

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

Wednesday, March 19, 2025

Hearing Room 301

10:30 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.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

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Password: 513374

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:21-10844 Michael Chulak

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Docket 359

Tentative Ruling:

David Seror, chapter 7 trustee – approve compensation of \$10,750.00 and reimbursement of expenses in the amount of \$52.50.

BG Law, attorneys for chapter 7 trustee – approve fees of \$25,431.50 and reimbursement of expenses in the amount of \$847.02.

LEA Accountancy, LLP, accountants for chapter 7 trustee – approve fees of \$8,898.00 and reimbursement of expenses in the amount of \$262.43.

Andrew W. Levin, prior subchapter V trustee – approve fees of \$11,165.00.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Michael Chulak

Represented By
Candice Candice Bryner
Jeremy Faith

Trustee(s):

David Seror (TR)

Represented By
Jessica Wellington

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Michael Chulak

Jessica L Bagdanov
Steven T Gubner

Chapter 7

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1:23-10543 Alfonso Barragan and Elizabeth Barragan

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Docket 40

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve compensation of \$1,250.00 and reimbursement of expenses in the amount of \$5.13.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Alfonso Barragan

Represented By
Michael H Colmenares

Joint Debtor(s):

Elizabeth Barragan

Represented By
Michael H Colmenares

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:23-10956 Andres Aguirre

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Docket 41

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve compensation of \$1,091.71 and reimbursement of expenses in the amount of \$5.48.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Andres Aguirre

Represented By
Hector Vega

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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1:23-11470 Arutyun Peter Ekizyan

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Docket 24

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve compensation of \$1,630.16 and reimbursement of expenses in the amount of \$6.68.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Arutyun Peter Ekizyan

Represented By
Sevan Gorginian

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:24-11490 Denise Awani

Chapter 11

#5.00 Status Conference Re: Chapter 11 Case

fr. 10/31/24

Docket 1

Tentative Ruling:

The Court will continue the status conference to 1:00 p.m. on April 2, 2024, to be heard concurrently with the *United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case* [doc. 60].

Appearances on March 19, 2025 are excused.

Party Information

Debtor(s):

Denise Awani

Represented By
Stella A Havkin

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1:24-10228 Mr. Tortilla, Inc.

Chapter 11

**#5.01 Order To Show Cause Why Case Should Not Be
Converted To One Under Chapter 7**

fr. 1/15/25; 3/5/25

Docket 299

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger

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1:24-10228 Mr. Tortilla, Inc.

Chapter 11

**#5.02 Amended Disclosure Statement Describing Chapter 11
Plan of Reorganization**

fr. 3/5/25

Docket 326

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Giovanni Orantes

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1:24-10228 Mr. Tortilla, Inc.

Chapter 11

#5.03 Status conference re: chapter 11 case

fr. 4/11/24, 6/27/24, 8/1/24; 12/12/24; 12/11/24; 1/15/25; 3/5/25

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger

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1:25-10352 11262 VENTURA LLC

Chapter 11

#5.04 Order to Show Cause Re Dismissal With A 180-Day Bar

Docket 12

Tentative Ruling:

The Court will dismiss the case with a 180-day bar to the debtor being a debtor in a subsequent bankruptcy case.

The debtor, a limited liability company, filed a chapter 11 petition, pro se, on March 3, 2025. The debtor has not complied with Local Bankruptcy Rule 9011-2(a), which provides that such an entity may not file a petition or otherwise appear without counsel. Moreover, the debtor has not filed its schedules of assets and liabilities, statement of financial affairs and other required documents (collectively, the "Schedules") by the deadline of March 17, 2025, nor has the debtor obtained an extension of time to file the Schedules. *See Notice of Case Deficiency Under 11 U.S.C. § 521(a)(1) and Bankruptcy Rule 1007 [doc. 1-1] and Case Commencement Deficiency Notice [doc. 1-2].*

The Court will prepare the order.

