

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

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

8:00-00000

Chapter

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

**Tuesday, November 14, 2023**

**Hearing Room**

**5B**

10:00 AM

CONT...

**Chapter**

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT...**

**Chapter**

completed your appearance(s).

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**8:22-10487 Transportation Brokerage Specialists, Inc.**

**Chapter 7**

**#1.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM**

**VERONICA DEGROFF  
Vs  
DEBTOR**

Docket 139

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - ORDER ON  
STIPULATION TO DISMISS INVOLUNTARY BANKRUPTCY CASE  
ENTERED 11-03-23**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Transportation Brokerage

Represented By  
Ryan D O'Dea  
Max Casal  
Talin Keshishian

**Movant(s):**

Veronica Degroff

Represented By  
Cheryl C. Rouse

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

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

8:23-10433 Patricia C. Pham

Chapter 7

#2.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM  
(cont'd from 11-7-23 per order approving stip to cont. hrg on mtn for rlfsty  
entered 11-2-23)

**VINCENT DO AND LINH TUONG DO  
Vs.  
DEBTOR**

Docket 41

**Tentative Ruling:**

Tentative for 11/14/23

Grant. Careful findings from the state proceeding will be crucial if dischargeability is in question (for collateral estoppel purposes). Relief is for liquidation of the claim only. Levy must await further order. Appearance is optional.

**Party Information**

**Debtor(s):**

Patricia C. Pham

Represented By  
Thomas J Polis

**Movant(s):**

Linh Tuong Do

Represented By  
Misty A Perry Isaacson

Vincent Do

Represented By  
Misty A Perry Isaacson

**Trustee(s):**

Karen S Naylor (TR)

Pro Se

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**8:23-10433 Patricia C. Pham**

**Chapter 7**

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

**#2.10 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 11-07-23)**

Docket 11

**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.  
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Tentative for November 7, 2023

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

**Defendant(s):**

Patricia C. Pham

Represented By  
Thomas J Polis

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... Patricia C. Pham**

**Chapter 7**

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

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

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

8:23-12046 Jeffrey Adams Gomez

Chapter 13

#3.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

**KRISTINA L. SMITH  
Vs.  
DEBTOR**

Docket 15

**Tentative Ruling:**

Tentative for November 14, 2023

Characterization of marital property will have to occur at some point and the pending family law proceedings are the appropriate place. Debtor promises a 100% plan; one hopes so. Pending further order, stay is not relieved for any other purposes or for enforcement of existing orders but only for characterization of the marital property. This court is not inclined to intrude into which judge is utilized in the domestic proceedings, whether for expense reasons or otherwise. Appearance required.

**Party Information**

**Debtor(s):**

Jeffrey Adams Gomez

Represented By  
Richard G. Heston

**Movant(s):**

Kristina L Smith

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**8:23-12227 Hugo Gonzalez**

**Chapter 13**

**#4.00** Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 10

**Tentative Ruling:**

Tentative for November 14, 2023  
Grant as unopposed. Appearance is optional.

<b>Party Information</b>
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**Debtor(s):**

Hugo Gonzalez

Represented By  
Halli B Heston

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

**#5.00** Chapter 7 Trustee's Motion for Order: (1) Confirming the Sale of Real Property Owned By Debtor's Affiliate, Subject to Overbid, Comports With the Preliminary Injunction Entered in the Adversary Proceeding; (2) Authorizing the Trustee to Execute Any and All Documents Convenient and Necessary to the Sale; and (3) Granting Related Relief  
**(cont'd from 10-31-23)**

Docket 452

**Tentative Ruling:**

Tentative for November 14, 2023

Unchanged. Sale seems okay. Turnover of possession may be a bridge too far. Appearance required.

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Tentative for October 31, 2023

This is Chapter 7 Trustee Richard A. Marshack's ("Trustee") motion for order (1) Confirming the Sale of Real Property Owned by Debtor's Affiliate, Subject to Overbid, comports With the Preliminary Injunction Entered in Adversary Proceeding; (2) Authorizing the Trustee to Execute Any and All Documents Convenient and Necessary to the Sale; and (3) Granting Related Relief ("Motion").

**A. Background**

Trustee has received an offer from Jennifer Brookers ("Buyer") to purchase the real property located at 5632 Campo Walk, Long Beach, California 90803 ("Property") for the price of \$1,399,900 subject to overbids. The Property is not property of the estate but is owned by the Pukini Trust (an affiliate of Debtor/ Valasquez in the Insider Action, and Enjoined Party pursuant to the Preliminary Injunction).

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... AB Capital, LLC, a California limited liability co Chapter 7**

Under the Preliminary Injunction, the Trustee was expressly permitted to actively market the Property for sale and take all steps necessary and convenient to market and consummate the sale of the Property on the condition that the sale is expressly conditioned upon the filing of a noticed motion and resulting court order. Thus, Trustee contends this motion is filed in compliance with and pursuant to procedures contemplated by the Preliminary Injunction. The offer by the Buyer is the highest and best offer, but in the event the purchase price is increased by a successful overbid, the estimated net proceeds will increase.

The sale of the Property is expected to be a consensual short sale as there is no equity above the liens and encumbrances against the Property. Brentwood Finance Company, LLC ("Brentwood") has agreed to accept a reduced payment on its lien. Saman Jilanchi, Qwan International Investments, LLC and Qwan Capital, LLC ("Jilanchi Creditors") have agreed to a reduced payment to release the Jilanchi Lien as to the Property to resolve the Jilanchi Lien. The Jilanchi Creditors will accept a payment (which will be paid out of a Brentwood Carve-Out) that is the greater of (i) \$10,000.00, or (ii) fifty percent (50%) of the amount by which the final sale exceeds the net proceeds expected for a sale at \$1,399,900 (see chart in Section B of the Argument section), less the additional real estate commissions, escrow, title and transfer costs incurred by the higher price.

