

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

Thursday, July 11, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

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

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ZoomGov meeting number: 161 906 5434

Password: 611201

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
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Theodor Albert, Presiding
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Thursday, July 11, 2024

Hearing Room 5A

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

#1.00 Application And Order For Appearance And Examination Of Cheri Fu
(cont'd from 6-27-24 per order on stip. to cont. judgment debtor exam of
Cheri Fu entered 5-17-24)
[Appearing In Person]

Docket 397

*** VACATED *** REASON: OFF CALENDAR - NOTICE OF
COMPLETION OF EXAMINATION OF JUDGMENT DEBTOR CHERI
FU AND TAKING APPEARANCE AND CANCELLATION OF HER
CONTINUED EXAMINATION OF CHERI FU FILED 6-14-24 - SEE DOC
#441

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

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CONT... Cheri Fu

Chapter 7

Plaintiff(s):

BANK OF AMERICA, N.A.

Represented By
William S Brody

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Lisa Nelson
James Andrew Hinds Jr

**United States Bankruptcy Court
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Thursday, July 11, 2024

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10:00 AM

8:22-11776 Elaheh Yazdi

Chapter 7

Adv#: 8:23-01006 Verdugo Plaza Pharmacy, Inc. et al v. Yazdi

#2.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debts (1) 11 USC Section 523(a)(4), (2) 11 USC Section 523(a)(6) (cont'd from 2-01-24 per order approving stip. to cont. s/c entered 1-19-24) (cont'd from 4-25-24)

Docket 1

Tentative Ruling:

Tentative for July 11, 2024
Deadline for completing discovery: October 1, 2024
Last date for filing pre-trial motions: October 18, 2024
Pre-trial conference on: November 7, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Tentative for April 25, 2024
See #17. Appearance required.

Tentative for November 30, 2023
See #8.

Tentative for 5/4/23:
See #6.

Party Information

Debtor(s):

Elaheh Yazdi

Represented By
Ahren A Tiller

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CONT... Elaheh Yazdi

Chapter 7

Defendant(s):

Elaheh Yazdi

Pro Se

Plaintiff(s):

Verdugo Plaza Pharmacy, Inc.

Represented By
Stella A Havkin

Lawrence T Wong

Represented By
Stella A Havkin

Trustee(s):

Richard A Marshack (TR)

Represented By
Melissa Davis Lowe

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10:00 AM

8:23-10433 Patricia C. Pham

Chapter 7

Adv#: 8:23-01043 Do et al v. Pham

**#3.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt [11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6)]
(another summons issued on 7-25-23)
(cont'd from 4-11-24 per order granting stip. requesting continuance of s/c entered 4-01-24)**

Docket 11

***** VACATED *** REASON: CONTINUED TO 10-10-24 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION REQUESTING
CONTINUANCE OF STATUS CONFERENCE ENTERED 7-02-24 - SEE
DOC #39**

Tentative Ruling:

Tentative for November 14, 2023

See #2. Perhaps a stay of proceedings in this adversary proceeding would be appropriate pending determination in state court? Schedule holding status conference approximately 6 months hence, say April 11 @10 a.m.?

Appearance is optional.

Tentative for November 7, 2023

Continue to coincide with other hearing on November 14, 2023 at 10:00 a.m.
Appearance is optional.

Tentative for October 12, 2023

Reportedly plaintiff will ask for a stay pending resolution of related state court matter. Continue about 60 days to allow such a motion for stay to be filed and heard. Appearance required.

Party Information

Debtor(s):

Patricia C. Pham

Represented By
Thomas J Polis

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CONT... Patricia C. Pham

Chapter 7

Defendant(s):

Patricia C. Pham

Represented By
Thomas J Polis
Ryan Jackman

Plaintiff(s):

Vincent Do

Represented By
Misty A Perry Isaacson

Linh Tuong Do

Represented By
Misty A Perry Isaacson

Trustee(s):

Karen S Naylor (TR)

Pro Se

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Hearing Room 5B

10:00 AM

8:24-10459 Ted Titmas

Chapter 7

Adv#: 8:24-01033 Titmas v. Chenghan Chan Tia Realty

**#4.00 STATUS CONFERENCE RE: Complaint To Request For Injunction
(cont'd from 5-23-24)**

Docket 1

Tentative Ruling:

Tentative for July 11, 2024
Status? See #5. *Appearance required.*

Tentative for May 23, 2024
Atatus of answer/default? Appearance required.

