

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

Wednesday, December 4, 2024

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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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:23-11375 Natalie Delgado Clutario

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Amy Goldman, Chapter 7 Trustee

Docket 26

Tentative Ruling:

Amy L. Goldman, chapter 7 trustee – approve compensation of \$1,451.86 and reimbursement of expenses in the amount of \$1.54.

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):

Natalie Delgado Clutario

Represented By
Raj T Wadhvani

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:24-11300 Anush Arakelyan

Chapter 11

#2.00 Motion In Individual Chapter 11 Case For Order Authorizing
Use of Cash Collateral 11 U.S.C. section 363

fr. 10/10/24; 10/31/24

Docket 34

Tentative Ruling:

See cal. no. 3.

Party Information

Debtor(s):

Anush Arakelyan

Represented By
Thomas B Ure

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1:24-11300 Anush Arakelyan

Chapter 11

#3.00 Order to Show Cause Why This Case Should Not Be Dismissed or Converted To One Under Chapter 7 Pursuant to 11 U.S.C. sections 105(a) and 1112(b)

fr. 10/31/24

Docket 45

Tentative Ruling:

The Court will convert this case to one under chapter 7.

I. BACKGROUND

A. The Bankruptcy Case

On August 7, 2024, Anush Arakelyan ("Debtor") filed a chapter 11 petition, initiating bankruptcy case no. 1:24-bk-11300-VK (the "Case"). In her schedule A/B, Debtor identified interests in the following real properties: (1) 5233 Ben Avenue, Valley Village, CA 91607, with an alleged value of \$1,830,000 (the "Ben Avenue Property"); and (2) 8008 Wilkinson Avenue, North Hollywood, CA 91605, with an alleged value of \$1 million (the "Wilkinson Avenue Property") [doc. 1]. In her amended schedule C, Debtor claimed a \$699,421 exemption in the Ben Ave Property under C.C.P. § 704.730 [doc. 30].

U.S. Bank National Association ("US Bank") has filed an appraisal of the Ben Property, which is based on an interior and exterior inspection [doc. 74]. According to the submitted declaration of the licensed appraiser and the appraisal, the market value of the Ben Property as of October 28, 2024 is \$1,550,000.

In her chapter 11 case status report, Debtor represented that the Ben Avenue Property is a 4 unit residential building; as stated by Debtor, she and her spouse live in one unit and the other three units are rented for an aggregate amount of \$5,500 per month [doc. 29]. Debtor described the Wilkinson Property as a single family residence which is occupied by Debtor's brother. *Id.* Debtor represented that her brother pays \$4,500 per

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month in rent and pays for all the utilities and maintenance for the Wilkinson Property.
Id.

In September 2024, Debtor filed a *Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral* [11 U.S.C. § 363] (the "Cash Collateral Motion ") [doc. 34]. In the Cash Collateral Motion, Debtor stated that she receives rental income in the amount of \$5,500 per month from the Ben Avenue Property and \$4,500 per month from the Wilkinson Avenue Property (together with the Ben Avenue Property, the "Properties"). In addition, Debtor projected rental income and proposed a budget for the Properties.

Although Debtor allegedly generates \$5,060 per month in net rental income (after maintenance expenses) from the Ben Avenue Property, and Debtor and her spouse also live in a unit of the Ben Avenue Property, Debtor's proposed use of cash collateral did not include property tax payments, nor the provision of monthly adequate protection payments to US Bank. Debtor contended that the beneficiary of the first deed of trust against the Ben Avenue Property is adequately protected by an equity cushion and the proposed expenditures to maintain the Ben Avenue Property.

B. Claims Against the Estate

1. Secured Claims

As concerns the Ben Avenue Property, US Bank has filed proof of claim no. 14-1, asserting a secured claim in the amount of \$1,464,191.93. US Bank's secured claim is based on a first deed of trust, recorded in March 2007, encumbering the Ben Avenue Property. As set forth in its proof of claim, US Bank's claim includes \$426,991.09 in prepetition arrearages, comprised of \$110,124.24 in principal due, \$161,634.17 in interest due, \$26,074.60 in prepetition fees due and \$118,549.92 regarding an escrow deficiency for funds advanced by US Bank to pay property taxes and maintain hazard insurance.

