

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2024**

**Hearing Room 301**

9:30 AM

1: -

**Chapter**

**#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.**

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**CONT...**

**Chapter**

Password: 786238

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Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**1:23-10270 Linda Ezor Swarzman**

**Chapter 11**

**#1.00** Motion for relief from stay [RP]  
2917 Tropicana, Crystal Beach, TX 77650

LEGACY LENDING, LLC  
VS  
DEBTOR

fr. 7/12/23 (stip); 7/19/23(stip); 8/9/23(stip); 9/27/23(stip); 10/18/23(stip);  
11/15/23; 12/20/23

Docket 125

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Linda Ezor Swarzman

Represented By  
Susan K Sefflin  
Jessica Wellington  
David Seror

**Movant(s):**

Legacy Lending, LLC

Represented By  
Christopher M McDermott

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**1:23-10270    Linda Ezor Swarzman**

**Chapter 11**

**#2.00    Motion for relief from stay [RP]  
0 Bermuda Beach, Galveston, TX 77554**

LEGACY LENDING, LLC  
VS  
DEBTOR

fr. 7/12/23(stip); 7/29/23; 8/8/23(stip); 9/27/23(stip); 10/18/23(stip); 11/15/23;  
12/20/23

Docket      122

**\*\*\* VACATED \*\*\*    REASON: Mtn to approve agreement between trustee  
and lender granted on 1/17/24. See docs. 395 and 429.**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Linda Ezor Swarzman

Represented By  
Susan K Seflin  
Jessica Wellington  
David Seror

**Movant(s):**

Legacy Lending, LLC

Represented By  
Christopher M McDermott

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**1:23-10894 Mario Alberto Orozco**

**Chapter 13**

**#3.00 Motion for relief from stay [RP]**

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING  
VS  
DEBTOR

Docket 45

**Tentative Ruling:**

On January 15, 2024, the debtor filed a response to the motion, in which he states that he would like to enter into an adequate protection order [doc. 49]. Pursuant to Local Bankruptcy Rule 9013-1(f)(2), the response must be supported by a declaration and copies of all evidence on which the responding party intends to rely. The debtor did not attach to the motion a declaration, signed under penalty of perjury, attesting to the facts stated in the motion.

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

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

**Debtor(s):**

Mario Alberto Orozco

Represented By  
Onyinye N Anyama

**Movant(s):**

NewRez LLC d/b/a Shellpoint

Represented By  
Chad L Butler

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**CONT... Mario Alberto Orozco**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:30 PM

**1:20-10276    Hormoz Ramy**

**Chapter 7**

Adv#: 1:20-01077      Seror v. Ramy et al

**#4.00**    Status conference re: complaint to deny debtor's discharge  
11 U.S.C. § 727(a)(2), 11 U.S.C. § 727(a)(3), 11 U.S.C. § 727(a)((4)A)  
and 11 U.S.C. § 727(a)(5)

fr. 11/4/20, 5/5/21, 8/4/21, 10/13/21; per ruling on 10/6/21; 3/9/22; 4/20/22(stip);  
5/25/22(stip); 6/22/22(stip); 8/24/22; 11/2/22(stip); 11/16/22(stip); 1/25/23(stip);  
4/12/23; 5/31/23; 8/16/23, 10/18/23; 11/29/23(stip), 12/20/23 (stip)

**STIP TO DISMISS ADVERSARY PROCEEDING FILED 1/17/24**

Docket      1

**\*\*\* VACATED \*\*\*    REASON: Order dismissing case entered 1/18/24 [Dkt.  
101]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

Morteza Talebizadeh

Represented By  
Randy Chang

Parviz Kamali

Represented By  
Randy Chang

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**CONT... Hormoz Ramy**

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Tamar Terzian  
Ryan Coy

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias



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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:22-01005 Seror, Chapter 7 Trustee v. Daneshi et al

- #5.00** Status Conference re: First Amended Complaint for:
- (1) Quiet Title;
  - (2) Equitable Subordination;
  - (3) Disallowance of Claim;
  - (4) Determination of Secured Status and Voiding of Lien;
  - (5) Preservation of Lien for Benefit of Estate;
  - (6) Turnover of Estate Property; and
  - (7) Declaratory Relief

fr. 4/6/22; 5/13/22(stip); 6/8/22; 7/6/22; 7/27/22(advanced); 7/26/22;  
3/22/23(stip); 5/31/23; 8/16/23, 10/18/23; 11/29/23, 12/20/23(Stip)

**Stip to dismiss filed 1/17/24**

Docket 15

\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 1/18/24 [Dkt. 73]

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Ziba Daneshi

Represented By  
James R Felton  
Michael J Conway

Alejandro Ramy

Represented By  
Siamak E Nehoray

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**CONT... Hormoz Ramy**

**Chapter 7**

**Plaintiff(s):**

David Seror, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov  
Ryan Coy

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias

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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:22-01006 Seror, Chapter 7 Trustee v. Rami

**#6.00** Status Conference re: First Amended Complaint for:  
(1) Quiet Title;  
(2) Equitable Subordination;  
(3) Disallowance of Claim;  
(4) Determination of Secured Status and Voiding of Lien;  
(5) Preservation of Lien for Benefit of the Estate; and  
(6) Declaratory Relief

fr. 4/6/22; 4/13/22(stip); 6/8/22; 7/6/22; 7/27/22(advanced); 7/26/22;  
3/22/23(stip); 5/31/23; 8/16/23; 10/18/23; 11/29/23, 12/20/23(stip)

