

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

Wednesday, November 6, 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: 161 413 1564

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:23-12656 XD Industries, Inc.

Chapter 11

#1.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc.
(cont'd from 5-01-24)
(cont'd from 9-11-24)

Docket 1

Tentative Ruling:

Tentative for November 6, 2024
Convert to Chapter 7. *Appearance is optional.*

Tentative for September 11, 2024
A dismissal motion is forthcoming? Arrangements should be made for payment of administrative fees unless the alternative of conversion is accepted. *Appearance required.*

Tentative for June 26, 2024
A declaration re financial prospects was promised in the Status Report. Are there any orders needed prior to the confirmation hearing September 11, 2024 at 10:00 a.m.? *Appearance required.*

Tentative for May 1, 2024
Why no status report? See #6. *Appearance required.*

Tentative for March 13, 2024
Set confirmation date approximately 45-60 days hence. Separate disclosure statement not required. *Appearance required.*

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CONT... XD Industries, Inc.

Chapter 11

Tentative for January 24, 2024

Based on suggestion of the Subchapter V trustee disclosure statement is deemed unnecessary. When will plan be filed? Is confirmation date of March 13, 2024 at 10:00 a.m. about right? If so court will set last dates to file ballots and briefing schedule. *Appearance required.*

Party Information

Debtor(s):

XD Industries, Inc.

Represented By
Jeremy H Rothstein

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:24-10286 Walter Arthur Barker

Chapter 11

#2.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Individual.
(cont'd from 7-03-24)
(cont'd from 10-02-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for November 6, 2024
Continue plan deadline to February 12, 2025 at 10:00 a.m. as requested.
Continue status conference approximately 90 days. *Appearance required.*

Tentative for July 3, 2024
Schedule status conference in about 90 days. *Appearance required.*

Tentative for May 1, 2024
Continue to July 3, 2024 at 10:00 a.m.
Appearance required.

Tentative for March 13, 2024
A separate disclosure statement is probably not required. Is it appropriate to set a confirmation date now? How about the suggestion of expanding the Subchapter V trustee's powers to assist in selling the target property?
Appearance required.

Party Information

Debtor(s):

Walter Arthur Barker

Represented By
Summer M Shaw

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CONT... Walter Arthur Barker

Chapter 11

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:24-11046 MASHindustries, Inc.

Chapter 11

#3.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual. Inc.
(cont'd from 8-14-24)
(cont'd from 10-09-24 per order cont. subchapter V ch 11 status conference entered 9-19-24)

Docket 1

Tentative Ruling:

Tentative for November 6, 2024
Set confirmation and associated deadlines. *Appearance required.*

Tentative for August 14, 2024
Status conference continued per request of debtor to October 9 to give parties sufficient time to analyze the plan which is due by September 10.
Appearance suggested particularly if the continued date is a problem.

Tentative for June 26, 2024
Has a plan been filed?
Do we need a disclosure statement?
Set confirmation deadlines?
See ## 8 and 9

Perhaps an order clarifying that the jointly administered case has been dismissed is warranted so that it can be removed from the caption?

Appearance required.

Tentative for May 22, 2024

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CONT... MASHindustries, Inc.

Chapter 11

Do we need a disclosure statement? Set confirmation deadlines?
Appearance required.

Party Information

Debtor(s):

MASHindustries, Inc.

Represented By
Susan K Seflin
Jessica Wellington
David M Poitras

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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8:24-11522 Piecemakers

Chapter 11

#4.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition Non-Individual.
(cont'd from 9-11-24)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-11-24 AT 10:00 A.M.
PER HEARING HELD ON 10-23-24 RE: MOTION TO CONVERT CASE
TO CH 7 OF THE BANKRUPTCY CODE - SEE RULING HELD ON 10-23-24**

Tentative Ruling:

Tentative for September 11, 2024

Set a date for adequacy of the disclosure statement filed 9/4/24, for approximately 30 days hence. If approved at that continued date, a confirmation date will then be set with attendant deadlines for a companion plan to be filed. *Appearance required.*

Tentative for July 24, 2024

There seem to be contentious issues which may require a disclosure statement, centering on questions about the reported prepetition conveyance of an interest in real property (or in a partnership that owned real property?) and possible conflict between the duties of a DIP and the current management, which may also be involved in the transfer described. Also, counsel may have conflicts which ought to be examined and revealed. The court makes no pronouncement at this time, but merely observes that these are not insignificant issues.

