

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

Thursday, November 14, 2024

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

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ZoomGov meeting number: 161 711 7451

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:13-14887 Bret A Percival

Chapter 7

Adv#: 8:23-01027 Kelly v. Percival

- #1.00** PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Under 11 USC Section 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), and 523 (a) (6), Pursuant To Section 523(a)(3)(B)
(set from s/c hrg held on 6-29-23)
(cont'd from 4-04-24 per order continuing pretrial conf entered 3-27-24)
(cont'd from 9-12-24)
(cont'd from 10-24-24)
(cont'd from 11-07-24)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024

So, do we have a joint pretrial stipulation? *Appearance required.*

Tentative for November 7, 2024

On October 24, 2024, the court required that the parties submit a **joint** pretrial stipulation. What has been filed is not joint. The court cannot determine on this record why or who is to blame, but it is evident there has been a failure to cooperate. Mr. Kelly complains largely about a failure to provide overdue discovery, but that is not very helpful either as that should have been the subject of a motion to compel, probably months ago. We should be well beyond that by now. We are supposed to be at threshold of trial. But the court also observes that debtor appears to have been either negligent or worse regarding his discovery responsibility. So the court is reluctant to condone such behavior. The court is quite perturbed by the status of this case. So it will hear argument whether an order striking the answer is indicated.

Appearance required.

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CONT... Bret A Percival

Chapter 7

Tentative for October 24, 2024
No pretrial stip? Dismiss for failure to prosecute. *Appearance required.*

Tentative for September 12, 2024
The 30 day stay mentioned last time should be expired. Status? *Appearance required.*

Tentative for August 1, 2024
A stipulation regarding staying the proceedings was expected. Status?
Appearance required.

Tentative for April 25, 2024
A continuance was granted at Mr. Firman's request, but since nothing has
been filed. Why shouldn't the court adopt the unilateral stipulation offered by
plaintiff? Appearance required.

Tentative for February 29, 2024
Status on outstanding discovery disputes? Appearance required.

Tentative for 6/29/23:
Deadline for completing discovery: Nov. 1, 2023
Last date for filing pre-trial motions: Nov. 20, 2023
Pre-trial conference on: Dec. 7, 2023
Joint pre-trial stipulation and/or order due per local rules.

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CONT... Bret A Percival

Chapter 7

Appearance: required

Party Information

Debtor(s):

Bret A Percival Pro Se

Defendant(s):

Bret A Percival Pro Se

Plaintiff(s):

Gregory Kelly Pro Se

Trustee(s):

CASE REOP/CONV/OR CLOSED Pro Se

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10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01074 Marshack v. American Express National Bank

- #2.00** STATUS CONFERENCE RE: Complaint (1) To Avoid and Recover Intentionally Fraudulent Transfers Pursuant to 11 U.S.C. Sections 544(b), 548(a)(1)(A) and 550, and Cal. Civ. Code sections 3439.04(a)(1) and 3439.07; (2) To Avoid and Recover Constructively Fraudulently Transfers Pursuant to 11 U.S.C. Sections 544, 548(a)(1)(B) and 550, and Cal. Civ. Code Sections 3439.04(a)(2), 3439.05(a) and 3439.07; and (3) To Preserve the Transfers Pursuant to 11 U.S.C. Section 551
(cont'd from 4-11-24 per order approving stip to cont. s/c entered 4-01-24)
(cont'd from 6-27-24)
(cont'd from 10-03-24 per order approving stip to cont. s/c entered 9-19-24)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Continue in favor of a Rule 9019 motion? *Appearance required.*

Tentative for June 27, 2024
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by Oct. 1, 2024.
Status conference continued to: 10/03/24 at 10:00 a.m.
Appearance is optional.

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

Defendant(s):

American Express National Bank

Pro Se

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CONT... DGWB, Inc.

Chapter 7

Plaintiff(s):

Richard A Marshack

Represented By
David M Goodrich

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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8:23-11033 Jason Paul Reynolds

Chapter 11

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

- #3.00** STATUS CONFERENCE RE: Complaint (1) Objecting To The Discharge Of Debt On The Grounds That It Was Procured Through Fraud And Breach Of Fiduciary Duty
(set from s/c hrg held on 11-09-23)
(pre-trial conf. changed to s/c per hearing result from the mtn for summary judgment hrg held on 6-27-24 - matter #45)
(cont'd from 7-11-24)
(cont'd from 10-03-24 per order cont. case status conference entered 9-19-24)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024

Why didn't Plaintiff participate in the status report? As the court reads it, law and motion and discovery should now be complete. Continue to February 27, 2024 at 10:00 a.m. for Pretrial Conference. Joint Pretrial Stipulation is due per LBRs. *Appearance required.*

Tentative for July 11, 2024

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

Tentative for November 9, 2023

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

Party Information

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CONT... Jason Paul Reynolds

Chapter 11

Debtor(s):

Jason Paul Reynolds

Represented By
Anerio V Altman

Defendant(s):

Jason Paul Reynolds

Pro Se

Plaintiff(s):

Kasie Yoo

Represented By
Chad Biggins

Ryan Kim

Represented By
Chad Biggins

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8:18-10486 Ron S Arad

Chapter 7

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

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

Docket 1

Tentative Ruling:

Tentative for November 14, 2024

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

Tentative for August 1, 2024

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

Tentative for April 25, 2024

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

Tentative for March 28, 2024

Deadline for completing discovery is August 1, 2024.

Last date for filing pre-trial motions is August 16, 2024.

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CONT... Ron S Arad

Chapter 7

Pre-trial conference is on September 26, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules
A mediation is reportedly already underway. It should be complete not later than June of 2024.
Appearance required.

Tentative for January 4, 2024
The deadline for completing discovery is May 1, 2024.
The last date for filing pre-trial motions is May 24, 2024.
The pre-trial conference is on June 6, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

William H Brownstein

Pro Se

G Bryan Brannan

Pro Se

William H Brownstein & Associates,

Pro Se

Brannan Law Offices

Pro Se

Plaintiff(s):

Weneta M A Kosmala

Represented By
Jeffrey I Golden

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden

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8:19-10526 LF Runoff 2, LLC

Chapter 7

Adv#: 8:24-01065 Marshack v. United Airlines, Inc.

**#5.00 STATUS CONFERENCE RE: Complaint To Avoid And Recover Voidable Transfers
(cont'd from 8-01-24)
(cont'd from 10-31-24 per court's own mtn)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-21-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 10-17-24 - SEE DOC #30**

Tentative Ruling:

Tentative for August 1, 2024
See #31. *Appearance required.*

Tentative for June 27, 2024
Status conference continued to: August 1, 2024 at 11:00 a.m. to coincide with motion to dismiss. *Appearance required.*

Party Information

Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

Defendant(s):

United Airlines, Inc.

