UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 26, 2017 at 10:00 a.m.

1.	16-20912-A-11 PCB-6	SEAN SUH'S CARE HOMES, INC.	MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 11-15-17 [164]

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

The motion will be granted.

The debtor is asking the court to enter a final decree and close the case, contending that:

- the plan was confirmed,
the debtor has fulfilled all obligations under the plan (including making all plan payments),
- no unresolved adversary proceedings are pending,
- no unresolved compensation requests are pending, and
- the estate has been administered in all respects.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

This court confirmed the debtor's chapter 11 plan on December 5, 2016. The confirmation order is final. Property has revested in the debtors pursuant to the terms of the plan. Docket 134 at 10 (not as numbered).

Given that the debtor has completed all plan payments, there are no pending unresolved proceedings in the case, and the estate has been fully administered, substantial consummation has been achieved. Accordingly, the court will enter a final decree and close the case. The motion will be granted.

2. 10-34418-A-11 CORINA DRAGNEA — MOTION FOR ENTRY OF DISCHARGE
GEL-3 — 12-4-17 [370]

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

The motion will be granted.

The debtor asks the court to enter a discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"*In a case in which the debtor is an individual—*

"*(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;*

"*(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —*

"*(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and*

"*(ii) modification of the plan under section 1127 is not practicable; and*

"*(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —*

"*(i) section 522(q)(1) may be applicable to the debtor; and*

"*(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt*

of the kind described in section 522(q)(1)(B)."

This case was filed on June 1, 2010. The order confirming the debtor's chapter 11 plan was entered on July 26, 2012.

All payments under the plan have been completed. And, the debtor has produced evidence indicating that 11 U.S.C. § 522(q)(1) is not applicable. There is no pending proceeding where the debtor may be found guilty of a felony demonstrating that the filing of this case was an abuse of the Bankruptcy Code (section 522(q)(1)(A)) or the debtor may be found liable for a debt of the kind specified in section 522(q)(1)(B). Docket 372. Accordingly, discharge will be entered pursuant to section 1141(d)(5)(A). The motion will be granted.

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1141(d)(5)(C).

The conditional objection of creditor Dumitru Dragnea will be overruled. The request for a comfort order "clarifying" the discharge's affect on the applicability of 11 U.S.C. § 523(a)(5) and (15) will be denied. The court will not "include language clarifying that the Order discharging the Debtor has no effect on family court Orders." Docket 376 at 4.

The law of 11 U.S.C. § 523 is what it is. This court will not issue advisory opinions.

"'[I]t is quite clear that "the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions."' Flast v. Cohen, 392 U.S. at 96 . . . (citing c. Wright, Federal Courts 34 (1963)). The doctrine of justiciability is a blend of constitutional and policy or prudential considerations. Id. at 97. . . ."

Krasnoff v. Marshack (In re General Carriers Corp.), 258 B.R. 181, 190 (B.A.P. 9th Cir. 2001).

And, declaratory relief pertaining to the dischargeability of debts requires an adversary proceeding. The court does not have the authority to address the dischargeability of debts on a motion. See Fed. R. Bankr. P. 7001(6) & (9).

3.	17-26125-A-11	FIRST CAPITAL RETAIL,	MOTION FOR
	BAL-3	L.L.C.	RELIEF FROM AUTOMATIC STAY
	MACERICH VINTAGE FAIRE, L.P. VS.		11-8-17 [117]

Tentative Ruling: The motion will be granted in part and the hearing on the motion will be continued in part.

The movant, Macerich Vintage Faire, L.P., seeks relief from the automatic stay with respect to a commercial real property in Modesto, California, where the debtor operates a Cinnabon store. The debtor has been leasing the property from the movant. The debtor failed to make pre-petition payments from May through September 2017 to the movant under the lease agreement.

The movant served the debtor with a five-day notice to pay or surrender on September 7, 2017. The notice declared lease termination and forfeiture. The notice expired on September 13. The next day, September 14, the debtor filed this bankruptcy case.