The revocation of subchapter V status seems problematic since there is a difference between a "small business debtor" and eligibility for filing Subchapter V. In any event that should be the subject of a separate motion.

The court would value the input of the Subchapter V trustee. Is it appropriate to set a deadline for confirmation? *Appearance required.*

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CONT... Piecemakers

Chapter 11

Party Information

Debtor(s):

Piecemakers

Represented By
Ralph Ascher

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:24-12497 Afrin Transport, Inc.

Chapter 11

**#5.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition
Individual.**

Docket 1

Tentative Ruling:

Tentative for November 6, 2024

Set confirmation date and associated deadlines. *Appearance required.*

Party Information

Debtor(s):

Afrin Transport, Inc.

Represented By
Matthew D. Resnik

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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8:24-11213 Ben Edward Lofstedt

Chapter 11

#6.00 STATUS CONFERENCE RE: Chapter 11 Subchapter V Voluntary Petition
Individual.
(cont'd from 9-11-24)

Docket 1

Tentative Ruling:

Tentative for November 6, 2024
See #7. *Appearance required.*

Tentative for September 11, 2024
See #3. *Appearance required.*

Tentative for June 26, 2024
Do we need a disclosure statement?
Continue status conference to August 28 at 10:00 a.m. just after the deadline
for plan filing, at which time a confirmation hearing with attendant deadlines
will be set. *Appearance required.*

Party Information

Debtor(s):

Ben Edward Lofstedt

Represented By
D Edward Hays

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:24-11213 Ben Edward Lofstedt

Chapter 11

#7.00 Confirmation Of Chapter 11 Plan Of Reorganization

Docket 64

Tentative Ruling:

Tentative for November 6, 2024

This record is confusing. The Plan essentially provides for a two-year opportunity to sell this Newport Beach property debtor co-owns with his ex-spouse and daughter. The plan is opposed by the secured lender, New Residential Mortgage; the ex-spouse and daughter have also rejected the plan. There is a report that terms have been reached between debtor and the co-owners but very few details are provided. The court cannot tell whether this plan is to be implemented as written or the debtor intends to start over under new terms, given the reported agreement. While the court recognizes that there appears to be a sizeable equity cushion, it is also not clear whether debtor can consistent with obligations of good faith, simply wait for two years without servicing the secured claim. This might turn on whether some cash for that purpose is forthcoming from the agreement. *Appearance required.*

Tentative for September 11, 2024

The Disclosure Statement may be approved but the Trustee's observations and comments should be reviewed. Set confirmation date and attendant deadlines. *Appearance required.*

Party Information

Debtor(s):

Ben Edward Lofstedt

Represented By
D Edward Hays
Sarah Rose Hasselberger

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CONT... Ben Edward Lofstedt

Chapter 11

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:17-10517 Lisa Hackett

Chapter 11

#8.00 POST-CONFIRMATION STATUS CONFERENCE Re: Scheduling And Case Management Conference
(cont'd from 4-10-24 per court's own mtn - 12-15-23)
(cont'd from 4-24-24 at 10:00 a.m. to 11:00 a.m. per court's own mtn)
(cont'd from 10-02-24 per court's own mtn)

[fr: 6/7/17, 9/6/17, 12/6/17, 1/10/18, 2/28/18, 8/29/18, 3/13/19, 10/2/19, 2/12/20, 4/1/20, 7/22/20]

Docket 1

Tentative Ruling:

Tentative for November 6, 2024

One last continued Post Confirmation Status Conference January 22, 2025 at 10:00 a.m. By then, or coinciding with that conference, the court expects a motion for final decree. *Appearance is optional.*

Tentative for April 24, 2024

Schedule further status in about 6 months. Appearance is optional.

Tentative for September 13, 2023

Further post confirmation status conference on April 10, 2024 at 10:00 a.m. Appearance is optional unless there is a problem with the continuance date.

