

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**MODESTO DIVISION CALENDAR**  
**February 6, 2020 at 2:00 p.m.**

---

1. [19-91111-E-11](#)      **THE LIVING CENTERS OF  
FRESNO, INC.**      **STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-24-19 [1]**

Debtor's Atty: David C. Johnston

Notes:

Meeting of Creditors to be held 1/30/20 at 2:30 p.m. [Dckt 10]

Withdrawal of Claim: Claim No. 2 - State of California/Franchise Tax Board filed 1/23/20 [Dckt 22]

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 1/27/20 [Dckt 23];  
order pending

**The Status Conference is ~~XXXXXXXXXX~~**

This is the second recent Chapter 11 case filed by this Debtor. The prior case, 17-90981, was dismissed on September 2, 2019. No proposed Chapter 11 plan or proposed disclosure statement was filed by the Debtor in Possession in the prior case. The dismissal was made pursuant to the motion of the Debtor in Possession, with the court finding that based on the evidence presented by the Debtor in Possession that there was no likelihood of there being a successful reorganization in Chapter 11. 17-90981; Civil Minutes, Dckt. 128.

**Debtor in Possession Status Report**  
**(Filed February 3, 2020; Dckt. 26)**

In the Status Report, the Debtor in Possession states it is operating two locations, providing a 6 bed "in patient" behavior modification program in Fresno and a small "out-patient" support group in Turlock, California.

The Debtor in Possession reports that this bankruptcy case filing was precipitated by the Internal Revenue Service levies on the Debtor's bank accounts and insurance company payments.

With respect to property of the bankruptcy estate, Debtor in Possession reports, “There are so few assets that the Debtor in Possession does not anticipate any disputes concerning value of assets.” Status report, p. 3:1-2; Dckt. 26.

The Debtor in Possession anticipates a Chapter 11 plan that provides for a payment plan for the Internal Revenue Service debt.

At the Status Conference **XXXXXXXXXX**

2. [19-90440-E-7](#)            **LESLIE KINSEY**  
[19-9015](#)                    **RHS-1**  
**MORGAN V. KINSEY**

**ORDER TO SHOW CAUSE**  
**1-9-20 [14]**

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

Adv. Filed: 9/9/19  
Answer: 11/25/19

Nature of Action:  
Objection/revocation of discharge

Notes:

Plaintiff, Tom Morgan, to appear to show cause why this court should not dismiss this adversary proceeding. Telephonic appearance permitted for this order to show cause.

**The Order to Show Cause is XXXXXXXXXX**

On September 9, 2019, Tom Morgan, Creditor ("Morgan"), filed with the court a document titled "Adversary Complaint." Dckt. 1. The first two pages of this document state that Leslie Henry Kinsey, the Debtor in Chapter 7 Bankruptcy Case No. 19-90440 ("Kinsey"), made misrepresentations that he was a contractor, abandoned the work that Morgan had hired him to perform, and that Morgan sued Kinsey in state court and Kinsey was found guilty of fraud. The next twenty-six pages are a series of exhibits and documents, including state court judgment dating back to 2001, which was renewed in 2011.

This document bears the case number for Bankruptcy Case No. 19-90440. The Clerk of the Court perceiving that this could be a complaint for nondischargeability opened an adversary proceeding file and filed it therein (consistent with established court procedure).

A document titled "Answer" was filed by Kinsey on November 25, 2019. Dckt. 9. This answer contains a general denial and some counter allegations. While filed in *pro se*, the answer appears to have been prepared by someone with legal training, possibly an attorney.

At the December 19, 2019, Status Conference, the court discussed with the Parties shortcomings in both the Complaint and Answer. Plaintiff stated that he would seek the assistance of counsel. The court and Parties discussed the economic utility of nondischargeability litigation in light of the state court judgment now being 19 years old and not one dime has been recovered on it by Plaintiff.

On February 3, 2020, in response to the Order to Show Cause, Plaintiff Tom Morgan filed a document titled "Addendum #1, Adversary Complaint." This appears to be a copy of the proposed amended

complaint that Mr. Morgan seeks to file in this case. The sum total of the claim for relief stated by Mr. Morgan consists of:

This objection to the DISCHARGE of this indebtedness is substantiated by various bills passed by Congress and 11 U. S. CODE 523 ( 2 ) (A) (B). Which states in part" "Use of false pretenses, false representation, use of a false statement".

