

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

February 4, 2016 at 2:00 p.m.

1. [16-90002](#)-E-11 1263 INVESTORS LLC

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
1-5-16 [[1](#)]

Debtor's Atty: Stephen M. Reynolds

Notes:

Chapter 11 Status Report filed 1/22/16 [Dckt 17]

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

**FEBRUARY 4, 2015 STATUS CONFERENCE**

The Debtor in Possession filed a Chapter 11 Status Report on January 22, 2016. Dckt. 17. Debtor in Possession anticipates filing a Chapter 11 Plan which provides for the sale of the estates two properties. It is asserted that creditor agreement will be necessary to confirm a plan.

**MONTHLY OPERATING REPORT SUMMARY**

None yet due.

**SUMMARY OF SCHEDULES**

Real Property Schedule A	FMV	LIENS	
7348 Crane Road	\$291,500	(\$2,964)	Property Taxes
		(\$250,000)	DOT
7318 Crane Road	\$486,500	(\$597,221)	1 <sup>st</sup> DOT
		(\$120,000)	2 <sup>nd</sup> DOT

Personal Property Schedule B	FMV	LIENS	
Total Listed Values	\$1,250		

February 4, 2016 at 2:00 p.m.

<b>Secured Claims Schedule D</b>	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Stanislaus County - 7318 Crane Road	(\$2,963)	\$486,500	
Nationstar Mortgage	(\$597,221)		(\$186,000)
Bank of New York Mellon - 2 <sup>nd</sup> DOT	(\$120,000)		(\$120,000)
Bella Vista Capital - 7348 Crane Road	(\$250,000)	\$291,500	

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
None			

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	TOTAL CLAIM AMOUNT		GENERAL UNSECURED
	(\$96,164)		
FB Investors		(\$24,000)	

**STATEMENT OF FINANCIAL AFFAIRS**

**Question 1 Income**

2016 YTD	None	
2015	None	
2014	None	
2013	None	

**Question 2 Non-Business Income**

2016 YTD	None	
2015	None	
2014	None	
2013	None	

**Question 3 Payments within 90 days**

Creditor	Amount	Date
None		

**Payments within one year**

Creditor	Amount	Date
None		

2. [15-90109-E-11](#) NATIONAL EMERGENCY  
MEDICAL SERVICES

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-6-15 [[1](#)]

Debtor's Atty: David C. Johnston

Notes:  
Continued from 10/22/15

Operating Report filed: 11/13/15; 12/14/15; 1/11/16

<p>The Status Conference is continued to 2:00 p.m. on <del>XXXXXXXXXX</del>, 2016.</p>
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**FEBRUARY 4, 2016 STATUS CONFERENCE**

No further activity in this case is reflected on the Docket, except for filing of Monthly Operating Report. The most recent Monthly Operating Report, for December 2015, states that since the commencement of the case the estate has taken in \$374,054 in receipts and has made (\$308,000) in disbursements. Dckt. 75.

No disclosure statement or proposed Chapter 11 Plan has been filed by the Debtor in Possession and none is being advanced by any creditor.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

**OCTOBER 22, 2015 STATUS CONFERENCE SUMMARY**

This bankruptcy case was filed on February 6, 2015. No proposed disclosure statement and proposed plan have been filed. The September 2015 Monthly Operating Report (Dckt. 68) is summarized as follows:

	September 2015	Case Filing through September 2015
Cash Receipts	\$33,394	\$284,601
Total Disbursements	(\$25,590)	(\$236,245)
Excess/(Deficiency) of Receipts over Disbursements	\$7,804	\$48,356
End of Month Cash Balance	\$52,943	\$52,943

The Debtor in Possession revenue for the estate consists of Membership Dues. Debtor in Possession reports having disbursed commencement through September 2015, (\$30,174) for "Legal & Professional Services." The other significant expenses are real property rent of (\$9,410); payroll taxes of (\$49,628), salary expenses of (\$97,689); and "Torren's Indemnification & BK Indemnification of (\$6,392).

