that significant amount of time, Debtors have only settled with the Daily Aljian and unfortunately reduced the purchase price to the Palms Drive Property, which seems to be the most profitable asset in the estate. Given the ongoing litigation with Movants and alleged membership fees to the country clubs, the court expected Debtors to have accomplished more at this point and is losing confidence as more time passes. The second element of Section 1112(b)(4) (A) requires Movants to show that there is no reasonable likelihood of rehabilitation. The opposition contends there will be approximately \$1,887,531.90 in nonexempt assets to pay the McClintock secured claim, the IRS's \$10,288.00 priority tax claim, \$59,192.09 in allowed unsecured claims, and estimated \$330,000 administrative fees (totaling \$897,668.55). Debtors base this amount on the \$150,000 settlement amount from Daily Aljian, proceeds from the sale of Palms Drive Property and/or Broken Bow Property. This would reportedly leave approximately \$897,668.55 in nonexempt property to make monthly payments on the Oak Tree mortgage. Debtors' calculation does not include payment to Acclaim and is not broken down for the court in detail to show how it gets to this equity cushion amount.

Movants spend a considerable portion of their reply making their own calculations of funds for the estate. If the Palms Drive Property is sold at asking price, which is now \$999,000, the net proceeds are unlikely to be no more than \$395,000 when considering closing costs of roughly \$80,000, mortgage and homeowner association fees of approximately \$33,777, late

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fees and property taxes in the estimated amount of \$40,000, and the loan amount of approximately \$500,000. And this is before the McClintock claim is paid, which is at least \$590,382 as of July 5, 2024, and does not include the accruing attorneys' fees and other costs in pursuing the appeal. Thus, there is clearly not enough to pay the McClintock claim, and this also assumes that the Acclaim claim will not even be included. While there is an additional \$150,000 in funds from the Aljian settlement, Movants contend that this will likely be paid towards attorneys' fees. Looking to the Broken Bow Property (although this is allegedly being leased to a tenant?) and country club memberships, if one assumes the value is \$1.25 million, the net proceeds after 8% costs of sale and payment to lienholder in the amount of \$424,411 would be approximately \$725,000. Additionally, if one accounts for capital gains liability of \$200,000, the net proceeds would then be \$525,000. Adding this to the estimated valuation of the country club memberships of \$186,250 (\$275,000 minus 25% transfer fee and \$20,000 in costs by the club), there would be \$711,250 which would still not be enough to pay the claims of McClintock and Acclaim.

Movants submit, and the court agrees, that feasibility here is based on whether Debtors can defeat one or both of the Movants' claims, and the recoveries are being diminished every day that attorneys' fees are accruing in litigation. The court also notes that much of this Chapter 11 plan contemplates liquidating properties in order to pay creditors, which is essentially what a Chapter 7 case will do, but with the efficiency that comes with a Chapter 7 trustee in place. Based on the arguments presented, there may not be enough here for the Debtors to succeed in a Chapter 11 case based on Movant's above-stated calculations.

2. Gross Mismanagement of the Estate

Under Section 1112(b)(4)(B), "cause" also exists to convert or dismiss if the movant can demonstrate that there has been gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(A)(B). Here, Movants argue that Debtors have mismanaged the bankruptcy estate, as shown through their failure to sell the Palms Drive Property, taking months to close pre-petition bank accounts, partially disclosing bank accounts and financial history, and failing

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to timely comply with the court-ordered productions of documents. It reportedly took more than two months for Debtors to report anything until the OUST had to file motion to dismiss or convert. Further, Movants argue that Debtors' plan is just a concept for a future plan that depends on the outcome of litigation and property sales in the future.

Debtors strongly dispute these contentions. Regarding the Palms Drive Property, Debtors contend that immediately after filing the initial petition, they retained a real estate agent to market the property. The Palms Drive Property was virtually unmarketable during the summer months due to extreme heat in the desert, and the holiday season was similarly low. But Debtors submit that the efforts to sell have been there from the beginning. Next, Debtors assert that payment of the country club memberships are vital to ensure that membership is not terminated and can be preserved as an asset of the estate. Additionally, George utilizes the membership as a marketing tool for his medical business. Concerning the scheduling and reporting issues, Debtors submit that they have made good faith efforts to provide information in their schedules, and even went as far as replacing previous bankruptcy counsel when there were deficiencies in their performance. Debtors also hired Special Counsel Bryner to handle the Aljian settlement and who is representing the estate in the McClintock appeal. Finally, Debtors argue that for many months, they have complied in timely filing their monthly operating reports and filing their Chapter 11 plan.

