UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 19, 2018 at 10:00 a.m.

1.	17-26125-A-11 GEL-16	FIRST CAPITAL RETAIL, L.L.C.	MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY 2-19-18 [268]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Law Offices of Gabriel Liberman, counsel for the debtor in possession, has filed a first interim motion for approval of compensation. The requested first interim compensation consists of $59,200 in fees and $798.68 in expenses, for a total of $59,998.68. The first interim services cover the period from September 14, 2017 through January 23, 2018. The court approved the movant's employment as the debtor's chapter 11 attorney on October 3, 2017. In performing services, the movant charged an hourly rate of $250.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services during the second interim period included, without limitation:

(1) preparing petition documents and analyzing estate asset issues,

(2) preparing for and attending the IDI and meeting of creditors,

(3) analyzing claims,

(4) preparing and prosecuting first day motions, including cash collateral use,

(5) extensive time spent on reviewing and responding to stay relief motions,

(6) negotiating DIP financing issues,

(7) extensively communicating with the debtor about various issues,

(8) extensively negotiating with the debtor's landlords and franchisor about issues such as curing arrearages, future operations, DIP financing, a sale, etc.,

(9) assisting the debtor with the preparation of monthly operating reports,

(10) preparing and prosecuting a motion to extend the time to assume or reject leases,

(11) appearing at various court hearings, attending meetings, and reviewing and preparing pleadings and documents,

(12) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of the debtor's bankruptcy estate. The requested compensation will be approved and awarded on interim basis.

2. 17-26125-A-11 FIRST CAPITAL RETAIL, L.L.C. GEL-1
18-2017
FIRST CAPITAL RETAIL, L.L.C. V. FIRST CAPITAL REAL ESTATE
MOTION FOR PRELIMINARY INJUNCTION
2-19-18 [7]

Final Ruling: This motion is dropped from calendar subject to the conditions and pursuant to the terms of this court's March 13, 2018 order. Docket 27. As provided by the order, among other things, the parties are directed to file a status report by the hearing on the plaintiff's sale motion in the underlying chapter 11 case, set for March 29, 2018. Docket 27 at 2.

3. 17-27528-A-11 THE FOUNDATION OF HUMAN UNDERSTANDING DL-1
17-2240
THE FOUNDATION OF HUMAN UNDERSTANDING V. MASTERS ET AL
MOTION TO DISMISS ADVERSARY PROCEEDING
3-5-18 [39]

Tentative Ruling: The motion will be granted in part and denied in part.

The defendants in this adversary proceeding, Roy Masters, Alan Masters, and Michael Masters, seek dismissal arguing that:

- Mark Masters, David Masters, and Michael Lofrano are the real parties in interest as plaintiffs;

- the court lacks subject matter jurisdiction;

- mandatory abstention requires dismissal; and

- the adversary proceeding was not filed by an attorney that is a member of the bar of this court; David Epstein was not a member of the bar of this court when he filed the adversary proceeding.

The underlying chapter 11 case was filed on November 15, 2017. The alleged debtor in the case, TFHU, filed this adversary proceeding on December 16, 2017, seeking:

"*1. To Order all banks to transfer Debtor assets held by them to the Wells*

Fargo debtor in possession accounts in Sacramento, California so that Debtor may expeditiously carry out its Plan of reorganization, pay all creditors, and exit Chapter 11.

"*2. For a Declaration and Order of this Court to ratify the Board's actions bringing the organization into compliance with State and Federal requirements, including removal of directors refusing to join in the compliance effort, seating of three directors, and the election of new officers, so that the Board lawfully elected on September 8, 2017 may carry out its duties under the Federal Bankruptcy Code, the Internal Revenue Code, and the California Corporations Code without interference.*

"*3. To Order Defendants to immediately turn over the FHU Records, so that Debtor may timely file required monthly accountings and other reports with the Court.*

"*4. For all costs and expenses of this action.*"

Docket 1 at 7.

The complaint alleges, among other things, violations of the automatic stay by the defendants. While the court makes no determination of the sufficiency of the allegations in the complaint at this time, for purposes of this motion, it deems the complaint to seek relief for violations of the automatic stay. Except for this relief, all claims in the complaint will be dismissed. The court has no subject matter jurisdiction over those causes of action.