The Debtor in Possession does not have a plan, yet. Debtor in Possession states that they will have a proposed plan and disclosure statement on file within 60 days.

**JULY 23, 2015 STATUS CONFERENCE SUMMARY**

The Debtor in Possession reports that the plan will be filed shortly, with a small percentage dividend to creditors holding general unsecured claims. The designated representative of the Debtor in Possession is in his own bankruptcy case in Kentucky.

The "professional fees" are the contract fees for legal services provided to members, not the Debtor.

NAGE creditor reports that the attorney providing the services for the members is also a creditor, and it is not clear whether any payments being received are for the pre-petition debt.  
Review of June 2015 Monthly Operating Report (Dckt. 61)

The Monthly Operating Report states that since the commencement of this case the Debtor in Possession has generated \$181,000 in cash receipts. From this (\$154,099) has been disbursed. Several of the largest disbursements are: (\$60,291) for salary, (\$31,533) for payroll taxes, and (\$18,524) for legal and professional services. However, the court has not approve the payment of any legal or professional fees by the Debtor in Possession.

There is an additional expense item under taxes for "Torren's Indemnification" in the amount of (\$6,092).

**MARCH 5, 2015 STATUS CONFERENCE SUMMARY**

The Debtor commenced this Chapter 11 case on February 6, 2015. The court has granted the Debtor an extension until March 6, 2015, to file its Schedules, Statement of Financial Affairs, and other documents required for the prosecution of a Chapter 11 case. Order, Dckt. 17.

**Status Report - Filed March 2, 2015**

The Debtor in Possession reports that the Debtor is a labor union for specified medical personnel. After protracted litigation with another labor organization, a judgment was entered against the Debtor. The Chapter 11 case was filed to prevent the prevailing creditor from levying on the union dues held by Debtor.

The Debtor in Possession reports that it is cooperating with the U.S. Trustee to provide the required documents. Further, that it intends to file a proposed plan by June 6, 2015 (approximately 120 days after the commencement of the bankruptcy case).

3. [13-91315-E-7](#) [15-9048](#) APPLGATE JOHNSTON, INC.  
MCGRANAHAN V. WPCS  
INTERNATIONAL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-13-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Douglas N. Akay

Adv. Filed: 7/13/15  
Answer: 11/16/15  
First Amd Answer: 1/7/16

Nature of Action:  
Recovery of money/property - preference

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:

Continued from 12/17/15. Douglas N. Akay, counsel of record for Defendant to appear in person, no telephonic appearance permitted [if amended answer timely filed, counsel may file an ex parte motion for relief from appearing in person]. On or before 1/14/16 counsel for Defendant to file supplemental pleading. WPCS International Suisun City, Inc. may file an amended answer.

First Amended Answer to Complaint filed 1/7/16 [Dckt 15]

Ex Parte Application for Relief from Personal Appearance by Defendant, and Request for Telephonic Appearance by Douglas N. Akay for Defendants at Status Conference filed 1/14/16 [Dckt 17]; Order granting filed 1/19/16 [Dckt 19]

#### SUMMARY OF COMPLAINT

The complaint seeks to avoid pursuant to 11 U.S.C. § 547 from WPCS International \$78,091.94 in payments alleged to have been made within 90 days of the commencement of the bankruptcy case.

#### SUMMARY OF ANSWER

Defendant WPCS International - Suisun City, Inc. filed its First Amended Answer, which admits and denies specific allegations in the Complaint. Dckt. 15. The defenses asserted include that the monies transferred to Defendant were not monies of the Debtor.

The Answer also includes a demand for a jury trial. At the hearing, the Parties addressed this demand, identifying the following issues in the Complaint, as it exists as of the Status Conference, for which there is a right to trial by jury: ~~XXXXXXXXXXXXXXXXXXXXXX~~.