**Stipulation to dismiss filed 1/4/24**

Docket 13

\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 1/4/24. [Dkt.  
71]

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Massoud Rami

Represented By  
James R Felton  
Michael J Conway

**Plaintiff(s):**

David Seror, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov

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**CONT...**

**Hormoz Ramy**

Ryan Coy

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias

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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:22-01007 Seror, Chapter 7 Trustee v. Pashflex, Inc., a California corporation et al

**#7.00** Status Conference re; Complaint for: (1) Declaratory Relief;  
(2) Avoidance and Recovery of Transfers; (3) Turnover;  
(4) An Accounting; and (5) Conversion

fr. 4/6/22; 4/13/22; 6/8/22; 7/27/22(advanced); 7/26/22; 3/22/23(stip);  
5/31/23; 8/16/23; 10/18/23; 11/29/23, 12/20/23 (stip)

**Stipulation to dismiss filed 1/4/24**

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 1/8/24  
[Dkt.53]**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Pashflex, Inc., a California

Represented By  
James R Felton  
Michael J Conway

Massoud Rami

Represented By  
James R Felton  
Michael J Conway

Pasha Rami

Represented By  
James R Felton  
Michael J Conway

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**CONT... Hormoz Ramy**

**Chapter 7**

**Plaintiff(s):**

David Seror, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov  
Ryan Coy

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias

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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:22-01008 Seror, Chapter 7 Trustee v. Ramy & Associates, Inc., a California corporation

**#8.00** Status Conference re: Complaint for: (1) Declaratory Relief;  
(2) Avoidance and Recovery of Postpetition Transfer Under  
11 U.S.C. sections 549, 550; (3) Turnover of Estate Assets  
Under 11 U.S.C. section 542; (4) An Accounting; (5) Conversion;  
(6) Sale of Real Property in Which Non-Debtor Has an Interest  
Under 11 U.S.C. section 363(h); and (7) Preliminary Injunction

fr. 4/6/22; 4/13/22; 6/8/22; 7/27/22(advanced); 7/26/22; 3/22/23(stip);  
5/31/23; 8/16/23; 10/18/23; 11/29/23, 12/20/23 (Stip)

Docket 1

\*\*\* VACATED \*\*\* REASON: Order dismissing case entered 1/18/24 [Dkt.  
54]

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Ramy & Associates, Inc., a

Represented By  
James R Felton  
Michael J Conway

Hormoz Ramy

Represented By  
Siamak E Nehoray

Massoud Rami

Represented By  
James R Felton  
Michael J Conway

Ziba Daneshi

Represented By

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**Hormoz Ramy**

**Chapter 7**

Alejandro Ramy

James R Felton  
Michael J Conway

Represented By  
Siamak E Nehoray

**Plaintiff(s):**

David Seror, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov  
Ryan Coy

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias



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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:22-01009 Seror, Chapter 7 Trustee v. Ramy & Associates, LLC, a California limited

**#9.00** Status Conference re: Complaint for: (1) Declaratory Relief;  
(2) Turnover of Estate Assets Under 11 U.S.C. sec. 542;  
(3) An Accounting; (4) Conversion; (5) Quiet Title;  
(6) Sale of Real Property in Which Non-Debtor Has an  
Interest Under 11 U.S.C. sec. 363(h); and Preliminary Injunction

fr. 4/6/22; 4/13/22; 6/8/22; 7/27/22(advanced); 7/26/22; 3/22/23(stip);  
5/31/23; 8/16/23; 10/18/23; 11/29/23; 12/20/23(stip)

Cross-Complaint for: 1. Quiet Title; 2. Declaratory Relief; 3. Fraud;  
4. Unjust Enrichment; 5. Conversion; 6. Accounting

Edward Caraccia, as the Trustee of the Edward Faye & Lillie Faye  
Caraccia Trust,

Cross-Complainant,

v.

Ramy & Associates, LLC, a California limited liability company,  
David Seror, solely in his capacity as Chapter 7 Trustee of the  
Bankruptcy Estate,

Cross-Defendants

Docket 1

**Tentative Ruling:**

The Court intends to continue this status conference in order for the parties to submit briefing on the issues set forth below.

On February 4, 2022, David Seror, chapter 7 trustee (the "Trustee") filed a complaint against Ramy & Associates, LLC ("RAL"), Hormoz Ramy (the "Debtor"), Massoud

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**Hormoz Ramy**

**Chapter 7**

Rami, Darryl Snyder, an individual and the trustee of the Edward Faye & Lillie Faye Carracia Trust, et al., Edward Carracia, an individual and the trustee of the Edward Faye & Lillie Faye Carracia Trust, et al., Alejandro Ramy and Millad Ramy (the "Complaint") [doc. 1]. In the Complaint, the Trustee asserted the following causes of action: (1) declaratory relief; (2) turnover of estate assets under 11 U.S.C. §; (3) an accounting; (4) conversion; (5) quiet title; (6) sale of real property in which a non-debtor has an interest under 11 U.S.C. § 363(h); and (7) preliminary injunction. On July 28, 2022, the Trustee filed a stipulation between the Trustee and Mr. Snyder dismissing the bankruptcy estate's claims against Mr. Snyder [doc. 68].