A federal court has the obligation to review sua sponte whether it has subject matter jurisdiction under Article III's case-or-controversy requirement. Fed. R. Civ. P. 12(h)(3) (providing that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); Florida Wildlife Fed'n, Inc. v. South Florida Water Mgmt. Dist., 647 F.3d 1296, 1302 (11th Cir. 2011); see also Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc., 561 F.3d 1294, 1296 (11th Cir. 2009) (citing 28 U.S.C. § 1447(c)).

"Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000)(citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982)).

Bankruptcy jurisdiction extends to four types of title 11 matters: proceedings
- "under title 11,"
- "arising under title 11,"
- proceedings "arising in a case under title 11," and
- proceedings "related to a case under title 11."

See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." Contra Stern v. Marshal, 131 S. Ct. 2594, 2608 (2011) (creating another category of core claims as to which the bankruptcy court

cannot enter final judgment, treated as "cases related to a case under chapter 11"); see also Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 134 S. Ct. 2165, 2172 (2014).

"Stern made clear that some claims labeled by Congress as 'core' may not be adjudicated by a bankruptcy court in the manner designated by § 157(b). Stern did not, however, address how the bankruptcy court should proceed under those circumstances. We turn to that question now."

Bellingham Insurance at 2172.

28 U.S.C. § 157(b)(2) states that "*[c]ore proceedings include, but are not limited to– (A) matters concerning the administration of the estate . . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.*"

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). Given the subject motion, though, consent of the parties is highly unlikely in this case.

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The claims unrelated to violations of the automatic stay are not under title 11. They also do not invoke substantive rights provided by title 11, nor could they by their nature arise only in the context a bankruptcy case. Aside from the stay violation claim, the claims are based on state law — namely, the corporate governance dispute between Roy Masters, Alan Masters, and Michael Masters, on one hand, and Mark Masters, David Masters, and Michael Lofrano, on the other hand, over control of TFHU. These are purely non-bankruptcy law issues.

Moreover, this court dismissed the underlying chapter 11 case on January 29, 2018, determining that:

"*The pendency of the prepetition state court actions, where the same corporate governance issues raised by this motion are being litigated, convinces the court that there is a genuine and material dispute over who has the authority to govern TFHU and file and prosecute a bankruptcy case on behalf of TFHU. As such, bankruptcy is not ripe for prosecution.*

"*The proximity of the filing of the Oregon action prior to the filing of this case – only 15 days – also suggests an improper purpose for this filing, namely, to chill further litigation of the pre-petition actions.*

". . .

"*Even if the court were to ignore the foregoing, however, this case should still be dismissed because the ultimate burden of persuasion on the authority for filing this bankruptcy case has not been satisfied.*

"*The movant has produced sufficient prima facie evidence negating the authority of David Masters, Mark Masters, and Michael Lofrano to file and prosecute this case on behalf of TFHU.*"

Case No. 17-27528, Docket 46 at 4.

There is no bankruptcy estate any longer and the claims in this proceeding, aside from the claim for violation of the automatic stay, are not core. Nor could they affect the administration of the bankruptcy estate — there is no estate.

All claims except the automatic stay violation claim will be dismissed for lack of subject matter jurisdiction. The court finds it unnecessary to address the remaining grounds for dismissal as to those claims.

With respect to the claim based on the alleged violation of the automatic stay, the court cannot resolve that claim at this time, as the corporate governance dispute directly affects that claim. Only TFHU, as a former debtor in possession, may prosecute that claim. See also 11 U.S.C. § 1107(a). As TFHU was in charge of the estate, it is only TFHU who has standing to prosecute this claim. The dispute among the parties is concerns who has the right to control TFHU.

Given that the pending state court litigation will determine this issue, the court will abate further prosecution of this proceeding until this issue has been resolved in the non-bankruptcy forum. The court will set a status conference hearing in this adversary proceeding at least six months into the future.

