

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

January 14, 2016 at 2:00 p.m.

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1. [15-90811](#)-E-7 ASSN., GOLD STRIKE STATUS CONFERENCE RE: NOTICE OF  
[15-9061](#) HEIGHTS HOMEOWNERS REMOVAL  
INDIAN VILLAGE ESTATES, LLC V. 11-18-15 [[1](#)]  
GOLD STRIKE HEIGHTS

Plaintiff's Atty: James L. Brunello  
Defendant's Atty: unknown

Adv. Filed: 11/18/15  
Answer: none

Nature of Action:  
Determination of removed claim or cause

**The Status Conference is ~~XXXXXXXXXXXXXX~~.**

Notes:

Trustee's Status Conference Statement filed 1/6/16 [Dckt 9]

**SUMMARY OF COMPLAINT**

The removed Complaint was filed by Indian Village Estates, LLC in the California Superior Court for the County of Calaveras on March 20, 2015. A copy of the Complaint is filed as an Exhibit to the Notice of Removal. Dckt. 5. The First Cause of Action seeks declaratory relief as to the existence and interests of Gold Strike 2002 and Gold Strike 2007, and whether the conduct taken by these entities was properly exercised. The Second Cause of Action seeks to have set aside or determined void various non-judicial foreclosure sales by which the Debtor asserted it acquired title to 31 lots. The Third Cause of Action seeks to have the trustee's deeds cancelled. The Fourth Cause of Action asserts that the asserted foreclosure sales were wrongful. The Fifth Cause of Action is to quiet title. The Sixth Cause of Action seeks to assert a claim for slander of title.

**REMOVAL**

The Complaint was filed by Indian Village, Estates, LLC in the California Superior Court. The Notice of Removal was filed by the Chapter 7 Trustee on November 18, 2015, Dckt. 1, which removed the action to this federal court. 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9027.

In the Notice of Removal the Trustee asserts that this is a core proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b). The Trustee states:

January 14, 2016 at 2:00 p.m.

"[t]he Removed Case involves matters that concern the administration of the estate, allowance or disallowance of claims, possible counterclaims by the estate against persons filing claims against the estate, and a determination of the validity, extent or priority of liens and/or title to real property."

Notice of Removal, p. 2:25-28.

The Notice of Removal further states that the Trustee is obtaining the other documents, order, and minutes from the State Court Action and will file them with the court.

#### **TRUSTEE'S STATUS REPORT - FILED JANUARY 6, 2016**

The Trustee reports that the Notice of the Removal was served on December 4, 2015. Dckt. 9. Copies of the pleadings in the State Court Action have been obtained by the Trustee, but they are not certified copies. Fed. R. Bankr. P. 9027(h). As of the court's January 10, 2016 review of the Docket, the copies of the other pleadings have not been filed.

The Trustee requests that the court continues the Status Conference for six weeks to allow the parties to comply with Federal Rule Bankruptcy Procedure 9027 and this court's Order to Confer (issued November 19, 2015). The Trustee does not provide any information as to why the parties have not confer or otherwise complied with the Federal Rules of Bankruptcy Procedure or prior order of this court.

The Trustee further reports that he intends to file a cross claim against Community Assessment Recovery Services, one of the named defendants in the State Court Action.

The Trustee further reports that none of the other parties have yet filed the required responsive pleading as concerning jurisdiction and core/non-core determination, as required by Federal Rule of Bankruptcy Procedure 9027(e) (3), which provides:

**"(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action."**

**January 14, 2016 at 2:00 p.m.**

2. [15-90811-E-7](#) ASSN., GOLD STRIKE  
[15-9062](#) HEIGHTS HOMEOWNERS  
LEE V. GOLD STRIKE HEIGHTS  
ASSOCIATION ET AL

STATUS CONFERENCE RE: NOTICE OF  
REMOVAL  
11-18-15 [[1](#)]

Plaintiff's Atty: Pro Se  
Defendant's Atty: unknown

Adv. Filed: 11/18/15  
Answer: none

Nature of Action:  
Determination of removed claim or cause

**The Status Conference is ~~XXXXXXXXXXXXXXXXXX~~.**

Notes:

Trustee's Status Conference Statement filed 1/6/16 [Dckt 9]

#### **SUMMARY OF COMPLAINT**

The removed Complaint was filed by Don Lee in the California Superior Court for the County of Calaveras on March 20, 2015. A copy of the Complaint is filed as an Exhibit to the Notice of Removal. Dckt. 5. The First Cause of Action seeks declaratory relief as to the existence and interests of Gold Strike 2002 and Gold Strike 2007, and whether the conduct taken by these entities was properly exercised as to the real property identified as 145 Jasper Way. The Second and Third Causes of Action seeks to assert a claim for the negligent infliction of emotional distress in connection with the asserted foreclosure sale of the 145 Jasper Way Property.

#### **REMOVAL**

The Complaint was filed by Don Lee in the California Superior Court. The Notice of Removal was filed by the Chapter 7 Trustee on November 18, 2015, Dckt. 1, which removed the action to this federal court. 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9027.

In the Notice of Removal the Trustee asserts that this is a core proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b). The Trustee states:

"[t]he Removed Case involves matters that concern the administration of the estate, allowance or disallowance of claims, possible counterclaims by the estate against persons filing claims against the estate, and a determination of the validity, extent or priority of liens and/or title to real property."

Notice of Removal, p. 2:25-28.

The Notice of Removal further states that the Trustee is obtaining the other documents, order, and minutes from the State Court Action and will file them with the court.

**TRUSTEE'S STATUS REPORT - FILED JANUARY 6, 2016**

The Trustee reports that the Notice of the Removal was served on December 4, 2015. Dckt. 9. Copies of the pleadings in the State Court Action have been obtained by the Trustee, but they are not certified copies. Fed. R. Bankr. P. 9027(h). As of the court's January 10, 2016 review of the Docket, the copies of the other pleadings have not been filed.