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 15. **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(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 15. **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 is Adversary Proceeding are related to proceedings, 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 claims and issues 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.**

4. [13-91315-E-7](#) APPLGATE JOHNSTON, INC.  
[15-9052](#)  
MCGRANAHAN V. LAGUNA GOLD  
MORTGAGE, INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-15-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Patrick Keene

Adv. Filed: 7/15/15  
Answer: 1/14/16  
Counterclaim Filed: 1/14/16  
Answer: none

Nature of Action:  
Recovery of money/property - preference

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 12/3/15. Defendant to file an answer on or before 1/15/16.

Answer of Defendant Laguna Gold Mortgage, Inc. Dba LGM Construction filed 1/14/16 [Dckt 43]

Counterclaim of Defendant Laguna Gold Mortgage, Inc. Dba LGM Construction Against Ahern Rentals, Inc. filed 1/14/16 [Dckt 44]

**FEBRUARY 4, 2016 STATUS CONFERENCE**

SUMMARY OF COMPLAINT

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

A. Bankruptcy case filed on July 16, 2013.

B. Payment of \$2,857.62 made to Defendant Laguna Gold Mortgage, Inc., dba LGM Construction on April 24, 2013.

**SUMMARY OF ANSWER**

Defendant Laguna Gold Mortgage, Inc., dba LGM Construction, filed its Answer on January 14, 2016. Dckt. 43. Defendant admits and denies specific allegations in the Complaint. Defendant also asserts fourteen affirmative defenses.

**SUMMARY OF THIRD PARTY COMPLAINT**

Defendant Laguna Gold Mortgage, Inc. has filed a Third Party Complaint, naming Ahern Rentals, Inc. as the defendant. Dckt. 44. Defendant Laguna Gold Mortgage, Inc. asserts that it is entitled to indemnification from Laguna Gold Mortgage, Inc. for any monies it may be required to pay the Plaintiff-Trustee in this Adversary Proceeding.

A Certificate of Service was filed by Laguna Gold Mortgage, Inc. attesting to the Answer and Third Party Complaint having been served on counsel for the Plaintiff-Trustee. No proof of service has been filed attesting to the Third-Party Complaint having been served on Ahern Rentals, Inc.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its First Amended Answer, Laguna Gold Mortgage, Inc. the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 43. **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.**

In the Third Party Complaint, Third-Party Plaintiff Laguna Gold Mortgage, Inc. alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Third-Party Complaint ¶¶ 3, 4, Dckt. 44.

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

a. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its First Amended Answer, Laguna Gold Mortgage, Inc. the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 43. **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.**

In the Third Party Complaint, Third-Party Plaintiff Laguna Gold Mortgage, Inc. alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Third-Party Complaint ¶¶ 3, 4, Dckt. 44.

b. Initial Disclosures shall be made on or before -----, 2016.

c. Expert Witnesses shall be disclosed on or before -----, 2016,

**February 4, 2016 at 2:00 p.m.**



6. [14-91231](#)-E-7 MALUK/RANJIT DHAMI  
[15-9065](#)  
FARRAR V. DHAMI

STATUS CONFERENCE RE: COMPLAINT  
12-3-15 [[1](#)]

**APPEARANCE OF COUNSEL NOT REQUIRED FOR STATUS CONFERENCE  
IF THE PARTIES ACCEPT THE CONTINUANCE OF THE  
STATUS CONFERENCE TO MARCH 17, 2016**

**Tentative Ruling:**

Plaintiff's Atty: Aaron A. Avery  
Defendant's Atty: Armando S. Mendez; Brandy L. Brown

Adv. Filed: 12/3/15  
Answer: 1/19/16

Nature of Action:  
Recovery of money/property - preference

**The Status Conference is continued to 2:00 p.m. on March 17,  
2016.**

Notes:

Joint Discovery Plan filed 1/27/16 [Dckt 10]

Joint Status Report filed 1/27/16 [Dckt 11]

**FEBRUARY 4, 2016 STATUS CONFERENCE**

The Parties have filed a Joint Status Report and Joint Discovery Plan. Dckts. 11, 10. The Status Reports advises the court that lead counsel for Plaintiff-Trustee is unable to attend and that counsel for Defendant has pending (the order thereon has been issued) an application for admission *pro hac vice*. Further, that due to a numbering error in the Complaint, there are two paragraphs 2 and two paragraphs 3. The Parties state that they "anticipate" that they will request that the Status Conference to be continued while they actively discuss settlement.

