

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

December 5, 2024 at 11:00 a.m.

1. [24-00203-E-0](#)
[24-2188](#)

WINDSOR TERRACE
HEALTHCARE, LLC

MOTION FOR REMAND
10-26-24 [11]

BRANDY RUSSELL,
SUCCESSOR-IN-INTEREST TO
DECEDENT DEBORAH WASHINGTON
V. WINDSOR EL CAMINO CARE CENTER, LLC

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.

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 26, 2024. By the court's calculation, 40 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-Plaintiffs Brandy Russell, as successor in interest to decedent Deborah Washington, and Brandy Russell, individually (collectively "Plaintiff") move this court for an order remanding the Superior Court Proceeding, *Russell vs. Windsor El Camino Care Center, LLC, et al.*, case no. 34-2022-00329913, to the Superior Court for the County of Sacramento ("Superior Court Proceeding").

December 5, 2024 at 11:00 a.m.

Page 1 of 59

The Superior Court Proceeding involves Plaintiff's claims against Debtor-Defendant Windsor Sacramento Estates, LLC and other defendants, 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. 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
3. The absence of any federal interest or nexus – including to the out-of-District bankruptcy case that the Debtors themselves say is now post-confirmation and post-consummation.

Mot. 2:9-19. Docket 11.

4. 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 15. 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 15.

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, Justin Ward, also submits his Declaration in support. Decl., Docket 14. Mr. Ward testifies as to the conditions Plaintiff suffered during her time under Defendant's care. *Id.* at ¶ 3. Mr. Ward testifies as to the nature of the issues, specifically that the issues involve state law specific causes of action. *Id.* at ¶ 4.

DEFENDANT'S OPPOSITION

Defendants Windsor El Camino Care Center, LLC dba Windsor El Camino Care Center ("Defendants") filed an Opposition on November 21, 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. Further, there is supplemental jurisdiction pursuant to 11 U.S.C. § 1367(a). Opp'n 2:4-10, Docket 16.
2. The *Cedar Funding* 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 3:11-14.
3. Resolution of the state court claims in tandem with the completion of the Debtor's Plan of Reorganization is the contemplated outcome of the cases being jointly administered through *In re Windsor*. For this Court to deny the Plaintiff's motion for remand allows for the most efficient resolution of all the claims tied into the joint bankruptcy proceedings. *Id.* at 3:10-13.
4. The only named defendant in the state court action is the debtor. Any judgment against Windsor El Camino Care Center will be submitted to the *In re Windsor* court, where it will be paid out at the percentage elected by the Plaintiff under the applicable part of the plan of reorganization. If the state court award were to be unexpectedly large, it could strain the financial backstop, leading to potential modifications to the plan or adjustments to how claims are paid. For these reasons, this Court should deny the Plaintiff's Motion to Remand. *Id.* at 3:14-19.

PLAINTIFF'S REPLY

Plaintiff filed a Reply on November 28, 2024. Plaintiff states:

1. Defendant has filed Oppositions in related cases after the *Orrick* ruling, but Defendant does not mention this ruling, electing instead to argue similarly afresh. Reply 2:13-3:4, Docket 17.
2. The facts here are indistinguishable from those in *Orrick*, including the facts that : (i) the Debtors' confirmed Plan does not provide for liquidation of these personal injury claims in bankruptcy court; (ii) the sole remaining task is the liquidation of a state law claim that is much better suited to disposition in the Superior Court than in this Court; and (iii) this Court cannot preside over the jury trial that both sides have demanded but that Plaintiffs refuse to agree can take place here. *Id.* at 7:20-27.
3. Furthermore, as Debtors in the bankruptcy case have moved for a final decree, Plaintiff argues their subject matter jurisdiction argument is even stronger now. *Id.* at 8:6-7.

APPLICABLE LAW

Defendant 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;**¹ others more broadly look for “**any injury which is an invasion of personal rights.**”² A third viewpoint (which one court has called the “hybrid approach”^{2a} 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.”³

1

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).

2

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).**

2a

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).

3

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 (16th Edition) [emphasis added].

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. 15.