The Trustee requests that the court continues the Status Conference for six weeks to allow the parties to comply with Federal Rule Bankruptcy Procedure 9027 and this court's Order to Confer (issued November 19, 2015). The Trustee does not provide any information as to why the parties have not confer or otherwise complied with the Federal Rules of Bankruptcy Procedure or prior order of this court.

The Trustee further reports that none of the other parties have yet filed the required responsive pleading as concerning jurisdiction and core/non-core determination, as required by Federal Rule of Bankruptcy Procedure 9027(e)(3), which provides:

"(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action."

3. [15-90811](#)-E-7 ASSN., GOLD STRIKE STATUS CONFERENCE RE: NOTICE OF  
[15-9063](#) HEIGHTS HOMEOWNERS REMOVAL  
INDIAN VILLAGE ESTATES, LLC ET 11-18-15 [[1](#)]  
AL V. GOLD STRIKE HEIGHTS

Plaintiff's Atty: Adam Weiner  
Defendant's Atty: unknown

Adv. Filed: 11/18/15  
Answer: none

Nature of Action:  
Determination of removed claim or cause

The Status Conference is ~~XXXXXXXXXXXXXXXXXX~~.

Notes:

Trustee's Status Conference Statement filed 1/6/16 [Dckt 10]

#### SUMMARY OF COMPLAINT

The removed Complaint was filed by Indian Village Estates and Don Lee in the California Superior Court for the County of Calaveras on August 24, 2015. A copy of the Complaint is filed as an Exhibit to the Notice of Removal. Dckt. 5. As the Trustee notes, this is after the August 20, 2015, filing of the Chapter 7 bankruptcy case by Gold Strike Homeowners Association. (It would not be unusual for the information about the filing of the bankruptcy case and the filing of the State Court Action to have "crossed in the mail" during that four day period, which includes a weekend.)

The Plaintiffs in the State Court Action are Indian Village Estates, LLC (which is the plaintiff in another removed state court action, though represented by a different attorneys) and Don Lee (a pro se plaintiff in another removed state court action). The First Cause of Action seeks damages for Don Lee for breach of contract (a "Litigation Indemnity Agreement"). The Second Cause of Action seeks to assert a claim contesting the election relating to whether indemnification was to be provided to Don Lee. The Third Cause of Action seeks declaratory relief as to the rights and obligations under the asserted Indemnity Agreement.

#### REMOVAL

The Complaint was filed by Don Lee in the California Superior Court. The Notice of Removal was filed by the Chapter 7 Trustee on November 18, 2015, Dckt. 1, which removed the action to this federal court. 28 U.S.C. § 1452 and Fed. R. Bankr. P. 9027.

In the Notice of Removal the Trustee asserts that this is a core proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b). The Trustee states:

"[t]he Removed Case involves matters that concern the

administration of the estate, allowance or disallowance of claims, possible counterclaims by the estate against persons filing claims against the estate, and a determination of the validity, extent or priority of liens and/or title to real property."

Notice of Removal, p. 2:23-25.

The Notice of Removal further states that the Trustee is obtaining the other documents, order, and minutes from the State Court Action and will file them with the court.

#### **TRUSTEE'S STATUS REPORT - FILED JANUARY 6, 2016**

The Trustee reports that the Notice of the Removal was served on December 4, 2015. Dckt. 10. Copies of the pleadings in the State Court Action have been obtained by the Trustee, but they are not certified copies. Fed. R. Bankr. P. 9027(h). As of the court's January 10, 2016 review of the Docket, the copies of the other pleadings have not been filed.

The Trustee requests that the court continues the Status Conference for six weeks to allow the parties to comply with Federal Rule Bankruptcy Procedure 9027 and this court's Order to Confer (issued November 19, 2015). The Trustee does not provide any information as to why the parties have not confer or otherwise complied with the Federal Rules of Bankruptcy Procedure or prior order of this court.

The Trustee further reports that none of the other parties have yet filed the required responsive pleading as concerning jurisdiction and core/non-core determination, as required by Federal Rule of Bankruptcy Procedure 9027(e)(3), which provides:

**"(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action."**

4. [13-90219-E-7](#) DOUGLAS KENNEDY  
[13-9041](#)  
KENNEDY V. INTERNAL REVENUE  
SERVICE

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
12-23-13 [[1](#)]

**Final Ruling: No appearance at the January 14, 2015 Status Conference is required.**

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Plaintiff's Atty: Trevor J. Zink  
Defendant's Atty: Boris Kukso  
Adv. Filed: 12/23/13  
Reissued Summons: 2/14/14  
Answer: 3/10/14  
Nature of Action:  
Dischargeability - priority tax claims

<p><b>The Status Conference is continued to 2:00 p.m. on July 7, 2016.</b></p>
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No  
tes:

Continued from 8/20/15. Parties to file status reports on or before fourteen days prior to the continued Status Conference date.

Joint Status Conference Statement Regarding the Stay of the Adversary Proceeding filed 12/28/15 [Dckt 63]

#### **JANUARY 14, 2016 STATUS CONFERENCE**

The Parties filed a Joint Status Conference Report on December 28, 2015. Dckt. 63. This court has stayed this Adversary Proceeding pending the Ninth Circuit Court of Appeals addressing related legal issues in *Smith, et al v. IRS (In re Smith)*. The Parties further report that briefing in Smith has been completed, but the Circuit has not yet set oral argument for that appeal. The parties request that this court further continue the Status Conference four to six months to allow for the continuing prosecution of and ruling on that appeal.

The court continues the Status Conference, erring on the longer side, to allow the Parties the opportunity to consider and constructively discuss how the ruling in Smith impacts the prosecution of this Adversary Proceeding.

The court shall issue a minute 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 Status Conference in this Adversary Proceeding having scheduled by this court, the ruling in the pending Ninth Circuit appeal in *Smith et al v. IRS* not having been issued,

such ruling in that appeal having an impact on the issues in this Adversary Proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on July 7, 2016. The Parties shall file a Status Conference Report Update at least fourteen days before the above continued Status Conference date.

