

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

November 14, 2024 at 11:00 a.m.

1. [24-00203-E-0](#)  
[24-2189](#)

WINDSOR TERRACE  
HEALTHCARE, LLC

MOTION FOR REMAND  
10-17-24 [11]

ORRICK ET AL V. TRESTLES, LLC  
ET AL

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on attorneys of record who have appeared in the case on October 17, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Remand has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Remand is granted.**

Creditor-Plaintiff Jerry Orrick and Joe Orrick ("Plaintiff") moves this court for an order remanding the Superior Court Proceeding, case no. 23CV002855, to the Superior Court for the County of Sacramento ("Superior Court Proceeding").

The Superior Court Proceeding involves Plaintiff's claims against Debtor-Defendant Windsor Sacramento Estates, LLC ("Defendant"), which Debtor removed to this court on September 26, 2024. Plaintiff moves this court on the follow grounds:

1. The court should remand based upon 28 U.S.C. § 1447 and 1452 on the basis that: (i) on the facts and in the posture presented here, this Court “lacks subject matter jurisdiction,” 28 U.S.C. § 1447(c), and (ii) additionally or in the alternative, remand of the Superior Court Action is appropriate on “any equitable ground,” *id.* § 1452(b). Mot. 2:1-5, Docket 11.
2. Plaintiff Jerry Orrick’s advanced age and declining health, which prompted the Sacramento Superior Court to set the case for jury trial beginning December 16, 2024 – relief that is impossible unless this Court remands the Superior Court Action forthwith;
3. The exclusively state law causes of action that arise under and are governed by California law, which can and should be applied by California courts in a case brought by California plaintiffs against a California facility; and
4. The absence of any federal interest or nexus – including to the soon-to-be-closed out-of-District bankruptcy case that involves just a single defendant (out of more than a dozen total), and is now post-confirmation and postconsummation.

Mot. 2:9-19. Docket 11.

5. Pursuant to Federal Rule of Bankruptcy Procedure 9027(e)(3) and Judicial Code section 157(e), the non-removing plaintiff: (i) disputes that any claim or cause of action herein should proceed or be tried by or before any tribunal other than the Superior Court; (ii) disputes that any claim or cause of action herein is core; (iii) respectfully declines to consent to entry of orders or judgment by the bankruptcy judge; (iv) demands trial by jury; (v) respectfully declines to consent to the bankruptcy judge conducting a jury trial; and (vi) reserves all rights, claims, and defenses concerning all of the foregoing. Nothing herein or in any subsequent filing shall constitute or be deemed or construed as a waiver of any rights (or as any form of consent that could adversely affect such rights) under the Constitution, the Bankruptcy Code, the Bankruptcy Rules, and/or any applicable law, including under Article III of the Constitution with respect to the exercise of the judicial power of the United States, with respect to any of the foregoing. Statement of Reservation of Rights, Docket 9.

Plaintiff’s bankruptcy counsel, Robert Pfister, submits his Declaration in support. Docket 13. Mr. Pfister testifies as to some time lines surrounding this case, including other details of case prosecution and plan confirmation in the related bankruptcy case in the Central District of California, case no. 1:23-bk-11200-VK. Decl. ¶¶ 2-4, Docket 13.

Mr. Pfister identifies language in the confirmed Plan that states Plaintiff’s claim is not liquidated, and the Plan provides the claim is to be liquidated by jury trial in either a United States District Court or a California Superior Court. *Id.* at ¶ 5. Mr. Pfister testifies as to other personal injury claims ongoing against Defendant and related affiliates, noting that Defendant has removed some, but not all, of the other personal

injury claims. Mr. Pfister testifies that randomness in removal shows there is no particular nexus between the post-confirmation liquidation of these matters and the prosecution of the confirmed Plan. *Id.* at ¶¶ 10, 11.

Plaintiff's Superior Court Proceeding counsel, Thomas McLaughlin, also submits his Declaration in support. Decl., Docket 15. Mr. McLaughlin testifies as to the conditions Plaintiff Jerry Orrick suffered during his time under Defendant's care. *Id.* at ¶ 3. Mr. McLaughlin testifies as to the time line of the Superior Court Proceeding and related deadlines. *Id.* at ¶ 6. Mr. McLaughlin emphasizes his client's advanced age and deteriorating health conditions supporting remand. *Id.* at ¶ 8.

