

Motion: December 31, 2021
Judge John C Counourer

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA;
Plaintiff

V

ERIC SHIBLEY

Defendant

No. CR20-174-JCC

LIMITED OBJECTION TO UNITED
STATE'S MOTION FOR ENTRY OF
ORDER OF FORFEITURE

COMES NOW the ES1 LLC, by and through its attorney, Vortman & Feinstein, and moves the Court as follows:

The United States has filed a motion under FRCP 32.2(b) for an Order of Forfeiture, seeking to forfeit to the United States "Defendants Eric Shibley's interest" in certain bank accounts listed therein. Item number 2 on the list of certain bank accounts, states:

\$100,000.00 in U.S. funds, seized on or about May 29, 2020 from Wells Fargo account #*****2378, held in the name of **ES1 LLC** ("Subject Property 2");

ES1 LLC filed a petition for relief in the United States Bankruptcy Court for the Western District of Washington under Cause No. 21-12109. See attached Exhibit A, Notice of Chapter 11 Bankruptcy Case.

Under 11 USC §362, there is a stay of all actions against the Debtor [ES1 LLC] and against property of the estate, and that any actions to levy or seize funds of the estate are stayed. Section 362 provides (and note the highlighted text below):

Except as provided in subsection (b) of this section, a petition filed under section [301](#), [302](#), or [303](#) of this title, or an application filed under section 5(a)(3) of the [Securities Investor Protection Act of 1970](#), operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

Property of the bankruptcy estate, under 11 USC Section §541 provides:

(a) The commencement of a case under section [301](#), [302](#), or [303](#) of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

1 As such, ES1 LLC, files this limited objection as to the United States'
2 request that the bank account in the name of the Chapter 11 Debtor ES1 LLC be
3 forfeited to the United States on behalf of the Defendant in these proceedings, Eric
4 Shibley. The Court must order, instead, provide that Item #2 of the Motion, the
5 stated bank account of ES1 LLC at Wells Fargo Ban, account #*****2378, must
6 be released from the United States' levy and seizure and ordered to be turned over
7 and returned back to the debtor US1 LLC, to be accounted for in the aforesaid
8 Chapter 11 bankruptcy proceedings.

9 ES1 LLC requests relief accordingly.

10 DATED this 29rd day of December, 2021.

11 /s/ Larry B. Feinstein

12 Larry B. Feinstein WSBA # 6074
13 Kathryn Scordato, WSBA #41922
14 Attorneys for Debtors ES1 LLC
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Information to identify the case:

Debtor **ES1 LLC** EIN: 46-1595849
 Name
 United States Bankruptcy Court Western District of Washington Date case filed for chapter: 11 11/19/21
 Case number: 21-12109-CMA

Official Form 309F2 (For Corporations or Partnerships under Subchapter V) Notice of Chapter 11 Bankruptcy Case

08/21

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 12 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name	ES1 LLC	
2. All other names used in the last 8 years		
3. Address	c/o Eric Shibley, Reg. 50216-086 Federal Detention Center PO Box 13900 Seattle, WA 98198	
4. Debtor's attorney Name and address	Larry B. Feinstein Larry B. Feinstein 2033 Sixth Avenue Ste 251 Seattle, WA 98121	Contact phone 206-223-9595 Email: 1947feinstein@gmail.com
5. Bankruptcy trustee Name and address	Michael DeLeo Peterson Russell Kelly Livengood PLLC 10900 NE 4th Street Suite 1850 Bellevue, WA 98004	Contact phone 425-990-4014 Email: msdeleo-trustee@prklaw.com
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov .	700 Stewart St, Room 6301 Seattle, WA 98101	Hours open: 8:30 am - 4:30 pm Monday - Friday Contact phone 206-370-5200 Date: 11/23/21

For more information, see page 2 >

Debtor **ES1 LLC**Case number **21-12109-CMA**

7. Meeting of creditors	December 21, 2021 at 11:00 AM	Location:
The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.	The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket. *** Valid photo identification and proof of social security number required ***	Telephonic Creditors Meeting Conference Line: 1-866-817-4564 Participant Code: 2679438
8. Proof of claim deadline	Deadline for filing proof of claim: Not yet set. If a deadline is set, the court will send you another notice. A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. Your claim will be allowed in the amount scheduled unless: • your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>; • you file a proof of claim in a different amount; or • you receive another notice. If your claim is not scheduled or if your claim is designated as <i>disputed</i> , <i>contingent</i> , or <i>unliquidated</i> , you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled. You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov . Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	
9. Exception to discharge deadline	If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below. Deadline for filing the complaint: 2/22/22	
10. Creditors with a foreign address	If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
11. Filing a Chapter 11 bankruptcy case	Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will generally remain in possession of the property and may continue to operate the debtor's business.	
12. Discharge of debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.	
Notice of Potential Dismissal If the debtor fails to file required schedules, statements or lists within 15 days from the date the petition is filed, or object to dismissal of the case indicating why dismissal is not appropriate, the case may be dismissed without further notice. If the Debtor(s) fails to appear at the meeting of creditors, the U.S. Trustee may apply for an order of dismissal without further notice. Anyone can register for the Electronic Bankruptcy Noticing program at ebn.uscourts.gov OR (2) Debtors can register for DeBN by filing local form DeBN Request Form with the Clerk of Court. Both options are FREE and allow the clerk to quickly send you court-issued notices and orders by email.		