5. [13-90323-E-12](#) FRANCISCO/ORIANA SILVA CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-25-13 [[1](#)]

Debtors' Atty: Peter L Fear

**The Post-Confirmation Status Conference is continued to  
XXXXXXXXXXXXXXXXX.**

Notes:

Continued from 12/17/15. On or before 1/5/16, the Chapter 12 Trustee is to file a status report of the post-confirmation compliance with the plan, defaults or deficiencies in connection with the plan, necessary amendments or modifications, the disbursements made pursuant to the confirmed plan, and the monies then held by the Chapter 12 Trustee and the projected parties to whom said monies are to be disbursed.

Status Report of Chapter 12 Trustee filed 1/4/16 [Dckt 155]

**JANUARY 14, 2016 POST-CONFIRMATION STATUS CONFERENCE**

The Chapter 12 Trustee filed his Post-Confirmation Status Report on January 4, 2016. Dckt. 155. The Trustee reports that the Chapter 12 Debtors are current on their plan payments.

Upon review of the Claims filed in this case, the Trustee reports that the confirmed plan understated (based on the proofs of claims filed) the secured tax claims of Stanislaus County as being \$15,297.69, which the amount in the Proofs of Claim Nos. 25, 26, and 27 total \$36,366.37; and understates the priority claims to be \$200, while Proofs of Claim Nos. 17 - 21 state priority claims which total \$41,207.00.

As presently confirmed, the Plan is underfunded by the Trustee's calculations and will not provide sufficient monies to pay the secured tax claims and priority claims in full. The Trustee reports that he first communicated this underfunding to Debtor's counsel in August 2015.

No proposed modified Chapter 12 plan has been filed.

6. [14-91633-E-11](#) SOUZA PROPANE, INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-17-14 [[1](#)]

**Final Ruling:** No appearance at the January 14, 2015 Status Conference is required.

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Debtor's Atty: David C. Johnston

**The Status Conference is continued to 2:00 p.m. on March 17, 2016, as a holding date pending the Chapter 11 Trustee filing and the court ruling on a motion to convert this case to one under Chapter 7.**

Notes:

Continued from 9/3/15

Operating Reports filed: 9/9/15, 10/15/15, 11/14/15, 12/14/15

[FWP-9] Notice of Rejection of Commercial Lease Agreement Dated February 1, 2010, Between Souza Properties, Inc., and Souza Propane, Inc. for Real Property Located at 199 W. Canal Drive, Turlock California 95380 filed 9/9/15 [Dckt 289]

[FWP-11] Trustee's Application to Set Bar Date for Filing Motions for Allowance of Chapter 11 Administrative Claims filed 9/10/15 [Dckt 295]; Order granting filed 9/13/15 [Dckt 299]

[FWP-10] Order sustaining objection to Proof of Claim Nos. 8 and 9 of Shasta Gas Propane, Inc. filed 10/5/15 [Dckt 308]

[FWP-12] Motion of David D. Flemmer for First Interim Allowance of Trustee's Fees and Reimbursement of Expenses filed 10/23/15 [Dckt 312]; Order granting filed 12/9/15 [Dckt 362]

[FWP-13] Motion of Felderstein Fitzgerald Willoughby & Pascuzzi LLP for Second Interim Allowance of Attorneys' Fees and Reimbursement of Expenses as Bankruptcy Counsel for the Chapter 11 Trustee filed 10/23/15 [Dckt 317]; Order granting filed 12/9/15 [Dckt 363]

[FWP-14] Chapter 11 Trustee's Motion to Determine Value of Secured Claim of Financial Pacific Leasing, LLC in Net Sale Proceeds filed 11/5/15 [Dckt 326]; Order granting filed 12/9/15 [Dckt 364]

[FWP-15] Chapter 11 Trustee's Motion for Authority to Disburse Net Sale Proceeds in Blocked Account filed 11/5/15 [Dckt 341]; Order granting filed 12/9/15 [Dckt 365]

[FWP-16] Chapter 11 Trustee's Motion for Authority to Abandon the Estate's Interest in Propane Tanks filed 11/5/15 [Dckt 332]; Order granting filed 12/9/15 [Dckt 366]

**January 14, 2016 at 2:00 p.m.**

[FWP-17] Chapter 11 Trustee's Motion for Authority to Pay Pre-Petition Priority Tax Claims filed 11/5/15 [Dckt 336]; Order denying filed 12/9/15 [Dckt 367]

Chapter 11 Trustee's Case Status Report filed 1/7/16 [Dckt 375]

**JANUARY 14, 2016 STATUS REPORT - Filed January 7, 2016**

In his Status Report, the Chapter 11 Trustee states that he has determined that the case should be converted to one under Chapter 7 and will be filing a motion seeking such relief. Dckt. 375. The Trustee anticipates having a hearing on such motion on February 4, 2016.

The Trustee further reports that the court has approved, and the Trustee has consummated, sales of substantially all of the Estate's business assets and there is no longer an ongoing business operation upon which to build a Chapter 11 plan around. The property of the estate consists of substantially unencumbered cash.

The parties in interest have appeared a number of times before this court, actively participated in this case, and actively worked to sell the business assets of the Estate. Continuing the Status Conference is proper, pending a conversion (if so ordered) of this case.

7. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
4-10-15 [[1](#)]

Debtors' Atty: David M. Meegan

Notes:

Continued from 9/3/15

Operating Reports filed: 9/15/15, 10/16/15, 11/6/15, 11/16/15

[MHK-1] Order granting use of cash collateral filed 9/8/15 [Dckt 154]

[MHK-5] Order granting motion to sell [87 W. Canal Drive, Turlock, California] filed 9/14/15 [Dckt 156]

[MHK-8] Debtors' Motion to Use Cash Collateral to Pay Property-Tax Installments filed 11/2/15 [Dckt 165]; Order granting filed 12/9/15 [Dckt 202]

[RDW-1] Provident Credit Union's Motion for Relief from Automatic Stay [97 W. Canal Drive, Turlock, CA] filed 11/5/15 [Dckt 169]; heard 12/3/15 and continued to 1/14/16 at 10:30 a.m.