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. 3:8-9; Dckt. 16. 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 Cedar Funding, Inc.*, 419 B.R. 807, 820–21 (B.A.P. 9th Cir. 2009), 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 the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the 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 on 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;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Failing to persuade the court with the abstention factors listed in *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990), Defendant is now appealing to the factors in *In re Cedar Funding, Inc.* to support their position.

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 predicated on 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, First Am. Complaint, Docket 14. The record also reflects that there have been discovery proceedings and other pretrial proceedings in state court. 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 15 [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 proceedings, Defendant now wishes to remove and seek the federal court route to liquidate the claim.

In regard to the abstention factors of *Tucson*, the court previously ruled in its Civil Minutes in the *Orrick* case:

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 exercise 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.

Case No. 24-00203, Adv. Proc. No. 24-2189, Civil Minutes 16-18, Docket 39.

Defendant's attempt to rehash out similar arguments under a new case with similar factors, *In re Cedar*, is not persuasive. The *Tucson* factors are all identical to those now cited in *Cedar*, besides the last two factors of comity and the possibility of prejudice to other parties in the actions. The court finds those additional two factors, even if presuming they do support denying remand, do not outweigh its findings in regard to the first twelve factors.

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, *Russell vs. Windsor El Camino Care Center, LLC, et al.*, case no. 34-2022-00329913, is remanded to the Superior Court for the County of Sacramento, effective immediately upon this court entering its order. ^{FN.1.}

FN. 1. The court notes that one of the grounds stated by Debtor for why Federal Court would be proper and preferable over State Court was that:

If the state court award were to be unexpectedly large, it could strain the financial backstop, leading to potential modifications to the plan or adjustments to how claims are paid.

...

Here, the debtor's confirmed plan offers assurance that creditor's liquidated claims will be honored. Keeping this case in federal court to liquidate the Plaintiff's claim may ensure that any award the Plaintiff may obtain does not upset the feasibility of the plan, creating significant obstacles to plan implementation or require adjustments to the financial provisions in the plan.

Opposition, p. 3:17-18, 5:16-19; Dckt. 16. This could be read several ways.

First, that a State Court would be inclined to be overly biased in favor of Plaintiff and grant an excessive judgment well in excess of what the law and evidence allows.

Alternatively, it could be read that the Federal Court would be inclined to issue a judgment for a reduced amount to make the "plan work" as advanced by the Debtor, without regard to the actual damages to which Plaintiff would be entitled.

Neither the assertion that the State Court awarded judgment may be greater than the Debtor planned/sought/needed to make the Plan work, or that the Federal Court would be inclined to issue a reduced judgment amount to "go along" with the Debtor's Plan are valid or credible grounds for denial of the Motion to Remand.

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 Creditor-Plaintiffs Brandy Russell, as successor in interest to decedent Deborah Washington, and Brandy Russell individually, 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 15). *Russell vs. Windsor El Camino Care Center, LLC, et al.*, case no. 34-2022-00329913, is remanded to the Superior Court for the County of Sacramento and shall proceed in the Superior Court for the County of Sacramento immediately.

RUBY EVANS, BY AND THROUGH HER
SUCCESSOR-IN-INTEREST,
WILLETTE WILLIAMS
V. WINDSOR VALLEJO CARE CENTER, LLC

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.

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 26, 2024. By the court's calculation, 40 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.
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Creditor-Plaintiff Ruby Evans, by and through her Successor in Interest, Willette Williams ("Plaintiff") moves this court for an order remanding the Superior Court Proceeding, *Evans vs. Windsor Vallejo Care Center, LLC, et al*, case no. fc5055755, to the Superior Court for the County of Solano ("Superior Court Proceeding").

The Superior Court Proceeding involves Plaintiff's claims against Debtor-Defendant Windsor Sacramento Estates, LLC and other defendants, 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 14.

2. 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
3. The absence of any federal interest or nexus – including to the out-of-District bankruptcy case that the Debtors themselves say is now post-confirmation and post-consummation.

Mot. 2:9-19. Docket 14.

4. 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 10.

Plaintiff's bankruptcy counsel, Robert Pfister, submits his Declaration in support. Docket 17. 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 17.

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, Christopher Buckley, also submits his Declaration in support. Decl., Docket 16. Mr. Buckley testifies as to the conditions Plaintiff suffered during her time under Defendant's care. *Id.* at ¶ 3. Mr. Buckley testifies as to the nature of the issues, specifically that the issues involve state law specific causes of action. *Id.* at ¶ 6.