Further, Brentwood and the Broker have agreed to carve-out and assign a distribution of their payment to the Trustee to assist in defraying the fees and expenses associated with the marketing and sale of the Property pursuant to the Preliminary Injunction. Specifically, Brentwood has agreed to carve-out and assign a distribution to the Trustee in the amount of all remaining proceeds to which the Brentwood DOT would attach after a payment of \$1,230,000.00, which is estimated to total \$39,827.73. The Broker has agreed to carve-out and assign a distribution to the Trustee in the sum of approximately \$24,498.25. After payments to Brentwood, there are no funds available for payment to the Jilanchi Creditors, Living Art Works, LLC, and Showroom Interiors LLC v. Pukini et. Al.

Finally, through this Motion, the Trustee also requests turnover of the

**United States Bankruptcy Court  
Central District of California**

Santa Ana

Theodor Albert, Presiding  
Courtroom 5B Calendar

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

Property from the current tenant and Enjoined Party, Edmund Valasquez, Jr. ("Valasquez"), pursuant to the Preliminary Injunction entered. Specifically, Trustee asserts that Valasquez's failure to pay rent is in violation the Preliminary Injunction, but also of the lease itself.

**B. Motion Complies with the Requirements of Preliminary Injunction**

Firstly, Trustee has filed this motion regarding the sale of the Property to ensure he has complied with the Preliminary Injunction, which provides Trustee with final authority regarding the sale of Property so long as an Order from this court is entered approving the sale. Next, although this Property is not property of the estate, Section 363(b) of the Bankruptcy Code is instructive and provides good framework for the court to review the Trustee's decision to sell the Property pursuant to the Preliminary Injunction. The sale of estate property pursuant to 11 U.S.C. § 363(b)(1) must demonstrate a valid business justification. *In re 240 North Brand Partners v. Colony GFP Partners, L.P. (In re 240 North Brand Partners)*, 200 B.R. 653, 659 (9th Cir. BAP 1996) (citing to *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)); see also *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). Under this "business judgment" test, the bankruptcy court "independently" determines "only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Collier on Bankruptcy P 363.02[4] (16th 2022). Here, Trustee asserts that the Property will be at fair market value because the best determination of the price is the market, and the sale is subject to overbids. The sale will also result in the estate receiving a Brentwood Carve-Out and Broker Carve-Out totaling \$54,325.98. The sale ensures that the secured creditors will receive some payment on account of their liens. Valasquez, the only opponent of the motion, does not dispute a sound business justification for the sale of the Property or that the terms of the sale are not proper.

**C. Execution of Documents Convenient and Necessary for Sale of the Property**

Paragraph 16 of the Preliminary Injunction state: "For the avoidance of doubt, the Trustee shall have final authority regarding the sale or other disposition of any of the Enjoined Property, and approval of any sale or

**United States Bankruptcy Court  
Central District of California**

Santa Ana

Theodor Albert, Presiding  
Courtroom 5B Calendar

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

disposition of the Enjoined Property must be expressly approved by the Trustee in writing prior to closing or consummating such a transaction, or otherwise authorized by Court order." Out of abundance of caution, Trustee requests authority to execute any and all documents convenient and necessary to consummate the sale of the Property consistent with the Preliminary Injunction. The court is permitted to do so pursuant to 11 U.S.C. § 105(a) which provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105. Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code. *In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986). Therefore, the Trustee contends he may execute any and all documents convenient and necessary to consummate the sale of the Property consistent with the Preliminary Injunction, including documents where Trustee expressly consent to closing on the sale of the Property.

**D. Proposed Sale May be Allowed Free and Clear of Liens**

Section 363(f) of the Bankruptcy Code allows a trustee to sell property of the bankruptcy estate "free and clear of any interest in such property of an entity," if any one of the following five conditions are met: (1) Applicable non-bankruptcy law permits a sale of such property free and clear of such interest; (2) such entity consents; (3) such interests is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest. 11 U.S.C. § 363(f); see, e.g., *Pinnacle Restaurant at Big Sky, LLC v. CH SP Acquisitions, LLC (In re of Spanish Peaks Holdings II, LLC)*, 862 F.3d 1148, 1153-54 (9th Cir. 2017).

In *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017) ("Pinnacle"), the Ninth Circuit Court of Appeals held that where state foreclosure law would eliminate a junior interest, Trustee may sell property free and clear of such interest pursuant to Section 363(f)(1). *Id.* at 900. Bankruptcy Courts have also found that the availability of foreclosure sales outside of bankruptcy represent

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

Tuesday, November 14, 2023

Hearing Room

5B

---

10:00 AM

CONT... **AB Capital, LLC, a California limited liability co** **Chapter 7**

a "legal or equitable proceeding", such that a bankruptcy trustee may thus sell a subject property free and clear of liens under Section 363(f)(5). See, *In re Jolan, Inc.*, 403 B.R. 866, 869-870 (Bankr. W.D. Wash., 2009).

Here, with respect to the liens asserted by Living Art Works and Showroom, they each constitute an "interest" in property for the purposes of Section 365(f)(5). Further, both junior liens could be compelled to accept a money satisfaction, as Brentwood and Jilanchi Creditors have senior liens on the Property. Brentwood could conduct a judicial or nonjudicial foreclosure on its lien, which would eliminate Living Art Works and Showroom. Thus, both are "out of the money" and, subject to the issue below, the court finds that the sale can proceed free and clear of these liens.