[RDW-2] Provident Credit Union's Motion for Relief from Automatic Stay [87 W. Canal Drive, Turlock, CA] filed 11/5/15 [Dckt 176]; heard 12/3/15 and continued to 1/14/16 at 10:30 a.m.

[MHK-9] Debtors' Application to Employ Real Estate Broker [Keller Williams Realty, Modesto, CA] filed 12/23/15 [Dckt 217]; Order granting filed 12/23/15 [Dckt 221]

Debtors' Third Chapter 11 Status Report filed 12/30/15 [Dckt 229]

#### **JANUARY 14, 2016 STATUS CONFERENCE**

Debtors in Possession filed the Chapter 11 Status Report on December 30, 2015. Dckt. 229. They report that they are reviewing draft documents for a Chapter 11 Plan. The Report also discusses the liquidation of Souza Propane, Inc. and disputes relating to the Estate's interest in Turlock Air Park, Inc.

#### **REVIEW OF MONTHLY OPERATING REPORTS**

The Most recent Monthly Operating Report was filed on December 15, 2015, for the period through the month ending November 30, 2015. Dckt. 215. The information provided in the Monthly Operating Report for November 2015 includes the following:

A. Cash Receipts - Rent/Leases

- 1. Rents/Leases
  - a. November 2015.....\$1,720
  - b. April 2015 - November 2015.....\$28,579
- 2. Funds from Shareholders, Partners, or Other Insiders
  - a. Nov 2015.....\$103
  - b. Apr 2015 - Nov 2015.....\$64,399
- 3. Insurance Refund
  - a. Apr 2015 - Nov 2015.....\$10,853
- B. Cash Disbursements
  - 1. Administrative
    - a. Nov 2015.....(\$ 500)
    - b. Apr 2015 - Nov 2015.....(\$1,833)
  - 2. Rent/Lease
    - a. Nov 2015.....(\$1,294)
    - b. Apr 2015 - Nov 2015.....\$(4,030)
  - 3. Draws
    - a. Nov 2015.....(\$1,410)
    - b. Apr 2015 - Nov 2015.....(\$37,620)
  - 4. Total
    - a. Nov 2015.....(\$3,790)
    - b. Apr 2015 - Nov 2015.....\$53,178)

**SUMMARY OF SCHEDULES**

Real Property Schedule A	FMV	LIENS	
Total Value	\$2,074,000		
Residence			
Eight Residential Rental Properties			

<b>Personal Property Schedule B</b>	FMV	LIENS	
Total	\$1,927,960		
Souza Properties, Inc. (100%)			\$750,000
Turlock Air Park, Inc. (25%)			\$1,000,000
Turlock Air Park, Inc. Note			\$101,407

<b>Secured Claims Schedule D</b>	TOTAL CLAIM AMOUNT	FMV	EQUITY (UNSECURED) CLAIM PORTION
Carrington Mtg Services N Johnson Rd Residence First Deed of Trust	(\$422,000)	\$550,000	\$128,000
Wells Fargo Bank N Johnson Road Residence Second Deed of Trust	(\$250,000)		(\$122,000)
Internal Revenue Service	(\$254,837)		
Provident Credit Union Canal Dr. Prop A First Deed of Trust	(\$67,981)	\$250,000	\$182,019
Provident Credit Union Canal Drive Prop B First Deed of Trust	(\$75,177)	\$195,000	\$119,823
Maiman Revocable Trust A W. Syracuse Prop A First Deed of trust	(\$46,000)	\$173,000	\$127,000
Seterus W. Syracuse Prop B First Deed of Trust	(\$131,036)	\$75,000	(\$56,036)
Seterus W. Syracuse Dr. Prop C First Deed of Trust	(\$126,841)	\$132,000	\$5,159
Seterus W. Syracuse Dr. Prop D First Deed of Trust	(\$122,700)	\$149,000	\$26,300
Stanislaus County Tax Collector Golden State Dr Prop A Property Tax Lien	(\$537)	\$120,000	\$119,463

Curtis Family Trust Golden State Dr. Prop A First Deed of Trust	(\$331,191)		(\$211,728)
Stanislaus County Tax Collector W. Syracuse Prop E	(\$1,931)	\$430,000	\$428,069
Curtis Family Trust W. Syracuse Prop E First Deed of Trust	(\$920,350)		(\$492,281)
Curtis Family Trust 2 <sup>nd</sup> DOT W Canal Prop A 2 <sup>nd</sup> DOT w Canal Prop B 2 <sup>nd</sup> DOT W Syracuse Prop B 2 <sup>nd</sup> DOT W Syracuse Prop C 2 <sup>nd</sup> DOT W Syracuse Prop D	(\$250,000)		\$83,301

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
Internal Revenue Service	(\$2,169)	(\$2,169)	

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	TOTAL CLAIM AMOUNT		GENERAL UNSECURED
Total General Unsecured Claims	(\$1,843,376)		
Bank of America			(\$81,800)
Calone & Harrel			(\$66,912)
Chase			(\$23,528)
Citibank			(\$23,393)
Damrell et al			(\$107,163)
Discover			(\$27,635)
Financial Pacific Leasing			
Money Brokers (unsecured guaranty of debt, with underlying debt secured by property owned by Souza Properties, Inc.)			(\$955,812)
Turlock Air Park, Inc.			(\$375,915)
Wells Fargo Bank			(\$26,666)

<b>INCOME, SCHEDULE I</b>		
Total Average Monthly Income		
Total	\$12,483	

<b>EXPENSES, SCHEDULE J</b>		
Total Average Monthly Expenses		
Total	(\$24,917)	
Residence Mtgs	(\$4,200)	
Rental Prop Mtgs	(\$15,693)	
Rental Property Expenses	(\$2,100)	
Net Monthly Income	(\$12,433)	

**STATEMENT OF FINANCIAL AFFAIRS**

**Question 1 Income**

2015 YTD	none	
2014	none	
2013	none	

**Question 2 Non-Business Income**

2015 YTD	\$40,300	
2014	\$187,000	
2013	\$131,800	

**Question 3 Payments within 90 days or One Year**

Creditor	Amount	Date
None		

8. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
SDN-3

APPROVAL OF DISCLOSURE  
STATEMENT FILED BY CREDITOR YP  
WESTERN DIRECTORY, LLC  
12-3-15 [[704](#)]

**No Tentative Ruling:** The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

9. [12-93049-E-11](#) MARK/ANGELA GARCIA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-30-12 [[1](#)]

Debtors' Atty: Mark J. Hannon

The Status Conference is continued to ~~XXXXXXXXXX~~.