On May 5, 2022, Mr. Carracia, as the Trustee of the Edward Faye & Lillie Faye Carracia Trust (the "Trust"), filed a cross-complaint (the "Cross-Complaint") against RAL and the Trustee [doc. 38]. In the Cross-Complaint, the Trust asserted the following causes of action: (1) quiet title; (2) declaratory relief; (3) fraud; (4) unjust enrichment; (5) conversion; and (6) an accounting.

In October 2022, the Trustee and certain of the defendants attended mediation and ultimately reached a settlement of this adversary proceeding and other related adversary proceedings, subject to Court approval. *See Motion to Approve Compromise with the Debtor, Massoud Rami, Ziba Daneshi, Alejandro Ramy, Millad Ramy, Pasha Rami, Ramy & Associates, Inc., Ramy & Associates, LLC & Pashflex, Inc. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure* (the "First Motion to Approve Compromise") [1:20-bk-10276-VK (the "Bankruptcy Case"), doc. 133], p. 5; *Stipulation to Continue Status Conference* (the "Stipulation") [doc. 95], p. 2.

In connection with the settlement, the Trustee filed the First Motion to Approve Compromise in the Bankruptcy Case. On August 10, 2023, the Court entered its *Order Approving Overbid of Creditors WV SPE 2017-2A, LLC and WVJP 2017-2, LP to Proposed Settlement Between Trustee and the Debtor, Massoud Rami, Ziba Daneshi, Alejandro Ramy, Millad Ramy, Pasha Rami, Ramy & Associates, Inc., Ramy & Associates, LLC & Pashflex, Inc.* (the "Order Approving Overbid") [Bankruptcy Case, doc. 197]. Pursuant to the Order Approving Overbid, creditors WV SPE 2017-2A, LLC and WVJP 2017-2, LP (the "WV Parties") would ultimately substitute as the real party in interest for the plaintiff in this adversary proceeding and the other

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**CONT... Hormoz Ramy**

**Chapter 7**

related adversary proceeding. Order Approving Overbid, p. 2.

After the Court entered the Order Approving Overbid, the Trustee, defendants RAL, Hormoz Ramy, Massoud Rami, Millad Ramy, Alejandro Ramy (collectively, the "Ramy Parties") and the WV Parties engaged in ongoing discussions and reached a settlement which provided, in part, that RAL would be substituted as the real party in interest in this adversary proceeding. Stipulation, pp. 2-3.

On December 6, 2023, the Trustee filed another motion to approve compromise pursuant to Fed. R. Bankr. P. 9019 (the "Second Motion to Approve Compromise") [Bankruptcy Case, doc. 273]. To the Second Motion to Approve Compromise, the Trustee attached his declaration, which included a copy of a settlement agreement among the Trustee, the WV Parties and the Ramy Parties (the "Agreement") as Exh. 1. Exh. 1 to the Declaration of David Seror (the "Seror Declaration") [Bankruptcy Case, doc. 273]. The Agreement provides, in relevant part, that:

**2.2 The Assigned Proceedings**....Upon the Effective Date [as defined in the Agreement], the WV Parties and Trustee shall be deemed to have assigned all of their collective rights, title, interests, and standing to RAL to pursue [adversary proceeding no. 1:22-ap-01009-VK] and other related claims. The Trustee and WV Parties shall cooperate with RAL in filing any necessary documents or motion(s) to accomplish the assignment of the Trustee's and WV Parties' standing and interest to RAL.

Exh. 1 to the Seror Declaration, p. 6. On December 21, 2023, the Court entered an order granting the Second Motion to Approve Compromise [Bankruptcy Case, doc. 283].

On January 26, 2024, RAL filed a joint status report (the "Status Report") with Mr. Carracia, individually and as trustee of the Trust (together, the "Carracia Parties") [doc. 99]. In the Status Report, RAL asserts that it intends to dismiss all of the defendants from this adversary proceeding except for the Carracia Parties. *See* Status Report, p. 2. With respect to the Cross-Complaint, in the Status Report, the Carracia Parties raise a number of procedural issues, including whether the Court has jurisdiction over this adversary proceeding, which no longer concerns property of the

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**CONT... Hormoz Ramy**

**Chapter 7**

bankruptcy estate. Status Report, p. 5.

RAL must specify the claims and cross-claims it intends to pursue against the Carracia Parties.

Thereafter, in their briefs, the parties must address the following:

Given the Trustee's assignment of the estate's rights, title, interests, and standing to RAL, and the terms and effect of the Agreement, should this adversary proceeding be dismissed for lack of this Court's jurisdiction or should this Court abstain from adjudicating the remaining claims and cross-claims?

The Court will prepare the order.