"The matter of granting or denying such an application [for relief from a lease

forfeiture under section 1179] is one which lies so largely in the discretion of the [state] trial court that it would require a very clear showing of an abuse of such discretion to justify a reversal of the order made thereon."

Superior Motels, Inc. v. Rinn Motor Hotels, Inc., 195 Cal. App. 3d 1032, 1064 (1987) (quoting Mathews v. Digges, 45 Cal. App. 561, 566 (1920)).

Given that state courts have nearly plenary discretion on deciding whether to grant relief from a lease forfeiture and given the movant's intention to obtain judgment for possession, the court will modify the automatic stay to allow the debtor to prosecute to conclusion a relief from forfeiture request with the state court within the next 30 days. A motion for relief from the forfeiture can be brought before the state court on as little as five days notice. Cal. Civ. Proc. Code § 1179.

The hearing on this motion will be otherwise continued to February 5, 2018 at 10:00 a.m. for the court to determine whether additional relief is warranted for the movant to obtain possession of the property via an unlawful detainer action. If the debtor has not obtained relief from the forfeiture by the continued hearing date, the court is likely to grant the requested stay relief.

The debtor has no ownership interest in the property. The debtor is unable to assume the lease because its tenancy interest terminated before this case was filed upon expiration of the five-day notice on or about September 13, 2017. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

4.	17-26125-A-11 GEL-4	FIRST CAPITAL RETAIL, L.L.C.	MOTION TO USE CASH COLLATERAL 10-6-17 [45]

Tentative Ruling: The motion will be conditionally granted.

The court continued the hearing on this motion from December 11, 2017, in order for the debtor to submit an updated budget and cash flow reflecting the approximately $83,000 rent arrears payment to Westfield, L.L.C. Subject to hearing from the debtor and Byline Bank about the updated budget, the court is inclined to grant this motion. The ruling from December 11 is below and it otherwise remains unaltered.

First Capital Retail, L.L.C., the chapter 11 debtor, seeks approval to use the cash collateral of several creditors secured by fourteen retail franchise locations throughout California, which the debtor owns and operates. These retail franchises include Focus Brands such as Auntie Anne's, Cinnabon and Mrs. Fields. The cash collateral at issue is the income generated by the debtor's business transactions.

The supplemental motion (Docket 82) seeks to approve use of cash collateral for the period of November 1, 2017 through December 31, 2017 for the payment of the operating expenses as set forth in the budget filed concurrently with the motion. Docket 84, Ex. A. The court previously approved the use of cash collateral through November 13, 2017. Docket 95.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights under 11 U.S.C. § 363. 11 U.S.C. §

363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The proposed budget includes labor, accounting, advertising, maintenance, insurance, technology, and miscellaneous expenses. See Docket 84, Ex. A.

The proposed use of cash collateral will preserve the going concern of the debtor's businesses, allowing the debtor to continue operating them, thus permitting realization of income through retail transactions. This is in the best interest of the estate and the creditors.

There are five creditors that hold security interests against the debtor's cash collateral: (1) ByLine Bank, successor by merger of Ridgestone Bank, SBA loan; (2) ByLine Bank, successor by merger of Ridgestone Bank, SBA construction loan; (3) ESBF California, L.L.C., factoring loan; (4) Global Merchant Cash, factoring loan; (5) Yellowstone Capital West L.L.C., factoring loan; and (6) World Global Financing, factoring loan.

The debtor proposes to remit to ByLine Bank monthly adequate protection payments of interest only payment on both notes in the total amount of $11,032.47 no later than the 15th of each month, such payments to be retroactive to the petition date.

As for the remaining factoring loans, the debtor is currently not seeking authorization to pay any adequate protection payments. Rather, all excess funds will be set-aside in a DIP account, which the debtor will not use without further permission from creditors or the court. The debtor asserts that no adequate protection payment is required because the factoring loans are adequately protected by their security interest in the debtor's cash on hand, inventory, all assets - equipment and fixtures. The aggregate value of the factoring loan debts is approximately $670,000.00. As of October 23, 2017, the debtor's cash, cash equivalents, and financial assets from operating the business has increased from $278,416.99 to $740,868.76 ($525,936.43 represents assets held in Debtor-in-possession bank accounts and the balance of $214,932.33 is held by First Data, a third-party merchant operator). Docket 82 at 2-3.