Party Information

Debtor(s):

11262 VENTURA LLC

Pro Se

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1:24-10035 Varunkumar Pankajbhai Suthar

Chapter 7

Adv#: 1:24-01009 EQUATE MEDIA, INC., et al v. Suthar et al

#6.00 Pre-trial conference re: complaint to determine dischargeability of debt pursuant to 11 U.S.C. section 523 (a) and objecting to discharge under 11 USC Section 727

fr. 6/12/24; 6/26/24; 8/21/24

Docket 1

***** VACATED *** REASON: Hearing rescheduled to 3/20/25 at 1:30 PM.
[Dkt.34]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Varunkumar Pankajbhai Suthar

Represented By
Eric Bensamochan

Defendant(s):

Varunkumar Pankajbhai Suthar

Pro Se

Disha Virendrabhai Suthar

Pro Se

Joint Debtor(s):

Disha Virendrabhai Suthar

Represented By
Eric Bensamochan

Plaintiff(s):

EQUATE MEDIA, INC.,

Represented By
Leslie A Cohen

BUDGET VAN LINES, INC.

Represented By
Leslie A Cohen

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CONT... Varunkumar Pankajbhai Suthar

Chapter 7

QUOTE RUNNER, LLC.

Represented By
Leslie A Cohen

HOME EXPERT, INC.

Represented By
Leslie A Cohen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:24-11175 Darci Penn

Chapter 7

#7.00 Creditors' Objection to Debtor's Claim of Homestead
Exemption Pursuant to 11 U.S.C. Section 522(q)

fr. 11/14/24, 1/9/24 (Stip); 2/19/25(stip)

Docket 12

Tentative Ruling:

As set forth below, the Court will continue the hearing on the creditors' objection to the debtor's homestead exemption.

I. BACKGROUND

A. The Bankruptcy Case, the Property and the Schedules

On July 17, 2024 (the "Petition Date"), Darci Penn ("Debtor") filed a voluntary chapter 7 petition. In her schedule A/B, Debtor listed an interest in a single-family home located at 26608 Sunflower Ct., Calabasas, CA 91302 (the "Property") [doc. 1]. Debtor represented she shares her interest in the Property with her since-separated spouse, Andrew Penn ("Mr. Penn"). *Id.* In her schedule C, Debtor claimed a homestead exemption in the Property in the amount of \$699,000 under Cal. Code Civ. Proc. § 704.730 [doc. 1].

In her schedule D, Debtor disclosed that the Property is encumbered by a first deed of trust in favor of Carrington Mortgage Services ("Carrington") securing a debt in the amount of \$463,767 [doc. 1]. Debtor further disclosed that she and Mr. Penn entered into a modification with Carrington to resolve \$130,000 of arrearages. *Id.* According to Debtor, pursuant to the modification, the Property is encumbered by a junior lien in favor of Carrington securing a debt in the amount of \$130,000.

A. Debtor's Current Financial Circumstances

Debtor has four children, ages 2 to 9. *Schedule J*, ¶ 2 [doc. 1]; *Declaration of Darci*

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Penn, ¶ 3 [doc. 17]. In January 2023, Debtor separated from Mr. Penn. *Id.* In April 2023, Debtor filed a petition for marital dissolution, initiating case no. 23STFL04321 in Los Angeles Superior Court. *See id.*; *Statement of Financial Affairs*, ¶ 9 [doc. 1]. In her schedule I, Debtor disclosed that the state court awarded Debtor monthly child support of \$41,000 and monthly spousal support of \$40,000 to begin on June 15, 2024. However, Debtor represents that Mr. Penn did not pay these amounts and that she doubts he ever will. *Id.*; *Declaration of Darci Penn*, ¶ 3 [doc. 17].

In the absence of spousal support, Debtor's sole monthly income is \$946.83 from her job as a part-time office administrator at an insurance agency in Calabasas, CA. *Schedule I; Declaration of Darci Penn*, ¶ 4 [doc. 17]. In 2008, Debtor obtained a college degree in sales from California State University, Northridge. *Declaration of Darci Penn*, ¶ 4 [doc. 17]. However, Debtor represents that she has not recently been employed full-time in any industry that would utilize her degree. Debtor further states that full-time employment would be impossible while raising her four children. *Id.*

Debtor represents that she owns minimal personal property totaling less than \$15,000. *Declaration of Darci Penn*, ¶ 4 [doc. 17]; *see Schedule A/B*. In her schedule J, Debtor estimated her transportation expenses to total \$400 monthly. Debtor further estimated her monthly childcare and children's education costs to total \$4,600 monthly. According to Debtor, her mother owns and pays for the car which Debtor drives and pays the tuition expenses for Debtor's children. *Declaration of Darci Penn*, ¶ 4 [doc. 17].