Party Information

Debtor(s):

Ted Titmas	Pro Se
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Defendant(s):

Chenghan Chan Tia Realty	Pro Se
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Plaintiff(s):

Ted Titmas	Pro Se
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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8:24-10459 Ted Titmas

Chapter 7

Adv#: 8:24-01033 Titmas v. Chenghan Chan Tia Realty

#5.00 Order to Show Cause Why Case Should Not Be Dismissed for Failure to Prosecute

Docket 4

Tentative Ruling:

Tentative for July 11, 2024
Dismiss. *Appearance required.*

Party Information

Debtor(s):

Ted Titmas	Pro Se
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Defendant(s):

Chenghan Chan Tia Realty	Pro Se
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Plaintiff(s):

Ted Titmas	Pro Se
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Trustee(s):

Karen S Naylor (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

#6.00 STATUS CONFERENCE RE: Complaint For Legal Malpractice

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE TO AUGUST 1,
2024 AT 10:00 AM PER ORDER APPROVING STIPULATION TO
CONTINUED ENTERED 5-30-24 (Docket No. 7).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henry George Brennan

Represented By
Michael R Totaro

Defendant(s):

Daily Aljian, LLP

Pro Se

Reed Aljian

Pro Se

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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8:24-11012 Sunmeadows, LLC

Chapter 11

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

#7.00 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]

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6) ENTERED 7-9-24 - SEE DOC #28**

Tentative Ruling:

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker

Defendant(s):

RR1050, LLC

Pro Se

Plaintiff(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker

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8:23-11033 Jason Paul Reynolds

Chapter 11

Adv#: 8:23-01087 Yoo et al v. Reynolds

- #8.00** STATUS CONFERENCE RE: Complaint (1) Objecting To The Discharge Of Debt On The Grounds That It Was Procured Through Fraud And Breach Of Fiduciary Duty
(cont'd from 11-02-23 per court's own mtn)
(set from s/c hrg held on 11-09-23)
(pre-trial conf. changed to s/c per hearing result from the mtn for summary judgment hrg held on 6-27-24 - matter #45)

Docket 1

Tentative Ruling:

Tentative for July 11, 2024

Status? There is a lingering question regarding amount of damages appropriate in the judgment. *Appearance required.*

Tentative for November 9, 2023

Status conference continued to May 9, 2024 to follow the trial set in state court. The court will hear argument as to whether a stay of this proceeding is appropriate before conclusion of the state court matter. Appearance required.

Party Information

Debtor(s):

Jason Paul Reynolds

Represented By
Anerio V Altman

Defendant(s):

Jason Paul Reynolds

Pro Se

Plaintiff(s):

Kasie Yoo

Represented By
Chad Biggins

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CONT... Jason Paul Reynolds
Ryan Kim

Represented By
Chad Biggins

Chapter 11

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8:21-12506 Sarina Browndorf

Chapter 11

Adv#: 8:22-01020 Browndorf v. Browndorf et al

#9.00 STATUS CONFERENCE RE: Complaint For: 1) Turnover And/Or Control Of Property Of The Estate; 2) Accounting; 3) Appointment Of Chief Responsible Officer; 4) Preliminary Injunction; And 5) Turnover Of Possession Of Real Property Of The Estate
(cont'd from 5-02-24)
(cont'd from 5-30-24)

[Defendant Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, Solely In Its Capacity As Owner Trust Of The RBSHD 2013-1 Trust has been dismissed from adversary - see order entered on 4-05-23 - document #161]

**[Notice of Dismissal of Defendants Plutos Sama Holdings, Inc., Distressed Capital Management, LLC, DCM-P1, LLC, LNREPO 2021 LLC And DCM-P3, LLC Filed 5-18-23 - see document # 167]
(cont'd from s/c hrg held on 11-30-23)
(set from p/t conf on 4-04-24 per order approving stip. to vacate rule 16 deadlines & to set a cont. s/c entered 3-26-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-29-24 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO CONTINUE
HRG ON CH 7 TR'S MTN TO CORRECT DEFAULT JUDGMENT
AGAINST MATTHEW BROWNDORF & CONT. STATUS CONFERENCE
ENTERED 6-28-24 SEE DOC #250**

Tentative Ruling:

Tentative for May 30, 2024
Continue to July 11, 2024 at 10:00 a.m. *Appearance required.*

Tentative for May 2, 2024

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CONT... Sarina Browndorf

Chapter 11

Continue to coincide with related matters May 30, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for November 30, 2023
See #6. A status conference report is needed, but it might be more logical to
continue the status conference so that only the complaint is considered (not
the cross complaint). Appearance is optional.

Tentative for October 12, 2023
Continue to coincide with Motion to Dismiss cross complaint November 30,
2023 at 11:00 a.m. Appearance is suggested.

Tentative for 8/10/23:
See #11.

Tentative for 6/8/23:
See #17.

Tentative for 5/25/23:
Status conference continued to: June 8, 2023 to coincide with hearing on
motion for default judgment.

Appearance: optional

Tentative for 3/30/23:
Continued to May 25 @ 10:00AM per request.

Appearance: optional

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CONT... Sarina Browndorf

Chapter 11

Tentative for 1/12/23:
See #5. Continue for about 60 days.

Tentative for 12/8/22:
It appears this proceeding has been in default posture for several months now. Where is the prove up? Continue for about 90 days. Additional postponements should not be expected.