DEFENDANT'S OPPOSITION

Defendants Windsor Vallejo Care Center, LLC dba Windsor Vallejo Care Center and the Non-Debtor Defendants (Windsor Norcal 13 Holdings, LLC, S&F Management Company, LLC, S&F Management Company, Inc., Lee Samson, and Donny Feldman) (“Defendants”) filed an Opposition on November 21, 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. Further, there is supplemental jurisdiction pursuant to 11 U.S.C. § 1367(a). Opp’n 5:6-17, Docket 19.
2. The *Cedar Funding* 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 5:18-28.
3. Resolution of the state court claims in tandem with the completion of the Debtor’s Plan of Reorganization is the contemplated outcome of the cases being jointly administered through *In re Windsor*. For this Court to deny the Plaintiff’s motion for remand allows for the most efficient resolution of all the claims tied into the joint bankruptcy proceedings. *Id.* at 7:2-5.
4. Here, the Plaintiff’s claims against co-defendant Windsor Vallejo Care Center are inextricably intertwined with the Plaintiff’s claims against the Non-Debtor Defendants. Given that the plaintiff’s theory of the Non-Debtor Defendants’ liability cannot be separated from that of Windsor Vallejo Care Center, the state court action is clearly related to the federal bankruptcy proceeding. If the Plaintiffs proceed to litigate their claims, any judgment against Windsor Vallejo Care Center would be submitted to the *In re Windsor* court as a claim against the estate, where the Plaintiff may assert a claim for the percentage of the judgment allowed under the plan of reorganization for their type of claim. The judgment would impact the implementation and administration of the plan by reducing the overall amount available in the bankruptcy estate to satisfy all claims against the debtor. Additionally, any ruling on the joint and several or potentially vicarious or alter-ego liability between the Debtor Defendant and the NonDebtor defendant would necessarily complicate the evaluation or potential acceptance of any settlement proposal. *Id.* at 10:12-22.

PLAINTIFF’S REPLY

Plaintiff filed a Reply on November 28, 2024. Plaintiff states:

1. Defendant has filed Oppositions in related cases after the *Orrick* ruling, but Defendant does not mention this ruling, electing instead to argue similarly afresh. Reply 2:13-3:4, Docket 20.

2. The facts here are indistinguishable from those in *Orrick*, including the facts that : (i) the Debtors' confirmed Plan does not provide for liquidation of these personal injury claims in bankruptcy court; (ii) the sole remaining task is the liquidation of a state law claim that is much better suited to disposition in the Superior Court than in this Court; and (iii) this Court cannot preside over the jury trial that both sides have demanded but that Plaintiffs refuse to agree can take place here. *Id.* at 7:3-11.
3. Furthermore, as Debtors in the bankruptcy case have moved for a final decree, Plaintiff argues their subject matter jurisdiction argument is even stronger now. *Id.* at 7:17-18.

APPLICABLE LAW

Defendant 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;**¹ others more broadly look for “**any injury which is an invasion of personal rights.**”² A third viewpoint (which one court has called the “hybrid approach”^{2a} 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.”³

1

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).

2

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).**

2a

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).

3

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 (16th Edition) [emphasis added].

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. 17.

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. 6:28-7:1; Dckt. 19. 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 Cedar Funding, Inc.*, 419 B.R. 807, 820–21 (B.A.P. 9th Cir. 2009), 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 the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the 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 on 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;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Failing to persuade the court with the abstention factors listed in *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990), Defendant is now appealing to the factors in *In re Cedar Funding, Inc.* to support their position.

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 predicated on 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, Complaint, Docket 16. The record also reflects that there have been discovery proceedings and other pretrial proceedings in state court dating back to December of 2020. 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 17 [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 proceedings, Defendant now wishes to remove and seek the federal court route to liquidate the claim.

In regard to the abstention factors of *Tucson*, the court previously ruled in its Civil Minutes in the *Orrick* case:

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 established 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 exercise 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.

Case No. 24-00203, Adv. Proc. No. 24-2189, Civil Minutes 16-18, Docket 39.