As further partial adequate protection for the continued use by the debtor of the cash collateral, the debtor proposes to grant continuing replacement liens in favor of the Byline Bank on the debtor's property, to the extent of his interest in cash collateral on the date of the order for relief.

Accordingly, the court will approve the debtor's use of the creditors' cash collateral, consistent with the budget proposed in the motion.

By authorizing cash collateral use, the court is not approving the compensation of professionals of the estate, even if such compensation is accounted for in the cash collateral budget.

5.	17-26125-A-11 WWH-1 GGP NORTHRIDGE	FIRST CAPITAL RETAIL, L.L.C. FASHION CENTER, L.P. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-21-17 [142]

Tentative Ruling: The motion will be granted in part and the hearing on the motion will be continued in part.

The movant, GGP Northridge Fashion Center, L.P., seeks relief from the automatic stay with respect to a commercial real property in Northridge, California, where the debtor operates a Cinnabon store. The debtor has been leasing the property from the movant. The debtor failed to make four pre-petition payments to the movant as required by the lease.

The movant served the debtor with a five-day notice to pay or surrender on July 21, 2017. The notice declared lease termination and forfeiture. Following expiration of the notice, the movant filed a complaint for unlawful detainer in state court on August 4, 2017. A default judgement was entered in favor of the movant on August 24, 2017. On September 14, 2017, the debtor filed this bankruptcy case.

The debtor opposes the motion and seeks relief from forfeiture under California law.

California Code of Civil Procedure § 473(b) states that entry of a default or default judgment may be set aside if the request is filed within six (6) months if the default was taken as the result of "inadvertence, surprise, mistake or excusable neglect".

"The matter of granting or denying such an application [for relief from a lease forfeiture under section 1179] is one which lies so largely in the discretion of the [state] trial court that it would require a very clear showing of an abuse of such discretion to justify a reversal of the order made thereon."

Superior Motels, Inc. v. Rinn Motor Hotels, Inc., 195 Cal. App. 3d 1032, 1064 (1987) (quoting Mathews v. Digges, 45 Cal. App. 561, 566 (1920).

Given that state courts have nearly plenary discretion on deciding whether to grant relief from a lease forfeiture and given the movant's intention to proceed with eviction, the court will modify the automatic stay to allow the debtor to prosecute to conclusion a relief from forfeiture request with the state court within the next 30 days. A motion for relief from the forfeiture can be brought before the state court on as little as five days notice. Cal. Civ. Pro. Code § 1179.

The hearing on this motion will be otherwise continued to February 5, 2018 at 10:00 a.m. for the court to determine whether additional relief is warranted for the movant to obtain possession of the property via writ of possession. If the debtor has not obtained relief from the forfeiture by the continued hearing date, the court will almost certainly granted the requested stay relief.

The debtor has no ownership interest in the property. The debtor is unable to assume the lease because its tenancy interest terminated before this case was filed upon expiration of the five-day notice on or about July 26, 2017. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

6. 17-26125-A-11 FIRST CAPITAL RETAIL, L.L.C. — STATUS CONFERENCE 9-14-17 [1]

Tentative Ruling: None.

7. 17-26329-A-11 SHIV SINGH AND POOJA THAKUR — STATUS CONFERENCE 9-23-17 [1]

Tentative Ruling: None.

8. 17-22851-A-7 ABDUL/TAHMINA RAUF
17-2142 PA-2
STOHLMAN AND ROGERS, INC. V. RAUF ET AL.,
MOTION TO COMPEL
11-16-17 [26]

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

The motion will be granted.

The plaintiff, Stohlman & Rogers, Inc. dba Lakeview Petroleum Company, seeks to compel the defendants, Abdul Raug and Tahmina Rauf, to make initial disclosures.

The plaintiff also asks for sanctions against the defendants in the form of an award of the attorney's fees necessary to bring this motion.