One might ask himself why after eighteen years are you, Tom Morgan pursuing this indebtedness. One of the many answers might be, because he , Mr. Kinsey, created this incident thru lying, deception and fraud, of which the documentation to substantiate these statements are on file with the Bankruptcy Court. The indebtedness is substantiated by a California Court where Mr. Kinsey was also found guilty of Fraud.

Dckt. 16. This clearly falls short of the pleading standards enunciated by the U.S. Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

3. [19-90440-E-7](#)            **LESLIE KINSEY**  
[19-9015](#)  
**MORGAN V. KINSEY**

**CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-9-19 [1]**

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

Adv. Filed: 9/9/19  
Answer: 11/25/19

Nature of Action:  
Objection/revocation of discharge

Notes:  
Continued from 12/19/19. Plaintiff stated he would seek the assistance of counsel.

[RHS-1] Order to Show Cause Why Adversary Proceeding Should Not Be Dismissed filed 1/9/20 [Dckt 14], set for hearing 2/6/20 at 2:00 p.m.

**The Status Conference is ~~XXXXXXXXXX~~**

On September 9, 2019, Tom Morgan, Creditor ("Morgan"), filed with the court a document titled "Adversary Complaint." Dckt. 1. The first two pages of this document state that Leslie Henry Kinsey, the Debtor in Chapter 7 Bankruptcy Case No. 19-90440 ("Kinsey"), made misrepresentations that he was a contractor, abandoned the work that Morgan had hired him to perform, and that Morgan sued Kinsey in state court and Kinsey was found guilty of fraud. The next twenty-six pages are a series of exhibits and documents, including state court judgment dating back to 2001, which was renewed in 2011.

This document bears the case number for Bankruptcy Case No. 19-90440. The Clerk of the Court perceiving that this could be a complaint for nondischargeability opened an adversary proceeding file and filed it therein (consistent with established court procedure).

A document titled "Answer" was filed by Kinsey on November 25, 2019. Dckt. 9. This answer contains a general denial and some counter allegations. While filed in *pro se*, the answer appears to have been prepared by someone with legal training, possibly an attorney.

At the December 19, 2019, Status Conference, the court discussed with the Parties shortcomings in both the Complaint and Answer. Plaintiff stated that he would seek the assistance of counsel. The court and Parties discussed the economic utility of nondischargeability litigation in light of the state court judgment now being 19 years old and not one dime has been recovered on it by Plaintiff.

On February 3, 2020, in response to the Order to Show Cause, Plaintiff Tom Morgan filed a document titled "Addendum #1, Adversary Complaint." This appears to be a copy of the proposed amended

complaint that Mr. Morgan seeks to file in this case. The sum total of the claim for relief stated by Mr. Morgan consists of:

This objection to the DISCHARGE of this indebtedness is substantiated by various bills passed by Congress and 11 U. S. CODE 523 ( 2 ) (A) (B). Which states in part" "Use of false pretenses, false representation, use of a false statement".

One might ask himself why after eighteen years are you, Tom Morgan pursuing this indebtedness. One of the many answers might be, because he , Mr. Kinsey, created this incident thru lying, deception and fraud, of which the documentation to substantiate these statements are on file with the Bankruptcy Court. The indebtedness is substantiated by a California Court where Mr. Kinsey was also found guilty of Fraud.

Dckt. 16. This clearly falls short of the pleading standards enunciated by the U.S. Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Having reviewed the document and it not stating any relief sought and affording Morgan to seek the assistance of counsel to determine whether this is an action he intended to file as an adversary proceeding and diligently so prosecute, and good cause appearing;

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 11/7/19

Status Report #9 filed 1/22/20 [Dckt 1104]

Status Report #9 AMENDED filed 1/27/20 [Dckt 1107]

**The Status Conference is XXXXXXXXXX**

**FEB**

**RUARY 6, 2020 POST-CONFIRMATION STATUS CONFERENCE**

On January 27, 2020, the Plan Administrator who replaced the Debtors who were the former plan administrators, filed his Status Report #9 Amended. Dckt. 1107.