Defendant's attempt to rehash out similar arguments under a new case with similar factors, *In re Cedar*, is not persuasive. The *Tucson* factors are all identical to those now cited in *Cedar*, besides the last two factors of comity and the possibility of prejudice to other parties in the actions. The court finds those additional two factors, even if presuming they do support denying remand, do not outweigh its findings in regard to the first twelve factors.

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, *Evans vs. Windsor Vallejo Care Center, LLC, et al*, case no. fc5055755, is remanded to the Superior Court for the County of Sacramento, effective immediately upon this court entering its order. ^{FN.1.}

FN. 1. The court notes that one of the grounds stated by Debtor for why Federal Court would be proper and preferable over State Court was that:

If the state court liquidation results in a higher-than-expected claim amount, the backstop provisions of the confirmed plan will need to account for this increase to ensure the reorganization plan remains feasible. Confirmation of the Debtor's Plan of Reorganization was predicated on the bankruptcy court's determination that the plan was "not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor."

...

Here, the debtor's confirmed plan offers assurance that the creditor's liquidated claims will be honored. Keeping this case in federal court to liquidate the Plaintiffs' claim may ensure that any award the Plaintiffs may obtain does not upset the feasibility of the plan, creating significant obstacles to plan implementation or requiring adjustments to the financial provisions in the plan.

Opposition, p. 10:26-11:4, 11-27-12-2; Dckt. 19. This could be read several ways.

First, that a State Court would be inclined to be overly biased in favor of Plaintiff and grant an excessive judgment well in excess of what the law and evidence allows.

Alternatively, it could be read that the Federal Court would be inclined to issue a judgment for a reduced amount to make the "plan work" as advanced by the Debtor, without regard to the actual damages to which Plaintiff would be entitled.

Neither the assertion that the State Court awarded judgment may be greater than the Debtor planned/sought/needed to make the Plan work, or that the Federal Court would be inclined to issue a reduced judgment amount to “go along” with the Debtor’s Plan are valid or credible grounds for denial of the Motion to Remand.

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 Creditor-Plaintiff Ruby Evans, by and through her Successor in Interest, Willette Williams, 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 17). *Evans vs. Windsor Vallejo Care Center, LLC, et al*, case no. fc5055755, is remanded to the Superior Court for the County of Solano and shall proceed in the Superior Court for the County of Solano immediately.

**DONALD KNESTRICK BY AND
THROUGH HIS SUCCESSOR-IN-INTEREST,
KATHERINE FELKINS
V. WINDSOR OXFORD HOLDING COMPANY, LLC**

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.

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 26, 2024. By the court’s calculation, 40 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.

<p>The Motion for Remand is granted.</p>

Creditor-Plaintiffs Donald Knestrict by and through his successor-in-interest Katherine Felkins and Katherine Felkins, individually (“Plaintiff”) moves this court for an order remanding the Superior Court Proceeding, *Knestrict vs. Windsor Oxford Holding Company, LLC, et al.*, case no. 34-2022-003134D4, 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 and other defendants, which Debtor and non-debtor Windsor Norcal Holding, LLC 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 13.

2. 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
3. The absence of any federal interest or nexus – including to the out-of-District bankruptcy case that the Debtors themselves say is now post-confirmation and post-consummation.

Mot. 2:9-19. Docket 13.

4. 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 10.

Plaintiff's bankruptcy counsel, Robert Pfister, submits his Declaration in support. Docket 15. 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 15.

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, Edward Dudensing, also submits his Declaration in support. Decl., Docket 17. Mr. Dudensing testifies as to the conditions Plaintiff suffered during her time under Defendant's care. *Id.* at ¶ 3. Mr. Dudensing testifies as to the nature of the issues, specifically that the issues involve state law specific causes of action. *Id.* at ¶ 4.

