



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)(A). Complaint ¶¶ 2, 3, Dckt. 1. In their Answer, Anna Starr and William Starr admit the allegations of jurisdiction and core proceedings. Answer **introductory paragraph (admission of core proceeding), Dckt. 16.** 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. The Plaintiff-Trustee alleges in the Complaint 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)(A). Complaint ¶¶ 2, 3, Dckt. 1. In their Answer, Anna Starr and William Starr admit the allegations of jurisdiction and core proceedings. Answer **introductory paragraph (admission of core proceeding), Dckt. 16.** 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.**
- 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.**



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|  | <ol style="list-style-type: none"><li>1. The case was dismissed pursuant to the Motion of the Chapter 13 Trustee. 13-12130, Dckt. 30. The grounds included the failure to provide copies of pay advices, tax returns, and profit and loss statements.</li><li>2. On the petition, Debtor lists his residence as being in Merced County. <i>Id.</i>, Dckt. 1.</li></ol> |
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In the current Chapter 11 case, Debtor lists residence as being in Stanislaus County, listing a different street address, but listing the same mailing box address in Merced County.

In bankruptcy case no. 15-14125, Debtor stated that he had no business. 15-14125; Statement of Financial Affairs Question 18, Dckt. 15. In the current case, Debtor states that he has a rental business in Turlock, California. Petition Question 12, Dckt. 1. The address of the rental business is the same address which Debtor states for his residence on the Petition (Question 5).

On Schedule I in case no. 15-14125, Debtor states that he is employed by Foster Farms (in Merced County) and has been employed there for more than 25 years. Dckt. 15 at 14.

In the current case, Debtor states that he has not lived at any other places in the three years prior to the commencement of the 2016 bankruptcy case. Statement of Financial Affairs Question 3, Dckt. 15 at 22. On the Statement of Financial Affairs, Question 27, Debtor now states that he has had a business since 2005. Dckt. 15 at 26. However, on Schedule A/B Debtor states under penalty of perjury that he has no business-related property. Schedule B, Question 37; *Id.*



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

Notice of Removal, p. 2:25-28; Dckt. 1.

#### **STATEMENT OF NON-CORE PROCEEDING**

On March 4, 2016, Defendant Community Assessment Recovery Services filed its Rule 9027(e)(3) statement of non-core proceeding. (All references to "Rule" shall be reference to the Federal Rule of Bankruptcy Procedure, unless otherwise stated.) This Defendant confirms that this is a non-core proceeding, and expressly consents to the entry of final orders and judgment by the bankruptcy judge.

#### **ANSWERS**

Answers were filed in the state court action by Community Assessment Recovery Services and Gold Strike Heights Homeowners Association. Exhibits G and H, Dckt.11.

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

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

The Defendant-Trustee asserts that this is a core proceeding, with this Adversary Proceeding relating to determination of Plaintiff's claim in the bankruptcy case of Gold Strike Heights Association (Bankr. E.D. Cal. 15-90811). Notice of Removal, Dckt. 1. Defendant Community Assessment Recovery Services asserts that the claims are non-core, and consent to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding. Fed. R. Bank. P. 9027(e)(3) Statement. Plaintiff Indian Village Estates, LLC confirmed at the hearing ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~. 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. The Defendant-Trustee asserts that this is a core proceeding, with this Adversary Proceeding relating to determination of Plaintiff's claim in the bankruptcy case of Gold Strike Heights Association (Bankr. E.D. Cal. 15-90811). Notice of Removal, Dckt. 1. Defendant Community Assessment Recovery Services asserts that the claims are non-core, and

consent to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding. Fed. R. Bank. P. 9027(e)(3) Statement. Plaintiff Indian Village Estates, LLC confirmed at the hearing ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~. 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.

- b. Initial Disclosures shall be made on or before **March 24, 2016**.
- c. Expert Witnesses shall be disclosed on or before **August 31, 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 **September 30, 2016**.
- e. Dispositive Motions shall be heard before **November 11, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on December 15, 2016**.



Fed. R. Bankr. P. 9027.

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

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

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

**SUMMARY OF ANSWER**

No copy of any answer filed prior to the removal of the Complaint has been filed in this Adversary Proceeding.