The parties who filed the underlying bankruptcy case on behalf of TFHU have approximately six months, until September 28, 2018, to obtain an adjudication of their rightful control of TFHU. If this issue is adjudicated within the six-month deadline, they may return and continue to prosecute this adversary proceeding insofar as it alleges a violation of the automatic stay. If this issue is not adjudicated within the six-month deadline, the court will dismiss without prejudice the proceeding.

If and when prior to the six-month deadline the issue is resolved in any way, the prevailing parties to file a status report in this adversary proceeding.

4. 17-27528-A-11 THE FOUNDATION OF HUMAN UNDERSTANDING JDE-1
17-2240
THE FOUNDATION OF HUMAN UNDERSTANDING V. MASTERS ET AL

MOTION FOR DECLARATORY RELIEF
2-20-18 [22]

Tentative Ruling: The motion will be denied.

The Foundation of Human Understanding through Mark Masters, David Masters, and Michael Lofrano ask:

"*the Court to declare that these five directors - David Masters, Michael Lofrano, Marcelo Corona, Branigan Sherman, and Mark Masters - are the lawful board of FHU, because a directors meeting was appropriately and lawfully held on 9/8/17 pursuant to Cal Corp Code 5227(c), and because this board now meets the 49% non-family requirement of Cal Corp Code § 5227(a).*

"*In the event the Court finds there are any technical defects in the actions taken by the new board, Plaintiff requests equitable relief under Cal Corp Code 5227(c) 34 to the effect that the totality of the board's action was proper under the circumstances; and on the basis that any confusion was caused by Defendants' actions and statements over 28 years claiming that FHU was exclusively religious even though the IRS, the Federal Appeals Court, the Court of Claims, and the Supreme Court have conclusively ruled otherwise; and on the basis of indications of the ongoing inurement by Defendants, thus disqualifying them to serve as directors.*"

Docket 22 at 15.

The motion will be denied for the reasons outlined in the court's ruling on the motion to dismiss the adversary proceeding complaint. (DCN DL-1). That ruling is incorporated here by reference. The court has no subject matter jurisdiction over the dispute among the parties.

This motion is also denied because this court cannot award the requested declaratory/injunctive relief in a contested matter. See Fed. R. Bankr. P. 7001(7), (9).

5. 17-27528-A-11 THE FOUNDATION OF HUMAN UNDERSTANDING JDE-2
17-2240
THE FOUNDATION OF HUMAN UNDERSTANDING V. MASTERS ET AL

OBJECTION UNDER RULE 41
2-6-18 [21]

Tentative Ruling: The objection will be overruled.

The Foundation of Human Understanding through Mark Masters, David Masters, and Michael Lofrano:

"*To Order Defendants to produce all FHU bank account statements for the period from November 15, 2017 through January 22, 2018 in order to clarify whether the Automatic Stay was violated by the use of cash collateral.*

"*To request Mr. Rossi to clarify which of the Defendants, if any, he represents, and if none, then to Order the Defendants to declare who their counsel is, or if they will appear pro se.*"

Docket 21 at 5.

This objection is in effect similar to what the complaint is seeking and what the movant(s)' motion for declaratory seek.

The objection will be overruled for the reasons outlined in the court's ruling on the motion to dismiss the adversary proceeding. (DCN DL-1). That ruling is incorporated here by reference. The court has no subject matter jurisdiction over the dispute among the parties, except for the claim based on the automatic stay violation. Prosecution of that claim been abated, given the dispute over who is in rightful control of TFHU and the pending non-bankruptcy litigation pertaining to that dispute.

Also, the court overrules this objection because it cannot award the requested declaratory/injunctive relief in a contested matter. See Fed. R. Bankr. P. 7001(7), (9).

6.	17-26329-A-11 TOG-5	SHIV SINGH AND POOJA THAKUR	MOTION TO DISMISS CASE 2-14-18 [87]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtors move for dismissal pursuant to 11 U.S.C. § 1112(b), arguing that they have been unable to confirm a plan, conversion would result in a no-asset case, and they do not wish to incur further administrative debt.

The debtors contend that their chapter 11 petition was prompted by a foreclosure notice of their residence. The foreclosure has been cancelled, and the debtors have begun mediation in their pending quiet title action. The residence is subject to two recorded judgment liens totaling over $2,500,000. The debtors believe the residence is worth about $275,000. Bank of America has a first mortgage note approaching $100,000. The debtors have claimed a homestead exemption.

