UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 24, 2019 at 2:00 p.m.

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

Final Ruling: No appearance at the January 25, 2019 Status Conference is required.

Debtor's Atty: Peter L. Fear

The Status Conference is continued to 2:00 p.m. on June 6, 2019, to afford the Debtor to obtain the discharge and close this case.

Notes:
Continued from 1/11/18

[FW-18] Application for Payment of Final Fees and Expenses filed 9/10/18 [Dckt 265]; Order granting filed 10/19/18 [Dckt 273]
Chapter 12 Standing Trustee's Final Report and Account filed 11/7/18 [Dckt 274]; Order approving filed 12/21/18 [Dckt 276]
Scheduling Order Regarding Procedure for Entry of Discharge and Closing Chapter 12 Case filed 12/26/18 [Dckt 277]

Chapter 12 Status Report filed 1/16/19 [Dckt 279]

JANUARY 24, 2019 STATUS CONFERENCE

On January 16, 2019, the Chapter 13 Plan Administrator-Debtor filed a Status Report stating that the Plan has been completed and that a motion to enter discharge will be filed by January 25, 2019. Dckt. 279. The hearing on the motion to enter discharge will be schedule for March 14, 2019.

The court continues the Status Conference as the Debtor now prosecutes the completion of this case.

2.	**18-90030-E-11 STJ-20**	**FILBIN LAND & CATTLE CO., INC.**	**MOTION TO SET REORGANIZATION SCHEDULE AND/OR MOTION TO APPROVE SOLICITATION OF BALLOTS 1-10-19 [392]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion To Set Reorganization Schedule And/Or Motion To Approve Solicitation Of Ballots was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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. At the hearing, **----------**.

The Motion To Set Reorganization Schedule And/Or Motion To Approve Solicitation Of Ballots is denied.

Filbin Land & Cattle Co., Inc. ("ΔIP") filed this Motion To Set Reorganization Schedule And/Or Motion To Approve Solicitation Of Ballots on January 10, 2019. Dckt. 392. ΔIP seeks a confusing assortment of possible relief, including the following:

1. Court approval setting a reorganization schedule and approving solicitation of ballots for the acceptance or rejection of its plan of reorganization.

2. Court approval of a combined hearing on approval of the disclosure statement and confirmation of the plan.

3. Retroactive court approval *nunc pro tunc* of the disclosure statement.

ΔIP argues the court has the power to combine the hearing on approval of the disclosure statement with the hearing on the confirmation of the plan. See 11 U.S.C. § 105(d)(2)(B)(iv).

In support of the Motion, ΔIP filed the Declaration of Michael St. James, counsel for ΔIP. Dckt. 394.

APPLICABLE LAW

The relevant provision of the Bankruptcy Code here provides:

(d) **The court, on its own motion or on the request of a party in interest**—

> (1) **shall hold such status conferences as are necessary** to further the expeditious and economical resolution of the case; **and**
>
> (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, **may issue an order at any such conference** prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—
>
> > (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
> >
> > (B) in a case under chapter 11 of this title—
> >
> > > (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
> > >
> > > (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
> > >
> > > (iii) sets the date by which a party in interest other than a debtor may file a plan;
> > >
> > > (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
> > >
> > > (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

> (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d)(emphasis added). While ΔIP cites to discussion of this code section in Colliers, an obvious nuance was missed:

> **At the status conference**, the court may issue orders "prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically." Section 105(d) provides illustrations of such orders, including those setting deadlines for action on executory contracts and for solicitation of plan acceptances, orders fixing the scope and format of notice of the disclosure statement hearing, and orders consolidating the disclosure statement and confirmation hearings. These orders must be consistent with other provisions of the Bankruptcy Code and with the Federal Rules of Bankruptcy Procedure. An order combining the disclosure statement and confirmation hearings is likely to be inconsistent with section 1125 except in prepackaged cases or "small business" cases.

2 COLLIER ON BANKRUPTCY P 105.08 (16th 2018) (emphasis added).

DISCUSSION

Here, ΔIP's Motion was filed seeking to combine the hearing on the motions to confirm plan and for approval of disclosure statement. Dckt. 392 ("The principal relief sought by this Motion is expressly approved by the Code, which provides that in a Chapter 11 case, the court may provide "that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan").

As a first point, this request is not being made, and the court is not issuing an order for such scheduling "at the Status Conference." ΔIP has filed its stand alone motion making such request.

