

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 19, 2014 at 2:30 p.m.

1. [13-32601](#)-E-13 BRIAN/AMANDA ZIELKE STATUS CONFERENCE RE: COMPLAINT
[13-2395](#) 12-30-13 [[1](#)]
STERLING JEWELRY, INC. V.
ZIELKE ET AL
ADV. CASE DISMISSED 2/27/14

Plaintiff's Atty: Austin P. Nagel
Defendant's Atty: Diana J. Cavanaugh

Adv. Filed: 12/30/13

Answer: none

Nature of Action:

Dischargeability - willful and malicious injury

Final Ruling: The Adversary Proceeding having been dismissed without prejudice pursuant to the stipulation of the parties, **the Status Conference is removed from the calendar.** No appearance at the March 19, 2014 Status Conference is required.

Notes:

Stipulation Resolving Adversary Proceeding and for Dismissal of Adversary Proceeding filed 2/26/14 [Dckt 8]

March 19, 2014 at 2:30 p.m.

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2. [10-36505-E-13](#) DONNA VICKS
[14-2022](#)
MICHAEL VICKS, JR., SUCCESSOR
IN INTEREST TO DONNA V. WELLS

STATUS CONFERENCE RE: COMPLAINT
1-17-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 1/17/14
Answer: none

Final Ruling: The Default of the Defendant having been entered and the period of time for the Plaintiff to file and notice a motion for entry of default judgment not having expired, **the Status Conference is continued to 2:30 p.m. on May 28, 2012.** No appearance at the March 19, 2014 Status Conference is required.

Nature of Action:
Recovery of money/property - other
Dischargeability - other
Other - e.g. other actions that would have been brought in state court if unrelated to bankruptcy case

Notes:

Request for Entry of Default filed 3/12/14 [Dckt 7]

3. [10-43410-E-13](#) MARIANN BINGHAM
[14-2020](#)
BINGHAM V. OCWEN LOAN
SERVICING, LLC

STATUS CONFERENCE RE: COMPLAINT
1-17-14 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 1/17/14
Answer: none

Final Ruling: The Default of the Defendant having been entered and a motion for entry of default judgment having been filed and set for hearing, **the Status Conference is continued to 2:30 p.m. on May 28, 2012.** No appearance at the March 19, 2014 Status Conference is required.

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

Notes:

[DBJ-1] Motion for Default Judgment Including an Award of \$2,238.50 in Attorney Fees and Penalties filed 3/4/14 [Dckt 10], set for hearing 4/3/14 at 1:30 p.m.

Plaintiff's Status Conference Statement filed 3/4/14 [Dckt 15]

4. [12-35521](#)-E-13 CHRISTOPHER DEAN
[13-2289](#)
DEAN V. COLLEGE GREENS EAST
HOMEOWNER ET AL

STATUS CONFERENCE RE: COMPLAINT
9-12-13 [[1](#)]

**NO APPEARANCE OF THE PARTIES IS REQUIRED.
IF NO APPEARANCE IS MADE THE COURT WILL CONTINUE THE
STATUS CONFERENCE TO 3:00 P.M. ON APRIL 29, 2014,
TO BE CONDUCTED IN CONJUNCTION WITH THE MOTION TO APPROVE
SETTLEMENT WITH COLLEGE GREENS EAST HOMEOWNERS ASSOCIATION AND
EUGENE BURGER MANAGEMENT CORP. AND THE CONFIRMATION OF THE
PLAINTIFF-DEBTOR'S PLAN.**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty:
Joshua B. Clark [College Greens East Homeowner; Eugene Burger Management Corp.]
Brian A. Paino [Cenlar F.S.B.; San Francisco Fire Credit Union]

Adv. Filed: 9/12/13
Answer: none

Nature of Action:
Other - e.g. other actions that would have been brought in state court if unrelated to bankruptcy case
Declaratory judgment

Tentative Ruling: The Status Conference is continued to April 29, 2014 at 3:00 p.m. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Notes:

Continued from 11/13/13 to be heard in conjunction with motion to dismiss [Dckt 45]

[PD-1] Motion for Discretionary Abstention or, in the Alternative, to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted [Defendants: Cenlar FSB and San Francisco Fire Credit Union] filed 10/15/13 [Dckt 13]; Amended Order granting in part and denying in part filed 12/13/13 [Dckt 48]

[SC-1] Notice of Motion to Dismiss [Defendants: College Greens East Homeowners Assoc. and Eugene Burger Management Corp.] filed 10/21/13 [Dckt 20]

[PGM-1] Plaintiff's Motion for Leave to File First Amended Complaint filed 3/3/14 [Dckt 51], set for hearing 4/1/14 at 3:00 p.m.