There is no equity in the residential property that would be of value to creditors in a liquidation proceeding. Further, the co-debtor's stock in a hotel franchise is also devoid of equity as it is in imminent foreclosure. The controlling limited liability company has not been able to obtain financing to do the necessary upgrades. Finally, the attorney for debtors has not been able to negotiate a consenting vote with an impaired class.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

Given the lack of equity in the debtors property, their inability to confirm a plan, and the absence of any opposition by creditors, dismissal is in the best interest of the debtors, the estate, and the creditors. Dismissal will permit the debtors to continue litigating the state court action without incurring additional administrative fees in bankruptcy. The case will be dismissed. No further relief will be granted.

7. 17-26329-A-11 TOG-6 — SHIV SINGH AND POOJA THAKUR — MOTION TO APPROVE COMPENSATION OF DEBTORS ATTORNEY 3-5-18 [95]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtors' counsel, Thomas O. Gillis, has filed a first and final motion for approval of compensation.

The requested compensation consists of fees and costs in the reduced amount of $20,000, which is the amount of the retainer paid by the debtors. The requested amount was reduced from $33,417.50 in fees and $204.06 in costs. This motion covers the period from June 16, 2017 through March 19, 2018. The court approved the movant's employment as the debtor's chapter 11 attorney on October 6, 2017. In performing services, the movant charged hourly rates of $125 and $450.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) analyzing estate asset issues, (2) preparing for and attending the IDI and meeting of creditors, (3) client conferences, (4) preparing, filing, and prosecuting a motion to avoid lien, (5) attending court hearings, (6) reviewing monthly financial reports, and (7) preparing fee and employment applications.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

8. 17-27936-A-11 — ABACUS INVESTMENT GROUP, INC. — ORDER TO SHOW CAUSE 1-26-18 [24]

Final Ruling: The order to show cause will be withdrawn.

This order to show cause was issued because counsel for the debtor paid the case filing fee with a check drawn of his account that was dishonored by his bank. At the prior hearing on February 20, 2018, the court ruled that the order to show cause would be withdrawn without sanction provided counsel makes good on his dishonored check and pays the $53 fee incurred by the clerk by March 16. The docket reflects that counsel paid both the filing fee and administrative fee on March 2, 2018.

9. 11-29444-A-7 JOSEPH/JULIE SPAGNOLI — MOTION TO CHARGE MEMBER'S INTEREST IN TSWR DEVELOPMENT
11-2528 SMK-1
RJP FRAMING, INC. V. SPAGNOLI
2-15-18 [27]

Tentative Ruling: The motion will be denied.

The plaintiff seeks to enforce a judgment entered by this court against the debtor/defendant by charging the membership interest, held by a corporation of which the defendant is the sole shareholder, in TSWR Development, L.L.C. pursuant to Cal. Civ. Pro. Code § 708.310 made applicable by Fed. R. Civ. P. 69.

The defendant opposes the motion. The opposition states that the defendant is in the process of selling all of the assets to which he is a partial owner, in his individual capacity, and will use the sale proceeds to pay the judgment. Docket 41 at 1. He intends to have the sale finalized within the next six months. Docket 41 at 2.

On January 6, 2012, this court entered judgment against the defendant in this case based upon a stipulation for entry of judgment and settlement agreement in the sum of $283,801. Dockets 13 & 33, Ex. A. The plaintiff has collected seven $500 payments ($3,500) from the defendant to date, the last of which was received in August of 2013, leaving a balance of $280,301. In the event of default, interest accrues on the remaining balance at the rate of 10% per annum from and after the date of default, i.e. September, 2013. As of January 25, 2018, the plaintiff asserts that, including interest and costs, the remaining balance on the judgment debt is approximately $401,790.

In April of 2013, FAF Incorporated filed a Statement of Information with the California Secretary of State in which the defendant is identified as the sole officer and director. Docket 31, Ex. A. The corporation was suspended by the California Secretary of State as of January 31, 2018 - likely for failing to file the required Statement of Information due every other year. A suspended entity may be revived by resolving the issue that caused the suspension. The now-suspended corporation is a member of TSWR Development a Delaware limited liability oil and gas company operating in Greenville, South Carolina.