**STATEMENT OF NON-CORE PROCEEDING**

On January 14, 2016, Defendant Don Lee filed his Rule 9027(e)(3) statement of non-core proceeding. (All references to "Rule" shall be reference to the Federal Rule of Bankruptcy Procedure, unless otherwise stated.) This Defendant confirms that this is a non-core proceeding, and expressly consents to the entry of final orders and judgment by the bankruptcy judge. Dckt. 14.

**JOINT STATUS CONFERENCE STATEMENT - Filed March 10, 2016**

Plaintiff Don Lee and Defendant-Trustee filed a Joint Status Conference Statement. Dckt. 27. The Statement reports that the Plaintiff may be dismissing the second and third causes of action (negligent and emotional distress).

**MOTION FOR JUDGMENT ON THE PLEADINGS**

On March 3, 2016, Defendant-Trustee filed a Motion for Judgment on the Pleadings. Dckt. 23. The Motion states with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007) the following grounds upon which relief is based:

- A. "Plaintiff Don Lee lacks standing to file such an action."

These "grounds" consist of the single legal conclusion by Defendant-Trustee that Plaintiff lacks "standing." Other than adopting Defendant-Trustee's legal conclusion, there is little for the court to do on the Motion. FN.1.

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FN.1. The Motion does further state that in addition to the legal conclusion, Defendant-Trustee instructs the court to read the Points and Authorities, the complies files and records in this "action" and any such other matters that the Defendant-Trustee decides to present to the court at any time (of the Defendant-Trustee's choosing) before or (sprung) at the hearing. The law and motion process under the Federal Rules of Civil Procedure, Federal Rules of

Bankruptcy Procedure, and Local Bankruptcy Rules establish a fairly straight forward, fair process, which does not include throwing evidence at the court at any time, nor telling the court and other parties to mine the records to determine what, if anything, could be stated as grounds for relief - if the movant has so stated the grounds with particularity as required by the Rules.

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5. [15-90811](#)-E-7 ASSN., GOLD STRIKE CONTINUED STATUS CONFERENCE RE:  
[15-9063](#) HEIGHTS HOMEOWNERS NOTICE OF REMOVAL  
INDIAN VILLAGE ESTATES, LLC ET 11-18-15 [[1](#)]  
AL V. GOLD STRIKE HEIGHTS

Plaintiff's Atty: Adam Weiner  
Defendant's Atty: Peter G. Macaluso  
Trustee's Atty: Clifford W. Stevens

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

Nature of Action:  
Determination of removed claim or cause

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:  
Continued from 2/4/16. Parties to file and serve status conference statements on or before 3/3/16.

Status Conference Statement filed 3/10/16 [Dckt 22]

**MARCH 15, 2016 STATUS CONFERENCE**

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**SUMMARY OF COMPLAINT**

The removed Complaint was filed by Indian Village Estates and Don Lee in the California Superior Court for the County of Calaveras on August 24, 2015. A copy of the Complaint is filed as an Exhibit to the Notice of Removal. Dckt. 5. As the Trustee notes, this is after the August 20, 2015, filing of the Chapter 7 bankruptcy case by Gold Strike Homeowners Association. (It would not be unusual for the information about the filing of the bankruptcy case and the filing of the State Court Action to have "crossed in the mail" during that four day period, which includes a weekend.) The Plaintiffs in the State Court Action are Indian Village Estates, LLC (which is the plaintiff in another removed state court action, though represented by a different attorneys) and Don Lee (a pro se plaintiff in another removed state court action). The First Cause of Action seeks damages for Don Lee for breach of contract (a "Litigation Indemnity Agreement"). The Second Cause of Action seeks to assert a claim contesting the election relating to whether indemnification was to be provided

to Don Lee. The Third Cause of Action seeks declaratory relief as to the rights and obligations under the asserted Indemnity Agreement.

**REMOVAL**

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

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

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

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

**STATUS CONFERENCE STATEMENT - Filed March 10, 2016**

The Chapter 7 Trustee, who removed this action, advises the court:

A. Plaintiff's counsel, Adam Weiner, communicated by email with counsel for the Chapter 7 Trustee that it is Mr. Weiner's intention to dismiss the causes of action "implicating Indian Village Estates" and that Don Lee will proceed solely in this matter in *pro se*.

The Trustee reports that this email communication occurred on March 4, 2016.