Based on these arguments, the court is not persuaded that there has been a gross mismanagement of the estate here. While Debtors have undoubtedly had a rocky start to this bankruptcy filing, and did not responsibly manage the estate at first, the court does recognize the efforts that have been made to make changes in compliance of the Chapter 11 requirements. The court is not necessarily confident that this bankruptcy is viable under Chapter 11, but Debtors have replaced their previous counsel and has provided explanation as to the need for continued membership fees and why the Palms Drive Property has not been sold yet. The court does not find there to be enough here to show that there was a gross mismanagement of the estate. ...at least not so far.

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D. Conclusion

There does not appear to be a gross mismanagement of the estate under Section 1112(b)(4)(B), and while there is likely at least some diminution of the estate likelihood of rehabilitation is unclear. But this much is clear: Debtors' time is up and a confirmable plan must be put forth promptly, or else a Chapter 7 trustee will be appointed to do the obvious liquidation. Deny motion at this time but subject to renewal.

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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#20.00 Confirmation Of Chapter 11 Subchapter V Plan Of Reorganization

**(set from hrg held on 7-24-24 re: mtn for order of extension of time to file
objection to discharge and nondischargeability complaint)
(cont'd from 8-28-24)
(cont'd from 10-23-24)
(cont'd from 1-08-25)
(set from s/c hrg held on 1-29-25)
(cont'd from 4-09-25 per court's own mtn)**

Docket 133

Tentative Ruling:

Tentative for April 8, 2025

The court is not convinced of either the feasibility of the plan or why it is superior to a liquidation under Chapter 7, but at higher expense. The court is informed that an appeal argued on April 1 may inform on some of the disputed issues. What is the expected timetable? The court will hear argument. No tentative. *Appearance required.*

Tentative for January 29, 2025

See #8. *Appearance required.*

Tentative for January 8, 2025

Continue to January 29, 2025 at 10:00 a.m. to coincide with conversion motion, as suggested by the Trustee. *Appearance required.*

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Tentative for October 23, 2024

Is success of the plan entirely dependent on the adversary proceeding? Is it appropriate to set a confirmation date now? Should a separate disclosure statement be required? *Appearance required.*

Tentative for August 28, 2024

Do we need a disclosure statement? The plan is due by end of September, but is it prudent to set balloting and opposition deadlines now? What is the status of the mediation efforts? *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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#21.00 Objection To Claim # 8 By Colin McClintock

Docket 237

Tentative Ruling:

Tentative for April 8, 2025

This is Debtors Henry George Brennan and Lisa Anne Brennan's ("Debtors") Objection to Claim #8 filed by Creditor/Claimant Colin McClintock ("McClintock" or "Claimant").

A. Background

On February 28, 2019, McClintock, as special administrator of the estate of decedent Robert Alexander McClintock, Jr. (Sandy McClintock) sued Debtors for financial elder abuse and breach of fiduciary duty and negligence ("Estate Action"). On January 16, 2020, Claimant individually filed complaint against Debtors for elder abuse, breach of fiduciary duty and unjust enrichment ("Individual Action"). The Superior court consolidated the two cases designating the Estate Action as the lead case. On March 9, 2023, the Court entered a judgment in the consolidated cases and awarded the estate \$165,000, plus \$52,655.34 in prejudgment interest against Lisa Anne Brennan. The judgment also awarded Henry George Brennan \$1,354.44 against Colin. The estate paid \$48,960.35 in costs, plus interest to Daily Aljian LLP, attorneys for Debtors at the time. This amount included \$47,009.66 for the costs of the Estate Action, \$1,354.44 for the judgment in favor of Henry George Brennan and \$596.25 in interest on the total.

On July 28, 2023, the initial judgment was amended to include an award of \$270,756.32 in attorney's fees, and costs for McClintock individually. Debtors assert that they filed a timely appeal of the initial judgment. Debtors own the real properties located at 56378 Palms Drive, La Quinta, CA 92253 ("Palms Property") and 22081 Broken Bow Dr., Lake Forest, 92630, Orange

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County, CA ("Broken Bow Property"). On August 3, 2023, the state court issued an Abstract of Judgment in the consolidated action listing both Claimant and the estate of Sandy McClintock as judgment creditors and Lisa as Judgment Debtor. Claimant and the Estate of Sandy McClintock recorded the Abstract of Judgment in Riverside County on September 7, 2023 which lists \$523,580.98 as the total amount of judgment.