Notes:

Continued from 12/17/15 to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

[AP-1] Stipulation to Continue Hearing on Motion for Relief from Automatic Stay filed 1/4/16 [Dckt 729]; Order approving filed 1/5/16 [Dckt 730], set for hearing 4/28/16 at 10:00 a.m.

#### JANUARY 14, 2016 STATUS CONFERENCE

The Chapter 11 Trustee did not file a Status Report. The court is conducting hearings this date on a Motion to Approve Disclosure Statement filed by YP Western Directory, LLC. Counsel for Debtor has filed his Memorandum of Points and Authorities citing to bankruptcy case law (not the Bankruptcy Code) for the proposition that a debtor's attorney may be paid attorneys' fees notwithstanding the appointment of a trustee. Shepardizing the cases cited in the Points and Authorities led the court to *Lamie v. United States Trustee*, 540 U.S. 526, 538-539 which is contrary to the Debtor's citations and lists the circumstances in which a debtor's counsel may be compensated from the estate:

"Adhering to conventional doctrines of statutory interpretation, we hold that § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327. If the attorney is to be paid from estate funds under § 330(a)(1) in a chapter 7 case, he must be employed by the trustee and approved by the court."

In its response to the YP Western Directory, LLC proposed creditor Chapter 11 Plan providing for payment of legal fees to Debtor's counsel, the U.S. Trustee cites to Supreme Court ruling in *Lamie*, as well as a number of other cases.

The proposed Disclosure Statement states that Debtor's Counsel will be paid \$40,000.00 as an administrative expense based on Ninth Circuit case law (no citation to the Ninth Circuit authorities in the Disclosure Statement).

The Disclosure Statement further provides that YP Western Directory, LLC intends to seek recovery of \$15,000 for fees as a claim in this case. It is not clear if this is being asserted as a general unsecured claim or an administrative expense for prosecuting a plan in this case.

The Disclosure Statement also states that counsel for the Chapter 11

January 14, 2016 at 2:00 p.m.

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Trustee is anticipated to be paid \$55,000 for fees in this case.

10. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
MJH-13

CONTINUED OBJECTION TO CLAIM OF  
UNITED STATES FIRE INSURANCE  
COMPANY, CLAIM NUMBER 19 A  
2-9-15 [[509](#)]

Notes:

Pre-Evidentiary hearing continued from 9/3/15 to afford the parties a final opportunity to confirm a plan.

[SDN-3] Creditor YP Western Directory, LLC's Disclosure Statement filed 12/3/15 [Dckt 704], set for hearing 1/14/16 at 2:00 p.m.

[SDN-3] Creditor YP Western Directory, LLC's Plan filed 12/3/15 [Dckt 706]

**JANUARY 14, 2016 CONFERENCE**

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

**DECEMBER 17, 2015 CONFERENCE**

The Hearing on the Objection to Claim is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

**SEPTEMBER 3, 2015 CONFERENCE**

The Debtors, Chapter 11 Trustee, and Creditors are jointly working on a final attempt to present a proposed plan and disclosure statement which can be set for a confirmation hearing. The Conference is continued to afford the parties this final opportunity to confirm a plan.

11. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[13-9029](#)  
UNITED STATES FIRE INSURANCE  
COMPANY V. GARCIA ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
4-30-15 [[64](#)]

Plaintiff's Atty: Gregory M. Salvato  
Defendant's Atty:  
Mark J. Hannon [Mark Garcia and Angela Garcia]  
Estela O. Pino [John Bell]

Adv. Filed: 8/23/13  
Answer: 10/4/13

Amd. Cmplt. Filed: 4/30/15  
Answer: 5/20/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury



Notes:

Continued from 12/17/15 to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

**JANUARY 14, 2016 STATUS CONFERENCE**

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

**DECEMBER 17, 2015 STATUS CONFERENCE**

The Status Conference is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

**JULY 2, 2015 STATUS CONFERENCE**

On June 25, 2015, United States Fire Insurance Company ("USFI") filed a Status Report in this Adversary Proceeding. Dckt. 72. It states that USFI believes that an agreement has been reached which settles this Adversary Proceeding and the objection to claim filed by Mark and Angela Garcia ("Defendant-Debtor") Debtors. USFI's counsel has transmitted the final forms for the Stipulation for Entry of Judgment and Stipulation for allowance of the USFI claim (POC 19-3).

The Report further states that USFI contemplates that no court approval

is required, and unless otherwise ordered by the court. USFI does intend to seek court approval of the compromise with respect to the allowance of its claim in the Defendant-Debtor's bankruptcy case.

12. [12-93049-E-11](#) MARK/ANGELA GARCIA  
[15-9013](#)  
GARCIA ET AL V. G STREET  
INVESTMENTS, LLC. ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
5-30-15 [[14](#)]

Plaintiff's Atty: Mark J. Hannon  
Defendant's Atty: David M. Wiseblood

Adv. Filed: 4/10/15  
Answer: none

Amd. Cmplt. Filed: 5/30/15  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Injunctive relief -imposition of stay  
Subordination of claim or interest

Notes:

Continued from 12/17/15 to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

**JANUARY 14, 2016 STATUS CONFERENCE**

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.~~

**DECEMBER 17, 2015 STATUS CONFERENCE**

The Status Conference is continued to 2:00 p.m. on January 14, 2016, to be conducted in conjunction with the hearing for Approval of Disclosure Statement.

**SEPTEMBER 3, 2015 STATUS CONFERENCE**

The Debtors, Chapter 11 Trustee, and Creditors are jointly working on a final attempt to present a proposed plan and disclosure statement which can be set for a confirmation hearing. The Conference is continued to afford the parties this final opportunity to confirm a plan.