As the defendants have not filed a response to this motion and the motion has been brought pursuant to Local Bankruptcy Rule 9014-1(f)(1), the defendants have waived their right to defend against the motion.

On August 4, 2017, the plaintiff served on the defendants the Order to Confer on Initial Disclosures and Setting Deadlines. Docket 29, Ex. 2. Pursuant to the order, the initial disclosures were to be made by each party on or before October 25, 2017. Further, a joint status report and proposed discovery plan, prepared by the plaintiff and signed by the defendants, memorialized the agreement made by the parties during their discovery conference as to the October 25 deadline. Docket 9 at 3. The court approved the joint discovery plan on October 18, 2017. Docket 13.

After the defendants did not respond in any way to the disclosure deadline, on October 30, 2017 the plaintiff sent an email to the defendants, noting that the defendants' initial disclosures had not been received, offering to meet and confer, and requesting the disclosures immediately. Docket 29 at 5-6, Ex. 5.

On November 1, 2017, the plaintiff sent a letter via regular mail to the defendants, again offering to meet and confer and requesting that the defendants' initial disclosures be provided immediately. Docket 29, Ex. 6.

On November 6, 2017, plaintiff drafted and filed a motion to compel defendants to make initial disclosures. Docket 17. Later that day, after the motion was filed, the plaintiff received an email from the defendants' counsel explaining that counsel had missed the October 25, 2017 initial disclosure deadline, in addition to several other deadlines as a result of taking three days off of

work due to illness. Docket 29 at 4-5, Ex. 7.

The plaintiff sent an email in response the following day stating intent to withdraw the motion to compel if initial disclosures were provided, offering sympathy, and expressing regret that the defendants' counsel had not communicated the situation earlier. Docket 26 at 6.

The plaintiff did not receive a response from the defendants to its November 7 email. Accordingly, the plaintiff called the defendants' counsel on November 7 and was told that he was in a meeting and unavailable. The plaintiff left a message for counsel with his assistant. Later that day, the plaintiff sent another email to counsel requesting a response and offering a personal cell phone number for contact during non-office hours. Docket 29 at 3-4, Ex. 7.

After receiving no response, the plaintiff sent an email on November 9, 2017 again requesting initial disclosures. Docket 29 at 2-5, Ex. 7.

As a professional courtesy, the plaintiff dismissed the first motion to compel without prejudice. Docket 23.

On November 15, 2017, still receiving no response, the plaintiff sent another email to defendants' counsel forwarding previous emails sent. Docket 29 at 1-5, Ex. 7.

As of the signing of this motion on November 16, 2017, the plaintiff had still not received a response from the defendants.

The plaintiff filed a supplement to this motion on December 15, 2017 stating that as of the time of its drafting, the defendants still had not provided their initial disclosures. Docket 33. As of December 15, the initial disclosures are 51 days late.

Fed. R. Civ. P. 26(a)(1)(C), as made applicable here by Fed. R. Bankr. P. 7026, provides a party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan.

In accordance with Rule 26(a)(1)(C), the deadline for initial disclosures was set for 14 days after the parties' Rule 26(f) conference by stipulation of the court. Docket 13; Docket 29, Ex. 2. Moreover, the docket does not reflect any evidence that this deadline was altered by stipulation of the parties or that the defendants objected to the appropriateness of initial disclosures in this action.

Second, Fed. R. Civ. P. 37(a)(3)(A), as made applicable here by Fed. R. Bankr. P. 7037, permits the party propounding discovery to move to compel disclosure.

A court may compel a party to make disclosures or to cooperate in discovery after the moving party has attempted in good faith to obtain such without court action. Fed. R. Civ. P. 37(a), incorporated by Fed. R. Bankr. P. 7037.

The movant must show that it conferred or attempted to confer in good faith. In order to comply with Fed. R. Civ. P. 37, the movant must accurately and specifically certify with whom, where, how, and when the movant attempted to personally resolve the discovery dispute. Shuffle Master v. Progressive Games,

170 F.R.D. 166, 170 (D. Nev. 1996). The movant must also certify that it has, in good faith, conferred or attempted to confer to resolve the discovery dispute without judicial intervention. Id. at 171.