In addition, Real Time Resolutions, Inc. ("Real Time") has filed proof of claim no. 6-1, asserting a secured claim in the amount of \$261,420.96. Real Time's claim is based on a junior deed of trust, recorded in March 2007, encumbering the Ben Ave Property.

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Regarding the Wilkinson Property, JPMorgan Chase Bank ("Chase") has filed two proofs of claim: (1) proof of claim no. 9-1, asserting a secured claim in the amount of \$54,378.56; and (2) proof of claim no. 10-1, asserting a secured claim in the amount of \$373,772.03. Chase's secured claims are based on first and second deeds of trust against the Wilkinson Property, recorded in December 1993 and March 2007, respectively.

2. Other Claims Against the Estate

As to additional secured claims:

1. the Franchise Tax Board ("FTB") has filed proof of claim no. 8-1, asserting a secured claim in the amount of \$5,079.71, as well as an unsecured priority claim in the amount of \$8,908.90; and
2. the Los Angeles County Tax Collector ("LACTC") has filed proof of claim no. 5-1, asserting a secured claim in the amount of \$14,200.05. The secured claim of LACTC is based on property taxes relating to real properties located at 12659 Arminta St., Los Angeles, CA 91605 and 10545 Pinewood Ave., Los Angeles, CA 91042. Any interest which Debtor has in these real properties is not disclosed in Debtor's bankruptcy schedules.

Regarding priority claims, in addition to the priority claim asserted by the FTB, the Internal Revenue Service ("IRS") has filed proof of claim no. 2-1, asserting an unsecured priority claim in the amount of \$6,812.95, as well as a general unsecured claim in the amount of \$1,069.85.

In her amended schedule E/F, Debtor has listed aggregate general unsecured claims in the aggregate amount of \$21,301.90 [doc. 30]. This does not include the general unsecured claim asserted by the IRS [see proof of claim 2-1], nor any deficiency claims of secured creditors.

C. The Order to Show Cause and the Monthly Operating Reports

On October 8, 2024, the Court entered its *Order to Show Cause Why this Case Should*

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Not be Dismissed or Converted to One Under Chapter 7 Pursuant to 11 U.S.C. §§ 105(a) and 1112(b) (the "OSC") [doc. 45] and set a hearing for October 31, 2024. The OSC provided, in relevant part:

Contrary to LBR 2015-2(a)(3), as of October 7, 2024, Debtor has not filed any monthly operating reports.

For good cause appearing, it is hereby

ORDERED, that Debtor must appear at a hearing in this case on October 31, 2024 at 1:00 p.m., in Courtroom 301 of the above-captioned Court, to show cause and explain why the Court should not, in accordance with 11 U.S.C. §§ 105(a) and 1112(b)(1) (b)(4)(B) and (b)(4)(F), dismiss this case or convert it to one under chapter 7, for cause, including Debtor's non-compliance with LBR 2015-2(a)(3); and it is further

ORDERED, that, no later than October 21, 2024, Debtor must file her August 2024 and September 2024 monthly operating reports in accordance with LBR 2015-2(a) and file and serve on all secured creditors and the United States Trustee any other response to this Order

OSC, p. 2 (emphases omitted). On October 21, 2024, Debtor filed monthly operating reports ("MORs") for August and September 2024 [docs. 54 and 55, respectively].

At the October 31, 2024 hearing, the Court expressed its concerns with Debtor's August and September 2024 MORs, which it outlined in its posted tentative ruling prior to the hearing. In addition, the Court discussed the issues with Debtor's alleged practice of having her brother, the tenant at the Wilkinson Property, pay the first and second deed of trust payments directly to Chase, along with all utilities and maintenance costs at the Wilkinson Property, without setting forth such payments in the MORs. In addition, the Court noted that the August and September 2024 MORs did not reflect any rental income from the Ben Ave Property.

On November 1, 2024, the Court entered an order continuing the hearing on the OSC

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to December 4, 2024 and requiring Debtor to file and serve her October 2024 MOR and her amended August and September 2024 MORs by no later than November 21, 2024 [doc. 58] .

