

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

February 15, 2018, at 2:00 p.m.

1. <u>16-90603-E-7</u> MARK ONE CORPORATION	STATUS CONFERENCE RE: NOTICE OF
<u>17-9021</u>	REMOVAL
BURGER PHYSICAL THERAPY	12-20-17 <u>[1]</u>
SERVICES, INC. V. SIMS	

Plaintiff's Atty: Jamie P. Dreher

Defendant's Atty: Walter J. Schmidt

Adv. Filed: 12/20/17 [Notice of Removal of Lawsuit Pending in State Court]

Answer: none

Nature of Action:

Determination of removed claim or cause

The Status Conference is continued to xxxxxxx on xxxxxxxx, 2018.
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Notes:

(WJS-1) Motion to Dismiss for Lack of Standing filed 1/9/18 [Dckt 9], set for hearing 2/15/18 at 10:30 a.m.

(BD-1) Burger Physical Therapy Services, Inc.'s Motion to Remand filed 1/18/18 [Dckt 13], set for hearing 2/15/18 at 10:30 a.m.

FEBRUARY 15, 2018 STATUS CONFERENCE

The court has three pending motions bearing directly on the prosecution of this Adversary Proceeding. Plaintiff has filed a motion for this matter to be remanded to the Superior Court. Defendant has filed a motion to dismiss, asserting that all claims asserted herein are not property of the bankruptcy estate pursuant to 11 U.S.C. § 544. In the related bankruptcy case, the Chapter 7 Trustee has pending a motion to compromise all claims asserted by Plaintiff in this Adversary Proceeding and assigning all such rights to Defendant.

As the court has addressed in connection with the motion to dismiss and the motion to remand, the parties, including the Chapter 7 Trustee, need to address several issues, including the scope of 11 U.S.C.

February 15, 2018, at 2:00 p.m.

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§ 544 and what claims in this Adversary Proceeding are subject to the rights of the Chapter 7 Trustee thereunder.

2. [17-90320](#)-E-7 **JESUS ALVARADO RODRIGUEZ** **CONTINUED STATUS CONFERENCE RE:**
[17-9014](#) **AMENDED COMPLAINT**
EDMONDS V. SALINAS ET AL **12-22-17 [26]**

Final Ruling: No appearance at the February 15, 2018 Status Conference is required.

Plaintiff's Atty: Steven S. Altman

Defendant's Atty:

Unknown [Joanna Salinas]

Randall K. Walton [Alejandra A. Alvarado]

Adv. Filed: 9/21/17

Answer: Alejandra A. Alvarado 10/31/17 [same document filed twice]

Joanna Salinas 11/27/17

Amd. Cmplt. Filed: 12/22/17

Answer: Joanna Salinas, Alejandra Alvarado 1/3/18

Jose Juarez, Aline Alvarado 1/3/18

Nature of Action:

Approval of sale of property of estate and of a co-owner

The Status Conference is continued to 2:00 p.m. on April 26, 2018, to afford the Parties time to implement the Settlement of this Adversary Proceeding approved by the court on February 1, 2018 (17-90320; Order, Dckt. 43).

Notes:

Continued from 11/30/17 and matter stayed to allow the Parties to determine the magnitude of claims in the bankruptcy case.

Stipulation [and Order] Granting Leave to File First Amended Complaint filed 12/15/17 [Dckt 23]; Order granting filed 12/17/17 [Dckt 25]

Answers filed 1/3/18 [Dckts. 30 & 31]

Plaintiff's Status Report filed 1/18/18 [Dckt 33]

FEBRUARY 15, 2018 STATUS CONFERENCE

As reported by Plaintiff-Trustee, the court approved the Settlement and Compromise of the claims asserted in this Adversary Proceeding at the February 1, 2018 hearing on the Plaintiff-Trustee's motion in the related bankruptcy case. The court continues the Status Conference to allow the Parties to implement the approved Settlement.

3. [18-90029](#)-E-11 **JEFFERY ARAMBEL** **STATUS CONFERENCE RE:**
Reno Fernandez **VOLUNTARY PETITION**
1-17-18 [1]

Debtor's Atty: Reno F.R. Fernandez

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Notes:

[MF-1] *Ex Parte* Application for Approval of Joint Caption filed 1/23/18 [Dckt 18]; Order denying filed 1/26/18 [Dckt 29]

[MF-2] *Ex Parte* Motion to Extend Time to File Schedules and Statement of Financial Affairs filed 1/29/18 [Dckt 32]; Order granting filed 1/31/18 [Dckt 40]; documents due 2/14/18

[MF-3] Application for Authority to Employ Reno F.R. Fernandez III of MacDonald Fernandez LLP as Attorneys for Debtor-in-Possession filed 1/29/18 [Dckt 36]; no order

Status Report filed 2/2/18 [Dckt 43]

FEBRUARY 15, 2018 STATUS CONFERENCE

This is one of two related Chapter 11 bankruptcy cases: Jeffery Arambel, 18-90029, and 18-90030, Filbin Land & Cattle Co., Inc. Jeffery Arambel is reported to be the principal of and 100% shareholder of Filbin Land & Cattle Co., Inc.