The plaintiff has complied with the certification document requirements because the declaration and exhibits in support of this motion include the specific details of his attempts at communication with the plaintiff. Docket 28; Docket 29, Exs. 5-7.

The plaintiff has also satisfied the performance requirement by attempting to confer with the defendants in multiple emails and letters. Docket 29, Exs. 5-7.

Thus, the plaintiff is entitled to an order compelling the defendants to make initial disclosures. The defendants shall have until December 29, 2017, to provide the plaintiff with initial disclosures.

Finally, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). This remedy, however, is limited only to expenses incurred in making the motion.

The plaintiff is seeking a total of $1,000.00 in attorney's fees and $30.22 in costs for a total of $1,030.22 as sanctions for the bringing of this motion and the previously withdrawn motion to compel. The fees include $750 (3 hrs attorney time) for preparing and filing the first motion to compel, and $250 (1 hr attorney time) for updating and filing the first motion to compel and the documents in support thereof. The costs include $30.22 for postage and copies for service of this motion and documents in support thereof.

The court concludes that the requested fees and costs are reasonable and necessary for the preparation and prosecution of this motion. The plaintiff's attorney reduced her hourly rate from $400 to $250, reduced the fees charged in connection with updating the motion from 2 hours to 1 hour, absorbed the costs associated with the filing of the first motion to compel, and did not charge for time spent reviewing and drafting related correspondence with the defendants' counsel. The court will award sanctions totaling $1,030.22. The defendants shall pay the sanctions to the plaintiff's counsel no later than January 5, 2018. The motion will be granted.

9. 17-25481-A-7 JOHN ROSE — STATUS CONFERENCE
17-2169 — 9-1-17 [1]
ROSE, III V. TAGGARD, M.D. ET AL

Tentative Ruling: None.

10. 17-25481-A-7 JOHN ROSE — MOTION FOR MANDATORY ABSTENTION AND FOR REMAND
17-2169 SDN-1 — 11-15-17 [10]
ROSE, III V. TAGGARD, M.D. ET AL

Tentative Ruling: The motion will be granted.

The chapter 7 trustee asks the court for abstention or remand of this adversary proceeding to state court. The debtor/plaintiff received a discharge on November 28, 2017.

The defendant, Derek Taggard, opposes the motion.

The defendant removed the state court action brought by the plaintiff to this court pursuant to 28 U.S.C. § 1452(a), which provides that "a party may remove any claim or cause of action in a civil action . . . 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." Docket 1.

28 U.S.C. § 1452(b) provides that the court "may" remand a removed action "on any equitable ground." Those grounds include judicial economy, comity and respect for the state court's decision-making capabilities, the effect of remand upon administration of the bankruptcy estate, the effect of bifurcating claims and parties and the possibility of inconsistent result, predominance of state law issues and non-debtor parties, and prejudice to other parties in the action. Western Helicopters, inc. v. Hiller Aviation, Inc., 97 B.R. 1, 6 (E.D. Cal. 1988); see also Williams v. Shell Oil Co., 169 B.R. at 692-93.

The applicability of mandatory remand under 28 U.S.C. § 1452(a) depends on whether this court has jurisdiction over the removed claims under 28 U.S.C. § 1334. See 28 U.S.C. § 1452(a). Put simply, abstention is mandatory if a federal court would not have jurisdiction absent the filing of a bankruptcy petition.

On October 15, 2014, the plaintiff filed a complaint in Sacramento Superior Court against two other named defendants in addition to this defendant. All causes of action were based on state law (the claims remaining as to the defendant here include invasion of privacy and intentional infliction of emotional distress). The defendant filed an answer to the complaint on February 17, 2015 and asserted no counterclaims against the plaintiff. Docket 1 at 18-28, Ex. B. The case proceeded in the state court through discovery, multiple law and motion hearings, and a mandatory settlement conference.

On August 18, 2017, the plaintiff filed a chapter 7 bankruptcy case in this court, Case No. 17-25481.