D. MORs filed in November 2024

On November 21, 2024, Debtor filed an amended August 2024 MOR [doc. 71], an amended September 2024 MOR [doc. 72] and the October 2024 MOR [doc. 73]. The amended August and September 2024 MORs are mostly unchanged, except that they now include notes from Debtor to provide her explanations why monthly rents and expenses do not appear in the bank statements attached to the MORs. For example, the note at the end of the amended August MOR states:

Debtor's income was not reflected in her DIP account due to the fact that she had to transfer her social security direct deposit from her prepetition account to one of her daughter's accounts temporarily.

Debtor received contribution from her daughters for many of her expenses.

The two vehicle loans are for vehicle used by her daughter and each of them make the vehicle payments directly to the lenders as well as cover the automobile insurance for the vehicles.

For August 2024, Debtor's brother (who lives in the Wilkinson Property), paid the 1st TD and 2nd TD directly to the lenders as well as providing for the utilities and necessary maintenance.

Doc. 71, p. 25. The note at the end of the amended September MOR is largely the same, except that it states Debtor's brother paid the first and second deed of trust payments directly to Chase for September 2024, along with all utilities and maintenance costs at the Wilkinson Property for that month. *See* doc. 72, p. 27.

The October 2024 MOR includes a similar note, including additional language as follows:

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For October 2024, Debtor's [sic] commenced using three separate DIP accounts.

Ending 6908 - General operating account. Due to the fact that Debtor's social security income has not yet been corrected to be deposited into this account, the account had limited activity for October 2024.

Ending 6682 - Segregated account for Wilkinson Property. Debtor received and deposited rent income into this account.

Ending 6957 - Segregated account for Ben Property. Tenants have not yet commenced making rent payments due to the current pending foreclosure. Debtor and her spouse continue to work with the tenants to have rent and past due rent paid.

Doc. 73, p. 22.

With respect to the rents for the Wilkinson Property, the bank statement for account ending in 6882 reflects a deposit on October 31, 2024 in the amount of \$1,200. *See* doc. 73, p. 17. According to the bank statements attached to the October 2024 MOR, Debtor's receipts totaled \$1,186.57 and her disbursements totaled \$65.57. In addition, Debtor's cash on hand as of October 31, 2024 was \$1,140.34.

II. DISCUSSION

11 U.S.C. § 1112(b) provides, in pertinent part:

- (1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

...

- (4) For purposes of this subsection, the term 'cause' includes—

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(B) gross mismanagement of the estate;...

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter

"'Cause' is defined in § 1112(b)(4), but the list contained in § 1112(b)(4) is illustrative, not exhaustive." *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). "[T]he party seeking relief under Section 1112(b)(1) has the initial burden of persuasion to establish that cause exists for granting such relief." *In re Baroni*, 36 F.4th 958, 966 (9th Cir. 2022); *see also In re Sullivan*, 522 B.R. 604, 614 (9th Cir. BAP 2014) ("The movant bears the burden of establishing by a preponderance of the evidence that cause exists."). Once the movant has established cause, the burden shifts to the party opposing conversion under section 1112(b)(2). *In re Labankoff*, 2010 WL 6259969, at *3 (9th Cir. BAP June 4, 2010).

Motions to dismiss under 11 U.S.C. § 1112(b) require a two-step analysis. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *In re Nelson*, 343 B.R. 671, 675 (9th Cir. B.A.P. 2006) (citations omitted).

Here, there is cause under 11 U.S.C. §§ 1112(b)(1), (b)(4)(B) and (b)(4)(F) to dismiss or convert this case. Despite the Court's concerns over the lack of disclosure as to the rental income and monthly expenses related to the Properties, Debtor has not, through the Amended August and September 2024 MORs and October 2024 MOR, remedied that lack of disclosure or sufficiently explained why Debtor's rental income is not reflected in the MORs.

The bank statements attached to the October 2024 MOR do not reflect rental income in the amount of \$4,500, as set forth in the Cash Collateral Motion. Rather, the October 2024 MOR shows that, on October 31, 2024, Debtor made a deposit into account ending in 6682 in the amount of \$1,120. Doc. 73, p. 17. Moreover, Debtor has not provided any documentary evidence that her brother made the first and second deed of trust payments regarding the Wilkinson Property.

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It appears that Debtor is intent on concealing her income and monthly expenses, including the postpetition payment of her secured debt, from the Court and creditors of the estate. Such conduct constitutes cause to convert or dismiss this case, including gross mismanagement of the estate and failure to satisfy timely the reporting requirements for MORs.