He reports that the Plan scheduled payment for September 30, 2019 has been paid and the unsecured claim dividend disbursed. This September 2019 payment was made in late January 2020. The Plan Administrator confirms that all other information in the Original Status Report #9 is unchanged.

Original Status Report #9, filed on January 22, 2020, provides the following additional information. Dckt. 1104. Debtor Mr. Garcia provided sufficient plan payments to pay the administrative expenses and pay the June 30, 2019 unsecured claim dividend.

Various other defaults exist in the Plan. A payment of \$21,937.71 became due December 31, 2019, and it does not appear paid. For the March 31, 2020 payment, it must be sufficient to fund the unsecured claim dividend to 50%.

The USFI payments of \$3,000 per month are in arrears from the March 2019 payment to the date of the Status Report #9.

Though Debtor Mr. Garcia reported that there is a settlement with USFI, no information was being provided to the Plan Administrator. This lead, after a number of attempts, to counsel for the Plan Administrator speaking with Michael Ziemer, a "Sr. V.P., Commercial Surety & President of Bail USA." He indicated that former counsel had was no longer being retained and discussions with Mr. Garcia were "ongoing."

At the Status Conference XXXXXXXXXX

**February 6, 2020 at 2:00 p.m.**

**- Page 7 of 23 -**

5. [19-90151-E-11](#)

**Y&M RENTAL PROPERTY  
MANAGEMENT, LLC**

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-21-19 [1]**

Debtor's Atty: David C. Johnston

Notes:

Continued from 9/19/19. The Trustee reported that the Trustee had just come on board and was taking steps to obtain control of property of the estate. There was an outstanding document request to counsel for Debtor.

Operating Reports filed: 11/19/19 [Aug; Sep; Oct; Jul]; 12/11/19 [Nov]; 1/13/20 [Dec]

[DCJ-1] Motion for Determination of Reasonableness of Fees filed 9/29/19 [Dckt 55]; Notice of Withdrawal filed 10/21/19 [Dckt 69]

[UST-2] Order granting U.S. Trustee's Motion for Review and Disgorgement of Fees of David C. Johnston, Esq. filed 10/8/19 [Dckt 66]

**The Status Conference is XXXXXXXXXX**

### **FEBRUARY 6, 2020 STATUS CONFERENCE**

The Chapter 11 Trustee filed her First Status Report on February 4, 2020. Dckt. 84. The information in the Status Report includes the following.

The Chapter 11 Trustee took control of \$81,067.04 in cash from the former Debtor in Possession and is currently collecting rents from tenants of property of the Bankruptcy Estate. As of December 31, 2019, the Trustee was holding \$96,904.12 in monies in this case. There is an additional \$3,194.00 of monies which were turned over to the Trustee by the former Debtor in Possession's counsel.

The Trustee has made demand on the managing member of the Debtor to pay fair rental value for her continued use and occupancy of property of the Bankruptcy Estate.

The Trustee reports that this should be a surplus case.

**February 6, 2020 at 2:00 p.m.**

**- Page 8 of 23 -**



Debtor's Atty: David C. Johnston

Notes:

Operating Report filed: 12/29/19

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 1/6/20 [Dckt 22]; contacted by Clerk of the Court re failure to submit proposed order

Debtor in Possession's Chapter 11 Status Report filed 1/13/20 [Dckt 25]

U.S. Trustee's Report at 341 Meeting lodged 1/21/20; meeting concluded

**The Status Conference is xxxxxxxxxxxx**

#### FEBRUARY 6, 2020 STATUS CONFERENCE

This Chapter 11 case was filed on December 11, 2019. The Debtor in Possession filed a Status Report on January 13, 2020. Dckt. 25. The Debtor in Possession reports that the Bankruptcy Estate is operating a real estate brokerage firm with agents in seven locations. Pre-petition litigation initiated by the Debtor resulted in an adverse judgment determining that the Debtor was obligated for \$47,000 in actual damages and an additional \$200,000 in attorneys' fees and costs.

The judgment creditor assets a judgment lien on the Debtor's personal property pursuant to a lien recorded with the Secretary of State and a Order of Examination.

