

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio. - ALL MATTERS SCHEDULED FOR 10:00 A.M. HAS BEEN MOVED TO 11:00 A.M.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

Case participants may connect to the video and audio feeds, free of charge, using the connection information provided below.

BY MANDATE OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, MEMBERS OF THE PUBLIC AND THE MEDIA MAY ONLY CONNECT TO THE ZOOMGOV AUDIO FEED, AND ONLY BY TELEPHONE. ACCESS TO THE VIDEO FEED BY THESE INDIVIDUALS IS PROHIBITED. IN THE CASE OF A TRIAL OR EVIDENTIARY HEARING, NO AUDIO ACCESS WILL BE PROVIDED.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1616086779>

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

CONT...

Chapter

ZoomGov meeting number: 161 608 6779

Password: 744926

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- 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.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT...

Chapter

- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

**#1.00 STATUS CONFERENCE RE: Preliminary Injunction
(set from order entered 8-23-24 re: preliminary injunction - see doc #289)
(cont'd from 11-07-24)**

Docket 249

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for November 7, 2024

See #19. Continue to December 5, 2024 at 10:00 a.m. *Appearance required.*

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

TABLEROCK ENTERPRISES, Represented By
Anthony Bisconti

LUNA CONSTRUCTION Pro Se

LIVING ART WORKS LLC Pro Se

CALPAC MORTGAGE FUND, Pro Se

CALPAC MANAGEMENT, INC. Pro Se

CAL-PAC DISTRESSED REAL Pro Se

BDP DEVELOPMENT Pro Se

ABC 2260 SAN YSIDRO LLC Pro Se

AB CAPITAL LFD, INC. Pro Se

AB CAPITAL FUND B, LLC Pro Se

AB CAPITAL FUND A, LLC Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

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

31831 SUNSET LLC Represented By
Anthony Bisconti

1034 W BALBOA, LLC Pro Se

108 AVENIDA SERRA, LLC Pro Se

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Represented By
Anthony Bisconti

Joshua R. Pukini, individually and as Pro Se

AB CAPITAL HOLDINGS I, LLC Pro Se

Plaintiff(s):

Richard A. Marshack Represented By
James C Bastian Jr
Ryan D O'Dea
Shane M Biornstad
Rika Kido
Kristine A Thagard

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
Brooke S Thompson

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:23-10913 Elizabeth A. Kempt

Chapter 7

Adv#: 8:24-01010 Kempt v. US Department of Education et al

**#2.00 STATUS CONFERENCE RE: Complaint For Determination That Student Loan Debt Is Dischargeable Pursuant to 11 USC Section 523(a)(8)
(cont'd from 8-29-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION - NOTICE OF CHANGE IN HEARING
TIME FOR DECEMBER 5, 2024 STATUS CONFERENCE FILED 12-03-24
- SEE DOC #42**

Tentative Ruling:

Tentative for August 29, 2024

It would appear from the status reports filed by the government creditors that more time is needed for either the attestation process to complete and/or for evaluation of permanent disability status, Navient agrees to discharge of any remaining balance. Since we have no timely report from Debtor perhaps the best approach is to continue this status conference for about three months to December 12, 2024 at 10:00 a.m. But at that time the court expects reports preferably jointly from all contestants as deadlines will be established at that time.

Appearance is optional.

Tentative for June 27, 2024

Where are we in the attestation process? Is it better to set deadlines now or to continue discussions without setting deadlines at this time? *Appearance required.*

Party Information

Debtor(s):

Elizabeth A. Kempt

Represented By
Joseph A Weber

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... Elizabeth A. Kempt

Chapter 7

Defendant(s):

US Department of Education Pro Se

Navient Solutions, LLC. Pro Se

Plaintiff(s):

Elizabeth A. Kempt Represented By
Fritz J Firman

Trustee(s):

Richard A Marshack (TR) Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:19-10526 LF Runoff 2, LLC

Chapter 7

Adv#: 8:24-01054 Marshack v. PBC 200 Park Avenue, LLC et al

**#3.00 STATUS CONFERENCE RE: Complaint To Avoid And Recover Voidable Transfers
(cont'd from 9-26-24 per court's own mtn)
(cont'd from 10-24-24 per order approving stip to cont. s/c entered 10-10-24 - see doc #23)
(cont'd from 11-07-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION - NOTICE OF CHANGE OF TIME FILED
11-26-24 - SEE DOC #27**

Tentative Ruling:

Tentative for November 7, 2024
Settlement Status? *Appearance required.*

Tentative for August 1, 2024
Continue to September 26 at 10:00 a.m. per request. *Appearance is optional unless the proposed continued date is a problem.*

Tentative for June 27, 2024
Status of answer/default? *Appearance required.*

Party Information

Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

Defendant(s):

PBC 200 Park Avenue, LLC

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... LF Runoff 2, LLC

Chapter 7

PBC Foundry, LLC Pro Se

Preferred Offices Properties, LLC Pro Se

Preferred Offices Properties II, LLC Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Lauren N Gans

Trustee(s):

Richard A Marshack (TR)

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

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-11012 Sunmeadows, LLC

Chapter 11

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

#4.00 STATUS CONFERENCE RE: Complaint For: (1) Declaratory Relief To Recharacterize Option Agreement And Entitlement Services Agreement Collectively As A Disguised Purchase And Sale Agreement/Loan Transaction; And (2) Disallowance Of Claim For Usurious Interest [Cal. Const. Art. XV §1; 11 U.S.C. §§ 502(b)(1), 506]
(set from hrg held on 9-05-24 re: mtn to dsm first amended complt)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe

Defendant(s):

RR1050, LLC

Represented By
Melissa Davis Lowe
Ryan D O'Dea

Plaintiff(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker
Mike D Neue

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-11012 Sunmeadows, LLC

Chapter 11

#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(con't from 9-11-24)

Docket 1

*** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION

Tentative Ruling:

Tentative for September 11, 2024

The court believes (but is unsure) that this was continued for a status conference at the hearing on the adversary Rule 12 motion until December 5 at 10:00 a.m. It is expected in meantime the complaint will be revised and finalized, an answer or other response filed and efforts toward mediation will get underway. A revised status conference report is requested. *Appearance not required unless parties disagree with either the continuance or any aspect of the above.*

Tentative for August 14, 2024

In the Debtor's status report it reports general compliance with the usual requirements but it asks for more time in filing a plan and disclosure statement. Debtor believes it will first be necessary to conclude the litigation with RR1050 pending in adversary proceeding No. 8:24-ap-01070-TA. But no timeline is given and one supposes this might take years. Moreover, as stated in the court's tentative published in that proceeding on the Rule 12(b) Motion to Dismiss, it remains very unclear (at least to this court) just what rights the debtor actually holds in the Colton property. When, exactly, is an "Option to Purchase", repeatedly stated in writing as a true option, really something else? The Debtor was given leave to amend. But the court is reluctant to give an open-ended extension to filing a plan at this point. Further, it is not necessarily true that a plan cannot provide for contingency as the litigation winds its way through trial and potentially appellate courts.

Further discussion on this point is invited at the hearing.

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... Sunmeadows, LLC
Appearance required.

Chapter 11

Tentative for May 22, 2024

Deadline for filing plan and disclosure statement: Does debtor propose that no plan be filed until the adversary proceeding is resolved? Even if that might take years? Isn't a plan that proposes reorganization or sale contingent upon title resolution more appropriate? Claims bar: 60 days after dispatch of notice to creditors advising of bar date. Debtor to give notice of the deadline by: May 28, 2024. Appearance required.

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-10483 Heycart Inc

Chapter 11

Adv#: 8:24-01073 Heycart, Inc. v. Victory Maritime Services USA et al

#6.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief And Injunctive Relief; 2. Violation Of The Automatic Stay And Injunctive Relief; And 3. Turnover of Property
**(Another summons issued on 5-17-24 re: First Amended Complaint)
(cont'd from 9-05-24 per order approving stip. to cont. s/c entered 8-26-24 - see doc # 42)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 11-13-24 - SEE DOC #54**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heycart Inc

Represented By
Zev Shechtman
Eric P Israel
Michael G D'Alba
Carol Chow

Defendant(s):

Victory Maritime Services USA	Pro Se
Auric Worldwide Cargo, a Canadian	Pro Se
Apex Global Logistics Inc., a	Pro Se
Apex Global Logistics, Inc., a	Pro Se

Plaintiff(s):

Heycart, Inc.

Represented By
Sabrina Espinal
Carol Chow

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT...

Heycart Inc

Zev Shechtman
Paige N. Topper

Chapter 11

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-10671 Howard Park

Chapter 7

Adv#: 8:24-01091 Dorsett v. Park et al

**#7.00 STATUS CONFERENCE RE: Notice of Removal
(cont'd from 7-25-24 per court's own mtg)
(cont'd from 8-15-24 per court's own mtg)
(cont'd from 8-29-24)
(cont'd from 10-24-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MTN - NOTICE OF CONTINUANCE FILED 11-22-
24 - SEE DOC # 32**

Tentative Ruling:

Tentative for October 24, 2024

The majority of the factors enunciated in cases like *In re Tucson Estates, Inc.*, 912 F2d 1162, 1167 (9th Cir. 1990) favor remand. This is particularly so when the court is advised that the matter can or will be set for trial in state court promptly upon remand. The case sounds primarily in fraudulent conveyance. But the Trustee has reportedly chosen not to pursue it, has filed a "no asset" report and so for practical purposes this bankruptcy is closed. There seems to be some argument as to whether the state court action should also serve in double capacity as an adversary proceeding to determine dischargeability of the state court judgment because the removal was one day before the nondischargeability deadline of June 21. Whether there is any viability to such an argument should be the subject of a separate proceeding and, even if it were sustainable, is still not enough to persuade the court to keep this case.

Remand to state court. *Appearance required.*

Tentative for August 29, 2024

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... **Howard Park** **Chapter 7**

No response has been received to the OSC entered June 26, 2024. No status report has been filed either. Dismiss for failure to prosecute. *Appearance required.*

Party Information

Debtor(s):

Howard Park	Represented By Ji Yoon Kim
-------------	-------------------------------

Defendant(s):

Howard Park	Pro Se
Bectel C.H. Development, Inc.	Pro Se
CJP Development, Inc.	Pro Se
JHL Development, Inc.	Pro Se
Chong Hoon Park	Pro Se
Grace G. Park	Pro Se

Plaintiff(s):

Dana M. Dorsett	Represented By Jeffrey Dorsett
-----------------	-----------------------------------

Trustee(s):

Thomas H Casey (TR)	Pro Se
---------------------	--------

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-11522 Piecemakers

Chapter 11

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

#8.00 STATUS CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Pursuant To 11 U.S.C. §523(a)(6) For: (1) Willful And Malicious Violations Of California Labor Laws: (2) Financial Abuse Of A Dependent Adult; And (3) Intentional Infliction Of Emotional Distress

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-06-25 AT 10:00 A.M.
PER ORDER GRANTING MOTION TO CONTINUE STATUS
CONFERENCE ENTERED 11-21-24 - SEE DOC #18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Piecemakers

Represented By
Ralph Ascher

Defendant(s):

Piecemakers

Pro Se

Brenda Stanfield

Pro Se

Douglas Follette

Pro Se

Plaintiff(s):

Michelle McKinney

Represented By
Brandon J. Iskander

Trustee(s):

Mark M Sharf (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:24-11880 Josefina Sanchez

Chapter 7

Adv#: 8:24-01123 Omni Metal Finishing, Inc. v. Sanchez

#9.00 STATUS CONFERENCE RE: Complaint To Determine Debts Nondichargeable Pursuant To 11 U.S.C. Section 523 And Objection To Discharge Under 11 U.S.C. Section 727

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josefina Sanchez

Represented By
Juanita V Miller

Defendant(s):

Josefina Sanchez

Pro Se

Plaintiff(s):

Omni Metal Finishing, Inc.