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Lauren N Gans

Trustee(s):

Richard A Marshack (TR)

Represented By

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CONT... LF Runoff 2, LLC

Chapter 7

David Wood
D Edward Hays
Thomas J Polis
Laila Masud
Roye Zur
Lauren N Gans

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8:24-11278 Stewart Vincent Taddeo

Chapter 7

Adv#: 8:24-01116 Stark et al v. Taddeo et al

**#6.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
[11 U.S.C. 523(a)(6)]**

Docket 1

Tentative Ruling:

Tentative for November 14, 2024

See item #15. This matter will be rescheduled to be heard together with that motion to dismiss. *Appearance required.*

Party Information

Debtor(s):

Stewart Vincent Taddeo

Represented By
Dennis Connelly

Defendant(s):

Stewart Vincent Taddeo

Pro Se

Yasuyo Kangu Taddeo

Pro Se

Joint Debtor(s):

Yasuyo Kangu Taddeo

Represented By
Dennis Connelly

Plaintiff(s):

Larry S. Stark

Represented By
Lazaro E Fernandez

Betty I. Stark

Represented By
Lazaro E Fernandez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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CONT... Stewart Vincent Taddeo

Chapter 7

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8:23-10820 Huan Minh Cao

Chapter 7

Adv#: 8:24-01117 MonsterPeeps LLC et al v. Cao

#7.00 STATUS CONFERENCE RE: Complaint Objecting To Dischargeability Of Debt And Debtor's Discharge [11 U.S.C. §§ 523(a)(2)(A) and (a)(6) and §§ 727(a)(2),(a)(3) and (a)(4)(A)]

Docket 2

Tentative Ruling:

Tentative for November 14, 2024

Status Conference continued to: December 12, 2024 at 10:00 a.m. to coincide with OSC re abstention in favor of state court litigation, as intimated by plaintiff. *Appearance required.*

Party Information

Debtor(s):

Huan Minh Cao

Represented By
Bert Briones

Defendant(s):

Huan Minh Cao

Pro Se

Plaintiff(s):

MonsterPeeps LLC

Represented By
Maggie Elyse Schroedter

Wozniak Distribution, LLC

Represented By
Maggie Elyse Schroedter

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden

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8:24-11368 Daeyoung Victor Kang

Chapter 7

Adv#: 8:24-01119 Choi v. Kang

#8.00 STATUS CONFERENCE RE: Complaint For: (1) Denial Of Discharge Of Debt Under: (a) Violation of 11 U.S.C. § 523(a)(2)(A); (b) Violation of 11 U.S.C. § 523(a)(4); (c) Violation of 11 U.S.C. § 523(a)(6) And (2) Determination Of Non-Dischargeability Under: (a) Violation of 11 U.S.C. § 727(a)(4)(A); (b) Violation of 11 U.S.C. § 727(a)(5); (c) Violation of 11 U.S.C. § 727(a)(2)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Deadline for completing discovery is July 1, 2025
Last date for filing pre-trial motions: July 11, 2025
Pre-trial conference on August 7, 2025 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within ten days. One day of mediation to be completed by February 28, 2025.

Appearance required.

Party Information

Debtor(s):

Daeyoung Victor Kang

Represented By
Dale J Park

Defendant(s):

Daeyoung Victor Kang

Pro Se

Plaintiff(s):

Youngmook Choi

Represented By
Michael H Yi

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:24-11337 Troy Corfield

Chapter 7

Adv#: 8:24-01121 United States of America v. Corfield et al

#9.00 STATUS CONFERENCE RE: Complaint Objecting To Discharge Of Certain Debts Pursuant To 11 U.S.C. Section 523(a)(2)(A)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Deadline for completing discovery: March 31, 2025
Last date for filing pre-trial motions: April 11, 2025
Pre-trial conference on: April 24, 2025 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.

Appearance required.

Party Information

Debtor(s):

Troy Corfield

Represented By
Marc A Goldbach

Defendant(s):

Troy Corfield

Pro Se

Kimberly Ann Corfield

Pro Se

Joint Debtor(s):

Kimberly Ann Corfield

Represented By
Marc A Goldbach

Plaintiff(s):

United States of America

Represented By
Elan S Levey

Trustee(s):

Thomas H Casey (TR)

Pro Se

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CONT... Troy Corfield

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

Chapter 7

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

#10.00 PRE-TRIAL CONFERENCE RE: Answer to Complaint and Counterclaims for:
(1) Violation of the Automatic Stay; (2) Avoidance of Preferential Transfer; (3)
Avoidance of Fraudulent Transfer; (4) Avoidance of Unauthorized Post-Petition
Transfer; (5) Preservation of Avoided Transfers; and (6) Declaratory
Relief/Unjust Enrichment
**Another summons issued on 3-21-23
(set from s/c hrg held on 6-08-23)
(cont'd from 9-12-24 per order continuance of pre-trial conference entered
8-30-24 -see doc #45)**

Docket 9

Tentative Ruling:

Tentative for November 14, 2024

An order approving a settlement agreement between Trustee and Plaintiffs was entered on September 18, 2024. The settlement provides for a stipulation to dismiss the adversary as to Trustee. The parties should explain what happens to the rest of this case. *Appearance required.*

Tentative for 6/8/23:

Deadline for completing discovery: March 31, 2024

Last date for filing pre-trial motions: May 1, 2024

Pre-trial conference on: May 9, 2024 @10

Party Information

Debtor(s):

AB Capital, LLC, a California

Pro Se

Defendant(s):

Richard A. Marshack

Represented By
Ryan D O'Dea

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

Chapter 7

Joshua R. Pukini	Pro Se
Calpac Mortgage Fund, LLC	Pro Se
Calpac Management, Inc	Pro Se
All Persons Unknown Claiming Any	Pro Se

Plaintiff(s):

Heritage One LLC	Represented By Neelamba Jhala Molnar Evan C Borges Claire-Lise Y. Kutlay
Jeffrey B. Panosian	Represented By Neelamba Jhala Molnar Evan C Borges Claire-Lise Y. Kutlay
Claire B. Panosian	Represented By Neelamba Jhala Molnar Evan C Borges Claire-Lise Y. Kutlay

Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays Alan W Forsley Ryan D O'Dea Kristine A Thagard James C Bastian Jr Marc A Lieberman Rika Kido
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8:23-10312 Lars Ake Morgan Gustavsson

Chapter 7

Adv#: 8:23-01041 Binun v. Gustavsson

#11.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt And/Or To Deny Debtor's Right To Receive A Discharge (cont'd from 9-12-24 per order approving stip to cont pre-trial conf. entered 8-20-24 - see doc #38)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Stipulation? *Appearance required.*

Tentative for November 30, 2023
The deadline for completing discovery is May 31, 2024.
The last date for filing pre-trial motions is June 10, 2024.
The pre-trial conference is on June 27, 2024 at 10:00 a.m.
Joint pre-trial order due per local rules.
Appearance required.

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe

Defendant(s):

Lars Ake Morgan Gustavsson

Pro Se

Plaintiff(s):

Paul Binun

Represented By
Kit J Gardner

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CONT... Lars Ake Morgan Gustavsson

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Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-10312 Lars Ake Morgan Gustavsson

Chapter 7

#12.00 STATUS CONFERENCE RE: Motion for Order Denying Debtor's Claim of Homestead Exemption
(cont'd from 8-24-23 per order approving stip. to cont. hrg on mtn for order denying debtor's claim of homestead exemption entered 8-22-23)
(cont'd from 6-27-24)
(cont'd from 9-12-24)

Docket 26

Tentative Ruling:

Tentative for November 14, 2024

It sounds from the joint status report that the parties want the court to set this matter regarding objection to homestead at the same time as trial on the adversary proceeding. Set trial date? *Appearance required.*

Tentative for September 12, 2024

The matter was continued to this date per request, but the court has seen nothing suggesting any progress. Status? *Appearance required.*

Tentative for June 27, 2024

Continue to Sept. 12 at 10:00 a.m. per request. *Appearance is waived.*

Tentative for March 28, 2024

According to the lone status report, we need a Spanish translation of the deposition of Ms. Gustavsson. This must be done before the court is in any position to rule upon the objection. What's the reason for the delay?
Appearance required.