On Schedule A/B Debtors lists having personal property consisting substantially of: \$3,665 in bank deposits; \$12,207 in security deposits; \$10,000 in office equipment; and \$37,229 in "Exit Reality Franchises." Dckt. 16 at 5-10. Debtor states having no interest in any real property. *Id.*

Krista Knight, the judgment lien creditor has filed a response to the Debtor in Possession Status Report. Dckt. 29. Ms. Knight first provides a detailed recounting of the dispute with the Debtor, a thirteen day trial, and the judgment in her favor for (\$287,790.17).

Ms. Knight then assets that her judgment is nondischargeable on the 11 U.S.C. § 523(a)(6) grounds that the judgment is for a willful and malicious injury.

Ms. Knight then asserts that the Debtor failed to disclose the following assets, in which Ms. Knight asserts her judgment lien: (1) \$100,000 in real estate commissions that are currently being held in escrow; and (2) pre-paid rent on Debtor's Manteca office in the amount of \$220,000 which is being held by the landlord of that property.

The landlord alleged to be holding the \$220,000 is Success Group, LLC, which Ms. Knight alleges is owned by Kris Klair. Kris Klair is the president of the Debtor and the authorized representative who signed the bankruptcy Petition. Dckt. 1 at 4.

Further, Ms. Knight alleges that the Debtor in Possession has been improperly using the cash collateral that secured Ms. Knight's claim without her consent or an order of this court.

At the Status Conference **XXXXXXXXXX**

7. [18-90776-E-7](#) ABIGAIL HENSYEL  
[19-9003](#)  
PETTAPIECE V. HENSYEL

PRE-TRIAL CONFERENCE RE:  
COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
1-18-19 [1]

Plaintiff's Atty: Lisa Blanco Jimenez  
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 1/18/19  
Reissued Summons: 2/7/19  
Answer: 3/26/19

Nature of Action:  
Dischargeability - willful and malicious injury

Notes:  
Scheduling Order -  
Initial disclosures by 4/16/19  
Disclose experts by 7/1/19  
Exchange expert reports by 7/24/19  
Close of discovery 9/30/19  
Dispositive motions heard by 12/6/19

**The Pre-Trial Conference is XXXXXXXXXX**

### FEBRUARY 6, 2020 PRE-TRIAL CONFERENCE

Neither the Plaintiff nor the Defendant-Debtor have filed their Pre-Trial Conference Statements as ordered by the court. Pre-Trial Conference Order, p. 4:15-28, 5:1-28, 6:1-13; Dckt. 13. As further stated in the Pre-Trial Conference Order, failure to comply with the Order may result in Sanctions. *Id.*, p. 6:21-24.

At the Pre-Trial Conference, XXXXXXXXXX

### SUMMARY OF COMPLAINT

Whitney Pettapiece ("Plaintiff") filed a Complaint on January 18, 2019 seeking a determination of the nondischargeability of debt. A summons was reissued in this Adversary Proceeding on February 7, 2019. Dckt. 6. In the Complaint Plaintiff alleges:

1. Abigail Hensyel, the Defendant-Debtor in this Adversary Proceeding is the defendant in a defendant in a pending action in the Superior Court.
2. Plaintiff filed the state court complaint asserting claims for assault, battery, and stalking.
3. Defendant-Debtor filed a cross-complaint in the State Court Action against Plaintiff in the state court action asserting a claim for assault.
4. The State Court Action was to commence on November 6, 2018. The Defendant-Debtor commenced her Chapter7 bankruptcy case on October 26, 2018, which caused the State Court Action to be stayed.
5. The Complaint includes specific allegations of communications, threats, vandalism, and calls which are attributed to Defendant-Debtor.
6. It is further alleged that Defendant-Debtor came into Plaintiff's place of employment, confronted Plaintiff, and physically struck Plaintiff.
7. It is alleged that Plaintiff's employment was terminated due to the altercation with Defendant-Debtor.
8. It is asserted that the conduct of Defendant-Debtor specified in the Complaint and damages resulting therefrom are nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious injury].