Based on the detailed Status Report and Discovery Plan, the court continues the Status Conference to allow the parties to further address these preliminary issues.

Defendant Hardev Singh Dhami shall file a supplement to Defendant's Answer formally stating the response to the "extra" paragraphs 2 and 3. The convention used for referring to these extra paragraphs will be "Second Paragraph 2" and "Second Paragraph 3."

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 Initial Status Conference having been set for hearing, the Parties having filed a Status Report and Discovery Plan, the Status Report requesting a short continuance of the Status Conference, presented to the court, and upon review of the pleadings in this Adversary Proceeding, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on March 17, 2016.

**IT IS FURTHER ORDERED** that Defendant Hardev Singh Dhani shall file and serve, on or before February 18, 2016, a supplement to Defendant's Answer formally stating the response to the "extra" paragraphs 2 and 3. The convention used for referring to these extra paragraphs will be "Second Paragraph 2" and "Second Paragraph 3."

7. [08-91933-E-7](#) BULMARO/MARIA PALAFOX  
[15-9017](#)  
MCGRANAHAN ET AL V. MI HOGAR,  
LLC

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
5-29-15 [[1](#)]

Plaintiff's Atty: Steve S. Altman; Ezra N. Goldman  
Defendant's Atty: Kelly L. Pope; Thomas E. Marrs

Adv. Filed: 5/29/15  
Answer: 9/8/15

Nature of Action:  
Declaratory judgment

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

Notes:  
Continued from 10/22/15 to allow the Defendant to file an amended answer.

**FEBRUARY 4, 2016 STATUS CONFERENCE**

On January 14, 2016, the court approved a settlement settling this Adversary Proceeding. 08-91933; Order, Dckt. 105.

8. [08-91933-E-7](#) BULMARO/MARIA PALAFOX CONTINUED ORDER TO SHOW CAUSE  
[15-9017](#) RHS-1 10-21-15 [[35](#)]  
MCGRANAHAN ET AL V. MI HOGAR,  
LLC

Plaintiff's Atty: Steve S. Altman; Ezra N. Goldman  
Defendant's Atty: Kelly L. Pope; Thomas E. Marrs

Adv. Filed: 5/29/15  
Answer: 9/8/15

Nature of Action:  
Declaratory judgment

Notes:  
Continued from 10/22/15 to allow the Parties to complete settlement of this Adversary Proceeding.

**FEBRUARY 4, 2016 STATUS HEARING**

On January 14, 2016, the court approved a settlement settling this Adversary Proceeding. 08-91933; Order, Dckt. 105.

9. [09-43956-E-13](#) RAFAEL/ELSA MARTINEZ  
[15-2131](#)  
MARTINEZ, JR. ET AL V. LITTON  
LOAN SERVICING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-18-15 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Phillip Barilovits

Adv. Filed: 6/18/15  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)



Notes:

Continued from 1/20/16. Counsel ordered to appear; telephonic appearance permitted. Parties to file and serve status conference reports on or before 1/29/16.

Plaintiff's Status Conference Statement filed 1/28/16 [Dckt 28]

Litton Loan Servicing's Status Conference Statement filed 1/28/16 [Dckt 30]

**FEBRUARY 4, 2016 CONTINUED STATUS CONFERENCE**

Defendant Litton Loan Servicing filed a Status Conference Statement on January 28, 2016. Dckt. 30. Litton states that is only "recently" received a "detailed settlement proposal" from Plaintiff-Debtor. The date the settlement proposal was received is not stated. Litton requests an additional twenty days to consider and respond to the proposal.