Represented By
Christopher J Green

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

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

Chapter 7

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

#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)
(cont'd from 11-14-24)**

Docket 9

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION - NOTICE OF CHANGE OF HEARING
FILED 11-22-24 - SEE DOC #54**

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

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

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

Chapter 7

Defendant(s):

Richard A. Marshack	Represented By Ryan D O'Dea
Joshua R. Pukini	Pro Se
Calpac Mortgage Fund, LLC	Pro Se
Calpac Management, Inc	Pro Se
All Persons Unknown Claiming Any	Pro Se

Plaintiff(s):

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

Trustee(s):

Richard A Marshack (TR)	Represented By D Edward Hays Alan W Forsley Ryan D O'Dea Kristine A Thagard James C Bastian Jr Marc A Lieberman Rika Kido
-------------------------	--

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

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) (cont'd from 11-14-24)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER COURT'S OWN MOTION - NOTICE OF RESCHEDULED PRE-TRIAL CONFERENCE FILED 11-25-24 - SEE DOC #46**

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

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... Lars Ake Morgan Gustavsson

Kit J Gardner

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

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)
(cont'd form 11-14-24)

Docket 26

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M.
PER COURT'S OWN MOTION - NOTICE OF RESCHEDULE HEARING
REGARDING OBJECTION TO DEBTOR'S HOMESTEAD EXEMPTION
FILED 11-25-24 - SEE DOC #67**

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

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

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.

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

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

CONT... **Lars Ake Morgan Gustavsson**

Chapter 7

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 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.

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

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 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

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... Lars Ake Morgan Gustavsson
have.

Chapter 7

Continue for evidentiary proceeding.

Appearance: required

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01070 Marshack v. Collins

#13.00 PRE-TRIAL CONFERENCE RE: Complaint For: (1) Damages For Payment Of Illegal Distributions To Shareholders [Cal Corp Code §§ 501, 506 And 316, And 11 USC § 544(b)]; (2) Avoidance Of Constructively Fraudulent Transfers [11 USC §§ 544(b) And 548(a)(1)(B)]; (3) Avoidance Of Intentionally Fraudulent Transfers Pursuant To 11 USC §§ 544(b) And 548(a)(1)(A); (4) Avoidance Of Preference Payments To Insider [11 USC § 547(b)]; (5) Recovery And Preservation Of Avoided Transfers [11 USC §§ 550 And 551] (6) Breach Of Fiduciary Duty (Trust Fund Doctrine); And (7) Unjust Enrichment
**(set from s/c hrg held on 12-14-23)
(cont'd from 8-15-24 per order on stip. between plaintiff & defendant to cont. pre-trial conference, discovery completion deadline and motion filing deadline entered 5-13-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M.
PER ORDER ON STIPULATION BETWEEN PLAINTIF & DEFENDANT
TO CONTINUE PRE-TRIAL CONFERENCE, DISCOVERY
COMPLETION DEADLINE AND MOTION FILING DEADLINE
ENTERED 9-05-24 - SEE DOC #30**

Tentative Ruling:

Tentative for December 14, 2023
Status of settlement negotiations?
Deadline for completeing discovery is July 1, 2024
Last Date for filing pre-trial motions is July 19, 2024
Pre-trial congurence is on August 15, 2024 at 10:00 a.m.
Joint pre-trial order due per local rules.
Appearance required.

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... DGWB, Inc.

Chapter 7

Defendant(s):

Edward Collins

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Christopher Minier

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01071 Marshack v. Weisman et al

#14.00 PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance Of Unauthorized Post-Petition Transfer Of Estate Assets [11 USC §§ 549, 550 And 551]; (2) Damages For Payment Of Illegal Distributions To Shareholders [Cal Corp Code §§ 501, 506 And 316, And 11 USC § 544(b)]; (3) Avoidance Of Constructively Fraudulent Transfers [11 USC §§ 544(b) And 548(a)(1)(B)]; (4) Avoidance Of Intentionally Fraudulent Transfers Pursuant To 11 USC §§ 544(b) And 548(a)(1)(A); (5) Avoidance Of Preference Payments To Insider [11 USC § 547(b)]; (6) Recovery And Preservation Of Avoided Transfers [11 USC §§ 550 And 551] (7) Breach Of Fiduciary Duty (Trust Fund Doctrine); And (8) Unjust Enrichment **(Another Summons Issued 7/18/23; cont'd from 10-5-23)**
(set from s/c hrg held on 12-14-23)
(cont'd from 8-15-24 per order on stip. between plaintiff & defendant to cont. pre-trial conf. discovery completion deadline and motion filing deadline entered 5-13-24)

Docket 1

*** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M.
PER ORDER GRANTING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE, DISCOVERY
COMPLETION DEADLINE AND MOTION FILING DEADLINE
ENTERED 9-05-24 - SEE DOC #

Tentative Ruling:

Tentative for December 14, 2023

Status of settlement negotiations? Same deadlines as in #7. Appearance required.

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... DGWB, Inc.

Chapter 7

Defendant(s):

Michael Brant Weisman Pro Se

The Weisman Family Trust Pro Se

Plaintiff(s):

Richard A Marshack Represented By
Christopher Minier

Trustee(s):

Richard A Marshack (TR) Represented By
David M Goodrich

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01072 Marshack v. Smith et al

#15.00 PRE-TRIAL CONFERENCE RE: Complaint For: (1) Avoidance Of Unauthorized Post-Petition Transfer Of Estate Assets [11 USC §§ 549, 550 And 551]; (2) Damages For Payment Of Illegal Distributions To Shareholders [Cal Corp Code §§ 501, 506 And 316, And 11 USC § 544(b)]; (3) Avoidance Of Constructively Fraudulent Transfers [11 USC §§ 544(b) And 548(a)(1)(B)]; (4) Avoidance Of Intentionally Fraudulent Transfers Pursuant To 11 USC §§ 544(b) And 548(a)(1)(A); (5) Avoidance Of Preference Payments To Insider [11 USC § 547(b)]; (6) Recovery And Preservation Of Avoided Transfers [11 USC §§ 550 And 551] (7) Breach Of Fiduciary Duty (Trust Fund Doctrine); And (8) Unjust Enrichment **(set from s/c hrg held on 12-14-23)**
(cont'd from 8-15-24 per order on stip. between plaintiff & defendant to cont. pre-trial conf. discovery completion deadline and mtn filing deadline entered 5-13-24)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M. PER ORDER GRANTING STIPULATION BETWEEN PLAINTIFF AND DEFENDANTS TO CONTINUE PRE-TRIAL CONFERENCE, DISCOVERY COMPLETION DEADLINE AND MOTION FILING DEADLINE ENTERED 9-05-24 - SEE DOC #31**

Tentative Ruling:

Tentative for December 14, 2023

Status of negotiations? Same deadlines as in ##7 and 8. Appearance required.

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

Defendant(s):

Jimmy Smith

Pro Se

Amusement Park Entertainment,

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... DGWB, Inc. Chapter 7

DGWB Ventures, LLC Pro Se

Slingshot People, LLC Pro Se

Amusement Park Capitaux, LLC Pro Se

Amusement Park, LLC Pro Se

Plaintiff(s):

Richard A Marshack Represented By
Christopher Minier

Trustee(s):

Richard A Marshack (TR) Represented By
David M Goodrich

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

Thursday, December 5, 2024

Hearing Room

5B

10:00 AM

8:21-11703 DGWB, Inc.

Chapter 7

Adv#: 8:23-01073 Marshack v. Smith et al

#16.00 PRE-TRIAL CONFERENCE RE: Complaint for (1) Avoidance of Constructively Fraudulent Transfers [11 U.S.C. Sections 544(b) and 548(a)(1)(B)]; (2) Avoidance of Intentionally Fraudulent Transfers Pursuant to 11 U.S.C. Section 544(b) and 548(a)(1)(A); (3) Avoidance of Preference Payments to Insiders [11 U.S.C. Section 547(b)]; (4) Recovery and Preservation of Avoided Transfers [11 U.S.C. Sections 550 and 551]; and (5) Unjust Enrichment
Another Summons Issued 7/18/23
Another Summons Issued 9-22-23
(set from s/c hrg held on 12-14-23)
(cont'd from 8-15-24 per order on stip. between plaintiff & defendant to cont. pre-trial conf., discovery completion deadline and mtn filing deadline entered 5-13-24)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M.
PER ORDER GRANTING STIPULATION BETWEEN PLAINTIFF AND
DEFENDANT TO CONTINUE PRE-TRIAL CONFERENCE, DISCOVERY
COMPLETION DEADLINE AND MOTION FILING DEADLINE
ENTERED 9-05-24 - SEE DOC #36**

Tentative Ruling:

Tentative for December 14, 2023

Status of negotiations? Same deadlines as in ##7-9. Appearance required.

Party Information

Debtor(s):

DGWB, Inc.

Represented By
Thomas J Polis

Defendant(s):

Deidre Smith

Pro Se

Jimmy Smith II

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

10:00 AM

CONT... DGWB, Inc.

Chapter 7

Devin Smith

Pro Se

Jarrel Smith

Pro Se

Plaintiff(s):

Richard A Marshack

Represented By
Christopher Minier

Trustee(s):

Richard A Marshack (TR)

Represented By
David M Goodrich

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

**#1.00 STATUS CONFERENCE RE: Preliminary Injunction
(set from order entered 8-23-24 re: preliminary injunction - see doc #289)
(cont'd from 11-07-24)
(Cont'd from 12-05-24 at 10:00 per court's own mtn)**

Docket 249

Tentative Ruling:

Tentative for December 5, 2024

No status report? *Appearance required.*

Tentative for November 7, 2024

See #19. Continue to December 5, 2024 at 10:00 a.m. *Appearance required.*

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

TABLEROCK ENTERPRISES, Represented By
Anthony Bisconti

LUNA CONSTRUCTION Pro Se

LIVING ART WORKS LLC Pro Se

CALPAC MORTGAGE FUND, Pro Se

CALPAC MANAGEMENT, INC. Pro Se

CAL-PAC DISTRESSED REAL Pro Se

BDP DEVELOPMENT Pro Se

ABC 2260 SAN YSIDRO LLC Pro Se

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

AB CAPITAL LFD, INC.	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se
31831 SUNSET LLC	Represented By Anthony Bisconti
1034 W BALBOA, LLC	Pro Se
108 AVENIDA SERRA, LLC	Pro Se
Edmund Valasquez, Jr.	Pro Se
Ryan Young, individually and as	Represented By Anthony Bisconti
Joshua R. Pukini, individually and as	Pro Se
AB CAPITAL HOLDINGS I, LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By James C Bastian Jr Ryan D O'Dea Shane M Biornstad Rika Kido Kristine A Thagard
---------------------	--

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 Brooke S Thompson
-------------------------	---

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-10913 Elizabeth A. Kempt

Chapter 7

Adv#: 8:24-01010 Kempt v. US Department of Education et al

**#2.00 STATUS CONFERENCE RE: Complaint For Determination That Student Loan Debt Is Dischargeable Pursuant to 11 USC Section 523(a)(8)
(cont'd from 8-29-24)
(cont'd from 12-05-24 at 10:00 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for December 5, 2024

So, can this material now be disposed of via stipulation? *Appearance required.*

Tentative for August 29, 2024

It would appear from the status reports filed by the government creditors that more time is needed for either the attestation process to complete and/or for evaluation of permanent disability status, Navient agrees to discharge of any remaining balance. Since we have no timely report from Debtor perhaps the best approach is to continue this status conference for about three months to December 12, 2024 at 10:00 a.m. But at that time the court expects reports preferably jointly from all contestants as deadlines will be established at that time.

Appearance is optional.

Tentative for June 27, 2024

Where are we in the attestation process? Is it better to set deadlines now or to continue discussions without setting deadlines at this time? *Appearance required.*

Party Information

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Elizabeth A. Kempt

Chapter 7

Debtor(s):

Elizabeth A. Kempt

Represented By
Joseph A Weber

Defendant(s):

US Department of Education

Pro Se

Navient Solutions, LLC.