Second, the grounds stated with particularity (Fed. R. Bankr. P. 9013) as to why the court should dispense with the normal approval of disclosure statement and then scheduling of confirmation hearing as provided for by Congress in 11 U.S.C. § 1125, are:

A. "On January 8, 2019, the sale of a 10 acre portion of Filbin DIP's real property closed. After paying the undisputed portion of the secured debt and impounding funds sufficient to pay the disputed portion of the secured debt, the sale generated more than $4.8 million of net proceeds." Motion, p. 2:19-21; Dckt. 392.

B. "Filbin DIP has proposed an agreement with Summit, which agreement would be implemented through confirmation of the Plan, pursuant to which (a) Summit would subordinate its claim to all other timely claims; (b) the net proceeds after payment of all administrative, priority and secured claims, estimated to aggregate more than $3.6 million, would be paid to or at the direction of Summit; but (c) some portion of those

proceeds would be made available to the Arambel Estate to assure the feasibility of its Plan of Reorganization." *Id.*, p. 3:1-6.

C. "As a result of the foregoing, the instant Plan provides that every class of claims is unimpaired – and thus conclusively presumed to accept the Plan – except only the class consisting of the claim of Summit. Summit is sophisticated, knowledgeable about the case, and expected affirmatively to accept the Plan." *Id.*, p. 3:7-10.

D. "The only impaired classes under the instant Plan are Class 4, the sole member of which is Summit, and Class 5, the Interests held by Arambel. Filbin DIP must solicit those two ballots in order to seek confirmation of this Plan." *Id.*, p. 3:17-19.

E. "Although Filbin DIP has undertaken to prepare **a generally appropriate Disclosure Statement**, it notes that the Code specifically provides that in determining whether a disclosure statement contains adequate information, the Court can consider information available to the person casting the ballot based on its "relationship with the debtor" and its "ability to obtain such information from sources other than the disclosure" statement." *Id.*, p. 3:19-23 (emphasis added).

The use of a qualifier as "generally appropriate" appears to indicate that ΔIP does not believe that the disclosure statement as drafted complies with the requirement of 11 U.S.C. § 1125.

F. "Here, the two persons who will be solicited to cast ballots are sophisticated and enjoy unparalleled access to information beyond that which could be contained in any disclosure statement." *Id.*, p. 3:23-25.

G. "Filbin DIP is optimistic that those two ballots will accept the Plan when offered an opportunity to do so, and believes that it would be in the best interests of creditors and the estate to confirm the Plan as rapidly as possible." *Id.*, p. 3:26-28.

H. "At the combined hearing, the Court would first consider *nunc pro tunc* approval of the Disclosure Statement." *Id.*, p. 4:26-27.

The ΔIP then cites to a number of cases in which the Ninth Circuit Court of Appeals provides *nunc pro tunc* approval for actions that required prior court authorizations but were done without such authorizations. It does not appear that the relief sought in the present motion is for such "absolution of legal sins." The ΔIP has not mailed out a disclosure statement in violation of the law and is now seeking *nunc pro tunc* approval. Rather, ΔIP is seeking authorization to send out a disclosure statement with initial approval, with the final approval being at the combined disclosure statement and confirmation hearing.

I. "As noted, in this case only two ballots will be cast on the basis of the Disclosure Statement, and in each case, even if the Disclosure Statement was otherwise inadequate, the solicitation could be approved on the basis of the voter's unparalleled "ability to obtain such information from sources other than the disclosure" statement.

Section 1125(b)(2). There will be good cause at the combined hearing for the Court to approve the Disclosure Statement and the solicitation *nunc pro tunc*." *Id.*, p. 5:13-18.

Putting aside the requirement that such combination of a disclosure statement hearing with the confirmation hearing is to be determined as part of a status conference, the court's concern begins with there being little if anything in the Motion or supporting pleadings indicating that the disclosure statement clearly provides "adequate information" as required by 11 U.S.C. § 1125. Rather, the best the ΔIP is willing to allege is that the proposed disclosure statement is "generally appropriate." Such is not a ringing endorsement of the disclosure statement such that the court could conclude that there is not likely to be any good faith dispute. Merely contending that there are sophisticated creditors who have or can get their own information is not an exception to the requirements of 11 U.S.C. § 1125, but could be a factor that the court considers in determining what is adequate. ΔIP offers nothing for the court to draw such conclusions.