## DEFENDANT'S OPPOSITION

Defendant filed an Opposition on October 31, 2024. Defendant opposes remand on the following grounds:

1. The Superior Court Proceeding has a close nexus to the related bankruptcy case in the Central District, case no. 1:23-bk-11200-VK, in that resolution of the state court action will impact the implementation and administration of the Debtor's Plan of Reorganization. Opp'n 5:6-8, Docket 34.
2. The *Lazar* factors weigh against remand. The fact that the Debtor's Plan of Reorganization has been confirmed and distributions have begun makes remand a much less efficient administration of the estate. *Id.* at 5:18-20.
3. Each cause of action the Plaintiffs have alleged against the Non-Debtor Defendants rely on a common set of operative facts, with plaintiff's advancing an alter ego theory of liability. Under plaintiff's theory, the Non-Debtor Defendants have no liability separate from the Debtor Defendant. Therefore, there can be no determination of liability for the non-debtors without determining the liability of Windsor Sacramento. For that reason, the determination of the claims against the Debtor and Non-Debtor Defendants must be made together in the same forum. However, any judgment against Windsor Sacramento will be submitted to the In re Windsor court, where it will be paid out at the percentage elected by the Plaintiffs under the applicable part of the plan of reorganization. Therefore, it will impact the implementation and administration of the plan of reorganization by reducing the overall amount available for the other claims allowed for by the plan. For these reasons, this Court should deny the Plaintiffs' Motion to Remand Action to Sacramento Superior Court. *Id.* at 8:17-28.

Defendants AVROHOM TRESS (DOE 104), AARON ROBIN (DOE 105), NEWGEN ADMIN SERVICES, LLC (DOE 106), 501 JESSIE AVENUE PROPCO, LLC (DOE 107), ANTELOPE REALTY HOLDINGS, LLC (DOE 108), and ANTELOPE HOLDINGS I, LLC (DOE 109) (collectively "NewGen Defendants") filed a joinder to Defendant's Opposition on October 31, 2024. Docket 35. NewGen Defendants support the opposition on the basis that consolidation of claims against all defendants under the bankruptcy court's jurisdiction is appropriate.

## PLAINTIFF'S REPLY

Plaintiff filed a Reply on November 7, 2024. Plaintiff states:

1. Remand is the only proper result here. The Superior Court Action was all-but-randomly wrested from its proper forum on the eve of a multi-week jury trial that was specially set so that an 88-year-old plaintiff could have his day in court. The only basis for that removal is a flimsy claim that the Superior Court Action has a “close nexus” to an out-of-District bankruptcy case that is itself all but over. The evidence before the Court refutes any such nexus. And even if this “close nexus” inquiry presented a close question (it does not), remand would still be manifestly appropriate under the “any equitable ground” standard. Reply 3:6-12, Docket 36.

## APPLICABLE LAW

Defendants removed the Superior Court Proceeding as provided in 28 U.S.C. § 1452 and 1334(b), and Federal Rule of Bankruptcy Procedure 9027. These Sections and Rule provide:

§ 1452. Removal of claims related to bankruptcy cases

(a) **A party may remove any claim or cause of action in a civil action** other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, **to the district court for the district where such civil action is pending**, if such district court has **jurisdiction of such claim or cause of action under section 1334 of this title**.

(b) The court to which such claim or cause of action is removed **may remand such claim or cause of action on any equitable ground**. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. § 1452 [emphasis added].

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, **the district courts shall have original but not exclusive jurisdiction of all civil proceedings** arising under title 11, or arising in or **related to cases under title 11**.

(c)

(1) Except with respect to a case under chapter 15 of title 11, **nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding** arising under title 11 or arising in or related to a case under title 11.

(2) **Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11** but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, **the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.**

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

....

28 U.S.C. § 1334(a)-(d) [emphasis added].

In reviewing the proper exercise of federal court jurisdiction in connection with related to matters and the “bankruptcy intrusion” (in a positive way) on the state court judicial process, the provisions of 28 U.S.C. § 157 are also relevant.

#### § 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)

(1) Bankruptcy 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, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the

purposes of confirming a plan under chapter 11, 12, or 13 of title 11 **but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;**

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(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;** and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2)].

**(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court** in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)

(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

....