Pro Se

Plaintiff(s):

Elizabeth A. Kempt

Represented By
Fritz J Firman

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:19-10526 LF Runoff 2, LLC

Chapter 7

Adv#: 8:24-01054 Marshack v. PBC 200 Park Avenue, LLC et al

**#3.00 STATUS CONFERENCE RE: Complaint To Avoid And Recover Voidable Transfers
(cont'd from 9-26-24 per court's own mtn)
(cont'd from 10-24-24 per order approving stip to cont. s/c entered 10-10-24 - see doc #23)
(cont'd from 11-07-24)
(cont'd from 12-05-24 at 10:00 a.m. to 12-05-24 at 11:00 a.m. per court's own mtn)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-13-25 AT 10:00 PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 12-03-24 - SEE DOC #29**

Tentative Ruling:

Tentative for November 7, 2024
Settlement Status? *Appearance required.*

Tentative for August 1, 2024
Continue to September 26 at 10:00 a.m. per request. *Appearance is optional unless the proposed continued date is a problem.*

Tentative for June 27, 2024
Status of answer/default? *Appearance required.*

Party Information

Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... LF Runoff 2, LLC

Chapter 7

Defendant(s):

PBC 200 Park Avenue, LLC	Pro Se
PBC Foundry, LLC	Pro Se
Preferred Offices Properties, LLC	Pro Se
Preferred Offices Properties II, LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By Lauren N Gans
---------------------	---------------------------------

Trustee(s):

Richard A Marshack (TR)	Represented By David Wood D Edward Hays Thomas J Polis Laila Masud Roye Zur Lauren N Gans
-------------------------	---

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:24-11012 Sunmeadows, LLC

Chapter 11

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

- #4.00** STATUS CONFERENCE RE: Complaint For: (1) Declaratory Relief To Recharacterize Option Agreement And Entitlement Services Agreement Collectively As A Disguised Purchase And Sale Agreement/Loan Transaction; And (2) Disallowance Of Claim For Usurious Interest [Cal. Const. Art. XV §1; 11 U.S.C. §§ 502(b)(1), 506]
(set from hrg held on 9-05-24 re: mtn to dsm first amended complt)
(cont'd from 12-05-24 at 10:00 a.m. per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for December 5, 2024
Deadline for completing discovery: May 30, 2025
Last date for filing pre-trial motions: June 20, 2025
Pre-trial conference on: July 31, 2025
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe

Defendant(s):

RR1050, LLC

Represented By
Melissa Davis Lowe
Ryan D O'Dea

Plaintiff(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker
Mike D Neue

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

8:24-11012 Sunmeadows, LLC

Chapter 11

#5.00 STATUS CONFERENCE RE: Chapter 11 Voluntary Petition Non-Individual.
(cont'd from 9-11-24)
(cont'd from 12-05-24 at 10:00 a.m. per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for December 5, 2024

Continue to coincide with hearing on January 8, 2025. *Appearance required.*

Tentative for September 11, 2024

The court believes (but is unsure) that this was continued for a status conference at the hearing on the adversary Rule 12 motion until December 5 at 10:00 a.m. It is expected in meantime the complaint will be revised and finalized, an answer or other response filed and efforts toward mediation will get underway. A revised status conference report is requested. *Appearance not required unless parties disagree with either the continuance or any aspect of the above.*

Tentative for August 14, 2024

In the Debtor's status report it reports general compliance with the usual requirements but it asks for more time in filing a plan and disclosure statement. Debtor believes it will first be necessary to conclude the litigation with RR1050 pending in adversary proceeding No. 8:24-ap-01070-TA. But no timeline is given and one supposes this might take years. Moreover, as stated in the court's tentative published in that proceeding on the Rule 12(b) Motion to Dismiss, it remains very unclear (at least to this court) just what rights the debtor actually holds in the Colton property. When, exactly, is an "Option to Purchase", repeatedly stated in writing as a true option, really something else? The Debtor was given leave to amend. But the court is reluctant to give an open-ended extension to filing a plan at this point.

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sunmeadows, LLC

Chapter 11

Further, it is not necessarily true that a plan cannot provide for contingency as the litigation winds its way through trial and potentially appellate courts.

Further discussion on this point is invited at the hearing.

Appearance required.

Tentative for May 22, 2024

Deadline for filing plan and disclosure statement: Does debtor propose that no plan be filed until the adversary proceeding is resolved? Even if that might take years? Isn't a plan that proposes reorganization or sale contingent upon title resolution more appropriate? Claims bar: 60 days after dispatch of notice to creditors advising of bar date. Debtor to give notice of the deadline by: May 28, 2024. Appearance required.

Party Information

Debtor(s):

Sunmeadows, LLC

Represented By
Robert P Goe
Jeffrey W Broker

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:24-10671 Howard Park

Chapter 7

Adv#: 8:24-01091 Dorsett v. Park et al

**#6.00 STATUS CONFERENCE RE: Notice of Removal
(cont'd from 7-25-24 per court's own mtn)
(cont'd from 8-15-24 per court's own mtn)
(cont'd from 8-29-24)
(cont'd from 10-24-24)
(cont'd from 12-5-24 at 10:00 a.m.)**

Docket 1

Tentative Ruling:

Tentative for December 5, 2024
See #14. *Appearance required.*

Tentative for October 24, 2024

The majority of the factors enunciated in cases like *In re Tucson Estates, Inc.*, 912 F2d 1162, 1167 (9th Cir. 1990) favor remand. This is particularly so when the court is advised that the matter can or will be set for trial in state court promptly upon remand. The case sounds primarily in fraudulent conveyance. But the Trustee has reportedly chosen not to pursue it, has filed a "no asset" report and so for practical purposes this bankruptcy is closed. There seems to be some argument as to whether the state court action should also serve in double capacity as an adversary proceeding to determine dischargeability of the state court judgment because the removal was one day before the nondischargeability deadline of June 21. Whether there is any viability to such an argument should be the subject of a separate proceeding and, even if it were sustainable, is still not enough to persuade the court to keep this case.

Remand to state court. *Appearance required.*

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Howard Park

Chapter 7

Tentative for August 29, 2024

No response has been received to the OSC entered June 26, 2024. No status report has been filed either. Dismiss for failure to prosecute. *Appearance required.*

Party Information

Debtor(s):

Howard Park

Represented By
Ji Yoon Kim

Defendant(s):

Howard Park

Pro Se

Becktel C.H. Development, Inc.

Pro Se

CJP Development, Inc.

Pro Se

JHL Development, Inc.

Pro Se

Chong Hoon Park

Pro Se

Grace G. Park

Pro Se

Plaintiff(s):

Dana M. Dorsett

Represented By
Jeffrey Dorsett

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:24-10671 Howard Park

Chapter 7

Adv#: 8:24-01091 Dorsett v. Park et al

#7.00 Plaintiffs Motion To Determine Whether The Notice Of Removal Filed Prior To The Deadline To File Nondischargeability Complaint Was A Timely Adversary Proceeding

Docket 29

Tentative Ruling:

Tentative for December 5, 2024

This is Plaintiff Dana Moon ("Plaintiff") Motion to Determine Whether the Notice of Removal Filed Prior to the Deadline to File Nondischargeability Complaint was a Timely Adversary Proceeding.

A. Background

Plaintiff filed a lawsuit against Debtor Howard Park ("Debtor") in Los Angeles County Superior Court under the California Voidable Transfers Act. Plaintiff claims that Debtor, through various intermediary entities that are not under his name, fraudulently transferred properties to his son Chong Park in order to avoid paying the judgment Plaintiff obtained in 2011 against Debtor and seeks to void the transfers. The matter is currently set for bifurcated jury trial on March 26, 2025. While this state court action was pending, Debtor filed his chapter 7 bankruptcy on March 20, 2024. The deadline to file an objection to discharge was set for June 21, 2024. One day prior to this deadline, Plaintiff filed a Notice of Removal, to remove the state court action to this bankruptcy court for further proceedings. On July 8, 2024, discharge was entered for Debtor and the bankruptcy case was closed.

On October 24, 2024, this court entered an order analyzing the factors for remand and determined that the state court action was to be remanded back to the originating state court, but allowed for Plaintiff to further brief on the issue of whether her notice of removal was sufficient to satisfy the claim filing

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... **Howard Park**

Chapter 7

requirements for nondischargeability, since she filed the removal one day prior to the deadline. This is the issue currently before this court.

B. Legal Standard

Bankr. R. 4007(a) states that "[a] debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt." (emphasis added) See *In re Jasperson*, 116 B.R. 740 (Bankr. S.D. Cal. 1990). Moreover, "[a]s an adversary proceeding, a proceeding to determine dischargeability of a debt must be commenced by a complaint rather than by a motion or application". 8 Collier on Bankruptcy ¶ 4007.07, at 4007-15-4007-16 (15th ed. 1989); *Id.* A literal reading of Bankr. R. 4007(a) supports the holding that a debtor or any creditor may file a complaint to determine dischargeability to timely initiate a proceeding regarding discharge or dischargeability. *Id.* It does not provide that a removed state court action may be filed in the alternative, to determine dischargeability. *Id.* In order to satisfy Bankr. R. 4007(a), a complaint is required to determine the dischargeability of a debt. *Id.* Nonetheless, the court in *Jasperson* analyzed whether an application for removal is acceptable to meet the statute of limitations despite not being in the form of a complaint.

The purpose of a complaint is to give notice to the adversary of the nature and basis for the claim and the type of litigation involved. See, *In re Blewett*, 14 B.R. 840, 842 (9th Cir. BAP 1981). Bankr. R. 7008 and Bankr. R. 7009 enforce the concept of notice pleading in the bankruptcy courts. *Jasperson*, 116 B.R. at 743. Bankr. R. 7008, which incorporates Fed.R.Civ.P. 8, requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* However, when fraud is alleged, Bankr. R. 7009, which incorporates Fed.R.Civ.P. 9, demands that the pleading specify the acts constituting fraud. *Id.*

C. Analysis

Plaintiff's main argument is that her Notice of Removal filed before the deadline to object to discharge is sufficient to open an adversary proceeding, as it operates as an objection to discharge. Plaintiff cites to a secondary

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

Santa Ana

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Howard Park

Chapter 7

source and Rule 7001(10) for the proposition that an action that is removed from state court to the district court or bankruptcy court is an adversary proceeding.

The law is thin in the 9th Circuit on this issue, but the parties seem to base the remainder of their arguments on *Jasperson*, 116 B.R. 740 (Bankr. S.D. Cal. 1990). In *Jasperson*, the plaintiff initiated a lawsuit in state court against sellers of a residential property recently purchased alleging fraud and seeking rescission. After the state court lawsuit was filed, one of the defendants filed a bankruptcy. Plaintiff in that case then filed a notice of removal removing the state court complaint to bankruptcy court. The court in *Jasperson* analyzed whether a notice of removal is acceptable despite not being in the form of a complaint for nondischargeability purposes. The *Jasperson* court found that the notice of removal was not sufficient to constitute an objection to discharge. First, the court articulated, as stated above, that a literal reading of Rule 4007(a) that a debtor or creditor may file a complaint to determine dischargeability, and not a removed state court action as an alternative. *Jasperson*, 116 B.R. at 743. Second, the court emphasized that the purpose of a complaint is to give notice to the adversary of the nature and basis for the claim and the type of litigation involved. *Id.* See, *In re Blewett*, 14 B.R. 840, 842 (9th Cir. BAP 1981). Finally, on further analysis of the complaint attached to the notice of removal, the *Jasperson* court found that the substance was insufficient to meet the FRCP 8 pleading standards.

While Defendants argue that this case is determinative on the issue before the court and indicates denial of the motion, Plaintiff contends that there are factual distinctions between *Jasperson* and this case. For instance, the removed complaint in *Jasperson* involved a more complex situation "multiple defendants and non-fraud causes of action", whereas the complaint here pertains to those engaged in the conspiracy related to the alleged fraudulent transfer, with Debtor being a party to all claims. Additionally, Plaintiff argues that the substance of the removed complaint and the Notice of Removal adequately informed Debtor of the nature of the claims against him. Specifically, the complaint alleges a claim for "willful and malicious injury by the debtor" asserting that Defendants conspired to transfer

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... **Howard Park**

Chapter 7

assets to Debtor's children and their entities with actual intent to hinder, delay or defraud the Plaintiff. It further alleges that the Defendants "intentionally, willfully, fraudulently, and maliciously did the things herein alleged to defraud and oppress Plaintiff." It may be that the state court complaint in this case is more factually substantive than the one in *Jasperson*, but the court is not persuaded that the degree of factual notice is the determinative issue. Statutes of limitation, like Rule 4007(a), serve interests other than notice. They also function to require parties to proceed with diligence, and the interest in a debtor's early fresh start is a cardinal concern of the bankruptcy court. See *Neff v. Neff (In re Neff)*, 824 F.3d 1181, 1186 (9th Cir. 2016) ("In considering the functional characteristics of federal statutes that provide a time period in which some action must be taken, the Court has focused on whether the time period serves the main goal of a statute of limitations: encouraging plaintiffs to prosecute their actions promptly or risk losing rights.").

The court observes that this timeliness issue is directed toward the dischargeability question. But the now remanded state court action can still proceed on other issues. As observed in the remand motion, the court is not sure why this case needs to be heard in this forum, particularly when Plaintiff has claimed liens on the properties that are allegedly superior to the bankruptcy estate and can be pursued through state court litigation.