Declaration in Support of Motion

The only Declaration filed in support of the motion is that of Counsel for ΔIP, electing to move from being counsel to being a witness in this case. Declaration, Dckt. 394. In it, Counsel voluntarily testifies under penalty of perjury:

A. Counsel provides his testimony based on "my own personal knowledge." Dec. ¶ 1, Dckt. 394.

B. "It is my understanding, confirmed by the title officer, that all outstanding real property taxes encumbering all of the real property owned by Filbin DIP were paid out of escrow." Dec. ¶ 4.

It appears that the Declarant has no personal knowledge, as required by Fed. R. Evid. 601, 602, and is merely repeating what he heard someone say.

C. 6. The holders of the Class 2 claim asserted an aggregate pay-off demand in the amount of $3,183,011.50. On January 9, 2019, I caused to be disbursed to the designee of the holders of the Class 2 claim the sum of $2,166,178.77, representing the undisputed portion of the Class 2 claim." Dec. ¶ 6.

D. "On that date [January 9, 2019], I also transmitted detailed memoranda setting forth the facts and law on which the disputes were based. On January 9, 2019, I provided a detailed and comprehensive settlement offer to the holders of the Class 2 claim which, if accepted, would resolve all issues respecting that claim. I anticipate that during the balance of the month of January, the parties will either reach a settlement or initiate litigation over the disputed portion of the Class 2 claim." Dec. ¶ 7.

Thus it appears that while a settlement offer has been extended, there is no agreed plan treatment in this case.

E. "It is my understanding that the principal parties in interest in Filbin DIP's case and in the Arambel case have agreed that it is appropriate that the proceeds of the Initial Sale

bear the burden of the taxes arising out of the Initial Sale, regardless of whether they are, as a matter of law, obligations of one estate or the other estate or should be shared in some fashion between the estates." Dec. ¶ 10.

Again, Counsel states that he does not have personal testimony, but he appears to be repeating what he heard someone else say. No declaration is provided by Mr. Arambel, the principal of the ΔIP in this case and the debtor in possession in his own related case.

F. "With two exceptions noted below, Filbin DIP does not believe that there is an appropriate objection to the unsecured claims." Dec. ¶ 19.

G. "As discussed below, Filbin DIP believed that Summit's guarantee claims, aggregating approximately $40 million, were potentially the subject of meritorious challenge." Dec. ¶ 19.a).

H. "Through Adversary Proceeding 18-9003, Filbin DIP asserted that Summit's guarantees were avoidable as fraudulent transfers, since they rendered the Debtor insolvent. Prior to the Auction and the Initial Sale, it was unclear whether and to what extent of unsecured creditors would enjoy a recovery absent avoidance of the Summit guarantees, but it was prudent to defer litigation until after there was greater clarity about the estate's solvency." Dec. ¶ 22.

I. "Although that proposal [presented to Summit] never reached the level of specificity and commitment provided by the accompanying Plan, it has been my understanding that Summit was and remains generally in accord with the proposal. It has also been my understanding that Summit strongly favors the prompt completion of the reorganization process in both cases." Dec. ¶ 25.

J. "I believe that prompt confirmation of the Plan would be decidedly in the best interests of creditors and the estate. Creditors other than Summit would receive payment of their claims in full, albeit more than a year after the case commenced. Distributing payment to creditors as rapidly as possible is a core objective of the bankruptcy laws. In addition, promptly confirming the instant Plan would provide an element of certainty and predictability to a critical ingredient in the Arambel reorganization effort." Dec. ¶ 27.

In looking at the testimony in the Declaration, there is nothing about the Disclosure Statement. It indicates that though settlement discussions have been undertaken, there is no agreement. Further, that the Plan seeks to force the "settlement" on Summit.

Review of Disclosure Statement

Though the ΔIP elected not to discuss what has been prepared as the disclosure statement to be preliminarily authorized to be sent to creditors, the court has reviewed that document. The proposed Disclosure Statement is eleven pages in length, a reasonable size to provide adequate information. Dckt. 397. The Plan treatment is summarized in Section II of the proposed Disclosure Statement, which states that

the Plan will resolve the dispute with Summit over the asserted $42,000,000 guarantee, and thereon provides for payment in full of every other claim. Disclosure Statement, p. 2:6-17; Dckt. 397.

The proposed Disclosure Statement then has a page and one-half statement of the history leading up the filing of the bankruptcy case and the related case of Mr. Arambel. *Id.*, p. 2-3.