B. The Objection to Debtor's Homestead Exemption and Debtor's Response

On October 16, 2024, creditors Nick Jasmine, Marissa Jasmine, Elan Buller, Jason Sabolic, Kyle Fujitaki, Viet-Linh Fujitaki, Jeffrey Wilson and Ellanee Wilson (collectively, "Creditors") filed an *Objection to Debtor's Claim of Homestead Exemption* (the "Objection") [doc. 12]. Thereafter, Creditors filed a request for judicial notice in support of the Objection [doc. 13].

In the Objection, Creditors allege that from 2019 through 2022, Debtor and Mr. Penn sold, and assisted in the sale of, unregistered securities to Creditors. Creditors further

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allege that this sale of investments were accompanied by materially false and misleading statements. Creditors represent that, based on these false statements, Creditors invested a total of \$761,624 with Debtor and Mr. Penn and that Debtor and Mr. Penn have not returned most of these funds.

The statements allegedly made by Debtor and/or Mr. Penn to Creditors regarding these investments include that the return on their investment was "guaranteed" and that the investment had "zero risk." *See Declaration of Marissa Jasmine*, ¶¶ 3-8 [doc. 12] and *Declaration of Jeffrey Wilson* ("Wilson Decl."), ¶¶ 2-7 and Exhibit 1 thereto [doc. 12].

Attached to the Wilson Decl. as Exhibit 1 is a "Private Investment Agreement," dated December 1, 2022, between Mr. Penn and Jeff Wilson, apparently signed by Mr. Penn and Jeff Wilson. This agreement states that, in exchange for Mr. Wilson making a \$100,000 investment with Mr. Penn, the "guaranteed return" is "22.8% - term ending the end of February 2023."

On October 21, 2024, Debtor filed an opposition to the Objection (the "Opposition") [doc. 17]. Although Debtor acknowledges that she is aware that the California Department of Financial Protection and Innovation (the "DFPI") has filed a complaint against her and Mr. Penn, Debtor denies that she "substantially assisted" Mr. Penn with solicitation of, or representations about, investments. *See Declaration of Darci Penn*, ¶¶ 6-15 [doc. 17]. Debtor further contends that Debtor's entire interest in the Property is reasonably necessary for the support of Debtor and her dependents.

On November 6, 2024, Creditors filed a reply to the Opposition [doc. 18].

On November 14, 2024, the Court held a hearing on the Objection. The Court's tentative ruling for the hearing stated, in relevant part:

If Creditors seek to rely on administrative decisions of the Commissioner to establish that Debtor owes a debt to them arising from the violation of California securities laws, or any regulation or order issued under California securities laws, such that the provisions of § 522(q) apply to Debtor's claim of a homestead exemption, then,

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among other things, Creditors must file and serve on Debtor: (1) certified, signed copies of such decisions and (2) **documents evidencing service of any such decisions on Debtor by the DFPI.** ... Creditors also must address Debtor's arguments that Debtor's entire interest in the Property is reasonably necessary for the support of Debtor and her four children. In order for Creditors to do so, the Court will continue the hearing on the Objection.

Tentative Rulings for November 14, 2024 Calendar, United States Bankruptcy Court, Central District of California, https://ecf-ciao.cacb.uscourts.gov/kioskPDF/VK_111424.pdf (under matter #4.00) (Nov. 14, 2024, 10:15 AM) (emphasis added).

C. *The Supplemental RJN and Supplemental Reply*

On February 28, 2025, Creditors filed a supplemental judicial notice in support of the Objection (the "Supplemental RJN") [doc. 27].

Attached as Exhibit 6 to the Supplemental RJN is a signed and certified *Desist and Refrain Order and Claim for Ancillary Relief*, dated June 11, 2024 (the "Desist Order"), issued by the Commissioner of Financial Protection and Innovation (the "Commissioner") against Debtor and Mr. Penn for the unlawful offer and sale of securities. Among other things, the Desist Order sets forth findings that Debtor and Mr. Penn "offered and sold unqualified securities in California, in the amount of at least \$622,275.00, and made numerous material misrepresentations and omissions of fact, to at least five investors, in violation of [Cal. Corp. Code] sections 25110 and 25401." The Desist Order further provides for Debtor and Mr. Penn to make restitution, totaling \$622,275.00, pursuant to Cal. Corp. Code section 25532.