DEFENDANT'S OPPOSITION

Defendants Windsor Sacramento Estates, LLC (“Debtor”) and Non-Debtor Defendant Windsor Norcal 13 Holdings, LLC (“Defendants”) filed an Opposition on November 21, 2024. Defendant opposes remand on the following grounds:

1. The *Cedar Funding* 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. Opp’n 2:6-17, Docket 20.
2. Importantly, because Plaintiff has alleged that Non-Debtor Defendant Windsor Norcal 13 Holdings, LLC and all DOE Defendants in this matter are alter egos of and/or joint venturers with Windsor Sacramento Estates, LLC, but have only alleged injurious conduct by Windsor Sacramento Estates, LLC, the liability of the alleged alter ego/joint venturer Non-Debtor Defendants is not separate from that of Windsor Sacramento Estates, LLC. Therefore, the liability of the Defendant Debtor and the Non-Debtor Defendants must be determined at the same time in the same forum. *Id.* at 1:16-2:5.

PLAINTIFF’S REPLY

Plaintiff filed a Reply on November 28, 2024. Plaintiff states:

1. Defendant has filed Oppositions in related cases after the *Orrick* ruling, but Defendant does not mention this ruling, electing instead to argue similarly afresh. Reply 2:14-3:4, Docket 24.
2. The facts here are indistinguishable from those in *Orrick*, including the facts that : (i) the Debtors’ confirmed Plan does not provide for liquidation of these personal injury claims in bankruptcy court; (ii) the sole remaining task is the liquidation of a state law claim that is much better suited to disposition in the Superior Court than in this Court; and (iii) this Court cannot preside over the jury trial that both sides have demanded but that Plaintiffs refuse to agree can take place here. *Id.* at 8:1-7.
3. Furthermore, as Debtors in the bankruptcy case have moved for a final decree, Plaintiff argues their subject matter jurisdiction argument is even stronger now. *Id.* at 8:26-27.

APPLICABLE LAW

Defendant 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;**¹ others more broadly look for “**any injury which is an invasion of personal rights.**”² A third viewpoint (which one court has called the “hybrid approach”^{2a} 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.”³

1

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).

2

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).**

2a

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).

3

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 (16th Edition) [emphasis added].

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. 15.

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. 6:28-7:1; Dckt. 19. 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 Cedar Funding, Inc.*, 419 B.R. 807, 820–21 (B.A.P. 9th Cir. 2009), 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 the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than § 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the 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 on 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;

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

(13) comity; and

(14) the possibility of prejudice to other parties in the action.

Failing to persuade the court with the abstention factors listed in *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1167 (9th Cir. 1990), Defendant is now appealing to the factors in *In re Cedar Funding, Inc.* to support their position.

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 predicated 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, Complaint, Docket 17. The record also reflects that there have been discovery proceedings and other pretrial proceedings in state court dating back to January of 2022. 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 15 [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 proceedings, Defendant now wishes to remove and seek the federal court route to liquidate the claim.

In regard to the abstention factors of *Tucson*, the court previously ruled in its Civil Minutes in the *Orrick* case:

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 exercise 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.

Case No. 24-00203, Adv. Proc. No. 24-2189, Civil Minutes 16-18, Docket 39.

Defendant's attempt to rehash out similar arguments under a new case with similar factors, *In re Cedar*, is not persuasive. The *Tucson* factors are all identical to those now cited in *Cedar*, besides the last two factors of comity and the possibility of prejudice to other parties in the actions. The court finds those additional two factors, even if presuming they do support denying remand, do not outweigh its findings in regard to the first twelve factors.

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 *Knestrick vs. Windsor Oxford Holding Company, LLC, et al.*, case no. 34-2022-003134D4, is remanded to the Superior Court for the County of Sacramento, effective immediately upon this court entering its order. ^{Fn.1.}

FN. 1. The court notes that one of the grounds stated by Debtor for why Federal Court would be proper and preferable over State Court is how it might effect the performance of the Plan, stating:

Plaintiff's claim, if liquidated in state court, can significantly impact the Debtor's Confirmed Plan of Reorganization. If the state court liquidation results in a

higher-than-expected claim amount, the backstop provisions of the confirmed plan will need to account for this increase to ensure the reorganization plan remains feasible. Confirmation of the Debtor’s Plan of Reorganization was predicated on the bankruptcy court’s determination that the plan was “not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor.” . . .

. . .

The financial backstop acts as a buffer to guarantee that allowed claims, including those liquidated in state court, are covered. However, if a claim is unexpectedly large, it could strain the financial backstop, leading to potential modifications to the plan or adjustments to how claims are paid, even if this is, as Plaintiff contends, not a “pot plan” where one creditor’s recovery impacts another’s.