## **SUMMARY OF ANSWER**

Abigail Hensyel ("Defendant-Debtor") filed a form answer provided for *pro se* defendants in which she alleges that this action is a core proceeding and denies each and every other allegation in the Complaint. Dckt. 11.

A review of the Answer causes the court to question whether it has actually be signed by the Defendant-Debtor. Rather than a signature, it has merely a printed name in the place of a signature, "/s/ Abigail Hensyel." Dckt. 11 at 2:6.

The *pro se* form answer in the upper left hand corner indicates that it was prepared by Cort V. Weigand, an attorney. *Id.* at 1-6. It continues, stating that Cort V. Weigand is for "Defendant(s), *Pro Se.*" By this it appears that Mr. Wiegand is the attorney for Defendant Abigail Hensyel in this Adversary Proceeding.

The court's files reflect that this Answer was electronically filed by Cort V. Weigand, Esq. In filing this Answer electronically, Mr. Weigand has now appeared as and is the Defendant-Debtor's attorney of record.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Whitney Pettapiece alleges in the Complaint 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). Complaint ¶¶ 1, 4; Dckt. 1. In her Answer, Defendant Abigail Hensyel admits that this is a core proceeding, and with that the allegation that federal court jurisdiction exists for this Adversary Proceeding. Answer, Dckt. 11. 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 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.

### **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

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

- a. Plaintiff Whitney Pettapiece alleges in the Complaint 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). Complaint ¶¶ 1, 4; Dckt. 1. In her Answer, Defendant Abigail Hensyel admits that this is a core proceeding, and with that the allegation that federal court jurisdiction exists for this Adversary Proceeding. Answer, Dckt. 11. 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 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.

8. [19-90783-E-11](#)      **BRYAN CABINET  
INSTALLATION, INC.**

**CONTINUED STATUS CONFERENCE  
RE:  
VOLUNTARY PETITION  
8-27-19 [1]**

Debtor's Atty: David C. Johnston

Notes:  
Continued from 10/3/19

Operating Reports filed: 11/30/19; 12/22/19; 1/17/20

U.S. Trustee Report at 341 Meeting lodged 10/11/19; meeting concluded

**The Status Conference is continued to 2:00 p.m. on XXXXXXXXXX, 2020**

#### **FEBRUARY 6, 2020 STATUS CONFERENCE**

On February 3, 2020, the Debtor in Possession filed an Updated Status Report. Dckt. 38. This bankruptcy case was filed on August 27, 2019, and was designated by the Debtor as a "small business debtor" as denied in 11 U.S.C. § 101(61D). One hundred and sixty-three (163) days have passed since this case was commenced by the Debtor.

The Debtor in Possession reports that it was originally going to file a plan on or before December 25, 2019, but has determined that in a small business case the exclusivity period will not end until February 23, 2020, so the Debtor in Possession elected to not file and start prosecuting a plan by December 25, 2019 as earlier represented.

Looking at the Docket, there appears that little is being done by the Debtor in Possession to prosecute this case. Other than Monthly Operating Reports being filed, no motions or other contested matters are being prosecuted by the Debtor in Possession.

The Internal Revenue Service has filed Proof of Claim No. 2 in the amount of (\$147,365.34), of which (\$21,043.00) is secured by a statutory lien and (\$126,322.34), of which (\$110,899.29) is asserted as a priority claim. Though the Internal Revenue Service asserts a secured claim in all of the Debtor's property as of the commencement of this case, the court does not see either a stipulation to use cash collateral or an order authorizing the use of cash collateral.

At the Status Conference, counsel for the Debtor in Possession XXXXXXXXXX

9. [18-90090-E-7](#) CLIFFORD BARBERA

[18-9010](#)  
BOWERS ET AL V. BARBERA

CONTINUED STATUS CONFERENCE  
RE:  
COMPLAINT  
6-11-18 [1]

Plaintiff's Atty: Bryan Silverman  
Defendant's Atty: Diana J. Cavanaugh

Adv. Filed: 6/11/18  
Answer: 7/18/18

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

Order Transferring Adversary Proceeding to Judge Sargis filed 11/27/18 [Dckt 23]

Notes:  
Continued from 3/28/19, the court staying this Adversary Proceeding pending conclusion of the state court actions or as otherwise provided in further order of the court.