There is a statement of the asserted Summit guarantee of the $42,000,000 obligation and the ΔIP seeking to avoid the guarantee as a fraudulent conveyance. *Id.*, p. 4:1-11. The proposed Disclosure Statement then provides a discussion of the sale of the ten acres of the ten acres by the ΔIP for $8,300,000. *Id.*, p. 4:13-25.

The proposed Disclosure Statement then discusses the administrative expenses and priority tax claims. *Id.*, p. 5-7.

The proposed Disclosure Statement then addresses the Class 2 secured claim of the "Filbin Creditors." The Class 2 claim was secured by the ten acres of property that was sold, and the lien attached to the proceeds. The creditors holding the Class 2 claim have been paid $2,166,178.77, and approximately $1,000,000, subject to the Filbin Creditor's lien, is being held in a blocked account pending resolution of the dispute between the ΔIP and the Filbin Creditors. It is asserted that since there are blocked funds, the Class 2 claim is "unimpaired" and the Filbin Creditors are not entitled to vote for or against confirmation of the Plan. *Id.*, p. 8:1-15.

For General Unsecured Claims, the proposed Disclosure Statement states the creditors holding the claims, the amount of the claims, and that the claims will be paid from the "Initially Available Cash" (a defined term for the net proceeds from the sale of the ten acres). *Id.*, p. 8:17-27, 9:1-3.

The proposed Disclosure Statement then discussed the Summit Guarantees and treatment under the Plan. *Id.*, p. 9:6-28, 10: 1. It is stated that the Summit claim is impaired under the Plan. The "adequate information" provided on the treatment of this claim are:

A. "Filbin DIP believes that, in principle, the obligations on the Summit Guarantees are avoidable as "fraudulent transfers" since they were incurred without receiving anything of value, let alone "reasonably equivalent value" and rendered Filbin insolvent (or were incurred while Filbin was insolvent). Filbin DIP filed suit to avoid (cancel) the Summit Guarantees, initiating Adversary Proceeding No. 18-9003 (the "Summit Lawsuit")."

B. "Thereafter, as a result of the success of the Initial Sale, it became clear that avoidance of the Summit Guarantees would principally benefit the Arambel estate in its capacity as the holder of the equity in Filbin DIP. There is serious question as a matter of law whether avoidance under the fraudulent transfer laws (assuming it is otherwise warranted) is available for the purpose of benefitting equity holders as opposed to creditors. See, e.g., Cal. Civ. Code Section 3439.07(d)."

C. "In addition, negotiations for a consensual Plan of Reorganization in the Arambel case had progressed, and Summit was occupying a constructive role, including as a potential source of reorganization financing."

D. "Filbin DIP therefore proposed an agreement with Summit under which (a) its guarantee claim would be allowed, (b) its claim would be voluntarily subordinated to all other claims, and (c) some portion of the funds otherwise payable on account of its claim would be used to fund the Arambel Plan. Although that proposal never reached the level of specificity and commitment provided by the accompanying Plan, Filbin DIP believes that Summit was and remains generally in accord with the proposal.

Id., p. 9.

While discussing some proposed settlement, the proposed Disclosure Statement provides no information as to the treatment of the Summit Class 4 claim.

The proposed Disclosure Statement provides the information that the shareholders shall retain their interests, which shall be unimpaired. *Id.*, p. 10:3-8.

The proposed Disclosure Statement concludes with a section titled "Liquidation Alternative." It states that absent a subordination of the Summit guarantees, the payment to the other creditors would be reduced from a 100% dividend to a 9.4% dividend. *Id.*, p. 11:1-18.

It appears that the proposed Disclosure Statement fails to disclose the key information as to what is the treatment for the Summit Claim.

While the judge before whom this matter is pending has said on prior occasions that in his prior attorney life he gave short shrift of disclosure statements, generally finding them intentionally confusing, overly long with dense, irrelevant materials, and confusing, this was in light of the judge having clients in Chapter 11 cases, when representing creditors, who generally had the information that was relevant to determining that the actual treatment provided in the plan (as determined from reading the plan) was acceptable.

Here, given how contentious the parties have been in this case and the related Chapter 11 case of the ΔIP's principal, the court is concerned that using the pre-approval procedure will merely cause a confusing contentious hearing dropped in the court's lap.