. .

. . .

Keeping this case in federal court to liquidate the Plaintiff’s claim may ensure that any award Plaintiff might obtain does not upset the feasibility of the plan, creating significant obstacles to plan implementation or require adjustments to the financial provisions in the plan.

Opposition, p. 8:24-9:2, 15:16-20, 15:25-28; Dckt. 20. This could be read several ways.

First, that a State Court would be inclined to be overly biased in favor of Plaintiff and grant an excessive judgment well in excess of what the law and evidence allows.

Alternatively, it could be read that the Federal Court would be inclined to issue a judgment for a reduced amount to make the “plan work” as advanced by the Debtor, without regard to the actual damages to which Plaintiff would be entitled.

Neither the assertion that the State Court awarded judgment may be greater than the Debtor planned/sought/needed to make the Plan work, or that the Federal Court would be inclined to issue a reduced judgment amount to “go along” with the Debtor’s Plan are valid or credible grounds for denial of the Motion to Remand.

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 Creditor-Plaintiffs Donald Knestrict by and through his successor-in-interest Katherine Felkins and Katherine Felkins, individually, 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 15). *Knestrict vs. Windsor Oxford Holding Company, LLC, et al.*, case no.

34-2022-003134D4, is remanded to the Superior Court for the County of Sacramento and shall proceed in the Superior Court for the County of Sacramento immediately.

4. [23-23834-E-7](#)
[DNL-8](#)

ANTONETTE TIN
Peter Macaluso

**CONTINUED MOTION FOR TURNOVER
OF PROPERTY**
8-7-24 [[177](#)]

Item 4 thru 5

**There are other “Tin” matters
on the 10:30 calendar.**

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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Turnover 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 Turnover is XXXXXXX.

December 5, 2024 Hearing

The court continued the hearing on this Motion from October 24, 2024, at the Parties’ request for a continuation. A review of the Docket on December 3, 2024, reveals nothing new has been filed with the court. At the hearing, XXXXXXX

REVIEW OF MOTION

Nikki Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin (“Debtor Tin”) to account for and turn over her interest in The Retreat at Skylake LLC (“Skylake LLC”) and The Retreat at Greenhurst LLC (“Greenhurst LLC”).

Movant argues that on the petition date, Debtor Tin held 100% ownership of Skylake LLC and Greenhurst LLC. She used these LLCs to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way, Sacramento real properties, currently controlled by Debtor Tin and her spouse, Exequiel Fernando. Mot. 2:15-18, docket 177. According to Movant, monthly income from Debtor Tin’s interest in the LLCs is estimated to be at least \$16,000 per month. *Id.* at 2:19-22. A sale of these interests could generate income for the Bankruptcy Estate. However, Debtor Tin has not complied with accounting and turnover requests made by Movant on April 23, 2024, and August 1, 2024. *Id.* at 2:25-26.

Movant submits her own Declaration in support at Docket 180, authenticating the facts alleged in the Motion. Movant submits as Exhibits the prior requests for turn over and accounting. Docket 179.

On September 10, 2024, Movant submitted a Supplemental Declaration, detailing Bank of America’s response to a Rule 2004 Examination Request. Docket 216. Movant testifies as to large amounts of money being moved around among the entities post-petition, including a \$56,000 sum paid from Skylake LLC to a trust controlled by Debtor Tin, and Greenhurst LLC paying \$52,000 to a trust controlled by Mr. Fernando. *Id.* at ¶ 6.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor Tin to deliver accountings and business interests to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a

trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this Motion by Debtor or any other party in interest.

The interests in the LLC's are property of the Bankruptcy Estate and it is not clear what will be "turned over." The Motion further requests that the Debtor turnover the proceeds of the LLCs that come into her possession, which would be the monies generated from the operations of the businesses therein.

At the hearing, the Parties identified the following items to be turned over to the Chapter 13 Trustee:

- A. \$5,562.00, which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Skylake LLC;
- B. \$5,022.00 which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Greenhurst LLC; and
- C. An Income and Expense Accounting for all revenues and expenses for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC.