Plaintiff's Status Statement filed 3/10/14 [Dckt 58]

5. [12-35521](#)-E-13 CHRISTOPHER DEAN
[13-2289](#) SC-1
DEAN V. COLLEGE GREENS EAST
HOMEOWNER ET AL

CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING
10-21-13 [[20](#)]

CONT. FROM 12-4-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-Plaintiff and Debtor-Plaintiff's Attorney on October 21, 2013. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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).

The court's decision is to continue the hearing on the Motion to Dismiss Adversary Proceeding to 3:00 p.m. on April 29, 2014, to be heard in conjunction with the motion to approve the stipulation with Movant. No appearance at the March 19, 2014 hearing is required.

PRIOR HEARING

Defendants College Greens East Homeowner's Association, Inc. and Eugene Burger Management Corporation move for an order dismissing the adversary complaint filed September 12, 2013 by Plaintiff Christopher D. Dean for failure to state a claim upon which relief may be granted.

Debtor-Plaintiff filed a reply to the Motion to Dismiss stating that both parties have agreed to a dismissal of this case, with certain conditions. Debtor-Plaintiff requests that the Motion to Dismiss be continued so the parties can prepare and file the stipulation.

On November 27, 2013, the parties filed the Notice of Pending Settlement and Stipulation Continuing Motion to Dismiss. The Stipulation agrees to a ninety day continuance of the Motion to Dismiss.

Based on the Debtor-Plaintiff reply, the court continued the hearing to afford the Plaintiff-Debtor the opportunity to consummate the reported settlement in this Adversary Proceeding and prosecute his Chapter 13 Plan, as well as determine if an amended complaint should be filed. See Civil Minutes from December 4, 2013 hearing on motion to dismiss filed by Cenlar FSB and San Francisco Fire Credit Union, DCN: PD-1.

PLAINTIFF'S RESPONSE

Plaintiff filed a response on March 3, 2014, stating that both parties have agreed to dismissal of this case as to Defendants College Greens East Homeowners Association and Eugene Burger Management Corporation, as reflected in the Motion to Compromise set in the bankruptcy case on March 11, 2014. The Motion was continued to April 29, 2014, to be heard in conjunction with the Motion to Confirm.

6. [11-21422-E-13](#) [13-2300](#) SHMAVON MNATSAKANYAN AND YERMONIYA ARTUSHYAN MNATSAKANYAN ET AL V. BAC HOME LOANS SERVICING, LP ET AL CONTINUED STATUS CONFERENCE RE: COMPLAINT 9-25-13 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty:
Bernard J. Kornberg [Green Tree Servicing, LLC]
unknown [BAC Home Loans Servicing, LP]

Adv. Filed: 9/25/13
Answer: none

Nature of Action:
Declaratory judgment

Final Ruling: The parties having notified the court that they are in the process of resolving this dispute through the bankruptcy case and Bank of America, N.A. having dismissed without prejudice its motion to dismiss the Complaint, **the Status Conference is continued to 2:30 p.m. on May 28, 2014.** No appearance at the March 19, 2014 Status Conference is required.

Notes:

Continued from 12/4/13 by request of the parties to allow the parties to continue in their efforts to resolve the dispute.

Plaintiffs' Status Conference Statement filed 3/10/14 [Dckt 37]

[SW-1] Green Tree Servicing LLC's Motion to Dismiss Adversary Proceeding filed 10/25/13 [Dckt 8], third amended notice set for hearing 4/24/14 at 1:30 p.m.

[SYK-1] Motion to Dismiss Adversary Complaint of Plaintiffs Shmavon Mnatsakanyan and Yermoniya Artushyan filed 2/21/14 [Dckt 29], set for hearing 4/24/14 at 1:30 p.m.; Defendant's Notice of Withdrawal of Motion to Dismiss filed 2/28/14 [Dckt 35]

7. [10-53637-E-13](#) G./KATHLEEN ULBERG
[11-2122](#)
ULBERG, JR. ET AL V. BANK OF
AMERICA, N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-22-11 [[1](#)]

Plaintiffs' Atty: John G. Downing

Defendants' Atty:
Adam N. Barasch [Bank of America, N.A.]
Scott A. CoBen [Pacific Crest Partners, Inc.; John Mudgett]
unknown [Recontrust Company, N.A.]

Adv. Filed: 2/22/11
Amd Cmplt Filed: 3/15/11

Answer: 5/10/11 [Pacific Crest Partners, Inc.; John Mudgett]
Counterclaim: 5/10/11

Nature of Action:
Recovery of money/property - other
Injunctive relief - other
Declaratory judgment

Notes:

Continued from 1/8/14

The court submitted proposed findings of fact and conclusions of law to the United States District Court for the Defendants Bank of America, N.A. and Recontrust. 28 U.S.C. § 157(c)(1), not all parties having consented to the bankruptcy judge entering the final orders and judgment in this Adversary Proceeding. The proposed findings and conclusions are to grant the motion and enter judgment for these Defendants on all claims.