Attached as Exhibit 8 to the Supplemental RJN is a signed and certified *Statement in Support of Order Levying Administrative Penalties*, dated June 11, 2024 (the "Administrative Penalties Statement"), issued by the Commissioner. As concerns both the Desist Order and the Administrative Penalties Statement, the Supplemental RJN does not include any proofs of service on Debtor.

On March 13, 2025, Creditors filed a supplemental reply to the Opposition together

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with a declaration of Jeffrey S. Shinbrot [doc. 28]. That same day, Creditors filed an *Updated Declaration Providing Notice of DFPI Trial Date Against Darci Penn* [doc. 29]. In it, counsel for Creditors represents that the DFPI's action pending against Debtor has been set for hearing before the California Office of Administrative Hearings (the "OAH") on June 30 and July 1, 2025. *See id.*, ¶ 2. [FN 1]

II. DISCUSSION

A. Property of the Estate

11 U.S.C. § 541(a) provides that property of the estate includes, in relevant part:

- (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor

Community property becomes part of the bankruptcy estate in its entirety. *In re Brace*, 979 F.3d 1228, 1231 (9th Cir. 2020) (citing 11 U.S.C. § 541(a)(2)). Here, it is not disputed that the Property is property of the estate.

B. Cap on Homestead Exemption for Certain Types of Wrongdoing

11 U.S.C. § 522(q) provides:

- (1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$189,050 [originally "\$125,000", adjusted effective April 1, 2022] if—

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(B) the debtor owes a debt arising from—

- (i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

...

- (2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

Section 522(q) "is designed to close the ‘mansion loophole’ for person who commit specified forms of misconduct and features a savings clause to ameliorate harsh consequences for debtors and dependents." *In re Oliver*, 649 B.R. 206, 210 (Bankr. E.D. Cal. 2023); *see also Dissenting Views of Rep. John Conyers, et al.*, H.R. Rep. No. 109-31, pt. 1, at 595 (2005) ("The limitations due to securities violations . . . were added in response to concerns that former Enron Chairman Kenneth Lay would be entitled to an unlimited homestead exemption in his native Texas should he file for bankruptcy.").

Section 522(q)(1) references § 522(p)(1)(A)–(D) to designate the property to which it applies; that is, it "applies to all homesteads wherever situated" and is not limited solely to such property acquired within the 1215-day period preceding the date of filing. *Oliver*, 649 B.R. at 212.

C. Burden of Proof

1. Burden Under Federal Law

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Under Fed. R. Bankr. P. 4003(c), "[i]n any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed." *See also In re Stijakovich–Santilli*, 542 B.R. 245, 254 (B.A.P. 9th Cir. 2015) (as general rule, party who objects to debtor's claim of exemption has burden of proving that exemption is not properly claimed). "Because Congress has regulated the allowance of exemptions in bankruptcy, the [Bankruptcy] Code and [Federal] Rules [of Bankruptcy Procedure] may alter burdens of proof relating to exemptions, even if those burdens are part of the 'substantive' right under state law." *In re Nicholson*, 435 B.R. 622, 633–34 (B.A.P. 9th Cir. 2010) (partially abrogated on other grounds) (citing *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 21–22 and n.2, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000)).

2. Burden Under State Law

Pursuant to Cal. Code Civ. P. § 703.580(b), "[a]t a hearing under this section, the exemption claimant has the burden of proof." "[W]here a state law exemption statute specifically allocates the burden of proof to the debtor, [Fed. R. Bankr. P.] 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (9th Cir. BAP 2016); *see also Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) (holding that burden of proof is substantive element of state law applicable when federal courts apply state law).

Notwithstanding this burden on the debtor, bankruptcy courts must "liberally construe 'the law and facts to promote the beneficial purposes of the homestead legislation and to benefit the debtor.'" *In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018) (quoting *Tarlesson v. Broadway Foreclosure Invs., LLC*, 184 Cal. App. 4th 931, 936, 109 Cal.Rptr.3d 319 (2010)).

When an objection to a debtor's claim of a homestead exemption is made, the debtor has the burden of proving that the debtor is entitled to a homestead exemption in the property. If a debtor has shown that the debtor is entitled to a homestead exemption under state law, under Fed. R. Bankr. P. 4003(c), the objecting party has the burden of proof as to whether § 522(q) limits the amount of the debtor's homestead exemption.

If the debtor's homestead exemption is subject to a cap, pursuant to § 522(q)(1), the

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debtor has the burden of showing that the debtor is entitled to increase the debtor's exempt interest above \$189,050, in accordance with § 522(q)(2). *See In re Cotton*, 647 B.R. 767, 770-71 (Bankr. W.D. Wash. 2022).