Given the nondescript statement in the proposed Disclosure Statement as to the Class 4 treatment, the court has looked at the proposed Plan (Dckt. 398). Under the treatment section of the proposed plan, the Class 4 (Summit) Claim treatment is stated to be:

> 4.2.4. Class 4: The Class 4 Claim is impaired. In full and complete satisfaction, the holder of Allowed Class 4 Claim shall receive or direct the disbursement of (a) the Summit Reserve as contemplated by Paragraph 2.5, and (b)

> the proceeds of the Remaining Property, subject to the provisions of Paragraphs 2.4 and 2.6.

Proposed Plan, ¶ 4.2.4, Dckt. 398.

From the above, the court cannot identify the proposed treatment of the Class 4 Claim. Going to paragraphs 2.4 and 2.5, which state:

> 2.4. Notwithstanding anything to the contrary, the Reorganized Debtor need not sell the Remaining Property if it can otherwise satisfy the Class 4 Claim.
>
> 2.5. The amounts of the Tax Reserve and the Expense Reserve shall be determined and established not later than the date of the Confirmation Hearing in the Arambel Case, unless that deadline is extended with the consent or non-opposition of the holder of the Class 4 Claim. The Reorganized Debtor may expend the Tax Reserve and the Expenses Reserve in its discretion, from time to time as may be appropriate, subject to the consent or non-opposition of the holder of the Class 4 Claim. On or before the Effective Date of the Plan in the Arambel Case, the Reorganized Debtor shall disburse the Summit Reserve to or at the direction of Summit.

Id., p. 8-16.

Under paragraph 2.4 it is stated that no sale of property is required if it can "otherwise" pay the Class 4 Claim.

In paragraph 2.5 provision is made for a tax reserve and tax reserve. The last sentence says that the reorganized debtor shall disburse the "Summit Reserve" at the direction of Summit. The "Summit Reserve" is defined in paragraph 1.34 as:

> 1.34. "Summit Reserve" means the residue of the Initially Available Cash, after payment of claims as contemplated in Paragraph 2.3 and after the funding of the Tax Reserve and the Expense Reserve.

The Initially Available Cash are the net sales proceeds from the sale of the ten acres, less the reserve for the disputed Filbin Creditor's claim (approximately $1,000,000) and the Tax and Expense Reserve (which amount is not estimated in the proposed Disclosure Statement or in the proposed Plan).

The court is not convinced that collapsing the disclosure statement hearing into the confirmation hearing is appropriate in this case. Rather, it appears destined to cause further dispute, delay, and contentious arguments. Going the route as provided by Congress and flushing out any true disclosure statement disputes and objections, rather than having them mushed together with plan objections, will force the demonstrated contentious parties to focus their actual objections in presenting them to the court. The court cannot preliminarily conclude that the proposed Disclosure Statement colorably provides adequate information such that there will not be objections, hand wringing, and gnashing of teeth by Creditors and

the ΔIP at a combined hearing, or that the court will give final approval to the proposed Disclosure Statement.

The court's view of this, as discussed above, is colored by the conduct of various parties who could not work together to consummate the sale of the ten acres for $8,300,000, but repeatedly appeared before the court arguing over who was doing what to whom. The court discusses this in the Civil Minutes from the November 29, 2018 Status Conference:

> The Debtor [in Possession] identifies two groups of creditors being an impediment to closing and the Estate recovering $8mm+ in sales proceeds. The first is a concern that the Filbin Creditors will submit a claim into escrow which will include interest in excess of the California usury laws. The order approving the sale is not one pursuant to 11 U.S.C. § 363(f) and the title company will not close without the undisputed demand of the Filbin Creditors.
>
> Clearly, the parties, seeking payment of claims in good faith, have a simple solution. From the sales proceeds the principal and undisputed portion of the interest is paid directly from escrow. The remaining $6mm +/- of proceeds remains subject to the lien of the Filbin creditors and an adequate amount is set aside in a blocked account or deposited with the court.
>
> In the Second Supplemental Report the Debtor in Possession argues that the Filbin Creditors are not seeking a reasonable resolution of the dispute, but are trying to block the sale to force the Debtor in Possession to pay amounts in excess of what the Debtor in Possession and its counsel in good faith believe is owed. (The court expresses no belief as to whether such contentions are true.)
>
> It is further asserted that the title company is requiring the Filbin Creditors, as a creditor having a lien on the property prior to the sale closing, to approve the lot line adjustments and associated deeds. Thus, it appears that the Filbin Creditors hold this key to getting paid the monies due on their secured claim.
>
> In describing the reluctance of the Filbin Creditors to approve the necessary deeds, the Debtor in Possession further reports that the tile company is also requesting that the Filbin Creditors indemnify the title company for any claims arising out of the recorded document. It does not appear that the indemnification is limited to the Filbin Creditors being the Filbin Creditors who have a lien on the property.
>
> It is curious that such a mess has been created out of a sale of property of the bankruptcy estate. The first several points can be easily resolved by and for the Filbin Creditors. As to the indemnification, it is not clear what and why the title company would seek what is described as such a broad indemnification.