Deny. *Appearance required.*

Party Information

Debtor(s):

Howard Park

Represented By
Ji Yoon Kim

Defendant(s):

Howard Park

Represented By
Ji Yoon Kim

Bectel C.H. Development, Inc.

Pro Se

CJP Development, Inc.

Pro Se

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Howard Park

Chapter 7

JHL Development, Inc.

Pro Se

Chong Hoon Park

Pro Se

Grace G. Park

Pro Se

Plaintiff(s):

Dana M. Dorsett

Represented By
Jeffrey Dorsett

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:24-11880 Josefina Sanchez

Chapter 7

Adv#: 8:24-01123 Omni Metal Finishing, Inc. v. Sanchez

**#8.00 STATUS CONFERENCE RE: Complaint To Determine Debts Nondichargeable Pursuant To 11 U.S.C. Section 523 And Objection To Discharge Under 11 U.S.C. Section 727
(cont'd from 12-05-24 at 10:00 a.m. per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for December 5, 2024
Status re service/default. *Appearance required.*

Party Information

Debtor(s):

Josefina Sanchez

Represented By
Juanita V Miller

Defendant(s):

Josefina Sanchez

Pro Se

Plaintiff(s):

Omni Metal Finishing, Inc.

Represented By
Christopher J Green

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-10312 Lars Ake Morgan Gustavsson

Chapter 7

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

#9.00 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) (cont'd from 11-14-24) (cont'd from 12-5-24 at 10:00 a.m. per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for December 5, 2024
Set matter for trial. *Appearance required.*

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

Plaintiff(s):

Paul Binun

Represented By
Kit J Gardner

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-10312 Lars Ake Morgan Gustavsson

Chapter 7

#10.00 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)
(cont'd from 11-14-24)
(cont'd from 12-5-24 at 10:00 a.m. per court's own mtn)

Docket 26

Tentative Ruling:

Tentative for December 5, 2024

The court was expecting a stipulation to consolidate this issue with the adversary proceeding (see #9). *Appearance required.*

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.*

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

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.

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.

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

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 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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Lars Ake Morgan Gustavsson

Chapter 7

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 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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Lars Ake Morgan Gustavsson Chapter 7

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

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-12227 Hugo Gonzalez

Chapter 7

Adv#: 8:24-01100 Kosmala v. Bernabe

#11.00 Motion For Entry Of Default Judgment Against Defendant Daisy L. Bernabe Pursuant To Federal Rule Of Civil Procedure 55, As Incorporated By Federal Rule of Bankruptcy Procedure 7055, And Local Bankruptcy Rule 7055-1

Docket 16

Tentative Ruling:

Tentative for December 5, 2024
Grant as unopposed. *Appearance required.*

Party Information

Debtor(s):

Hugo Gonzalez Pro Se

Defendant(s):

Daisy L Bernabe Pro Se

Plaintiff(s):

Weneta M.A. Kosmala Represented By
Ryan W Beall

Trustee(s):

Weneta M.A. Kosmala (TR) Represented By
Ryan W Beall
Jeffrey I Golden

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:19-12480 Guy S. Griffithe

Chapter 7

Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

- #12.00** Defendant's Objection To The Order Lodged On June 12, 2024 And Request For The Court To Set A Hearing And Briefing Schedule Based On Post Trial Events
(advanced from 9-26-24 at 11:00 a.m. to 9-12-24 at 11:00 a.m. - see order entered 8-14-24 - see doc #256)
[Anerio Altman, Attorney for Debtor, Guy S. Griffithe - Will Be Appearing In Person]
(cont'd from 9-12-24)
(cont'd from 10-24-24)

Docket 248

***** VACATED *** REASON: CONTINUED TO 1-09-25 AT 11:00 A.M.
PER ORDER GRANTING PLAINTIFFS JOSEPH AND BRENDA
SAMEC'S MOTION TO STIPULATE TO CONT. HRG ON JUDGMENT
ENTERED 12-02-24 - SEE DOC #292**

Tentative Ruling:

Tentative for October 24, 2024

Plaintiffs argue that the total amount paid to Plaintiffs from RTSI and GAP as quarterly distributions from Plaintiffs initial investment is \$25,495.59 [Exhibit 7, p.2 at para.4]. Plaintiffs received two quarterly distribution checks from RTSI: (1) January 25, 2017 for \$8,752.99; (2) April 29, 2017 for \$7,620.66. Plaintiffs also received two quarterly distribution checks form GAP: (1) July 31, 2017 in the amount of \$5,299.64, and (2) November 2, 2017 for \$3,832.30. Plaintiffs seem to assert that they did not obtain distribution checks of \$11,029.71 from Bridgegate Management, a company unrelated to RTSI and GAP. Bridgegate was a separate investment which the court determined was a dischargeable breach of contract. Although Defendant attempts to obtain credit for this payment against the fraudulent cannabis investment (RTSI and GAP) damages total, no persuasive argument or evidence is offered for this conclusion.

The judgment interest rate is determined by the federal interest rate for the week prior to the filing of the claim, not the interest rate for the date the

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

damage occurred. Plaintiffs filed their claim on October 1, 2019, so one week prior would be September 27, 2019, in which 1.79% would be the applicable rate of interest to apply to the proven damages. Plaintiffs provided calculations including the total amount of the investment and payments made by Defendant's companies RTSI and GAP including interest is provided in the declaration on page 5, and results in a total judgment amount of \$140,671.24. The Plaintiff's Proposed Judgment is procedurally improper as it fails to attach the Proposed Order to the Notice of Lodgment. All that is provided is the notice and the proof of service which does not indicate serve to the Defendant or counsel. Service is provided through the declaration.

Defendant Griffithe also points out that a copy of the proposed order is not attached to the Notice of Lodgment, and Defendant is now deprived of his due process rights to review the proposed order and should not be entered until the issue is cured. Second, the court instructed Plaintiffs to file a proposed findings of fact and conclusions of law . No such filing appears on the docket and Defendant presumes Plaintiff might be relying on the court's Memorandum of Decision as findings, but since the Defendant has already announced an intent to appeal, this seems a hazardous course. Defendant intends to appeal the ruling, and requests guidance from the court how to proceed on the resolution of Docket #248.

Third, Defendant contends that Plaintiffs admitted that payments from Bridgegate Management were distributions on the RTSI obligation, but this is unsupported in the record as Bridgegate was a separate investment and so the court is not persuaded this should be deducted.

It seems that Defendant agrees that Federal Interest Rate should be used because the Judgment derives from federal law alone. There were no significant issues of state law decided or relied upon by this court in supporting the fraud cause of action. By calculating the Pre-Judgment Interest at the Federal T-Bill rate, the post-judgment Federal Interest would yield a result of \$138,163.38 as defendant contends. [See Griffithe Dec, Exhibit 1]. Defendant urges the court to consider whether interest should be awarded since the court's memorandum of decision was entered. Plaintiffs gain a year of interest as a result of their indolence. This is not a persuasive argument since clearly the liability was established and even if some dispute

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... **Guy S. Griffithe**

Chapter 7

over interest or credits or the like could be mentioned, Defendant has made no effort to pay anything on account.

To the court's reading it would seem \$140,671.24 is the correct number to be inserted into a form of judgment, which Plaintiff is directed to submit forthwith. Unless Plaintiff is abandoning his right to submit findings of fact consistent with the Memorandum of Decision, those should also be submitted as a separate document. Plaintiff is encouraged to prepare and submit findings of fact and conclusions of law. Otherwise, the court will adopt its Memorandum of Decision from last year as findings.

Appearance required.

Tentative for September 12, 2024

This is before the court on Defendant's Objection to the Order Lodged June 12, 2024. At issue is whether the Plaintiffs Joseph and Brenda Samec ("Plaintiffs") are entitled to a nondischargeable judgment for money based on the court's findings announced in its Memorandum of Decision After Trial entered on July 28, 2023 [Docket No. 216]. This case has become a tangled mess primarily because Plaintiffs first filed a deficient form of judgment after trial which was initially rejected (mostly going to interest issues) , but the remedy to fix the deficiency was not attempted, inexplicably, *for nearly one year later on June 12, 2024*. In the meantime, reportedly, events occurred in the Riverside Superior Court which Defendant argues have changed everything. Defendant now argues that under the doctrine of collateral estoppel there is no claim because the Riverside Court determined that damages were zero, so the Order lodged June 12, 2024 cannot be entered. How exactly the Riverside Court came to that astounding conclusion is never adequately explained (indeed, it looks like Plaintiff *requested dismissal* of Defendant perhaps at Defendant's behest), and alternative theories are offered.

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

A. Background

On July 10, 2019, Plaintiffs initiated a lawsuit in the California Superior Court, County of Riverside ("Riverside Court"), to which Defendant was one of the parties included in that action. Defendant contends that the facts at issue in that matter were the same as the facts initially at issue in this adversary proceeding, although this is disputed by Plaintiffs. [Motion, Exhibit 5].

Plaintiffs requested relief from the automatic stay to litigate the matters in the Riverside Case on August 22, 2019, which was granted by this court September 27, 2019. [Motion, Exhibit 2]. Plaintiffs also initiated a parallel adversary proceeding against Debtor in this case, which led to trial conducted between June 22 through June 25th, 2023. This court's Memorandum of Decision After Trial held that the debt arising from RTSI/SMRB/GAP investment was nondischargeable under Sections 523(a)(2)(A) and (a)(19). However, the court did not make a finding as to the amount of this debt except to note that "Damages were obvious since the entire investment of \$150,000 plus interest, costs, attorneys' fees was lost except what might have been received as bogus "dividends" of about \$30,000"...."[MOD p.24 at lines 25-27]. The original form of judgment lodged August 25, 2023 was rejected, mostly over calculation of interest issues, and Plaintiffs were directed to lodge a new form of judgment. In the meantime, Plaintiffs' lawyers apparently left the case for reasons left unexplained. Plaintiffs attempted to lodge another order one year later on June 12, 2024 (the reasons for this extreme delay were not provided), but there was no notice of lodgment included. Instead, this motion followed. Defendant contends that Plaintiffs in their declaration attempt to calculate the judgment and enter monetary judgment now. However, Defendant argues that this court is collaterally estopped from entering a monetary judgment because of the outcome at the Riverside Court. Defendant argues the Riverside Court liquidated Plaintiffs' claims against Defendant by determining they had none, in other words zero, and dismissed Defendant from the 5th amended complaint with prejudice ("Riverside Case"). [Motion, Exhibit 1].

Based on the Riverside Court's order, Defendant now requests that, since this court has technically not issued a final judgment on its

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

Memorandum of Decision, it must follow the Riverside Court's ruling under the theory of collateral estoppel and not award *any* damages.

B. Legal Standard

Application of issue preclusion (collateral estoppel) requires a prior determination that: (1) resolved an identical issue; (2) actually litigated the identical issue; (3) necessarily decided the identical issue; (4) is final and resolved the issue on its merits; and (5) occurred between parties in privity to one another, in the former proceeding. *Khaligh v. Hadaegh (In Re Khaligh)*, 338 B.R. 817, 824 (B.A.P. 9th Cir. 2006). But left unclear is exactly what the Riverside Court decided (if anything) and why. This goes to the "actually litigated" issue primarily.

C. Collateral Estoppel

Defendant argues that all elements of issue preclusion are met because the Riverside Court resolved the same or similar issues regarding the Plaintiffs' investment in RTSI/SMRB/GAP, and that this issue was actually litigated and necessarily decided by the Riverside Court. The privity between the parties is present as the case was between Plaintiffs and Defendant in both forums. There was also a final judgment issued by the Riverside Court. But what remains to be determined and is disputed by the parties is whether the issues were the same in both forums and, more importantly, whether they were actually litigated and decided by the Riverside Court. The causes of action are somewhat different, given the nature of the two different forums and the presence of third parties. What the court is looking for here is if there is a determination made by the Riverside Court that there was no fraud or securities fraud that would determine dischargeability under Section 523(a)(2) (A) and (a)(19). Plaintiff contends that the issues are not identical, that this court has already decided on these issues, and that the Riverside Court made determinations eight months after this adversary concluded and only opined as to other defendants. Plaintiff adds that the reason the Riverside Court did not find on the question of fraud etc. is because it believed that the

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Guy S. Griffithe

Chapter 7

bankruptcy court had already done so. But this was not established by any evidence save Plaintiff's report that the Riverside Court said to the effect that the bankruptcy court was a one-stop court and so there was no need or ability to go further in Riverside since the bankruptcy court had already done so.