D. Collateral Estoppel

The doctrine of collateral estoppel provides that once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of that issue if the party had "a full and fair opportunity to litigate that issue in the earlier case." *See Allen v. McCurry*, 449 U.S. 90, 95, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). "A bankruptcy court may rely on the issue preclusive effect of an existing state court judgment In so doing, the bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. 456, 462 (9th Cir. BAP 2015); *see also* 28 U.S.C. § 1738 (federal courts must give "full faith and credit" to state court judgments).

"Administrative proceedings have the same preclusive effect accorded to a court when an administrative agency is acting *in a judicial capacity* and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate." *Plaine v. McCabe*, 797 F.2d 713, 718-19 (9th Cir. 1986) (upholding preclusive effect given to unreviewed administrative decision of California Corporations Commissioner) (quoting *United States v. Utah Construction & Mining Co.*, 384 U.S. 394, 422 (1966) (emphasis in original)).

The requirements for issue preclusion in California are:

- (1) the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding;
- (2) the issue to be precluded must have been actually litigated in the former proceeding;
- (3) the issue to be precluded must have been necessarily decided in the former proceeding;
- (4) the decision in the former proceeding must be final and on the merits;
- (5) the party against whom preclusion is sought must be the same as,

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- or in privity with, the party to the former proceeding; and
(6) application of issue preclusion must be consistent with the public policies of preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation.

White v. City of Pasadena, 671 F.3d 918, 927 (9th Cir. 2012) (internal citation omitted). "The burden is on the party seeking to rely upon issue preclusion to prove each of the elements have been met." *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1050–51 (9th Cir. 2008). "This means providing 'a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'" *Plyam*, 530 B.R. at 462 (quoting *In re Kelly*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996)). "Any reasonable doubt as to what was decided by a prior judgment should be resolved against allowing the [issue preclusive] effect." *Kelly*, 182 B.R. at 258.

"The bar is asserted against a party who had a full and fair opportunity to litigate the issue in the first case but lost." *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813, 826–27 (2015). "The point is that, once an issue has been finally decided against such a party, that party should not be allowed to relitigate the same issue in a new lawsuit." *Id.* "Issue preclusion operates 'as a shield against one who was a party to the prior action to prevent' that party from relitigating an issue already settled in the previous case." *Id.* (quoting *Rice v. Crow*, 81 Cal.App.4th 725, 735 (2000)).

In *Plaine v. McCabe*, the Ninth Circuit Court of Appeals upheld the preclusive effect given to an unreviewed administrative decision of the California Corporations Commissioner. 797 F.2d at 722. In reaching that conclusion, the Court of Appeals explained:

[T]he threshold inquiry for a court deciding whether to give preclusive effect to a state administrative adjudication . . . is to determine whether the state administrative proceeding was conducted with sufficient safeguards to be equated with a state court judgment.

. . .

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[T]here can be no indiscriminate presumption of judicial adequacy of state administrative proceedings. The federal court must carefully review the state administrative proceeding to ensure that, at a minimum, it meets the state's own criteria necessary to require a court of that state to give preclusive effect to the state agency's decisions. To do otherwise would run the risk of precluding relitigation of issues by parties who have had no fair opportunity to be heard.

Id. at 719. Regarding the lack of review of the commissioner's decision by a state court, the Court of Appeals explained:

That the California Corporation Commissioner's decision here was not reviewed by a state court does not diminish its preclusive effect in federal court. Plaine could have sought state court review of the Commissioner's decision, Cal. Code Civ. Proc. § 1094.5 (West Supp. 1985), but chose not to do so. If an adequate opportunity for review is available, a losing party cannot obstruct the preclusive use of the state administrative decision simply by foregoing her right to appeal.

Id. at 719 n.12.

E. Violation of State Securities Laws or Any Regulation or Order Issued Thereunder

One category of misconduct that triggers the § 522(q) cap on exemptions is if a debtor owes a debt arising from any violation of state securities laws or any regulations or orders issued under such securities laws or regulations. 11 U.S.C. § 522(q)(1)(B)(i). In California, the offer and sale of securities are regulated by the Corporate Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) and the accompanying regulations (Cal. Code Regs. tit. 10, §§ 260.000-260.617). The DFPI and the Commissioner administer the Corporate Securities Law of 1968. Cal. Corp. Code §§ 25005, 25605, 25610.