Federal Rule of Civil Procedure 69(a) provides: "A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution--and in proceedings supplementary to and in aid of judgment or execution--must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69.

Fed. R. Civ. P. 69 applies in adversary proceedings via Fed. R. Bankr. P. 7069.

In Zamani v. Carnes, the Ninth Circuit held that Fed. R. Civ. P. 69 permits the enforcement of judgments pursuant to California state law. 491 F.3d 990

(2007). The case dealt specifically with section 724 of the California Code of Civil Procedure found under title 9, Enforcement of Judgments:

"Rule 69(a) should be applied to the satisfaction of judgments and acknowledgment thereof as long as it is valid under the Rules Enabling Act. Rule 69(a) incorporates state law so it cannot possibly 'abridge, enlarge or modify any substantive right' that may exist under section 724 of the California Code of Civil Procedure [part of California's Enforcement of Judgments Law]. 28 U.S.C. § 2072(b). Because Rule 69(a) is valid under the Rules Enabling Act, we conclude that it applies to satisfaction of judgments and acknowledgment thereof."

Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007).

Like section 724, section 708 of the California Code of Civil Procedure is found under the Enforcement of Judgments title of the Code and is thus within the breadth of Rule 69.

Cal. Civ. Pro. Code § 708.310 provides: "If a money judgment is rendered against a partner or member but not against the partnership or limited liability company, the judgment debtor's interest in the partnership or limited liability company may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15907.3, 16504 , or 17705.03 of the Corporations Code."

Cal. Corp. Code § 17705.03 provides: "On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor."

Pursuant to Cal. Civ. Pro. Code § 708.310 and Cal. Corp. Code § 17705.03, the plaintiff seeks an order directing TSWR Development, L.L.C. to pay any money due to FAF Incorporated, directly to the plaintiff to satisfy the defendant's judgment debt. The state laws cited by the plaintiff apply if a judgment debtor is a member of a limited liability company. Here, FAF Inc., not the defendant, is a member of TSWR. Although FAF Inc. has recently been suspended by the California Secretary of State, the suspension does not necessarily void contracts to which FAF is a party. While an entity has suspended status under California law, a contract is void only at the instance of any party to the contract. There is no evidence that FAF Inc. no longer holds a contractual membership interest in TSWR. Thus, to apply Cal. Corp. Code § 17705.03 and direct TSWR to pay the plaintiff in satisfaction of the defendant's personal liability, the court would have to amend the judgment to include FAF Inc. as an alter-ego co-defendant. This type of veil piercing by a third party, known as reverse veil piercing, essentially allows a third party outsider to reach corporate assets to satisfy claims against an individual shareholder.

California courts have routinely rejected attempts by plaintiffs to expand the reach of the alter ego doctrine in this manner. FG Hemisphere Assocs., LLC v. Unocal Corp., 560 F. App'x 672, 673 (9th Cir. 2014)(citing Stodd v. Goldberger, 73 Cal. App. 3d 827, 141 Cal. Rptr. 67, 71 (1977) (rejecting alter ego theory where bankruptcy trustee failed to allege injury by corporation); Postal Instant Press, Inc. v. Kaswa Corp., 162 Cal. App. 4th 1510, 77 Cal. Rptr. 3d 96, 102-03 (2008)(rejecting the creation of an outsider reverse veil piercing

theory of alter ego liability)).

"Whether a party is liable under an alter-ego theory is normally a question of fact. (Las Palmas Associates v. Las Palmas Center Associates (1991) 235 Cal.App.3d 1220, 1248, 1 Cal.Rptr.2d 301; accord, RLH Industries, Inc. v. SBC Communications, Inc. (2005) 133 Cal.App.4th 1277, 1288, 35 Cal.Rptr.3d 469.) 'The conditions under which the corporate entity may be disregarded, or the corporation be regarded as the alter ego of the stockholders, necessarily vary according to the circumstances in each case inasmuch as the doctrine is essentially an equitable one and for that reason is particularly within the province of the trial court.' (Stark v. Coker (1942) 20 Cal.2d 839, 846, 129 P.2d 390.) Nevertheless, it is generally stated that in order to prevail on an alter-ego theory, the plaintiff must show that '(1) there is such a unity of interest that the separate personalities of the corporations no longer exist; and (2) inequitable results will follow if the corporate separateness is respected.' (Tomaselli v. Transamerica Ins. Co., supra, 25 Cal.App.4th at p. 1285, 31 Cal.Rptr.2d 433)."

Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 811-12 (2010).

Although the defendant is the sole shareholder of FAF Inc., the plaintiff's motion does not address the alter ego doctrine. Rather, the plaintiff assumptively equates FAF Inc.'s membership interest in TSWR as the defendant's interest in his individual capacity - perhaps erroneously on account of the corporation's suspended status. Absent firmer support than the plaintiff has provided, the court does not think the California Supreme Court would extend the alter ego doctrine to this context. See, e.g., Morrell Constr., Inc. v. Home Ins. Co., 920 F.2d 576, 578–79 (9th Cir. 1990).

Even if the theory of outside reverse piercing of the corporate veil is available for use by creditors to reach corporate assets to satisfy a shareholder's personal liability, equity requires that before the theory can be applied, a creditor wishing to invoke the doctrine must demonstrate the absence of a plain, speedy, and adequate remedy at law would protect against reverse piercing being used to bypass legal remedies. See, e.g., Postal Instant Press, Inc. v. Kaswa Corp., 162 Cal. App. 4th 1510 (2008). Thus, in order to establish an alter ego theory between the defendant and FAF Inc., the plaintiff would, in addition to other factors, need to thoroughly address the adequacy of alternative remedies to reverse piercing of the corporate veil - which the plaintiff has not done.

For the forgoing reasons, the motion is denied.

10.	17-23968-A-7	PATRICK/MICHELE PITTS	MOTION TO
	17-2135	DBJ-1	AMEND
	ENGLAND ET AL V. PITTS ET AL		2-22-18 [41]

Final Ruling: The motion will be dismissed.

The movant has provided only 25 days' notice of the hearing on this motion. Nevertheless, the notice of hearing for the motion states that the motion is being noticed under Local Bankruptcy Rule 9014-1(f)(1), which requires at least 28 days' notice. The notice of hearing states that no party shall be heard in opposition to the motion, if written opposition to the motion has not been timely filed. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). This rule does not require written oppositions to be filed with the court.

Further, Local Bankruptcy Rule 9014-1(f)(2)(i) prohibits use of the shorter notice permitted by Local Bankruptcy Rule 9014-1(f)(2) in adversary proceedings. Instead, all motions in adversary proceedings must be set on 28 days of notice pursuant to Local Bankruptcy Rule 9014-1(f)(1).

11. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1 — 1-24-18 [1002]
JPMORGAN CHASE BANK, N.A. VS.

Tentative Ruling: The motion will be granted.

The movant, JPMorgan Chase Bank, N.A., seeks relief from the automatic stay as to a real property located at 186 Prairie Circle in Sacramento, California pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

The chapter 11 trustee filed a statement of non-opposition. Docket 1024.

Adequate protection under section 362(d)(1) is provided in order to safeguard the creditor movant against the depreciation in value of its collateral property and not to compensate the movant for lost interest or lost opportunity costs. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 370 (1988). Yet, there is no evidence in the record establishing that the property is depreciating in value.

Turning to section 362(d)(2), there is no equity in the property. It has an undisputed value of $120,000 and is encumbered by claims totaling approximately $236,986. Docket 336. Specialized Loan Servicing, LLC holds the first deed against the property that secures a claim for approximately $145,066. The movant holds the second deed against the property securing a claim for approximately $116,347.

As to necessity to an effective reorganization, the court granted the chapter 11 trustee's motion to abandon the subject property on September 19, 2016. Docket 320. Thus, the property is no longer property of the estate and is not necessary to an effective reorganization.

The motion will be granted to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

12. 18-20608-A-11 ANTIGUA CANTINA & GRILL, INC. — STATUS CONFERENCE 2-2-18 [1]

Tentative Ruling: None. Debtor's appearance required.