Appearance: required

Tentative for 8/25/22:
Status conference continued to: December 8, 2022 per request.

Appearance: optional

Tentative for 5/5/22:
Status on who is in default and who actively contests this proceeding would be helpful.

Status conference continued to: August 3 @ 10:00AM.

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner

Defendant(s):

Matthew Browndorf

Pro Se

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CONT... Sarina Browndorf

Chapter 11

Plutos Sama Holdings, Inc. Pro Se

Christiana Trust Pro Se

Distressed Capital Management, Pro Se

DCM-P1, LLC Pro Se

LNREPO 2021 LLC Pro Se

DCM-P3, LLC Pro Se

Melvin Marc Browndorf Pro Se

Elsbeth Bonnie Browndorf Pro Se

Plaintiff(s):

Sarina Browndorf

Represented By
Susan K Seflin
Jessica L Bagdanov

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8:21-12506 Sarina Browndorf

Chapter 7

Adv#: 8:22-01020 Browndorf v. Browndorf et al

#10.00 Chapter 7 Trustee's Motion To Correct Default Judgment Against Matthew Browndorf Pursuant to FRCP 60(a) or Alternatively, Pursuant to FRCP 60(b) (cont'd from 5-02-24 per order approving stip to cont hrg on ch 7 tr's mtn to correct default judgment against Matthew Browndorf entered 4-23-24) (cont'd from 5-30-24 per order approving emergency motion to cont hrg on ch 7 tr's mtn to correct default judgment against Matthew Browndorf entered 5-29-24)

Docket 224

***** VACATED *** REASON: CONTINUED TO 8-29-24 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO CONTINUE
MOTION TO CORRECT DEFAULT & CONTINUE STATUS
CONFERENCE ENTERED 6-28-24 - SEE DOC #250**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

Defendant(s):

Matthew Browndorf

Represented By
William J Wall

Plutos Sama Holdings, Inc.

Pro Se

Christiana Trust

Represented By
Leib M Lerner

Distressed Capital Management,

Pro Se

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Chapter 7

DCM-P1, LLC

Pro Se

LNREPO 2021 LLC

Pro Se

DCM-P3, LLC

Pro Se

Melvin Marc Browndorf

Pro Se

Elsbeth Bonnie Browndorf

Pro Se

Plaintiff(s):

Sarina Browndorf

Represented By
Susan K Seflin
Jessica L Bagdanov
Jessica Wellington

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin

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8:21-12506 Sarina Browndorf

Chapter 7

Adv#: 8:23-01117 Casey v. 5pm Investments, Inc.

- #11.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint for (1) Declaratory Relief, and (2) Avoidance and Recovery of Fraudulent Transfers and (3) Marshalling
(cont'd from 5-02-24)
(cont'd from 5-30-24)

Docket 1

***** VACATED *** REASON: CONTNUED TO 8-29-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 6-29-24 - SEE DOC #18**

Tentative Ruling:

Tentative for May 30, 2024

It appears that a Rule 9019 motion, which may be pertinent to resolution, was originally scheduled for today but continued until 7/11. Status? Appearance required.

Tentative for May 2, 2024

Continue to coincide with 9019 motion on May 30, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for April 11, 2024

Continued to May 2, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for January 11, 2024

Continue to April 11, 2024 at 10:00 a.m. per request in the Status Conference report, to allow documentation of and authorization for settlement.
Appearance optional.

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CONT... Sarina Browndorf

Chapter 7

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

Defendant(s):

5pm Investments, Inc.

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Jessica L Bagdanov

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov

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8:21-12506 Sarina Browndorf

Chapter 7

- #12.00 Motion To Approve Compromise Under Rule 9019
(cont'd from 5-02-24 per order apprvng stip to cont. hrg on ch 7 tr's amended mtn # [332] to approve compromise pursuant to FRBP 9019 entered 4-23-24)
(cont'd from 5-30-24 order approving emergency motion to cont. hrg on ch 7 tr's amended mtn # [332] to approve compromise pursuant to FRBP 9019 entered 5-29-24)

Docket 315

*** VACATED *** REASON: CONTINUED TO 8-29-24 AT 11:00 A.M.
PER ORDER APPROVING SECOND STIPULATION TO CONTINUE
HEARING ON CH 7 TRUSTEE'S AMENDED MOTION [332] TO
APPROVE COMPROMISE PURSUANT TO FRBP 9019 ENTERED 6-28-
24 - SEE DOC #356

Tentative Ruling:

Tentative for March 26, 2024

This is Chapter 7 Trustee Thomas H. Casey's ("Trustee") motion to approve compromise of controversy pursuant to Rule 9019 of the FRBP. Trustee seeks approval of a Stipulation Resolving the Adversary Proceeding *Casey v. 5pm Investments, Inc.*, adv. No. 23-01117TA, providing for Entry of Judgment and Related Relief ("Settlement Stipulation"), entered into between the Trustee and 5pm Investments, Inc. ("5pm"), and Steven Brent Herrin ("Herrin", and collectively with 5pm, the "Herrin Parties"). If this compromise is approved, it might assist Trustee in administering for the estate real property known at 27 Kaxs Way, Chazy, New York 12921 ("Kaxs Way Property"). There is a second property referred to as "Lakeside Drive" which allegedly was also collateral for the loan described below, but how/whether it fits into the picture of settlement described in this motion is left unclear. Trustee argues that the Herrin Parties have effectively consented to judgment in the Trustee's favor in the adversary proceeding #22-01020 TA, and in exchange, Trustee has agreed to abandon Lakeshore. Trustee does not believe Lakeshore has significant value for the estate. But that conclusion is tenuous

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CONT... Sarina Browndorf
on this record.

Chapter 7

As the opponents argue, the facts are complicated. Moreover, some of the conclusions may rest upon uncertain presumptions. The court applauds this motion as a good attempt to settle a series of contentious issues, but the predicate factual structure which might support that settlement may be rickety.

Debtor Sarina Browndorf's ("Debtor") estranged spouse Matthew Browndorf allegedly entered into a Note and Mortgage arrangement whereby 5pm purported to loan Mr. Browndorf (or to the Matthew Browndorf Living Trust) the sum of \$345,000, secured by the Kaxs Way and Lakeshore properties. Trustee filed a complaint in adv. # 23-01117 TA against 5pm seeing declaratory relief as to the validity, extent, and priority of the Mortgage and the 5pm Lien, avoidance, and recovery of the Mortgage and 5pm Lien as a fraudulent transfer, and for marshalling. 5pm filed an answer to the complaint. Instead of lengthy discovery, the parties have wisely focused their efforts to resolution and have agreed to resolve the adversary proceeding through this Settlement Stipulation. If that were as far as it went this motion could be easily resolved. But now even 5p.m. is raising some doubts based on some ill-defined and perhaps unresolved issues as alleged in another proceeding filed January 31, 2024 *Browndorf v. Casey*, Adv.24-01014 TA by Elsbeth Browndorf (Matthew's mother).

A. Legal Standard

It is well-established by the Ninth Circuit that bankruptcy courts have wide discretion in approving compromises. *Martin v. Kane (in re A&C Properties)*, 784 F. 2d 1377 (9th Cir. 1986), cert denied, 479 U.S. 854 (1986). In approving the compromise, the court must find that the compromise is fair and equitable, and that the negotiations were conducted in good faith. In doing so, the court must consider: (1) probability of success in litigation; (2) difficulties in collection; (3) complexity and expense of litigation; (4) best interest of the creditors. *Id.* at 1380-81.

Trustee argues that Settlement Stipulation should be approved when

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CONT... Sarina Browndorf

Chapter 7

reviewing all *A&C Properties* factors. First, Trustee is confident in his claims that the 5pm Lien and Mortgage are void as against the Kaxs Way Property, and the proposed settlement resolves the litigation in Trustee's favor. As to difficulties in collection, Trustee does not believe this to be an applicable factor here. Third, given the judgment being provided in Trustee's favor, the comparative complexity and expense of ongoing litigation is not in the estate's best interest. Further, Trustee does not believe that he would realize a meaningful recovery in administration of the other real property Lakeshore, given that the Debtor appears to hold a life estate through community property rights. Thus, abandoning the Lakeshore property through the Settlement Stipulation would be preferred here. Finally, this settlement is in the best interest of the creditors because it provides for prompt administration and sale of the Kaxs Way Property. All of that is fine and good: the problem arises because it presumes estate ownership of Kaxs Way. But the court is given an unconvincing factual basis for that conclusion.

Matthew Browndorf's parents Elsbeth and Melvin oppose the motion on the grounds that Kaxs Way Property was and is currently the property of Matthew's maternal family and is not his community property which might lead to it being considered property of the debtor's estate. The deed for the properties, which is central to establishing "property of the estate " conclusion was to "Matthew Browndorf Living Trust" [See Exhibit A to Browndorf Opposition] which is allegedly held for the benefit of Matthew's three children, further demonstrating (arguably) the family's intent to keep it as separate property. [But was/is that Trust revocable as indicated in the Trust instrument?] It was reportedly a gift from Matthew's parents, and there was allegedly and unsurprisingly no intent to give the property to debtor, Sarina Browndorf. The Lakeshore Property is still reportedly in the name of Elsbeth Browndorf and is only vested as her property and cannot be bargained for as consideration in the settlement agreement. The basis for that conclusion is unstated. But we are shown a deed from Barbara Boynton to Matthew (with designation of the Trust stricken) dated July 26, 2017 apparently regarding Lakeshore only. [Exhibit B to Opposition]. Elsbeth argues that the motion should be denied because Trustee is attempting to settle a dispute between non-party creditors on property that is not property of the estate.