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CONT... Lars Ake Morgan Gustavsson

Chapter 7

Tentative for November 30, 2023

Schedule continued evidentiary hearing as needed. Appearance required.

Tentative for 7/11/23:

This is Motion for Order Denying Debtor, Lars Ake Morgan Gustavsson's ("Debtor") Claim of Homestead Exemption brought by creditor, Paul Binun ("Creditor"). Debtor opposes the motion.

The Debtor filed his voluntary Chapter 7 petition on February 17, 2023, listing his residence as being 2960 Champion Way, Unit 1908 in Tustin, California. However, Creditor asserts, that is not believed to be the Debtor's domicile. Rather, the residence in Tustin appears to be that of the Debtor's son, while the Debtor's domicile is and has been the Mexico Real Property in Mazatlan, Mexico, where the Debtor's wife also resides, and for which the Debtor has claimed a \$300,000.00 homestead exemption pursuant to California Code of Civil Procedure section 704.730. However, Creditor argues, because the Debtor was not domiciled in California for 730 days prior to filing his bankruptcy petition, as required by Bankruptcy Code section 522(b)(3)(A), the Debtor may not claim California's homestead exemption in the Mexico Real Property.

Creditor asserts that the nowhere in the Debtor's Schedules or Statement of Financial Affairs did he disclose his interest in the Mexico Real Property. Even after he had been questioned extensively at a meeting of creditors held on March 29, 2023, concerning his potential ownership of real property in Mexico, Creditor asserts, the Debtor filed an amended set of Schedules and Statement of Financial Affairs on April 27, 2023, which still did not list any interest in real property.

However, Debtor further amended his schedules on April 28, 2023 and listed the Mexico Real Property, but asserted that it was held in his wife's name. In fact, Creditor asserts, the Mexico Real Property was purchased by Debtor with his own separate property (an inheritance). Still, the Debtor also amended his Schedule C to claim an exemption in the Real Property in the amount of \$300,000.00 pursuant to California Code of Civil Procedure section 704.730. As noted above, Creditor argues that Debtor is not entitled to that

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CONT... Lars Ake Morgan Gustavsson

Chapter 7

homestead exemption under section 522(b)(3)(A), which states:

(3) Property listed in this paragraph is—
(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

A person is "domiciled" in a location where he or she has established a fixed habitation or abode in a particular place and intends to remain there permanently or indefinitely. *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986).

Creditor argues that a timeline established in part by filings in this case show that Debtor was domiciled in Mexico within the 730 days preceding the petition date, rendering him, according to Creditor, ineligible for the California exemptions.

Further, Creditor argues that under 11 U.S.C. sec. 522(g), Debtor may not claim an exemption if the property was voluntarily transferred or if it was concealed. *See, e.g. In re McKinnon*, 495 B.R. 553, 555 (Bankr. M.D. Fla. 2013) ("If either the transfer was a voluntary transfer or if the transfer was not disclosed, then § 522(g) is unavailable to the Debtor"). As noted above, Creditor argues that Debtor likely transferred and concealed the Mexico Real Property, at least initially. Creditor asserts that discovery will be necessary to determine under what circumstances the Mexico Real Property was acquired and/or when the funds used to acquire it were given by the Debtor to his wife.

Debtor opposes the motion. Debtor asserts that Creditor is a former business partner and also a disputed creditor. Debtor maintains that he has always lived in California. Debtor points out that when Creditor sued Debtor in Orange County Superior Court in October of 2019, Debtor was listed in the

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Lars Ake Morgan Gustavsson

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complaint as "residing in Orange County, California..." Debtor maintains that he has always listed an address in Orange County in his bankruptcy filings because that is, in fact, where he lives, though notes that he does visit his wife in Mexico. Debtor disputes that he ever had any interest in the Mexico Real Property and maintains that it is his wife's property. Debtor asserts that his frequent trips to Mexico are a result of medical care and recovery from serious illness. However, Debtor argues that under the definition of "domicile" he should be considered domiciled in California because he has never intended to live and remain anywhere else, including Mexico. Debtor argues that his intent to live and remain in California is evidenced by his assets being located here, his sources of income located here, his work is here, he carries a California driver's license, owes and pays taxes in California. Debtor concedes that he was advised to say that he resided in Mexico, but maintains he never formed a subjective intent to live and remain there. Debtor also disputes that any the Mexico Real Property was transferred or concealed because, Debtor argues, he never had any ownership interest there, making sec. 522(g) inapplicable.

In reply, Creditor argues that Debtor has not rebutted the argument that he purchased the house in Mexico with money from an inheritance. Creditor also argues that Debtor at various times during this case made it clear that Mexico was his "home" and that he intended to live there indefinitely. Creditor argues that if his arguments are not sufficiently compelling at this time, he should be given leave to conduct discovery and get answers to questions such, what is exactly is his living arrangement with his son in California? What are his expenses in Mexico? Where is his car registered? What personal property assets are in Mexico?

The court cannot tell where the truth is on this record. A contested proceeding in the nature of a trial to establish Debtor's domicile during the relevant period may be required. In the meantime, the court would value any comments the chapter 7 trustee, Karen Naylor or the U.S. Trustee might have.

Continue for evidentiary proceeding.

Appearance: required

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CONT... Lars Ake Morgan Gustavsson

Chapter 7

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-11421 Juan Manuel Bernal

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Adv#: 8:23-01112 Ginadan Venture 2, LLC v. Bernal

#13.00 PRE-TRIAL CONFERENCE RE:Complaint to Determine Dischargeability of Debt [11 USC Section 523(a)(2)(A), (4), and (6)]
(set from s/c hrg held on 1-04-23)
(cont'd from 8-08-24 per order approving stipulation for order to continue pretrial conference entered 7-24-24)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
ORDER APPROVING STIPULATION TO DISMISS ADVERSARY
PROCEEDING ENTERED 9-30-24 - SEE DOC #23**

Tentative Ruling:

Tentative of January 4, 2024

The deadline for completing discovery is May 1, 2024.
The last date for filing pre-trial motions is May 24, 2024.
The pre-trial conference is on June 13, 2024 at 10:00 a.m.
The joint pre-trial stipulation and/or order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within ten days.
One day of mediation to be completed by April 1, 2024.
Appearance required.