28 U.S.C. § 157(a)-(c) [emphasis added].

Collier on Bankruptcy discusses this wrongful death and personal injury tort exception from the referral to the bankruptcy court, stating:

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

It is not at all clear what constitutes a “personal injury tort” claim. **Some courts (those that adopt what is called the “narrow view”) require a trauma or bodily injury;**<sup>1</sup> others more broadly look for **“any injury which is an invasion of personal rights.”**<sup>2</sup> A third viewpoint (which one court has called the “hybrid approach”<sup>2a</sup> finds fault with both of these approaches, and concludes that “in cases where it appears that a claim might be a ‘personal injury tort claim’ under the ‘broader’ view but has earmarks of a financial, business or property tort claim, or a contract claim, the court reserves the right to resolve the ‘personal injury tort claim’ issue by (among other things) a more searching analysis of the complaint.”<sup>3</sup>

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A persuasive decision adopting the narrow view following a thorough review of the legislative history, is *In re Gawker Media LLC*, 571 B.R. 612 (Bankr. S.D.N.Y. 2017). See also *Massey Energy Co. v. West Va. Consumers for Justice*, 56 C.B.C.2d 1585, 351 B.R. 348, 351 (E.D. Va. 2006) (claims for

defamation and business conspiracy are not PITWD claims, a category that “is limited to a narrow range of claims that involve an actual physical injury”); *In re Sheehan Mem’l Hospital*, 377 B.R. 63, 68 (Bankr. W.D.N.Y. 2007) (employment discrimination claim); *In re Cohen*, 107 B.R. 453 (S.D.N.Y. 1989) (claim for statutory violation of state anti-discrimination law); *In re Atron Inc.*, 172 B.R. 541 (Bankr. W.D. Mich. 1994) (civil rights complaint alleging damages for mental and emotional distress does not qualify); *In re Interco, Inc.*, 135 B.R. 359 (Bankr. E.D. Mo. 1991) (age discrimination complaint alleging emotional distress does not qualify).

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*Control Center, L.L.C. v. Lauer*, 288 B.R. 269, 286 (M.D. Fla. 2002) (“Defamation is a personal injury tort.”); *Unnamed Citizens A thru E v. White (In re White)*, 410 B.R. 195 (Bankr. W.D. Va. 2008) (violation of federal and state housing laws); *Leathem v. Volkmar (In re Volkmar)*, 217 B.R. 561, 566 (Bankr. N.D. Ill. 1998) (“personal injury tort” may include complaint alleging intentional infliction of emotional distress); ***Thomas v. Adams (In re Gary Brew Enters.)*, 198 B.R. 616 (Bankr. S.D. Cal. 1996) (racial discrimination complaint falls within the term).**

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*In re Residential Capital, LLC*, 536 B.R. 566, 572 (Bankr. S.D.N.Y. 2015), followed by *In re Roman Catholic Church for the Archdiocese of New Orleans*, 2021 U.S. Dist. LEXIS 160497 at \*7 (E. D. La., Aug. 25, 2021).

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*Parker v. Miller (In re Miller)*, 589 B.R. 550, 563 (Bankr. S.D. Miss. 2018) (alienation of affection and intentional infliction of emotional distress are PITWD claims); *In re Residential Capital, LLC*, 536 B.R. 566, 572 (Bankr. S.D.N.Y. 2015) (emotional distress, whether intentional or negligent); *Elkes Devel., LLC v. Arnold (In re Arnold)*, 407 B.R. 849 (Bankr. M.D.N.C. 2009); *Stranz v. Ice Cream Liquidation, Inc. (In re Ice Cream Liquidation, Inc.)*, 281 B.R. 154, 161 (Bankr. D. Conn. 2002) (also holding that the provisions regarding personal injury tort and wrongful death claims are not constitutionally mandated); accord *Adelson v. Smith (In re Smith)*, 389 B.R. 902, 908 (Bankr. D. Nev. 2008) (libel claim is a PITWD claim). The Supreme Court noted this triad of views in the course of its opinion in *Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475, 65 C.B.C.2d 827 (2011), discussed at ¶¶ 3.02[3][d][i] and 3.03 supra, but did not have to reach the issue.

1 Collier on Bankruptcy, ¶ 3.06 (16<sup>th</sup> Edition).

Even under the most narrow view (which does not include the trial courts in the Ninth Circuit), one looks to see if the claim is based on a “trauma or physical injury.”