13. [14-91565-E-7](#) RICHARD SINCLAIR  
[15-9007](#)  
KATAKIS ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-20-15 [[1](#)]

No Tentative Ruling.

-----  
Plaintiff's Atty: Kimberley V. Deede  
Defendant's Atty: Pro Se

Adv. Filed: 2/20/15  
Answer: 3/30/15; 11/25/15

Nature of Action:  
Dischargeability - willful and malicious injury

**The Status Conference is continued to 2:00 p.m. on  
~~XXXXXXXXXXXX~~, 2016.**

Note  
s:

Continued from 4/30/15. All matters in this Adversary Proceeding stayed pending further order of the court. Parties to file and serve on or before 1/6/16 updated status reports.

Order Modifying Automatic Stay filed 5/4/15 [Dckt 20]

Answer to Complaint to Determine Dischargeability of Debt filed 11/25/15 [Dckt 35]

Plaintiffs' Unilateral Status Report filed 1/6/16 [Dckt 36]

**JANUARY 14, 2016 STATUS CONFERENCE**

The court addressed with the Parties ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

With respect to the District Court Action, based on the issues presented the Parties identified the issues for which the Trustee was the real party in interest and those matters, if any, for which Mr. Sinclair would be the real party in interest:

- A. ~~XXXXXXXXXX~~
- B. ~~XXXXXXXXXX~~
- C. ~~XXXXXXXXXX~~

Plaintiffs filed a Unilateral Status Report on January 6, 2016. Dckt. 36. The court has stayed further proceedings in this Adversary Proceeding, having modified the automatic stay to allow the Parties to litigate the pending State Court Action. Plaintiffs report the following updated information:

- A. On July 22, 2015, filed a notice of conditional settlement with one of the non-debtor defendants, Stanley Flake and dismissed Mr. Flake from the State Court Action on September 10, 2015.
- B. Richard Sinclair filed a Third Amended Cross-Complaint in June 2015 against Plaintiffs.
- C. In July 2015, Plaintiffs filed a demurrer to the Third-Amended Complaint and a motion to strike.
- D. In August 2015, Mr. Sinclair filed a notice of disability, which asserted substantially the same disability as presented to this court in August 2015.
- E. The State Court granted an extension to Mr. Sinclair to September 29, 2015, to file an opposition to the demurrer.
- F. Mr. Sinclair filed an opposition to the demurrer and the hearing on the demurrer was set for November 10, 2015.
- G. Prior to the November 10, 2015 hearing, the U.S. Trustee filed a motion to covert Mr. Sinclair's bankruptcy case to one under Chapter 7.
- H. Upon being provided notice of the pending motion to convert the bankruptcy case, the State Court dropped the demurrer and other pending motions, believing that if the case was converted and a trustee was appointed, it would not have "jurisdiction" over the cross-claim.
- I. Mr. Sinclair's bankruptcy case was converted to one under Chapter 7 in December 2015. The State Court Action has been "put on hold" to allow the Chapter 7 Trustee to investigate the cross-claim.

The Chapter 7 Trustee having been recently appointed, Plaintiffs request that this Status Conference be continued until after mid-March, 2016, to allow the newly appointed Trustee to investigate the issues relating to the State Court Action, this Adversary Proceeding, and the Bankruptcy Case.

14. [14-91565-E-7](#) RICHARD SINCLAIR  
[15-9008](#)  
CALIFORNIA EQUITY MANAGEMENT  
GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-23-15 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

The Status Conference is continued to 2:00 p.m. on  
~~XXXXXXXXXX~~, 2016.

Note  
s:

Continued from 4/30/15. All matters in this Adversary Proceeding stayed pending further order of the court. Parties to file and serve on or before 1/6/16 updated status reports.

Order Modifying Automatic Stay filed 5/4/15 [Dckt 20]

[HAR-1] Order dismissing as moot Motion for Summary Judgment filed 5/27/15 [Dckt 30]

**JANUARY 14, 2016 STATUS CONFERENCE**

The court addressed with the Parties ~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~.

With respect to the District Court Action, based on the issues presented the Parties identified the issues for which the Trustee was the real party in interest and those matters, if any, for which Mr. Sinclair would be the real party in interest:

- A. ~~XXXXXXXXXX~~
- B. ~~XXXXXXXXXX~~
- C. ~~XXXXXXXXXX~~

**SUMMARY OF COMPLAINT**

California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seeks to have the damages relating to the claims asserted in a pending District Court Action, case 03-05439, are nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6). The default

of Richard Sinclair ("Defendant-Debtor") has been entered in the District Court Action, but no judgment has been entered therein.

**SUMMARY OF ANSWER**

Richard Sinclair, the Defendant-Debtor, filed an answer which specifically admits and denies the allegations in the Complaint. Defendant-Debtor asserts twenty-three affirmative defenses.

15.	<a href="#">14-90473-E-7</a>	ROBERT WOJTOWICZ AND SHERRI HERTZIC-WOJTOWICZ HERTZIC-WOJTOWICZ V. IRM CORPORATION ET AL	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 9-29-15 [ <a href="#">46</a> ]
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Plaintiff's Atty: Shane Reich  
 Defendant's Atty:  
     Jamie P. Dreher [JCM Partners, LLC]  
     Unknown [IRM Corporation]

Adv. Filed: 7/11/14  
 Answer: 12/15/15 [JCM Partners, LLC]

Nature of Action:  
 Recovery of money/property

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 12/17/15

Joint Status Report filed 1/7/16 [Dckt 57]

**SUMMARY OF COMPLAINT**

The First Amended Complaint seeks to avoid a pre-petition payment pursuant to 11 U.S.C. § 547, which is asserted to be exempt pursuant to 11 U.S.C. § 522(g) and (h). The amount at issue is \$232.41. This remains from a larger amount, \$832.30, which Plaintiff-Debtor sought to recover from Defendant.