> At the hearing, the parties presented their well thought out legal and business positions, stating that on the afternoon on November 29, 2018, that Ms. Arnot went by the title company to pick up documents. They discussed their views on the title and possible resolutions.

Civil Minutes, p. 3; Dckt. 385.

The Court also notes that the proposed Disclosure Statement does not specify when and how the dispute with the Filbin Creditors will be addressed. The Filbin Creditors consist of Dorothy Arnaud, Helen Jacobson, Garry DeWolf individually, and Garry DeWolf as trustee of the Jeanette DeWolf trust. Disclosure Statement, p. 2:23-24; Dckt. 397. The court could not find any pending objections to claims for these creditors. The proposed Disclosure Statement does not disclose any plan requirement for the prompt adjudication of any such disputes.

When running a word search on the Docket to try and find any objection to claim that had been filed, the court was struck by how many objections and oppositions had been filed by various members of the Filbin Creditor group.

The Motion is denied. The ΔIP can prosecute this case in the manner otherwise provided for by Congress. The motion for approval of the proposed disclosure statement can be set for hearing. Creditor can file their bona fide, good faith oppositions to such motion, as they relate to the proposed Disclosure Statement (and not merely premature, contentious objections as to the Plan terms). The court can then sort out and rule on such bona fide, good faith opposition to approval of the proposed Disclosure Statement. The hearing on confirmation can then be set, at which the court can then address bona fide, good faith oppositions to confirmation

Based on the foregoing, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Set Reorganization Schedule And/Or Motion To Approve Solicitation Of Ballots filed by Filbin Land & Cattle Co., Inc. ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

3. 16-90157-E-7 DARYL FITZGERALD
18-9011

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-25-18 [1]

FITZGERALD V. TRELLIS COMPANY

Plaintiff's Atty: Richard Kwun
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18
Answer: 7/26/18

Nature of Action:
Dischargeability - student loan
Dischargeability - other

The Status Conference is xxxxxxxxxxxxxxxxxx

Notes:
Continued from 12/20/18. Attorney Richard Kwun to file a confirmation of appearance or substitution of attorney.

Substitution of Attorney for Daryl D. Fitzgerald Pro Se Plaintiff filed 1/2/19 [Dckt 53]

JANUARY 25, 2019 STATUS CONFERENCE

At the December 20, 2018 Status Conference Richard Kwun, Esq. appeared and reported that he was substituting in as counsel for the Plaintiff-Debtor. The court's order for such substitution was filed on December 26, 2018. Dckt. 52. The Substitution document was filed on January 2, 2019. Dckt. 53.

No further pleadings have been filed.

At the Status Conference xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

AUGUST 23, 2018 STATUS CONFERENCE

Navient Solutions, Inc. is in the process of filing documentation of the transfer of the debt at issue to Trellis Company. The court requested, and Movant agreed to provide, documentation of the assignment of the obligation at issue to the remaining defendant. The transfer of the note or sale of the underlying contract has to be a documented transaction to be effective, and as such, can be "documented" for the court.

At the Adversary Proceeding Status Conference held on the afternoon of August 23, 2018, the Plaintiff-Debtor reported that he will contact counsel for Defendant Trellis Company, fka Texas Guaranteed Student Loan for its documentation of how it purports to own the debt and be Plaintiff-Debtor's creditor.

The action by Movant and Trellis Company in reasonably responding should quickly and inexpensively get the rights parties in interest before this court.

SUMMARY OF COMPLAINT

Daryl Fitzgerald, the Plaintiff-Debtor, has filed a Complaint to have his student loan obligation determined dischargeable. The named defendants are Navient Solutions, Inc., Wilkes-Barre, and Trellis Company. The court has dismissed Navient Solutions, Inc. from this Adversary Proceeding.