But the problem is that The Property is not "property of the estate" and that seems to be a prerequisite for application of §363. So, the question arises, how much of the unique power of a sale free of liens under subsection (f) can be imported either by contract or via terms of the Preliminary Injunction?

**E. Turnover of the Property**

The bulk of Valasquez's opposition concerns the turnover of the Property. Regarding the actual sale of the Property, Valasquez does not take issue and submits that the sale is acceptable; the bidding practices are standard; the marketing appears reasonable; and the sale appears to be arm's length. Trustee has been liquidating property pursuant to the preliminary injunction and has seen some success. Valasquez specially takes issue with Trustee's arguable wrongful eviction of him and disagrees that he or his wife surrendered their rights as tenants by means of signing the Preliminary Injunction.

**1. Surrender of the Lease and Sale of Property**

First, Valasquez submits that the parties agree Trustee can attempt to sell The Property because it is owned by the Pukini Trust; that there is a lease between Valasquez and the Pukini Trust that provides for a two year fixed

**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 14, 2023**

**Hearing Room**

**5B**

10:00 AM

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

**Chapter 7**

term tenancy; and that the Trustee could, if done properly, seek to terminate the lease and evict the tenants. However, Valasquez argues that Trustee has exceeded what he is privileged to do in the bankruptcy court as there is a fixed term tenancy in place that cannot be terminated by a landlord in California unless there is a non-payment of rent and landlord follows certain procedures under California law. Valasquez contends that there is no delinquent rent owed under the lease because Madeline Valasquez has paid \$150,000 in rent since April 2022. Absent failure to pay rent, Valasquez argues that there is no basis to terminate the tenancy and the lease will remain with the Property when it is sold (much as if the holder of title, Pukini Trust, attempted to sell). To allow the Trustee to terminate the lease is to provide a right to the Trustee, as administrator of the estate, that neither the Debtor nor the Pukini Trust had before the involuntary petition was filed.

In Trustee's reply, he asserts that Trustee, standing in the shoes of Valasquez, has the right to obtain turnover or surrender the lease. Trustee points to various parts of the Preliminary Injunction for support. First, Valasquez is considered an "Enjoined Party" under the Preliminary Injunction and the Property is considered an "Enjoined Property". "Enjoined Property" is defined to include "any asset" owned or controlled by any of the Enjoined Parties. Thus, the lease is an asset under the Preliminary injunction that is controlled by the Trustee. Second, Paragraph 9 of the Preliminary Injunction indicates that Valasquez "shall cooperate with, report to and take advice and direction from the Trustee and his agents, counsel and representatives as necessary in the Trustee's discretion in: (a) marketing, selling and managing the Enjoined Property; ... and (d) taking any other actions that are reasonably necessary to monetize the Enjoined Property for the benefit of the estate and creditors." Paragraph 16 also provides that the Trustee shall have final authority regarding the sale of any of the Enjoined Property. Thus, Trustee argues that all three paragraphs of the Preliminary Injunction contradict the opposition's argument that Trustee surrendering the Lease "exceeds what the Trustee is privileged to do. In fact, Trustee has the right to surrender the Lease to the Pukini Trust as a reasonably necessary action in furtherance of the Property's sale. But the court is not sure, even if that is true, that the lease can be terminated as to the lessees absent a breach or order of a court of competent jurisdiction considering the question of either unlawful detainer or

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

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

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

Chapter 7

Regarding the pre-payment of rent of \$150,000, the opposition does not allege the existence of a writing changing the terms of the lease regarding Mrs. Valasquez's pre-payment. Any amendment to the lease directing payment to any entity besides the Pukini Trust as landlord would be ineffective and void due to a lack of signed writing as required by the lease. Further, Trustee asserts that the \$100,000 payment made to Calpac Mortgage was not for a pre-payment of rent but was for investment secured by her interest in the lien recorded on a different property. Consequently, Trustee's position is that he has grounds to unilaterally terminate the lease, given Valasquez's failure to pay rent consistent with the lease. The court will hear further argument from Valasquez and the Trustee on this point as more explanation is needed because even if the lease could be construed as in default because the payments reference was not of rent, the court is left unsure that means the Trustee can proceed to short circuit rule of ejection or eviction, as he would need to utilize here.

## 2. No Option to Purchase Property

Valasquez represents he holds an option to purchase the Property in the Opposition. However, Trustee contends that there is no evidence of any option to purchase the Property. Trustee took possession of copies of all documents on Debtor's server, which contained filed for the Pukini Trust and the Property. While the server contained documents related to the Property and the lease, a copy of the apparent option was not located.

## 3. Fifth Amendment Implication

Valasquez argues that depriving him of the benefit of his lease, which he alleges has been paid in full, results in a "takings" issue under the Fifth Amendment because he will be deprived of his property right by a court order without any sort of compensation. However, Trustee disputes this argument based on the fact that surrender of the lease is not a "taking" due to Valasquez's consent to the terms of the Preliminary Injunction. Even if the consensual authority to surrender the Lease can be a "taking", it is not for a governmental purpose since Trustee is enforcing a private right under the



**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 14, 2023**

**Hearing Room**

**5B**

10:00 AM

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

**Chapter 7**

Preliminary Injunction. The court agrees that this is not a "taking" as this is not for a governmental purpose of public use, but for the benefit of a private Debtor's bankruptcy estate and its creditors. Authority to turnover and sell the property by a court order does not mean it qualifies as a taking. But as a matter of real estate law the court is still not sure that the Trustee can proceed as though the lease did not exist or short circuit the eviction process.