Party Information

Debtor(s):

Juan Manuel Bernal

Represented By
Robert P Goe
Reem J Bello

Defendant(s):

Juan Manuel Bernal

Pro Se

Plaintiff(s):

Ginadan Venture 2, LLC

Represented By

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CONT... Juan Manuel Bernal

Matthew D. Resnik

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Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros

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8:23-11546 Marie Salanga

Chapter 7

Adv#: 8:23-01128 Roth v. Salanga

#14.00 PRE-TRIAL CONFERENCE RE: Adversary Complaint To Determine Dischargeability Of Debt, And Objection To Discharge (set from hrg held on s/c 4-11-24) (cont'd from 10-10-24 per order cont. pre-trial conf. entered 9-19-24)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Schedule trial date. *Appearance required.*

Tentative for April 11, 2024
Deadline for completing discovery is August 1, 2024.
Last date for filing pre-trial motions is August 16, 2024.
Pre-trial conference is on September 12, 2024 at 10:00 a.m. (travel plans to be evaluated)
Joint pre-trial stipulation and/or order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days.
One day of mediation to be completed by July 1, 2024.
Appearance required.

Tentative for March 14, 2024
See #19. No status report filed. Appearance required.

Tentative for February 1, 2024
Deadline for completing discovery is July 1, 2024.

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CONT... Marie Salanga

Chapter 7

Last date for filing pre-trial motions is July 19, 2024.
Pre-trial conference is on August 1, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Marie Salanga

Represented By
Richard G. Heston

Defendant(s):

Marie Salanga

Pro Se

Plaintiff(s):

Ivar Roth

Represented By
David B Lally

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:24-11278 Stewart Vincent Taddeo

Chapter 7

Adv#: 8:24-01116 Stark et al v. Taddeo et al

#15.00 Defendants Stewart And Yasuyo Taddeos' Motion To Dismiss Plaintiffs' Complaint For Non Dischargeability 12b(6)

Docket 6

Tentative Ruling:

Tentative for November 14, 2024

A. Background

This is Stewart Vincent Taddeo and Yasuyo Kangu Taddeo's ("Debtors" or "Defendants") Motion to Dismiss Plaintiff Larry S. Stark and Betty I. Stark's ("Plaintiffs" or "Starks") complaint to determine the dischargeability of debts pursuant to FRBP 7012, FRCP 12(b)(6) and 11 USC§ 523(a)(6).

In February 2019, the Debtors purchased 42584 Cougar Road, Big Bear Lake, San Bernardino County ("Lot 111"), as an investment property to be used as an Airbnb rental. The purchase was financed entirely with a VA loan and included an alleged implied easement for the use of a driveway, as represented by the seller, who also acted as Debtors' real estate broker. The title insurer, lender, and other stakeholders approved the transaction with no concerns regarding the alleged easement. The Plaintiffs own the neighboring property at 42594 Cougar Road ("Lot 112"). The properties, Lot 111 (improved with a residence) and Lot 112 (unimproved), were originally owned by the Starks. The only access point to Lot 111 was allegedly through the driveway on Lot 112, which also provided parking. Successive owners of Lot 111, including the Debtors, used this driveway for ingress and egress. When Plaintiffs purchased Lot 111 in 2001, it had a single-family residence, while Lot 112 was vacant. In March 2004, Plaintiffs transferred ownership of Lot 111 to their daughter and her husband, retaining Lot 112. The daughter and her husband eventually sold Lot 111 to intermediate buyers who eventually sold it to Debtors, while Plaintiffs continued to own Lot 112.

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Stewart Vincent Taddeo

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The driveway on Plaintiffs' unimproved Lot 112 had allegedly been used by all previous owners of Lot 111. The Debtors assumed they were legally entitled to continue using the driveway. However, 15 months after purchasing the property, a real estate agent informed them that Lot 112 was being sold, and they could no longer use the driveway for access or parking. Plaintiffs refused to grant the Debtors an extension to build their own driveway or allow them the opportunity to purchase Lot 112. Given their reliance on the rental income from Lot 111 to cover the mortgage, the Debtors filed a lawsuit to secure their right to use the driveway. Without it, they risked foreclosure as the property would become unmarketable without access. On July 17, 2020, the Debtors filed a complaint in San Bernardino County Superior Court seeking a temporary restraining order, preliminary and permanent injunctions to prevent the Plaintiffs from obstructing the driveway on Lot 112. They also sought to quiet title and requested declaratory relief regarding their right to use the driveway. Plaintiffs cross-complained for trespass, arguing that the Debtors had no legal right to use the driveway. On May 21, 2024, the San Bernardino County Superior Court entered judgment in favor of the Plaintiffs for quiet title, declaratory relief, and trespass, awarding them \$200,000 in damages. Moreover, the court ruled against the Debtors, finding insufficient evidence of historical use by previous owners. Since no easement was established, the court found in favor of the Plaintiffs for trespass.

On May 19, 2024, Debtors filed their Chapter 7 bankruptcy petition. Plaintiffs timely filed this adversary proceeding on August 26, 2024. Plaintiffs allege that Debtors should not get discharged from their judgment obligation under Section 523(a)(6) because Debtors willfully and maliciously caused Plaintiffs harm and damages, especially since Debtors have a judgment against them in favor of Plaintiffs in the amount of \$200,000. Debtors have now filed this motion to dismiss Plaintiffs' complaint for nondischargeability under the theory Plaintiffs failed to state a claim under Section 523(a)(6). Specifically, Debtors dispute how their actions or their good faith litigation of important pecuniary rights in a lot of land adjacent to Plaintiffs' lot was either willful or malicious. Debtors also contend that Plaintiffs only assert vague and

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conclusory allegations of Plaintiffs quiet use and enjoyment without specifying how Plaintiffs were harmed and Defendants intended that harm by using an existing implied easement.

B. Legal Standard

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

C. Willful and Malicious Injury Under Section 523(a)(6)

Debts incurred in the "willful and malicious injury" to another person or the property of another are not dischargeable. 11 U.S.C. § 523(a)(6). To satisfy the "willful" requirement, the debtor must have a subjective motive to inflict the injury or that the debtor believed that the injury was substantially

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certain to occur as a result of his conduct. *In re Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001). The "malice" requirement is satisfied when the injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. *In re Su*, 290 F.3d 1140, 1147 (9th Cir. 2002). While bankruptcy law governs whether a claim is non-dischargeable under Section 523(a)(6), the court looks to state law to determine whether an act falls within the underlying tort. *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999); See also *Lockerby v. Sierra*, 535 F.3d 1038, 1041 (9th Cir. 2008) (holding that a breach of contract is not "willful and malicious" under Section 523(a)(6) unless accompanied by conduct that constitutes a tort under state law).

Plaintiffs allege that Debtors caused harm through willful and malicious conduct by continuously trespassing on Lot 112, despite repeated requests to cease and desist, and after Debtor's were allegedly informed of Plaintiff's intent to sell Lot 112. According to Plaintiffs, this trespass deprived them of their rightful use and enjoyment of Lot 112 and led to financial damages, which they argue are non-dischargeable under 11 U.S.C. § 523(a)(6). The Plaintiffs further assert that the Debtors' conduct, including their refusal to stop using the driveway, was done with the intent to harm, especially given that Plaintiffs were actively trying to sell the property. They argue that the damages from the superior court's trespass judgment were both a direct and proximate result of Debtors' actions, which were done without just cause or excuse.