Given that there appears to be approximately \$572,000 in unexempt equity in the Wilkinson Property, conversion is in the best interests of the creditors and the estate.

III. CONCLUSION

The Court will convert the case to a chapter 7.

The Court will prepare the order.

Party Information

Debtor(s):

Anush Arakelyan

Represented By
Thomas B Ure

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1:24-11323 Irwin Naturals

Chapter 11

#4.00 Debtors' emergency motion for authority to: (A) Use cash collateral on an interim basis pending final hearing; (B) Grant replacement liens; and (C) Set final hearing

fr. 8/16/24; 9/5/24; 9/26/24; 11/7/24(stip)

Docket 19

Tentative Ruling:

On November 18, 2024, the debtors filed a *Supplement Containing (A) Agreed Upon Form of Final Cash Collateral Order and (B) Final Cash Collateral Budget in Connection with Their Cash Collateral Motion* (the "Supplement") [doc. 235]. Attached as Exhibit C to the Supplement is a proposed *Final Cash Collateral Order*.

Does the Official Committee of Unsecured Creditors object to any provisions in the proposed Final Cash Collateral Order?

Party Information

Debtor(s):

Irwin Naturals

Represented By
Joseph Axelrod
Susan K Seflin

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1:24-11323 Irwin Naturals and Irwin Naturals Inc

Chapter 11

#5.00 Debtors' Motion for Entry of an Order Extending the Debtors' Exclusivity Periods During Which the Debtors May File a Plan and Solicit Acceptances Thereof

Docket 219

Tentative Ruling:

Grant, as set forth below.

The exclusive period of the debtors and debtors in possession to file a chapter 11 plan of reorganization will be extended by sixty (60) days to expire on **February 5, 2025**. The exclusive period of the debtors and debtors in possession to solicit acceptances thereof similarly will be extended to expire on **Friday, April 4, 2025**.

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

Party Information

Debtor(s):

Irwin Naturals

Represented By
Joseph Axelrod
Susan K Seflin
Jessica Wellington
Ashley M Teesdale

Joint Debtor(s):

Irwin Naturals Inc

Represented By
Susan K Seflin

DAI US HOLDCO INC

Represented By
Susan K Seflin

5310 Holdings, LLC

Represented By
Susan K Seflin

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1:23-11200 Windsor Terrace Healthcare, LLC

Chapter 11

#6.00 Motion By Windsor Terrace Healthcare, LLC To Estimate Proof of Claim No. 87 Filed By Cynthia Batac In Accordance With 11 U.S.C. §502(c)

fr. 10/17/24; 11/21/24

Docket 1514

Tentative Ruling:

Taking into account the facts set forth below (including available insurance coverage), the pending arbitration proceeding involving multiple defendants [FNI], the terms of the confirmed chapter 11 plan and the willingness of the respondent to limit her recovery from the debtor's estate to available insurance proceeds, the Court will abstain from ruling on the motion.

I. BACKGROUND

A. Ms. Batac's Employment with Windsor Terrace Healthcare LLC

Windsor Terrace Healthcare, LLC ("Windsor Terrace") is the operating entity of a skilled nursing facility located at 7447 Sepulveda Blvd., Van Nuys, California 91405. This facility is known as Windsor Terrace Healthcare Center (the "Facility").

On or about September 26, 2019, Ms. Batac was hired to be a Health Information Director at the Facility. Declaration of Randall Kervin de Guzman ("Guzman Decl."), ¶¶ 4 and 8 and Exhs. 1 and 5 thereto [doc. 1514]. In late June 2021, Ms. Batac's employment was terminated; the explanation provided for this termination was Ms. Batac's inability/unsatisfactory work and poor productivity. Guzman Decl., ¶ 7 and Exh. 4 thereto.

B. Prepetition Litigation

In March 2023, Ms. Batac filed a complaint (the "Complaint") against, among others, Windsor Terrace, in the Superior Court of the State of California for the County of Los Angeles, initiating case no. 23STCV06987 (the "State Court Action"). Guzman

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Decl., ¶ 9 and Exh. 6 thereto. The basis for the Complaint is Ms. Batac's alleged wrongful termination.