Cal. Corp. Code § 25532 states, in relevant part:

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(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

...

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

...

(f) If, after an order has been served under subdivision (a), (b), (c), or (d), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609. [FN 2]

III. DISCUSSION

Because the DFPI's action against Debtor has been set for hearing before the OAH on June 30 and July 1, 2025, the Commissioner's orders are non-final. *See* Cal. Corp.

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Code § 25532(f). As a result, the current record is insufficient for the Court to determine whether Debtor owes a debt arising from a violation of state securities law, based on the Desist Order and the Administrative Penalties Statement. Accordingly, the Court will continue the hearing on the Objection to be held at 1:30 p.m. on August 20, 2025.

No later than two weeks before the continued hearing, Creditors must file a supplement to the Objection containing evidence of the finality of the administrative decision of the Commissioner. Creditors also must address Debtor's arguments that Debtor's entire interest in the Property is reasonably necessary for the support of Debtor and her four children.

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

FOOTNOTES

FN 1: The OAH will prepare a proposed decision within 30 days after the hearing, after which the DFPI has 100 days to act in order for the decision to become final. *See* Cal. Gov't Code § 11517(c).

FN 2: California Corporations Code § 25609 ("Judicial review of commissioner's acts") provides that "[e]very final order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law."

Party Information

Debtor(s):

Darci Penn

Represented By
David S Hagen

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:25-10015 Special Effects Unlimited, Inc.

Chapter 11

#8.00 Stipulation for Adequate Protection and Use of Cash Collateral

Docket 45

Tentative Ruling:

Grant.

The debtor must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the parties to the Stipulation is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the parties to the Stipulation will be so notified.

Party Information

Debtor(s):

Special Effects Unlimited, Inc.

Represented By
Marc A Goldbach

Movant(s):

U.S. Small Business Administration

Represented By
Elan S Levey

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1:25-10123 Magic Car Rental Inc.

Chapter 11

#9.00 Debtor's Motion for Order Authorizing Use of Cash Collateral
On an Interim Basis Pending a Final Hearing and to Provide Adequate
Protection To Secured Creditors

Docket 40

Tentative Ruling:

On February 26, 2025, the debtor filed *Debtor's Motion for Order Authorizing Use of Cash Collateral on an Interim Basis Pending a Final Hearing and Provide Adequate Protection to Secured Creditors ReadyCap Lending, LLC, Perpetual Investments, LLC and Ted Goldberg* (the "Motion") [doc. 40] and set the hearing on regular notice pursuant to Local Bankruptcy Rule 9013-1. The debtor has provided sufficient service of the Motion and notice of the Motion, the hearing and the deadline to file any response. As of March 17, 2025, no responses to the Motion have been filed.

Consequently, the Court will grant the Motion on a final basis, through and including July 31, 2025.

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

Appearances on March 19, 2025 are excused.

Party Information

Debtor(s):

Magic Car Rental Inc.

Represented By
Onyinye N Anyama

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1:25-10168 Elsa Cazares

Chapter 7

#9.01 Debtor's Motion to 1. Vacate the order of dismissal entered 2/3/25;
and 2. Reinstate the case

fr. 3/5/25

Docket 11

Tentative Ruling:

As set forth below, the Court will deny the motion to vacate dismissal of the case.

I. BACKGROUND

On January 30, 2025, Elsa Cazares ("Debtor") filed, as one docket entry, the following documents, initiating the above-captioned chapter 7 case (the "Case"): (1) a voluntary chapter 7 petition, and (2) verification of master mailing list of creditors. *See* doc. 1. Later that day, Debtor filed her statement about her social security number [doc. 2] and certificate of credit counseling [doc. 3]. The initial section 341(a) meeting of creditors (the "Meeting of Creditors") was scheduled for February 26, 2025.

A. The Dismissal Notice, Deficiency Notice and Order to Comply

The same day, the Court entered: (1) a *Notice of Dismissal of Case if Required Documents are Not Filed or Signed* (the "Dismissal Notice") [doc. 5]; (2) a *Case Commencement Deficiency Notice* (the "Deficiency Notice") [doc. 1]; and (3) an *Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case* (the "Order to Comply") [doc. 1].