Defendant cites to Exhibit 1 of the Motion and its brief as support to his contention that collateral estoppel applies because the Riverside Court determined that Plaintiffs had no claim against Defendant and dismissed him from the complaint (at Plaintiff's request?) with prejudice. Upon the court's review of this Exhibit 1, unless the court is missing something, there is nothing that provides any, much less a detailed finding from the Riverside Court that Defendant is or is not liable for fraud and securities fraud and/or its reasoning for this determination. Plaintiffs assert that the Riverside Court apparently told Plaintiffs that since the bankruptcy court awarded a dischargeability judgment (which it had not done as of that date but it had issued findings) against Defendant, Plaintiffs could not obtain a second judgment against him in state court for similar causes of action. Thus, Defendant became a witness in the Riverside Case (this is unsupported by a declaration or any evidence). Plaintiffs also attach Defendant's trial brief in the Riverside Case, which summarily provides that *res judicata* should apply and Defendant should be dismissed from the case, as the bankruptcy court has already issued a decision after trial and awarded Plaintiffs a judgment for the same facts or nucleus of events. [emphasis added, Response, Exhibit 7]. Although the court agrees with Defendant that Plaintiffs have not explicitly shown how the trial brief was the factor that led to the dismissal of Plaintiffs' complaint against him with prejudice, Defendant has also not provided sufficient evidence to show that collateral estoppel applies here. Exhibit 1 attached to the motion demonstrates the Riverside Court's findings are bare to nonexistent pertaining to Plaintiffs, and simply dismisses Defendant from the case. [See Motion at Exhibit 1 p.2]. The dismissal may have been precipitated by either the Riverside Court or by Plaintiffs' (or maybe Defendant's) request that he be dismissed because of the bankruptcy court's findings. The findings attached as Exhibit 1 in Defendant's reply pertain only to another defendant Maartin Rossouw and indicates that Defendant Griffithe

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

Santa Ana

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

Guy S. Griffithe

Chapter 7

was dismissed with prejudice from the lawsuit. [See Reply, Exhibit 1 p.3-4, "Ruling After Court Trial" dated March 27, 2024]. Finally, Plaintiff's supplemental declaration (Docket No. 272) provides an email from Defendant to Plaintiff acknowledging that he was only a witness and no longer a party due to Plaintiffs already having a judgment in the adversary trial. [PI Supp Dec, Exhibit 5]. It is thus more likely that the Riverside Court simply declined to issue findings about the alleged fraud etc. as against Defendant largely because it was led to believe this court had already done so, in great detail. Had there been an intention to actually determine such issues, one would expect a much greater attention to detail, especially considering at that time this courts findings were already published. Based on the evidence and arguments presented by both parties, the court is not persuaded that collateral estoppel applies here and maintains its ruling in the Memorandum of Decision After Trial that the debt arising from RTSI/SMRB/GAP investment was nondischargeable under Sections 523(a)(2)(A) and (a)(19).

D. Issue of Damages

Defendant contends that the court has not addressed the amount of Plaintiffs damages, and thus, the Riverside Court's dismissal effectively liquidates the value of the claim at zero. It may be true that a formal finding on sums owed was not made, but as Plaintiffs state in their response, this court did state that "Damages were obvious since the entire investment of \$150,000 plus interest, costs, attorneys' fees was lost except what might have been received as bogus "dividends" of *about* \$30,000" [MOD p.24 at lines 25-27] (italics added), recognizing that monetary damages were owed to Plaintiffs but in an unliquidated sum. This alone is sufficient to preclude the zero conclusion offered by Defendant as its entry predates anything issued by the Riverside Court on the question, even assuming the Riverside Court actually intended to go into the question of quantum of damages. So, should the court adopt the principal and interest amounts included in Plaintiffs' submitted proposed Judgment? The answer to this question may need to be determined at a separate hearing, as there are several remaining issues. First, the interest question has not been vetted yet, and the numbers appear

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

Guy S. Griffithe

Chapter 7

very different. It might be the difference between calculating under the federal rate vs. under Washington state law. Research on which is appropriate might be required. Additionally, the principal requests are different, but without explanation. On this point, is it sufficient to merely subtract the \$30,000 (approx.?) received as bogus "dividends" from the aggregate amount invested, as mentioned in the Memorandum of Decision? That would yield \$120,000 (i.e. \$150,000-130,000=120,000), but that differs from the amounts submitted in either of Plaintiff's forms of judgment without explanation. Further, and possibly related, the difference could be explained by interim interest accrued on a declining principal or some other theory of damage not yet explained. But it is just left frustratingly unclear. Determining the correct balance from which the interim payments ought to be deducted will be a challenge. Plaintiffs retain the burden of proving the amounts with admissible evidence and calculation of appropriate interest is likewise their burden and should be calculated in an easily understandable format .

For the purposes of this hearing, the court finds that the elements of collateral estoppel have not been met, and the Memorandum of Decision After Trial controls. Further hearing is required to determine the final amount of the form of Judgment. *Appearance required.*

Party Information

Debtor(s):

Guy S. Griffithe

Represented By
Bert Briones

Defendant(s):

Guy Griffithe Et.Al

Represented By
Anerio V Altman

Plaintiff(s):

Joseph Samec

Pro Se

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

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

#13.00 Order To Show Cause Why Case Should Not Be Dismissed As Resolved

Docket 1

Tentative Ruling:

Tentative for December 5, 2024

It would appear that the matter is resolved and appeal dismissed. What would the parties have the court do? *Appearance required.*

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

Richard A. Marshack Represented By
Ryan D O'Dea

Joshua R. Pukini Pro Se

Calpac Mortgage Fund, LLC Pro Se

Calpac Management, Inc Pro Se

All Persons Unknown Claiming Any Pro Se

Plaintiff(s):

Heritage One LLC Represented By
Neelamba Jhala Molnar
Evan C Borges
Claire-Lise Kutlay

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

Claire B. Panosian

Represented By

Neelamba Jhala Molnar

Evan C Borges

Claire-Lise 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

Brooke S Thompson

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

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

- #14.00** PRE-TRIAL CONFERENCE RE: Answer to Complaint and Counterclaims for:
(1) Violation of the Automatic Stay; (2) Avoidance of Preferential Transfer; (3)
Avoidance of Fraudulent Transfer; (4) Avoidance of Unauthorized Post-Petition
Transfer; (5) Preservation of Avoided Transfers; and (6) Declaratory
Relief/Unjust Enrichment
**Another summons issued on 3-21-23
(set from s/c hrg held on 6-08-23)
(cont'd from 9-12-24 per order continuance of pre-trial conference entered
8-30-24 -see doc #45)
(cont'd from 11-14-24)
(cont'd from 12-05-24 at 10:00 am)**

Docket 9

Tentative Ruling:

Tentative for December 5, 2024

It would appear that the matter is resolved and appeal dismissed. What would the parties have the court do? *Appearance required.*

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

Richard A. Marshack Represented By
Ryan D O'Dea

Joshua R. Pukini Pro Se

Calpac Mortgage Fund, LLC Pro Se

Calpac Management, Inc Pro Se

All Persons Unknown Claiming Any Pro Se

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT...

AB Capital, LLC, a California limited liability co

James C Bastian Jr
Marc A Lieberman
Rika Kido

Chapter 7

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-12433 Brandon Paul Brooks

Chapter 7

Adv#: 8:24-01027 EFD USA, Inc. v. Brooks et al

**#15.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
And For Declaratory Relief RE Community Property Liability
(cont'd from 5-09-24 per court's own mtn)
(cont'd from 5-30-24)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 8-14-25 AT 10:00 A.M.
PER ORDER TO CONTINUE STATUS CONFERENCE ENTERED 12-02-
24 - SEE DOC #20**

Tentative Ruling:

Tentative for May 30, 2024
See #8. Appearance suggested.

Party Information

Debtor(s):

Brandon Paul Brooks

Represented By
Sara Tidd

Defendant(s):

Brandon Paul Brooks

Pro Se

Natalie Rae Brooks

Pro Se

Joint Debtor(s):

Natalie Rae Brooks

Represented By
Sara Tidd

Plaintiff(s):

EFD USA, Inc.

Represented By
R Gibson Pagter Jr.

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-12433 Brandon Paul Brooks

Chapter 7

Adv#: 8:24-01027 EFD USA, Inc. v. Brooks et al

#16.00 Motion To Abate Adversary Proceeding (Permissive Abstention) And For Relief From Discharge Injunction To Continue Appeal And Post-Appeal Proceedings In Underlying Action In NonBankruptcy Forum
(cont'd from 5-30-24)

Docket 7

***** VACATED *** REASON: OFF CALENDAR PER ORDER
GRANTING PLAINTIFF'S MOTION TO ABATE ADVERSARY
PROCEEDING ENTERED 6-04-24 - SEE DOC #17**

Tentative Ruling:

Tentative for May 30, 2024

Grant abatement in favor of completion of appeals and related matters in state court. Revisit at a holding date about 180 days hence? *Appearance required.*

Party Information

Debtor(s):

Brandon Paul Brooks

Represented By
Sara Tidd

Defendant(s):

Brandon Paul Brooks

Pro Se

Natalie Rae Brooks

Pro Se

Joint Debtor(s):

Natalie Rae Brooks

Represented By
Sara Tidd

Movant(s):

EFD USA, Inc.

Represented By
R Gibson Pagter Jr.

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Brandon Paul Brooks

Chapter 7

Plaintiff(s):

EFD USA, Inc.

Represented By
R Gibson Pagter Jr.

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:23-12060 Stewart Homes, Inc.

Chapter 7

#17.00 PRE-TRIAL CONFERENCE RE: Chapter 7 Involuntary Petition Against a Non-Individual. Inc.
(set from s/c hrg held on 3-12-24)
(cont'd from 8-01-24 per order approving stip. between the alleged debtor & petitioning creditors to cont. mtn cutoff date & pre-trial conf. entered 7-12-24)

Docket 1

*** VACATED *** REASON: CONTINUED TO 1-09-25 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION BETWEEN THE ALLEGED
DEBTOR & PETITIONING CREDITORS TO CONTINUE MOTION CUT-
OFF DATE & PRE-TRIAL CONFERENCE ENTERED 10-25-24 - SEE
DOC #67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stewart Homes, Inc.

Represented By
Marc C Forsythe
Charity J Manee

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

- #18.00** Order To Show Cause Why Case Should Not Be Dismissed For Failure To Prosecute
(cont'd from 6-27-24 per order granting motion for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)

Docket 0

Tentative Ruling:

Tentative for December 5, 2024

##18-21

The court received the motion for continuance from the defendant, allegedly to permit completion of aa mediation that had been delayed by scheduling issues of the mediator. The court reluctantly granted the continuance but notes that this matter has been continued again and again for one reason or another. No more continuances. When the matter is hear in January a trial date will be set absent a stipulation.

Appearance required.

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Represented By

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Janet Ann Lutz

Allan Litovsky

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

#19.00 Defendant's Motion To Set Aside Entry Of Default And, If Necessary, Default Judgment, For Mistake, Inadvertence, And Excusable Neglect; Points And Authorities; Declaration Of Defendant
**(set from hrg held on 3-14-24, plaintiff's mtn for default judgment - doc #65)
(cont'd from 6-27-24 per order granting motion for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)**

Docket 71

Tentative Ruling:

Tentative for December 5, 2024
See #18. *Appearance required.*

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Represented By
Allan Litovsky

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

#20.00 Plaintiff's Motion For Default Judgment Against Defendant Janet Ann Lutz
(cont'd from 3-14-24)
(cont'd from 6-27-24 per order granting motion for continuance entered
6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for
pre-trial entered 8-14-24)

Docket 65

Tentative Ruling:

Tentative for December 5, 2024
See #18. *Appearance required.*

Tentative for March 14, 2024
Motion to Set Aside Default Judgment was filed on March 11, 2024 by Ms.
Lutz. However, she was informed that notice was short/not provided.
Continue for a combined hearing? Appearance required.