**SUMMARY OF ANSWER**

Defendant JCM Partners, LLC denies specific allegations in the First

Amended Complaint, as well as asserting 13 affirmative defenses.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (without referencing the applicable code section. First Amended Complaint ¶ 1, Dckt. 46. In its answer, Defendant JCM Partners, LLC asserts,

"1. Paragraph 1 of the FAC contains legal assertions to which no response is required. However, to the extent a response is required, JCM denies the allegations of Paragraph 1."

Answer, ¶ 1; Dckt. 51.

Contrary to the contention of Defendant, a lack of subject matter or personal jurisdiction must be asserted in an answer. Fed. R. Civ. P. 12(b)(1) and (2); Fed. R. Bank. P. 7012(b). In addition, the answer must affirmatively plead whether the matter is a core or non-core proceeding, and if non-core, whether defendant consents to the bankruptcy judge issuing all final orders and final judgment therein. Fed. R. Bankr. P. 7012(b).

At the hearing, Sherri Hertzic-Wojtowicz, the Plaintiff-Debtor, and JCM Partners, LLC, the Defendant, stated on the record that: (1) Federal court jurisdiction exists for this adversary proceeding for relief pursuant to 11 U.S.C. §§ 547 and 550; (2) This is a core proceeding, and (3) To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (without referencing the applicable code section. First Amended Complaint ¶ 1, Dckt. 46. At the hearing, Sherri Hertzic-Wojtowicz, the Plaintiff-Debtor, and JCM Partners, LLC, the Defendant, stated on the record that: (1) Federal court jurisdiction exists for this adversary proceeding for relief pursuant to 11 U.S.C. §§ 547 and 550; (2) This is a core proceeding, and (3) To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction for this Adversary

Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (without referencing the applicable code section. First Amended Complaint ¶ 1, Dckt. 46. At the hearing, Sherri Hertzic-Wojtowicz, the Plaintiff-Debtor, and JCM Partners, LLC, the Defendant, stated on the record that: (1) Federal court jurisdiction exists for this adversary proceeding for relief pursuant to 11 U.S.C. §§ 547 and 550; (2) This is a core proceeding, and (3) To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, 2016.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

16. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE  
RMY-9

CONFIRMATION OF PLAN OF  
REORGANIZATION FILED BY DEBTORS  
9-18-15 [[332](#)]

**Tentative Ruling:** The Motion For Confirmation of the Chapter 11 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Note, Plan, and supporting pleadings were served on the Creditors, other Parties in Interest, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. Dckt. 361. By the court's calculation, 71 days' notice was provided. 42 days' notice is required.

The Request for Confirmation of the First Amended Chapter 11 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002. The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties in interest are entered.

**The First Amended Chapter 11 Plan, as amended at the hearing, is confirmed.**

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 6, 2015	Plan, Disclosure Statement, Disc Stmt Ord, and Ballot Mailed
December 7, 2015	Last Day for Submitting Written Acceptances or Rejections
December 7, 2015	Last Day to File Objections to Confirmation

December 21, 2015

Last Day to File Replies to Objections,  
Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1	For: 1 Against: 0	100%	100%
Class 2	For: 1 Against: 0	100%	100%
Class 3	For: 1 Against: 0	100%	100%
Class 4	For: 1 Against: 0	100%	100%
Class 5	For: 1 Against: 0	100%	100%
Class 6	For: 2 Against: 0	100%	100%
Class 7	For: 1 Against: 0	100%	100%
	For: Against:		

Declaration of Michael House filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

**11 U.S.C. § 1129(a).**

1. The plan complies with the application provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

**Evidence:** Memorandum, Dckt. 338, pg. 10; Declaration, Dckt. 393, ¶ 4

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

**Evidence:** Memorandum, Dckt. 338, pg. 11; Declaration, Dckt. 393, ¶ 4, 5

3. The plan has been proposed in good faith and not by any means forbidden by law.

**Evidence:** Memorandum, Dckt. 338, pg. 11; Declaration, Dckt. 393, ¶ 6

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

**Evidence:** Memorandum, Dckt. 338, pg. 11; Declaration, Dckt. 393, ¶ 7

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

**Evidence:** Memorandum, Dckt. 338, pg. 11; Declaration, Dckt. 393, ¶ 8

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

**Evidence:** Memorandum, Dckt. 338, pg. 12; Declaration, Dckt. 393, ¶ 9

7. With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 USCS § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in

the estate's interest in the property that secures such claims.

**Evidence:** Memorandum, Dckt. 338, pg. 12; Declaration, Dckt. 393, ¶ 10

8. With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

**Evidence:** Memorandum, Dckt. 338, pg. 12; Declaration, Dckt. 393, ¶ 10

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

**Evidence:** Memorandum, Dckt. 338, pg. 12; Declaration, Dckt. 393, ¶ 11

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive--

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

**Evidence:** Memorandum, Dckt. 338, pg. 12; Declaration, Dckt. 393, ¶ 11, 12

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash--

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

**Evidence:** Memorandum, Dckt. 338, pg. 12-13; Declaration, Dckt. 393, ¶ 12

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan y any insider.

**Evidence:** Memorandum, Dckt. 338, pg. 13; Declaration, Dckt. 393, ¶ 13

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**Evidence:** Memorandum, Dckt. 338, pg. 13; Declaration, Dckt. 393, ¶ 14

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

**Evidence:** Memorandum, Dckt. 338, pg. 14; Declaration, Dckt. 393, ¶ 15

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Evidence:** Memorandum, Dckt. 338, pg. 14; Declaration, Dckt. 393, ¶ 16

14. If the debtor is required by a judicial or administrative order, or by statue, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statue for such obligation that first become payable after the date of the filing of the petition.