**4. Due Process**

Valasquez argues that Madeline Valasquez has been denied procedural due process because she is not a party to this proceeding and has never been served. No formal notice has ever been sent to her by any party and Trustee is requesting that she and her infant son be evicted from her house. Valasquez contends that as a citizen of California, the beneficiary of a fixed term tenancy, Mrs. Valasquez is entitled to receive proper notice from the Pukini Trust if the lease is terminated. However, Trustee contends that notice has been given because the Property has been listed on the market for over six months, and since that listing there have been over nineteen agent calls and give buyer calls. The Brokers have also shown the Property fifteen times. Mrs. Valasquez needing to organize her schedule to permit these fifteen showings of the Property and her submission of an offer to purchase shows notice as well as receiving notices and regular updates since August 2023. Finally, she submitted a declaration in support of her husband's opposition to this motion. It is evident from Trustees' arguments that Mrs. Valasquez has not been oblivious to the sale of this Property and this Motion. She has apparently been part of the process at every step of the way. But the court is not persuaded this means she does not retain a right to due process of an eviction proceeding.

**5. Approval of the Brentwood Carve-Out**

Velasquez in his Opposition also asserts that the Brentwood Carve-Out should be the subject of a FRBP 9019 motion for compromise or settlement. However, Trustee argues that there was never any dispute that Brentwood has a secured claim, and that Brentwood and the estate are not compromising any other claims Brentwood asserts against the estate. Brentwood is volunteering to share a portion of the proceeds to which its

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... AB Capital, LLC, a California limited liability co Chapter 7**

collateral attaches with the estate. This carve-out is not the result of the Trustee compromising a claim it has against Brentwood or vice versa. Rather, this is a secured creditor electing for its own purposes to forego some of its right to payment in order to facilitate a sale. Accordingly, the court is persuaded that this carve-out does not require a separate approval pursuant to an FRBP 9019 motion.

Some fundamental issues remain. No tentative.

<b>Party Information</b>
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**Debtor(s):**

AB Capital, LLC, a California

Pro Se

**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  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

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

**Chapter 7**

**#6.00** Chapter 7 Trustees Motion for Order: (1) Confirming the Sale of Real Property Owned by Debtors Affiliate, Subject to Overbid, Comports With the Preliminary Injunction Entered in the Adversary Proceeding; (2) Authorizing the Trustee to Execute Any and All Documents Convenient and Necessary to the Sale; and (3) Granting Related Relief  
**[Real Property located at 1034 W. Balboa Blvd., #A, Newport Beach, California 92661]  
(con't from 11-7-2023)**

Docket 491

**Tentative Ruling:**

Tentative for November 14, 2023

This is Chapter 7 Trustee Richard A. Marshack's ("Trustee") motion for order (1) Confirming the Sale of Real Property Owned by Debtor's Affiliate, Subject to Overbid, Comports With the Preliminary Injunction Entered in Adversary Proceeding; (2) Authorizing the Trustee to Execute Any and All Documents Convenient and Necessary to the Sale; and (3) Granting Related Relief ("Motion"). The sale and request for turnover are opposed as to varying aspects.

**A. Background**

Trustee has received an offer from RC Family Investments LLC or its assignee ("Buyer") to purchase the real property located at 1034 W. Balboa LLC Blvd, Unit A, Newport Beach, California 92661 ("Property") for the price of \$2,700,000.00 subject to overbids. The Property is not property of the estate but owned 1034 W. Balboa LLC ("Balboa LLC") (an affiliate of Debtor/ Defendant in the Insider Action, and Enjoined Party pursuant to the Preliminary Injunction). This motion bears many similarities to the motion brought by the Trustee regarding the property discussed in item #5 5632 Campo Walk, Long Beach, and has several of the same problems.

Under the Preliminary Injunction, the Trustee was expressly permitted

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... AB Capital, LLC, a California limited liability co Chapter 7**

to actively market the Property for sale and take all steps necessary and convenient to market and consummate the sale of the Property on the condition that the sale is expressly conditioned upon the filing of a noticed motion and resulting court order. Thus, this motion is filed in compliance with and pursuant to procedures contemplated by the Preliminary Injunction. The offer by the Buyer is the highest and best offer, but in the event the purchase price is increased by a successful overbid, the estimated net proceeds will increase.

The sale of the Property was expected to be a consensual short sale as there is no equity above the liens and encumbrances against the Property. The Trustee and the Baiocchi Creditors, who hold a first deed of trust in the total payoff amount of \$1,938,738.03, are discussing options for the Baiocchi Creditors to accept a reduced payment on their lien with a carveout and assignment of their payment to the Trustee to assist in defraying the fees and expenses associated with the marketing and sale of the Property pursuant to the Preliminary Injunction and provide funds for distribution to creditors. If not resolution is made, then Trustee reserves the right to seek court approval of a surcharge under 11 U.S.C. § 506(c). If a resolution has been reached, the court is not informed.

Further, The Broker has agreed to carve-out and assign a distribution to the Trustee in the sum of one percent (1%) of the total purchase price of the Property (estimated \$27,000). The sale of the Property will result in the estate receiving repayment of its loan represented by the Debtor Note and Debtor DOT in the amount of \$555,028.44, subject to resolution of collateral assignments disputes with the Investor Creditors. There are no funds available for payment on the junior Living Art DOT. The Baiocchi DOT or the Estate could conduct a judicial or non-judicial foreclosure on their liens. The Trustee requests the Court authorize that he may execute any and all documents convenient and necessary to consummate the sale of the Property consistent with the Agreement and Preliminary Injunction.