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CONT...

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However, as Trustee argues, the default judgment in adv. Proceeding 22-01020 TA to which the Matthew, Elsbeth and Melvin were parties, could be read to mean that the two properties are *community property of Matthew* as there was no objection from the Browndorfs despite being represented by counsel. In fact, it appears the parties *chose* to stay silent on the point upon advice of counsel. This creates a formidable (but maybe not impossible) obstacle to their coming in now arguing about title or what could be construed as malpractice by their counsel. If that is in fact what happened (and it is somewhat unclear) then the argument is with counsel's malpractice insurance company and the objecting parties have little or no basis to argue for a "do over" on the complaint, default and resulting title issues, whether under Rule 60(b) or otherwise. But problems still abound. The actual language of the "Default Judgment Against Matthew Browndorf" entered August 2, 2023 in adversary #22-01020 TA is frustratingly silent about the all-important title issues, and purports only to address possession by Matthew and removal of belongings. It never explicitly provides that title was in his name, although one could infer that conclusion based upon the words of the complaint. It would seem that most likely record title was "Matthew Browndorf as Trustee"; but that raises the related question of whether we can just ignore the Trust altogether? Presumably, Trustee Casey will argue that the estate can simply revoke the Living Trust in favor of Matthew individually. But that conclusion is more easily reached *if Matthew were the debtor*. But we have to deal with the link between that and designation of community property since it is only through Sarina, the debtor, that property of the estate rights might attach. Sarina appears to have been designated as successor trustee in the Amended Trust Instrument, but will that work here? Not much is put on this record on that question except to argue the California Community Property law presumption. Can the presumption operate when title is not cleanly in the name of a spouse?

Trustee also argues Elsbeth and Melvin have no standing here as they are not parties to the adversary proceeding or the Settlement Stipulation, they are also not creditors of the estate, and their rights or liabilities are not affected by the Settlement Stipulation. The default judgment has long been final and the opportunity to object to the substantive aspects of it may have passed. But this argument is based on a *res judicata*/ collateral estoppel

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theory. The problem is that the default judgment is almost silent on the critical question of title, so heavy reliance on that point is problematic. Moreover, standing may also be found if a plausible case is made that some kind of residual interest of the senior Browndorfs or their family can be shown or the conclusion they were in privity with Matthew cannot be supported.

Moreover, as further complication, there appears now to be a concern raised by 5pm regarding its interest in both the Kaxs Way and the Lakeshore Drive properties in that it may be a result of some unarticulated fraud committed by Matthew Browndorf, as alleged in the newly filed adversary proceeding *Elsbeth Browndorf v. Casey*, Adv.#24-01014 TA seeking quiet title and declaratory relief, among other remedies. 5pm does not want an order approving the compromise without a hearing on the issue in the event the compromise includes underlying facts that are false.

While the court is inclined to approve the Settlement Stipulation if it can be shown to rest upon a firm factual/legal foundation as Trustee argues but will hear further argument regarding 5pm's issue with its interest in the Lakeshore Property, and whether that is a basis for unwinding the whole deal. The court will also hear argument as to whether the title issues raised by the objectors have already been determined under principles of *res judicata*, thus are now law of the case and cannot now be gainsaid, at least absent a successful Rule 60(b) motion. As described, that is very difficult on this mess of a record.

No tentative. Appearance required.

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

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Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin

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10:00 AM

8:21-12506 Sarina Browndorf

Chapter 7

Adv#: 8:24-01014 Browndorf v. Casey et al

**#13.00 Emergency Motion To Vacate Order Granting Motion To Dismiss
(OST Signed 6-21-24)**

Docket 21

***** VACATED *** REASON: CONTINUED TO 8-29-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HRG ON
EMERGENCY MTN TO VACATE ORDER GRANTING MTN TO
DISMISS ENTERED 6-28-24 - SEE DOC #31**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Sefflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

Defendant(s):

Thomas H Casey

Represented By
Susan K Sefflin
Jessica L Bagdanov
Jessica Wellington

5PM Investments Inc

Represented By
Anerio V Altman

Elsbeth Browndorf

Pro Se

Matthew Browndorf

Pro Se

Melvin Browndorf

Pro Se

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CONT... Sarina Browndorf

Chapter 7

Plaintiff(s):

Elsbeth Browndorf

Represented By
Stephen D Weisskopf

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin
Jessica Wellington

**United States Bankruptcy Court
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10:00 AM

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

Chapter 7

Adv#: 8:23-01003 Heritage One LLC et al v. Richard A. Marshack et al

#14.00 PRE-TRIAL CONFERENCE RE: Answer to Complaint and Counterclaims for: (1) Violation of the Automatic Stay; (2) Avoidance of Preferential Transfer; (3) Avoidance of Fraudulent Transfer; (4) Avoidance of Unauthorized Post-Petition Transfer; (5) Preservation of Avoided Transfers; and (6) Declaratory Relief/Unjust Enrichment
**Another summons issued on 3-21-23
(set from s/c hrg held on 6-08-23)
(cont'd from 5-30-24 per order continuance of pre-trial conference entered 5-09-24)**