The Complaint; Exhibit A to Notice of Removal, Dckt. 5; identifies Adam Weiner as counsel for both Indian Village Estates, LLC and Don Lee. Mr. Weiner is counsel of record for both Plaintiffs.

The Trustee suggests in the Status Conference Statement that the Complaint should properly be dismissed for several reasons:

A. The state court complaint was filed on August 24, 2015, which was in violation of the automatic stay, the Debtor's bankruptcy case having been filed on August 20, 2015. 15-90811.

B. The damages are the same as asserted by Don Lee in Claim No1 1-2 filed in the Debtor's bankruptcy case on September 7, 2016.

6. [15-90811-E-7](#) [16-9002](#) ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS FARRAR V. MASSELLA ET AL STATUS CONFERENCE RE: COMPLAINT 1-13-16 [[1](#)]

Plaintiff's Atty: Clifford W. Stevens  
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 Filed: 2/23/16 [Johnny Massella; Mary Massella]  
Answer: None

Nature of Action:  
Validity, priority or extent of lien or other interest in property

Notes:

#### **MARCH 17, 2016 STATUS CONFERENCE**

The Plaintiff-Trustee filed a Status Conference Statement on March 14, 2016. Dckt. 13. He requests that the Status Conference be continued sixty-days to allow the Trustee to review the Counterclaims (filed February 23, 2016) and respond.

#### **SUMMARY OF COMPLAINT**

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, ("Plaintiff-Trustee") filed a complaint to avoid various liens filed by the Defendants. The Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not have been properly recorded.

#### **SUMMARY OF ANSWERS**

Johnny Masella and Mary Masella, Trustees, and Robinson Enterprises, inc., Employee Profit sharing Plan ("Defendants") have filed an answer which admits and denies specific allegations in the Complaint. Dckts. 9, 11. The Answers assert nine affirmative defenses, including: the interests of the estate were obtained through wrongful foreclosures, the Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust, Defendants may seek to have defects in the deeds of trust corrected, and the nonjudicial foreclosure sales were void because Debtor's corporate powers were suspended at the time of the sales.

#### **COUNTERCLAIMS OF DEFENDANTS**

In the Counterclaims, Defendants seek reformation of the Deeds of Trust.

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

Gary Farrar, the Plaintiff-Trustee, alleges in the Complaint 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), (B), (K), and (O). Complaint ¶¶ 1, 2, 3, Dckt. 1. In their respective answers, Robinson Enterprise, Inc Employee Profit Sharing Plan, and Johnny and Mary Massella, admit the allegations of jurisdiction and core proceedings. Answers ¶¶ 1, 2, and 3, Dckts. 9, 11. In their respective Counterclaims, the Defendants allege that jurisdiction exists for the Counterclaims pursuant to 28 U.S.C. § 157 and 1334, and that the matters therein are core pursuant to 28 U.S.C. § 157(b)(2)(F), (H), (K), and (N), and to the extent non-core, consent to the bankruptcy judge issuing all orders and the final judgments relating thereto. Counterclaims, ¶¶ 44 and 45, Dckts. 9 and 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.

7. [16-90113-E-12](#) LYNN/DONNA PORTER

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
2-16-16 [[1](#)]

Final Ruling: No appearance at the March 17, 2016 Status Conference is required.

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*DISMISSED 3/8/16*

Debtors' Atty: David C. Johnston

The bankruptcy case having been dismissed, the Status Conference is removed from the calendar
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8. [15-90717](#)-E-11 PLASMA ENERGY PROCESSES, CONTINUED STATUS CONFERENCE RE:  
INC. VOLUNTARY PETITION  
7-22-15 [[1](#)]

Debtor's Atty: Michael R. Germain

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 12/17/15

Operating Reports filed: 1/18/16, 2/26/16, 3/10/16

[MRG-4] Motion by Debtor-in-Possession for Dismissal of Chapter 11 Case filed 3/2/16 [Dckt 60], set for hearing 3/17/16 at 10:30 a.m.

Supplemental Status Report by Debtor in Possession filed 3/10/16 [Dckt 66]

**MARCH 17, 2016 STATUS CONFERENCE**

On March 10, 2016, the Debtor in Possession ("ΔIP") filed a Supplemental Status Conference Report. Dckt. 66. The ΔIP reports that it has filed a motion to dismiss this case. Through authorized post-petition financing, the ΔIP has restructured the finances of the main creditors such that the Debtor may address the debts outside of a Chapter 11 Plan.

9. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA MOTION TO CONFIRM CHAPTER 12  
FLG-15 PLAN  
3-2-16 [[209](#)]

Final Ruling: No appearance at the March 17, 2016 hearing is required.  
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The motion appearing to be an erroneous duplicate calendar entry of the Motion to Modify Chapter 12 Plan (Dckt. 158), this duplicate calendar entry is removed from calendar.

10. [13-90323-E-12](#) FRANCISCO/ORIANA SILVA  
FLG-15

MOTION TO MODIFY CHAPTER 12  
PLAN  
1-12-16 [[158](#)]

**No Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 65 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is to ~~xxxx~~ the Motion to Confirm the Modified Plan.**

Francisco and Oriana Silva ("Debtor") filed a Motion to Modify Chapter 12 Plan on January 12, 2016. Dckt. 158.

The Debtor states that the original plan was confirmed November 25, 2013. In June, 2015, almost two years after the claims filing deadline, the property taxing authority on Debtor's real property filed three secured claims in the bankruptcy. Debtor was previously unaware of two of these three claims, and the third, which was provided for in the Plan, was significantly higher than anticipated.

Additionally, the Debtor states that a number of creditors filed claims which stated that they were entitled to priority in an "unascertained" amount. Debtor believes that these claims are not entitled to priority and are allowable only as non-priority general unsecured claims. Debtor has filed an

March 17, 2016 at 2:00 p.m.

- Page 15 of 31 -

objection to each of these claims.

The Debtor proposes the following amendments:

1. For Class 2, the claim of County of Stanislaus for property taxes on debtor's real property located at 300 E. Barnhart Road, Ceres, California, the creditor filed a proof of claim in the amount of \$29,392.02, and the Plan proposes to pay 18% interest. Amortized over the remaining term of the Plan, the payment sufficient to pay this claim in full is \$1,139.69. The Debtor proposes to pay this claim at \$1,139.69 per month beginning in January, 2016.
2. For Classes 5, the claim of Systems & Services Technologies, Inc., secured by debtor's 2008 Wilson 24 Ranch Hand Trailer, the creditor filed a proof of claim in the amount of \$8,060.92. Prior to the filing of this motion, the trustee has disbursed \$6,,257.52 towards the principal balance of this claim. The remaining balance of \$1,803.40, amortized over the remaining 33 months of the Plan at 5% interest, the payment sufficient to pay this claim in full is \$58.59. The Debtor proposed to pay this claim at \$58.59 per month beginning in January, 2016.
3. The claim of Stanislaus County, filed as proof of claim number 25 in this bankruptcy matter and denoting secured property taxes on the property located at 213 Barnhart Road, Ceres, CA, is \$2,463.92. Amortized over the remaining term of the Plan at 18% interest, the payment sufficient to pay this claim in full is \$95.21. The Debtor proposes to create a new Class 7, on which payments will be made in the amount of \$95.21 per month beginning January, 2016 and continuing until the completion of the Plan.
4. The claim of Stanislaus County, filed as proof of claim number 26 in this bankruptcy matter and denoting secured property taxes on the property located at 6400 Crows Landing Road, Ceres, CA, is \$4,410.43. Amortized over the remaining term of the Plan at 18% interest, the payment sufficient to pay this claim in full is \$170.45. The Debtor proposes to create a new Class 8, on which payments will be made in the amount of \$170.45 per month beginning January, 2016 and continuing until the completion of the Plan.

#### **TRUSTEE'S OPPOSITION**

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 191. The Trustee states that the secured claim of Stanislaus County is understated at \$29,492.02 as the proof of claim was amended on February 22, 2016 to \$42,563.27. The secured claim of Stanislaus County is understated at \$2,463.92 as the proof of claim was amended on February 22, 2016 to \$2,744.74. The secured claim of Stanislaus County is understated at \$4,410.43 as the proof of claim was amended o February 22, 2016 to \$5,630.88. The Trustee calculates that the plan will take approximately 86 months to complete which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1222(c).

March 17, 2016 at 2:00 p.m.