The Adversary Proceeding was filed on June 18, 2015, and seeks relatively simple relief - reconveyance of a deed of trust after Plaintiff-Debtor completed the Chapter 13 Plan and the claim secured thereby (as determined pursuant to 11 U.S.C. § 506(a)) paid in full.

Plaintiff filed a Status Report stating that there in not now, eight months into this Adversary Proceeding, any settlement. Plaintiff projects that it will be at least 60 days before any settlement can be documented.

Though the court has previously continued the Status Conference several times based on representations that the Parties were actively working on the case: September 9, 2015 Status Conference, November 4, 2015 Status Conference, and January 20, 2016 Status Conference.

Notwithstanding the multiple continuances and eight months having passed without the parties either settling this simple Adversary Proceeding or

actively prosecuting it, the Parties explained to the court that they in good faith believe that the matter will be settled, if possible, in the next 60 to 90 days: ~~xxxxxxxxxxxxxxxxxxxxxxxx~~.

**JANUARY 20, 2016 CONTINUED STATUS CONFERENCE**

Defendant's counsel did not appear at the Status Conference.

The court issued an order continuing the Status Conference and ordering Defendant to explain why this matter has not been resolved or being actively prosecuted.

The Continued Status Conference in this Adversary Proceeding was conducted by the court. Counsel for Plaintiff-Debtors appeared at the Status Conference. No appearance was made by counsel for Defendant.

Counsel for Plaintiff-Debtors reported that the Parties are working on a settlement and requested that the Status Conference be continued 60 days. Status Report, Dckt. 23.

On October 22, 2015, Plaintiff-Debtors filed a Status Report stating that the Parties have discussed settlement and "are waiting the filing of documents to effectuate the settlement." Status Report, Dckt. 20. Relying on that Status Report, the court continued the Status Conference from November 4, 2015, to January 20, 2016. That allowed the party three months for "filing the documents to effectuate the settlement."

The Complaint in this Adversary Proceeding seeks to have the court quiet title to Plaintiff-Debtors' property and determine that the lien of Defendant is void - it's value as determined pursuant to 11 U.S.C. § 506(a) having been paid through the Chapter 13 Plan, which Plan has now been fully performed. The Complaint also seeks the recovery of \$500 in statutory damages for the failure of Defendant to reconvey the deed of trust after completion of the plan resulted in the obligation secured by the deed of trust having been paid in full. Finally, the Complaint requests an award of attorneys' fees and costs.

Defendant failed to respond to the Complaint (which was filed June 18, 2015) and its default was entered by the Clerk of the Court. Dckt. 9. On August 11, 2015, a stipulation was filed for vacating the Defendant's default. Dckt. 12. An order vacating the default was issued by the court. Dckt. 13. Defendant filed its Answer on September 9, 2015. Dckt. 17.

No explanation has been provided by Defendant or Plaintiff-Debtors why the purported settlement has not been effectuated. No affirmative representation has been provided to the court that there is an executed settlement agreement between the parties. Rather, the court has now been requested on three occasions to continue the Status Conference 60 days and not set discovery or other deadlines necessary for the effective, good faith prosecution of this Adversary Proceeding. August 24, 2015 filed Status Report, Dckt. 14; October 22, 2015 filed Status Report, Dckt. 20; and January 11, 2016 filed Status Report, Dckt. 23.

This Adversary Proceeding has been pending 216 days without the court

setting deadlines for discovery and the good faith prosecution of this Adversary Proceeding. For more than 180 days it is clear that Defendant has been aware of this Adversary Proceeding, the allegations in the Complaint, and its rights and obligations in connection with the deed of trust, California law, the confirmed Chapter 13 Plan, and the Bankruptcy Code.