In the Complaint, Ms. Batac asserted the following claims for relief:

(1) breach of express and implied contract; (2) breach of the covenant of good faith and fair dealing; (3) wrongful termination in violation of public policy; (4) violation of California Constitution; (5) violation of California Government Code § 12900, et seq.; (6) intentional infliction of emotional distress; (7) violation of Business & Professions Code § 17200; (8) intentional misrepresentation [fraud], negligent misrepresentation, and concealment; (9) violation of California Labor Code § 1198.5; (10) violation of California Labor Code § 1102.5; (11) violation of California Health & Safety Code § 1432; (12) violation of California Labor Code § 6310; and (13) violation of California Labor Code § 232.5(c).

Exh. 6 to the Guzman Decl.

In August 2023, the State Court Action was moved to arbitration (the "Arbitration"). Guzman Decl., ¶ 9. The Arbitration was stayed when Windsor Terrace filed a chapter 11 bankruptcy petition. *See id.*

C. The Bankruptcy Cases

On August 23, 2023, Windsor Terrace and eighteen related entities filed chapter 11 petitions. On September 29, 2023, two additional related entities filed chapter 11 petitions. The Court approved the joint administration of the cases. On September 24, 2024, the Court entered an order confirming a chapter 11 plan for Windsor Terrace and each of the other debtors (collectively, the "Debtors") [doc. 1437].

In September 2023, Ms. Batac moved for relief from the automatic stay to proceed with the State Court Action and the Arbitration (the "2023 RFS Motion") [doc. 89]. The 2023 RFS Motion was one of several motions filed by litigants seeking relief from the automatic stay to litigate the amount of their claims against the Debtors outside of this Court (collectively, the "RFS Motions"). *See* 2023 RFS Motion and

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docs. 134, 158 and 268. In December 2023, the Court denied the RFS Motions and barred the movants from filing any further relief from stay motions until September 1, 2024. *See* docs. 490, 491, 492 and 493.

In September 2024, Ms. Batac filed another motion for relief from the automatic stay to proceed with the State Court Action and the Arbitration (the "2024 RFS Motion") [doc. 1502]. In denying the 2024 RFS Motion as moot, the Court stated, in pertinent part:

On September 4, 2024, the Court entered an order [doc. 1437] confirming *Debtors' Plan of Reorganization (Dated June 11, 2024) as Amended* (the "Plan") [doc. 1424]. As concerns the effect of confirmation, the Plan provides that:

The Debtors will receive a discharge under this Plan of all debts, liabilities and Claims other than the payments required to be made by the Reorganized Debtors under this Plan because the requirements of Section 1141 of the Bankruptcy Code necessary for the Debtors to receive a discharge are present.

Plan, p. 45. On October 10, 2024 the Court entered an *Order of Discharge* (the "Discharge Order") [doc. 1555].

...

In light of the entry of the Discharge Order, the automatic stay has been terminated. Consequently, the Motion will be denied as moot.

Court's ruling on the 2024 RFS Motion, pp. 1-2 [doc. 1587].

D. Ms. Batac's Proof of Claim

In January 2024, Ms. Batac filed proof of claim no. 87-1 against Windsor Terrace in case no. 1:23-bk-11200-VK. Ms. Batac asserted a nonpriority unsecured claim in the amount of \$3 million (the "Claim"). As the basis for the Claim, Ms. Batac indicated as follows: "As stated in pleadings in LASC 23STCV06987/Arbitration personal injury claims attorneys fees costs damages." Claim No. 87-1.

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E. The Disclosure Statement and the Chapter 11 Plan of Reorganization

In June 2024, the Debtors filed the *Disclosure Statement Describing Debtors' Plan of Reorganization (Dated June 5, 2024)* (the "Disclosure Statement") [doc. 1044]. As concerns Ms. Batac, the Debtors included an analysis of the Claim, which stated, in pertinent part:

INSURANCE COVERAGE	YES <u> X </u> NO _____
NAME OF CARRIER	Core Specialty fka Starstone Specialty Insurance Co.
POLICY NUMBER	Policy No. DNO00011919P-01

...

[B]ecause there is insurance coverage for this claim, any award to Ms. Batac should be paid directly by the insurance carrier, not the Debtor. However, Ms. Batac may achieve a recovery beyond coverage limits. Accordingly, Debtor estimates this claim at \$50,000, ***subject to any other amounts that Ms. Batac might recover from existing insurance.***

Exh. 2(c) to the Disclosure Statement, pp. 22 and 24 (bolded emphasis in original; italicized emphasis added).

In August 2024, the Debtors filed *Debtors' Plan of Reorganization (Dated June 11, 2024) as Amended* (the "Plan") [doc. 1424]. With respect to Class 4 Creditors, including Ms. Batac, the Plan provides, in relevant part:

Class 4 – General Unsecured Claims. Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors.

...

Plan Treatment Option 2 will consist of a single payment equal to 10% of the amount of their Allowed General Unsecured Claim made within 15 days after the later of the Effective Date and the date of Allowance

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of the Claim. The ballot provided to each such Class 4 claimant will give them the options of (1) accepting or rejecting this Plan and (2) electing whether they opt for Plan Treatment Option 1 or Plan Treatment Option 2.

ALL HOLDERS OF CLASS 4 ALLOWED CLAIMS WHO FAIL TO TIMELY VOTE ON THIS PLAN OR WHO TIMELY VOTE (WHETHER FOR OR AGAINST THIS PLAN) BUT FAIL TO ELECT PLAN TREATMENT OPTION 1 OR PLAN TREATMENT OPTION 2 WILL BE AUTOMATICALLY DEEMED TO HAVE SELECTED PLAN TREATMENT OPTION 2...

Plan, pp. 12-13 [doc. 1424].

With respect to the protocol for liquidating disputed claims, the Plan provides, in pertinent part:

The Debtors have proposed, for settlement purposes only, the amount they propose to allow for each timely-filed Unliquidated Litigation Claim. [FN2] Attached as Exhibits 2(a) through 2(e) to the Disclosure Statement is a written summary of each Unliquidated Litigation Claim and the relevant Debtor's analysis of the Unliquidated Litigation Claim. At the end of each such summary is the Debtors' proposed settlement amount for that Unliquidated Litigation Claim. If a claimant accepts the amount proposed for that claimant, then that amount shall be deemed the amount of the Allowed Class 4 Claim for that claimant for both voting and distribution purposes under this Plan, and this Plan's treatment of their Allowed Class 4 Claim shall be deemed to be in full settlement and satisfaction of their Allowed Class 4 Claim.

...

If any claimant with an unliquidated Employee Claim rejects the proposed Claim settlement amount, the Debtors will request that the Court estimate the amount of such claim for all purposes, including voting, final Allowance and distribution pursuant to the provisions of Section 502(c) of the Bankruptcy Code unless, prior to the date of Plan confirmation, the Debtors and the claimant agree upon a different

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mutually agreeable Claim settlement amount, which amount shall then be deemed to be the Allowed amount of the Claim.

Absent such agreement, and unless and until the Court enters a Final Order estimating an Allowed amount for the Employee Claim, such Employee Claim shall be deemed a Disputed Claim, and the holder of such Employee Claim shall not be entitled to receive any distribution from the Reorganized Debtors.

...

ALL HOLDERS OF UNLIQUIDATED LITIGATION CLAIMS WHO FAIL TO TIMELY VOTE ON THIS PLAN WILL BE AUTOMATICALLY DEEMED TO HAVE ACCEPTED THE PROPOSED CLAIM SETTLEMENT AMOUNT AND BE AUTOMATICALLY DEEMED TO HAVE SELECTED PLAN TREATMENT OPTION 2.

Plan, pp. 29 and 32-33 (emphasis omitted).

F. The Motion

On September 16, 2024, Windsor Terrace filed a motion to estimate the Claim (the "Motion") [doc. 1514]. In the Motion, Windsor Terrace requested that the Court estimate the Claim at \$50,000 for purposes of distribution. Windsor Terrace also asserted that, because Ms. Batac did not vote on the Plan and elect the other option, Ms. Batac is deemed to have accepted Plan Treatment Option 2.

G. The Opposition and the Reply

On October 4, 2024, Ms. Batac filed her opposition to the Motion (the "Opposition") and the supporting Declaration of Suzanne E. Rand-Lewis ("Rand-Lewis Decl.") [doc. 1531]. Ms. Rand-Lewis is Ms. Batac's attorney who filed the Complaint. *See* Guzman Decl., ¶ 9 and Ex. 6 thereto. In her declaration, Ms. Rand-Lewis stated: "Based upon my almost 40 years of experience litigating employment cases of this nature in Court and arbitration, the value of [Ms. Batac's] case exceeds \$800,000.00... ." Rand-Lewis Decl., ¶ 5.

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In the Opposition, Ms. Batac asserted, in part, that she had not had sufficient time to review and object to the evidence presented in the Motion. In addition, within the Opposition, Ms. Batac objected to the admissibility, in full, of the declarations filed by Windsor Terrace in support of the Motion. On October 10, 2024, Windsor Terrace filed a reply to the Opposition [doc. 1548].

The Court continued the initial hearing and provided a deadline for Ms. Batac to file a supplemental response. On October 18, 2024, the Court entered a scheduling order (the "Scheduling Order"), which provides, in pertinent part:

The Motion shall be treated as a Motion objecting to claim pursuant to 11 U.S.C. § 502(b), Fed. R. Bankr. P. 3007, and Local Bankruptcy Rule 3007-1(b)(1).

...

Any supplemental response by Ms. Batac to the Motion must be filed and served by November 7, 2024.

Any reply by the Reorganized Debtor to the supplemental response by Ms. Batac, if any, must be filed and served by November 14, 2024.

Scheduling Order, p. 2 [doc. 1598].

On November 12, 2024, Ms. Batac belatedly filed the Supplemental Response, which she signed under penalty of perjury. In the Supplemental Response, Ms. Batac states that she "seeks to remove her claim from the Bankruptcy Plan to permit it to continue in arbitration **with all amounts being paid by insurance**" and that she "requests that the Court permit her proceed [sic] with her arbitration **only as to insurance proceeds.**" Supplemental Response, pp. 2 and 17 (emphases added). Ms. Batac also discusses the events leading up to the termination of her employment in June 2021. Finally, Ms. Batac provides a summary of her alleged damages, including past loss of earnings, past loss of benefits, future loss of earnings, emotional distress, punitive damages and attorney's fees, for total alleged damages of \$1,624,466.58. *Id.*, pp. 16-17 (emphases omitted). [FN3]

On November 14, 2024, Windsor Terrace filed a reply to the Supplemental Response (the "Reply") [doc. 1645]. In the Reply, Windsor Terrace addresses the damages

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components which Ms. Batac set forth in the Supplemental Response.

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III. CONCLUSION

Given that: (1) Windsor Terrace acknowledges in the Disclosure Statement that there is insurance coverage for the Claim; (2) the Plan has been confirmed; (3) there is a pending arbitration proceeding regarding the Complaint, which involves multiple defendants; and (4) Ms. Batac has offered to limit her recovery from Windsor Terrace to available insurance coverage, it would be in the interest of judicial economy and would prevent inconsistent rulings for Ms. Batac to move forward with the Arbitration as to the Complaint and the Claim, with her recovery from Windsor Terrace limited to the available insurance coverage. Until the Arbitration has concluded and a decision as to the amount of any damages for which Windsor Terrace is liable to Ms. Batac has become final, the Claim will be deemed disputed.

Windsor Terrace must submit the order within seven (7) days.

FOOTNOTES

FN1: *See Batac's Supplemental Response to Debtor's Motion [as Permitted by Order DKT 1598] (the "Supplemental Response"), p. 3 [doc. 1643].*

FN2: A "Litigation Claim" is defined in the Plan "an Employment Claim or Personal Injury Claim." Plan, p. 7. An "Unliquidated Litigation Claim" is defined in the Plan as a Litigation Claim that was not fully liquidated by judgment or settlement prior to the filing of the Debtors' bankruptcy cases. *Id.*, p. 10.

FN3: This amount was reduced from \$3 million, i.e., the amount of the claim against Windsor Terrace which Ms. Batac asserted in her proof of claim.

Party Information

Debtor(s):

Windsor Terrace Healthcare, LLC

Represented By
Ron Bender

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Juliet Y. Oh
Monica Y Kim
Lindsey L Smith
Robert Carrasco
Beth Ann R. Young