**The Status Conference is XXXXXXXXXXXX**

### FEBRUARY 6, 2020 STATUS CONFERENCE

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

At the Status Conference the respective counsel first addressed the failure to comply with the court's prior order and the appropriate sanctions for such noncompliance. XXXXXXXXXXXX

The respective counsel then addressed whether this action was to be prosecuted, whether Defendant was abandoning the defense and judgment should be entered, or Plaintiff was dismissing the Complaint. XXXXXXXXXXXX

## **SUMMARY OF COMPLAINT**

Damon Bowers, Lisa Bowers, and DB Capital Investments, Inc., (“Plaintiff”) filed a Complaint for the determination of nondischargeability of certain debts pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(6). The Complaint alleges:

1. Debtor-Defendant Clifford Barbera entered into a contract with Damon Bowers to perform construction work on property owned by Damon and Lisa Bowers (“The Bowers”).
2. The Bowers terminated the services of Defendant-Debtor based on asserted defects in the construction.
3. In August 2016 Plaintiffs filed a State Court Action against Defendant-Debtor and his company, Priceless Kitchen & Bath, Inc. (“Priceless”), in the Superior Court for Contra Costa County.
4. In April of 2015 DB Capital Investments contracted with Defendant Debtor and Priceless to remodel a home. DB Capital Investments sold the home, and the buyer of the home has alleged construction defects relating to Defendant-Debtor’s work, and has sue DB Capital Investments over the purchase of the property.
5. In the Complaint Plaintiffs provide specific allegations of the alleged defects in the work provided by Defendant-Debtor and Priceless.
6. Plaintiffs seek a determination that their damages, including those arising in the state court action against DB Capital Investments are nondischargeable.

## **SUMMARY OF ANSWER**

Clifford Barbera (“Defendant”) has filed his Answer (Dckt. 13) which admits and denies specific allegations in the Complaint.

## **STAYING PROCEEDING PENDING STATE COURT LITIGATION**

The court has previously entered an order granting relief from the automatic stay so that the parties may pursue to final judgment pending state court actions, from which the determinations therein will be brought to this court for the application of principles of *Res Judicata*. Order, Dckt. 18.

The Parties report that there is some confusion whether the order relates to the to pending state court actions, as intended, or only one. To remedy this situation, the parties shall file their motion for such additional relief as necessary pursuant to the stipulation of the parties.

The court stays this Adversary Proceeding pending conclusion of the state court actions, or as otherwise provided in further order of the court, to allow the parties to focus their time and resources on the substantive issues in those state court proceedings.



# FINAL RULINGS

10. [15-90811-E-7](#) ASSN., GOLD STRIKE CONTINUED STATUS CONFERENCE  
[16-9002](#) HEIGHTS HOMEOWNERS RE:  
FARRAR V. MASSELLA ET AL COMPLAINT  
1-13-16 [1]

**Final Ruling: No appearance at the February 6, 2020 Status Conference is required.**

-----  
Plaintiff's Atty: Clifford W. Stevens; Ricardo Z. Aranda  
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16  
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
2/23/16 [Johnny Massella; Mary Massella]  
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]  
Answer: None  
Counterclaim Dismissed 5/2/16  
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]  
Answer: None  
Counterclaim Dismissed 5/2/16  
Nature of Action:  
Validity, priority or extent of lien or other interest in property

**The Status Conference is continued to 2:00 p.m. on July 16, 2020.** The appeal in the related subject matter Adversary Proceeding, No. 15-9061, now pending before the Ninth Circuit, the Status Conference is continue and this Adversary Proceeding continues to be stayed pending conclusion of such appeal.

Notes:

Continued from 6/27/19. It was requested that the court continue the Status Conference until after the anticipated completion of the appeal in the related matter which should be in the fourth quarter of 2019. Updated Status Reports to be filed on or before 1/16/20.  
Plaintiff's Status Conference Statement filed 1/16/20 [Dckt 88]

**Final Ruling: No appearance at the February 6, 2020 Status Conference is required.**

-----  
Debtor's Atty: Reno F.R. Fernandez; Daniel E. Vaknin

Notes:

Continued from 11/7/9. The Debtor in Possession intends to pursue a plan in this case. Further 2004 exams are ongoing concerning the alleged fraudulent conveyances.