As the court addresses below, the confirmed Chapter 11 Plan provides the process for the liquidation of the debt that Plaintiffs assert in the Superior Court Judicial Proceeding. In the Chapter 11 Plan



itself (counsel for the Debtor in Possession listed as the attorneys in the upper left hand corner of page 1 of the confirmed Plan), expressly references claims in the nature of Plaintiffs' asserted in the Superior Court Proceeding as a "Personal Injury Claim." Examples include:

49. "Litigation Claim" means an Employment Claim or Personal Injury Claim.

Confirmed Plan, p. 7:22; Exhibit B, Dckt. 13.

64. "Personal Injury Claim" means a General Unsecured Claim that has been scheduled by the Debtors or asserted by a claimant in a timely filed proof of claim for damages for personal injury, wrongful death or related claims.

*Id.*; p. 8:21-23.

**Class 4 – General Unsecured Claims.** Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors. Each Claimant with a Personal Injury Claim who does not accept the Debtors' proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation (each, a "Non-Settling Personal Injury Claimant") shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) in the manner set forth in Section IV(D)(7) below.

*Id.*; p. 12:17-27.

The Personal Injury Claim of any claimant who does not accept the Debtors' proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and until such Claim becomes a liquidated Allowed Claim pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court, at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims. For the avoidance of doubt, all rights of holders of Personal Injury Claims and the Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

*Id.*; p. 32:1-11.

Thus, it appears that the confirmed Chapter 11 Plan itself defines Plaintiffs' claim as one for "Personal Injury."

## Statutory Remand Provisions

As grounds for remand, Plaintiff cites to 28 U.S.C. §§ 1447(c) and 1452(b), which state:

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 U.S.C. § 1447(c);

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. 1452(b).

In the Opposition, Defendants also cite to 28 U.S.C. § 1367(a) as an additional basis for Federal Court jurisdiction for the Superior Court Proceeding.

§ 1367. Supplemental jurisdiction

(a) **Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.** Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title [Diversity], the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The **district courts may decline to exercise supplemental jurisdiction** over a claim under subsection (a) if—

- (1) **the claim raises a novel or complex issue of State law,**
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection

(a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

28 U.S.C. § 1367 [emphasis added].

It is argued in the Opposition that this Superior Court Proceeding is “related to *In re Windsor*, a case arising in title 11 of the U.S. Code.” Opposition, p. 8:11-14; Dckt. 34. As addressed above, Congress expressly provides in 28 U.S.C. § 1334 for such “related to” jurisdiction in connection with jurisdiction being asserted pursuant to all proceedings under Title 11 or arising in or related to cases under Title 11.

A decision to remand under 28 U.S.C. 1452(b) is “committed to the sound discretion of the bankruptcy judge” and is only overturned on an abuse of discretion standard. *In re McCarthy*, 230 B.R. 414, 416 (B.A.P. 9th Cir. 1999). In *McCarthy*, the Bankruptcy Appellate Panel for the Ninth Circuit found that remand was proper on an equitable basis, the bankruptcy court having made findings of fact and conclusions of law to support remand. Such findings and conclusions included the fact that the counts in the complaint were grounded upon state law issues that do not commonly arise in bankruptcy. The Bankruptcy Appellate Panel found that was sufficient for a bankruptcy judge’s discretion in choosing to remand on the equities. *Id.* at 418.

The crux of Defendants’ argument is that removal is proper as the state court claims share a close nexus with the related bankruptcy case, and so pursuant to 28 U.S.C. § 1367(a), remand should be denied. 28 U.S.C. § 1367(a) states:

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that

they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Defendant's second contention is that the factors set out in *In re Lazar*, 200 B.R. 358, 372–373 (Bankr. C.D. Cal. 1996) (quoting *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir.1990)), support this court exercising the supplemental jurisdiction over the state court claims. Those factors are [the paragraph reformatted by this court to show each element as a separate line item]:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted “core” proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of nondebtor parties.

*In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990). As discussed in *Tucson*, these factors are most relevant in the context of abstention pursuant to 11 U.S.C. § 1334, not remand.

The court has previously considered the issue of allowing a cause of action to proceed in state court in the Motion for Relief context. Although not exactly on point here, law there is relevant and helps shed light on allowing a cause of action to proceed in state court. The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v.*

*Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at \*8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at \*9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at \*6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

## DISCUSSION

Although the action in nature is complicated given the gravity of the issues and allegations, the court has been presented with a straight forward set of facts predating a simple resolution. Plaintiff seeks remand based on a lack of subject matter jurisdiction, or based on any equitable ground. Defendant argues removal is proper and the court should deny remand, exercising its supplemental jurisdiction over Plaintiff’s claim, to consolidate the claims and liquidate the Plaintiff’s claims in this forum.