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Represented By
Allan Litovsky

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Janet Ann Lutz

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:22-10046 Janet Ann Lutz

Chapter 7

Adv#: 8:22-01038 Litovsky v. Lutz

- #21.00** PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Under 11 USC §§ 523(a)(2)(A) And 523(a)(2)(B); Fraud
(set from s/c hrg held on 12-15-22)
(cont'd from 10-05-23 per court's own motion)
(cont'd from 3-28-23)
(cont'd from 6-27-24 per order granting mtn for continuance entered 6-21-24)
(cont'd from 8-29-24 per order granting mtn request for continuance for pre-trial entered 8-14-24)

Docket 1

Tentative Ruling:

Tentative for December 5, 2024
See #18. *Appearance required.*

Tentative for March 28, 2024
What's the status on mediation? *Appearance required.*

Tentative for November 9, 2023
What is the court to do with the attempt to amend the complaint (see #22)?
Can any of the unilateral pretrial stipulation be used in view of new issues interjected by the amendment, assuming it is allowed? Why did defendant not participate in preparation of what was supposed to be a joint pretrial stipulation? *Appearance required.*

Tentative for 6/29/23:
See #10. When are we going to see a pretrial stipulation?

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Janet Ann Lutz
Appearance: required

Chapter 7

Tentative for 12/15/22:
Mediation results?

Tentative for 8/25/22:
Status conference continued to: December 15, 2022 @ 10a.m. Refer to
mediation. One day of mediation to occur by November 17, 2022. Plaintiff to
submit an order appointing a mediator within 10 days.

Appearance: required

Tentative for 7/7/22:
Why no status conference report?

Appearance: required

Party Information

Debtor(s):

Janet Ann Lutz

Represented By
Kevin J Kunde

Defendant(s):

Janet Ann Lutz

Pro Se

Plaintiff(s):

Allan Litovsky

Pro Se

Trustee(s):

Karen S Naylor (TR)

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:21-12506 Sarina Browndorf

Chapter 11

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

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

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

**[Notice of Dismissal of Defendants Plutos Sama Holdings, Inc., Distressed Capital Management, LLC, DCM-P1, LLC, LNREPO 2021 LLC And DCM-P3, LLC Filed 5-18-23 - see document # 167]
(cont'd from s/c hrg held on 11-30-23)**

(set from p/t conf on 4-04-24 per order approving stip. to vacate rule 16 deadlines & to set a cont. s/c entered 3-26-24)

(cont'd from 7-11-24 per order approving second stp to cont. mtn to correct deflt judgment & cont. s/c entered 6-28-24)

(cont'd from 8-29-24)

(cont'd from 10-24-24 per order approving fourth stp to cont. mtn to correct deflt judgment & cont. s/c entered 10-08-24 - see doc #261)

Docket 1

***** VACATED *** REASON: CONTINUED TO MARCH 6, 2025 AT 11:00 A.M. PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE HRG ON CH 7 TRUSTEE'S MOTION TO CORRECT DEFAULT JUDGMENT AGAINST MATTHEW BROWNDORF & CONTINUE STATUS CONFERENCE ENTERED 11-19-14 - SEE DOC**

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

**CONT... Sarina Browndorf
#267**

Chapter 11

Tentative Ruling:

Tentative for August 29, 2024
Continue to October 24, 2024 a 10:00 a.m. to coincide with related motions.
Appearance is optional.

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

Tentative for May 2, 2024
Continue to coincide with related matters May 30, 2024 at 11:00 a.m.
Appearance is optional.

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

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

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

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 11

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

Appearance: optional

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

Appearance: optional

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

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

Appearance: required

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

Appearance: optional

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... Sarina Browndorf

Chapter 11

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

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

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner

Defendant(s):

Matthew Browndorf	Pro Se
Plutos Sama Holdings, Inc.	Pro Se
Christiana Trust	Pro Se
Distressed Capital Management,	Pro Se
DCM-P1, LLC	Pro Se
LNREPO 2021 LLC	Pro Se
DCM-P3, LLC	Pro Se
Melvin Marc Browndorf	Pro Se
Elsbeth Bonnie Browndorf	Pro Se

Plaintiff(s):

Sarina Browndorf

Represented By
Susan K Seflin
Jessica L Bagdanov

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:21-12506 Sarina Browndorf

Chapter 7

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

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

(cont'd from 8-29-24 per order approving second stip. to cont. hrg on ch 7 tr's mtn to correct default judgment against Matthew Browndorf & cont. s/c entered 8-21-24 - see doc #255)

(cont'd from 10-24-24 per order approving fourth stp to cont. hrg on ch 7 tr's mtn to correct deflt judgment against Matthew Browndorf & cont. s/c entered 10-08-24 - see doc #261)

Docket 224

***** VACATED *** REASON: CONTINUED TO MARCH 6, 2025 AT 11:00 A.M. PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE HRG ON CH 7 TRUSTEE'S MOTION TO CORRECT DEFAULT JUDGMENT AGAINST MATTHEW BROWNDORF & CONTINUE STATUS CONFERENCE ENTERED 11-19-14 - SEE DOC #267**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf

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

Defendant(s):

Matthew Browndorf

Represented By

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

William J Wall

Plutos Sama Holdings, Inc.

Pro Se

Christiana Trust

Represented By
Leib M Lerner

Distressed Capital Management,

Pro Se

DCM-P1, LLC

Pro Se

LNREPO 2021 LLC

Pro Se

DCM-P3, LLC

Pro Se

Melvin Marc Browndorf

Pro Se

Elsbeth Bonnie Browndorf

Pro Se

Plaintiff(s):

Sarina Browndorf

Represented By
Susan K Seflin
Jessica L Bagdanov
Jessica Wellington

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

8:21-12506 Sarina Browndorf

Chapter 7

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

- #24.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint for (1) Declaratory Relief, and (2) Avoidance and Recovery of Fraudulent Transfers and (3) Marshalling
(cont'd from 5-02-24)
(cont'd from 8-29-24 per order approving second stip to cont. s/c entered 8-19-24 see doc. #22)
(cont'd from 10-24-24 per order approving third stip to cont. s/c entered 10-08-24 - see doc #27)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
STATUS CONFERENCE ENTERED 11-19-24 - SEE DOC #32**

Tentative Ruling:

Tentative for May 30, 2024

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

Tentative for May 2, 2024

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

Tentative for April 11, 2024

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

Tentative for January 11, 2024

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

Appearance optional.

Party Information

Debtor(s):

Sarina Browndorf

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

Defendant(s):

5pm Investments, Inc.

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Jessica L Bagdanov

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

8:21-12506 Sarina Browndorf

Chapter 7

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

#25.00 Emergency Motion To Vacate Order Granting Motion To Dismiss
(OST Signed 6-21-24)
(con't d from 8-29-24 per order approving stip. to cont. hrg on emergency mtn to vacate order granting mtn to dsm entered 8-22-24 - see doc #35)
(cont'd from 10-24-24 per order approving stip. to cont. hrg on emergency mtn to vacate order granting mtn to dsm entered 10-08-24 - see doc #40)

Docket 21

***** VACATED *** REASON: CONTINUED TO 3-06-25 AT 11:00 A.M.
PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE
HEARING ON EMERGENCY MOTION TO VACATE ORDER
GRANTING MOTION TO DISMISS ENTERED 11-19-24 - SEE DOC #45**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf

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

Defendant(s):

Thomas H Casey

Represented By
Susan K Seflin
Jessica L Bagdanov
Jessica Wellington

5PM Investments Inc

Represented By
Anerio V Altman

Elsbeth Browndorf

Pro Se

Matthew Browndorf

Pro Se

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

Melvin Browndorf

Pro Se

Plaintiff(s):

Elsbeth Browndorf

Represented By
Stephen D Weisskopf

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin
Jessica Wellington

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

8:21-12506 Sarina Browndorf

Chapter 7

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

(cont'd from 8-29-24 order approving 2nd stip. to cont. hrg on ch 7 tr.
amended mtn [332] to approve compromise pursuant to FRBP 9019
entered 8-21-24 - see doc #361)

(cont'd from 10-24-24 order approving fourth stip. to cont. hrg on ch 7 tr's
amended mtn [332] to approve compromise pursuant to FRBP 9019
entered 10-08-24 - see doc #366)

Docket 16

***** VACATED *** REASON: CONTINUED TO 3-6-25 AT 11:00 A.M.
PER ORDER APPROVING FIFTH STIPULATION TO CONTINUE HRG
ON CH 7 TR'S AMENDED MOTION TO APPROVE COMPROMISE
PURSUANT TO FRBP 9019 ENTERED 11-19-24 - SEE DOC #371**

Tentative Ruling:

Tentative for March 26, 2024

This is Chapter 7 Trustee Thomas H. Casey's ("Trustee") motion to approve compromise of controversy pursuant to Rule 9019 of the FRBP. Trustee seeks approval of a Stipulation Resolving the Adversary Proceeding *Casey v. 5pm Investments, Inc.*, adv. No. 23-01117TA, providing for Entry of Judgment and Related Relief ("Settlement Stipulation"), entered into between the Trustee and 5pm Investments, Inc. ("5pm"), and Steven Brent Herrin ("Herrin", and collectively with 5pm, the "Herrin Parties"). If this compromise is approved, it might assist Trustee in administering for the estate real property known at 27 Kaxs Way, Chazy, New York 12921 ("Kaxs Way Property"). There is a second property referred to as "Lakeside Drive" which allegedly was also collateral for the loan described below, but how/whether it fits into the picture of settlement described in this motion is left unclear. Trustee

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

Sarina Browndorf

Chapter 7

argues that the Herrin Parties have effectively consented to judgment in the Trustee's favor in the adversary proceeding #22-01020 TA, and in exchange, Trustee has agreed to abandon Lakeshore. Trustee does not believe Lakeshore has significant value for the estate. But that conclusion is tenuous on this record.

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

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

A. Legal Standard

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

interest of the creditors. Id. at 1380-81.

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

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

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

designation of the Trust stricken) dated July 26, 2017 apparently regarding Lakeshore only. [Exhibit B to Opposition]. Elsbeth argues that the motion should be denied because Trustee is attempting to settle a dispute between non-party creditors on property that is not property of the estate.

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

Trustee also argues Elsbeth and Melvin have no standing here as they

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

Sarina Browndorf

Chapter 7

are not parties to the adversary proceeding or the Settlement Stipulation, they are also not creditors of the estate, and their rights or liabilities are not affected by the Settlement Stipulation. The default judgment has long been final and the opportunity to object to the substantive aspects of it may have passed. But this argument is based on a *res judicata*/ collateral estoppel theory. The problem is that the default judgment is almost silent on the critical question of title, so heavy reliance on that point is problematic. Moreover, standing may also be found if a plausible case is made that some kind of residual interest of the senior Browndorfs or their family can be shown or the conclusion they were in privity with Matthew cannot be supported.

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

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

No tentative. Appearance required.

Party Information

Debtor(s):

Sarina Browndorf

Represented By

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... Sarina Browndorf

Chapter 7

Susan K Seflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Susan K Seflin

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

- #27.00** Defendants Ryan Young, Tablerock Enterprises LLC And 31831 Sunset LLC's Motion To Dismiss First Amended Complaint Adversary Without Leave to Amend Pursuant To Rule **12(b)**
(cont'd from 9-12-24 order approving stip to cont. hrg on mtn to dismiss entered 8-27-24 - see doc #294)
(cont'd from 11-7-24 per order approving stip to cont. hrg on mtn to dismiss entered 10-31-24 - see doc #305)

Docket 281

Tentative Ruling:

Tentative for December 5, 2024

This is Defendants Ryan Young ("Young"), Tablerock Enterprises LLC ("Tablerock"), and 31831 Sunset LLC ("Sunset LLC") (collectively, "Moving Defendants") Motion to Dismiss without leave to amend the causes of action against them in the First Amended Complaint ("FAC") filed by Trustee/Plaintiff Richard A. Marshack ("Trustee" or "Plaintiff"). The Motion to Dismiss is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

A. Brief Background

On September 15, 2022, the Initial Petitioning Creditors filed an involuntary chapter 7 bankruptcy against Debtor AB Capital, LLC ("Debtor"). Debtor is a real estate investment company and finance lender specializing in real estate secured debt investments in California. Debtor is a limited liability company, whose two 50/50 members and co-managers (or principals) are Joshua Pukini and Ryan Young ("Principal Defendants"). Principal Defendants are the officers, agents and/or directors of other entity defendants, most of which also used the same address as Debtor.

Plaintiff's summary of the claims in this action is as follows: Debtor and

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

Santa Ana

Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

its principals breached their fiduciary duties by looting and fraudulently transferring Debtor's assets, misappropriating Debtor's business opportunities, and defrauding creditors. Throughout the complaint, Trustee seeks to recover damages from such tortious conduct and avoid and recover Debtor's fraudulent transfers. The FAC contains eleven claims for relief that implicate Moving Defendants. These claims can be separated into two categories: (1) breach of fiduciary duty and aiding and abetting breach of fiduciary duty ("Fiduciary Duty Claims"); and (2) conversion, money had and received, unjust enrichment, turnover of estate property, avoidance of constructive fraudulent transfers ("Transfer Claims"). Accordingly, each cause of action will be analyzed under the *Iqbal* and *Twombly* standard analyzed below based on its respective category.