Tentative for 3/29/23:

Continue for further status conference September 13, 2023 @ 10. In meantime the court expects that close consideration be given to a final decree motion.

Appearance: suggested

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CONT... Lisa Hackett

Chapter 11

Tentative for 11/30/22:
Continue for further status conference March 28, 2023 @ 10:00AM.

Appearance: optional

Tentative for 6/22/22:
Where's the Motion for Final Decree?

Tentative for 12/8/21:
The court would have appreciated an updated status report. Is debtor in compliance?

Tentative for 8/11/21:
Why no updated status report? Can a final decree be expected soon?

Tentative for 6/30/21:
Continue to August 11 @ 10:00AM. More continuances should not be expected.

Appearance: excused

Tentative for 3/3/21:
It sounds from the December status report like the plan is being paid as agreed but since no updated report was filed, the court is uncertain. Will

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CONT... Lisa Hackett

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debtor seek to administratively close or obtain a final decree? Timetable?

Tentative for 12/9/20:
Why no updated status report?

Appearance: required

Appearances necessary. Telephonic appearances only. Any party who wishes to appear must register in advance by contacting CourtCall at (866) 582-6878.

Party Information

Debtor(s):

Lisa Hackett

Pro Se

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8:20-10143 Bridgemark Corporation

Chapter 11

**#9.00 POST-CONFIRMATION STATUS CONFERENCE RE: Chapter 11 Voluntary
Petition Non-Individual.
(cont'd from 7-03-24)
(cont'd from 10-02-24 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for November 6, 2024

This case has been dragging post-confirmation for far too long. Is a final decree appropriate now? *Appearance required.*

Tentative for July 3, 2024

Continue to Oct. 2, 2024 at 10:00 a.m. per request, to combine with final decree. *Appearance is not required.*

Tentative for April 3, 2024

Continued to July 3, 2024 at 10:00 a.m. per request. Final decree motion is expected, preferably to coincide. *Appearance suggested.*

Tentative for December 6, 2023

Continue to April 3, 2024 @ 10:00 per request. Appearance is optional.

Tentative for September 13, 2023

Continue to Dec. 6, 2023 at 10:00 a.m. Appearance is optional.

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CONT... Bridgemark Corporation

Chapter 11

Tentative for 3/15/23:

Continue for further status conference June 28, 2023 @ 10. The court expects a final decree motion to be filed before or to coincide .

Appearance: optional

Tentative for 11/2/22:

Continue for final post confirmation conference in about 120 days. It is expected that a motion for final decree will be filed in meantime.

Appearance: suggested

Tentative for May 25, 2022:

Continue for further status conference to November 2, 2022 at 10:00 a.m. with the expectation that a motion for final decree will be filed either for that date or before. Appearance is optional.

Tentative for 12/8/21:

Status? Appearance: required

Tentative for 8/25/21:

See #2.

Tentative for 8/4/21:

See #s 5 and 6.

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CONT... Bridgemark Corporation

Chapter 11

Tentative for 7/28/21:
See #s 14-16.

Tentative for 6/23/21:
Continue to adequacy of disclosure or confirmation hearing.

Tentative for 4/7/21:
See #9.

Tentative for 3/31/21:
See #16. Appearance: optional

Tentative for 2/24/21:
Continue to March 31, 2021 @ 10:00 a.m.

Tentative for 2/10/21:
Same as #8. Appearance: required

Tentative for 2/26/20:
The court will, at debtor's request, refrain from setting deadlines at this time in favor of a continuance of the status conference about 90 days, but the parties should anticipate deadlines to be imposed at that time.

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CONT... Bridgemark Corporation

Chapter 11

Debtor(s):

Bridgemark Corporation

Represented By
William N Lobel

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8:24-10803 **Bridge Diagnostic, LLC**

Chapter 11

#10.00 Debtor's Emergency Motion For Order Authorizing Debtor To Obtain Post-Petition Loan; And Request For Expedited Hearing
(OST Signed 4-23-24)
(cont'd from 8-14-24)

Docket 52

Tentative Ruling:

Tentative for November 6, 2024
Grant request for continuance to coincide with status conference February 12, 2025 at 10:00 a.m. *Appearance is optional.*

Tentative for August 14, 2024
Status? *Appearance required.*

Tentative for June 26, 2024
Status? *Appearance required.*

Tentative for May 8, 2024
How is the post-petition loan functioning? Is a discussion needed about collateral, perfection and security as was alluded to in Trustee's comments?
Appearance required.