SUMMARY OF ANSWER

Trellis Company, fka Texas Guarateed [sic] Student Loan filed an Answer (Dckt 18) that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court.

4. 17-90577-E-7 **WILSON SARHAD**
17-9019

GARCIA V. SARHAD

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT TO (1) DETERMINE DISCHARGEABILITY OF PARTICULAR DEBT; AND (2) DETERMINE DISCHARGEABILITY OF ALL DEBTS
11-6-17 [1]

Plaintiff's Atty: Michael R. Dennis
Defendant's Atty: David C. Johnston

Adv. Filed: 11/6/17
Answer: 12/3/17

Nature of Action:
Dischargeability - willful and malicious injury
Objection/revocation of discharge

The Pretrial Conference is xxxxxxxxxxxxxxxxxxxxxx

Notes:
Continued from 11/29/18, the Parties reporting that they are working on a settlement.

JANUARY 24, 2019 STATUS CONFERENCE

On January 23, 2019, Defendant-Debtor filed an updated Status Report. Dckt. 22. He reports that the matter has been resolved in a settlement approved by the court, and that the $20,000 payment required thereunder has been paid to the Trustee. *Id.* ¶ 1.

Defendant-Debtor states that he intends to object to the claim of the Internal Revenue Service in his Chapter 7 case, and that the hearing on the Objection should be in 60 days. *Id.* ¶ 3. The Defendant-Debtor made the same representation to the court in his Status Conference Statement filed on November 26, 2018. Dckt. 20, ¶ 3. A review of the Docket in Defendant-Debtor's Chapter 7 case shows that no such objection has been filed. CH 7 Case, 17-90577.

The Status Report concludes with Debtor's counsel stating that he has been unable to address this case due to extraordinary family health issues.

The Chapter 7 bankruptcy case has been pending since July 14, 2017. The settlement was approved by order filed on August 26, 2018. 17-90577.

At the hearing xxxxxxxxxxxxxxxxxxxxxxxx

SUMMARY OF COMPLAINT

Leonani Garcia ("Plaintiff") filed a Complaint (Dckt. 1) to have Plaintiff's debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6) and that Defendant-Debtor be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) [property of the debtor]. Plaintiff alleges that she obtained a state court judgment for failure to pay wages, harassment, and punitive damages. Further, Plaintiff alleges that an abstract of judgment was recorded in Stanislaus County in May 14, 2014, and a Notice of Judgment Lien filed with the Secretary of State on July 9, 2014.

It is further alleged that W.S. Towing, Inc., one of the two judgment debtors, was converted by Defendant-Debtor to a partnership two months before the commencement of a prior Chapter 13 bankruptcy case in 2014. The Complaint alleges further conduct relating to contentions that assets of W.S. Towing, Inc., one of Plaintiff fs two state court judgment debtors (for which the judgment lien had been filed with the Secretary of State) were transferred into Defendant-Debtor fs partnership or Defendant-Debtor.

The allegations continue, asserting that Defendant-Debtor purports to no longer have these business assets, but purports to have transferred them to his non-debtor wife.

SUMMARY OF ANSWER

Wilson Sarhad ("Defendant-Debtor") has filed an Answer (Dckt. 8) that admits and denies specific allegations in the Complaint. Defendant-Debtor also asserts seven affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157(b)(2), and 11 U.S.C. § 523 and § 727 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(l) [and J]. Complaint ¶ 1, Dckt. 1. In his Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings, and consents to the bankruptcy judge issuing final orders and judgments. Answer ¶ 1, Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment 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.

5. **17-90494-E-7** **DALJEET MANN** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
18-9012 **7-27-18 [1]**

EDMONDS V. MANN ET AL

Final Ruling: No appearance at the January 24, 2019 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Unknown

Adv. Filed: 7/27/18
Answer: none

Nature of Action:
Injunctive relief - other
Recovery of money/property - fraudulent transfer

Judgment having been entered, the Status Conference is concluded. The Clerk of the Court may close the file for this Adversary Proceeding when no further matter are set for hearing herein.

Notes:
Continued from 9/27/18

[SSA-3] Motion for Entry of Default Judgment; Permanent Restraining Order and Other Relief Including Judgment for Damages, Imposition of Equitable Lien on Real Property; and Order Authorization for Sale of Real Property filed 11/9/18 [Dckt 42]; Order granting filed 12/26/18 [Dckt 53]