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Ramy & Associates, LLC, a

Represented By  
James R Felton  
Michael J Conway

Hormoz Ramy

Represented By  
Siamak E Nehoray

Massoud Rami

Represented By  
James R Felton  
Michael J Conway

Darryl Snyder, an individual and the

Represented By  
Donald R Davidson III

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**Hormoz Ramy**

**Chapter 7**

Edward Carracia, an individual and

Represented By  
Keith Patrick Banner  
Brian L Davidoff

Alejandro Ramy

Represented By  
Siamak E Nehoray

Millad Ramy

Represented By  
Siamak E Nehoray

**Plaintiff(s):**

David Seror, Chapter 7 Trustee

Represented By  
Jessica L Bagdanov  
Ryan Coy

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy  
Alan I Nahmias

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**1:20-10276 Hormoz Ramy**

**Chapter 7**

Adv#: 1:23-01019 Seror v. Kamali et al

**#10.00** Status Conference re: Complaint For Sale Of Real Property of the  
Estate In Which Non-Debtors Have Interests Under U.S.C. Sec.363(h)

fr. 8/16/23(stip); 9/6/23(stip); 10/4/23(stip), 11/27/23(stip)

Docket 1

**Tentative Ruling:**

The parties have not filed a joint status report, and plaintiff has not filed a unilateral status report, pursuant to Local Bankruptcy Rule 7016-1(a). In addition, contrary to the provisions of Local Bankruptcy Rule 7016-1(a), plaintiff has not filed a declaration setting forth the attempts made by plaintiff to contact or obtain the cooperation of defendants.

The Court will continue the status conference in order for the parties or plaintiff to comply with Local Bankruptcy Rule 7016-1(a) and timely file the required status report before the status conference.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) court days after this status conference, plaintiff must submit a scheduling order. If such an order is not timely submitted, or plaintiff does not otherwise comply with the Local Bankruptcy Rules prior to the continued status conference, the Court may dismiss this adversary proceeding pursuant to Local Bankruptcy Rule 7016-1(f) and/or (g).

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

**Debtor(s):**

Hormoz Ramy

Represented By  
Siamak E Nehoray

**Defendant(s):**

Parviz Kamali

Pro Se

Morteza Talebizadeh

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2024**

**Hearing Room 301**

1:30 PM

**CONT... Hormoz Ramy**

**Chapter 7**

**Plaintiff(s):**

David Seror

Represented By  
Steven T Gubner  
Ryan Coy  
Jessica L Bagdanov

**Trustee(s):**

David Seror (TR)

Represented By  
Steven T Gubner  
Jessica L Bagdanov  
Tamar Terzian  
Ryan Coy

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Central District of California  
San Fernando Valley  
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**Wednesday, January 31, 2024**

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1:30 PM

**1:23-11223 Brenda Lou Fisher**

**Chapter 7**

Adv#: 1:23-01049 Gomez et al v. Fisher

**#11.00** Status conference re: Complaint to determine nondischargeability  
of debt pursuant to 11 U.S.C. section 523

Docket 1

**\*\*\* VACATED \*\*\* REASON: Rescheduled for 2:00 PM**

**Tentative Ruling:**

- NONE LISTED -

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

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Defendant(s):**

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Plaintiff(s):**

Gina Nuccio Gomez

Represented By  
John C Clough  
Nicholas S Couchot

RSA Productions LLC

Represented By  
John C Clough  
Nicholas S Couchot

RSA Talent Management LLC

Represented By  
John C Clough  
Nicholas S Couchot

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2024**

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2:00 PM

**1:23-11223 Brenda Lou Fisher**

**Chapter 7**

Adv#: 1:23-01049 Gomez et al v. Fisher

**#12.00 Defendant's Motion to Dismiss Complaint**

Docket 5

**Tentative Ruling:**

The Court will grant the motion to dismiss (the "Motion") [doc. 5] as to the claims of Gina Nuccio Gomez ("Nuccio"), RSA Talent Management, LLC ("RSA Talent") and RSA Productions LLC ("RSA Productions", and collectively with Nuccio and RSA Talent, "Plaintiffs") against the debtor Brenda Lou Fisher ("Defendant") under 11 U.S.C. § 523(a)(4) for embezzlement and larceny, with leave to amend the complaint as to embezzlement and not larceny.

The Court will deny the Motion as to Plaintiffs' claim against Defendant under 11 U.S.C. § 523(a)(6).

**APPLICABLE FEDERAL CIVIL RULES OF PROCEDURE**

"A motion to dismiss [pursuant to Fed. R. Civ. P. ("Rule")12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "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.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)).

In evaluating a Rule 12(b)(6) motion, review is "limited to the contents of the complaint." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). However, without converting the motion to one for summary judgment, exhibits attached to the complaint may be considered in determining whether dismissal is proper. *See Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995).

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**Brenda Lou Fisher**

**Chapter 7**

Under Rule 15(a)(1)(B), a plaintiff has a one-time right to file an amended complaint "as a matter of course" 21 days after the earlier of (i) service of a responsive pleading or (ii) service of a Rule 12(b), (e) or (f) motion. Even if a plaintiff does not have the right to amend "as a matter of course," the court may grant leave to amend. Rule 15(a)(2) provides that "the court should freely give leave [to amend] when justice so requires." Dismissal without leave to amend is appropriate, however, when the court is satisfied that the deficiencies in the complaint could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

Pursuant to Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Particularity means that allegations must be stated with "specificity including an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Lepton Labs, LLC v. Walker*, 55 F.Supp. 3d 1230, 1243 (C.D. Cal. 2014) (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir 2007)). Allegations must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged[.]" *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993).