The court does not address a lack of subject matter jurisdiction here, finding that remand is proper based on a) the equities, and b) the fact that the terms of the confirmed Plan in the related bankruptcy case require the Superior Court Action to try the issues and liquidate the claim if the district court elects to abstain.

Similar to the facts in *McCarthy*, it is not disputed that the counts in the complaint deal in issues of state law not regularly seen in bankruptcy court. The Complaint involves allegations of elder abuse, fraud based upon the elder abuse, and infliction of emotional distress based upon the elder abuse. *See* Ex. A, Second Am. Complaint, Docket 15. The record also reflects that there have been extensive discovery proceedings and other pretrial proceedings in state court. To be sure, a trial date has been set for December 16, 2024, and is rapidly approaching. This court does not intend to infringe upon the work already performed in state court by entertaining proceedings in this court to try issues that are already deep in the litigation process.

The court is also presented with the terms of the confirmed Plan in the related bankruptcy case in the Central District of California, case no. 1:23-bk-11200-VK, which address treatment of the Superior Court Action. Section IV. D. 7. contains the exact provision dealing with these types of unliquidated claims. Of relevance here, that section of the confirmed Plan states:

Each Claimant with a Personal Injury Claim who does not accept the Debtors’ proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation **shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) for distribution purposes under this Plan in the District Court (subject to issues of abstention by the District Court as set**

**forth below)** as provided 28 USC §157(b) and 28 USC §1411 only after completion of this mandatory mediation process.

The Personal Injury Claim of any claimant who does not accept the Debtors' proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and **until such Claim becomes a liquidated Allowed Claim pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court**, at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims. For the avoidance of doubt, all rights of holders of Personal Injury Claims and the Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

Ex. B, Confirmed Plan at 31:19-27, 32:1-11, Docket 13 [emphasis added]. Indeed, the trial has been ongoing in the Superior Court for months now, the parties appearing to operate under this provision to liquidate the claim. If Defendant desired removal to have a federal District Court try the claim, the terms of the Plan permitted such a route; however, after months of litigation and on the eve of trial, Defendant now wishes to remove and seek the federal court route to liquidate the claim.

Contrary to Defendant's position, the terms of the confirmed Plan are clearly in operation as the Superior Court Action goes forward and liquidates Plaintiff's claim, and such action can go forward without obstruction from this court upon remand.

In considering the *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990), (abstention) factors directed to by Defendants, the court notes the following:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,

On this point, the court concludes that the Plan itself provides for these obligations to be liquidated in either the District Court or the State Court. From what has been presented, the confirmed Plan shows that such litigation will not negatively impact the efficient administration of the estate under the confirmed Plan. In fact, this multi-year old Superior Court Proceeding will more efficiently proceed in the Superior Court rather than wrenching it into Federal Court.

(2) the extent to which state law issues predominate over bankruptcy issues,

The Complaint seeks recovery on claims for Elder Abuse, Fraud-Misrepresentation, Fraud-Constructive, Fraud-Concealment, and Negligent Infliction of Emotional Distress. Ntc. of Removal, p. 2:11-14; Dckt. 1. These are all state law issues and rights, which are commonly litigated in the State Courts. While this court never shies away from matters merely because non-bankruptcy law is involved, that does not change the fact that there are no bankruptcy issues to be adjudicated.

(3) the difficulty or unsettled nature of the applicable law,

On this point, while the court has not researched the issues, it presumes that while not simple, California law is well established on each of the claims being asserted. (This court is familiar with the well establish law concerning fraud in the state of California.)

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,

The Superior Court Proceeding was commenced in June of 2023, and as shown on the copy of the Superior Court Proceeding Docket, attached as Exhibit 2 to the Notice of Removal (Dckt. 1), there are thirty-two (34) pages of Docket entries for activity in the Superior Court Proceeding. Not only is there the Superior Court Proceeding, but there has been substantial activity in it.

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,

No jurisdictional basis for this matter being in Federal Court other than 28 U.S.C. § 1334(b) has been asserted. Ntc. of Removal, p. 2:3-9; Dckt. 1. Defendants assert that supplemental jurisdiction may be asserted over the Defendants pursuant to 28 U.S.C. § 1367(a) because the Superior Court Proceeding is “related to” the Bankruptcy Case because the debt liquidated in such Proceeding (if any) will then be paid through the confirmed Chapter 11 Plan. This is substantially duplicative of the “related to” jurisdiction expressly provided for in 28 U.S.C. § 1334(b) and does not add anything of “jurisdictional substance.”