Operating Reports filed: 11/20/19 [Sep; Oct; Amd Oct]; 1/16/20 [Nov]; 1/24/20 [Dec]

[MF-31] First and Final Application for Approval of Compensation and Reimbursement of Expenses of Acrius Capital, LLC as Financing Broker for Debtor in Possession filed 11/27/19 [Dckt 409]; Order granting filed 12/23/19 [Dckt 424]

[MF-32] Debtor in Possession's Motion for Approval of the Debtor in Possession's Adequate Protection Stipulation with Volvo Financial Services filed 12/19/19 [Dckt 416]

Status Conference Statement filed 1/23/20 [Dckt 430]

<p><b>The Status Conference is continued to 10:30 a.m. on March 12, 2020 (Specially Set Time) to be conducted in conjunction with the final hearing on approval of an adequate protection stipulation.</b></p>
--

12. [18-90339-E-7](#)

KIMBERLY SOLARIO

CONTINUED PRE-TRIAL  
CONFERENCE  
RE: COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
8-17-18 [1]

[18-9014](#)

DE JONG V. SOLARIO

**Final Ruling: No appearance at the February 6, 2020 Pre-Trial Conference is required.**

-----  
Plaintiff's Atty: Michael R. Tener  
Defendant's Atty: Pro Se

Adv. Filed: 8/17/18

Answer: 9/7/18

Nature of Action:

Dischargeability - priority tax claims

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

**The Pre-Trial is continued to 2:00 p.m. on April 23, 2020, for case management purposes.** The court has granted Plaintiff summary judgment (Order filed January 22, 2020), with the lodging of the proposed judgment and post-judgment motions, if any, filing time pending.

Notes:

Continued from 12/19/19; the matter being taken under submission.

Order Granting Motion for Summary Judgment filed 1/22/20 [Dckt 47]

Memorandum Opinion and Decision filed 1/22/20 [Dckt 49]

13. [19-90464-E-7](#)      **RICHARD RICKS**  
[19-9020](#)  
**HIRST LAW GROUP, P.C. V. RICKS**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**12-6-19 [1]**

**Final Ruling: No appearance at the February 6, 2020 Status Conference is required.**  
-----

Plaintiff's Atty: Mark A. Serlin  
Defendant's Atty: unknown

Adv. Filed: 12/6/19  
Answer: 1/6/20

Nature of Action:  
Dischargeability - other

Notes:  
Plaintiff's Discovery Plan filed 1/24/20 [Dckt 10]

Status Conference Statement of Plaintiff Hirst Law Group, P.C. filed 1/24/20 [Dckt 11]

[MAS-1] Motion for Summary Judgment and Alternatively for Summary Adjudication filed 1/24/20 [Dckt 12], set for hearing 3/12/20 at 10:30 a.m.

<p><b>The Status Conference is continued to 2:00 p.m. on March 12, 2020.</b></p>
--

#### **STATUS CONFERENCE STATEMENT**

Counsel for Plaintiff filed a Status Conference Statement on January 24, 2020. Dckt. 11. He advises the court that he will not be available on February 6, 2020, and requests that the Status Conference be continued.

Counsel further advises the court that he is filing and setting for hearing a Motion for Summary Judgment to be heard on March 12, 2020, and requests the Status Conference be continued to that date.

Though it does not appear that the court is inclined to rule on the Motion for Summary Judgment as filed and will likely dismiss or deny it without prejudice, it appears that Plaintiff's counsel will be free of his conflicts for that date for purposes of the Status Conference.

## **SUMMARY OF COMPLAINT**

Hirst Law Group, P.C. NAME] (“Plaintiff”) has filed a Complaint titled “Complaint for Denial of Dischargeability, which claims and relief sought are summarized as follows:

- A. It is alleged that the Debtor has concealed, destroyed, mutilated, falsified, and/or failed to keep or preserve books and records relating to Debtor’s financial or business transactions.
- B. Debtor’s Schedules and Statement of Financial Affairs contain false and inaccurate information, including a large qui tam claim which Debtor was aware of be failed to list on his Schedules.
- C. Defendant-Debtor has failed to explain the dissipation of over \$1,200,000 in cash received by Debtor in May 2016, and now stating not to have any assets for creditors.
- D. Defendant-Debtor may properly be denied a discharge as provided in 11 U.S.C. § 727(a)(3), (a)(4)(A), or (a)(5).