Order Adopting the Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law filed 2/10/14 [Dist Crt] [Dckt 214]

Judgment in a Civil Case filed 2/10/14 [Dist Crt] [Dckt 213] for Bank of America, N.A. only.

8. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2342](#)
EDMONDS V. MATHFALLU ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-31-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: Pro Se

Adv. Filed: 10/31/13
Answer: 2/11/14

Nature of Action:
Recovery of money/property - other

Notes:

Continued from 1/8/14, the Defendants having been granted a reasonable extension of time to file an answer.

Answer filed 2/11/14 [Dckt 11]

SUMMARY OF COMPLAINT

The Complaint seeks to recover avoidable transfers pursuant to 11 U.S.C. §§ 362, 549, 550. It is alleged as the First Cause of Action that while the Debtor was serving as the Chapter 11 Debtor in Possession prior to the conversion of this case \$166,270.00 (final amount subject to proof) was transferred by the then Debtor in Possession to Amar Mathfallu. Such transfer was not authorized by the court or permitted by the Bankruptcy Code. Avoidance of this transfer is sought pursuant to 11 U.S.C. § 549.

In the Second Cause of Action it is alleged that Ashwindar Kaur, the Debtor is the immediate or mediate transferee from Amar Mathfallu. The Trustee seeks recovery from both Amar Mathfallu and Ashwindar Kaur.

The Third Cause of Action alleges a violation of the automatic stay by the transfer of the \$166,270.00 of property of the estate to Amar Mathfallu. It is alleged that any such transfer is void and that Ashwindar Kaur breached her duties as the Debtor in Possession in so transferring the monies. The Plaintiff-Trustee seeks to have Ashwindar Kaur held in civil contempt, with the Plaintiff-Trustee awarded damages, costs, and attorneys' fees.

SUMMARY OF ANSWER

Amar Mathfallu and Ashwindar Kaur, appearing in pro se, have filed answer. These Defendants admit the following allegations:

- a. Defendant Amar Mathfallu is an individual doing business as Amar's Lawn & Garden. Answer ¶ 1.
- b. Defendant Ashwindar Kaur is an individual. *Id.*
- c. The assets of the bankruptcy estate include a 50% joint tenancy interest in the Willow Lakes Apartment Complex.

d. Answindar Kaur, as the Debtor in Possession established a debtor in possession bank account at Bank of the West (XXX-XX0970).

The Defendants deny all other allegations, based on the lack of information, all other allegations in the Complaint. This includes denying the federal court jurisdiction and core proceeding allegations in Paragraphs 1-3 of the complaint.

In addition to pleading whether basic federal court jurisdiction exists or does not exist, Federal Rule of Bankruptcy Procedure 7012(b) imposes an affirmative duty on defendants to expressly plead whether the adversary proceeding is a core proceeding and whether the parties consent or non-consent to determination of non-core matters by the bankruptcy judge.

7012(b):

(b) Applicability of Rule 12(b)-(i) F. R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

The Defendants also plead Nine Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In there answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and thereon deny. Answer ¶¶ 2, Dckt. 11.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property of the bankruptcy estate transferred post-petition by the then Debtor in Possession. The Complaint also seeks to have the Debtor held in contempt and civil sanctions awarded for violating the duties and obligations arising under 11 U.S.C. § 1107.

To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

e. The Plaintiff alleges that jurisdiction exists for this

Adversary Proceeding 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)(H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In their answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and thereon deny. Answer ¶¶ 2, Dckt. 11.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property of the bankruptcy estate transferred post-petition by the then Debtor in Possession. The Complaint also seeks to have the Debtor held in contempt and civil sanctions awarded for violating the duties and obligations arising under 11 U.S.C. § 1107.

To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

- f. Initial Disclosures shall be made on or before -----, 2014.
- g. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- h. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- i. Dispositive Motions shall be heard before -----, 2014.
- j. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

9. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2343](#)
EDMONDS V. KAUR ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-1-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: Pro Se

Adv. Filed: 11/1/13
Answer: none

Nature of Action:
Recovery of money/property - other

Notes:

Continued from 1/8/14 to afford the Plaintiff the time to locate the new address for the Defendants.

Answer filed 2/11/14 [Dckt 11]

SUMMARY OF COMPLAINT

The Complaint seeks to recover avoidable transfers pursuant to 11 U.S.C. §§ 362, 549, 550. It is alleged as the First Cause of Action that while the Debtor was serving as the Chapter 11 Debtor in Possession prior to the conversion of this case \$10,000.00 (final amount subject to proof) was transferred by the then Debtor in Possession to Kndar Jeet Kaur, into a bank account for which the Debtor was also a signatory. Such transfer was not authorized by the court or permitted by the Bankruptcy Code. Avoidance of this transfer is sought pursuant to 11 U.S.C. § 549.