## **APPLICABLE BANKRUPTCY STATUTES**

### ***11 U.S.C. § 523(a)(4) - Embezzlement***

Pursuant to 11 U.S.C. § 523(a)(4), a bankruptcy discharge does not discharge an individual debtor from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." For purposes of section 523(a)(4), federal law and not state law controls the definition of "embezzlement." *In re Wada*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997). The proponent of the nondischargeability determination must prove: (1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than that for which it was entrusted; and (3) circumstances indicating fraud. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991); *In re Peltier*, 643 B.R. 349, 360 (B.A.P. 9th Cir. 2022).

"[E]mbezzlement requires a showing of wrongful intent." *Peltier*, 643 B.R. at 360

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**Brenda Lou Fisher**

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(quoting *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 133 S.Ct. 1754, 185 L.Ed.2d 922 (2013)). "[W]rongful intent in this context has been described as 'moral turpitude or intentional wrong' or 'felonious intent.'" *Id.* "Cases indicate that the felonious intent with which embezzlement is committed consists of the intent to appropriate or convert the property of the owner; the simultaneous intent to return the property or to make restitution does not make the offense any less embezzlement." *Id.*

"Circumstances indicating fraud can be situations where the debtor intended to conceal the misappropriation." *In re Campbell*, 490 B.R. 390, 402 (Bankr. D. Ariz. 2013) (holding debt nondischargeable based on embezzlement when, among other things, debtor failed to provide financial information, even after repeated requests). With respect to establishing nondischargeability of a debt as a result of embezzlement, a fiduciary relationship is not required. *Id.* (citing *Wada*, 210 B.R. at 576).

***11 U.S.C. § 523(a)(4) - Larceny***

In bankruptcy, federal common law defines larceny as the "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010). "The elements of larceny differ only [from the elements of embezzlement] in that a larcenous debtor has come into possession of funds wrongfully." *In re Mickens*, 312 B.R. 666, 680 (Bankr. N.D. Cal. 2004). A finding of larceny requires proof of the debtor's fraudulent intent in taking the creditor's property. *In re Sokol*, 170 B.R. 556, 560 (Bankr. S.D.N.Y. 1994). For purposes of larceny, a fiduciary relationship is not required. *Littleton*, 942 F.2d at 555.

***11 U.S.C. § 523(a)(6)***

Under 11 U.S.C. § 523(a)(6), a discharge under 11 U.S.C. § 727 does not discharge an individual debtor from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." "[A]n intentional breach of contract cannot give rise to non-dischargeability under § 523(a)(6) unless it is accompanied by conduct that constitutes a tort under state law." *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008).

[A]lthough § 523(a)(6) *generally* applies to torts rather than to contracts and an intentional breach of contract *generally* will not give

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rise to a nondischargeable debt, where an intentional breach of contract is accompanied by tortious conduct which results in willful and malicious injury, the resulting debt is excepted from discharge under § 523(a)(6).

*In re Jercich*, 238 F.3d 1202, 1205 (9th Cir. 2001) (emphasis in original).

Bankruptcy courts have held that debts arising from a debtor's intentional interference with contractual relations may be nondischargeable under section 523(a)(6). *See Jercich*, 238 F.3d at 1205; *see also In re Chaparala*, 2020 WL 6992858 at \*8 (Bankr. C.D. Cal. Aug. 3, 2020). "To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Reeves v. Hanlon*, 33 Cal.4th 1140, 1148 (2004). "When the defendant performs the act that causes the interference, the defendant need not know exactly who is a party to the contract, so long as he knows he is interfering with a contractual relationship." *Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1091-92 (9th Cir. 2005).

In *Chaparala*, 2020 WL 6992858 at \*3, the bankruptcy court held that a state court judgment and related findings against a defendant for intentional interference with contractual relations should be given preclusive effect in the bankruptcy court with respect to a claim under section 523(a)(6). There, the state court had found, in relevant part, that: (1) there were contracts between the plaintiff and its vendors and customers; (2) the defendant knew about those contracts; (3) the defendant's conduct prevented performance under those contracts or made performance under those contracts more expensive or difficult; (4) the defendant either intended to disrupt performance of the contracts or knew that disruption of performance was certain or substantially certain to occur; (5) the defendant's conduct was a substantial factor in causing harm to the plaintiff; (6) the harm caused by the defendant's intentional interference with the contracts resulted in damages to the plaintiff; and (7) the defendant engaged in its conduct with malice, oppression or fraud. *Id.* at \*8.

The bankruptcy court reasoned that those issues were "relevant to and encompassed

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within those that a bankruptcy court would consider in determining if the defendant's actions constituted a willful and malicious tortious injury to the plaintiff under section 523(a)(6)," and that, based on the state court judgment, the plaintiff was entitled to summary judgment against the defendant for nondischargeability of the debt under section 523(a)(6). *Id.*

**THE COMPLAINT**

On November 28, 2023, Plaintiffs filed a complaint (the "Complaint") [doc. 1] against Defendant. The Complaint asserts claims against Defendant for nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(4) and (a)(6) and makes, in relevant part, the following factual allegations or includes exhibits with the referenced information:

Nuccio and Defendant each own fifty percent of RSA Talent and fifty percent of RSA Productions. Nuccio was and is a manager of both RSA Talent and RSA Productions. Defendant was a manager of RSA Talent from May 30, 2015 to September 25, 2022. In addition, Defendant was also a manager of RSA Productions from July 26, 2021 to September 25, 2022. Complaint, ¶¶ 2, 5, 11 and 28.