In light of there being no appearance at the January 20, 2016 Status Conference by counsel for Defendant Litton Loan Servicing, no settlement agreement or the existence thereof having been presented to the court, the passage of time in this Adversary Proceeding, the issues in the Complaint, and good cause appearing;

10. [14-91565-E-7](#) RICHARD SINCLAIR CONTINUED STATUS CONFERENCE RE:  
[15-9009](#) COMPLAINT  
KATAKIS ET AL V. SINCLAIR 2-23-15 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15; 11/25/15

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 ~~XXXXXXXXXXXXXXXXXXXX~~.**

Notes:  
Continued from 10/22/15 due to the stated legal capacity disability stated by Richard Sinclair.

Answer to Complaint to Determine Dischargeability of Debt filed 11/25/15 [Dckt 45]

Report of Creditors California Equity Management Group, Inc., Fox Hollow of Turlock Owners' Association, and Andrew Katakis for Status Conference on February 4, 2016 filed 1/28/16 [Dckt 47]

**SUMMARY OF COMPLAINT**

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seek a determination that a judgment against Richard Sinclair, the Defendant-Debtor, in the amount of \$1,337,073.72 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). This judgment is alleged to have been obtained in Stanislaus County

Superior Court case no. 332233.

#### **SUMMARY OF ANSWER**

Defendant-Debtor, Richard Sinclair, the Defendant-Debtor, has filed two answers to the Complaint. The First Answer was filed on March 30, 2015. (The answer was filed twice, Docket Entries 8 and 9). The Second Answer was filed on November 25, 2015. The Second Answer admits and denies specific allegations in the Complaint, and includes more detailed responses as part of the admissions and denials. The Second Answer includes twenty-two affirmative defenses.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint, unnumbered paragraph titled "Jurisdiction," p.11:11-13; Dckt. 1. Though extensive in admitting and denying the numbered paragraph allegations and asserting affirmative defenses, the Second Answer neither admits nor denies the allegations of jurisdiction and that this is a core proceeding. There is an affirmative obligation to admit or deny allegations of whether the matter is a core proceeding, and if contended non-core, whether the responding party consents to the bankruptcy judge issuing all orders and the final judgment.

The relief sought in the Complaint is for a determination of whether a debt is non-dischargeable based on fraud, fraud or defalcation while in a fiduciary capacity, or wilful and malicious injury as provided by Congress in 11 U.S.C. § 523(a)(2), (4), and (6). These claims arising under the Bankruptcy Code and are core proceedings for which the bankruptcy judge issues all orders and the final judgment in this Adversary Proceeding, for the Complaint as it exists as of the February 4, 2016 Status Conference.

#### **STATUS REPORT FILED BY PLAINTIFFS**

Plaintiffs state that in the related Adversary Proceeding, 15-9008, the court has modified the automatic stay to allow Plaintiffs to prosecute to judgment in the United States District Court the underlying obligation which they assert in Adversary Proceeding 15-9008. This court has continued the status conference in that Adversary Proceeding to July 7, 2016, to allow time for judgment to be entered in that District Court action.

In this Adversary Proceeding (15-9009), Plaintiffs seek to have a state court judgment in the amount of \$1,337,073.72 determined nondischargeable. In the Status Report Plaintiffs assert that the claims upon which the state court judgment are based on the same fraud which is the basis for the District Court claims. Plaintiffs suggest that this court should delay the prosecution of this Adversary Proceeding to allow the default judgment to be entered in the District Court action, since under the default judgment alleged facts can be deemed as admitted and true.

The court does not concur in delaying the prosecution of this Adversary Proceeding pending entry of judgment and final adjudication of the District Court action. Plaintiffs seek to have a determination made as to the

**February 4, 2016 at 2:00 p.m.**

nondischargeability of the debt determined in a state court action. That state court action has been litigated, the judgment on those state court claims has been determined, the factual findings made, and the conclusions of law drawn by the state court.

Plaintiffs state that they intend to seek summary judgment in this Adversary Proceeding. The Status Report indicates that Plaintiffs would intend to simultaneously prosecute the two summary judgment motion in the two separate proceedings. To the court, it appears that while such could be done, it might lead to otherwise unnecessary confusion between the rulings in the state court action and the District Court action.