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

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

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. Transfer Claims

1. Conversion

The FAC's third claim for relief is conversion. "The elements of a conversion are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Burlesci v. Petersen*, 68 Cal.App.4th 1062, 1066 (1998); see also *In re Thiara*, 285 B.R. 420, 427 (B.A.P. 9th Cir. 2002) (quoting *Farmers Ins. Exchange v. Zerin*, 53 Cal. App. 4th 445, 451 (1997)).

Trustee alleges in the FAC that Debtor owned and had the right to possess the Debtor Assets (assets derived from or related to Debtor) and Defendants intentionally and substantially interfered with Debtor Assets and took them for themselves for their own benefit making them unavailable to Trustee and Debtor's creditors. Moving Defendants argue that this claim should be dismissed because the allegations are conclusory. Specifically, Moving Defendants contend that the FAC does not identify specific property, the facts supporting Debtor's ownership or right to possession of the property, or any wrongful act of any of the Moving Defendants disposing of such property. Further, no factual allegations are made to show that Young, Tablerock, or Sunset LLC converted any identified property by wrongful act or dispossessed Debtor of property.

Trustee argues in the opposition that Defendants only focus on the paragraphs below the conversion claim for relief and ignore paragraphs 1 through 123 which are realleged and incorporated in the conversion claim. Trustee then provides an extensive list of examples in the FAC showing instances of Young and/or Pukini conversion of payoff funds from the sale of what is inferred as Debtor's property to themselves or other entities including the "alter egos" Tablerock and Sunset LLC. The court disagrees with Moving

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

Santa Ana

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

Defendants contention in the reply that the property that allegedly belongs to or is owned by Debtor is not specified. This is stated clearly throughout the complaint, as shown in Trustee's opposition. It is not fatal that assets are referred to in mass categories. The facts presented by Trustee do appear to be plausible to assert a claim for conversion, but the court recognizes Moving Defendants' concerns that not enough may be alleged here to show that Tablerock and Sunset LLC are alter egos, especially Sunset LLC. If they are to be named defendants in this adversary, there should at least be more allegations showing their nature as affiliates of Young, facts suggesting separate existence is legally inappropriate/unrecognizable In the law and their role in the claims for relief.

2. Money Had and Received

The FAC 's fourth claim for relief is for money had and received. To state a claim for money had and received, a plaintiff must allege: (1) that defendant received money that was intended to be used for the benefit of plaintiff; (2) that the money was not used for the benefit of plaintiff; and (3) that defendant has not given the money to plaintiff. *Chase Inv. Servs. Corp. v. Law Offices of Jon Divens & Assocs.*, 748 F. Supp. 2d 1145, 1175 (C.D. Cal. 2010).

Moving Defendants argue that the FAC fails to allege the first element because no facts are alleged showing that any of the Moving Defendants received money that belonged to Debtor or was for Debtor's use. Trustee strongly opposes this argument by asserting in the opposition that Paragraphs 37 through 42 of the FAC detail Young's improper diversion of no less than \$32,500 from Debtor to himself for the Ventura Property sale. Specifically, the FAC asserts that the Principal Defendants (includes Young), on behalf of Debtor, solicited investors for a collateral assignment as to a second deed of trust for the Ventura Property for \$1,500,000. This was recorded against the Ventura Property, and the borrower paid of the deed of trust on June 11, 2021. Three days later, CalPac Mortgage, and affiliate of the Principal Defendants, received a wire deposit of \$2,194,641.111, and on the same day, a transfer from CalPac Mortgage was made to Joshua R.

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

Santa Ana

Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

Pukini Trust's checking account, and a payments totaling \$32,500 was made to Ryan Young's Amex Card. No payments were every made to the investors on the collateral assignments for the Ventura Property.

Moving Defendants argue that this \$32,500 was to pay off a business credit card of Debtor, not Young personally, which was discussed in the hearing on the preliminary injunction. Reportedly, Young's name was listed as the cardholder for the American Express card, but the card was intended to be used as representative account of Debtor, and not a personal account of Defendant Young. The opposition of the preliminary injunction asserts that Young does not have a personal Amex card. This is clearly a factual dispute, that will certainly be explore in litigation, as this is the basis for this cause of action. However, for the purposes of a motion to dismiss, the court must accept as true the allegations in the complaint and asses that whether they are "plausible" to assert a claim for money had and received. Based on what is alleged above, the court is persuaded that at these beginning stages, the Trustee has sufficiently alleged that Moving Defendants diverted the \$32,500 belonging to Debtor. Thus, this cause of action survives under the *Iqbal* and *Twombly* standard.

3. Unjust Enrichment

The FAC's fifth claim for relief is for unjust enrichment. Moving Defendants primarily argue that the court must dismiss this claim because unjust enrichment is not an independent cause of action in California. *Smith v. Ford Motor Co.*, 462 F. App'x 660, 665 (9th Cir. 2011)("unjust enrichment is not an independent cause of action in California."). Trustee cites to *Bruton v. Gerber Prods. Co.*, 2017 U.S. App. LEXIS 12933, at *2 (9th Cir. 2017) for the proposition that unjust enrichment can be sustained as a standalone cause of action. The case is unpublished and while it relies on California Supreme Court in *Hartford Casualty Insurance Company v. J.R. Marketing, L.L.C.*, 61 Cal. 4th 988, 1000 (2015), the California Supreme Court only clarified that that an independent claim for unjust enrichment can proceed in an insurance dispute. Further, Moving Defendants cited to Ninth Circuit court's decision in *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015), which recognized that "in California, there is not a standalone cause of action for

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... **AB Capital, LLC, a California limited liability co**
'unjust enrichment,' which is synonymous with 'restitution.'"

Chapter 7

However, the Ninth Circuit goes on to explain that unjust enrichment is not irrelevant but describes a theory underlying a claim that a defendant has been unjustly conferred a benefit "through mistake, fraud, coercion, or request". *Id.* Thus, on its own the unjust enrichment claim may not survive, but when considered with the other claims for relief in the FAC like conversion, money had and received, then it may proceed. As explained below, the court is persuaded that Trustee will have claims for relief under conversion, money had and received, and other related forms of misconduct. So, unjust enrichment can continue as a cause of action so long as one of these claims survive as well.

In any event, Moving Defendants argue that a defendant cannot be plausibly alleged to have been unjustly enriched where the defendant did not receive or retain a benefit at the plaintiff's expense. *Young v. Bank of Am., N.A.*, 2022 WL 1288224, at *2 (C.D. Cal. Mar. 31, 2022). In this case, Moving Defendants assert that Trustee has not alleged facts that if taken as true would establish that any of the Moving Defendants received or retained any benefit at Debtor's expense. Trustee, and the court disagrees, as the FAC alleges in Paragraph 27-42 that Young diverted at least \$32,500 of Debtor funds to himself in connection with the sale of the Ventura Property. Allegedly, those funds have not been returned. Although Moving Defendants contend those funds were delivered to an American Express card owned by Debtor, and not Young himself, this is a factual dispute that cannot be determined in the pleading stage. Taken as true, the court finds that Trustee has sufficiently alleged facts to meet the *Iqbal* and *Twombly* standard. However, as stated above, and noted for the entire FAC, some improvements should be made in alleging that both Tablerock and Sunset LLC are alter egos of Young, and how the diverted funds are allegedly flowed to both entities.

4. Turnover Under Section 542 and 543

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

AB Capital, LLC, a California limited liability co

Chapter 7

The FAC's sixth and seventh claim for relief is for turnover of property of the estate under 11 U.S.C. § 542 and § 543 . To support this cause of action the trustee must plausibly allege that: "(1) the property is in the possession, custody or control of a noncustodial third party; (2) the property constitutes property of the estate; (3) the property is of the type that the trustee could use, sell or lease pursuant to section 363 or that the debtor could exempt under section 522, and (4) that the property is not of inconsequential value or benefit to the estate." *In re Labib*, 2013 WL 5934326, at *4 (Bankr. C.D. Cal. Nov. 5, 2013). To establish a right to turnover under 11 U.S.C. § 543, the following elements must be adequately alleged: (i) that a custodian has possession, custody, or control of property; and (ii) that such property is property of the debtor. 11 U.S.C. § 543(b)(1); see also *In re Redman Oil, Inc.*, 95 B.R. 516 (Bankr. S.D. Ohio 1988).

Moving Defendants argue that Trustee failed to identify any property in the possession, custody, or control of any of the Moving Defendants that constitutes property of the estate, under both the sixth and seventh claim for relief. Trustee asserts in the opposition that the FAC does allege that the Moving Defendants are in possession of Debtor's monetary assets, which were allegedly misappropriated by Pukini and Young to themselves and others including Tablerock and Sunset. Trustee cites in the opposition to several paragraphs in the complaint that reportedly allege that Young and Pukini diverted funds intended for Debtor's creditors or diverted Debtor's assets. Further, before October 1, 2022, Pukini and Young allegedly removed and destroyed Debtor's books and records from Debtor's principal office to prevent Trustee from taking possession of Debtor's books and records and accessing them. To date, Defendants and Trustee have not engaged in formal discovery (i.e. Trustee has not propounded any interrogatories or formal requests for production on Defendants). All information and documents Trustee has received and reviewed thus far is from what Trustee was able to salvage following the intentional destruction of Debtor's books and records, from limited records Defendants voluntarily produced, from records produced by Debtor's creditors and from records produced by third parties voluntarily or through formal discovery. [FAC p. 7 at lines 3-9]. Trustee believes that after formal discovery, Trustee will located additional of assets to the Moving Defendants. The Moving Defendant's reply once again asserts that Trustee

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

Santa Ana

Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

does not identify with any particularity property of the estate over which Mr. Young is alleged to have possession, custody, or control.

The court disagrees, as Trustee has provided several examples in the FAC that point to allegations showing that Young had possession of the Debtor's property as its representative (and thus, Debtor's estate), and allegedly misappropriated these funds for himself of the other Moving Defendants. Accordingly, these claims for relief under Section 542 and 543 survive the 12(b)(6) standard.

5. Intentional Fraudulent Transfer

The FAC's eighth claim for relief is for avoidance of intentional fraudulent transfer. "Under § 544(b) and § 550(a) of the Bankruptcy Code, a trustee may avoid a fraudulent transfer of property if that transfer is avoidable under applicable state law." Section 548 "provides a federal statutory basis for avoiding fraudulent transfers." *In re United Energy Corp.*, 944 F.2d 589, 593 (9th Cir.1991); see also *In re JTS Corp.*, 617 F.3d at 1111. The federal fraudulent transfer provisions are "similar in form and substance" to California's fraudulent conveyance statutes. *In re United Energy Corp.*, 944 F.2d at 594. An actual fraudulent transfer is a transfer made with "actual intent to hinder, delay or defraud any creditor of the debtor." *Id.* (citing Cal. Civ. Code § 3439.04(a)(1)) see also 11 U.S.C § 548(a)(1)(A).

The court disagrees with Moving Defendants' contention that Trustee must plead with exactness the circumstances concerning fraudulent transfers under Rule 9, as this has historically been governed under Rule 8 pleadings requirements under the Federal Rules of Civil Procedure. *Danning v. Lavine*, 572 F.2d 1386, 1388-1389 (9th. Cir. 1978)("[i]n a plenary action brought by a trustee in bankruptcy to set aside a transfer of property as either a voidable preference or as a fraudulent conveyance, the pleadings are governed by rule 8 of the Federal Rules of Civil Procedure.").

Moving Defendants argue that the FAC does not allege the most basic elements of an actual fraudulent transfer or obligation: the existence of a transfer made or obligation incurred by Debtor, or that any of the Moving Defendants constitute a "transferee" or any such transfer against whom

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

Santa Ana

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT...