The Dismissal Notice stated that Debtor's physical street address was missing and that page 2 of voluntary petition was not included in doc. 1. The Dismissal Notice advised Debtor to file the voluntary petition, with Debtor's holographic signature within 72 hours, otherwise the Case would be dismissed. The Deficiency Notice provided that: (1) the statement of related cases (the "Statement of Related Cases") must be filed by February 13, 2025; (2) the statement of intention for individuals filing under chapter 7 (the "Statement of Intention") must be filed by March 1, 2025; and (3) the Case may

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be dismissed if Debtor did not file the Statement of Related Case and the Statement of Intention by their respective deadlines. The Order to Comply provided that the Court would dismiss the Case without further notice unless Debtor filed by February 13, 2025, either: (a) schedules A/B through J, the Declaration About an Individual Debtor's Schedules, and the Statement of Financial Affairs; or (b) a motion for an order extending the time to file such documents.

Debtor's counsel was served, via NEF, with copies of the Dismissal Notice, the Deficiency Notice and the Order to Comply. On February 1, 2025, Debtor was served, by U.S. mail, a copy of the Dismissal Notice. *See* doc. 9.

Debtor did not comply with the Dismissal Notice, Deficiency Notice or Order to Comply. On February 3, 2025, the Court entered its *Order and Notice of Dismissal for Failure to File Initial Petition Documents* (the "Dismissal Order") [doc. 10].

B. The Motion

On February 3, 2025, Debtor filed the Motion. In the Motion, Debtor requests that the Court vacate the Dismissal Order and states that she did not cure the deficiencies because of counsel's error and mis-calendar. Accompanying the Motion is a declaration by Debtor's counsel, Jaime A. Cuevas, Jr., in which Debtor's counsel states under penalty of perjury that the explanation for failure to timely file the required documents was because of a calendaring error on his part.

On March 5, 2025, the Court held a hearing on the Motion. As of that date, Debtor had not filed an amended voluntary petition with Debtor's physical street address and with Debtor's holographic signature appearing on page 2 of the petition, schedules A/B through J, the Declaration About an Individual Debtor's Schedules, the Statement of Financial Affairs, the Statement of Related Cases, the Disclosure of Compensation of Attorney for Debtor, the Declaration by Debtor(s) as to Whether Income was Received From an Employer within 60 Days of the Petition Date, or the Statement of Intention (collectively, the "Remaining Case Commencement Documents").

On March 6, 2025, the Court entered an order continuing the hearing on the Motion [doc. 15], in which the Court ordered that, "by no later than March 12, 2025, Debtor must file a supplemental declaration, with the Remaining Case Commencement

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Documents attached as exhibits thereto."

C. The Supplemental Declaration

On March 12, 2025, Debtor filed a *Summary of Amended Schedules, Master Mailing List, and/or Statements* (the "Supplemental Declaration") [doc. 17]. Attached to the Supplemental Declaration is an amended voluntary petition with Debtor's physical street address and with Debtor's holographic signature appearing on page 2 of the petition. Debtor did not attach a proof of service to the Supplemental Declaration.

To date, Debtor has not filed her schedules A/B through J, the Declaration About an Individual Debtor's Schedules, the Statement of Financial Affairs, the Statement of Related Cases, the Disclosure of Compensation of Attorney for Debtor, the Declaration by Debtor(s) as to Whether Income was Received from an Employer within 60 Days of the Petition Date, or the Statement of Intention.

II. DISCUSSION

Pursuant to LBR 1017-2(c)(1):

Any motion requesting that the dismissal of a case for failure to timely file a required document...be vacated **must include as exhibits to the motion all of the documents that were not timely filed and must be supported by a declaration under penalty of perjury establishing a sufficient explanation why the documents were not timely filed.** The motion may be ruled on without further notice or hearing pursuant to LBR 9013-1(q).

LBR 1017-2(c)(1) (emphasis added).

When amending a petition, Fed. R. Bankr. P. 1009(a) provides that "[t]he debtor must give notice of the amendment to the trustee and any affected entity." Local Bankr. R. 1007-1(c) provides that "[w]hen an amended list, schedule or statement is filed, it must be accompanied by a Summary of Amended Schedules, Master Mailing List, and/or Statements using the court-approved form."

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The Motion and Supplemental Declaration do not comply with LBR 1017-2(c). The Case was dismissed because Debtor did not file the Remaining Case Commencement Documents. Except for the amended petition, Debtor did not attach the Remaining Case Commencement Documents as exhibits to the Supplemental Declaration.