On March 24, 2024, Debtors filed a voluntary petition for Chapter 11 bankruptcy. On July 5, 2024, Claimant timely filed a Proof of Claim #8 ("POC") asserting a claim for the entire amount of the Amended Judgment, plus post judgment interest to the petition date. Debtors filed the instant Claim Objection on March 4, and on March 19, Claimant filed an amended Proof of Claim #8 ("Amended Claim").

B. Legal Standard

A proper proof of claim is presumed valid and is prima facie evidence of the validity of both the claim and its amount. *Lundell v. Anchor Constr, Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9th Cir. 2000); Fed. R. Bankr. P. 3001(f). "Upon objection, the proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). In order to rebut the presumption of validity, 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." *In re Holm*, 931 F.2d at 623; L.B.R. 3007(c)(1). If the objecting party produces sufficient evidence to rebut the presumption of validity, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *Lundell*, 223 F.3d at 1039. The ultimate burden of persuasion remains at all times upon the claimant. See *In re Holm*, 931 F.2d at 623.

C. Analysis

The Amended Claim is based on the entire amount of the Amended Judgement, plus post judgment interest from the petition date in the total amount of \$523,580.98. Debtors argue in their objection to claim that

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Claimant is not entitled to the full amount of his claim for because (1) a substantial portion of the claim (\$217,655.34 plus \$29,782.69 in post-judgment interest) is based on the judgment award of the Estate of Sandy McClintock and Claimant has not established the validity of this claim; (2) the interest is erroneous interest calculation and \$3,763.91 of it should be disallowed; and (3) Claimant's claim is under secured and should be disallowed under Section 506(b).

1. Whether Claimant is Entitled to the Full Amount of the Amended Claim

Debtors contend that the Amended Judgment awarded Claimant \$316,925.64 individually and the Estate of Sandy McClintock \$217,655.34. The Amended Claim includes both awarded for a total of \$534,580.98. He has demonstrated the basis for his claim in the amount of \$316,925.64 but Debtors assert that Claimant has not established the validity of the claim for \$217,655.34 based on the award to the Estate of Sandy McClintock.

Claimant argues that Debtors' counsel was also counsel for Debtors in the appeal of the court decisions in the Estate Action, and they both should be well aware that Claimant is the administrator of the Estate of Sandy McClintock, and is the only person with standing to assert estate claims against Debtors. He was authorized to act on behalf of the Estate and did so by filing the POC and later Amended Claim that included both his individual judgment amount and the Estate's judgment amount. Debtors respond to this argument by asserting that the original POC did not reference the Estate of the Sandy McClintock and did not indicate that Claimant was acting as representative of the Estate. Further, the Amended Claim was filed after this objection to claim and was not filed after obtaining consent from Debtor's or leave from the court. That may be true, but even if the court only considers the Original POC, the Amended Judgment is attached which delineates the judgment for Claimant and the judgment of the Estate of Sandy McClintock. The Amended Judgment simply clarifies this, and the court is persuaded that Debtors were aware of the nature and basis of the claim, as they reportedly scheduled a contingent, unliquidated, and disputed claim in favor of "Colin McClintock" in the amount of \$550,000 twice before the POC was filed. Claimant here holds the presumption of validity as to the claim here. A

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separate filing of a claim on behalf of the estate might have been preferred to avoid any confusion, but the history between Debtors and Claimant show that Debtors understand that party of the claim is based on Claimant's representation of the Estate of Sandy McClintock. Debtors have not provided the court with any other arguments or evidence to rebut this presumption of validity other than one of semantics and procedure. Nothing is shown that substantively Claimant is not entitled to assert a claim on behalf of the Estate.

2. Interest Calculation

Claimant seeks a post-judgment interest at a rate of 10% in the amount of \$55,801.47, but Debtors argue that this amount is based on the total judgment award at a daily rate of \$146.46. Even if Claimant was entitled to the full judgment amount, Debtors contend that the post-judgment interest would be \$50,235.78, because there were 343 days between July 8, 2023 when the Amended Judgment was entered and the July 5, 2024 date when Claimant filed the claim. Thus, \$5,565.69 should be disallowed. Claimant submits that he reasonably calculated interest on the full amount from the date of the initial judgment of \$46,169.32, since those fees were incurred to obtain the judgment for himself and the Estate. Even if the court adopts the Debtors' narrower position and allows interest on the attorneys' fees and costs only from July 28, 2023, Claimant contends that he is still entitled to interest in the amount of \$22,696.66 $[(\$46,169.32 \times 10\% \div 365 \times 381 \text{ days} = \$4,819.32) + (270,756.32 \times 10\% \div 365 \times 241 \text{ days} = \$17,877.34)]$.