On or around September 16, 2022, Defendant formed Untamed River Media & Productions LLC ("Untamed"). *Id.*, ¶ 18.

With respect to RSA Talent, the Complaint alleges the following:

RSA Talent was formed upon the filing of its Articles of Organization with the California Secretary of State on May 29, 2015. In those Articles of Organization, RSA Talent asserts that it will be "managed by: All Limited Liability Company Members(s)." RSA Talent was formed to work with entertainers and creatives in all media, e.g., social media, film, television, podcasts, and radio. RSA Talent does business not only as "RSA Talent Management," but also under the name "RSA Entertainment." *Id.*, ¶ 8.

On or about May 29, 2015, Nuccio and Defendant both executed an operating agreement for RSA Talent (the "RSA Talent Operating

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Agreement"). The RSA Talent Operating Agreement Provided, in relevant part, that: (1) managers are agents of RSA Talent, and that the actions of managers taken in accordance with the powers set forth in the RSA Talent Operating Agreement shall bind RSA Talent; (2) each manager shall have a fiduciary duty of loyalty and care similar to that of managers of business corporations organized under the laws of California; (3) managers' fiduciary duties of loyalty and care are to RSA Talent and not to the other managers; (4) managers owe fiduciary duties of disclosure, good faith and fair dealing to RSA Talent and to the other; (5) managers shall refrain from (i) dealing with RSA Talent in the conduct of RSA Talent's business as or on behalf of a party having an interest adverse to RSA Talent, and (ii) competing with RSA Talent in the conduct of RSA Talent's business unless a majority, by individual vote, of the Board of Managers (as defined in the RSA Talent Operating Agreement), excluding the interested manager, consents thereto. *Id.*, ¶¶ 9-10 and Exh. 1 thereto.

On September 22, 2022, without the consent of RSA Talent or Nuccio, Defendant transferred approximately \$2,000 from RSA Talent's bank account to Defendant's personal bank account. Although Defendant transferred the \$2,000 back to RSA Talent's bank account, she admitted that she transferred the money from RSA Talent's bank account because she was "using it as a tool" to get Nuccio to talk to her. *Id.*, ¶ 20 and Exh. 2 thereto.

In addition, notwithstanding Defendant's fiduciary duties to RSA Talent and to Nuccio, without the consent of RSA Talent and/or Nuccio, Defendant sought to void all of RSA Talent's contracts through RSA Talent's eSign document system, Foxit ("Foxit"). *Id.*, ¶ 13.

Defendant has solicited, and continues to solicit, RSA Talent's clients to—in the words of an RSA Talent client—"go with her," and further stated that, as "half owner of RSA [Talent], you can be released from [your contract with RSA Talent] anytime." Although Defendant's email response to the RSA Talent client was sent from Defendant's

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RSA Talent email address, Defendant's email response had her email signature block for her new company, Untamed. The aforementioned client then contracted with Untamed. Countless other clients of RSA Talent have, emboldened by Defendant's comments that as "half owner of RSA [Talent] you can be released from [your contract with RSA Talent] anytime," begun to instead work with the Defendant and Untamed. Nuccio has caused RSA Talent to expend resources to contact RSA Talent's existing clients, and those clients that it had been soliciting to share with them how much RSA Talent values their trust and confidence, as well as RSA Talent's commitment to continuing to perform under the terms of their respective contract and to service their needs. *Id.*, ¶¶ 17-19.

On September 26, 2022, Nuccio caused RSA Talent to remove Defendant as a manager and/or officer of RSA Talent and terminated Defendant's authority to take any action on behalf of RSA Talent. Nuccio thereafter went to banks and other financial institutions in which RSA Talent maintained depository accounts to remove Defendant's authority to do business on behalf of RSA Talent, only to find that Defendant had emptied RSA Talent's bank accounts. *Id.*, ¶¶ 21-22.

On November 18, 2022, Plaintiffs filed a complaint against Defendant and Untamed in Los Angeles County Superior Court, case no. 22BBCV01033 (the "State Court Action"), asserting causes of action for, among other things, breach of contract, breach of fiduciary duty and interference with contractual relationships. *Id.*, ¶¶ 13-14.

On March 9, 2023, during a deposition in connection with the State Court Action, Defendant testified that she directed a former assistant of RSA Talent to void a contract between RSA Talent and its client Preston McCoy. Defendant further testified that she instructed her assistant to delete all of the contracts between RSA Talent and its clients on Foxit. Defendant's cancelation of the contracts on Foxit caused each of RSA Talent's clients to receive an email from RSA Talent that their contracts with RSA Talent had been voided.



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**Chapter 7**

Defendant testified that she thought deleting the contracts on Foxit would annoy Nuccio because Nuccio would have to make the contracts live again. *Id.*, ¶¶ 15-16 and Exh. 2 thereto.