Docket 9

***** VACATED *** REASON: CONTINUED TO 9-12-24 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION RE CONTINUANCE OF PRE-TRIAL CONFERENCE ENTERED 6-21-24**

Tentative Ruling:

Tentative for 6/8/23:
Deadline for completing discovery: March 31, 2024
Last date for filing pre-trial motions: May 1, 2024
Pre-trial conference on: May 9, 2024 @10

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

Richard A. Marshack Represented By
Ryan D O'Dea

Joshua R. Pukini Pro Se

Calpac Mortgage Fund, LLC Pro Se

Calpac Management, Inc Pro Se

All Persons Unknown Claiming Any Pro Se

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

Chapter 7

Plaintiff(s):

Heritage One LLC

Represented By
Neelamba Jhala Molnar
Evan C Borges
Claire-Lise Y. Kutlay

Jeffrey B. Panosian

Represented By
Neelamba Jhala Molnar
Evan C Borges
Claire-Lise Y. Kutlay

Claire B. Panosian

Represented By
Neelamba Jhala Molnar
Evan C Borges
Claire-Lise Y. Kutlay

Trustee(s):

Richard A Marshack (TR)

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

**United States Bankruptcy Court
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Hearing Room

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11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#15.00 Motion For Reconsideration And Objection To The Court's June 13, 2024,
Tentative Ruling

Docket 344

Tentative Ruling:

Tentative for July 11, 2024

This is the Defendant/Debtor Fariborz Wosoughkia's ("Defendant" or "Debtor") Motion for Reconsideration and Objection to the court's June 13, 2024, Tentative Ruling against Plaintiff Bijan Mahdavi ("Plaintiff"). Defendant is requesting the court to "reconsider" its "tentative ruling" and allow the Defendant to file his opposition and be heard. The fact that this motion addresses a "tentative ruling" is, of course, misplaced as only actual orders can be reconsidered. So, for purposes of this motion, the court will regard the order in question as the ORDER GRANTING PLAINTIFF'S SECOND FILING OF PLAINTIFF'S RENEWED MOTION FOR SANCTIONS AND ATTORNEY FEES AND COSTS ..." entered June 24, 2024 as that is the one emanating from the June 13 hearing.

A. Background

Plaintiff filed a Renewed Motion for Sanctions and Attorney's fees relating to Defendant's FRCP 60 Motion to Set Aside the March 18, 2022 Settlement Agreement ("Settlement Agreement") on April 3, 2024. In addition to sanctions being imposed pursuant to 28 U.S.C. §1927, Plaintiff sought \$5,500.00 in attorney fees and costs of \$112.00 incurred for ordering for the March 18, 2022, trial transcript. The motion was granted but was not properly served on the Defendant. Thus, Plaintiff filed a Second Renewed Motion on May 14, 2024. This court granted the Second Renewed Motion as unopposed at its June 13, 2024, hearing since there was no opposition filed as of June 12, 2024.

Defendant claims that the first time he saw the Plaintiff's Second

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Motion was on June 18, 2024, when he downloaded it from the court's docket. After this, the Defendant states that he triple-checked his emails for May 13 – 16, 2024, and did not find any email from Plaintiff's attorney. Defendant claims that he did not have any opportunity to prepare and present an opposition since he did not receive adequate notice. Contrarily, Plaintiff's attorney claims that the Motion was electronically served. However, since the Defendant is *in pro se*, he contends that he should have been served by US Mail. Additionally, and perhaps most importantly, the proof of service page shows that the Motion has the wrong email. Instead of mikewkia@gmail.com, the email used is described as mikekia@gmail.com. It is therefore plausible that the email did not go through.

Consequently, Defendant is requesting the court to reconsider its order and allow the Defendant to file his opposition and be heard. In the alternative, Defendant requests the court to (1) reduce the sanctions to an amount less than \$500 and (2) strike the Plaintiff's request to have Defendant deemed as a "vexatious litigant" in this case. The motion is brought under Rule 60(b), but Rule 59(e) is also relevant as it concerns reconsideration and will be analyzed below.

B. Legal Standard

Rule 60(b) allows the court to relieve a party or its legal representative from a final judgment, order, or proceeding for, most applicably:, a mistake, inadvertence, surprise, excusable neglect, and a void judgment. FRCP 60(b). "[I]n its legal usage, 'mistake' included errors 'of law or fact.' . . . Thus, regardless whether 'mistake' in Rule 60(b)(1) carries its ordinary meaning or legal meaning, it includes a judge's misconception of law." *Kemp v. United States*, 596 U.S. 528-29 (2022).

Rule 59(e) of the Federal Rules of Civil Procedure state that "a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment. FRCP 59(e). "In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment

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rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted).