- Page 16 of 31 -

Additionally, the Trustee asserts that the feasibility of the plan depends on the Debtor's objections to claims of Joel Celasco, Jose Velasco, Luis Jimenez, Jose Palomare, and Juan Ibarra being sustained. These objections are set to be heard March 17, 2016.

#### **MODIFIED PLAN**

On March 2, 2016, the Debtors filed a new document titled "MODIFIED CHAPTER 12 PLAN DATED JUNE 26, 2013." Dckt. 209. The "Plan" is signed by the Debtors on March 1, 2016.

The Plan states that it is submitted to the court pursuant to 11 U.S.C. § 1221. That Code Section requires that the Chapter 12 Plan filed be submitted not later than 90 days after the commencement of the filing of the bankruptcy case. This case having been filed on February 25, 2013, that 90 days expired on April 26, 2013 - almost three years ago.

This Motion is given Docket Control Number, FLG-15. The Notice of Hearing states that it is a Supplemental Notice of the Motion to Modify the Debtors' Chapter 12 Plan dated June 26, 2013. Dckt. 210. The Notice states that accompanying it is a copy of the Chapter 12 Plan "which embodies the changes described in the Motion and Notice previously served on you on January 12, 2016." *Id.*

A Motion to Modify, DCN: FLG-15, was filed on January 12, 2016. Dckt. 158. However, no proposed modified plan was filed. Federal Rule of Bankruptcy Procedure 3015(g) provides that the motion to modify a Chapter 12 plan and the proposed modification shall be filed.

#### **MARCH 17, 2016 HEARING**

At the hearing, the court xxxxx the objections to claim of Joel Celasco, Jose Velasco, Luis Jimenez, Jose Palomare, and Juan Ibarra.

#### **DISCUSSION**

Upon review of the proposed Chapter 12 Plan, as amended, the evidence in the form of the declaration of Francisco Mendes Silva, the Debtor, and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1229 and 1225.

- (1) the plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- (2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;
- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;

March 17, 2016 at 2:00 p.m.

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B) (I) the plan provides that the holder of such claim retain the lien securing such claim; and

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

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

Notwithstanding the objection of the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

(b) (1) (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

(B) the plan provides that all of the debtor's projected disposable income to be received in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(b) (2) For purposes of this subsection "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

11. [14-91023](#)-E-11 JOSEPH TEDESCO

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
7-16-14 [[1](#)]

Debtor's Atty: David C. Johnston

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

Notes:

Continued from 11/19/15

Operating Reports filed: 12/14/15, 1/21/16

[RHS-1] Order Confirming Amended Plan of Reorganization (October 1, 2015) filed 12/13/15 [Dckt 139]

Withdrawal of Proof Claim [Stanislaus County Tax Collector] filed 3/4/16 [Dckt 146]

**MARCH 17, 2016 STATUS CONFERENCE**

The Chapter 11 Plan was confirmed in this case on December 13, 2015. Order, Dckt. 139. Counsel for the former Debtor in Possession has not yet file a motion for approval of professional fees.

12. [14-91231-E-7](#) MALUK/RANJIT DHAMI  
[15-9065](#)  
FARRAR V. DHAMI

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

**Final Ruling: No appearance at the March 17, 2016 Status Conference is required.**

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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 June 2, 2016, to afford the Parties time to obtain approval of the settlement.**

Notes:  
Continued from 2/4/16. Defendant Hardev Singh Dhami to file and serve supplement to Answer on or before 2/18/16.

Supplemental Response to Defendant's Answer filed 2/12/16 [Dckt 17]

Joint Status Report filed 3/10/16 [Dckt 18]

**MARCH 17, 2016**

In a Joint Status Conference Statement, the Parties report that this matter has been settled, and within two weeks the Trustee will file a motion for court approval of the proposed settlement.

13. [14-91633](#)-E-7 SOUZA PROPANE, INC.

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

Final Ruling: No appearance at the March 17, 2016 Status Conference is required.

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Debtor's Atty: David C. Johnston

The case having been converted to one under Chapter 7, the Status Conference is removed from the calendar.

Notes:

Continued from 1/14/16 as a holding date pending the Chapter 11 Trustee filing, and the court ruling on, a motion to convert this case to one under Chapter 7.