Finally, through this Motion, the Trustee also requests turnover of the Property from Joshua Pukini, and anyone else occupying the Property with him, pursuant to the Preliminary Injunction entered in the Insider Action. As

**United States Bankruptcy Court  
Central District of California**

Santa Ana

Theodor Albert, Presiding  
Courtroom 5B Calendar

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

such, as part of this Motion and to avoid losing a favorable business opportunity, the Trustee is requesting that the Court also authorize the turnover of the Property.

**B. Motion Complies with the Requirements of Preliminary Injunction**

Firstly, Trustee has filed this motion regarding the sale of the Property to ensure he has complied with the Preliminary Injunction, which provides Trustee with final authority regarding the sale of Property so long as an Order from this court is entered approving the sale. Next, although this Property is not property of the estate, Trustee argues § 363(b) of the Bankruptcy Code is instructive and provides good framework for the court to review the Trustee's decision to sell the Property pursuant to the Preliminary Injunction. The sale of estate property pursuant to 11 U.S.C. § 363(b)(1) must demonstrate a valid business justification. *In re 240 North Brand Partners v. Colony GFP Partners, L.P. (In re 240 North Brand Partners)*, 200 B.R. 653, 659 (9th Cir. BAP 1996) (citing to *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)); see also *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). Under this "business judgment" test, the bankruptcy court "independently" determines "only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Collier on Bankruptcy P 363.02[4] (16th 2022).

Trustee asserts that the Property will be at fair market value because the best determination of the price is the market, and the sale is subject to overbids. The sale will also result in the estate receiving a repayment of its loans in the amount of approximately \$555,028.44 and a Broker carve-out of \$27,000. The sale of the Property ensures the secured creditors, most of whom are creditors of Debtor, will receive some payment on account of their liens. The court agrees that there is a sounds business justification for the sale of the Property.

**C. Execution of Documents Convenient and Necessary for Sale of the Property**

Paragraph 16 of the Preliminary Injunction state: "For the avoidance of doubt, the Trustee shall have final authority regarding the sale or other

**United States Bankruptcy Court  
Central District of California**

Santa Ana

Theodor Albert, Presiding  
Courtroom 5B Calendar

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

disposition of any of the Enjoined Property, and approval of any sale or disposition of the Enjoined Property must be expressly approved by the Trustee in writing prior to closing or consummating such a transaction, or otherwise authorized by Court order." Out of abundance of caution, Trustee requests authority to execute any and all documents convenient and necessary to consummate the sale of the Property consistent with the Preliminary Injunction. The court is permitted to do so pursuant to 11 U.S.C. § 105(a) which provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." See 11 U.S.C. § 105. Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code. *In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986). Therefore, the court authorizes the Trustee to execute any and all documents convenient and necessary to consummate the sale of the Property consistent with the Preliminary Injunction, including documents where Trustee expressly consent to closing on the sale of the Property.

**D. Proposed Sale May be Allowed Free and Clear of Liens?**

Trustee believes the sale will be consensual, but in the event he does not get consent, Trustee requests that the court authorize the sale of the Property free and clear of liens and encumbrances, including the Collateral Assignments and the Living Art DOT. While this is not a sale of property of the estate, Section 363(f) of the Bankruptcy Code is instructive as to when the sale of the property free and clear is equitable. But actually, getting to where the Trustee wants to go may be complicated.

Section 363(f) of the Bankruptcy Code allows a trustee to sell property of the bankruptcy estate "free and clear of any interest in such property of an entity," if any one of the following five conditions are met: (1) Applicable non-bankruptcy law permits a sale of such property free and clear of such interest; (2) such entity consents; (3) such interests is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest. 11 U.S.C. § 363(f); see, e.g., *Pinnacle Restaurant at Big Sky*,

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

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

*LLC v. CH SP Acquisitions, LLC (In re of Spanish Peaks Holdings II, LLC)*,  
862 F.3d 1148, 1153-54 (9th Cir. 2017).

In *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892 (9th Cir. 2017) ("Pinnacle"), the Ninth Circuit Court of Appeals held that where state foreclosure law would eliminate a junior interest, Trustee may sell property free and clear of such interest pursuant to Section 363(f)(1). *Id.* at 900. Bankruptcy Courts have also found that the availability of foreclosure sales outside of bankruptcy represent a "legal or equitable proceeding", such that a bankruptcy trustee may thus sell a subject property free and clear of liens under Section 363(f)(5). See, *In re Jolan, Inc.*, 403 B.R. 866, 869-870 (Bankr. W.D. Wash., 2009). But this only solves the problem of applicability of §363(f)(5), not some of the other questions.

Here, with respect to the Collateral Assignments, if the title company requires a release of the Collateral Assignments to allow the sale to proceed and reconvey the Debtor DOT, Trustee requests the court authorize sale free and clear of the Collateral Assignments under Section 363(f)(1) and/or (f)(4) and/or (f)(5). As there is at least a bona fide dispute as to the nature of the Investor Creditors' Interest, sale free and clear of such interest is permitted.

Trustee also proposes to sell free and clear of Living Art Works junior interest under Section 363(f)(1) or 363(f)(5) under the theory that his entity is "out of the money.". Baiocchi and the estate have senior lien against the Property and could conduct a judicial or non-judicial foreclosure on their liens. In the event of foreclosure, every junior interest, including Living Art DOT would be extinguished. Thus, Living Art Works is "out of the money" and the court finds that the sale can proceed free and clear of this lien under the rubric of §363(f)(5).