AB Capital, LLC, a California limited liability co

Chapter 7

avoidance may be sought. Trustee persuasively points to several paragraphs in the FAC that demonstrates allegations of a transfer of funds from Debtor, including: (a) Defendants diverted payoff funds received from the sale of Ventura to themselves and others and lied regarding same (FAC, ¶¶ 37-42); (b) Defendants diverted payoff funds received from the sale of Greenwood to themselves and others and lied regarding same (FAC, ¶¶48-53); (c) Defendants diverted payoff funds received from the sale of Ivarene to themselves and others and lied regarding same (FAC, ¶¶54-59); (d) Defendants diverted investment funds investors provided to fund loans on 40th Street to themselves and others (FAC, ¶¶ 60-65); and (e) Defendants diverted investments funds investors provided to fund loans on 1611 Cliff Drive, Newport Beach, CA to themselves and others (FAC, ¶¶ 77-78). It is also inferred in reading the allegations from paragraphs 1-124 that the Debtor Assets include payoff funds from specific properties with Debtor funded loans and in the form investment funds solicited on behalf of Debtor. The FAC sufficiently pleads a claim for intentional fraudulent transfer at this pleading stage because it alleges that the Moving Defendants diverted payoff funds intended to be paid to investors and instead paid themselves and affiliates, and continuously lied to investors.

6. Constructive Fraudulent Transfer

The FAC's ninth cause of action is for avoidance of constructive fraudulent transfer. To plead a constructive fraudulent transfer/obligation, the FAC was required to allege that (i) Debtor made a transfer or incurred an obligation to or for the benefit each of the Moving Defendants, (ii) the transfer or incurred obligation were not for "reasonably equivalent value," and (iii) Debtor was insolvent at the time or became insolvent as a result. See 11 U.S.C. § 548(a)(1)(B); Cal. Civ. Code § 3439.05.

Here, Moving Defendants assert that the FAC fails to allege what – if any – rights or property were transferred by Debtor "to or for the benefit" of any of the Moving Defendants, and thus what specific rights or property the Trustee seeks to recover from each of the Moving Defendants. As indicated above in the court's analysis of intentional fraudulent transfer, and overall

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

Santa Ana

Theodor Albert, Presiding
Courtroom 5B Calendar

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

reading of the complaint, not just the allegations under the ninth claim for relief, demonstrates sufficiently a showing of the payoff funds that were transferred by Moving Defendants on behalf of Debtor to themselves or their affiliates.

Moving Defendant also argue that FAC also fails to include sufficient allegations regarding AB Capital's purported insolvency, and the FAC's constructive fraudulent transfer claim against Moving Defendants should be dismissed because the FAC sets forth mere conclusory allegations regarding AB Capital's insolvency. In particular, the FAC's only allegation of insolvency parrots the statutory language, without any facts. Trustee argues that under *Danning v. Lavine*, 572 F.2d 1386, 1388-1389 (9th. Cir. 1978), all that is required is a general allegations of insolvency to meet the 12(b)(6) standard. The court has recently indicated a disagreement with *Danning* in this regard, as the decision was published long ago and before *Iqbal*, and the Ninth Circuit may hold a different requirement in showing insolvency than it did 40+ years ago. Thus, amendment to allege more facts showing insolvency, perhaps through the timing of the transfer and the petition date may be necessary to assert a claim for constructive fraudulent transfer.

7. California Penal Code Section 496(c)

The FAC's tenth claim for relief is under California Penal Code § 496(c). That statute provides that "[a]ny person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees." Under California Penal Code § 496(a), it is an actionable offense to "bu[y] or receiv[e] any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained" or to conceal, sell, or withhold such property from the owner. Cal. Penal Code § 496(a). To plausibly allege a cause of action under this statute, the Trustee was required to plead facts to establish "(a) the property was stolen, and (b) the defendant was in possession of it, (c) knowing it was stolen." *Allure Labs, Inc. v. Markushevsk*,

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

CONT... AB Capital, LLC, a California limited liability co
606 B.R. 51, 63-64 (N.D. Cal. 2019) (citations omitted).

Chapter 7

Here, Moving Defendants assert that the FAC fails to allege the elements of a cause of action under California Penal Code 496. Specifically, Moving Defendants argue that the Trustee fails to sufficiently allege facts of any property stolen from the Debtor, or that any of the Moving Defendants are in possession of such stolen property (let alone that they would have had knowledge that such property was stolen). Trustee contends that this is incorrect, and the FAC makes the following allegations that meet the elements of Section 396(c): (1) Defendants misappropriated Debtor Assets; (2) those assets were diverted to Defendants; and (3) because Defendants themselves were the ones misappropriating Debtor Assets, they knew they were "stolen" when they received them. Trustee argues that Young himself solicited investment funds on behalf of Debtor on several real estate investment projects where the funds were not paid to the borrower but allegedly diverted to Defendants.

While the complaint asserts several examples and allegations of these misappropriations by Young, the court is hesitant to conclude that this cause of action necessarily applies here, as the elements appear to require that defendant receive "stolen" property, and the property here would not necessarily have been considered stolen until after Moving Defendants received it. Further, as Moving Defendants argue, this specification as to how the elements are met is not made until the opposition brief. The court sees the potential for this cause of action but encourage Trustee to go back and restate with particularity how each element is met. Only then can the court consider this cause of action to meet the *Iqbal* and *Twombly* standard.

8. Constructive Trust Claim

The FAC's thirteenth claim for relief is for constructive trust. Like the FAC's unjust enrichment cause of action, Moving Defendants argue that a claim for relief based on "constructive trust" should be dismissed because it is not an independent cause of action, but instead only a remedy. *Oxford St. Properties, LLC v. Robbins*, 2010 WL 11549864, at *5 (C.D. Cal. Sept. 15,

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

2010) (dismissing cause of action for constructive trust without leave to amend) (citing *Stansfield v. Starkey*, 220 Cal. App. 3d 59, 76 (1990) (holding that constructive trust is not a cause of action and affirming demurrer without leave to amend). Trustee asserts that "[c]ourts have permitted separate causes of action for constructive trust where there is fraud, breach of duty, or any other act that entitles the plaintiff to some relief." *Clifford v. Concord Music Group, Inc.*, 2012 U.S. Dist. LEXIS 14084, *10-11, 2012 WL 380744 (N.D. Cal. 2012) referencing *Michaelian v. State Comp. Ins. Fund*, 50 Cal. App. 4th 1093, 1114, 58 Cal. Rptr. 2d 133 (1996). Thus, Trustee argues that the FAC's claim for constructive trust is both proper and plausible because he sufficiently pled a viable conversion claim, a viable claim for breach of fiduciary duty and a viable claim for aiding and abetting breach of fiduciary duty. The law does not appear to be black and white on this issue but seems to make an exception in cases where cause of action for breach of fiduciary duty and the like are asserted, like this one. Because the court finds a viable claim for conversion and additionally aiding and abetting breach of fiduciary duty, as explained below, it will consider the constructive trust claim as well.

A constructive trust may only be imposed if plaintiff demonstrates: "(1) a specific, identifiable property interest, (2) the plaintiff's right to the property interest, and (3) the defendant's acquisition or detention of the property interest by some wrongful act." *Higgins v. Higgins*, 217 Cal. Rptr. 3d 691, 700 (Cal. Ct. App. 2017). Here, Moving Defendants argue that the FAC fails to allege the first element of a Constructive Trust claim, and that Trustee still cannot identify any specifically identifiable property or asset received by Young or to which he has title that would be subject to Trustee's claims. Although it can be inferred that this "property" is the Debtor Assets alleged in the FAC, or the payoff funds from the various failed investments, perhaps a more specific description should be included in the FAC's definition of "Debtor Assets" on page 5, especially given that a constructive trust claim requires a "specific, identifiable property interest".

D. Fiduciary Duty Claims

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

1. Breach of Fiduciary Duty/ Aiding and Abetting Breach of Fiduciary Duty

The FAC's first claim for relief is for Breach of Fiduciary Duty Against the Principal Defendants. "The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, breach of fiduciary duty, and damages." *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 820 (2011). Under California law, "[t]he fiduciary duties that a member owes to a member-managed limited liability company and the other members of the limited liability company are the duties of loyalty and care" as set forth in that statute. Cal. Corp. Code § 17704.09(a). The parties main dispute here does not necessarily concern whether Young held a fiduciary duty or the existence of a fiduciary relationship, but how Young breached his fiduciary duty.

Moving Defendants argue that in nearly every section of the FAC containing allegations that could potentially be construed as allegations that Mr. Young somehow breached his fiduciary duties, the FAC fails to include alleged acts or omissions by Mr. Young specifically. Instead, the FAC only identifies acts by Pukini or, alternatively, impermissibly lumps together multiple defendants using the vague defined terms of "Principal Defendants" or "Defendants" instead of including specific allegations as to each defendant, as is required. Trustee contends that the FAC clearly delineates Young's specific role and involvement as one of two principals of Debtor responsible for committing the wrongdoing detailed in the FAC, and expressly alleges facts regarding Young's actions and inactions. These include, such as soliciting investments directly from investors, lying to investors and subsequently misappropriating funds that investors were to be paid pursuant to those investments.

The FAC's second claim for relief is Aiding and Abetting a Breach of Fiduciary Duty. "The elements of a claim for aiding and abetting a breach of fiduciary duty are: (1) a third party's breach of fiduciary duties owed to plaintiff; (2) defendant's actual knowledge of that breach of fiduciary duties; (3) substantial assistance or encouragement by defendant to the third party's breach; and (4) defendant's conduct was a substantial factor in causing harm

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

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

Chapter 7

to plaintiff." *Nasrawi v. Buck Consultants LLC*, 231 Cal. App. 4th 328, 343 (2014).

The court is familiar with this dispute from Trustee's Motion for Temporary Restraining Order and Preliminary Injunction and the hearing held on August 6, 2024. Although the motion was granted, the court expressed concern in the tentative regarding whether there was enough to show a breach of fiduciary duty from Young personally, as most of the examples of misconduct were from Pukini. However, the court noted that Young and Pukini were 50/50 members and co-manager of not only Debtor, but other related entities. Young was directly involved in almost all of the investments that fell apart due to Pukini's misrepresentations. At the very least, the court was persuaded at the time, and is still persuaded that at the very least, Young knew about Pukini's alleged breach of duty, and in many instances, substantially assisted him in carrying out his deceptions. As to the second claim for relief, the court finds that the *Iqbal* and *Twombly* standard has been met as to Young. Regarding Young's personal breach of fiduciary duty, Trustee references several paragraphs in the FAC showing Young's diversion of \$32,500 to himself rather than intended investors during the Ventura sale, and failure to fund loans on the 40th Street transaction despite collecting \$11 million. Whether these instances will be enough to show an actual breach at trial is unclear at this point without further discovery. However, we are at the pleading stage and the lower standard of 12(b)(6) which requires the court to take the allegations as true and determine whether they are plausible in their face to assert a claim for breach of fiduciary duty. As to Young, the court is persuaded that Trustee has met the standard. As to Tablerock and Sunset LLC, Trustee needs to state with more specificity how these entities are affiliates and "alter egos" of Young to connect them to the breach. There are some general statements early in the FAC, but in order to tie these entities to Young's alleged misconduct, there needs to be further context or explanation.

Deny in part, grant in part, *viz.* More detail should be provided regarding: 1. the alter ego theories particularly as to Tablerock and Sunset; 2. a more specific delineation as to properties allegedly subject to constructive trust; 3. more substance should be added to identify "stolen" property for purposes of Penal Code 496(c) and 4. more facts should be alleged leading

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

Thursday, December 5, 2024

Hearing Room

5B

11:00 AM

CONT... **AB Capital, LLC, a California limited liability co**
to the conclusion of insolvency on the constructive fraudulent conveyances.
Thirty days leave to amend. *Appearance required.*

Chapter 7

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

TABLEROCK ENTERPRISES, Represented By
Anthony Bisconti

LUNA CONSTRUCTION Pro Se

LIVING ART WORKS LLC Pro Se

CALPAC MORTGAGE FUND, Pro Se

CALPAC MANAGEMENT, INC. Pro Se

CAL-PAC DISTRESSED REAL Pro Se

BDP DEVELOPMENT Pro Se

ABC 2260 SAN YSIDRO LLC Pro Se

AB CAPITAL LFD, INC. Pro Se

AB CAPITAL FUND B, LLC Pro Se

AB CAPITAL FUND A, LLC Pro Se

31831 SUNSET LLC Represented By
Anthony Bisconti

1034 W BALBOA, LLC Pro Se

108 AVENIDA SERRA, LLC Pro Se

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Represented By

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

Thursday, December 5, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

Joshua R. Pukini, individually and as Pro Se

AB CAPITAL HOLDINGS I, LLC Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea
Shane M Biornstad
Rika Kido
Kristine A Thagard

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
Brooke S Thompson