Although the parties do not provide authority as to the correct calculation of the post-judgment interest, the court finds that the post-judgment interest should be based on the total judgment of both Claimant individually and the Estate of Sandy McClintock. If calculated from the Amended Judgment date, which is the appropriate start date and reflects additional judgment award for Claimant individually, the interest at a rate of 10% would be $[\$534,580 \times 10\% \div 365 \times 343 \text{ days} = \$50,235.87]$. This should be the total post-judgment interest rate.

3. Request for Attorney's Fees/Post Judgment Interest/Costs and Charges Under Section 506(b)

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Section 506(b) is only applicable to the extent supported by the value of the property securing a creditor's claim greater than the secured claim. 11 U.S. Code § 506 (b). Here, Debtors argue that the Claimant is undersecured and there is no surplus in equity in the Debtors' real property which would entitle Claimant to recovery attorney's fees, interest, cost, and other charges. Further, Debtors also contend that Claimant's Amended Claim or POC does not state what particular personal property Claimant contends the Judgment Lien attaches. Claimant argues that he and the Estate have met all statutory requirements to enforce their secured claim by recording an Abstract of Judgment in Riverside and Orange Counties, attaching liens to two debtor-owned properties. Debtors have not avoided the liens and argue that the property equity far exceeds the secured claim. A key issue is disputed here: whether Claimant is undersecured or not. Debtors indicate that an adversary proceeding is filed to avoid Claimant's lien on the Broken Bow Property. Perhaps this issue should be taken up in the adversary proceeding if the parties cannot agree on whether there is equity in the properties to pay Claimant's claim.

To conclude, the court finds that Debtors have not rebutted the presumption of validity and that the motion is denied. *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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**#21.10 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)
(cont'd from 4-03-25)**

Docket 119

Tentative Ruling:

Tentative for April 8, 2025
See #19. *Appearance required.*

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

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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 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

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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 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

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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 ("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)

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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 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

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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 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 Campell*, 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

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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 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

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Trustee(s):

Arturo Cisneros (TR)

Pro Se

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

#21.20 Defendant's Motion For Judgment On The Pleadings Regarding Plaintiff/Creditor
Acclaim Recovery Management, LLC's Proof Of Claim #9
(cont'd from 4-03-25)

Docket 14

Tentative Ruling:

Tentative for April 8, 2025

See #19. This might have to be resolved in an adversary proceeding but more likely in a Chapter 7. *Appearance required.*

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

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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

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

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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 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

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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 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 *

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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 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

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Lisa Ann Brennan

M. Candice Bryner

Represented By
M. Candice Bryner

Joint Debtor(s):

Lisa Anne Brennan

Represented By
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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8:24-12738 Newport Ventures, LLC

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#22.00 Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Pay Prepetition Wages, Salaries, and Other Compensation and (B) Continue Employee Benefits, and (II) Granting Related Relief
(cont'd from order entered 11-08-24 - see doc # 70)
(cont'd from order entered 12-31-24 - see doc #178)
(cont'd from 3-26-25 per court's own mtn)
(cont'd from 4-09-25 per court's own mtn)

Docket 22

Tentative Ruling:

Tentative for April 8, 2025
Grant on final basis- no opposition. *Appearance required.*

Tentative for December 19, 2024
Continue on same terms for about 90 days? *Appearance is optional.*

Tentative for November 7, 2024
Opposition due at hearing. *Appearance required.*

Party Information

Debtor(s):

Newport Ventures, LLC

Represented By
Steven M Kries
Evelina Gentry

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#23.00 Final Hearing Re: Debtor's Emergency Motion For Order For Entry Of Order (I) Authorizing The Debtor To Maintain, Renew, Or Supplement Insurance Policy And (II) Granting Related Relief
(set from order entered on 11-07-24 see doc #62)
(set from order entered on 12-31-24 see doc #179)
(cont'd from -26-25 per court's own mtn)
(cont'd from 4-09-25 per court's own mtn)

Docket 23

Tentative Ruling:

Tentative for April 8, 2025
Grant as unopposed. *Appearance required.*

Tentative for December 19, 2024
Continue on same terms for about 90 days? *Appearance is optional.*

Tentative for November 7, 2024
Opposition due at hearing. *Appearance required.*

Party Information

Debtor(s):

Newport Ventures, LLC

Represented By
Steven M Kries
Evelina Gentry