As indicated in a previous tentative, the problem is that The Property is not "property of the estate" and that seems to be a prerequisite for application of §363(f) in any of its special powers. So, the question arises, how much of the unique power of a sale free of liens under subsection (f) can be imported either by contract or via terms of the Preliminary Injunction? This question is

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

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

CONT... AB Capital, LLC, a California limited liability co  
not well answered.

Chapter 7

**E. Payoff Demands and Reconveyance of the Debtor DOT**

Trustee also requests under Section 105(a) of the Bankruptcy Code the authority to execute any and all documents convenient and necessary to payoff the Debtor Note and reconvey the Debtor DOT. The Trustee requests, and the court authorizes, Trustee to execute any and all documents to consummate the sale of the Property consistent with the Preliminary Injunction and the Bankruptcy Code, whereby Trustee expressly consents to closing the sale of the Property and reconveyance of the Debtor DOT.

**F. Surcharge Under Section 506(c)**

Under Section 506(c) of the Bankruptcy Code, the trustee may recover from property securing an allowed claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim. 11 U.S.C. § 506(c). If Trustee is unable to work out a resolution with Baiocchi to provide for a carve-out, Trustee reserves the right to seek court approval of a surcharge under Section 506(c) for the fees and expenses incurred by the estate to maintain, preserve, and sell the Baiocchi collateral. The net funds from the sale which would be available for the Baiocchi Creditors will be held by the estate in a segregated surcharge account.

Baiocchi refutes this request because Trustee's attempt to use this provision of the Bankruptcy Code is misguided, as the Property is not property of the estate. Moreover, Baiocchi contends that there is nothing to support the argument that the Trustee's administrative expenses were incurred primarily for Baiocchi's benefit, as required for 506(c). The court agrees that this section of the Bankruptcy Code is inapplicable as the Property is not property of the estate, and there is more than one creditor who would benefit from the sale of the Property. Further, as Baiocchi asserts, this is an inappropriate forum to determine surcharge under Section 506(c), as a separate motion would be required.

**G. Turnover of the Property**



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

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

CONT...

**AB Capital, LLC, a California limited liability co**

**Chapter 7**

In conjunction with the proposed sale Trustee requests an order of turnover requiring Pukini et al to vacate. Trustee is informed that there is no genuine lease agreement between Pukini and Balboa LLC and that no rents have been paid to Balboa LLC since the Preliminary Injunction was entered. Trustee is working with Pukini's counsel to ensure that Pukini and other occupants of the Property vacate prior to close of escrow. Trustee is hopeful that Pukini will cooperate as required under Paragraph 9 of the Preliminary Injunction, but requests out of abundance of caution, turnover of the Property so the sale can close promptly after entry of the order approving the motion. But Pukini has file opposition suggesting he has no intention of cooperating with vacating the Property.

Section 542 of the Bankruptcy Code provides for turnover of property of the debtor's estate that the Trustee is entitled to use, sell, or lease. See, *In re Sherry & O'Leary, Inc.*, 148 B.R. 248, 256 (Bankr. W.D. Pa. 1992); see also, *In re Weiss-Wolf, Inc.*, 60 B.R. 969, 975 (Bankr. S.D.N.Y. 1986). Trustee argues the Court may order turnover of the Property under 11 U.S.C. § 105(a) to ensure that the sale of the Property is consummated and Pukini, an affiliate of the Debtor, a Defendant in the Insider Action, and an Enjoined Party to the Preliminary Injunction, complies with the Preliminary Injunction. *Chinichian*, 784 F.2d at 1443.

But as in the recent Long Beach proposed sale, this turnover request may be the "bridge too far." Trustee contends that Pukini is a "Defendant" in the Preliminary Injunction and included as an "Enjoined Party", bound to act in accordance with the Preliminary Injunction. The Property is also included within the defined phrase "Enjoined Property" under the Preliminary Injunction. Arguably, Paragraph 9 of the Preliminary Injunction requires Pukini to vacate the Property, and this extends to Kelly Meyer and his children because they constitute "affiliates" of Pukini under the Preliminary Injunction. *Balboa LLC* argues in its opposition that Section 542 is inapplicable because the Property is not property of the estate. Trustee's reliance on section 105(a) and *Chinichian* is also misguided because unlike in *Chinichian*, neither Balboa LLC nor Pukini are debtors. Therefore, the lease agreement between them cannot be terminated by the court. While the court appreciates that there is some concern as to whether Balboa LLC is an alter ego of the

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

Tuesday, November 14, 2023

Hearing Room

5B

10:00 AM

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

Chapter 7

Debtor. However, it is correct that the Property is not property of the estate and Trustee cannot use Section 542 to force Pukini and/or the other occupants out of the Property as that section is expressly confined to property of the estate. Even if the provision were applicable, this in an inappropriate means as a summary proceeding to determine this issue. California procedural law regarding unlawful detainer and the like also have a role to play. The court urges the parties to work together to resolve this issue over vacating the Property. But it cannot be done in this summary format.

#### H. Striking Balboa LLC Opposition

Balboa LLC opposes the Trustee's sale motion on the basis that it is premature, the Property is not property of the estate, and is not subject to the jurisdiction of the bankruptcy court. However, Trustee replies that the Balboa LLC opposition does not impact approval of the sale because (a) it was filed without authorization from Balboa LLC, LLC; (b) the lease is falsified; (c) even if there is a *bona fide* dispute, the Trustee can sell the Property free and clear of lease under Section 363(f); and (4) the lease is surrendered under California and terminated by the Trustee.