Therefore, the court sets the discovery schedule in this case to allow the parties to actively prosecute it. If Plaintiffs believe that coordinating a summary judgment motion in this Adversary Proceeding with that in Adversary Proceeding No. 15-9008, the scheduling in this Adversary Proceeding will allow sufficient time to coordinate such filing.

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

a. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint, unnumbered paragraph titled "Jurisdiction," p.11:11-13; Dckt. 1. Though extensive in admitting and denying the numbered paragraph allegations and asserting affirmative defenses, the Second Answer neither admits nor denies the allegations of jurisdiction and that this is a core proceeding. There is an affirmative obligation to admit or deny allegations of whether the matter is a core proceedings, and if contended non-core, whether the responding party consents to the bankruptcy judge issuing all orders and the final judgment.

The relief sought in the Complaint is for a determination of whether a debt is non-dischargeable based on fraud, fraud or defalcation while in a fiduciary capacity, or wilful and malicious injury as provided by Congress in 11 U.S.C. § 523(a)(2), (4), and (6). These claims arising under the Bankruptcy Code and are core proceedings for which the bankruptcy judge issues all orders and the final judgment in this Adversary Proceeding, for the Complaint as it exists as of the February 4, 2016 Status Conference.

- b. Initial Disclosures shall be made on or before **February 26, 2016**.
- c. Expert Witnesses shall be disclosed on or before **June 1, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **June 1, 2016**.
- d. Non-Expert Discovery closes, including the hearing of all discovery motions, on **July 29, 2016**.
- e. Expert Discovery closes, including the hearing of all discovery motions, on **August 30, 2016**.
- f. Dispositive Motions shall be heard before **October 10, 2016**.

g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on December 1, 2016.**

11. [14-91565-E-7](#) RICHARD SINCLAIR CONTINUED STATUS CONFERENCE RE:  
[15-9055](#) COMPLAINT  
FLAKE V. SINCLAIR 7-24-15 [[1](#)]

Plaintiff's Atty: Kelly L. Pope; Jamie P. Dreher  
Defendant's Atty: Pro Se

Adv. Filed: 7/24/15  
Answer: 12/9/15

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

Notes:

Continued from 10/22/15 due to the stated legal capacity disability stated by Richard Sinclair.

Answer to Complaint to Determine Dischargeability of Debt filed 12/9/15  
[Dckt 12]

**SUMMARY OF COMPLAINT**

Plaintiff Stanley Flake seeks to have the court determine that claims for damages arising out of Defendant-Debtor Richard Sinclair's representation of Plaintiff determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). The Complaint seeks to have the court determine the amount of the damages, punitive damages, and that such damages are nondischargeable.

**SUMMARY OF ANSWER**

Defendant-Debtor filed his Answer on December 9, 2015. Dckt. 12. The Answer admits and denies specific allegations in the Complaint. The Answer also asserts twenty-three 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 pursuant to 28 U.S.C. § 157(b)(2), seeking relief arising under 11 U.S.C. § 523. Complaint ¶ 3, Dckt. 1. In his Answer, Plaintiff-Debtor admits

the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 12.

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 pursuant to 28 U.S.C. § 157(b)(2), seeking relief arising under 11 U.S.C. § 523. Complaint ¶ 3, Dckt. 1. In his Answer, Plaintiff-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 12. This is a core proceeding, for which the bankruptcy judge issues all orders and the final judgment, for claims arising under the Bankruptcy Code.
- b. Initial Disclosures shall be made on or before **February 26, 2016**.
- c. Expert Witnesses shall be disclosed on or before **June 1, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **June 1, 2016**.
- d. Non-Expert Discovery closes, including the hearing of all discovery motions, on **July 29, 2016**.
- e. Expert Discovery closes, including the hearing of all discovery motions, on **August 30, 2016**.
- f. Dispositive Motions shall be heard before **October 10, 2016**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on December 1, 2016**.