The profit distributions and the accountings shall be delivered to Russell J. Cunningham, Esq., counsel for the Chapter 7 Trustee on or before September 26, 2024. The payment by the Debtor of the \$5,562.00 and \$5,022.00 to the Trustee by the Debtor is without prejudice to the rights and interests of the Bankruptcy Estate to profit distributions from each of the Limited Liability Companies, computation of profits and distributions for that period, and other rights and interests relating thereto.

The hearing on the Motion is continued to 10:30 a.m. on October 3, 2024.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

October 3, 2024 Hearing

The court continued the hearing on this Motion to allow Debtor to make all required turnover payments to Trustee, and to provide Trustee with an accounting for all revenues and expenses, and the profit distribution calculation, for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC. Order, Docket 228.

As of the court's October 1, 2024 review of the Docket, no updated information had been filed with respect to the continued hearing.

At the hearing, counsel for the Trustee stated that from today's hearing, the Trustee is looking to address the following.

The Debtor has provided accounts for the two care home LLCs. The two LLCs had \$500,000 gross revenues for the first 8 months, but only \$11,000 profit. Twenty percent of the revenue is being paid for rent to the Debtor and her husband.

Half of the rent is for the current period, and half is for "catch up" payments to the insider for the prior year. The Trustee needs to further investigate these payments and the computation of the profits from the LLCs which are due the Bankruptcy Estate.

The Parties agreed that the Debtor, as the managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC will provide an Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation for October, November, and December, 2023, and for September 2024, all of which are post-petition months for which the Bankruptcy estate held the interests in the LLCs.

The Parties agreed that these Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation will be made under penalty of perjury.

Additionally, the Debtor, as managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC, shall distribute to the Trustee any and all profits relating to the Estate's interests in the LLC's for these periods.

The Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation and distribution of the profits shall be made on or before 10:00 .m. on October 23, 2024, and be delivered to the office of Russell Cunningham, Esq., counsel for the Trustee by that time and date.

The hearing on the Motion is continued to 11:00 a.m. on October 24, 2024.

October 24, 2024 Hearing

The court continued the hearing on this Motion to afford Debtor in this case to comply with Trustee's demands for accountings under the penalty of perjury and to continue providing the Trustee with profits of the operating care home LLCs. Debtor was to provide Trustee's counsel with the profits by October 23, 2024. Order, Docket 235.

A review of the Docket on October 21, 2024, reveals nothing new has been filed with the court under this docket control number. At the hearing, counsel for the Trustee requested that the hearing be continued a month as the Parties work to address these issues, if possible.

The Parties agreed to extend the prior order of the court, Dckt. 235.

The Motion is granted, with the court's prior order (Dckt. 335) extended.

The Hearing on the Motion is continued to 11:00 a.m. on December 5, 2024.

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 Turnover of Property filed by Nikki Farris, the Chapter 7 Trustee, (“Movant”) 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 Turnover is **XXXXXXX**.

5.	<u>23-23834-E-7</u> <u>24-2179</u> CAE-1	ANTONETTE TIN	CONTINUED STATUS CONFERENCE RE: COMPLAINT 8-20-24 [1]
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**FARRIS V. ANTONETTE TIN,
TRUSTEE OF THE RA CORONEL
FAMILY TRUST**

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 8/20/24
Answer: 9/20/24

Nature of Action:
Recovery of money/property - turnover of property

Notes:
Continued from 11/13/24 to be heard in conjunction with the continued hearing on the Motion for Turnover of Property.

The Status Conference is XXXXXXX

DECEMBER 5, 2024 STATUS CONFERENCE

The Stipulated Judgment in this Adversary Proceeding determines that the 100% beneficial interest in the RAC Trust is property of the Bankruptcy Estate in the Antonette Tin Bankruptcy Case. Judgment; Dckt. 27. It further identifies specific assets in the RAC Trust and that such assets are to be turned over to the Trustee.

At the Status Conference, **XXXXXXX**

NOVEMBER 13, 2024 STATUS CONFERENCE

On October 28, 2024, the court entered an order granting the Plaintiff-Trustee's Motion for entry of Judgment in this Adversary Proceeding. Order; Dckt. 25.

The Judgment was entered on the Docket on October 29, 2024. Dckt. 27.

The Status Conference is continued to 11:00 a.m. on December 5, 2024.