

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

Tuesday, November 28, 2023

Hearing Room 5B

10:30 AM
8:00-00000

Chapter

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ZoomGov meeting number: 161 471 0066
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- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
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- Disconnect from the meeting by clicking "Leave" when you have

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:23-10045 Jacqueline Ann McKaye

Chapter 7

#1.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**JPMORGAN CHASE BANK, N.A.
Vs
DEBTOR**

Docket 78

Tentative Ruling:

Tentative for November 28, 2023
Grant. Appearance is optional.

Party Information

Debtor(s):

Jacqueline Ann McKaye

Represented By
Bert Briones

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Beth Gaschen

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8:22-11758 Jorge Alberto Barreda

Chapter 13

#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 10-03-23)

**NEWREZ, LLC
Vs.
DEBTOR**

Docket 62

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
THE AUTOMATIC STAY ENTERED 11-27-23**

Tentative Ruling:

Tentative for October 3, 2023
Grant unless current or APO stipulation. Appearance required.

Party Information

Debtor(s):

Jorge Alberto Barreda

Represented By
Amanda G. Billyard
Richard L. Sturdevant

Movant(s):

The Bank Of New York Mellon FKA

Represented By
Joseph C Delmotte

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:23-11888 Paul Cubillos

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**MURANO APARTMENT HOMES LLC
Vs
DEBTOR**

Docket 11

Tentative Ruling:

Tentative for November 28, 2023
Grant. Appearance is optional.

Party Information

Debtor(s):

Paul Cubillos

Represented By
Darren G Smith

Movant(s):

Murano Apartment Homes LLC

Represented By
Scott Andrews

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-12188 Jamgle Jam USA, Inc.

Chapter 7

#4.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**DAVID CRAIG HUNSAKER, TRUSTEE OF THE HUNSAKER FAMILY TRUST
Vs
DEBTOR**

Docket 4

Tentative Ruling:

Tentative for November 28, 2023
Grant. Appearance is optional.

Party Information

Debtor(s):

Jamgle Jam USA, Inc.

Represented By
David M Goodrich

Movant(s):

David Craig Hunsaker, Trustee of

Represented By
Gordon G May

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Chapter 11

**#5.00 EVIDENTIARY HEARING RE: Motion For Sanctions For Violation Of Automatic Stay
(set from hrg held on 5-10-23)
(cont'd from 11-14-23) [As Holding Date]**

Docket 576

Tentative Ruling:

Tentative for November 28, 2023
Where is the promised stipulation? Appearance required.

Tentative for November 14, 2023
Settled? When can a stipulation be lodged? Appearance required.

Tentative for 5/10/23:
Mediation concluded? Status?

Appearance:required

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

Appearance: required

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 &

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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 discharge has yet been granted).

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

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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 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

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Chapter 11

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 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.

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Chapter 11

Continue for evidentiary hearing. Refer to mediation in meantime.

Appearance: required

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

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8:23-10045 Jacqueline Ann McKaye

Chapter 7

#6.00 Trustee's Final Report And Applications For Compensation:

JEFFREY I. GOLDEN - CHAPTER 7 TRUSTEE

GOLDEN GOODRICH LLP - ATTORNEY FOR CH 7 TRUSTEE

HAHN FIFE & COMPANY LLP - ACCOUNTANT FOR TRUSTEE FEES

Docket 73

Tentative Ruling:

Tentative for November 28, 2023
Allowed as prayed. Appearance is optional.

Party Information

Debtor(s):

Jacqueline Ann McKaye

Represented By
Bert Briones

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Beth Gaschen

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#7.00 First Interim Application for Compensation and Reimbursement of Expenses
(Period: 10/28/2019 to 10/31/2023)

GROBSTEIN TEEPLE LLP, ACCOUNTANTS FOR CHAPTER 7 TRUSTEE

FEE: \$367,560.00

EXPENSES: \$154.81

Docket 1282

Tentative Ruling:

Tentative for November 28, 2023
For calendar items ##7-9, allowed as prayed but subject to the respective reductions as appear in Trustee's Declaration ¶ 8 and pro rata disbursements at this time. Appearance is optional.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

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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CONT... BP Fisher Law Group, LLP

Chapter 7

Laila Masud
Roye Zur
Lauren N Gans

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#8.00 First and Final Fee Application For Period: 7/21/2019 to 11/7/2027:

**GOE FORSYTHE & HODGES LLP AS SPECIAL LITIGATION COUNSEL TO
CHAPTER 7 TRUSTEE RICHARD MARSHACK:**

FEES: \$229,401.00

EXPENSES: \$5,080.63

Docket 1284

Tentative Ruling:

Tentative for November 28, 2023
See #7

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee
Laila Masud
Roye Zur

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CONT... BP Fisher Law Group, LLP

Lauren N Gans

Chapter 7

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8:19-10158 BP Fisher Law Group, LLP

Chapter 7

#9.00 Second Interim Application For Allowance Of Fees And Costs For Period:
11/1/2019 to 10/31/2023:

MARSHACK HAYS WOOD LLP AS GENERAL COUNSEL:

FEE: \$170,517.00

EXPENSES: \$12,042.56

Docket 1286

Tentative Ruling:

Tentative for November 28, 2023
See #7

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee
Laila Masud
Roye Zur

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Lauren N Gans

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

Chapter 7

#10.00 Second Application for Payment of Interim Fees and/or Expenses For Period:
6/1/2023 to 9/30/2023
(Re-Scheduled from 11-07-23 per court's own mtn)

FLP LAW GROUP LLP, TRUSTEE'S ATTORNEY:

FEE: \$23,143.50

EXPENSES: \$243.15

Docket 441

Tentative Ruling:

Tentative for November 28,2023
For calendar items ##10-15, allowed as prayed subject to agreed reductions
and holdbacks/timetables as appear in ¶4 of Trustee's Omnibus Declaration.
Appearance is optional.