Tentative for April 25, 2024
Opposition due at hearing. *Appearance required.*

Party Information

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CONT... Bridge Diagnostic, LLC

Chapter 11

Debtor(s):

Bridge Diagnostic, LLC

Represented By
David Wood

Trustee(s):

Robert Paul Goe (TR)

Pro Se

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8:15-15311 Freedom Communications, Inc.

Chapter 11

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

- #11.00** Motion for Abstention Pursuant to 28 U.S.C. § 1334(c) and 11 U.S.C. § 505(a) (1)
[Affects Freedom Communications, Inc and Freedom Communications Holdings, Inc ONLY]
[cont'd from 2-16-23 Amended Notice Of Motion and Supplemental Notice Of Hearing filed 2/3/2023, dkt#31]
(cont'd from 5-29-24)

Docket 25

Tentative Ruling:

Tentative for November 6, 2024

So, what is the outcome of the re-audits and where do we stand?

Appearance required.

Tentative for May 29, 2024

Why shouldn't this court either abstain or convert this case? See #9. The extraordinary delay is unseemly and little prospect is shown for a resolution.

Appearance required.

Tentative for March 27, 2024

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

Tentative for October 4, 2023

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

Except for the retirement of a key employee of CDTFA nothing new is raised on the abstention question. Consequently, the court adopts from the tentative

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posted for the hearing 3/9/23 and grants the abstention request. Appearance required.

Tentative for 6/7/23:
Mediation results?

Appearance: required

Tentative for 3/9/23:

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

Basic Background

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

While the Administrative Tax Appeal was pending, Debtors sought to

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

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

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

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

Legal Standards

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

- (1) Except with respect to a case under chapter 15 of title 11, nothing

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Freedom Communications, Inc.

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in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

- (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

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

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

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

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

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

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

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

Efficient Administration

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

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by a stay pending appeal, resulting in lengthy delays given the centrality of the issues with respect to the Chapter 11 Plan. Therefore, the court finds this factor neutral on the issue of abstention.

Extent To Which State Laws Predominate

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

Difficulty of the Issues

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

Presence of a Related Proceeding In State Court

The fourth factor requires the court to consider the presence of a related proceeding in the state court. Here, it is obvious that there is a related administrative proceeding, but Debtors argue, it is not a court proceeding. For example, Debtors point out that the Office of Tax Appeals is unlike this court as it has no formal discovery, has limited authority to require the disclosure of witnesses and evidence, and does not follow the Federal Rules of Evidence or California Evidence Code. Therefore, Debtors argue, abstention at this

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stage, with its side effect of halting formal discovery, will hinder the interests of justice and unfairly prejudice Debtors. However, Debtors do not explicitly argue that the results of the state proceeding are not binding or do not carry preclusive effect. The court is not inclined or equipped to make findings as to the relative tactical disadvantages each party may encounter if this court abstains. Without a fulsome understanding of how full adjudication by the state agencies might/will affect whether the Chapter 11 Plan takes full effect, the court is not ideally situated to assess this element. The court will hear further argument on this point. However, as noted above, the court would still prefer that a highly specialized state agency preside over the esoteric state tax issues.

The Court's Jurisdictional Basis

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

Degree of Relatedness To The Main Bankruptcy Case

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

Substance Over Form Of "Core" Proceeding

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

Severing State Law Claims From Core Bankruptcy Issues

The eighth factor requires the court to consider the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court. Again, the court is unclear as to how enforceability of state adjudication would affect

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this bankruptcy case. If the state proceeding resolves all current substantial issues concerning administration of this case, the court believes this factor favors abstention. However, the court will hear further argument on this point.

Burden On This Court's Docket

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

Forum Shopping?

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

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

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

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

Grant.

Party Information

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Caroline Djang
Scott D Fink
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Defendant(s):

California Department of Tax and

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Plaintiff(s):

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Freedom Communications Holding,

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