The most noteworthy argument issue here is whether the opposition was filed without authorization from Balboa LLC. Joshua Pukini asserts in his declaration to the Balboa LLC Opposition that he is the "authorized agent of for the 1034 W. Balboa LLC". This authority is apparently sourced by a Purported Resolution agreement that gives Pukini the title of authorized agent but is confined to issues concerning construction and development of the Property. Because the Balboa LLC Opposition does not concern either, the only member of Balboa LLC is Cal-Pac Distressed Real Estate Fund I LLC ("Cal-Pac Real Estate"). Mr. Michael Issa has authority from this court's order to act as Chief Restructuring Officer of CalPac Management, which is the only member of Cal-Pac Real Estate. Thus, Trustee argues that only Mr. Issa had the authorized to file the Balboa LLC Opposition and he was not asked for authorization, nor did he ever provide it. Perhaps the opposition should be stricken. However, Balboa LLC has presented some valid arguments concerning turnover of the Property and determination over whether Balboa

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... AB Capital, LLC, a California limited liability co Chapter 7**

LLC is an alter ego of the Debtor. Consequently, the court is not prepared to strike the opposition in its entirety until it hears further argument on the issue.

Aside from Balboa LLC, it appears that all parties are in favor of selling the Property (although it might do well to poll them again as it is unclear whether the conditions to consent have been or can be met). But what remains after the sale is dispute over distribution over the sale proceeds. While the court is inclined to grant the motion, if possible, it would like to hear further argument on certain fundamental issues, including the termination of the lease with Pukini and Balboa LLC; and applicability of Section 363 to this Property (not property of the estate) on any basis and turnover regarding non-estate property.

*No tentative. Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

AB Capital, LLC, a California

Pro Se

**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  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

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

Chapter 7

#7.00 Chapter 7 Trustees Motion for Order: (1) Confirming the Sale of Real Property Owned by Debtors Affiliate, Subject to Overbid, Comports With the Preliminary Injunction Entered in the Adversary Proceeding; (2) Authorizing the Trustee to Execute Any and All Documents Convenient and Necessary to the Sale; and (3) Granting Related Relief  
**[Real Property Located at 1034 W. Balboa Blvd., #B, Newport Beach, California 92661]**  
**(con't from 11-7-2023)**

Docket 494

**Tentative Ruling:**

Tentative for November 14, 2023  
See #6, Motions are identical, concerns same property 1034 W. Balboa Blvd., #B, Newport Beach, California 92661. Appearance required.

**Party Information**

**Debtor(s):**

AB Capital, LLC, a California

Pro Se

**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  
Central District of California  
Santa Ana  
Theodor Albert, Presiding  
Courtroom 5B Calendar**

Tuesday, November 14, 2023

Hearing Room 5B

10:00 AM

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

Chapter 11

#8.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

**ALLAN ELI GINDI  
Vs.  
DEBTOR**

Docket 630

**Tentative Ruling:**

November 14, 2023

The court is left unclear as to why we are here. Reorganized debtor seems to argue that this is not a disguised reconsideration motion of the events from Sept. 13, 2023, but it does read that way. If that is what is requested it is denied as procedurally improper. If it's in the nature of declaratory relief whether the stay relates to non-debtor parties, it does not and as a matter of law never did. American Express can pursue its setoff defenses as was made clear in the September 2023 ruling. Why are we here? Appearance required.

**Party Information**

**Debtor(s):**

Allan Eli Gindi

Represented By  
Michael G Spector  
Vicki L Schenum  
R Gibson Pagter Jr.  
M. Candice Bryner

**Joint Debtor(s):**

Carol June Gindi

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

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

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

**Chapter 11**

**#9.00 EVIDENTIARY HEARING RE: Motion For Sanctions For Violation Of Automatic Stay  
(set from hrg held on 5-10-23)  
(cont'd from 8-14-23)**

Docket 576

**Tentative Ruling:**

Tentative for November 14, 2023  
Settled? When can a stipulation be lodged? Appearance required.  
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Tentative for 5/10/23:  
Mediation concluded? Status?

Appearance:required  
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Tentative for 3/15/23:  
Status ? Mediation result?

Appearance: required  
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Tentative for 1/11/23:

This is Debtor's motion for sanctions against Nathan Gwilliam, Crystal Gwilliam, Elevati, Inc., Aracaju, Inc., and their lawyers, Scott Hatch and Call & Jensen ("Respondents") for alleged violation of the automatic stay pursuant to 11 U.S.C. §362(k). Confusingly, there was a parallel motion for OSC re Contempt on what appears to be the same issue very recently withdrawn. Also, as the court reads it, this motion is teed up as a stay violation question, not a discharge violation (and from what the court can discern it seems no

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... Allan Eli Gindi and Carol June Gindi**  
discharge has yet been granted).

**Chapter 11**

The parties disagree on the facts in several key respects so gleaning an objective statement of facts from the briefs is difficult. But in substance, Debtor and his now deceased co-debtor wife, Carol, commenced this bankruptcy case under chapter 11 on 1/18/19. On 10/1/20, the court confirmed Debtors' plan of reorganization. The court granted a motion for final decree and to close the case on 1/14/21 following substantial consummation of the plan (but again before any discharge was granted).