Debtors, however, contend that their actions do not meet the willful and malicious standard required for non-dischargeability. Debtors' continued use of the driveway was neither willful nor malicious, as they were acting out of necessity and in good faith. The driveway, as an alleged implied easement, was their only means of ingress and egress to Lot 111, and this access was critical for maintaining their Airbnb business. Debtors also emphasize that Plaintiffs have failed to provide sufficient evidence to prove both the willfulness and maliciousness requirements. Plaintiffs have merely presented vague and conclusory statements regarding injury, without offering substantial proof of financial harm such as lost sales, broker fees, or other specific

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1. Willful Requirement

To satisfy the "willful" requirement, the debtor must have a subjective motive to inflict the injury or that the debtor believed that the injury was substantially certain to occur as a result of his conduct. Plaintiffs allege that Debtors trespassed on their property, Lot 112, despite repeated requests by the Plaintiffs to cease and desist, and that Debtors acted with the intent to deprive Plaintiffs of their use and enjoyment of their ownership interest in Lot 112. Further, Plaintiffs contend that Debtors were substantially certain that Plaintiffs would be deprived of their use and enjoyment of the subject property as a result of Debtors' conduct. There was allegedly motive and knowledge that the injury was substantially certain to occur as a result of Debtors' conduct since Plaintiffs were trying to sell the property, and Debtors allegedly knew of this sale. Based on these allegations, it is likely that the willfulness component of 523(a)(6) is plausibly met here.

2. Malice Requirement

In evaluating the malice requirement under § 523(a)(6), courts look for four elements: (1) there was a wrongful act, (2) it was done intentionally, (3) it caused injury, and (4) it was done without just cause or excuse. In re Su, 290 F.3d 1147.

(a) Wrongful Act

The first element in determining malice under § 523(a)(6) requires a showing of a wrongful act. Id. Plaintiffs pled that through Debtors' willful and malicious conduct, Debtors caused Plaintiffs harm by continuously trespassing on Plaintiffs' Lot 112. The complaint further indicates that despite numerous requests by Plaintiffs to Debtors, Debtors continued to use Lot 112 as a driveway to access Lot 11, and continued to park vehicles on Lot 112

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despite Plaintiffs' request to stop such activity. The state court judgment against Debtors awarded Plaintiffs \$200,000 for trespass. Debtors' actions are likely to meet the threshold for this first element, as Debtors knowingly engaged in conduct that was deemed unlawful. Therefore, the wrongful act is plausibly pled in this case.

(b) Intentional

The second element for establishing malice under § 523(a)(6) requires that the wrongful act was done intentionally. *Id.* Plaintiffs argue that despite repeated requests to stop using the driveway on Lot 112, Debtors continued to use Lot 112 to access Lot 111 and in doing so, Debtors intentionally used Plaintiffs' Lot 112 contrary to Plaintiffs' ownership rights to Lot 112 and in direct contravention of Plaintiffs' use and enjoyment of Lot 112. Plaintiffs further state that Debtors' intentional incursion onto Plaintiffs' Lot 112, without permission, and continued use of Plaintiffs' Lot 112 as Debtors' parking lot intentionally interfered with Plaintiffs' use and enjoyment of Lot 112. Moreover, Plaintiffs state that Debtors acted with the intent to deprive the Plaintiffs of their use and enjoyment of their ownership interest in Lot 112. Therefore, enough is pled to meet the *Iqbal* and *Twombly* standard of plausibility.

(c) Injury

The third element in establishing malice under § 523(a)(6) requires a showing that the wrongful act caused injury. *Id.* Plaintiffs assert that the Debtors' intentional use of Lot 112 damaged Plaintiffs in that Plaintiffs' efforts to sell Lot 112 were stalled due to the Debtors' state court complaint regarding Lot 112 as well as the notice of *lis pendens* filed against Lot 112. Moreover, Plaintiffs state that as a direct and proximate cause of the Debtors' willful and malicious conduct in continuously trespassing on Plaintiffs' Lot 112, Plaintiffs suffered damages for which the San Bernadino County Superior

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Court awarded Plaintiffs' \$200,000 in monetary damages.

Additionally, Plaintiffs argue that their use and enjoyment of Lot 112 was deprived as a result of Debtors' conduct. Debtors state in their motion that it is unclear how Debtors could have possibly interfered with Plaintiffs' quiet use and enjoyment of raw land that had never been used by Plaintiffs at all. Moreover, Debtors argue that there were no improvements on the land to use or enjoy and it was never used by Plaintiffs and if a sale of the subject land was delayed, it may have been to their benefit. But the court is confronted with the judgment of a sister court wherein such acts were construed to have caused damage. Thus, this issue may be subject to the doctrine of collateral estoppel. Accordingly, it is likely that enough is pled to demonstrate that the injury element had been met.

(d) Just Cause or Excuse

The fourth element requires showing the wrongful act was done without just cause or excuse. *Id.* Plaintiffs' complaint states that Debtors' intentional usage of Plaintiffs' Lot 112 without permission and continued use as a personal driveway and parking lot was done without just cause or excuse. Plaintiffs further state that when Plaintiffs granted Lot 111 to their daughter and her husband, Plaintiffs chose to retain Lot 112 for their own benefit, as Lot 112 was not reasonably necessary for the use and enjoyment of Lot 111. Plaintiffs further contend that Lot 111 could be accessed directly from the main street ("Cougar Rd"), and use of Lot 112 was not necessary for access to Lot 111 and that Plaintiffs never relinquished interest or ownership of Lot 112. However, Debtors argue that the driveway was used by a succession of buyers all of whom used the only driveway on the unimproved lot as ingress and egress to the improve lot with the home on it. There is a dispute of fact regarding whether there is accessibility through more than one driveway. Plaintiffs argue that the property can be accessed directly from Cougar Rd and Debtors state that the only access point to their property is the implied easement in question. Debtors' just cause and excuse was that

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they thought they were entitled to the easement and Plaintiffs are contending that there is no just cause or excuse because Debtors' didn't need the easement. While the implied easement Debtors were relying on as the driveway to extra parking, as Plaintiffs state this personal parking lot is without just cause or excuse especially since it is likely that Debtors' have another means of entry to the property. Although the two possible entries to the property will be an issue for the court to consider down the road in litigation, for now this element has been sufficiently pled to meet the plausibility standard.

Plaintiffs contend in their opposition that the presence of a state court judgment with the cognizable legal theory is enough for the claim to survive both the standards of Rule 12(b)(6) and FRBP 7012. Although the facts are viewed in the light most favorable to the nonmovant, it is important to note that having a state court judgment does not automatically entitle Plaintiffs' to meet the aforementioned standards because Plaintiffs are still required to provide sufficient facts to meet both the willful and malicious requirements.

On the other hand, Debtors' reply states that Plaintiffs did not plead sufficient facts that Debtors had requisite intent required under Section 523(a)(6). They further argue that the allegations are vague and conclusory. Since we are at the pleading stage of this litigation, a claim has to have facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Here, it is likely that Plaintiffs did state enough facts to meet facial plausibility. At this point, it is not required that detailed factual allegations were made by Plaintiffs that Debtors intended to harm Plaintiffs. It is sufficient that Plaintiffs mentioned Debtors' continued to use Lot 112 to access Lot 111 in direct contravention of Plaintiffs' use and enjoyment of Lot 112 and Debtors' intentional incursion onto Plaintiffs' Lot 112, without permission, and Debtors' parking lot intentionally interfered with Plaintiffs' use and enjoyment of Lot 112. Plaintiffs also pled that Debtors acted with the intent to deprive the Plaintiffs of their use and enjoyment of their ownership interest in Lot 112.