No Schedules or Statement of Financial Affairs have been filed by either debtor, the court has granted extensions of time to February 14, 2018, in both cases. The court has not been afforded the opportunity to review such information prior to this Status Conference.

Reno Fernandez, Esq., of MacDonald Fernandez, LLP filed both of the bankruptcy cases as the attorney for each debtor. Mr. Fernandez has filed motions in each case to serve as counsel for the two debtors in possession.

The Initial Scheduling Orders in the two bankruptcy cases include a special addition raising the issue of whether one attorney can represent the two debtors in possession, the fiduciaries to their respective bankruptcy estates. The issue exists whether the one attorney (law firm) can represent the two estates that may have claims one against the other.

In each bankruptcy case, said counsel has filed motions to be employed. In his original declarations in support of the motions, counsel made the statement, “The Firm is proposed counsel for the Debtor in Possession in the related case of In re Filbin Land & Cattle Co., Inc. (Case No. 18-90030-E-11). Mr. Arambel owns 100% of the outstanding shares of stock in that Debtor. **I am informed and believe that the Debtors have no claims against one another.**” See 18-90029; Declaration ¶ 3, Dckt. 37.

Congress has addressed the “disinterested” requirement for the employment of a professional, defining that term in 11 U.S.C. § 101(14).

§ 101. Definitions

In this title the following definitions shall apply:

“(14) The term "disinterested person" means a person that--

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.”

While being “informed and believes” that there is no potential of a conflict, the double layers of fiduciaries—the debtor in possession fiduciary to the bankruptcy estate and the attorney fiduciary to the bankruptcy estate as counsel for the debtor in possession—require a more significant, acknowledged review by the court before such appointment may be made. It may be that one debtor in possession may need a separate general bankruptcy counsel, and then seek to employ Mr. Fernandez (who would be serving as the general bankruptcy counsel for one of the debtors in possession) as special counsel to prosecute the plan and other issues for the second debtor in possession—all subject to the oversight by the general bankruptcy counsel fiduciary for the second debtor in possession.

4. [18-90030-E-11](#) **FILBIN LAND & CATTLE** **STATUS CONFERENCE RE:**
 CO., INC. **VOLUNTARY PETITION**
 Reno Fernandez **1-17-18 [1]**

Debtor's Atty: Reno F.R. Fernandez

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

[MF-1] *Ex Parte* Application for Approval of Joint Caption filed 1/23/18 [Dckt 13]; Order denying filed 1/26/18 [Dckt 20]

[MF-2] *Ex Parte* Motion to Extend Time to File Schedules and Statement of Financial Affairs filed 1/29/18 [Dckt 25]; Order granting filed 1/31/18 [Dckt 40]; documents due 2/14/18

[MF-3] Application for Authority to Employ Reno F.R. Fernandez III of MacDonald Fernandez LLP as Attorneys for Debtor-in-Possession filed 1/29/18 [Dckt 29]; no order

Status Report filed 2/2/18 [Dckt 35]

FEBRUARY 15, 2018 STATUS CONFERENCE

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The Initial Scheduling Orders in the two bankruptcy cases include a special addition raising the issue of whether one attorney can represent the two debtors in possession, the fiduciaries to their respective bankruptcy estates. The issue exists whether the one attorney (law firm) can represent the two estates that may have claims one against the other.

In each bankruptcy case, said counsel has filed motions to be employed. In his original declarations in support of the motions, counsel made the statement, "The Firm is proposed counsel for the Debtor in Possession in the related case of In re Filbin Land & Cattle Co., Inc. (Case No. 18-90030-E-11).

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(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.”

While being “informed and believes” that there is no potential of a conflict, the double layers of fiduciaries—the debtor in possession fiduciary to the bankruptcy estate and the attorney fiduciary to the bankruptcy estate as counsel for the debtor in possession—require a more significant, acknowledged review by the court before such appointment may be made. It may be that one debtor in possession may need a separate general bankruptcy counsel, and then seek to employ Mr. Fernandez (who would be serving as the general bankruptcy counsel for one of the debtors in possession) as special counsel to prosecute the plan and other issues for the second debtor in possession—all subject to the oversight by the general bankruptcy counsel fiduciary for the second debtor in possession.

Final Ruling: No appearance at the February 15, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2017. By the court’s calculation, 140 days’ notice was provided. 42 days’ notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The hearing on the Motion to Confirm the Amended Plan of Reorganization is continued to 2:00 p.m. on March 8, 2018.

Ronald Sundburg and Susan Sundburg (“Debtor in Possession”) seek to amend the proposed plan. Debtor in Possession filed a Motion to Convert Case to Chapter 7 on February 7, 2018, however. Dckt. 175. That motion has been set for hearing on March 8, 2018. Dckt. 176.