## **SUMMARY OF ANSWER**

Richard Ricks, the “Defendant-Debtor” has filed an Answer (Dckt. 9) in response to the Complaint, which includes the following:

- A. Defendant-Debtor denies concealing, destroying mutilating, falsifying, or failing to keep books and records.
- B. Defendant-Debtor states that for 25 years he was married to an accountant and Defendant-Debtor never had custody of statements, documents, and or financial records.
- C. Plaintiff’s counsel has taken the deposition of Defendant-Debtor’s former wife, Joy L. Hughes.
- D. When Defendant-Debtor states that there were no law suits pending, the qui tam case had not been filed. Defendant-Debtor does not address the information that is required to be on Schedule A/B.
- E. The books and records obtained by Plaintiff’s counsel in the deposition of Defendant-Debtor’s ex-wife explains where the monies went.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Hirst Law Group alleges in the Complaint 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)(I) and (J). Complaint ¶¶ 3, 5, Dckt. 1. In the Answer, Defendant-Debtor Richard Ricks does not dispute the admits the allegations of jurisdiction and core proceedings. Answer Dckt. 9.

The denial of a discharge pursuant to 11 U.S.C. § 727 is a core proceeding arising under the Bankruptcy Code itself and is a matter for which the Bankruptcy judge issues final orders and judgment. 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 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.

## **SUMMARY JUDGMENT MOTION**

Plaintiff filed a Summary Judgment Motion on January 24, 2020. Dckt. 12. The grounds for summary judgment are stated as follows:

Plaintiff Hirst Law Group P.C. (“HLG”) hereby moves for summary judgment against defendant Richard Arland Ricks for denial of discharge under 11 U.S.C. § 727(a)(4)(A) pursuant to FRBP 7056. There are no disputed issues of material fact such that HLG is entitled to judgment as a matter of law. Should the Court be disinclined to grant summary judgment, then HLG seeks summary adjudication as to the 11 U.S.C. § 727(a)(4)(A) claim only. If the Court grants HLG’s summary adjudication motion as to the 11 U.S.C. § 727(a)(4)(A) claim, HLG will dismiss all the remaining claims so as judgment can be entered on the 11 U.S.C. § 727(a)(4)(A) claim singly.

Other than stating the conclusion that “there are no disputed issues of material facts,” no other grounds are given. It is clear from the Answer that Defendant-Debtor disputes the allegations that are necessary for Plaintiff to prevail in the denial of a discharge.

Filed with the Motion for Summary Judgment is one thirty-nine (39) page set of exhibits, Dckt. 15, four (4) more pages of exhibits, Dckt. 17, two short declarations, a four (4) page points and authorities, Dckt. 18, and a two (2) page request for judicial notice.

None of these other pleadings are referenced in the Motion for Summary Judgment. The court is not inclined to canvas the various pleadings filed by Plaintiff for information that should be stated in the Motion, organize the information, state the information in the Motion, and then advance those grounds for Plaintiff.

[19-9013](#)

KALRA V. SMITH

**Final Ruling: No appearance at the February 6, 2020 Status Conference is required.**  
-----

Plaintiff's Atty: Mark W. Hostetter

Defendant's Atty: unknown

Adv. Filed: 7/29/19

Answer: none

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

Continued from 12/19/19

The continued motion for default judgment heard 1/23/20 at 10:30 a.m. The Motion was granted. Court to prepare an order.

**The Status Conference is continued to 2:00 p.m. on April 2, 2020.**

FE

**FEBRUARY 6, 2020 STATUS CONFERENCE**

The court granted Plaintiff Paul Karla's motion for entry of default judgment on January 30, 2020. Dckt. 35. Counsel for Plaintiff is preparing and lodge with the court a judgment consistent with the default judgment granted.

The court continues the Status Conference for case management purposes while Plaintiff and counsel wrap up the relief granted.