As concerns RSA Production, the Complaint alleges the following:

On or about July 16, 2021, Nuccio and Defendant both executed an operating agreement for RSA Productions (the "RSA Productions Operating Agreement"). The RSA Productions Operating Agreement Provided, in relevant part: (1) that all decisions respecting the management, operation, and control of RSA Productions' business and affairs shall be made by a unanimous vote of its members; (2) that the members shall not sell, exchange, lease, assign or otherwise transfer all or substantially all of RSA Productions' assets; and (3) that all of RSA Productions' funds shall be deposited in RSA Productions' name in a bank account or accounts as chosen by the members, and that withdrawals from any bank accounts shall be made only in the regular course of business. *Id.*, ¶¶ 9 and 27 and Exh. 3 thereto.

Defendant, without RSA Productions' or Nuccio's consent, caused each of RSA Productions' clients to receive an email from RSA Productions that their contracts with RSA Productions had been voided. In addition, Defendant has solicited, and continues to solicit, RSA Productions' clients, for whom RSA Productions had already provided services assisting them in their sale of their films for distribution. Nuccio has caused RSA Productions to expend resources to contact RSA Productions' existing clients, and those clients that it had been soliciting, to share with them how much RSA Productions values their trust and confidence, as well as RSA Productions' commitment to continuing to perform under the terms of their respective contracts and to service their needs. *Id.*, ¶¶ 30-32.

Nuccio caused RSA Productions to remove Defendant as a manager and/or officer of RSA Productions and terminated Defendant's authority to take any action on behalf of RSA Productions. Nuccio thereafter went to banks and other financial institutions in which RSA



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Productions maintained depository accounts to remove Defendant's authority to do business on behalf of RSA Productions, only to find that Defendant had emptied RSA Productions' bank accounts. *Id.*, ¶¶ 33-34.

Finally, the Complaint alleges that Defendant's conduct, actions and statements, as alleged in the Complaint, were made willfully and maliciously in an attempt to interfere with the business of RSA Talent and RSA Productions and deprive RSA Talent and RSA Productions of their ability to conduct their respective businesses profitably. *Id.*, ¶ 46.

**ANALYSIS**

***11 U.S.C. § 523(a)(4)***

***A. Embezzlement***

***1. September 22, 2022 Transfer of \$2,000 from RSA Talent's Bank Account***

Given the allegations in the Complaint, Plaintiffs have not stated a claim for nondischargeability of debt based on embezzlement. Plaintiffs allege that, on September 22, 2022, Defendant transferred \$2,000 from RSA Talent's bank account to her own personal account, in contravention of the RSA Talent Operating Agreement, in order to coerce Nuccio into speaking with her. However, Plaintiffs also allege that Defendant returned the \$2,000. Because Defendant returned the \$2,000, it appears there are no damages stemming from this specific conduct.

Plaintiffs' reference to *United States v. Coin*, 753 F.2d 1510, 1511 (9th Cir. 1985), in support of their contention that returning embezzled funds is not a defense, is inapposite. There, the defendant was convicted of the *crime* of embezzlement. *Coin*, 753 F.2d at 1510. Here, Plaintiffs' claim concerns nondischargeability of a debt, which requires that damages be incurred. Given that these funds were returned, Plaintiffs do not allege facts which support that they incurred damages as a result of Defendant's temporary transfer of such funds to her personal account. In an amended complaint, Plaintiffs must allege how they incurred damages based on this specific

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**CONT...**      **Brenda Lou Fisher**  
conduct.

**Chapter 7**

***2. Emptying of RSA Talent's and RSA Productions' Bank Accounts***

With respect to Plaintiff's allegation that Defendant emptied RSA Talent's and RSA Productions' bank accounts, Plaintiffs have not alleged enough facts to state a claim for relief, in accordance with the heightened pleading standard imposed by Rule 9(b). In an amended complaint, Plaintiffs must allege: (1) how much money Defendant "emptied" from RSA Talent's bank accounts, and the date(s) that Defendant did so; (2) how much money Defendant "emptied" from RSA Productions' bank accounts, and the date(s) that Defendant did so; and (3) whether or not Defendant returned any of these monies and if so, how much Defendant returned and when. In addition, Plaintiffs must set forth the circumstances indicating fraud.

***B. Larceny***

***1. September 22, 2022 Transfer of \$2,000 from RSA Talent's Bank Account***

To the extent that Plaintiffs contend they have a claim against Defendant for nondischargeability of debt based on larceny, given the allegations in the Complaint, Plaintiffs have not stated a claim with respect to the September 22, 2022 transfer of \$2,000 from RSA Talent's bank account. In the Complaint, Plaintiffs admit that Defendant had authority to do business on behalf of RSA Talent. This suggests that Defendant had authorized access to RSA Talent's bank account.

Larceny involves "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *Ormsby*, 591 F.3d at 1205. ). "The elements of larceny differ only [from the elements of embezzlement] in that a larcenous debtor has come into possession of funds wrongfully." *Mickens*, 312 B.R. at 680. If Defendant had authority to access funds in RSA Talent's bank account, Defendant did not come into possession of the money wrongfully. Because this deficiency could not possibly be cured by an amendment, the Court will grant the Motion as to Plaintiffs' claim for larceny under section 523(a)(4), with respect to the September 22, 2022 transfer of \$2,000, with prejudice.