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,

The liquidation of this debt and determination of whatever amount is owed is related to the Bankruptcy Case and payment under the Plan.

(7) the substance rather than form of an asserted “core” proceeding,

In substance, the litigation of the Superior Court Proceeding does not relate to law arising under Title 11 (the Bankruptcy Code) or proceedings in the Bankruptcy Case. Rather, it is a necessary liquidation of the amount owed, if anything, to Plaintiffs to be paid through the confirmed Chapter 11 Plan.

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

There are only state law claims being asserted in the Superior Court Proceeding, and there are no core bankruptcy matters to be addressed.

(9) the burden of [the bankruptcy court's] docket,

While the federal courts, including the Bankruptcy Court, can and does regularly addresses complex and substantial non-federal law business, finances, title, and economic claims and issues, claims for Elder Abuse and Negligent Infliction of Emotional Distress, as well as seeking recover for damages for the personal injury asserted to be caused Plaintiff, is an entirely different world for the Bankruptcy Court.

Additionally, Defendants have exercised their right to a jury trial. Jury Demand; Dckt. 8. While theoretically possible for there to be a jury trial in an Article I Bankruptcy Court, such is a rare beast. However, it is an everyday occurrence in the California Superior Court.

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

As noted above, the Chapter 11 Plan does include a provision for the liquidation of the Plaintiffs' claim through litigation in either the District Court or the Superior Court Proceeding. However, as noted by Plaintiffs, the Superior Court Proceeding was set for trial to start in December 2024, which the removal by Defendants would derail

(11) the existence of a right to a jury trial, and

Defendants have exercised their right to a jury trial. Jury Demand; Dckt. 8. In the Motion to Remand, Plaintiffs state that the Sacramento Superior Court had set the Superior Court Proceeding for a jury trial beginning December 16, 2024. Motion, p. 2:9-12; Dckt. 11. *See also*, Declaration, p. 3:10-12, stating that the December 16, 2024 jury trial was projected to take 25 to 30 trial days; Dckt. 15.

(12) the presence in the proceeding of nondebtor parties.

There are non-debtor defendants in the Superior Court Proceeding. However the Debtor defendant asserts that there is derivative liability and the rights and claims being adjudicated are the same among all the Defendants.

In considering all of the above factors, applicable law, and the proper, efficient administration of justice and use of judicial resources, the court finds that the facts, law, and equities support remanding this action to the Sacramento Superior Court pursuant to 28 U.S.C. 1452(b). There is little left to do with Bankruptcy Case administration. The Plan itself provides for the Plaintiff's "Personal Injury" claims to be adjudicated either in the District Court or the State Court.

The Bankruptcy Plan (the modified "contract" between the Debtors and Creditors) is confirmed and provides how once the asserted Personal Injury Claim of Plaintiff is liquidated it will be paid. There is no Federal Law or Bankruptcy Law to be adjudicated, "just" California State Law.

From what has been presented, removal of the Superior Court Proceeding delays the adjudication of the issues and delays the ultimate payment under the confirmed Chapter 11 Plan. While "related to" the Bankruptcy Case, the adjudication of the Superior Court Proceeding is not something for which the administration of Bankruptcy Case is benefitted by the removal to this Bankruptcy Court.

The California Superior Court is the better court in which these California State Law rights and issues to be determined. That court has the resources and ability to have the Superior Court Proceeding diligently prosecuted and a judgment issued determining the Personal Injury Claim of Plaintiffs so as to not delay the performance of the confirmed Chapter 11 Plan.

The Motion is granted and Superior Court Proceeding, case no. 23CV002855, is remanded to the Superior Court for the County of Sacramento, effective immediately upon this court entering its order.



The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Remand filed by the debtor, Creditor-Plaintiff Jerry Orrick and Joe Orrick (“Plaintiff”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Remand is granted pursuant to 28 U.S.C. 1452(b) and the terms of the Confirmed Plan at Section IV. D. 7. (Ex. B, Docket 13). Case no. 23CV002855 is remanded to the Superior Court for the County of California and shall proceed in the Superior Court for the County of Sacramento immediately.