Thus, Plaintiffs have likely alleged enough facts to meet the *Iqbal* and *Twombly* plausibility standard for stating a claim and pled enough to prove

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both the willful and malice injury requirements of 523(a)(6). Courts take all allegations as true and construe them in the light most favorable to the nonmoving party, and Plaintiffs have sufficiently pled enough facts to assert a claim.

Deny. Appearance required.

Party Information

Debtor(s):

Stewart Vincent Taddeo

Represented By
Dennis Connelly

Defendant(s):

Stewart Vincent Taddeo

Represented By
Dennis Connelly

Yasuyo Kangu Taddeo

Represented By
Dennis Connelly

Joint Debtor(s):

Yasuyo Kangu Taddeo

Represented By
Dennis Connelly

Plaintiff(s):

Betty I. Stark

Represented By
Lazaro E Fernandez

Larry S. Stark

Represented By
Lazaro E Fernandez

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:24-11522 Piecemakers

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Adv#: 8:24-01122 McKinney v. Piecemakers et al

#16.00 Defendants' Motion Pursuant To F.R.C.P. Rules **12(b)(1) and 12(b)(6)** To Dismiss Adversary Complaint To Determine Non-Dischargeability Of Debt Pursuant To 11 U.S.C. Sec. 523(a)(6)

Docket 4

Tentative Ruling:

Tentative for November 14, 2024

This is Debtor-in-Possession Piecemakers ("Debtor"), Douglas Follette ("Follette") and Brenda Stanfield's ("Stanfield")(collectively, "Defendants") motion to dismiss Plaintiff Michelle McKinney's ("Plaintiff") adversary complaint for failing to state a claim under Section 523(a)(6) under the Bankruptcy Code. This motion is brought pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

On June 17, 2024, Debtor filed a voluntary petition for Chapter 11, Subchapter V bankruptcy. Debtor is a general partnership having two general partners – Follette and Stanfield. Debtor functions as a retail sales of craft and quilting merchandise, classes conducted out of its storefront at 1720 Adams Avenue, Costa Mesa, California ("Country Store") as well as having an online store. Debtor also engages in residential construction activities through one of its employees who holds a General Contractor's license, and provides remodeling, home repair, and handyman services.

Plaintiff filed a state court complaint against Debtor, Follette, and Stanfield as general partners on April 2, 2018 ("State Court Action") for lost wages, labor code violations, and emotional distress while Plaintiff lived with and was a member of Piecemakers. A judgment was entered on October 25, 2023 in the amount of \$4,096,200.88 ("Judgment"). Attorney's fees and costs were also granted. The Judgment is currently on appeal. Plaintiff brought this adversary proceeding to seek and exception from the discharge against all Defendants.

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The adversary complaint contains three claims for relief:

- (1) Nondischargeability under Section 523(a)(6) against all Defendants for willful and malicious violation of California labor law.

- (2) Nondischargeability under Section 523(a)(6) against all Defendants for financial abuse of a dependent adult in violation of California law

- (3) Nondischargeability under Section 523(a)(6) against all Defendants for intentional infliction of emotional distress.

The motion to dismiss does not object to the substance of each claim or whether enough facts have been alleged to assert claims for relief under Section 523(a)(6), but simply argues that Section 523(a) is not applicable to entities like Debtor Piecemakers, and consequently, does not apply to Follette and Stanfield as well. Plaintiff opposes the motion, and most of the arguments in the pleadings focus on which case law to rely on to determine the issue of whether 1192 provides an exception to the plain language of Section 523(a) that only apply to individuals, and no entity debtors.

A. Legal Standard

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions,

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and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-556 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) citing Twombly. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. Id. The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. Id.

B. Dismissal Under Section 523(a)(6)

Debts incurred in the "willful and malicious injury" to another person or the property of another are not dischargeable. 11 U.S.C. § 523(a)(6). To satisfy the "willful" requirement, the debtor must have a subjective motive to inflict the injury or that the debtor believed that the injury was substantially certain to occur as a result of his conduct. In re Jercich, 238 F.3d 1202, 1208 (9th Cir. 2001). The "malice" requirement is satisfied when the injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. In re Su, 290 F.3d 1140, 1147 (9th Cir. 2002). While bankruptcy law governs whether a claim is non-dischargeable under Section 523(a)(6), the court looks to state law to determine whether an act falls within the underlying tort. In re Bailey, 197 F.3d 997, 1000 (9th Cir. 1999); See also Lockerby v. Sierra, 535 F.3d 1038, 1041 (9th Cir. 2008) (holding that a breach of contract is not "willful and malicious" under Section 523(a)(6) unless accompanied by conduct that constitutes a tort under state law).

1. Section 523(a) and Corporate/Entity Debtors

Defendant's main argument in the motion to dismiss is that Section 523(a) only applies to individual debtors and not entity debtors, like Debtor Piecemakers. This is supported by the plain language of Section 523(a) which

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CONT... **Piecemakers**

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states that "a discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an *individual debtor* from any debt—" 11 U.S. Code § 523 (emphasis added). Plaintiff, however, contends that Section 1192 of the Bankruptcy Code provides for discharge of debt except "of the kind specified in Section 523(a) of this title." There is an apparent contradiction in the Code as to whether a Subchapter V entity debtor can be subject to a nondischargeability suit under Section 523(a).

Both Defendants and Plaintiff provide case law to support their respective positions. Defendants cite to *Lafferty v. Off-Spec Sols., LLC (In re Off-Spec Sols., LLC)*, 651 B.R. 862 (9th Cir. BAP 2023), which held that Section 1192's discharge of debts following confirmation of a plan also discharges debts under Section 523(a) if the debtor is an entity. *Id.* 867. However, Plaintiff contends that Ninth Circuit BAP is not binding authority, and it is important to look at other circuits for insight on this issue. Other circuits weighed in on the issue have found that there is no reason to disregard the plain language of Section 1192, which on its face limits the discharge of individual and corporate debtors by excluding debts of the kinds specified in Section 523(a). *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509, 517-18 (4th Cir. 2022); *Avion Funding, L.L.C. v. GFS Indus., L.L.C. (In re GFS Indus., L.L.C.)*, 99 F.4th 223, 232 (5th Cir. 2024). The court in *Off-Spec* addresses *Cleary* and criticizes its reasoning, stating that "the reference in Section 1192 to debtors 'of the kind specified in section 523(a)' can reasonably be construed to mean the list of debts, but nothing in Section 1192 obviates the express limitation in the preamble of Section 523(a) or other expands the scope to corporate debtors." *Off-Spec*, 651 B.R. at 867.