14. [15-90953](#)-E-7 RACHEL MARMOL  
[15-9067](#)  
MCGRANAHAN V. AGUILAR

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

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

Adv. Filed: 12/15/15  
Answer: none

Nature of Action:  
Approval of sale of property of estate and of a co-owner  
Declaratory judgment

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Entry of Default and Order re Default Judgment Procedure [Juan Aguilar] filed 1/29/16 [Dckt 13]

Plaintiff's First Status Conference Statement filed 2/2/16 [Dckt 14]

[SSA-1] Plaintiff's Motion for Entry of Default Judgment filed 2/3/16 [Dckt 16], set for hearing 3/17/16 at 10:30 a.m.

**MARCH 17, 2016 STATUS CONFERENCE**

On March 17, 2016, the Plaintiff-Trustee's motion for entry of default judgment was heard by the court. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

15. [15-90555-E-11](#) SUSAN ALLEN

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
6-4-15 [[1](#)]

Debtor's Atty: Brian S. Haddix

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Converted from Chapter 13 to Chapter 11. Transferred from Judge Bardwil to Judge Sargis 1/4/16 [Dckt 88]

Operating Reports filed: 1/15/16, 2/14/16

U.S. Trustee Report at 341 Meeting docketed 1/15/16

Trustee's Final Report and Account filed 2/19/16 [Dckt 105]

**MARCH 17, 2016 STATUS CONFERENCE**

Debtor commenced this bankruptcy case on June 4, 2015, and it was converted to one under Chapter 11 on December 15, 2015. Order, Dckt. 79.

**MONTHLY OPERATING REPORT SUMMARY**

January 2016 Report		Filed: March 15, 2016 (Late)	
INCOME	Current		Cumulative
Wages	\$ 4,404		\$ 8,846
Tutoring	\$ 431		\$ 431
Child Support	\$ 100		\$ 100
Refunds	\$ 1,538		\$ 1,640
Gifts	\$ 0		\$ 300
	-----		-----
<b>Total</b>	\$ 6,473		\$ 11,317
<b>EXPENSES</b>	\$ (3,452)		\$ (5,363)
<b>PROFIT/(LOSS)</b>	\$ 3,021		\$ 5,954
<b>Specific Expenses</b>			
	Rent/Mortgage		
	Interest		
	Payroll		

**SUMMARY OF SCHEDULES**

Real Property Schedule A (Dckt. 11)	FMV	LIENS
Residence	\$370,000	(\$376,238)

<b>Personal Property Amended Schedule B (Dckt. 3)</b>	FMV	LIENS	
	\$24,018		

<b>Secured Claims Schedule D (Dckt. 11)</b>	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Green Tree Mortgage (Residence)	(\$188,782)	\$370,000	
Trojan Capital (2 <sup>nd</sup> , Residence)	(\$187,456)		
IRS (All Real and Personal)	(\$31,352)		
IRS (All Real and Personal)	(\$13,721)		

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
California FTB	(\$2,540)		

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	TOTAL CLAIM AMOUNT		
Total	(\$205,452)		
US SBA	(\$169,892)		

<b>INCOME, SCHEDULE I</b>		
Total Average Monthly Income		
Wages	\$5,422	
Deductions	(\$1,079)	

<b>EXPENSES, AMENDED SCHEDULE J (Dckt. 38)</b> Total Average Monthly Expenses		
One Adult, Two Minor Children	\$3,917	

**AMENDED STATEMENT OF FINANCIAL AFFAIRS (Dckt. 92)**

**Question 1 Income**

2015 YTD	\$27,524	
2014	\$50,406	
2013	\$43,577	

**Question 2 Non-Business Income**

2015 YTD	None	
2014	None	
2013	None	

**Question 3 Payments within 90 days**

Creditor	Amount	Date
	None	

**Payments within one year**

Creditor	Amount	Date
	None	

**Question 10 Other Transfers Within Two Years of Bankruptcy Filing**

Transferee	Amount	Date and Transfer
Justin Allen	50% of Debtor's CalSTRS retirement account. \$6,000	June 20, 2014 Default Judgment in Dissolution Action

16. [15-90470-E-7](#) SUSAN FISCOE  
[15-9056](#)  
FARRAR V. FISCOE

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

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

Notes:

Continued from 2/4/16. Defendant-Debtor may file an amended Schedule C on or before 2/16/16.