***2. Emptying of RSA Talent's and RSA Productions' Bank Accounts***

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Similarly, with respect to Defendant's alleged emptying of RSA Talent's and RSA Productions' bank accounts, Plaintiffs have not alleged enough facts to state a claim for relief under section 523(a)(4), based on larceny. In the Complaint, Plaintiffs contend that Defendant emptied RSA Talent's and RSA Productions' bank accounts *before* Nuccio removed Defendant's authority to do business on behalf of RSA Talent and RSA Productions. This suggests that Defendant had authority to access the funds in these bank accounts. As a result, within the context of a claim for larceny, Defendant would not have come into possession of the funds in these bank accounts "wrongfully." Because this deficiency could not possibly be cured by an amendment, the Court will grant the Motion as to Plaintiffs' claim for larceny under section 523(a)(4), with prejudice.

***11 U.S.C. § 523(a)(6)***

The Complaint and Exhs. 1-3 attached thereto include sufficient allegations that Defendant intentionally interfered with RSA Talent's and RSA Productions' contractual relationships. Among other things, Plaintiffs allege that: (1) Defendant caused each of RSA Productions' clients to receive an email from RSA Productions stating that their contracts with RSA Productions had been voided; (2) Defendant instructed her assistant to delete all the contracts between RSA Talent and its clients on Foxit; (3) this deletion caused each of RSA Talent's clients to receive an email stating that their contracts with RSA Talent were voided; and (4) because of such conduct and inaccurate representations made by Defendant, a number of clients of both entities are now working with Defendant and Untamed, instead of RSA Talent and RSA Productions.

Based on the factual allegations in the Complaint and Exhs. 1-3 attached thereto, it is reasonable to infer that: (1) Defendant intentionally acted to induce a breach or disruption of contractual relationships between RSA Talent and RSA Productions and their clients; (2) Defendant caused the breach or disruption of these contractual relationships; and (3) this breach or disruption of these contractual relationships caused damages to Plaintiffs. Plaintiffs also allege that Defendant acted maliciously. To survive a motion to dismiss, malice and intent may be alleged generally. *See* Rule 9(b).

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Having assessed the standards, and taking into account the analysis set forth above:

- (1) The Court will deny the Motion as to Plaintiffs' claim under 11 U.S.C. § 523(a)(6).
- (2) The Court will grant the Motion as to Plaintiffs' claims under 11 U.S.C. § 523(a)(4) for embezzlement, with leave to amend the Complaint.
- (3) The Court will grant the Motion as to Plaintiffs' claims under 11 U.S.C. § 523(a)(4) for larceny, with prejudice.

No later than 14 days after the entry of the Court's order deciding the Motion, Plaintiffs may file and serve an amended complaint. If Plaintiffs will not be filing an amended complaint, by that deadline, Plaintiffs must file a notice that they will go forward with those claims in the Complaint that have not been dismissed.

No later than 14 days after the filing and service date of the amended complaint or Plaintiffs' notice that they will prosecute only the remaining claims in the Complaint, Defendant must file and serve a response to Plaintiffs' amended complaint or to the remaining claims in the Complaint.

Plaintiffs must submit the order within seven (7) days.

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

**Debtor(s):**

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Defendant(s):**

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Movant(s):**

Brenda Lou Fisher

Represented By

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**Chapter 7**

Sevan Gorginian

**Plaintiff(s):**

Gina Nuccio Gomez

Represented By  
John C Clough  
Nicholas S Couchot

RSA Productions LLC

Represented By  
John C Clough  
Nicholas S Couchot

RSA Talent Management LLC

Represented By  
John C Clough  
Nicholas S Couchot

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

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Adv#: 1:23-01049 Gomez et al v. Fisher

**#12.01** Status conference re: Complaint to determine nondischargeability  
of debt pursuant to 11 U.S.C. section 523

Docket 1

**Tentative Ruling:**

The Court will continue the status conference to **1:30 p.m. on March 20, 2024**. *See*  
cal. no. 12.

In accordance with Local Bankruptcy Rule 7016-1(a)(2), the parties are required to  
file a joint status report using mandatory court form F 7016-1.STATUS.REPORT  
(and F 7016-1.STATUS.REPORT.ATTACH, if applicable) **by no later than March  
6, 2024**.

The plaintiffs must submit a scheduling order within seven (7) days.

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

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Defendant(s):**

Brenda Lou Fisher

Represented By  
Sevan Gorginian

**Plaintiff(s):**

Gina Nuccio Gomez

Represented By  
John C Clough  
Nicholas S Couchot

RSA Productions LLC

Represented By  
John C Clough  
Nicholas S Couchot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2024**

**Hearing Room 301**

2:00 PM

**CONT... Brenda Lou Fisher**

**Chapter 7**

RSA Talent Management LLC

Represented By  
John C Clough  
Nicholas S Couchot

**Trustee(s):**

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Victoria Kaufman, Presiding  
Courtroom 301 Calendar**

**Wednesday, January 31, 2024**

**Hearing Room 301**

2:00 PM

**1:23-11762 Tony Kian Djie**

**Chapter 7**

**#13.00** Order To Show Cause Re: Dismissal With A 180-Day Bar,  
Annulment Of The Automatic Stay, And Disgorgement

fr. 12/21/23; 1/4/24

Docket 1

**\*\*\* VACATED \*\*\* REASON: Hearing continued to 2/29/24 at 1:00 pm per  
order entered 1/25/24. [Dkt. 24]**

**Tentative Ruling:**

- NONE LISTED -

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

Tony Kian Djie

Pro Se