C. Analysis

(1) Procedural Considerations

"A reconsideration is construed in one of two ways. Courts have generally held that, regardless of the title, any motion for reconsideration filed within the time specified by Rule 59(e) is treated as a motion to alter or amend judgment. A motion for reconsideration filed more than 28 days after entry of judgment is treated as a motion seeking relief from judgment under Rule 60(b)." 12 Moore's Federal Practice – Civil § 59.30[7] (2024).

The Defendant's Motion for Reconsideration was filed on June 20, 2024. The court entered and filed an order granting the Plaintiff's Renewed Motion on June 24, 2024. Thus, the motion was filed prematurely and will be treated as a Rule 59(e) motion to alter or amend judgment. This memo will however include an analysis of both the Rule 59(e) motion to alter or amend judgment and the Rule 60(b) motion to obtain relief from a judgment or order.

Under Rule 9023, a motion to alter a judgment must be made within 14 days of the entry of judgment. Here, this motion for reconsideration was made before the entering and filing of the order and within 13 days after the entry of judgment in the tentative ruling, therefore, it is within the time period required by FRBP 9023.

(2) Reconsideration Under Rule 59(e)

There are four grounds enumerated above to grant a motion for reconsideration under Rule 59(e). The first ground concerns manifest errors of law or fact upon which the judgment rests. The term manifest error is "an error that is plain and indisputable, and that amounts to a complete disregard

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of the controlling law or the credible evidence in the record." *In re Oak Park Calabasas Condominium Ass'n*, 302 B.R. 682, 683 (2003). An example of a manifest error of law would be a judgment that is demonstrably void due to a defect in notice that rises to the level of a violation of constitutional due process. *In re Wahlin*, No.19-20479-TLM, 2011 WL 1063196, at *2 (Bankr. D. Idaho Mar. 21, 2011) (citing *In re Graves*, 279 B.R. 266, 276 (9th Cir., BAP 2002)). "A judgment is not void merely because it is erroneous. It is void only if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or if the court acted in a manner inconsistent with due process of law. *In re Center Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir. 1985). Defendant argues plausibly that he was not given adequate notice and an opportunity to be heard on the matter. The Defendant argues that since he was not properly served, he was not able to prepare an opposition which led the court to grant the Plaintiff's Renewed Motion for Sanctions as unopposed. It appears the Plaintiff misspelled the email of the Defendant, therefore, he never received notice of the motion through the electronic mail notice system. This issue was raised in the original filing and occurred again in the Second filing. The Plaintiff should have cured this mistake by serving the *pro se* Defendant through U.S. mail, as is prescribed in FRBP 7004. This error is plain to the court and is apparently not disputed by the parties. The lack of adequate service, notice, and opportunity to be heard is a violation of due process which must be corrected. As stated in *Graves*, a void judgment due to a defect in notice that amounts to a violation of constitutional due process is an example of a manifest error of law which would give rise to relief under Rule 59(e).

The second ground for reconsideration is not applicable here as Defendant does not argue that there was newly discovered or previously available evidence. The court has also been aware of Defendant's medical illness for some time now and is not new evidence that would call for reconsideration.

The third ground for reconsideration is to prevent manifest injustice. Here, the result of allowing the judgment to rest on a decision where one side was not given full due process would be manifest injustice in any situation. The court will correct this and ensure that both sides were heard on their

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respective arguments which can be done through granting of this motion.

The final ground is not applicable as there has been no change in the controlling law.

(3) Rule 60

Rule 60(b) provides, as stated above, for relief from judgment on the grounds of mistake inadvertence, surprise, or excusable neglect. There is a mistake of law or clearly surprise or inadvertence in this case through the entering of a void judgment due to a defect in notice which led to a violation of constitutional due process. The Defendant through this motion notified the court that this mistake of law allowed the judgment to be based on his apparent failure to file an opposition. Additionally, the Defendant states that he checked his email multiple times on those days in search of the correspondence containing the Plaintiff's motion, but there was none there. Consequently, the judgment is void because the Defendant was deprived of a fair opportunity to appear and be heard in connection with the underlying dispute.

*Grant. Reset hearing in about 45 days on the motion heard June 13.
Appearance required.*

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

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Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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8:23-11167 Five Rivers Land Company LLC

Chapter 11

Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

#16.00 Plaintiff's Motion To Dismiss Cross-Complaint
(cont'd from 11-02-23 per court's own mtn)
[Movant - Christopher D. Beatty Intends To Appear In Person]
(cont'd from 10-26-23 per order granting stipulation to stay litigation &
continuance hrgs set for October 26, 203 entered 10-24-23)
(cont'd from 3-7-24 per court's own mtn -10-24-23)
(cont'd from 3-14-24 per order granting stip., to stay litigation & cont. hrgs
entered 3-04-24)
[Movant - Christopher D. Beatty Intends To Appear In Person]