Debtor filed, in parent case, Amended Schedule C 2/15/16 [Dckt 59]

**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 Fiscoe, the Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer 1, 2, Dckt. 11

**FEBRUARY 15, 2016 AMENDED SCHEDULE C**

On February 15, 2016, Debtor filed an Amended Schedule C which asserts a \$75,000.00 exemption pursuant to California Code of Civil Procedure § 704.100(c), stating that the full value of the annuity is necessary for the support of the Debtor. 15-90470, Dckt. 59.

On March 10, 2016, the Trustee filed an objection to the Amended Schedule C. Dckt. 61. The main thrust of the objection to the exemption claimed in the annuity is that California Code of Civil Procedure § 704.100(c) applies to "life insurance policies, and the asset at issue is an annuity. Citing Estate of Short v. Payne (In re Payne), 323 B.R. 723, 728 (B.A.P. 9th Cir. 2005), for the proposition that annuities are not exempt under

March 17, 2016 at 2:00 p.m.

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18. [14-91084-E-7](#) DANNY LOTT STATUS CONFERENCE RE: COMPLAINT  
[16-9001](#) 1-4-16 [[1](#)]  
LOTT V. TIDEWATER FINANCE  
COMPANY

DISMISSED 3/10/16

Plaintiff's Atty: Shane Reich  
Defendant's Atty: unknown

Adv. Filed: 1/4/16  
Answer: none

Nature of Action:  
Recovery of money/property

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.

19. [15-90797-E-7](#) SERGIO/TIFFANIE MOLINA CONTINUED STATUS CONFERENCE RE:  
[15-9060](#) COMPLAINT  
MODESTO IRRIGATION DISTRICT V. 10-28-15 [[1](#)]  
MOLINA ET AL

Final Ruling: No appearance at the March 17, 2016 Status Conference is required.

-----  
Plaintiff's Atty: Pro Se  
Defendant's Atty: unknown  
Adv. Filed: 10/28/15  
Answer: none

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

The court having dismissed the Adversary Proceeding without prejudice, the Status Conference is removed from the calendar.

Notes:

Continued from 1/14/16

Order to Show Cause re lack of prosecution filed 1/19/16 [Dckt 10], set for hearing 3/17/16 at 2:00 p.m.

March 17, 2016 at 2:00 p.m.

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20. [15-90797-E-7](#) SERGIO/TIFFANIE MOLINA  
[15-9060](#)  
MODESTO IRRIGATION DISTRICT V.  
MOLINA ET AL

ORDER TO SHOW CAUSE  
1-19-16 [[10](#)]

**Final Ruling: No appearance at the March 17, 2016 hearing is required.**  
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The Order to Show Cause was served on January 19, 2016. Dckt. 11. Sixty-eight days notice of the hearing was given.

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

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

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

**The Order to Show Cause is sustained and the Adversary Proceeding is dismissed without prejudice.**

Notes:

**MARCH 17, 2016 HEARING**

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

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

This document not being a "complaint" and not having been signed by an attorney, the court issued show cause why this Adversary Proceeding should not be dismissed without prejudice.

The Order to Show Cause required any response or opposition to be in writing and filed on or before March 3, 2016. Order to Show Cause, Dckt. 10. No response or opposition to the Order to Show Cause has been filed.

This "complaint" would constitute the unlicensed practice of law by a non-attorney if this adversary proceeding were to proceed. The California State Bar does not show a Rebecca James at the Modesto Irrigation address as a licensed attorney in the state of California.

No appearance was made at the Status Conference for the "plaintiff," Modesto Irrigation District. Civil Minutes, Dckt. 9.

No written response or opposition to the Order to Show Cause has been filed.

Therefore, upon review of the Declaration of Rebecca James, Dckt. 1, the files in this Adversary Proceeding, and the lack of response to the order to show cause, this Adversary Proceeding is dismissed without prejudice.

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 Order to Show Cause for Modesto Irrigation District to respond in writing as to why this Adversary Proceeding should not be dismissed; Modesto Irrigation District not being represented by a licensed attorney in this Adversary Proceeding; Modesto Irrigation District not filing any response to the Order to Show Cause; and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained and the Adversary Proceeding is dismissed without prejudice.