

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

Wednesday, December 13, 2023

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.**

**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.**

Parties in interest may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Members of the public, the press and parties in interest may participate by audio only using a telephone (standard telephone charges may apply).

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

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9:30 AM

CONT...

**Chapter**

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Docket 0

**Tentative Ruling:**

- NONE LISTED -

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

1:23-10674 Ingrid Lorena Asturias

Chapter 13

#1.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON  
VS  
DEBTOR

fr. 11/1/23

Docket 40

**Tentative Ruling:**

On October 18, 2023, the debtor filed a response to the motion [doc. 44]. The debtor did not submit with the response a declaration, signed under penalty of perjury, attesting to the facts stated in the response. 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.

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

Ingrid Lorena Asturias

Represented By  
Anerio V Altman

**Movant(s):**

The Bank Of New York Mellon FKA

Represented By  
Wendy A Locke  
Jenelle C Arnold

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**1:23-11200 Windsor Terrace Healthcare, LLC**

**Chapter 11**

**#1.01** Motion for relief from stay [AN]

VIRGINIA PECH-TORRES  
VS  
DEBTOR

fr. 10/18/23(stip); 12/6/23

Docket 134

**Tentative Ruling:**

Taking into account, among other things, the facts, the applicable legal standards and case law set forth below, and the evidence submitted regarding the debtors' insurance coverage, the Court will decide the matter after hearing oral argument.

The Court will hear oral argument for each of the four pending relief from stay motions, prior to making a decision on each of them.

For that oral argument, the Court will provide the movant for each of those motions with up to 15 minutes of time and the debtors and the two Official Committees of Unsecured Creditors with up to 15 minutes of time for each of the motions, which 15 minutes will be shared between the debtors and those committees.

**I. BACKGROUND**

*A. The Bankruptcy Cases*

On August 23, 2023, Windsor Terrace Healthcare, LLC and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, the "Debtors"). The Court has approved the joint administration of these cases.

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

The Debtors are managing their financial affairs and administering their bankruptcy estates as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. Declaration of Tianxiang "Shawn" Zhou ("Zhou Declaration") [doc. 422], ¶ 6. An Official Committee of Unsecured Creditors has been appointed with respect to each of the Debtors' cases; one such Committee for the Original Debtors and one such Committee for the New Debtors (the "Committees").

The Debtors are primarily engaged in the businesses of owning and operating skilled nursing facilities throughout California. The Debtors provide 24 hour, seven days a week care to patients that reside in their facilities. In addition to the eighteen skilled nursing facilities, the Debtors have one assisted living facility, one home health care center and one hospice center. As of the petition date, the Debtors' facilities had more than 2,000 patients and are staffed by over 2,300 full and part-time employees. While there are twenty-one separate chapter 11 debtors, the Debtors operate as one business enterprise. Zhou Declaration, ¶¶ 7-8.

All of the Debtors' facilities are licensed by the California Department of Public Health, and the administrative services are provided by an affiliated entity, Newgen Administrative Services, LLC ("Newgen"). Newgen services and handles all of the administrative tasks for all of the Debtors, for which it is paid a monthly administrative fee. Newgen (and the Debtors' current owners) assumed control over the administrative services of the Debtors' facilities on or around March 1, 2023, and the Debtors' current owners acquired the ownership of the Debtors on or around July 1, 2023. *Id.*, ¶¶ 8 and 11.

Prior to the Debtors' bankruptcy cases, there were more than 75 lawsuits filed against the Debtors. More specifically, there were approximately 24 employment lawsuits and 52 resident lawsuits brought against the Debtors. *Id.*, ¶¶ 10 and 13. Absent the bankruptcy cases, the Debtors anticipate that the number of lawsuits could be well over 100, with claims exceeding tens of millions of dollars over the next few years. *Id.*, ¶ 10.

On October 6, 2023, the Original Debtors filed their statements of financial affairs, and on October 27, 2023, the New Debtors filed their statements of financial affairs. In its statement of financial affairs, each Debtor identified the legal actions, proceedings and arbitrations in which that Debtor was involved, in any capacity,

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

within one year before filing its chapter 11 petition. For example, Windsor Terrace Healthcare, LLC identified nine proceedings pending against it, as a defendant, including in the Superior Court of the State of California (the "Superior Court"), a class action regarding employee claims in the United States District Court for the Central District of California (the "Employees Class Action") and an appeal in the Court of Appeal for the State of California [case no. 1:23-bk-11200, doc. 232]. Windsor Cheviot Hills, LLC identified ten proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11206, doc. 10]. Windsor Gardens Convalescent Hospital, Inc. identified six proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11214, doc. 11]. Rather than the Court summarizing this information as set forth in the statement of financial affairs filed by each of the other eighteen Debtors, the Court will take judicial notice of each of the Debtors' statements of financial affairs and the Debtors' representations therein regarding litigation which commenced prepetition and is pending against each of them, as defendants.

The bar date for filing proofs of claims against the Debtors is January 31, 2024. On November 2, 2023, Virginia Pech-Torres ("Creditor") filed a proof of unsecured claim in the amount of \$3,000,000 (the "POC"). Creditor's POC is based on her prepetition employment claims against Windsor Cheviot Hills, LLC, which is one of the Debtors, and four non-debtor defendants, i.e., CPE HR, Inc., Kevin Jones, Nancy Doe and Jeff Huang. Creditor's claims are detailed in a complaint, attached to the POC. In an attachment to the POC, Creditor states that her total claim for damages has not yet been determined.

The Debtors represent that they are actively negotiating distribution terms with the Committees under a chapter 11 plan and that the plan will include proposed treatment terms for payout amounts and an orderly and equal process by which litigant claims will be liquidated. Zhou Declaration, ¶ 31. On November 16, 2023, the Debtors filed a motion to extend the exclusivity periods for the Debtors to file a plan and obtain acceptances [doc. 394]. After notice and a hearing, and in accordance with a Stipulation between the Debtors and the Committees, the Court extended the exclusivity periods for the Original Debtors: (i) to file a plan of reorganization to and including January 20, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including March 20, 2024. The Court similarly extended the exclusivity

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

periods for the New Debtors: (i) to file a plan of reorganization to and including February 26, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including April 26, 2024 [doc. 477].

***B. Litigation Prior to the Bankruptcy Cases***

On January 5, 2021, Creditor filed the complaint against Windsor Cheviot Hills, LLC and the non-debtor defendants, initiating case no. 21STCV00208 (the "P-T Employment Action"). Supplemental Declaration of Zachary Wagner [doc. 134], ¶ 1 and Complaint for Damages, attached as Exhibit 1 thereto. In her complaint, Creditor asserts the following claims for relief:

(1) actual/perceived disability harassment in violation of Government Code sections 12940, et seq.; (2) actual/perceived disability discrimination in violation of the Fair Employment and Housing Act (FEHA); (3) actual/perceived disability retaliation in violation of FEHA; (4) failure to engage in the good faith interactive process under Cal. Government Code section 12940(n); (5) failure to provide reasonable accommodations in violation of government code section 12940(m); (6) violation of the California Family Rights Act, Cal. Government Code section 12945.2, et seq.; (7) violation of the California Pregnancy Disability Leave Law, Cal. Government Code section 12945; (8) sex/gender harassment in violation of the FEHA; (9) sex/gender discrimination in violation of the FEHA; (10) sex/gender retaliation in violation of the FEHA; (11) race/national origin harassment in violation of the FEHA; (12) race/national origin discrimination in violation of the FEHA; (13) race/national origin retaliation in violation of the FEHA; (14) reporting patient abuse harassment, discrimination and retaliation and/or expulsion in violation of the FEHA; (15) whistleblower violation under Cal. Labor Code section 1102.5; (16) failure to provide meal and rest periods in violation of Cal. Labor Code section 226.7, 512 and IWC wage order; (17) failure to pay overtime wages in violation of Cal. Labor Code section 510 and IWC wage order no. 4; (18) violation of Cal. Bus. & Prof. Code sections 17200 et seq. for unfair business practices; (19) intentional infliction of emotional distress; and (20) injunctive relief – disability discrimination in violation of Cal. Government Code section 12940, et seq.

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

By order of the state court, the P-T Employment Action is in arbitration. Supplemental Declaration of Zachary Wagner, ¶ 8. The arbitration proceeding is estimated to require 10 days. Although it was scheduled to begin on January 17, 2024, the arbitration proceeding is being rescheduled by the parties and the arbitrator. *Id.*, ¶ 9.

***C. Relief from Stay Motion***

On September 19, 2023, Creditor filed her *Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in NonBankruptcy Forum)* (the "Motion") [doc. 134], requesting relief to proceed with the P-T Employment Action. Creditor set the Motion for hearing on October 18, 2023. On October 3, 2023, the parties filed a stipulation to continue the hearing to December 6, 2023 [doc. 200], and the Court entered an order continuing the hearing to that date [doc. 207].

In the Debtors' lead bankruptcy case of Windsor Terrace Healthcare, LLC, three other motions for relief from the automatic stay also have been set for hearing in December 2023. Prepetition, each of the movants filed a complaint against one of the Debtors, as well as non-debtor parties, asserting claims for damages under California law. One of these movants (like Creditor) asserts claims arising from her prior employment with one of the Debtors, and the other two movants assert claims regarding former residents at one of the Debtors' facilities. Each of the movants seeks relief from the stay in order for that creditor/plaintiff to proceed with her litigation in a nonbankruptcy forum and thus liquidate the amount of damages owed by the Debtor at issue, i.e., through arbitration proceedings or at trial in the state court. Unlike Creditor, the other movants have not yet filed a proof of claim; until the bar date passes, these movants retain the opportunity to do so on a timely basis.

**II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY**

***A. Burden of Proof***

"The burden of proof on a motion to modify the automatic stay is a shifting one. To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC

Chapter 11

stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied." *In re Advanced Medical Spa, Inc.*, 2016 WL 6958130, \*4 (9<sup>th</sup> Cir. BAP Nov. 28, 2016); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

***B. Relief from Stay Under 11 U.S.C. § 362(d)(1)***

The Ninth Circuit Court of Appeals has explained that the "purpose of § 362(a)'s automatic stay is to protect both the debtor and his creditors." *In re Conejo Enterprises, Inc.*, 96 F.3d 346, 351 (9<sup>th</sup> Cir. 1996). The Court of Appeals noted that "the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions [and] permits the debtor to attempt a repayment or reorganization plan." *Id.*

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7<sup>th</sup> Cir. 1995).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT...**

**Windsor Terrace Healthcare, LLC**

**Chapter 11**

creditors, the creditors' committee and other interested parties.

- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*Plumberex Specialty Prods.*, 311 B.R. at 559-560; *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Not all of these factors are relevant in every case, nor is a court required to give each of the factors equal weight in making its determination. *Plumberex Specialty Prods.*, 311 B.R. at 560 (internal citations omitted). In *Curtis*, 40 B.R. at 806, the court stated that the "most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."

"When considering an early filed motion for relief under this section, the Court first determines, under the facts presented, whether the reorganization in these early stages would be objectively futile...." *In re C.C. Rider, Inc.*, 1997 WL 33344313, \*2 (Bankr. D. S.C. Aug. 19, 1997). See also *Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered)*, 382 B.R. 90, 108-109 (Bankr. E.D. Mich. 2008) (in early stages of large chapter 11 case, court "is just not persuaded that the balancing of the various interests in the case supports a finding at this time that there is cause to lift the automatic stay.")

In *Conejo Enterprises*, prior to filing its proof of claim, a creditor filed a motion for relief from the automatic stay, in a chapter 11 case, to proceed with its state court action. The bankruptcy court denied creditor's motion. The creditor appealed the bankruptcy court's decision to the district court. The district court held that the state

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC

Chapter 11

court action was a non-core proceeding, subject to mandatory abstention under 28 U.S.C. § 1334(c)(2), and reversed the bankruptcy court's decision denying relief from the automatic stay. Thereafter, the chapter 11 trustee and another creditor appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals reversed the district court's decision to grant relief from the automatic stay, holding that the bankruptcy court's denial of the motion to lift the stay was not an abuse of discretion. *Conejo Enterprises*, 96 F.3d at 352. In doing so, the Court of Appeals noted and approved the following grounds considered by the bankruptcy court:

- (1) staying the state action gave the bankruptcy court and the other parties time to see whether [creditor] would file a proof of claim before the upcoming claims bar date, or effectively waive its right to payment from the bankruptcy estate; (2) staying the state action promoted judicial economy by minimizing the duplication of litigation in two separate forums and promoting the efficient administration of the estate; and (3) staying the state action preserved a level playing field for negotiation of a consensual reorganization plan. All of these grounds for denying relief from the automatic stay are reasonable and supported by the record.

*Id.*

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

Windsor Terrace Healthcare, LLC

Represented By  
Ron Bender  
Juliet Y. Oh  
Monica Y Kim  
Lindsey L Smith  
Robert Carrasco

**Movant(s):**

Virginia Pech-Torres X

Represented By  
Gregory M Salvato

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**1:23-11200 Windsor Terrace Healthcare, LLC**

**Chapter 11**

**#1.02 Motion for relief from stay [AN]**

MARIA DE LA PARRA  
VS  
DEBTOR

fr. 10/18/23(stip); 12/6/23

Docket 158

**Tentative Ruling:**

Taking into account, among other things, the facts, the applicable legal standards and case law set forth below, and the evidence submitted regarding the debtors' insurance coverage, the Court will decide the matter after hearing oral argument.

The Court will hear oral argument for each of the four pending relief from stay motions, prior to making a decision on each of them.

For that oral argument, the Court will provide the movant for each of those motions with up to 15 minutes of time and the debtors and the two Official Committees of Unsecured Creditors with up to 15 minutes of time for each of the motions, which 15 minutes will be shared between the debtors and those committees.

**I. BACKGROUND**

***A. The Bankruptcy Cases***

On August 23, 2023, Windsor Terrace Healthcare, LLC and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, the "Debtors"). The Court has approved the joint administration of these cases.

The Debtors are managing their financial affairs and administering their bankruptcy

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

estates as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. Declaration of Tianxiang "Shawn" Zhou ("Zhou Declaration") [doc. 424], ¶ 6. An Official Committee of Unsecured Creditors has been appointed with respect to each of the Debtors' cases; one such Committee for the Original Debtors and one such Committee for the New Debtors (the "Committees").

The Debtors are primarily engaged in the businesses of owning and operating skilled nursing facilities throughout California. The Debtors provide 24 hour, seven days a week care to patients that reside in their facilities. In addition to the eighteen skilled nursing facilities, the Debtors have one assisted living facility, one home health care center and one hospice center. As of the petition date, the Debtors' facilities had more than 2,000 patients and are staffed by over 2,300 full and part-time employees. While there are twenty-one separate chapter 11 debtors, the Debtors operate as one business enterprise. Zhou Declaration, ¶¶ 7-8.

All of the Debtors' facilities are licensed by the California Department of Public Health, and the administrative services are provided by an affiliated entity, Newgen Administrative Services, LLC ("Newgen"). Newgen services and handles all of the administrative tasks for all of the Debtors, for which it is paid a monthly administrative fee. Newgen (and the Debtors' current owners) assumed control over the administrative services of the Debtors' facilities on or around March 1, 2023, and the Debtors' current owners acquired the ownership of the Debtors on or around July 1, 2023. *Id.*, ¶¶ 8 and 11.

Prior to the Debtors' bankruptcy cases, there were more than 75 lawsuits filed against the Debtors. More specifically, there were approximately 23 employment lawsuits and 52 resident lawsuits brought against the Debtors. *Id.*, ¶¶ 10 and 13. Absent the bankruptcy cases, the Debtors anticipate that the number of lawsuits could be well over 100, with claims exceeding tens of millions of dollars over the next few years. *Id.*, ¶ 10.

On October 6, 2023, the Original Debtors filed their statements of financial affairs, and on October 27, 2023, the New Debtors filed their statements of financial affairs. In its statement of financial affairs, each Debtor identified the legal actions, proceedings and arbitrations in which that Debtor was involved, in any capacity, within one year before filing its chapter 11 petition. For example, Windsor Terrace

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

Healthcare, LLC identified nine proceedings pending against it, as a defendant, including in the Superior Court of the State of California (the "Superior Court"), a class action regarding employee claims in the United States District Court for the Central District of California (the "Employees Class Action") and an appeal in the Court of Appeal for the State of California [case no. 1:23-bk-11200, doc. 232]. Windsor Cheviot Hills, LLC identified ten proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11206, doc. 10]. Windsor Gardens Convalescent Hospital, Inc. identified six proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11214, doc. 11]. Rather than the Court summarizing this information as set forth in the statement of financial affairs filed by each of the other eighteen Debtors, the Court will take judicial notice of each of the Debtors' statements of financial affairs and the Debtors' representations therein regarding litigation which commenced prepetition and is pending against each of them, as defendants.

The bar date for filing proofs of claims against the Debtors is January 31, 2024. To date, Maria de la Parra ("Creditor") has not filed a proof of claim.

The Debtors represent that they are actively negotiating distribution terms with the Committees under a chapter 11 plan and that the plan will include proposed treatment terms for payout amounts and an orderly and equal process by which litigant claims will be liquidated. Zhou Declaration, ¶ 32. On November 16, 2023, the Debtors filed a motion to extend the exclusivity periods for the Debtors to file such a plan and obtain acceptances [doc. 394]. After notice and a hearing, and in accordance with a Stipulation between the Debtors and the Committees, the Court extended the exclusivity periods for the Original Debtors: (i) to file a plan of reorganization to and including January 20, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including March 20, 2024. The Court similarly extended the exclusivity periods for the New Debtors: (i) to file a plan of reorganization to and including February 26, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including April 26, 2024 [doc. 477].

***B. Litigation Prior to the Bankruptcy Cases***

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

On February 17, 2022, Creditor, the spouse of a former resident, Fred C. Arko, Jr. (deceased), filed the complaint against Windsor Cheviot Hills, LLC and the non-debtor defendants, *i.e.*, Windsor Healthcare Management, Inc., and S&F Management Company, LLC, initiating case no. 22STCV06034 (the "De La Parra Action"). Declaration of Maria de la Parra ("de la Parra Decl.") [doc. 158], p. 6 and Complaint, attached as Exhibit 1 thereto. In her complaint, Creditor asserts the following claims for relief:

(1) statutory elder abuse/neglect; (2) violation of Patient's Bill of Rights and Health and Safety Code § 1430(b); (3) wrongful death; (4) negligent hiring, training and supervision; (5) negligence; and (6) unfair business practices.

A trial in the De La Parra Action is scheduled to begin on August 19, 2024. de la Parra Decl., p. 6. Creditor states that the trial is estimated to require seven to ten days. *Id.*

***C. Relief from Stay Motion***

On September 27, 2023, Creditor filed her *Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in NonBankruptcy Forum)* (the "Motion") [doc. 158], requesting relief to proceed with the De La Parra Action. Creditor set the Motion for hearing on October 18, 2023. On October 3, 2023, the parties filed a stipulation to continue the hearing to December 6, 2023 [doc. 201], and the Court entered an order continuing the hearing to that date [doc. 208].

In the Debtors' lead bankruptcy case of Windsor Terrace Healthcare, LLC, three other motions for relief from the automatic stay also have been set for hearing in December 2023. Prepetition, each of the movants filed a complaint against one of the Debtors, as well as non-debtor parties, asserting claims for damages under California law. Two of the movants assert claims arising from their prior employment with one of the Debtors, and the other movant asserts claims regarding a former resident of one of the Debtors' facilities. Each of the movants seeks relief from the stay in order for that creditor/plaintiff to proceed with her litigation in a nonbankruptcy forum and thus liquidate the amount of damages owed by the Debtor at issue, *i.e.*, through arbitration proceedings or at trial in the state court. Like the Creditor, several of these movants have not yet filed a proof of claim; until the bar date passes, these movants retain the

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC  
opportunity to do so on a timely basis.

Chapter 11

## II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY

### A. Burden of Proof

"The burden of proof on a motion to modify the automatic stay is a shifting one. To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied." *In re Advanced Medical Spa, Inc.*, 2016 WL 6958130, \*4 (9<sup>th</sup> Cir. BAP Nov. 28, 2016); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

### B. Relief from Stay Under 11 U.S.C. § 362(d)(1)

The Ninth Circuit Court of Appeals has explained that the "purpose of § 362(a)'s automatic stay is to protect both the debtor and his creditors." *In re Conejo Enterprises, Inc.*, 96 F.3d 346, 351 (9<sup>th</sup> Cir. 1996). The Court of Appeals noted that "the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions [and] permits the debtor to attempt a repayment or reorganization plan." *Id.*

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7<sup>th</sup> Cir. 1995).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy forum include:

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT...**

**Windsor Terrace Healthcare, LLC**

**Chapter 11**

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*Plumberex Specialty Prods.*, 311 B.R. at 559-560; *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Not all of these factors are relevant in every case, nor is a court required to give each of the factors equal weight in making its determination. *Plumberex Specialty Prods.*, 311 B.R. at 560 (internal citations omitted). In *Curtis*, 40 B.R. at 806, the court stated that the "most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."

"When considering an early filed motion for relief under this section, the Court first determines, under the facts presented, whether the reorganization in these early stages would be objectively futile...." *In re C.C. Rider, Inc.*, 1997 WL 33344313, \*2

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

**CONT...** Windsor Terrace Healthcare, LLC **Chapter 11**

(Bankr. D. S.C. Aug. 19, 1997). *See also Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered)*, 382 B.R. 90, 108-109 (Bankr. E.D. Mich. 2008) (in early stages of large chapter 11 case, court "is just not persuaded that the balancing of the various interests in the case supports a finding at this time that there is cause to lift the automatic stay.")

In *Conejo Enterprises*, prior to filing its proof of claim, a creditor filed a motion for relief from the automatic stay, in a chapter 11 case, to proceed with its state court action. The bankruptcy court denied creditor's motion. The creditor appealed the bankruptcy court's decision. The district court held that the state court action was a non-core proceeding, subject to mandatory abstention under 28 U.S.C. § 1334(c)(2), and reversed the bankruptcy court's decision denying relief from the automatic stay. Thereafter, the chapter 11 trustee and another creditor appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals reversed the district court's decision to grant relief from the automatic stay, holding that the bankruptcy court's denial of the motion to lift the stay was not an abuse of discretion. *Conejo Enterprises*, 96 F.3d at 352. In doing so, the Court of Appeals noted and approved the following grounds considered by the bankruptcy court:

- (1) staying the state action gave the bankruptcy court and the other parties time to see whether [creditor] would file a proof of claim before the upcoming claims bar date, or effectively waive its right to payment from the bankruptcy estate; (2) staying the state action promoted judicial economy by minimizing the duplication of litigation in two separate forums and promoting the efficient administration of the estate; and (3) staying the state action preserved a level playing field for negotiation of a consensual reorganization plan. All of these grounds for denying relief from the automatic stay are reasonable and supported by the record.

*Id.*

**Party Information**

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

---

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

**Debtor(s):**

Windsor Terrace Healthcare, LLC

Represented By  
Ron Bender  
Juliet Y. Oh  
Monica Y Kim  
Lindsey L Smith  
Robert Carrasco

**Movant(s):**

Maria de la Parra

Represented By  
Derrick Talerico

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**1:23-11200 Windsor Terrace Healthcare, LLC**

**Chapter 11**

**#1.03 Motion for relief from stay [AN]**

IRENE PRZEBINDA, AN INDIVIDUAL AND AS SUCCESSOR IN-INTEREST  
FOR SOPHIA GROSS, DECEASED  
VS  
DEBTOR

fr. 11/15/23; 12/6/23

Docket 268

**Tentative Ruling:**

Taking into account, among other things, the facts, the applicable legal standards and case law set forth below, and the evidence submitted regarding the debtors' insurance coverage, the Court will decide the matter after hearing oral argument.

The Court will hear oral argument for each of the four pending relief from stay motions, prior to making a decision on each of them.

For that oral argument, the Court will provide the movant for each of those motions with up to 15 minutes of time and the debtors and the two Official Committees of Unsecured Creditors with up to 15 minutes of time for each of the motions, which 15 minutes will be shared between the debtors and those committees.

**I. BACKGROUND**

*A. The Bankruptcy Cases*

On August 23, 2023, Windsor Terrace Healthcare, LLC and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors" and collectively with the Original Debtors, the "Debtors"). The Court has approved the joint administration of these cases.

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

The Debtors are managing their financial affairs and administering their bankruptcy estates as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. Declaration of Tianxiang "Shawn" Zhou ("Zhou Declaration") [doc. 424], ¶ 6. An Official Committee of Unsecured Creditors has been appointed with respect to each of the Debtors' cases; one such Committee for the Original Debtors and one such Committee for the New Debtors (the "Committees").

The Debtors are primarily engaged in the businesses of owning and operating skilled nursing facilities throughout California. The Debtors provide 24 hour, seven days a week care to patients that reside in their facilities. In addition to the eighteen skilled nursing facilities, the Debtors have one assisted living facility, one home health care center and one hospice center. As of the petition date, the Debtors' facilities had more than 2,000 patients and are staffed by over 2,300 full and part-time employees. While there are twenty-one separate chapter 11 debtors, the Debtors operate as one business enterprise. Zhou Declaration, ¶¶ 7-8.

All of the Debtors' facilities are licensed by the California Department of Public Health, and the administrative services are provided by an affiliated entity, Newgen Administrative Services, LLC ("Newgen"). Newgen services and handles all of the administrative tasks for all of the Debtors, for which it is paid a monthly administrative fee. Newgen (and the Debtors' current owners) assumed control over the administrative services of the Debtors' facilities on or around March 1, 2023, and the Debtors' current owners acquired the ownership of the Debtors on or around July 1, 2023. *Id.*, ¶¶ 8 and 11.

Prior to the Debtors' bankruptcy cases, there were more than 75 lawsuits filed against the Debtors. More specifically, there were approximately 24 employment lawsuits and 52 resident lawsuits brought against the Debtors. *Id.*, ¶¶ 10 and 13. Absent the bankruptcy cases, the Debtors anticipate that the number of lawsuits could be well over 100, with claims exceeding tens of millions of dollars over the next few years. *Id.*, ¶ 10.

On October 6, 2023, the Original Debtors filed their statements of financial affairs, and on October 27, 2023, the New Debtors filed their statements of financial affairs. In its statement of financial affairs, each Debtor identified the legal actions,

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC

Chapter 11

proceedings and arbitrations in which that Debtor was involved, in any capacity, within one year before filing its chapter 11 petition. For example, Windsor Terrace Healthcare, LLC identified nine proceedings pending against it, as a defendant, including in the Superior Court of the State of California (the "Superior Court"), a class action regarding employee claims in the United States District Court for the Central District of California (the "Employees Class Action") and an appeal in the Court of Appeal for the State of California [case no. 1:23-bk-11200, doc. 232]. Windsor Cheviot Hills, LLC identified ten proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11206, doc. 10]. Windsor Gardens Convalescent Hospital, Inc. identified six proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11214, doc. 11]. Rather than the Court summarizing this information as set forth in the statement of financial affairs filed by each of the other eighteen Debtors, the Court will take judicial notice of each of the Debtors' statements of financial affairs and the Debtors' representations therein regarding litigation which commenced prepetition and is pending against each of them, as defendants.

The bar date for filing proofs of claims against the Debtors is January 31, 2024. To date, Irene Przebinda ("Creditor") has not filed a proof of claim.

The Debtors represent that they are actively negotiating distribution terms with the Committees under a chapter 11 plan and that the plan will include proposed treatment terms for payout amounts and an orderly and equal process by which litigant claims will be liquidated. Zhou Declaration, ¶ 33. On November 16, 2023, the Debtors filed a motion to extend the exclusivity periods for the Debtors to file a plan and obtain acceptances [doc. 394]. After notice and a hearing, and in accordance with a Stipulation between the Debtors and the Committees, the Court extended the exclusivity periods for the Original Debtors: (i) to file a plan of reorganization to and including January 20, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including March 20, 2024. The Court similarly extended the exclusivity periods for the New Debtors: (i) to file a plan of reorganization to and including February 26, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including April 26, 2024 [doc. 477].

***B. Litigation Prior to the Bankruptcy Cases***

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

On May 10, 2022, Creditor, on behalf of Sophia Gross, filed the complaint against Windsor Gardens Convalescent Hospital, Inc. ("Windsor Gardens") and the non-debtor defendants, *i.e.*, S&F Management Company, LLC, John T. Liu, M.D., SNP Pharmacy, LLC (the "Non-Debtor Defendants"), initiating case no. 22STCV15487 ("Przebinda Complaint #1"). On August 19, 2022, Creditor filed a second complaint against Windsor Gardens and the Non-Debtor Defendants, initiating case no. 22STCV15408 ("Przebinda Complaint #2") (together, the Przebinda Actions). Declaration of Irene Przebinda ("Przebinda Declaration") [doc. 268], and complaints, attached as Exhibits A and B thereto.

Creditor filed Przebinda Complaint #1 on behalf of her deceased mother, Sophia Gross, alleging elder abuse and neglect, violation of resident's rights and negligence. In Przebinda Complaint #1, Creditor asserts the following claims for relief against Windsor Gardens:

- (1) elder abuse/neglect, pursuant to Welfare and Institutions Code §§ 15657 and 15610.57;
- (2) negligence, pursuant to Code of Civil Procedure § 377.34(b);
- (3) violation of resident's rights, pursuant to Health and Safety Code § 1430; and
- (4) elder abuse/financial (wrongful advantage), pursuant to Welfare and Institutions Code §§ 15610.30 and 15657.5.

In Przebinda Complaint #2, Creditor, on behalf of herself, asserts damages for the wrongful death of Sophia Gross.

Creditor represents that the Przebinda Actions are consolidated and in the advanced stages of discovery; they have not been set for trial. Przebinda Declaration, pp. 6-7. Based on the experience of Creditor's state court counsel with the judge, Creditor believes that the Przebinda Actions will be set for trial by November 1, 2024. *Id.*, p. 7. In Creditor's Memorandum of Points and Authorities filed in support of the Motion, Creditor represents that: "The State Court has allowed the [Przebinda Actions] to resume as against all the named defendants, excluding [Windsor Gardens]. Nonetheless, the State Court Judge indicated that 5-year mandatory dismissal term [sic] would continue to run against [Windsor Gardens] despite the bankruptcy." If

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

such is the case, the applicable dismissal terms would expire on May 10, 2027 and August 19, 2027.

***C. Relief from Stay Motion***

On October 20, 2023, Creditor filed the Motion [doc. 268], requesting relief to proceed with the Przebinda Actions. Creditor set the Motion for hearing on November 15, 2023. On October 26, 2023, the parties filed a stipulation to continue the hearing to December 6, 2023 [doc. 289], and the Court entered an order continuing the hearing to that date [doc. 298].

In the Debtors' lead bankruptcy case of Windsor Terrace Healthcare, LLC, three other motions for relief from the automatic stay also have been set for hearing in December 2023. Prepetition, each of the movants filed a complaint against one of the Debtors, as well as non-debtor parties, asserting claims for damages under California law. Two of the movants assert claims arising from their prior employment with one of the Debtors, and the other movant asserts claims regarding a former resident of one of the Debtors' facilities. Each of the movants seeks relief from the stay in order for that creditor/plaintiff to proceed with her litigation in a nonbankruptcy forum and thus liquidate the amount of damages owed by the Debtor at issue, i.e., through arbitration proceedings or at trial in the state court. Like the Creditor, several of these movants have not yet filed a proof of claim; until the bar date passes, these movants retain the opportunity to do so on a timely basis.

**II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY**

***A. Burden of Proof***

"The burden of proof on a motion to modify the automatic stay is a shifting one. To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied." *In re Advanced Medical Spa, Inc.*, 2016 WL 6958130, \*4 (9<sup>th</sup> Cir. BAP Nov. 28, 2016); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**  
(Bankr. C.D. Cal. 2004).

**Chapter 11**

***B. Relief from Stay Under 11 U.S.C. § 362(d)(1)***

The Ninth Circuit Court of Appeals has explained that the "purpose of § 362(a)'s automatic stay is to protect both the debtor and his creditors." *In re Conejo Enterprises, Inc.*, 96 F.3d 346, 351 (9<sup>th</sup> Cir. 1996). The Court of Appeals noted that "the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions [and] permits the debtor to attempt a repayment or reorganization plan." *Id.*

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7<sup>th</sup> Cir. 1995).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT...**

**Windsor Terrace Healthcare, LLC**

**Chapter 11**

lien avoidable by the debtor under Section 522(f).

- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

*Plumberex Specialty Prods.*, 311 B.R. at 559-560; *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Not all of these factors are relevant in every case, nor is a court required to give each of the factors equal weight in making its determination. *Plumberex Specialty Prods.*, 311 B.R. at 560 (internal citations omitted). In *Curtis*, 40 B.R. at 806, the court stated that the "most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."

"When considering an early filed motion for relief under this section, the Court first determines, under the facts presented, whether the reorganization in these early stages would be objectively futile...." *In re C.C. Rider, Inc.*, 1997 WL 33344313, \*2 (Bankr. D. S.C. Aug. 19, 1997). See also *Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered)*, 382 B.R. 90, 108-109 (Bankr. E.D. Mich. 2008) (in early stages of large chapter 11 case, court "is just not persuaded that the balancing of the various interests in the case supports a finding at this time that there is cause to lift the automatic stay.")

In *Conejo Enterprises*, prior to filing its proof of claim, a creditor filed a motion for relief from the automatic stay, in a chapter 11 case, to proceed with its state court action. The bankruptcy court denied creditor's motion. The creditor appealed the bankruptcy court's decision. The district court held that the state court action was a non-core proceeding, subject to mandatory abstention under 28 U.S.C. § 1334(c)(2), and reversed the bankruptcy court's decision denying relief from the automatic stay. Thereafter, the chapter 11 trustee and another creditor appealed to the Ninth Circuit Court of Appeals.

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC

Chapter 11

The Court of Appeals reversed the district court's decision to grant relief from the automatic stay, holding that the bankruptcy court's denial of the motion to lift the stay was not an abuse of discretion. *Conejo Enterprises*, 96 F.3d at 352. In doing so, the Court of Appeals noted and approved the following grounds considered by the bankruptcy court:

(1) staying the state action gave the bankruptcy court and the other parties time to see whether [creditor] would file a proof of claim before the upcoming claims bar date, or effectively waive its right to payment from the bankruptcy estate; (2) staying the state action promoted judicial economy by minimizing the duplication of litigation in two separate forums and promoting the efficient administration of the estate; and (3) staying the state action preserved a level playing field for negotiation of a consensual reorganization plan. All of these grounds for denying relief from the automatic stay are reasonable and supported by the record.

*Id.*

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

Windsor Terrace Healthcare, LLC

Represented By  
Ron Bender  
Juliet Y. Oh  
Monica Y Kim  
Lindsey L Smith  
Robert Carrasco

**Movant(s):**

Irene Przebinda

Represented By  
Lior Katz

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**1:23-11200 Windsor Terrace Healthcare, LLC**

**Chapter 11**

**#1.04** Motion for relief from stay [AN]

CYNTHIA BATAK  
VS  
DEBTOR

fr. 9/27/23; 12/6/23

Docket 89

**Tentative Ruling:**

Taking into account, among other things, the facts, the applicable legal standards and case law set forth below, and the evidence submitted regarding the debtors' insurance coverage, the Court will decide the matter after hearing oral argument.

The Court will hear oral argument for each of the four pending relief from stay motions, prior to making a decision on each of them.

For that oral argument, the Court will provide the movant for each of those motions with up to 15 minutes of time and the debtors and the two Official Committees of Unsecured Creditors with up to 15 minutes of time for each of the motions, which 15 minutes will be shared between the debtors and those committees.

**I. BACKGROUND**

***A. The Bankruptcy Cases***

On August 23, 2023, Windsor Terrace Healthcare, LLC and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, the "Debtors"). The Court has approved the joint administration of these cases.

The Debtors are managing their financial affairs and administering their bankruptcy

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

estates as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. An Official Committee of Unsecured Creditors has been appointed with respect to each of the Debtors' cases; one such Committee for the Original Debtors and one such Committee for the New Debtors (the "Committees").

The Debtors are primarily engaged in the businesses of owning and operating skilled nursing facilities throughout California. The Debtors provide 24 hour, seven days a week care to patients that reside in their facilities. In addition to the eighteen skilled nursing facilities, the Debtors have one assisted living facility, one home health care center and one hospice center. As of the petition date, the Debtors' facilities had more than 2,000 patients and are staffed by over 2,300 full and part-time employees. The Debtors operate as one business enterprise. Declaration of Tianxiang "Shawn" Zhou ("Zhou Declaration"), ¶¶ 6, 7 and 9 [doc. 112].

All of the Debtors' facilities are licensed by the California Department of Public Health, and the administrative services are provided by an affiliated entity, Newgen Administrative Services, LLC ("Newgen"). Newgen services and handles all of the administrative tasks for all of the Debtors, for which it is paid a monthly administrative fee. Newgen (and the Debtors' current owners) assumed control over the administrative services of the Debtors' facilities on or around March 1, 2023, and the Debtors' current owners acquired the ownership of the Debtors on or around July 1, 2023. *Id.*, ¶¶ 8, 10 and 13.

Prior to the Debtors' bankruptcy cases, there were more than 65 lawsuits filed against the Debtors. Absent the bankruptcy cases, the Debtors anticipate that the number of lawsuits could be well over 100, with claims exceeding tens of millions of dollars over the next few years. *Id.*, ¶ 12.

On October 6, 2023, the Original Debtors filed their statements of financial affairs, and on October 27, 2023, the New Debtors filed their statements of financial affairs. In its statement of financial affairs, each Debtor identified the legal actions, proceedings and arbitrations in which that Debtor was involved, in any capacity, within one year before filing its chapter 11 petition. For example, Windsor Terrace Healthcare, LLC identified nine proceedings pending against it, as a defendant, including in the Superior Court of the State of California (the "Superior Court"), a class action regarding employee claims in the United States District Court for the

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

Central District of California (the "Employees Class Action") and an appeal in the Court of Appeal for the State of California [case no. 1:23-bk-11200, doc. 232]. Windsor Cheviot Hills, LLC identified ten proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11206, doc. 10]. Windsor Gardens Convalescent Hospital, Inc. identified six proceedings pending against it, as a defendant, including in the Superior Court and the Employees Class Action [case no. 1:23-bk-11214, doc. 11]. Rather than the Court summarizing this information as set forth in the statement of financial affairs filed by each of the other eighteen Debtors, the Court will take judicial notice of each of the Debtors' statements of financial affairs and the Debtors' representations therein regarding litigation which commenced prepetition and is pending against each of them, as defendants.

The bar date for filing proofs of claims against the Debtors is January 31, 2024. To date, Cynthia Batac ("Creditor") has not filed a proof of claim.

The Debtors represent that they are actively negotiating distribution terms with the Committees under a chapter 11 plan and that the plan will include proposed treatment terms for payout amounts and an orderly and equal process by which litigant claims will be liquidated. On November 16, 2023, the Debtors filed a motion to extend the exclusivity periods for the Debtors to file a plan and obtain acceptances [doc. 394]. After notice and a hearing, and in accordance with a Stipulation between the Debtors and the Committees, the Court extended the exclusivity periods for the Original Debtors: (i) to file a plan of reorganization to and including January 20, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including March 20, 2024. The Court similarly extended the exclusivity periods for the New Debtors: (i) to file a plan of reorganization to and including February 26, 2024; and (ii) to obtain acceptances of a plan of reorganization to and including April 26, 2024 [doc. 477].

***B. Litigation Prior to the Bankruptcy Cases***

In March 2023, Creditor filed the complaint (the "Batac State Court Complaint") against Windsor Terrace Healthcare, LLC and the non-debtor defendants, i.e., Windsor Healthcare Management, Inc., SNF Management Company, LLC, CPE HR, Inc., Modern HR, Inc., and Amanda Moore in the Superior Court of the State of California for the County of Los Angeles, initiating case no. 23STCV06987 (the

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

"Batac Action"). Declaration of Cynthia Batac ("Batac Declaration") [doc. 89], p. 6 and Complaint for Damages, attached as Exhibit A thereto. In the Batac State Court Complaint, Creditor asserts 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).

According to the Batac State Court Complaint, on September 26, 2019, Creditor was hired for the position of Health Administration Director at the skilled nursing facility of Windsor Terrace Healthcare, LLC, and on June 24, 2021, Creditor's employment was terminated.

On May 31, 2023, Windsor Terrace Healthcare, LLC filed a motion to compel arbitration for itself, Windsor Healthcare Management, Inc., SNF Management Company, LLC and Amanda Moore; co-defendants CPE HR Inc and Modern HR, Inc. joined in that motion. Declaration of Suzanne E. Rand-Lewis, filed on September 20, 2023, ¶ 16 [doc. 138]. On August 17, 2023, the Superior Court granted that motion to compel, and Creditor filed her claim with the American Arbitration Association. *Id.*, ¶ 18. As of September 20, 2023, the arbitration had not yet proceeded, and an arbitrator had not been appointed. *Id.*, ¶¶ 2 and 22.

Creditor did not name Newgen, or successors in interest for Windsor Terrace Healthcare, LLC, as defendants in her original complaint. Creditor's counsel in the Batac Action represents that Creditor has since added them as non-debtor defendants. Declaration of Suzanne E. Rand-Lewis, filed on November 29, 2023, ¶ 10 [doc. 467].

***C. Relief from Stay Motion***

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

Wednesday, December 13, 2023

Hearing Room 301

9:30 AM

CONT... Windsor Terrace Healthcare, LLC

Chapter 11

On September 6, 2023, Creditor filed her *Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in NonBankruptcy Forum)* (the "Motion") [doc. 89], requesting relief to proceed with the Batac Action. Creditor set the Motion for hearing on September 27, 2023. Following that hearing, on October 5, 2023, the Court entered an order continuing the hearing to December 6, 2023 [doc. 225].

In the Debtors' lead bankruptcy case of Windsor Terrace Healthcare, LLC, three other motions for relief from the automatic stay also have been set for hearing in December 2023. Prepetition, each of the movants filed a complaint against one of the Debtors, as well as non-debtor parties, asserting claims for damages under California law. One of the movants (like Creditor) asserts a claim arising from her prior employment with one of the Debtors, and the other two movants assert claims regarding former residents at one of the Debtors' facilities. Each of the movants seeks relief from the stay in order for that creditor/plaintiff to proceed with her litigation in a nonbankruptcy forum and thus liquidate the amount of damages owed by the Debtor at issue, i.e., through arbitration proceedings or at trial in the state court. Like Creditor, several of the other movants have not yet filed a proof of claim; until the bar date passes, these movants retain the opportunity to do so on a timely basis.

## II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY

### A. Burden of Proof

"The burden of proof on a motion to modify the automatic stay is a shifting one. To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied." *In re Advanced Medical Spa, Inc.*, 2016 WL 6958130, \*4 (9<sup>th</sup> Cir. BAP Nov. 28, 2016); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

### B. Relief from Stay Under 11 U.S.C. § 362(d)(1)

The Ninth Circuit Court of Appeals has explained that the "purpose of § 362(a)'s

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

automatic stay is to protect both the debtor and his creditors." *In re Conejo Enterprises, Inc.*, 96 F.3d 346, 351 (9<sup>th</sup> Cir. 1996). The Court of Appeals noted that "the automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions [and] permits the debtor to attempt a repayment or reorganization plan." *Id.*

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9<sup>th</sup> Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Company, Inc.*, 47 F.3d 233, 238 (7<sup>th</sup> Cir. 1995).

Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the issues.
- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

(12) The impact of the stay on the parties and the "balance of the hurt."

*Plumberex Specialty Prods.*, 311 B.R. at 559-560; *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Not all of these factors are relevant in every case, nor is a court required to give each of the factors equal weight in making its determination. *Plumberex Specialty Prods.*, 311 B.R. at 560 (internal citations omitted). In *Curtis*, 40 B.R. at 806, the court stated that the "most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."

"When considering an early filed motion for relief under this section, the Court first determines, under the facts presented, whether the reorganization in these early stages would be objectively futile...." *In re C.C. Rider, Inc.*, 1997 WL 33344313, \*2 (Bankr. D. S.C. Aug. 19, 1997). See also *Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered)*, 382 B.R. 90, 108-109 (Bankr. E.D. Mich. 2008) (in early stages of large chapter 11 case, court "is just not persuaded that the balancing of the various interests in the case supports a finding at this time that there is cause to lift the automatic stay.")

In *Conejo Enterprises*, prior to filing its proof of claim, a creditor filed a motion for relief from the automatic stay, in a chapter 11 case, to proceed with its state court action. The bankruptcy court denied creditor's motion. The creditor appealed the bankruptcy court's decision. The district court held that the state court action was a non-core proceeding, subject to mandatory abstention under 28 U.S.C. § 1334(c)(2), and reversed the bankruptcy court's decision denying relief from the automatic stay. Thereafter, the chapter 11 trustee and another creditor appealed to the Ninth Circuit Court of Appeals.

The Court of Appeals reversed the district court's decision to grant relief from the automatic stay, holding that the bankruptcy court's denial of the motion to lift the stay was not an abuse of discretion. *Conejo Enterprises*, 96 F.3d at 352. In doing so, the Court of Appeals noted and approved the following grounds considered by the

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**  
bankruptcy court:

**Chapter 11**

(1) staying the state action gave the bankruptcy court and the other parties time to see whether [creditor] would file a proof of claim before the upcoming claims bar date, or effectively waive its right to payment from the bankruptcy estate; (2) staying the state action promoted judicial economy by minimizing the duplication of litigation in two separate forums and promoting the efficient administration of the estate; and (3) staying the state action preserved a level playing field for negotiation of a consensual reorganization plan. All of these grounds for denying relief from the automatic stay are reasonable and supported by the record.

*Id.*

**Ruling regarding the movant's evidentiary objections to the identified paragraphs in the declaration of Monica Y. Kim [doc. 421] set forth below. The Court notes that the page numbers, based on the pages of the entire pleading on the docket, including the declaration, are 119-120.**

The entire declaration of Monica Y. Kim: Overrule

Par. 2, p. 20, lines 8-11: Sustain as to truth of the information provided to the declarant

Par. 2, p. 20, lines 11-13: Sustain as to truth of the information provided to the declarant

Par. 2, p. 20, lines 13-18: Sustain as to truth of the information provided to the declarant

Par. 3, p. 20, lines 21-23: Overrule

Par. 3, p. 20, line 23-p. 21, line 1: Overrule

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

Windsor Terrace Healthcare, LLC

Represented By

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

---

9:30 AM

**CONT... Windsor Terrace Healthcare, LLC**

**Chapter 11**

Ron Bender  
Juliet Y. Oh  
Monica Y Kim  
Lindsey L Smith  
Robert Carrasco

**Movant(s):**

Cynthia Batac

Pro Se

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

9:30 AM

**1:23-11310 Julio Ernesto Midolo**

**Chapter 7**

**#2.00** Motion for relief from stay [PP]

TD BANK, N.A.  
VS  
DEBTOR

Docket 14

**Tentative Ruling:**

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

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

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

Note: No response has been filed. Accordingly, no court appearance by movant 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 movant will be so notified.

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

Julio Ernesto Midolo

Represented By  
Onyinye N Anyama

**Movant(s):**

TD Bank, N.A.

Represented By  
Sheryl K Ith

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

---

9:30 AM

**CONT... Julio Ernesto Midolo**

**Chapter 7**

**Trustee(s):**

Amy L Goldman (TR)

Pro Se

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

Wednesday, December 13, 2023

Hearing Room 301

1:30 PM

**1:22-11453 Livio Ernesto Gomez**

**Chapter 7**

Adv#: 1:23-01002 Balint v. Gomez

**#3.00** Status conference re: first amended complaint for determination of dischargeability and objection to Debtor's discharge pursuant to section 523(A)(6)

fr. 5/3/23; 6/14/23; 10/4/23; 11/8/23

Docket 5

**Tentative Ruling:**

Pursuant to the *Status Conference and Scheduling Order Pursuant to LBR 7016-1(a) (4)* [doc. 24], the status conference has been continued to **1:30 p.m. on March 20, 2024.**

Appearances on December 13, 2023 are excused.

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

Livio Ernesto Gomez

Represented By  
Jason Boyer

**Defendant(s):**

Livio Ernesto Gomez

Represented By  
Jason Boyer

**Plaintiff(s):**

Jessica Balint

Represented By  
Gabor Szabo

**Trustee(s):**

David Seror (TR)

Pro Se

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

1:30 PM

**1:23-10828 Dennis Phillip Ayre**

**Chapter 7**

Adv#: 1:23-01037      Cowan v. Ayre

**#4.00**      Status conference re: first amended complaint to determine non-dischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6) and 523(a)(19)

fr. 11/15/23

Docket      5

**Tentative Ruling:**

Parties should be prepared to discuss the following:

Deadline to complete discovery: 4/1/24.

Deadline to file pretrial motions: 4/17/24.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 5/22/24.

Pretrial: 6/5/24 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(4), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

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

Dennis Phillip Ayre

Represented By  
Navid Kohan

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

**Wednesday, December 13, 2023**

**Hearing Room 301**

1:30 PM

**CONT... Dennis Phillip Ayre**

**Chapter 7**

**Defendant(s):**

Dennis Phillip Ayre

Pro Se

**Plaintiff(s):**

Susan Shapiro Cowan

Represented By  
Leslie A Cohen

**Trustee(s):**

Nancy J Zamora (TR)

Pro Se