The Ninth Circuit is silent on this issue, given that subchapter v is relatively new to the Bankruptcy Code. However, Defendants are correct that Ninth Circuit BAP, while not binding, is certainly persuasive, especially in comparison to outside circuits. Moreover, the court agrees with the interpretation of Sections 1192 and 523(a) in *Off-Spec*. The Fourth Circuit in *Cleary* certainly presents an interest perspective that since Section 1192, which applies to both individual and entity debtors, does not specify that Section 523(a) applies only to individual debtors. However, as stated in *Off-*

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Spec, this court agrees that Section 1192 reiterates Section 523(a)'s application to subchapter v debtors, and Section 523 limits this application to only individual subchapter v debtors. See *Off-Spec*, 651 B.R. at 867. *Off-Spec* provides further context to this interpretation, stating that as part of the Small Business Reorganization Act of 2019, Congress amended Section 523(a) to add Section 1192 to the list of discharge provisions to which it applies. *Id.* If Section 1192 makes the debt specified in Section 523(a) nondischargeable to all debtors, the concurrent amendment to Section 523(a) has no meaning. *Id.* Finally, when looking to Section 1141, which is also on the list of discharge provisions of Section 523(a), it specifically makes debts under Section 523(a) applicable to corporate debtors. 11 U.S. Code § 1141 (d)(6). Thus, if Congress wanted to make this specification in Section 1192, it could have done so, and knew exactly how to in Section 1141. By omitting this specification, it likely intended for the restriction in Section 523(a) to individual debtors to also apply to subchapter v cases.

Accordingly, the court finds in favor of Defendants' argument that Section 523(a) does not apply to Debtor Piecemakers, and the adversary complaint should be dismissed as to Debtor.

2. Joinder of Follette and Stanfield

Defendants argue that the adversary lacks subject matter jurisdiction against Follette and Stanfield because the court cannot adjudicate the dischargeability of a debt against non-debtors when there is no pending bankruptcy case involving the non-debtors. Plaintiff argues that this interpretation is incorrect because Plaintiff is not seeking nondischargeability judgment against Follette or Stanfield, but only Debtor Piecemakers. Plaintiff seeks joinder of Follette and Stanfield. Specifically, Plaintiff asserts that California Code of Civil Procedure Section 369.5(b) provides that a member of a partnership may be joined as a party in an action against the entity or partnership. In this case, all three Defendants were parties in the State Court Action which Plaintiff asserts is nondischargeable as to Debtor. The complaint in the State Court Action substantially mirrors the complaint in this adversary.

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Piecemakers

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Further, Plaintiffs argue that FRCP 19(a) requires joinder of necessary parties and failure to join is actually grounds for dismissal. A party is considered necessary when: (1) complete relief cannot be granted in the party's absence; or (2) the district court determines that the absent party's participation is necessary to protect its legally cognizable interests or to protect other parties from a substantial risk of incurring multiple or inconsistent obligations because of those interests. See *Camacho v. Major League Baseball*, 297 F.R.D. 457, 461 (S.D. Cal. 2013). Indeed, joinder may have been appropriate here and a basis for including Follette and Stanfield had Debtor's claims not been dismissed for the reasons stated above. Nondischargeability under Section 523(a) is no longer an issue here against Debtor, since it is not an individual, so joinder of Follette and Stanfield is no longer necessary under the theory of joinder, and since nondischargeability is inapplicable to them as non-debtors.

Perhaps Plaintiff can come up with some other theories for relief, but for now this complaint fails to state a claim. The motion to dismiss is granted with leave to amend.

Grant. Appearance required.

Party Information

Debtor(s):

Piecemakers

Represented By
Ralph Ascher

Defendant(s):

Piecemakers

Represented By
Ralph Ascher

Brenda Stanfield

Pro Se

Douglas Follette

Pro Se

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CONT... Piecemakers

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Plaintiff(s):

Michelle McKinney

Represented By
Brandon J. Iskander

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:24-11279 TA Partners Apartment Fund II LLC, a California li
Adv#: 8:24-01127 RUC14 Playa LLC v. TA Partners LLC et al

Chapter 11

#17.00 Motion To Remand To Los Angeles Superior Court

Docket 15

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
STIPULATION REGARDING MOTION TO COMPEL ARBITRATION
AND MOTION TO REMAND - SEE DOC #27**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

TA Partners Apartment Fund II LLC,	Represented By Garrick A Hollander Peter W Lianides
------------------------------------	-----------------------------------------------------------

Defendant(s):

TA Partners LLC	Pro Se
Johnny Lu	Pro Se
ALFA IDG LLC	Pro Se
Yaojun Liu	Pro Se
Thriving Future LLC	Pro Se
Greenwell HHC LLC	Pro Se
Zhongjun Zheng	Pro Se
LCS Consulting Group LLC	Pro Se
Caiyang Chang	Pro Se
Hankey Capital LLC	Represented By Thomas M Geher Nicholas David Moss

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CONT...	TA Partners Apartment Fund II LLC, a California li	Chapter 11
Chicago Title Insurance Company	Pro Se	
Varde Partners, Inc.	Pro Se	
VP Irvine Lender LLC	Pro Se	
TA Partners Apartment Fund II LLC	Represented By Garrick A Hollander Peter W Lianides	

Plaintiff(s):

RUC14 Playa LLC	Represented By Michael R Pinkston
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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #18.00** STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 2-08-24 per order apprvng stip. for cont. of s/c & mtns to dsm
of Matthew Browndorf & Andrew Corcoran entered 2-08-24)
(cont'd from 2-08-24)
(cont'd from 8-15-25 per order approving stip. to cont. of s/c & mtns to
dismiss entered 8-15-24 - see doc #160)

Docket 1

Tentative Ruling:

Tentative for November 14, 2024
Continue to February 13, 2025 at 11:00 a.m. as requested in the stipulation to
continue filed November 13, 2024 at DN 165. The stipulation is not properly
executed. A properly executed stipulation with holographic signatures of all
non e-filing parties is expected.

Appearance is optional.

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the
reference was still pending before the District Court. The November 9, 2023
status conference was continued to this date. What to do? *Appearance
suggested.*

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CONT... BP Fisher Law Group, LLP

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Tentative for November 9, 2023
Status of withdrawal of reference? Appearance required.

Tentative for 7/27/23:
According to a stipulation filed April 26, 2023, a motion to withdraw the reference was still pending before the District Court. The April 27 hearing was continued to this date by stipulation of the parties. Updated status?

Appearance: required

Tentative for 4/27/23:
The court is aware of a stipulation to continue these hearings for a further 90 days. The court will adopt the stipulation unless there is some reason not to do so.

Appearance: optional

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:
Where are we on withdrawal of the reference?

Appearance: suggested

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CONT... BP Fisher Law Group, LLP

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Tentative for 4/14/22:
Where do we stand on the motion for withdrawal of the reference? The court would appreciate a written update.

Appearance: optional

Tentative for 10/28/21:
Continue to January 6, 2022 at 11:00 a.m. Appearance waived.

Tentative for 6/24/21:
See #s 17 and 18. What is status on withdrawal of reference? Continue to August 26 @ 11:00 a.m.

Tentative for 4/22/21:
Continue to June 23 @ 10:00AM to allow district court's ruling.