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

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AB Capital, LLC, a California limited liability co

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Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido

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

Chapter 7

#11.00 Second Interim Application for Compensation and Reimbursement of Expenses
(Period: 5/1/2023 to 9/30/2023)
(re-scheduled from 11-07-23 per court's own mtn 10-17-23)

GROBSTEIN TEEPLE LLP, ACCOUNTANTS FOR CHAPTER 7 TRUSTEE

FEE: \$19,804.00

EXPENSES: \$147.53

Docket 456

Tentative Ruling:

Tentative for November 28, 2023
See #10. Appearance is optional.

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

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

Chapter 7

#12.00 Motion For Order Allowing And Authorizing Payment Of The Petitioning
Creditors Attorneys Fees Expenses For The Period: 8/25/2022 to 10/4/2022:
(re-scheduled from 11-07-23 per court's own motion 10-17-23)

JAMES C. BASTIAN JR., CREDITOR'S ATTORNEY:

FEE: \$138,980.70

EXPENSES: \$1,185.64

Docket 470

Tentative Ruling:

Tentative for November 28, 2023
See #10. Appearance is optional.

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

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

Chapter 7

#13.00 Second Interim Application For Allowance of Fees and Costs For
Period: 6/1/2023 to 9/30/2023
(re-scheduled from 11-07-23 per court's own motion 10-17-23)

MARSHACK HAYS WOOD LLP, GENERAL COUNSEL,

Fee: \$417,905

Expenses: \$5,993.83

Docket 474

Tentative Ruling:

Tentative for November 28, 2023
See #10. Appearance is optional.

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

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

Chapter 7

#14.00 Second Interim Application For Approval Of Fees and Reimbursement of Expenses For Period: 6/1/2023 to 9/30/2023
(re-scheduled from 11-07-23 per court's own motion 10-17-23)

**SHULMAN BASTIAN FRIEDMAN & BUI LLP, SPECIAL LITIGATION
COUNSEL FOR THE CHAPTER 7 TRUSTEE**

FEE: \$650,164.00

EXPENSES: \$7,563.70

Docket 483

Tentative Ruling:

Tentative for November 28, 2023
See #10. Appearance is optional.

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

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Rika Kido**

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

Chapter 7

#15.00 Trustee's First Interim Report And Account Of Chapter 7 Trustee And Request For Allowance Of Fees And Reimbursement Of Expenses For Period: 9/22/2022 to 9/30/2023
(re-scheduled from 11-07-23 per court's own motion 10-17-23)

RICHARD A. MARSHACK , CHAPTER 7 TRUSTEE:

FEE: \$619,150.87

EXPENSES: \$668.81

Docket 490

Tentative Ruling:

Tentative for November 28, 2023
See #10. Appearance is optional.

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

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

Chapter 7

#16.00 Motion To Approve Compromise Of Controversy With Investors In Loans For
The 20620 Manzanita Ave., Yorba Linda, California Property

Docket 544

Tentative Ruling:

Tentative for November 28, 2023

The A&C Properties factors appear satisfied. Approved. Appearance is optional.

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

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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8:10-10310 Robert A. Ferrante

Chapter 7

**#17.00 Motion To Modify Stay Of Bankruptcy Court Specifically To Allow Negotiations
And Settlement Between Debtor And Internal Revenue Service**

Docket 661

Tentative Ruling:

Tentative for November 28, 2023

This is a motion brought by the debtor for leave to negotiate with the IRS for settlement of certain unidentified issues. The motion reportedly suffers from procedural deficiencies as outline in IRS's opposition. Any order emanating from this motion must therefore await proper service on the designated addresses for IRS and the US. Government (or waiver of same). But that issue can presumably be cured by stipulation, so the court turns to the substance of the request. Reportedly, IRS is reluctant to proceed because the debtor's discharge was revoked. The court agrees that it is not a stay issue as IRS correctly points out since the stay terminated as to debtor upon the denial of discharge. See 11 USC §362(c)(2)(C). Whether this is a "justiciable controversy" or whether the court even has jurisdiction, is less clear. But again the procedural issues on that front can be resolved, so the court views the motion as one filed "in abundance of caution" in the nature of declaratory relief. The court has no problem with and even encourages discussions and sees no immediate prospect of any stay violation but adds the caveat that any attempt to deal with property of the estate (assuming any is left) in satisfaction in whole or in part of IRS's claim can be of no effect except and unless the appointed Chapter 7 Trustee consents and, further, seeks court approval of any transaction. If property is discovered which might be property of the estate, or even if its provenance is unclear, the parties are directed to inform the Trustee who may seek to reopen his administration of the estate. Arrangements not involving transactions of estate property can proceed without this court's involvement as those would seemingly involve only the claim of IRS and its relationship to debtor aside from bankruptcy discharge.

Grant subject to the admonitions above. Appearance required.

Party Information

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Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, November 28, 2023

Hearing Room 5B

11:00 AM

CONT... Robert A. Ferrante

Chapter 7

Debtor(s):

Robert A. Ferrante

Represented By

Richard M Moneymaker - SUSPENDED -

Arash Shirdel

Ryan D O'Dea

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey

Thomas A Vogele

Brendan Loper

Cathrine M Castaldi

Honieh H Udenka