Moreover, the Supplemental Declaration apparently was not served in compliance with Fed. R. Bankr. P. 1009(a). The Supplemental Declaration does not comply with Local Bankr. R. 1007-1(c) because Debtor did not complete the proof of service contained in mandatory form F 1007-1.1.AMENDED.SUMMARY.

Accordingly, the Court will deny the Motion.

The Court will prepare the order.

Party Information

Debtor(s):

Elsa Cazares

Represented By
Jaime A Cuevas Jr.

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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1:24-11886 Right Size Plumbing & Drain Co Inc.

Chapter 11

#10.00 Status conference re: chapter 11, Subchapter V Case

fr. 1/8/25

Docket 1

***** VACATED *** REASON: Order continuing status conference entered
3/7/25 [doc. 82]. Hearing continued to 4/30/25 at 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Right Size Plumbing & Drain Co

Represented By
Michael Jay Berger

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:24-11563 Glory Project LLC

Chapter 11

#11.00 Status conference re: Chapter 11 case

fr. 11/7/24; 1/8/25; 2/12/25

Docket 1

Tentative Ruling:

The Court will continue the chapter 11 case status conference to **1:30 p.m. on April 30, 2025**, to be held concurrently with the hearing to consider approval of the *Disclosure Statement Describing Debtors' Chapter 11 Plan of Reorganization Dated February 28, 2025* [doc. 104].

Appearances on March 19, 2025 are excused.

Party Information

Debtor(s):

Glory Project LLC

Represented By
Susan K Seflin
Jessica Wellington

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1:24-11564 Private Animal Care Veterinary Corporation

Chapter 11

#12.00 Status conference re: Chapter 11 Subchapter V Case

fr. 11/7/24; 1/8/25; 2/12/25

Docket 1

Tentative Ruling:

The Court will continue the chapter 11 case status conference to **1:30 p.m. on April 30, 2025**, to be held concurrently with the hearing to consider approval of the *Disclosure Statement Describing Debtors' Chapter 11 Plan of Reorganization Dated February 28, 2025* [1:24-bk-11563, doc. 104].

Appearances on March 19, 2025 are excused.

Party Information

Debtor(s):

Private Animal Care Veterinary

Represented By
Susan K Seflin
Jessica Wellington

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

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1:24-12038 Biotactics, Inc.

Chapter 11

#13.00 Status Conference re: Chapter 11, Subchapter V case

fr. 1/22/25

Docket 1

Tentative Ruling:

The deadline for the debtor to file its January 2025 monthly operating report was February 21, 2025; to date, the debtor has not filed that monthly operating report.

The deadline for the debtor to file its February 2025 monthly operating report is March 21, 2025.

Proposed dates and deadlines regarding the Plan:

Hearing on confirmation of the Plan: **May 7, 2025 at 2:00 p.m.**

Deadline for the debtor to mail the Plan, the exhibits in support of the Plan [doc. 72], ballots for acceptance or rejection of the Plan and to file and serve notice of: (1) the confirmation hearing and (2) the deadline to file objections to confirmation and to return completed ballots to the debtor's counsel: **March 21, 2025.**

The debtor must serve the notice and the other materials (with the exception of the ballots, which should be sent only to creditors in classes) on all creditors, parties who have requested special notice, the subchapter V trustee and the United States trustee.

Deadline to return completed ballots to the debtor: **April 14, 2025.**

Deadline for the debtor to file and serve the debtor's brief and evidence, including declarations and the returned ballots, in support of confirmation: **April 18, 2025.** Among other things, the debtor's brief must address whether the requirements for confirmation set forth in 11 U.S.C. § 1191 are satisfied. These materials must be served on the subchapter V trustee, the United States trustee and any creditor who returns a ballot rejecting the Plan.

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Deadline to file and serve any objections to confirmation: **April 25, 2025.**

Deadline for the debtor to file and serve any reply to objections to confirmation:
April 30, 2025.

Continued chapter 11 case status conference to be held at **2:00 p.m. on April 2, 2025.**
Before the continued status conference, the debtor must be current on the filing of its
monthly operating reports.

The Court will prepare an order continuing the status conference.

If the Court sets the above dates and deadlines regarding confirmation of the Plan as
outlined above, the debtor must submit the confirmation scheduling order within
seven (7) days.

Party Information

Debtor(s):

Biotactics, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Mark M Sharf (TR)

Pro Se