In 2019, Respondents obtained a judgment against the non-debtor entity, Promedia, Inc. in Orange County Superior Court ("OCSC"). There is no contention that entry of that judgment was stayed. On 1/7/21, Respondents filed a motion to amend the judgment in OCSC in which Respondents asserted that judgment debtor Promedia was an alter ego of Debtors and sought to have Debtors added as judgment debtors. The motion was granted on 9/24/21. When notified that the motion might have violated the automatic stay, Respondents promptly filed a motion to vacate the order on 10/27/21. However, on 6/15/22, Respondents apparently filed a second motion to amend the judgment, once again seeking to add Debtors to the judgment.

Debtor argues that Respondents violated the automatic stay by seeking to add him and his wife as judgment debtors despite such conduct being barred by the automatic stay. Debtor argues that the violation of the stay was willful because Respondents had notice of Debtors' bankruptcy case as early as February of 2019 (or about a month after the petition date). The filing of the motion to amend the state court judgment, Debtor argues, caused him to have to retain counsel to oppose the motion and incur all attendant expenses. Debtor argues that Respondents should never have filed the motion to amend the judgment in the first place and could have clarified the status of the bankruptcy by number of methods, but did none of them. In any case, Debtor argues that Respondents were obviously aware of the bankruptcy filing when they agreed to file a motion to vacate the order adding Debtors to the list of judgment debtors. Therefore, Debtor argues, the filing of the second motion to amend the judgment, which sought to add Debtors as judgment debtors constitutes wanton disregard for the automatic stay and warrants punitive damages. Debtor argues that the extra stress put on them

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... Allan Eli Gindi and Carol June Gindi Chapter 11**

by believing they were judgment debtors in the Promedia case may have been a contributing factor in his wife's suicide. For these reasons Debtor seeks damages as follows:

(a) \$30,973.70 for the attorneys' fees and costs incurred by Cronin and the Prenovost law firm, payable to the Prenovost law firm;

(b) \$4,059.70 for the attorneys' fees and costs incurred by Mr. Spector, payable to his law office;

(c) \$13,354.50 for the attorneys' fees and costs incurred by the Pagter firm, payable to the firm, and such further fees and costs incurred by the Pagter law firm after 10/24/2022 in preparing and prosecuting the instant Motion;

(d) \$24,035.67 for the attorneys' fees and costs incurred by Fuchs, payable to his law firm,

(e) the greater of \$1,000,000 or whatever amount Respondents assert Debtor owes or could owe them as a judgment debtor in the OCSC case; and

(f) punitive damages of no less than \$1,000,000 or whatever amount Respondents assert Debtor owes or could owe them as a judgment debtor in the OCSC case.

Respondents argue that they had insufficient notice of the bankruptcy as they became post-petition judgment creditors when the OCSC granted the motion to amend the judgment. Respondents argue that there was ample time for Debtors to notify Respondents about the bankruptcy filing over the course of the case but Debtors did not do so. Respondents point to their agreement to move the OCSC to vacate the order amending the judgment as evidence that all the expense and stress could have been avoided by more timely communication. As to the filing of the second motion to amend the OCSC judgment, Respondents argue that there was a typographical error in the amended motion and Debtors were mentioned by mistake. Respondents argue that even if there were a technical violation of the stay, Debtor's motion for sanctions should be barred by the equitable doctrines of laches and estoppel as many months passed between the alleged violation of the stay



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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... Allan Eli Gindi and Carol June Gindi**

**Chapter 11**

and this motion. Respondents also argue that they detrimentally relied on Debtor not raising the automatic stay issue when it would have made sense for Debtor to do so.

It seems regrettable that mistakes were made on both sides. Debtor raises troubling evidence that Respondents had knowledge of the bankruptcy prior to filing the first motion to amend the judgment in the OCSC. It is not clear that Respondents can really say otherwise. Thus, it seems likely that a willful violation of the stay occurred because Respondents likely held a pre-petition contingent claim for attorney's fees based on the alter ego theory of recovery that eventually prevailed in the OCSC. The filing of the second motion to amend the judgment is inexplicable unless there was a genuine mistake and apparently (inexplicably) Debtor did not oppose that motion. However, it is not clear why it took so long for Debtor to assert the protection of the stay until after he had incurred substantial legal fees unsuccessfully opposing Respondents' motion to amend the OCSC judgment. Thus, even if this court were to find that a willful violation of the stay occurred, it is unclear how to fairly apportion consequent damages as it seems Debtor failed to mitigate the damages caused by the alleged stay violation. To accurately apportion damages might require a mini-trial or further briefing, neither of which seems like a preferable outcome at this juncture.

It is not clear what settlement efforts have occurred so far, but it does not appear that this matter has been mediated, and a case like this seems ideal for resolution by formal mediation. For any success, however, the debtor needs to take a much more realistic view of what should reasonably be awarded for a willful violation even assuming that willful violation is found. It seems much effort and fees were expended in trying to deal with the question at the OCSC level when it would have been very straightforward to involve the bankruptcy court at the outset. The amount of those fees could not reasonably have exceeded low five digits. Why it was not done that way is never explained.

*Continue for evidentiary hearing. Refer to mediation in meantime.*

Appearance: required

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

**Tuesday, November 14, 2023**

**Hearing Room 5B**

10:00 AM

**CONT... Allan Eli Gindi and Carol June Gindi**

**Chapter 11**

**Party Information**

**Debtor(s):**

Allan Eli Gindi

Represented By  
Michael G Spector  
Vicki L Schenum  
R Gibson Pagter Jr.

**Joint Debtor(s):**

Carol June Gindi

Represented By  
Michael G Spector  
Vicki L Schenum  
Candice Candice Bryner