Tentative for 12/10/20:
Continue to April 22, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It would appear there are several preliminary questions concerning jurisdiction and proper venue. It makes sense to sort these out first before discovery

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CONT... BP Fisher Law Group, LLP

Chapter 7

commences and deadlines are imposed. Consequently, the status conference will be continued to December 10, 2020 @ 2020. In meantime, the parties are ordered to file such motions as are necessary and appropriate to resolve the questions about proper venue and /or withdrawal of reference. By the continued status conference the court expects those issues to be resolved.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Pro Se

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Pro Se

Ditech Financial, LLC

Pro Se

SELECT PORTFOLIO

Pro Se

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood

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Chapter 7

Tinho Mang
Marc C Forsythe
Charity J Manee

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #19.00** Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 2-08-24 per order apprvng stip. for cont. of s/c & mtns to dsm
of Matthew Browndorf & Andrew Corcoran entered 2-08-24)
(cont'd from 2-08-24)
(cont'd from 8-15-24 per order apprvng stip. to cont s/c & mtn to dism cases
entered 8-15-24 - see doc #160)

Docket 38

Tentative Ruling:

Tentative for November 14, 2024

Continue to February 13, 2025 at 11:00 a.m. as requested in the stipulation to continue filed November 13, 2024 at DN 165. The stipulation is not properly executed. A properly executed stipulation with holographic signatures of all non e-filing parties is expected.

Appearance is optional.

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the reference was still pending before the District Court. The November 9, 2023 status conference was continued to this date. What to do? *Appearance suggested.*

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CONT... BP Fisher Law Group, LLP

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November 9, 2023
Status of withdrawal of reference? Appearance required.

Tentative for 7/27/23:
Status of withdrawal of reference?

Appearance: optional

Tentative for 4/27/23:
See #19.

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:
See #9.

Tentative for 4/14/22:
See #5.

Appearance: optional

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CONT... BP Fisher Law Group, LLP

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Tentative for 10/28/21:
See #8.

Tentative for 6/24/21:
Status of withdrawal of reference?

Tentative for 4/22/21:
The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference. By that time, the District Court in Maryland will likely have ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including revisiting this motion.

Stay proceedings pending a renewed status conference in approximately 45 days.

Tentative for 12/10/20:
This is a Motion to Dismiss this adversary proceeding based on lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), or in the alternative, to stay or transfer this adversary proceeding, of defendant Andrew Corcoran joined by Defendant Matthew Browndorf (collectively "Defendants"). The motion is opposed by plaintiff, Peleus Insurance Company ("Plaintiff").

1. Defendants' Alternative Remedy of Staying This Adversary

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**CONT... BP Fisher Law Group, LLP
Proceeding Is Warranted**

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The parties report that there is a matter currently pending in Maryland District Court that involves the substantially the same parties and subject matter. Furthermore, that matter was initiated several months prior to this adversary proceeding. Plaintiff believes that this court is the proper venue as it argues that this court can exercise personal jurisdiction over all necessary parties. Plaintiff also reports that there is a motion to dismiss in the Maryland matter based on an alleged failure to join a necessary party under Rule 12(b) (7). Plaintiff believes that motion to dismiss will succeed. Defendants believe the Maryland motion to dismiss will fail and assert that this court cannot properly exercise personal jurisdiction.

According to the status report filed on 12/3, Plaintiff reports that the Maryland motion to dismiss is expected to be fully briefed by 12/14 (just after the hearing on this motion). The hearing date for the Maryland motion to dismiss is unknown, but likely not too long after the completion of the briefing. Plaintiff has also filed a motion with the District Court of the Central District of California to withdraw the reference. That motion is set for hearing before Judge Kronstadt on March 29, 2021.

There is a lot going on in this case to say the least. The motion and subsequent papers indicate that the threshold issue of personal jurisdiction is likely to be complex and hotly contested. There are also two pending motions that could have a major impact on this adversary proceeding, but the outcome of those motions is obviously uncertain at present. Matters will clarify one way or another soon. Thus, for reasons of judicial economy, comity, deterrence of potential forum shopping, and the need to avoid parallel litigation and/or inconsistent rulings, this court will grant a stay of proceedings as an alternative form of relief as suggested in the motion. This relief can likely be justified under the "First to File" doctrine, a discretionary rule in which the court must consider whether a complaint containing the same issues and parties has already been filed in another district. *Alltrade, Inc. v. Uniweld Prods.*, 946 F.2d 622, 625 (1991). This rule is not to be applied mechanically or too rigidly and the policy underlying the rule should not be disregarded lightly. *Id.* at 625, 627-28. In other words, the rule does not require perfect

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identity of issues and parties. See *Audio Entertainment Network, Inc. v. AT&T*, 1999 U.S. App. LEXIS 34500 at *3. "[I]t is not an abuse of discretion, and therefore not reversible error, for a district court judge to weigh the facts and conclude that the rule should apply." *Alltrade*, 946 F.2d at 628.

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference in late March or early April. By that time, the District Court in Maryland will likely have also ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including potentially revisiting this motion.

Grant a temporary stay of proceedings pending the outcome of both the Maryland motion to dismiss and the motion to withdraw the reference. A continued status conference is scheduled April 8, 2021 at which time the court requires a full update and, if then appropriate consistent with other rulings, will establish deadlines.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

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CONT... BP Fisher Law Group, LLP

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Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

- #20.00** Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 4-27-23)
(cont'd from 7-27-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 2-08-24 per order apprvng stip. for cont. of s/c & mtns to dsm of Matthew Browndorf & Andrew Corcoran entered 2-08-24)
(cont'd from 2-08-24)
(cont'd from 8-15-24 per order appvng stip. to cont. s/c & mtns to dsm entered 8-15-24 - see doc #160)

Docket 43

Tentative Ruling:

Tentative for November 14, 2024

Continue to February 13, 2025 at 11:00 a.m. as requested in the stipulation to continue filed November 13, 2024 at DN 165. The stipulation is not properly executed. A properly executed stipulation with holographic signatures of all non e-filing parties is expected.

Appearance is optional.

Tentative for February 8, 2024

According to a stipulation filed November 8, 2023, a motion to withdraw the reference was still pending before the District Court. The November 9, 2023 status conference was continued to this date. What to do? *Appearance suggested.*

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Tentative for November 9, 2023
Status on withdrawal of reference? Appearance required.

Tentative for 7/27/23:
See #11.

Appearance: optional

Tentative for 4/27/23:
See #19.

Tentative for 1/12/23:

Tentative for 10/6/22:

Tentative for 6/23/22:
See #9.

Tentative for 4/14/22:
See #5.

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Appearance: optional

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Tentative for 10/28/21:
See #8.

Tentative for 6/24/21:
Status of withdrawal of reference?

Tentative for 4/22/21:
See #7

Tentative for 12/10/20:
See #12.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By

**United States Bankruptcy Court
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CONT... BP Fisher Law Group, LLP

Chapter 7

Ditech Financial, LLC	Samuel G Brooks Represented By Christopher O Rivas
SELECT PORTFOLIO	Represented By Lauren A Deeb
BP Peterman Legal Group, LLC	Pro Se

Plaintiff(s):

Peleus Insurance Company	Represented By Linda B Oliver Andrew B Downs
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Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays David Wood Tinho Mang Marc C Forsythe Charity J Manee
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