**Evidence:** Memorandum, Dckt. 338, pg. 14; Declaration, Dckt. 393, ¶ 17

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan-

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

**Evidence:** Memorandum, Dckt. 338, pg. 14; Declaration, Dckt. 393, ¶ 18

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

**Evidence:** Memorandum, Dckt. 338, pg. 14; Declaration, Dckt. 393, ¶ 19

**11 U.S.C. § 1129(b)**

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

**Evidence:** Memorandum, Dckt. 338, pg. 14-15; Declaration, Dckt. 393, ¶ 20

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

- (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the

allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

**Evidence:** Memorandum, Dckt. 338, pg. 15; Declaration, Dckt. 393, ¶ 20, 21

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

**Evidence:** Memorandum, Dckt. 338, pg. 15-18; Declaration, Dckt. 393, ¶ 23

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the

interests of such class will not receive or retain under the plan on account of such junior interest any property.

#### **DEBTORS-IN-POSSESSION AMENDMENT**

The Debtor-in-Possession, pursuant to 11 U.S.C. § 1127(a) requests that some language in the proposed plan, as related to Petaluma, is deleted. The Debtor-in-Possession states that they have reached an agreement with Petaluma requiring its treatment under the plan. On page 13 of the plan, at line 3, through page 15, line 23, the language provided what would happen if an agreement was not met. The Debtor-in-Possession argues that since the Debtor-in-Possession and Petaluma have reached an agreement and that the deleting of the language would not effect the treatment of other claimants, that the amendment should be allowed.

#### **CONCLUSION**

The proposed Chapter 11 Plan of Reorganization filed on September 18, 2015 (Dckt. 332), complies with the requirements of 11 U.S.C. §§ 1129 and 1123. All classes of claims have voted at least more than 50% in number and 2/3 in dollar amount of the voting creditors to accept the Chapter 11 Plan.

As to the Debtor-in-Possession amendment, the court agrees that the deletion of the section would not negatively effect the treatment of other claimants in the plan. The proposed section to be deleted was only in case a settlement with Petaluma was not made. However, now that the Debtor-in-Possession and Petaluma have negotiated, the need for the alternative is no longer necessary.

The proposed Chapter 11 Plan is confirmed. Counsel for the Debtor in Possession shall prepare and lodge with the court an order confirming the Chapter 11 Plan, removing the section related to Petaluma on page 13 of the plan, at line 3, through page 15, line 23, with a copy of such confirmed plan attached as an exhibit to the proposed order.

17. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE  
[14-9025](#)  
HOUSE ET AL V. AMARAL

CONTINUED PRE-TRIAL CONFERENCE  
RE: COMPLAINT  
8-8-14 [[1](#)]

Plaintiff's Atty: Robert M. Yaspan; Joseph G. McCarty  
Defendant's Atty: Michael B. Ijams

Adv. Filed: 8/8/14  
Answer: 9/8/14

Nature of Action:  
Injunctive relief - imposition of stay  
Declaratory judgment



Notes:

Continued from 10/1/15 pursuant to stipulation of the Parties.

[RMY-20] Debtors-in-Possession's Motion for an Order to Approve the Compromise of the Controversy Between Plaintiff and Defendant Emanuel O. Amaral filed 12/4/15 [Dckt 75], set for hearing 1/14/16 at 10:30 a.m.

18. [13-91189-E-11](#) MICHAEL/JUDY HOUSE

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-25-13 [[1](#)]

Debtors' Atty: Robert M. Yaspan; Joseph G. McCarty

Notes:

Continued from 9/3/15

Operating Reports filed: 9/16/15, 10/12/15, 11/12/15, 12/15/15

[RMY-14] Debtors-in-Possession's Motion for Entry of Interim Orders (A) Authorizing the Continued Use of Cash Collateral; (B) Granting Adequate Protection to Pre-petition Secured Parties; and (C) Scheduling Further Hearings filed 9/10/15 [Dckt 325]; Order granting through 12/31/15 filed 10/1/15 [Dckt 338]

[RMY-9] Amended Plan [Dckt 332] and Amended Disclosure Statement [Dckt 333] filed 9/18/15; Order approving disclosure statement filed 10/27/15 [Dckt 356], set for hearing 1/14/16 at 2:00 p.m.

Amended Schedule A and Schedule B filed 10/29/15 [Dckt 358]

[RMY-14] Debtors-in-Possession's Motion for Entry of Interim Orders (A) Authorizing the Continued Use of Cash Collateral; (B) Granting Adequate Protection to Pre-petition Secured Parties; and (C) Scheduling Further Hearings filed 11/12/15 [Dckt 363]; Order granting 12/3/15 through 3/31/16 filed 12/9/15 [Dckt 376]

[RMY-20] Joint Ex Parte Application to Approve Stipulation to Extend Ballot Submission and Plan Objection Deadline Subject to Court Approval filed 12/7/15 [Dckt 369]; Order granting filed 12/12/15 [Dckt 377]

[RMY-21] Second and Final Motion for Compensation of Law Offices of Robert M. Yaspan as Attorneys for Debtors-in-Possession filed 12/17/15 [Dckt 379], set for hearing 1/14/15 at 10:30 a.m.

[RMY-1] Status Conference Report filed 12/30/15 [Dckt 396]

**JANUARY 14, 2016 STATUS CONFERENCE**

19. [15-90797-E-7](#) SERGIO/TIFFANIE MOLINA  
[15-9060](#)  
MODESTO IRRIGATION DISTRICT V.  
MOLINA ET AL

STATUS CONFERENCE RE: COMPLAINT  
10-28-15 [[1](#)]

Plaintiff's Atty: Pro Se  
Defendant's Atty: unknown

Adv. Filed: 10/28/15  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:

**REVIEW OF PLEADINGS**

On October 28, 2015, a document titled "SUPPORTING DOCUMENT OF MODESTO IRRIGATION DISTRICT'S ADVERSARY TO THE DISCHARGEABILITY OF DEBT OWED TO THE DISTRICT UNDER 523a(4) AND (6)." Dckt. 1. This document is signed by Rebecca James, who is identified as a Customer Service Representative for Modesto Irrigation District ("MID"). The Document is a declaration.

The declaration recounts that power use at the Debtor's property was found to have in part been diverted around the power meter. Further, that MID has recorded a lien pursuant to California Water Code § 25806 to secure the asserted power usage obligation of \$13,397.71. No specific relief is requested in this Document.