Docket 47

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO FURTHER STAY
ADVERSARY PROCEEDING AND CONTINUING HEARINGS
ENTERED 7-01-24 - SEE DOC #127**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl
Richard H Golubow

Defendant(s):

Harjinder Singh Brar

Represented By
William Lynn Cowin

Ramandip Singh Brar

Represented By
William Lynn Cowin

Pinder Kaur Brar

Represented By
William Lynn Cowin

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CONT... Five Rivers Land Company LLC

Chapter 11

Movant(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

Five Rivers Land Company LLC

Represented By
Christopher Dale Beatty

Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

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8:23-11167 Five Rivers Land Company LLC

Chapter 11

Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

- #17.00** Cross-Defendants David Nino, Victoria Nino and Coast to Coast Packing Group LLC's Notice of Motion and Motion to Dismiss Cross-Complaint
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 10-26-23 per order granting stipulation to stay litigation & continuance hearings set for October 26, 2023 entered 10-24-23)
(cont'd from 3-7-24 per court's own mtn -10-24-23)
(cont'd from 3-14-24 per order granting stip., to stay litigation & cont. hrgs entered 3-04-24)

Docket 58

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO FURTHER STAY
ADVERSARY PROCEEDING AND CONTINUING HEARINGS
ENTERED 7-01-24 - SEE DOC #127**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl
Richard H Golubow

Defendant(s):

Harjinder Singh Brar

Represented By
William Lynn Cowin

Ramandip Singh Brar

Represented By
William Lynn Cowin

Pinder Kaur Brar

Represented By
William Lynn Cowin

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Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

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8:23-11167 Five Rivers Land Company LLC

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Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

#18.00 Plaintiff's Motion to Dismiss First Amended Cross-Complaint
(cont'd from 12-07-23 per court's own mtn /order granting stip. to stay
litigation & cont. hrgs set for October 26, 2023 - entered 10-24-23 / this
motion was added on verbally per Maggan on 10-24-23 - with amna
approval)
(cont'd from 3-14-24 per order granting stip., to stay litigation & cont. hrgs
entered 3-04-24)
[Movant - Christopher D. Beatty Intends To Appear In Person]

Docket 72

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO FURTHER STAY
ADVERSARY PROCEEDING AND CONTINUING HEARING ENTERED
7-01-24 - SEE DOC #127**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl
Richard H Golubow

Defendant(s):

Harjinder Singh Brar

Represented By
William Lynn Cowin

Ramandip Singh Brar

Represented By
William Lynn Cowin

Pinder Kaur Brar

Represented By
William Lynn Cowin

Coast to Coast Packing Group, LLC

Pro Se

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Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

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8:23-11167 Five Rivers Land Company LLC

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Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

#19.00 Debtor's Motion For Summary Judgment And Statement Of Uncontroverted Facts And Conclusions Of Law In Support
(cont'd from 10-12-23 per order approving stip. to cont. hrg on mtn for partial summary judgment entered 10-04-23 - see order #78)
(cont'd from 10-26-23 per order granting stipulation to stay litigation & continuing hearings set for October 26, 2023 entered 10-24-23)
(cont'd from 3-7-24 per court's own mtn -10-24-23)
(cont'd from 3-14-24 per order granting stip., to stay litigation & cont. hrgs entered 3-04-24)
[Movant - Christopher D. Beatty Intends To Appear In Person]

Docket 36

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO FURTHER STAY
ADVERSARY PROCEEDING AND CONTINUING HEARINGS
ENTERED 7-01-24 - SEE DOC #127**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl

Defendant(s):

Harjinder Singh Brar

Represented By
William Lynn Cowin

Ramandip Singh Brar

Represented By
William Lynn Cowin

Pinder Kaur Brar

Represented By

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Chapter 11

William Lynn Cowin

Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

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Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

**#20.00 PRE-TRIAL CONFERENCE RE: Complaint for Declaratory Relief
(set from s/c hrg held on 8-24-23)
(cont'd from 5-02-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO FURTHER STAY
ADVERSARY PROCEEDING AND CONTINUING HEARINGS
ENTERED 7-01-24 - SEE DOC #127**

Tentative Ruling:

Tentative for May 2, 2024

Continued to July 11, 2024 at 11:00 a.m. Appearance is optional.

Tentative for August 24, 2023

Deadline for completing discovery: March 31, 2024

Last date for filing pre-trial motions: April 22, 2024

Pre-trial conference on: May 2, 2024 at 10:00 a.m.

Joint pre-trial order due per local rules.

Shouldn't an attempt at mediation be made?

Appearance required.

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander

Defendant(s):

Harjinder Singh Brar

Pro Se

Ramandip Singh Brar

Pro Se

Pinder Kaur Brar

Pro Se

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

Thursday, July 11, 2024

Hearing Room 5B

11:00 AM

CONT... Five Rivers Land Company LLC

Chapter 11

Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander