

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

9:00 AM

**1:19-10520 Gus Williams**

**Chapter 13**

**#0.01 Motion to Dismiss Chapter 13 Proceedings**

Docket 7

**Tentative Ruling:**

See matter number .02

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

Gus Williams

Pro Se

**Movant(s):**

Camano Group, Inc.

Represented By  
Edward T Weber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

9:00 AM

**1:19-10520 Gus Williams**

**Chapter 13**

**#0.02 Motion for relief from stay**

**CAMANO GROUP, INC**

Docket 5

**Tentative Ruling:**

RFS

Petition Date: March 6, 2019

Chapter: 13

Service: Shortened time. No opposition filed.

Property: 14209 Chandler Blvd., L.A., CA 91401

Property Value: \$ N/A (No schedules filed)

Amount Owed: \$1,613,847.88 (per RFS motion)

Equity Cushion: N/A

Equity: N/A

Post-Petition Delinquency: N/A

Movant requests relief under 11 U.S.C. 362(d)(1), (d)(2), and (d)(4). Specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); 4 (confirm that there is no stay in effect); 6 (termination of the co-debtor stay); 7 (waiver of the 4001(a)(3) stay); 9 (relief under 362(d)(4)).

Camano Group, Inc. ("Movant") argues that this case was filed in bad faith. Movant points to the fact that Debtor exceeds the chapter 13 debt limits of section 109(e) and filed a skeletal petition. Furthermore, Movant argues that this case was filed solely to delay foreclosure, which is scheduled for March 13. Shortly before the bankruptcy, Debtor filed case in California Superior Court to obtain a preliminary injunction against foreclosure, and was unsuccessful. The Debtor's argument in the Superior Court was that Movant violated the California Homeowner's Bill of Rights by failing to make pre-foreclosure contact. The Superior Court, however, agreed with Movant that the property was not subject to the Homeowner's Bill of Rights because the loan issued by Movant was for commercial or investment property, not to be used as Debtor's primary residence.

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**CONT...**

**Gus Williams**

**Chapter 13**

Furthermore, the Court has discovered that the Debtor filed another bankruptcy case in the Northern District of California two days after the initiation of this case, 19-40551-WJL. While Debtor lists the Chandler Blvd. property as his residence in the instant bankruptcy case, Debtor lists his home address in the Northern District case as 4081 #209 Clayton Rd. Concord, CA. For both bankruptcies, however, Debtor lists his mailing address as PO Box 1683, Union City, CA 94587. Similarly, Debtor filed two bankruptcies in California Northern in 2017: 17-41219 and 17-41844. In each of the 2017 bankruptcies, Debtor listed his home address was 1859 Hartnell St., Union City, CA 94587, but used the same PO Box 1683 in Union City as his mailing address. While Debtor represented to the Superior Court that he had moved into the Chandler Blvd. property despite not intending to live there, the Court very much doubts that Debtor filed this bankruptcy, moved to Union City, and filed a new bankruptcy within two days. This case appears to be part of a scheme to hinder, delay, or defraud creditors.

Motion is DENIED under (d)(2), as neither Debtor nor Movant have produced any evidence of value from which the Court would determine whether Debtor has equity in the property.

The motion is also DENIED as moot as to paragraph 6, because there is no evidence that there is a co-debtor with respect to this property. The loan documents attached to the motion indicate that Debtor was the only borrower with respect to the property, Debtor's incomplete schedules do not list a co-debtor, and no co-debtor was served.

The motion is further DENIED under paragraph 4, as it appears that the automatic stay is in effect. The 2017 bankruptcies were each dismissed more than a year ago, and so do not affect the stay under section 362(c)(4)(A)(i)

Was Debtor properly served with notice per the Order Granting Application and Setting Hearing on Shortened Time?

Assuming service was proper, the motion is GRANTED under section 362(d)(1). Specific relief granted under paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); 7 (waiver of the 4001(a)(3) stay); and 9 (relief under 362(d)(4)).

MTD

Movant brings this motion to dismiss due to the impending foreclosure noted above.

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**CONT... Gus Williams**

**Chapter 13**

Movant argues that Debtor exceeds the secured debt limitations provided for in § 109(e). The chapter 13 debt limit is \$1,184,200, while Debtor owes at least \$1,613,847.88 to secured creditors due the Movant's claim. Movant further argues that this case was filed in bad faith. A motion to dismiss a case under § 1307(c) may be granted on request of a party in interest after notice and a hearing for "cause," including unreasonable delay by the debtor that is prejudicial to creditors. The Court finds that this case was part of a scheme to hinder, delay, or defraud creditors. The Court also finds that, for the reasons stated above, that this case represents an unreasonable delay that is prejudicial to creditors. The Court therefore finds that cause exists to dismiss this case. The case is DISMISSED.

APPEARANCE REQUIRED

THIS TENTATIVE RULING MAY BE MODIFIED BEFORE OR AT THE HEARING

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

Gus Williams

Pro Se

**Movant(s):**

Camano Group, Inc.

Represented By  
Edward T Weber

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

9:30 AM

1:14-14636 Joseph Youseffia

Chapter 11

#1.00 Post Confirmation Conference

fr. 1/8/15; 7/30/15, 10/15/15; 1/20/16; 3/31/16,  
6/2/16, 7/28/16, 11/3/16, 7/28/17; 10/18/17; 12/6/17,  
2/7/18; 3/7/18; 4/4/18, 5/23/18, 7/18/18, 8/29/18, 10/17/18

Docket 1

\*\*\* VACATED \*\*\* REASON: Final decree entered -CT

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Joseph Youseffia

Represented By  
William H Brownstein

**Movant(s):**

Joseph Youseffia

Represented By  
William H Brownstein

**United States Bankruptcy Court  
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**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:19-10267 Jose Luis Valadez Torres**

**Chapter 13**

**#1.01** Order 1- Setting Status Conference: 2- Directing Compliance with Applicable Law; and 3- Requiring Debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refile.

Docket 11

**Tentative Ruling:**

- NONE LISTED -

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

Jose Luis Valadez Torres	Pro Se
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**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court  
Central District of California  
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**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:19-10395 Lawrence Mark Gotlieb**

**Chapter 13**

**#1.02** Order (1) Setting status conference; (2) Directing compliance with applicable law; and (3) Requiring debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refiling

Docket 1

**Tentative Ruling:**

- NONE LISTED -

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

Lawrence Mark Gotlieb	Pro Se
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**Trustee(s):**

Elizabeth (SV) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court  
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**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:19-10398 Miriam Santacruz**

**Chapter 13**

**#1.03** Order 1- Setting Status Conference: 2- Directing Compliance with Applicable Law; and 3- Requiring Debtor(s) to explain why this case should not be converted or dismissed with 180-day bar to refile.

Docket 7

**Tentative Ruling:**

- NONE LISTED -

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

Miriam Santacruz

Pro Se

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
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10:00 AM

**1:19-10504 Rafael Sotelo Mendez**

**Chapter 13**

**#1.04** Motion in individual case for order confirming termination of stay

Docket 9

**Tentative Ruling:**

Movant brings this motion on shortened time to confirm that no automatic stay is in effect under section 362(j). The instant case was filed on March 4, 2019. Debtor has two cases which were dismissed within one year of the petition date: 18-10913 (dismissed for failure to make plan payments on 5/31/18) and 18-12894 (dismissed on January 28, 2019). Therefore there is no automatic stay in effect due to the limitations of section 362(c)(4)(A)(ii).

The motion is GRANTED.

Appearance required due to shortened time.

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

Rafael Sotelo Mendez

Represented By  
Thomas B Ure

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:14-13823 Rumio Sato

Chapter 13

#2.00 Motion for relief from stay

BAYVIEW LOAN SERVICING, LLC

Docket 188

**Tentative Ruling:**

Petition Date: 8/14/14

Chapter: 13

Service: Proper. No opposition filed.

Property: 6012 Princeton Ct., Rialto Area, CA 92377

Property Value: \$ (property not scheduled)

Amount Owed: \$ (per RFS motion)

Equity Cushion: 0.0%

Equity: \$0.00.

Post-Petition Delinquency:

A 25% interest in this property was purportedly transferred to the Debtor on July 17, 2019. According to a stipulation filed by the Debtor and movant, Debtor does not accept this transfer, which appears to be a case of "hi-jacking." Debtor stipulates to entry of an order granting *in rem* relief with respect to this property. In the past eight years, there have been five bankruptcies affecting the property due to multiple unauthorized transfers, including the transfer to this Debtor. In one of those previous bankruptcies, another bankruptcy court entered an *in rem* relief from stay order with respect to the property in favor of Bayview. In re Francisco Lopez, 6:18-bk-12073-WJ, Doc. 43. The documents filed in support of the Motion sufficiently demonstrate a scheme to hinder, delay, or defraud this creditor.

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraphs 2 (proceed under non-bankruptcy law); 7 (waiver of the 4001(a)(3) stay); 9 (relief under 362(d)(4)); and 10 (relief binding & effective for 180 days against any debtor).

DENY relief requested in paragraph 11, as such relief requires an adversary action under FRBP 7001(7). The Court appreciates Movant's desire for this extraordinary relief, but it is unclear why two-year *in rem* relief is insufficient for movant's purposes.

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**CONT... Rumio Sato**

**Chapter 13**

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.  
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

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

Rumio Sato

Represented By  
Peter M Lively

**Movant(s):**

BAYVIEW LOAN SERVICING,

Represented By  
Edward G Schloss

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:15-11162 Steven Sandler

Chapter 13

#3.00 Motion for relief from stay

US BANK TRUST NA

fr, 2/6/19

Docket 77

**Tentative Ruling:**

At the previous hearing, the parties indicated that they were reviewing the possibility of a loan modification. What is the status of loan modification efforts?

**Party Information**

**Debtor(s):**

Steven Sandler

Represented By  
Stella A Havkin

**Movant(s):**

US Bank Trust National Association,

Represented By  
Michelle R Ghidotti  
Kristin A Zilberstein

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:15-13702 Margaret Anne Schunk and Michael James Schunk

Chapter 13

#4.00 Motio for relief from stay

SANTANDER CONSUMER USA INC.

Docket 59

**Tentative Ruling:**

Petition Date: 11/7/15  
Chapter: 13  
Service: Proper. No opposition filed.  
Property: 2016 Jeep Cherokee  
Property Value: \$ 11,058 (per debtor's schedules)  
Amount Owed: \$ N/A (Lease)  
Equity Cushion: N/A (Lease)  
Equity: N/A (Lease)  
Post-Petition Delinquency: N/A (Lease)

Debtor voluntarily surrendered the vehicle on 2/2/19 pursuant to the lease.

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.

**Party Information**

**Debtor(s):**

Margaret Anne Schunk

Represented By  
Jeffrey J Hagen

**Joint Debtor(s):**

Michael James Schunk

Represented By  
Jeffrey J Hagen

**Movant(s):**

Santander Consumer USA Inc. dba

Represented By

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10:00 AM

**CONT... Margaret Anne Schunk and Michael James Schunk  
Jennifer H Wang**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:17-10427 Charles Jenkins**

**Chapter 13**

**#5.00 Motion for relief from stay**

**HSBC BANK USA**

Docket 67

**Tentative Ruling:**

Petition Date: 2/17/17

Chapter: 13

Service: Proper. No opposition filed.

Property: 4158 Farmdale Ave., Studio City, CA 91604

Property Value: \$ 1,200,000 (Per debtor's schedules)

Amount Owed: \$ 779,901.02 (per RFS motion)

Equity Cushion: 27% (assuming 8% cost of sale)

Equity: \$232,547.98

Post-Petition Delinquency: \$21,188.42 (4 payments of \$6,442.91 minus suspense balance).

Movant requests relief under 11 U.S.C. 362(d)(1). Specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (movant may engage in loss mitigation activities); and 7 (waiver of the 4001(a)(3) stay).

There is a significant equity cushion on the property. Can the parties work out an APO or plan modification?

**APPEARANCE REQUIRED**

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

Charles Jenkins

Represented By  
Joshua L Sternberg

**Movant(s):**

HSBC BANK USA, NATIONAL

Represented By  
Jamie D Hanawalt  
Kelsey X Luu

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10:00 AM

**CONT... Charles Jenkins**

Alexander K Lee

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:18-10114 Calina Guadalupe Salgado

Chapter 13

#6.00 Motion for relief from stay

SANTANDER CONSUMER USA INC.

Docket 57

**Tentative Ruling:**

Petition Date: 1/11/18  
Chapter: 13  
Service: Proper. No opposition filed.  
Property: 2017 Nissan Rogue  
Property Value: \$ 17,260 (per debtor's schedules)  
Amount Owed: \$ 24,935.98  
Equity Cushion: 0.0%  
Equity: \$0.00.  
Post-petition Delinquency: \$7,083.44

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.  
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Calina Guadalupe Salgado

Represented By  
Anthony P Cara

**Movant(s):**

Santander Consumer USA Inc.

Represented By  
Jennifer H Wang

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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10:00 AM

**1:18-10737 Dana Stone Goldberg and Barry David Goldberg**

**Chapter 13**

**#6.01** Motion for relief from stay

VW CREDIT INC.

fr. MB cal, 2/27/19,

Docket 35

**Tentative Ruling:**

The parties indicated that they were working on an APO. Nothing new has been filed on the docket. What is the status of an APO?

APPEARANCE REQUIRED

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

**Debtor(s):**

Dana Stone Goldberg

Represented By  
Kevin T Simon

**Joint Debtor(s):**

Barry David Goldberg

Represented By  
Kevin T Simon

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:18-12079 Nicole Tanice Shepherd

Chapter 13

#7.00 Motion for relief from stay

WILMINGTON TRUST

Docket 40

**Tentative Ruling:**

Petition Date: 8/16/18

Chapter: 13

Service: Proper. No opposition filed.

Property: 17732 San Fernando Mission Blvd., Granada Hills, CA 91344

Property Value: \$ 685,680 (Per debtor's schedules)

Amount Owed: \$ 608,969.58 (per RFS motion)

Equity Cushion: 3% (assuming 8% cost of sale)

Equity: \$76,711

Post-Petition Delinquency: \$7,077.77 (5 payments of \$1,753.58 minus suspense balance).

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (movant may engage in loss mitigation activities); 7 (waiver of the 4001(a)(3) stay); and 12 (Debtor defined as borrower under Cal. Civ. Code 2920.5(c)(2)(C)).

NO APPEARANCE REQUIRED

**Party Information**

**Debtor(s):**

Nicole Tanice Shepherd

Represented By  
Matthew D. Resnik

**Movant(s):**

WILMINGTON TRUST,

Represented By  
Darlene C Vigil

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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**CONT... Nicole Tanice Shepherd**

**Chapter 13**

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**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-12920 Juan Lozano Mata**

**Chapter 13**

#7.01 Motion for relief from stay

WILMINGTON TRUST, NA

fr. MB cal, 2/27/19

Docket 21

**Tentative Ruling:**

At the previous hearing, Debtor stated that he would be applying to the LMM program. The motion to commence the LMM program is set for hearing on March 26, 2019. Debtor filed a declaration stating, among other things, that he is current on post-petition mortgage payments. As long as Debtor is current on post-petition payments, the Court sees no reason to hold a hearing on this relief from stay until after the LMM motion is resolved.

This matter will be continued to March 27, 2019 at 10:00 a.m.

NO APPEARANCE REQUIRED ON MARCH 13.

**Party Information**

**Debtor(s):**

Juan Lozano Mata

Represented By  
Donald E Iwuchuku

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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10:00 AM

1:18-12963 William Hughes Gaines

Chapter 13

#8.00 Motion for relief from stay

CIT BANK NA

Docket 19

**Tentative Ruling:**

Petition Date: 12/10/18  
Case Dismissed 2/27/19  
Chapter: 13  
Service: Proper. No opposition filed.  
Property: 17853 Ridgeway Rd., Granada Hills, CA 91344  
Property Value: \$ (property not scheduled)  
Amount Owed: \$ 1,236,482.61 (per RFS motion)  
Equity Cushion: N/A  
Equity: N/A  
Post-Petition Delinquency: N/A

Debtor's case was dismissed two weeks after the instant motion was filed and therefore the automatic stay is no longer in effect. 11 U.S.C. 362(c)(2)(B). Movant's relief requested under section 362(d)(1) is therefore denied as moot. The Court will, however, consider the Movant's request for *in rem* relief under (d)(4).

The materials attached to the motion detail multiple unauthorized transfers of the property. However, those transfers do not demonstrate an intent to hinder, delay, and defraud creditors. The first transfer was more than ten years ago. The second and third transfers, both on December 10, 2018, were apparently between family members. The motion states that there have been multiple bankruptcies affecting the property, but the only other bankruptcy case, 17-12661, does not appear to have affected this property. Nor does the movant demonstrate any collection efforts that were hindered by the prior bankruptcy. The foreclosure scheduled for December 11, 2018 was delayed by the instant bankruptcy filing, but there is no other evidence than any of the transfers or the previous bankruptcy actually hindered, delayed, or defrauded creditors. The evidence produced by movant is insufficient to sustain a finding of intent to hinder, delay, or defraud under section 362(d)(4).

Disposition: DENY under 11 U.S.C. 362(d)(1). DENY relief requested in paragraphs

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**CONT... William Hughes Gaines Chapter 13**

9 (relief under 362(d)(4)); and 10 (relief binding & effective for 180 days against any debtor).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.  
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

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

William Hughes Gaines

Pro Se

**Movant(s):**

CIT Bank, N.A.

Represented By  
Erin M McCartney

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
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Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:19-10382 Guyen Lyn Fernando

Chapter 13

#8.01 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate.

Docket 9

**Tentative Ruling:**

On February 20, 2019, Debtor filed this Chapter 13 case. Debtor has an extensive history of previous bankruptcy cases, including one which was dismissed within the past year. The most recent dismissed Chapter 13 case, 18-11322-MB, was filed on May 23 2018 and dismissed on August 1, 2018 with a 90 day bar to refiling pursuant to an agreement with the U.S. Trustee.

Debtor now moves for an order continuing the automatic stay as to all creditors. Debtor asserts the present case was filed in good faith notwithstanding the dismissal of the previous case. Debtor contends the previous case was dismissed because he was not represented by counsel, but has now retained the services of a bankruptcy attorney. Debtor's financial troubles resulted from being abroad while his wife underwent treatment for cancer and receiving large, unexpected bills from the L.A. Department of Water and Power. While the previous case was dismissed for abuse due to multiple filings, Debtor explains that previous cases were filed at the advice of a bankruptcy petition preparer, and retaining an attorney for this case demonstrates a commitment to a successful chapter 13 repayment plan.

No opposition was filed. The Motion is GRANTED.

NO APPEARANCE REQUIRED.

**Party Information**

**Debtor(s):**

Guyen Lyn Fernando

Represented By  
Karen Ware

**Movant(s):**

Guyen Lyn Fernando

Represented By  
Karen Ware



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**CONT... Guyen Lyn Fernando**

**Chapter 13**

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:00 AM

**1:19-10407 John Nha Vu**

**Chapter 13**

**#9.00** Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate.

Docket 12

**Tentative Ruling:**

On February 24, 2019, Debtor filed this Chapter 13 case. Debtor has one prior case which was dismissed within the past year. The recent dismissed chapter 13 case, 18-10650-VK, was filed on March 13, 2018 and dismissed on September 19, 2018 in connection with the confirmation hearing.

Debtor now moves for an order continuing the automatic stay as to all creditors. Debtor asserts the present case was filed in good faith notwithstanding the dismissal of the previous case. Debtor contends the previous case was dismissed because of a deterioration in the relationship between Debtor and his attorney, Dana Douglas. Debtor's new attorney, Jeffrey Hagen, determined that filing a new case would be simpler than vacating the dismissal on the previous case.

The Motion is GRANTED.

NO APPEARANCE REQUIRED.

**Party Information**

**Debtor(s):**

John Nha Vu

Represented By  
Jeffrey J Hagen

**Movant(s):**

John Nha Vu

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

**1:12-19998 Process America, Inc.**

**Chapter 11**

Adv#: 1:12-01421 Tigrent Group Inc. v. Process America, Inc. et al

**#9.01** Status conference re complaint for:  
damages and equitable relief

fr. 1/31/13, 3/21/13, 5/23/13, 8/29/13, 11/7/13,  
12/5/13, 4/24/14, 6/5/14, 11/6/14, 3/19/15,  
6/4/15, 7/22/15, 8/12/15, 9/9/15, 2/24/16,  
5/25/16, 7/27/16, 9/28/16, 12/14/16; 2/8/17,  
4/26/17,7/11/17; 9/6/17, 11/1/17, 11/30/17,  
1/9/18; 5/1/18, 6/21/18, 8/30/18; 9/20/18,  
9/21/18, 10/31/18; 12/12/18, 2/27/19

Docket 1

**Tentative Ruling:**

This matter will be heard at 11:00 along with the related matters.

**Party Information**

**Debtor(s):**

Process America, Inc.

Represented By  
Ron Bender  
John-patrick M Fritz

**Defendant(s):**

Process America, Inc.

Pro Se

Kimberly S Ricketts

Pro Se

Craig Rickard

Pro Se

KEITH PHILLIPS

Pro Se

Gwendolyn Phillips

Pro Se

C2K Group, LLC

Pro Se

Applied Funding, Inc.

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**CONT... Process America, Inc. Chapter 11**

KBS Dreams, Inc. Pro Se

Like Zebra, LLC Pro Se

Stripe Entertainment Group, Inc. Pro Se

**Plaintiff(s):**

Tigrent Group Inc. Represented By  
Thomas F Koegel

**US Trustee(s):**

United States Trustee (SV) Pro Se

United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:16-12811 JF Landscape, Inc

Chapter 7

Adv#: 1:19-01003 Weil v. Jacoby

#10.00 Status Conference re: Complaint to avoid and recover  
fraudulent transfers and preferential transfers

Docket 1

\*\*\* VACATED \*\*\* REASON: Cont'd to 4/3/19 per stip -CT

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

JF Landscape, Inc

Represented By  
Dheeraj K Singhal

**Defendant(s):**

Michael Jacoby

Pro Se

**Plaintiff(s):**

Diane C Weil

Represented By  
Talin Keshishian

**Trustee(s):**

Diane C Weil (TR)

Represented By  
David Seror  
Jessica L Bagdanov

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:17-12534 Richard Khatibi**

**Chapter 13**

Adv#: 1:18-01111 Khatibi v. Rosamond Community Services District

**#11.00** Status Conference Re:  
Complaint for Determination of Cliam

Docket 1

**\*\*\* VACATED \*\*\* REASON: Order entered dismissing adv. 3/4/19 (eg)**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Richard Khatibi

Represented By  
Michael D Kwasigroch

**Defendant(s):**

Rosamond Community Services

Represented By  
Martin Kosla  
Joseph P Buchman

**Plaintiff(s):**

Richard Khatibi

Represented By  
Michael D Kwasigroch

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

**1:18-11074 Len Teo Flores**

**Chapter 13**

Adv#: 1:18-01119 Flores v. United States Department of Veterans Affairs and R

**#12.00** Status conference re: complaint to determine dischargeability

fr. 1/23/19

Docket 1

**\*\*\* VACATED \*\*\* REASON: Cont'd per stipulation to April 17, 2019 at  
10:00 a.m. - hm**

**Tentative Ruling:**

- NONE LISTED -

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

**Debtor(s):**

Len Teo Flores

Represented By  
Barry E Borowitz

**Defendant(s):**

United States Department of

Pro Se

United States Department of

Pro Se

Defense Finance and Accounting

Pro Se

**Plaintiff(s):**

Len Teo Flores

Represented By  
Barry E Borowitz

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-12429 Salvador German Helleon**

**Chapter 7**

Adv#: 1:19-01001 Amaya v. Helleon

**#13.00** Status Conference Re: Complaint  
of Katherine Amaya for Determination  
of Non-Dischargeability of Debt Pursuant  
to 11 USC Sec. 523(a)

Docket 1

**Tentative Ruling:**

Discovery cut-off (all discovery to be completed):

Expert witness designation deadline (if necessary):

Case dispositive motion filing deadline (MSJ; 12(c)):

Pretrial conference:

Deadline for filing pretrial stipulation under LBR 7016-1(b)(1)(A) (14 days  
before pretrial conference):

**PLAINTIFF TO LODGE SCHEDULING ORDER WITHIN 7 DAYS**

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

**Debtor(s):**

Salvador German Helleon

Represented By  
Blake J Lindemann

**Defendant(s):**

Salvador German Helleon

Pro Se

**Joint Debtor(s):**

Daniel Roy Farrell

Represented By  
Blake J Lindemann



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

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10:00 AM

**CONT... Salvador German Helleon**

**Chapter 7**

**Plaintiff(s):**

Katherine Amaya

Represented By  
Paul M Yi  
Edward W Choi

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-12443 Raynard Edward Goins**

**Chapter 7**

Adv#: 1:19-01002 Horowitz v. Goins

**#14.00** Status Conference Re: Complaint  
to Determine Debt Exempted from  
Discharge Pursuant to 11 USC  
Section 523(a)(6)

Docket 1

**Tentative Ruling:**

Discovery cut-off (all discovery to be completed):

Expert witness designation deadline (if necessary):

Case dispositive motion filing deadline (MSJ; 12(c)):

Pretrial conference:

Deadline for filing pretrial stipulation under LBR 7016-1(b)(1)(A) (14 days  
before pretrial conference):

**PLAINTIFF TO LODGE SCHEDULING ORDER WITHIN 7 DAYS**

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

**Debtor(s):**

Raynard Edward Goins

Represented By  
Vernon R Yancy

**Defendant(s):**

Raynard Edward Goins

Pro Se

**Plaintiff(s):**

Gregory Horowitz

Represented By  
Mark T Jessee

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

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10:00 AM

**CONT... Raynard Edward Goins**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:11-22664 L.D.T. Investments Inc.

Chapter 7

**#15.00** Motion by Chapter 7 Trustee to:  
1 - Approve Sale of Real Property Free  
and Clear of All Liens, Interests, Claims  
and Encumbrances with such Liens, Interests,  
Claims, and Encumbrances to Attach to  
Proceeds Pursuant to 11 USC Sections 363(b)  
and (f); 2 - Approve Overbid Procedures; and  
3 - Determine that buyer is Entitled to Protection  
Pursuant to 11 USC Sec. 363(m)

Docket 693

**Tentative Ruling:**

APPEARANCE REQUIRED.

**Party Information**

**Debtor(s):**

L.D.T. Investments Inc.

Pro Se

**Movant(s):**

David Seror (TR)

Represented By  
David Seror  
David Seror (TR)  
Steven T Gubner  
Corey R Weber  
Michael W Davis  
Richard Burstein  
Elissa Miller  
Aram Ordubegian  
Andy Kong  
Jessica L Bagdanov  
Ronald P Abrams  
Talin Keshishian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**CONT... L.D.T. Investments Inc.**

**Chapter 7**

**Trustee(s):**

David Seror (TR)

**Represented By**

David Seror  
David Seror (TR)  
Steven T Gubner  
Corey R Weber  
Michael W Davis  
Richard Burstein  
Elissa Miller  
Aram Ordubegian  
Andy Kong  
Jessica L Bagdanov  
Ronald P Abrams  
Talin Keshishian

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-10094 Donald A Hilland**

**Chapter 7**

**#16.00** Chapter 7 Trustee's Motion for Order Approving  
Compromise of Controversy

Docket 58

**Tentative Ruling:**

No opposition filed. Having reviewed the motion and finding that the settlement is in the best interest of creditors and the estate, the motion is GRANTED. Trustee to lodge order.

NO APPEARANCE REQUIRED ON MARCH 13

**Party Information**

**Debtor(s):**

Donald A Hilland

Pro Se

**Movant(s):**

Nancy J Zamora (TR)

Represented By  
Toan B Chung

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Toan B Chung

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:19-10016 Tamica Jordan**

**Chapter 7**

**#17.00 Motion to Dismiss Case Pursuant to 11 USC  
Sections 707(a) and 727 (a)(8)**

Docket 16

**Tentative Ruling:**

The United States Trustee moves to dismiss Debtor's case pursuant to Sections 707(a) and 727(a)(8) of the Bankruptcy Code. Debtor has received a discharge of her debts in a chapter 7 case commenced within eight years of petition date in this case. Debtor filed her previous case, 11-33461-PGH in the Southern District of Florida on August 23, 2011. The current case was filed on January 3, 2019. Section 727(a)(8) provides that a Debtor may not be granted a discharge if they previously received a discharge in a case commenced less than eight years before the petition date. Debtor is ineligible for a discharge until late August of this year.

The Court may dismiss a case for cause, including unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. 707(a)(1). The Court finds that there is cause to dismiss this case due to Debtor's ineligibility for a discharge. No opposition has been filed.

The Motion is GRANTED. NO APPEARANCE REQUIRED

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

Tamica Jordan Pro Se

**Trustee(s):**

Diane C Weil (TR) Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:16-10069 Osher And Osher, Inc.**

**Chapter 11**

**#18.00** Post confirmation status conference

fr. 11/3/16, 11/10/16; 1/26/17; 2/1/17; 3/29/17, 5/24/17,  
6/14/17, 7/12/17, 10/18/17; 11/29/17, 2/7/18, 5/2/18,  
6/6/18, 8/15/18, 11/14/18, 1/23/19; 2/7/19

Docket 1

**Tentative Ruling:**

Having reviewed the docket, this status conference will be continued April 10, 2019 at 10:00 a.m. to be heard at the same time as the motion filed by Kourosh Vosoghi and 26 Moorpark, LLC.

NO APPEARANCE REQUIRED ON MARCH 13

**Party Information**

**Debtor(s):**

Osher And Osher, Inc.

Represented By  
Raymond H. Aver



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-11411 Schaffel Development Company, Inc.**

**Chapter 11**

**#19.00** Application for Compensation for Arthur Lettenmaier,  
Special Counsel

Period: 10/1/2018 to 2/19/2019,  
Fee: \$9798, Expenses: \$1064.47

Docket 119

**Tentative Ruling:**

Having reviewed the fee application filed by Arthur Lettenmaier, the Court finds that the fees and costs are reasonable and are approved as requested.

APPEARANCES WAIVED ON MARCH 13, 2019.

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

**Debtor(s):**

Schaffel Development Company,

Represented By  
Lewis R Landau

**Movant(s):**

Arthur Lettenmaier

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

10:00 AM

**1:18-11411 Schaffel Development Company, Inc.**

**Chapter 11**

**#20.00** Application for Compensation for Lewis R Landau,  
Debtor's Attorney

Period: 10/1/2018 to 2/15/2019,  
Fee: \$18117, Expenses: \$494.

Docket 120

**Tentative Ruling:**

Having reviewed the fee application filed by Lewis Landau, the Court finds that the fees and costs are reasonable and are approved as requested.

APPEARANCES WAIVED ON MARCH 13, 2019.

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

**Debtor(s):**

Schaffel Development Company,

Represented By  
Lewis R Landau

**Movant(s):**

Schaffel Development Company,

Represented By  
Lewis R Landau

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

10:00 AM

1:18-12855 PB-1, LLC

Chapter 11

#21.00 Scheduling and Case Management Conference

fr. 2/6/19

Docket 1

\*\*\* VACATED \*\*\* REASON: Cont'd per stipulation to 4/3/19 at 1:00 p.m.  
(doc. 38) - hm

**Tentative Ruling:**

The Court continued this status conference to be heard with the Debtor's disclosure statement. That disclosure statement is set for hearing on April 3, 2019. This status conference will be continued to April 3 at 10:00 a.m.

NO APPEARANCE REQUIRED ON MARCH 13

**Party Information**

**Debtor(s):**

PB-1, LLC

Represented By  
Jeffrey S Shinbrot

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

11:00 AM

1:12-19998 Process America, Inc.

Chapter 11

#22.00 Confirmation Hearing  
Re: Chapter 11 Plan  
of Reorganization

Docket 592

**Tentative Ruling:**

After having reviewed Debtor's Plan, the ballot summary, and Motion for Confirmation, the Court finds that all requirements for confirmation have been met. Debtor should include requisite findings under § 1129(a) and (b) in confirmation order.

Post-confirmation status conference will be held on \_\_\_\_\_

APPEARANCE REQUIRED

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

**Debtor(s):**

Process America, Inc.

Represented By  
Ron Bender  
John-Patrick M Fritz  
Beth Ann R Young  
Jeffrey S Kwong  
Lindsey L Smith

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

11:00 AM

**1:12-19998 Process America, Inc.**

**Chapter 11**

**#23.00** Status and case management conference

fr. 1/31/13, 3/21/13, 5/23/13, 8/29/13, 11/7/13,  
12/5/13, 3/13/14, 4/24/14, 6/5/14, 11/6/14, 3/19/15;  
6/4/15, 7/22/15, 9/9/15, 2/24/16, 5/25/16, 7/27/16  
9/28/16, 12/14/16, 6/21/18, 8/30/18; 9/20/18, 9/21/18,  
1/23/19

Docket 1

**Tentative Ruling:**

APPEARANCE REQUIRED

**Party Information**

**Debtor(s):**

Process America, Inc.

Represented By  
Ron Bender  
John-patrick M Fritz  
Beth Ann R Young

**Movant(s):**

Process America, Inc.

Represented By  
Ron Bender  
John-patrick M Fritz  
Beth Ann R Young

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

**Wednesday, March 13, 2019**

**Hearing Room 302**

11:00 AM

**1:18-12698 Green Nation Direct, Corporation**

**Chapter 11**

**#24.00 Case Management Conference**

fr. 12/19/18; 1/24/19

Docket 1

**Tentative Ruling:**

Appearance required

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

**Debtor(s):**

Green Nation Direct, Corporation

Represented By  
Giovanni Orantes

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

1:00 PM

**1:17-12534 Richard Khatibi**

**Chapter 13**

Adv#: 1:18-01111 Khatibi v. Rosamond Community Services District

**#25.00** Defendant Rosamond Community Services  
District's Motion to Dismiss Adversary Complaint  
for Failure to State a Claim, or Alternatively, for  
a More Definite Statement

Docket 6

**\*\*\* VACATED \*\*\* REASON: Ch. 13 case dismissed w/ 180-day bar - hm**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Richard Khatibi

Represented By  
Michael D Kwasigroch

**Defendant(s):**

Rosamond Community Services

Represented By  
Martin Kosla  
Joseph P Buchman

**Plaintiff(s):**

Richard Khatibi

Represented By  
Michael D Kwasigroch

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

1:00 PM

1:18-11545 Ian Ellis Silber

Chapter 13

Adv#: 1:18-01104 Silber et al v. Silber et al

#26.00 Motion for summary judgment

fr. 2/27/18

Docket 11

**Tentative Ruling:**

The causes of action asserted in the State Court Complaint were (1) constructive fraud; (2) breach of oral agreement; (3) financial elder abuse; (4) quiet title; (5) declaratory relief (as to the parties' rights to the Property & their obligations under any encumbrance or lien); and (6) partition of real property. While the formal causes of action do not control the analysis under issue preclusion, it is the findings made by the State Court that will be given preclusive effect where appropriate.

**1. Summary Judgment**

Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (incorporated by Fed. R. Bankr. P. 7056).

The moving party has the burden of establishing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Material facts are those which might affect the outcome of the suit." Rivera v. Philip Morris, Inc., 395 F.3d 1142, 1146 (9th Cir. 2005). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a genuine issue for trial. Celotex, 477 U.S. at 324. The court must view the evidence in the light most favorable to the nonmoving party. Bell v. Cameron Meadows Land Co., 669 F.2d 1278, 1284 (9th Cir.1982). All reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. Hector v. Wiens, 533 F.2d 429, 432 (9th Cir.1976). The inference drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. Valadingham v. Bojorquez, 866 F.2d 1135, 1137 (9th Cir.1989). Where different ultimate inferences may be drawn, summary judgment is inappropriate. Sankovich v. Insurance Co. of N. Am., 638 F.2d 136, 140 (9th



**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
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Wednesday, March 13, 2019

Hearing Room 302

1:00 PM

CONT... Ian Ellis Silber  
Cir.1981).

Chapter 13

A court can consider granting partial summary judgment under Fed. R. Civ. P. 56(f). Rule 56(f) states in relevant part:

Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

Under Rule 56(f) a cross-motion need not be filed for entry of summary judgment in favor of the opposing party. If there are no factual issues and the opposing party is entitled to judgment as a matter of law, and the moving party had notice and an adequate opportunity to address the issues, summary judgment may be granted forthwith. Gospel Missions of America v. City of Los Angeles, 328 F.3d 548, 553 (9th Cir. 2003)("Even when there has been no cross-motion for summary judgment, a district court may enter summary judgment *sua sponte* against a moving party if the losing party has had a 'full and fair opportunity to ventilate the issues involved in the matter. The salient issues upon which the district court granted summary judgment were presented in the original motion.'")(citation omitted).

## **2. Issue Preclusion**

Issue preclusion, also known as collateral estoppel, applies in discharge exception proceedings under § 523(a). Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991). "Under [issue preclusion], once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir. 2000) (*citing* Dodd v. Hood River County, 59 F.3d 852, 863 (9th Cir. 1995)).

"Under [issue preclusion], once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Montana v. United States, 440 U.S. 147, 153 (1979). "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
Courtroom 302 Calendar**

Wednesday, March 13, 2019

Hearing Room 302

1:00 PM

CONT... **Ian Ellis Silber**

**Chapter 13**

lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." Id. at 153-54.

Issue preclusion bars relitigation of an issue of fact or issue that: (1) is identical to a fact or issue determined in an earlier proceeding, (2) was actually decided by a court in an earlier action, (3) the issue was necessary to the judgment in such action, (4) there was a final judgment on the merits, and (5) the parties are the same. Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir.2001).

Lastly, in the Ninth Circuit, the Court must also find that giving the previous judgment preclusive effect would further the public policies underlying the collateral estoppel doctrine. The California Supreme Court has identified three policies underlying the doctrine of collateral estoppel: "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." Baldwin v. Kilpatrick (In re Baldwin), 249 F.3d 912, 919-920 (9th Cir. 2001).

The common thread that runs through the entirety of this matter is the state of mind of Defendants at different times in the transactions, and whether the facts that support an intent finding were actually litigated and necessarily decided. Under California law, an issue is actually litigated in the initial action when "it is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined ...." Gottlieb v. Kest, 141 Cal. App. 4th 110, 148 (Cal. Ct. App. 2006). An issue is "necessarily decided" when the issue's determination was not "entirely unnecessary" to the judgment in the initial proceeding. Lucido v. Superior Court, 51 Cal. 3d 335, 342 (1990). The issues presented by the Motion are outlined below, with the controlling legal standards:

- a. False Pretenses, False Representation, or Actual Fraud under § 523(a)(2)(A)

Section 523(a)(2)(A) excepts from discharge any debt "to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A). The Ninth Circuit has held that a creditor's claim of nondischargeability based on § 523(a)(2)(A) must satisfy five elements: 1) the debtor made false statement or deceptive conduct; 2) the debtor knew the representation to be false; 3) the debtor made the representation with the intent to deceive the creditor; 4) the creditor justifiably relied on the representation; and 5) the creditor sustained damage

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Chief Judge Maureen Tighe, Presiding  
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Wednesday, March 13, 2019

Hearing Room 302

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resulting from its reliance on the debtor's representation. Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000).

The relevant cause of action under this section on which judgment was entered is constructive fraud, which does not require a finding of intent. Consider the following excerpt from Harmon:

Constructive fraud is a unique species of fraud applicable only to a fiduciary or confidential relationship.... [A]s a general principle constructive fraud comprises any act, omission or concealment involving a breach of legal or equitable duty, trust or confidence which results in damage to another even though the conduct is not otherwise fraudulent. The failure of the fiduciary to disclose a material fact to his principal which might affect the fiduciary's motives or the principal's decision, which is known (or should be known) to the fiduciary, may constitute constructive fraud even though there is no fraudulent intent.

Assilzadeh v. Cal. Fed. Bank, 82 Cal.App.4th 399 (Cal.Ct.App. 2000) (internal quotation marks and citations omitted). [...] But such a finding would be insufficient to establish fraud under § 523(a)(2)(A), because under § 523(a)(2)(A), the debtor must have intended to deceive the creditor, but in the case of "constructive fraud ... it is not necessary to prove deliberate or intentional fraud." Edmunds v. Valley Circle Estates, 16 Cal.App.4th 1290 (Cal.Ct.App. 1993). (internal quotation marks and citation omitted) (omission in original). The party asserting collateral estoppel has the burden of showing that the doctrine's threshold requirements are met. Lucido, 51 Cal. 3d. 335, 341 (Cal. 1990). [Creditor] has failed to show that the state court granted judgment because it found that [Debtor] had committed actual rather than constructive fraud. Therefore, [Creditor] has not demonstrated that the issue of whether [Debtor] committed actual fraud was necessarily decided by the state court.

In re Harmon, 250 F.3d 1240, fn. 10 (9th Cir. 2001)(citing Assilzadeh v. Cal. Fed.

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Bank, 82 Cal.App.4th 399, (Cal.Ct.App. 2000)

Defendants argue that the facts show that they were not motivated by an intent to deceive because "they clearly were not aware of the falsity of their alleged promises, assuming they even know they were making any promises at all. The defendants did not believe they had a duty since there was no joint venture." Defendants stick by their contention that they honestly thought that they were buying the property on their own, rather than as a joint venture with Kurt and Irene, as the State Court found. Defendants position is belied by the State Court findings that there was an oral contract to enter into a joint venture to purchase the Galvez Property and that Defendants breached that oral contract by denying its existence and failing to pay Plaintiffs the full amounts due under the contract. Hanigan Decl., Ex. 2, internal pg. 8. Irrespective, the findings lack of findings as to intent is understandable as it was not required under the theory of constructive fraud.

The facts of this case may also present a case for false pretenses under § 523(a)(2)(A), although the briefs are silent on this theory. Section 523(a)(2)(A) are implied misrepresentations intended to create and foster a false impression. Unlike false representations, which are express misrepresentations, false pretenses include conduct and material omissions. In re Sturgeon, 496 B.R. 215, 223 (B.A.P. 10th Cir. 2013)(citing Marks v. Hentges (In re Hentges), 373 B.R. 709, 725 (Bankr.N.D.Okla.2007) (false pretenses are "implied misrepresentations or conduct intended to create and foster a false impression")). False pretenses can be "defined as any series of events, when considered collectively, that create a contrived and misleading understanding of a transaction, in which a creditor is wrongfully induced to extend money or property to the debtor." Stevens v. Antonious (In re Antonious), 358 B.R. 172, 182 (Bankr.E.D.Pa.2006) (citing Rezin v. Barr (In re Barr), 194 B.R. 1009, 1019 (Bankr.N.D.Ill.1996)).

Defendants also attack Plaintiffs assertion of justifiable reliance, as they assert that Plaintiffs knew or should have known the statement to be false. Justifiable reliance takes into account the "qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases." Field v. Mans, 516 U.S. 59, 71 (1995). Judging by the sophistication of Plaintiffs, experienced owners of and investors in real estate, Defendants argue that justifiable reliance does not exist where Plaintiffs failed to use their access to title professionals to determine whether they were properly put on title in 1996, after the periodic payments for "rent" ceased.

Plaintiffs allegations of nondischargeable conduct are that Defendants hid the

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material fact that Kurt and Irene were not on the title of the Galvez Property, and misrepresented their ownership to a lending bank to obtain a loan to drain the equity from the Galvez Property. In cases where the fraudulent conduct is false pretenses or omission, the Ninth Circuit has held that under § 523(a)(2)(A), there is a presumption of reliance when the subject nondisclosure is determined to be material. See In re Apte, 96 F.3d 1319, 1323–24 (9th Cir. 1996). Clearly, the fact that Kurt and Irene were joint owners of Galvez and were to have been on title is material. This presumption of reliance is limited, however, to cases in which *the plaintiff primarily alleges nondisclosure*. Id. (emphasis added). Where Plaintiffs primarily alleged misrepresentation in the State Court complaint (the Judgment on which Plaintiffs seek preclusion), the presumption may not apply. Id., citing Poulos v. Caesars World, Inc., 379 F.3d 654, 666–67 (9th Cir.2004); Binder v. Gillespie, 184 F.3d 1059, 1063–64 (9th Cir.1999). Parties should be prepared to discuss (1) whether the Apte presumption should apply here, where the facts support allegations of fraud by omission but the Complaint alleges misrepresentation; or (2) whether the justifiable reliance requirement may be satisfied in some other way.

- b. Fraud or Defalcation while acting in a Fiduciary Capacity under § 523(a)(4)

A creditor seeking a relief under Section 523(a)(4) must establish three elements: (1) an express trust existed; (2) the debt was caused by fraud or defalcation; and (3) that the debtor was a fiduciary to the creditor at the time the debt was created. Nahman v. Jacks, 266 B.R. 728, 735 (B.A.P. 9th Cir. 2001). For the Court to find that a fiduciary relationship exists, however, "the court must determine that the circumstances establish an express trust pursuant to state law." Jacks, 266 B.R. at 736. Under California law "[t]he five elements required to create an express trust are (1) a competent trustor, (2) trust intent, (3) trust property, (4) trust purpose, and (5) a beneficiary." Keitel v. Heubel, 103 Cal.App. 4th 324, 337 (Cal.Ct.App.2002). Intent is a question of fact. See, e.g., Candland v. Ins. Co. of N. Am. (In re Candland), 90 F.3d 1466 (9th Cir.1996).

Because California case law has raised the duties of partners beyond those imposed under a trust *ex maleficio*, partners are fiduciaries within the meaning of § 523(a)(4). Ragsdale v. Haller, 780 F.2d 794, 796–97 (9th Cir. 1986). Joint venturers have the same responsibilities as partners. See Leff v. Gunter, 33 Cal. 3d 508, 514 (Cal. 1983). Thus, the finding of the State Court that Plaintiffs and Defendants had an oral contract between them to enter into a joint venture to purchase the Galvez

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Property establishes that Defendants had the same duties to Kurt and Irene as a partner under California law.

Defalcation is the misappropriation of trust funds or money held in any fiduciary capacity, or the failure properly to account for such funds. In re Lewis, 97 F.3d 1182, 1186 (9th Cir. 1996)(internal citations omitted). The United States Supreme Court determined that where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term "defalcation" requires an "intentional wrong." Bullock v. BankChampaign, N.A., 133 S.Ct. 1754, 1759 (2013). This includes a knowingly wrongful act, or a grossly reckless act, by the debtor in a fiduciary capacity. Id. Where actual knowledge of wrongdoing is lacking, a fiduciary who "'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty" satisfies the statute. Id. (internal citations omitted). That risk "must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." Id., citing *ALO, Model Penal Code* § 2.02(2)(c).

Defendants argue that while the State Court found that there was breach of a fiduciary duty, it did not address the question of whether the wrongdoing was intentional at the time the alleged "agreement" took place or during the tenure of ownership of the Galvez Property. Defendants contend that with no specific finding made as to Defendants' degree of intent or gross recklessness, summary judgment is inappropriate. For their part, Plaintiffs point to the State Court findings under the punitive damages analysis to support their position, arguing that because the State Court "expressly found that Defendants' conduct was 'malicious, oppressive and/or fraudulent' it necessarily follows that Defendants engaged in defalcation."

Again, the Court is confronted with the question of how to proceed where the State Court's findings of "malicious, oppressive and/or fraudulent" conduct were made in the context of Defendant's fraudulent activity in the damages prove-up portion of the trial rather than fraudulent conduct as relates to the joint venture. It is unclear how the State Court related the malicious, oppressive and/or fraudulent conduct of Defendants during the damages portion of the trial to their intent during the breaches of their duty by omitting information to Plaintiffs during the Venture.

c. Embezzlement under § 523(a)(4)

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Under federal law, embezzlement in the context of nondischargeability requires three elements: '(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud.'" In re Littleton, 942 F.2d 551, 555 (9th Cir. 1991)(citations omitted).

Defendants argue that Plaintiffs' claim should fail under the first element, as they were owners in rightful possession of the Galvez Property and thus had a legal right to possession and use. While Defendants' assertion of ownership is correct, their position ignores that Plaintiffs had a 50% interest in the Galvez Property as well. Thus, while they had a legal right to use and possession of the entire fee, Defendants also obtained a loan that liquidated \$380,000 in equity from the Galvez Property – equity in which Plaintiffs had a 50% right. The portion of the equity of the Galvez Property that belonged to Plaintiffs was in the rightful possession of Defendants, per the terms of their oral agreement. Defendants then appropriated Plaintiffs' portion of the equity to their own use, namely Jane's unnamed business – a use for which the funds were certainly not entrusted, not in a real estate venture. Hanigan Decl. ISO MSJ, internal p. 2; Hanigan Decl. ISO Reply, Ex. 1. The State Court findings thus satisfy the first two elements of embezzlement, at least as to the loan proceeds. Whether the portion of the rents to which Plaintiffs were entitled were later misappropriated, rather than used for maintenance of the Galvez Property, is unclear on this record.

The State Court findings that Defendants misrepresented to the lender that they were the sole owners of the Galvez Property and that Defendants concealed from Plaintiffs that they had encumbered the Galvez Property with a substantial lien, along with the exhaustively detailed encomium of Defendants' misleading testimony and evidence identify circumstances indicating fraud.

It appears that Plaintiffs have met their burden to show that there are no genuine issues of material fact and are entitled to judgment under § 523(a)(4) for embezzlement. The extent of the damages under this theory may require further evidence or briefing.

d. Willful or Malicious Injury under § 523(a)(6)

Section 523(a)(6) excepts from discharge any debt of the debtor "for willful or malicious injury to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). Under § 523(a)(6), Debtors' actions would need to equate with "willful and

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malicious" injury within the meaning of the Code. The first step of this inquiry is whether there is "willful" injury, which must entail a deliberate or intentional injury. Kawaauhau v. Geiger, 523 U.S. 57, 61-62 (1998). In the Ninth Circuit, the intent required to be considered "willful" is either the subjective intent of the actor to cause harm or the subjective knowledge of the actor that harm is substantially certain to occur. Carrillo v. Su (In re Su), 290 F.3d 1140, 1144-45 (9th Cir. 2002).

In California, the elements for a breach of fiduciary duty are the existence of a fiduciary relationship, breach of that fiduciary duty, and damages. Oasis W. Realty, LLC v. Goldman, 51 Cal.4th 811, 820, 124 Cal.Rptr.3d 256, 250 P.3d 1115 (2011). There is no particular scienter requirement, let alone a requirement of a subjective intent to injure. See In re Pylam, 530 B.R. 456, 470-71 (B.A.P. 9th Cir. 2015)(internal citations omitted). As a result, without more, a judgment for breach of fiduciary duty under California law cannot support a willfulness determination under § 523(a)(6).

That said, a breach of fiduciary duty can give rise to an award of punitive damages if the breach is a result of malice, oppression, or fraud. See Cal. Civ. Code ("C.C.P.") § 3294. The State Court's punitive damages award against Defendants was based on a finding of "malice, oppression, and/or fraud." Hanigan Decl. ISO MSJ, Ex. 3. The "malice, oppression or fraud" finding arises from C.C.P. § 3294, which provides for the recovery of punitive damages in non-contract breach civil cases. Each finding supplies an independent basis for a punitive damages award under C.C.P. § 3294. See Coll. Hosp. Inc. v. Super. Ct., 8 Cal.4th 704, 721 (Cal. 1994).

C.C.P. § 3294 provides statutory definitions of these terms. "Malice" is defined as either: (1) conduct that the defendant intends to cause injury to the plaintiff ("Intentional Malice"); or (2) despicable conduct carried on by the defendant with a willful and conscious disregard of the rights or safety of others ("Despicable Malice"). C.C.P. § 3294(c)(1). "Oppression" means "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." Id. § 3294(c)(2). And, "fraud" refers to "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Id. § 3294(c)(3).

Only "intentional malice," see Brandstetter v. Derebery (In re Derebery), 324 B.R. 349, 356 (Bankr.C.D.Cal. 2005), and fraud expressly require an intent to cause injury. In re Pylam, 530 B.R. 456, 465 (B.A.P. 9th Cir. 2015). As a result, only those



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findings satisfy the § 523(a)(6) willfulness requirement for the purposes of issue preclusion. Id. Conversely, "despicable malice" and oppression, which arise from acts in conscious disregard of another's rights or safety, fail to satisfy the requisite state of mind for § 523(a)(6) willfulness. Id.

The second step of the inquiry is whether Debtors' conduct was "malicious." The relevant test for such "malicious" conduct is: 1) a wrongful act; 2) done intentionally; 3) which necessarily causes injury; and 4) without just cause and excuse. Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1105-1106 (9th Cir. 2005).

The findings of the State Court as to the punitive damages portion of the award do not explain under which theory of C.C.P. § 3294 the award was made. The State Court summed up its findings under Punitive Damages as "clear and convincing evidence demonstrates that Defendants' conduct was malicious, oppressive and/or fraudulent, thereby warranting an award of punitive damages." Hanigan Decl. ISO MSJ, Ex. 3, internal p. 6. As explained in In re Pylam, the distinctions among the three available findings under C.C.P. § 3294 (i.e., malice, oppression or fraud) are crucial to a determination of whether the punitive damage award is nondischargeable under 11 U.S.C. § 523(a)(6). See In re Pylam, 530 B.R. 456, 463-470 (B.A.P. 9th Cir. 2015)(explaining in detail the tort theories of recovery under C.C.P. §3294 and whether findings thereunder would suffice for issue preclusion under § 523(a)(6)). Under Pylam, to the extent that CC § 3294 findings are stated in the disjunctive or based on Despicable Malice or oppression or both, those findings prevent the use of issue preclusion as to § 523(a)(6) willfulness. It is unclear from the findings how the Punitive Damage award was apportioned between the identified "malicious, oppressive, and/or fraudulent conduct." The parties should be prepared to discuss whether this issue can be resolved with supplemental briefing, or whether a trial will be necessary to determine what portions of the Punitive Damage award are attributable to the different categories of conduct under C.C.P. § 3294.

APPEARANCE REQUIRED

**Party Information**

**Debtor(s):**

Ian Ellis Silber

Represented By  
Henry Glowa

**Defendant(s):**

Ian Ellis Silber

Pro Se

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Jane Ellen Silber

Pro Se

DOES 1 through 50

Pro Se

**Joint Debtor(s):**

Jane Ellen Silber

Represented By  
Henry Glowa

**Plaintiff(s):**

Kurt Silber

Represented By  
Timothy R Hanigan  
Arthur Carvalho Jr

Irene Silber

Represented By  
Timothy R Hanigan

**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se

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Adv#: 1:18-01104 Silber et al v. Silber et al

**#27.00** Status conference re complaint for:  
non-dischargeability of debt

fr. 12/12/18, 2/27/19

Docket 5

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Ian Ellis Silber

Represented By  
Henry Glowa

**Defendant(s):**

Ian Ellis Silber

Pro Se

Jane Ellen Silber

Pro Se

DOES 1 through 50

Pro Se

**Joint Debtor(s):**

Jane Ellen Silber

Represented By  
Henry Glowa

**Plaintiff(s):**

Kurt Silber

Represented By  
Timothy R Hanigan  
Arthur Carvalho Jr

Irene Silber

Represented By  
Timothy R Hanigan

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**Trustee(s):**

Elizabeth (SV) F Rojas (TR)

Pro Se