Debtor in Possession appears to no longer wish to prosecute the Amended Plan. Before ruling on confirmation of a plan that will not be followed, the court continues the hearing to determine whether this case should be converted to one under Chapter 7. The hearing is continued to 2:00 p.m. on March 8, 2018, to be heard on the same day as the motion to convert this case.

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 Motion to Confirm the Amended Plan of Reorganization filed by Ronald Sundburg and Susan Sundburg (“Debtor in Possession”) 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 hearing on the Motion to Confirm is continued to 2:00 p.m. on March 8, 2018.

6. [15-90358-E-7](#) **LAWRENCE/JUDITH SOUZA** **CONTINUED STATUS CONFERENCE RE:**
[17-9017](#) **THE GOLDEN 1 CREDIT UNION V.** **COMPLAINT**
SOUZA ET AL **10-23-17 [1]**

ADVERSARY PROCEEDING DISMISSED 2/8/18

Plaintiff's Atty: Jeannie Kim
Defendant's Atty: David C. Johnston

Adv. Filed: 10/23/17
Answer: 11/25/17

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 15) pursuant to the Stipulation of the Parties, the Status Conference is removed from the Calendar.</p>
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Notes:

Continued from 1/11/18, the Parties reporting that they are actively working on a settlement

Stipulation to Dismiss Complaint to Determine Nondischargeability of Debt filed 2/8/18 [Dckt 13]; Order granting filed 2/8/18 [Dckt 15]

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

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

Final Ruling: No appearance at the February 15, 2018 Status Conference is required.

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

Adv. Filed: 2/23/15
Answer: 3/30/15; 4/8/16

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

<p>The Status Conference is removed from the Calendar, the court having entered judgment on all claims in this Adversary Proceeding. Judgment, Dckt. 124.</p>
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Notes:

Continued from 11/30/17. On or before 12/15/17, Plaintiff Fox Hollow Home Owners' Association is to file pleadings necessary to have its claims dismissed from this Adversary Proceeding or a Status Report confirming that it is prosecuting claims in this Adversary Proceeding. Chambers copy to be delivered to Janet Larson, courtroom deputy for Department E.

[HAR-3] Motion to Dismiss by Plaintiff Fox Hollow of Turlock Owners' Association, to Amend Complaint to Strike 11 U.S.C. § 523(A)(4) as a Ground for Relief, and for Entry of Judgment in Favor of Plaintiff California Equity Management Group, Inc. Filed 12/14/17 [Dckt 112]; Order granting filed 2/5/18 [Dckt 120]

Judgment filed 2/9/18 [Dckt 125]

Notice of Appeal filed 2/9/18 [Dckt 126]

8. [12-92479](#)-E-12 **DAVID/ESPERANZA AGUILAR** **CONTINUED STATUS CONFERENCE RE:**
Nelson Gomez **VOLUNTARY PETITION**
9-17-12 [\[1\]](#)

Debtor's Atty: Nelson F. Gomez

The Status Conference is xxxxxxxxxxxxxxxxxxxx.

Notes:

Continued from 12/14/17 to afford Debtor the opportunity to timely prosecute a motion for entry of discharge in this case.

[NFG-3] Debtor's Motion to Enter Discharge filed 12/15/17 [Dckt 96]; set for hearing 2/15/18 at 10:30 a.m.

FEBRUARY 15, 2018 STATUS CONFERENCE

The hearing on Debtor's Motion for Entry of Discharge was conducted on February 15, 2018.
At the hearing, the court xxxxxxxxxxxxxxxxxxxx.

9. [12-40398-E-7](#) **HECTOR CHACON**
[17-2098](#)
CHACON V. EMC MORTGAGE
CORPORATION ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-7-17 [1]

Final Ruling: No appearance at the February 15, 2018 Status Conference is required.

Plaintiff's Atty: Thomas O. Gillis
Defendants' Atty: John M. Sorich, Matthew S. Henderson

Adv. Filed: 6/7/17
Answer: 7/10/17

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment
Recovery of money/property - other
Injunctive relief - other

The Status Conference is continued to 2:00 p.m. on April 12, 2018, to afford the Parties time to document their Settlement and dismiss this Adversary Proceeding.

Notes:
Continued from 12/21/17
Plaintiff's Status Report filed 2/2/18 [Dckt 44]

FEBRUARY 15, 2018 STATUS CONFERENCE

In the Updated Status Report filed February 2, 2018, the Plaintiff-Debtor reports that this matter has been settled, with the Parties being in the process of finalizing the settlement documents. Report, Dckt. 44. Plaintiff-Debtor advises the court that upon completion of such documentation, the Parties will dismiss this Adversary Proceeding.

DECEMBER 21, 2017 STATUS CONFERENCE

The Plaintiff-Debtor filed an updated Status Report on December 15, 2017. Dckt. 36.

The Plaintiff-Debtor reports that this Adversary Proceeding has been settled, with the parties working on finalizing the documents. The Status Conference is continued to 2:00 p.m. on February 15, 2018, to allow the parties to focus on documenting the settlement and getting the Adversary Proceeding dismissed.