12. [15-90470-E-7](#) SUSAN FISCOE  
[15-9056](#)  
FARRAR V. FISCOE

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-6-15 [[1](#)]

**Final Ruling: No appearance at the February 4, 2016 Status Conference is required.**

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Plaintiff's Atty: Dana A. Suntag  
Defendant's Atty: David C. Johnston

Adv. Filed: 10/6/15  
Answer: 11/26/15

Nature of Action:  
Objection/revocation of discharge

<p><b>The Status Conference is continued to 2:00 p.m. on March 17, 2016.</b></p>
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Notes:

Continued from 12/17/15 to allow the Parties to litigate the issue of whether the exemption at issue should be disallowed.

**SUMMARY OF COMPLAINT**

The Complaint seeks to have the discharge of the Debtor denied pursuant to 11 U.S.C. §§ 727(a)(4)(D) [failure to turn over property of the Bankruptcy Estate], and (a)(2)(B) [removal of property of the estate]. The Trustee asserts that an annuity scheduled with an estimated value of \$75,000 (\$539 a month for the life of the Debtor) is not exempt.

**SUMMARY OF ANSWER**

The Defendant-Debtor responds, asserting that the asset is exempt pursuant to applicable Florida Estate Law.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint 1, 2, Dckt. 1. In her answer, Susan Fisco, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer 1, 2, Dckt. 11.

**OBJECTION TO CLAIM OF EXEMPTION**

The court sustained the Trustee's objection to claim of exemptions, but ordered that Defendant-Debtor may file an amended Schedule C on or before February 16, 2016.

13. [15-90087-E-7](#) DIOLINDA MACHADO  
[15-9016](#)  
MACHADO V. MACHADO

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
5-15-15 [[1](#)]

Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty: Pro Se

Adv. Filed: 5/15/15  
Answer: 6/22/15

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

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.**

Notes:

Continued from 10/22/15 to allow the state court judgment to be issued and conclusion of this Adversary Proceeding summarily prosecuted.

**FEBRUARY 4, 2016 STATUS CONFERENCE**

The Status Conference was continued to 2:00 p.m. on February 4, 2016, to allow the state court judgment to be issued and conclusion of this Adversary Proceeding summarily prosecuted.

At the February 4, 2016 Status Conference, the Parties reported ~~XXXXXXXXXXXXXXXXXXXX~~.

**SUMMARY OF COMPLAINT**

Mary Machado, individually and as Trustee, ("Plaintiff") seeks to have debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(7). Defendant-Debtor is a family member of Plaintiff with whom there is alleged to have been a confidential relationship. It is alleged that Plaintiff qualifies for protection pursuant to California Welfare and Institutions Code § 15610.27 (elder protection).

It is alleged that Defendant-Debtor forged Plaintiff's signature on a deed to transfer real property from a trust to Plaintiff's name individually so as to fraudulently obtain secured loans in Plaintiff's name. It is further alleged that Defendant-Debtor forged Plaintiff's signature to: (1) obtain surrender value payments on three life insurance policies, and (2) obtain financing to purchase a vehicle.

It is further alleged that Defendant-Debtor forged Plaintiff's signature to purportedly refinance Plaintiff's property and diverted the loan proceeds.

Additionally, that Defendant-Debtor fraudulently used Plaintiff's bank accounts to withdraw money therefrom.

#### **SUMMARY OF ANSWER**

The Defendant-Debtor has filed a pro se answer, checking the box that Defendant-Debtor denies the allegations of the Complaint, other than procedural facts relating to the filing of the bankruptcy petition.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), seeking a determination of nondischargeability of debt arising under the Bankruptcy Code. Complaint 1,2, Dckt. 1. In her Answer, Diolinda Machado ("Defendant-Debtor") does not specifically deny the allegations of jurisdiction and core proceedings. Answer, Dckt. 8. The determination of the dischargeability of debt arises under the Bankruptcy Code and is a core proceeding for which the bankruptcy judgment issues the orders and final judgment. 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.