After almost three years of litigation in state court, the defendant petitioned to have the case removed to this court on September 1, 2017 - four weeks away from jury trial. The sole jurisdictional basis for removal cited in the notice of removal was the filing of the plaintiff's bankruptcy case. Docket 1 at ¶ 6.

The court will remand this action back to the state court where it was removed from because this court does not have subject matter jurisdiction over any of the claims in this proceeding.

All the claims in this proceeding arise pursuant to state law. Thus, none of the claims "arise under" title 11 because they do not "'involve a cause of action created or determined by a statutory provision of title 11.'" See Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009).

The claims do not "arise in" a case under title 11. "'[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.'" Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of a bankruptcy case.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir.

2000)(quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987))(emphasis added).

The claims do not arise in a case under title 11 because they arose outside the context of a bankruptcy case. They were brought in state court pursuant to state law.

Because the claims are purely based on state law, and could easily arise outside the context of a bankruptcy case, this court lacks subject-matter jurisdiction pursuant to the "arising under" and "arising in" bases provided by 28 U.S.C. § 1334(b).

This leaves the "related to a case under title 11" jurisdiction. A proceeding is related to a title 11 case if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy." Fietz v. Great Western Sav. (In re Fietz), 852 F.2d 455, 457 (9th Cir. 1988)(citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984)). "An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." Id.

The court does not find subject matter jurisdiction under the "related to a case under title 11" language. The notice of removal offers no jurisdictional basis for removal other than the filing of the plaintiff's petition - which is by definition grounds for mandatory remand. Further, the defendant admits in his opposition to the motion that the bankruptcy court lacks subject matter jurisdiction over all causes of action in the complaint and that he expected the bankruptcy court to transfer the action to the district court for this reason. Docket 17 at 3. It should be noted that the docket does not reflect that the defendant has filed a motion for withdrawal of the reference of this proceeding to the bankruptcy court. Moreover, the face of the complaint does not indicate that a district court would have general federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 or 1332 (i.e. a question involving federal law or diversity of citizenship between opposing parties in a lawsuit).

In accordance with the defendant's position, this court finds that it lacks subject matter jurisdiction. Based on the present facts, it is inconceivable that the outcome of this proceeding could alter the debtor's rights or liabilities or impact the handling and administration of the bankruptcy estate in any way. The defendant has not asserted that the debtor is liable for any debt owed to the defendant. The defendant did not assert a counterclaim against the debtor/plaintiff in answering the state law complaint. See Docket 1 at 18-28, Ex. B. The defendant did not file a proof of claim in this case. Moreover, the defendant is barred from pursuing a non-dischargeability action against the debtor because the deadline for filing 11 U.S.C. § 523 claims expired on November 21, 2017. See Case No. 17-25481, Docket 7. And, even if the defendant is able to pursue a non-dischargeability action against the debtor, such action could easily be stayed while the state law tort claims are adjudicated in state court.

In sum, the court concludes that it does not have jurisdiction under the "related to a case under title 11" language.

Even if this court has jurisdiction under the "related to a case under title 11" language, the court will exercise its discretion under 28 U.S.C. § 1452(b) to remand the action. Defamation and intentional infliction of emotional

distress are state law claims typically resolved in state court. As such, the state court is best able to resolve the causes of action. Further, the state court has invested substantial time and effort overseeing discovery, including issuing protective orders, ruling on five motions for summary judgment/adjudication, and presided over a mandatory settlement conference. At the time of removal, the settlement conference judge issued a minute order that there would be a further settlement conference with the removing party's personal attendance required. Hence, judicial economy, comity and respect for the state court's decision-making capabilities favor the action to be remanded. As described above, the nonexistent effect of remand upon administration of the bankruptcy case also favors remand. Also, there is no evidence that the defendant would be prejudiced by litigating the action in state court.

Accordingly, this court does not have subject matter jurisdiction over any of the claims in this adversary proceeding. The motion will be granted, and the action will be remanded to the state court under 28 U.S.C. § 1452(a).