In the Second Cause of Action it is alleged that Ashwindar Kaur, the Debtor and Indar Jeet Kaur are the initial, immediate or mediate transferee from the Debtor in Possession. Recovery is requested pursuant to 11 U.S.C. § 550.

The Third Cause of Action alleges a violation of the automatic stay by the transfer of the \$10,000.00 of property of the estate to Indar Jeet Kaur and the Debtor. It is alleged that any such transfer is void and that Ashwindar Kaur breached her duties as the Debtor in Possession in so transferring the monies. The Plaintiff-Trustee seeks to have Ashwindar Kaur held in civil contempt, with the Plaintiff-Trustee awarded damages, costs, and attorneys' fees.

SUMMARY OF ANSWER

Indar Jeet Kaur and Ashwindar Kaur, appearing in pro se, have filed answer. These Defendants admit the following allegations:

- a. Defendant Ashwindar Kaur is an individual. Answer ¶ 1.
- b. Indar Jeet Kaur is the mother of the Defendant Debtor Ashwindar Kaur.
- c. The assets of the bankruptcy estate include a 50% joint tenancy interest in the Willow Lakes Apartment Complex.

The Defendants deny all other allegations, based on the lack of information, all other allegations in the Complaint. This includes denying the federal court jurisdiction and core proceeding allegations in Paragraphs 1-3 of the complaint.

In addition to pleading whether basic federal court jurisdiction exists or does not exist, Federal Rule of Bankruptcy Procedure 7012(b) imposes an affirmative duty on defendants to expressly plead whether the adversary proceeding is a core proceeding and whether the parties consent or non-consent to determination of non-core matters by the bankruptcy judge.

7012(b) :

(b) Applicability of Rule 12(b)-(i) F. R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

The Defendants also plead Nine Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In there answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and thereon deny. Answer ¶¶ 2, Dckt. 11.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property of the bankruptcy estate transferred post-petition by the then Debtor in Possession. The Complaint also seeks to have the Debtor held in contempt and civil sanctions awarded for violating the duties and obligations arising under 11 U.S.C. § 1107.

To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

A. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding 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)(H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In there answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and

thereon deny. Answer ¶¶ 2, Dckt. 11.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property of the bankruptcy estate transferred post-petition by the then Debtor in Possession. The Complaint also seeks to have the Debtor held in contempt and civil sanctions awarded for violating the duties and obligations arising under 11 U.S.C. § 1107.

To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

B. Initial Disclosures shall be made on or before -----, 2014.

C. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

D. Discovery closes, including the hearing of all discovery motions, on -----, 2014.

E. Dispositive Motions shall be heard before -----, 2014.

F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

10. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2344](#)
EDMONDS V. SINGH

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-1-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: Pro Se

Adv. Filed: 11/1/13
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - other

Notes:

Continued from 1/8/14 to afford the Plaintiff the time to locate the new address for the Defendants.

Answer filed 2/11/14 [Dckt 14]

SUMMARY OF COMPLAINT

The Complaint seeks to recover avoidable transfers pursuant to 11 U.S.C. §§ 547, 548, 550. It is alleged as the First Cause of Action that Ashwindar Kaur, the Debtor ("Debtor") transferred property (cash) with a value of \$70,007.50 (subject to proof) to Defendant. This was made within 90 days of the commencement of the bankruptcy case by the Debtor. It is alleged that this constituted a preference and is avoidable pursuant to 11 U.S.C. § 547.

In the Second Cause of Action it is alleged that the Debtor made a fraudulent conveyance to Bhanjith Singh in the amount of \$70,007.50 (subject to proof) within two years of the commencement of the bankruptcy case by the Debtor. It is asserted that this transfer may be avoided pursuant to 11 U.S.C. § 548. Ashwindar Kaur, the Debtor and Indar Jeet Kaur are the initial, immediate or mediate transferee from the Debtor in Possession.

The Third Cause of Action alleges a that Bhanjett Singh is the initial, immediate or mediate transferee of a voidable transfer. Recovery of the \$70,007.50 (subject to proof) transfer or the value thereon is requested pursuant to 11 U.S.C. § 550. violation of the automatic stay by the transfer of the \$10,000.00 of property of the estate to Indar Jeet Kaur and the Debtor. It is alleged that any such transfer is void and that Ashwindar Kaur breached her duties as the Debtor in Possession in so transferring the monies. The Plaintiff-Trustee seeks to have Ashwindar Kaur held in civil contempt, with the Plaintiff-Trustee awarded damages, costs, and attorneys' fees.

SUMMARY OF ANSWER

Bhanjith Singh, appearing in pro se, has filed an answer. The Defendants denies all allegations based on a lack of information. This includes denying the federal court jurisdiction and core proceeding allegations in Paragraphs 1-3 of the complaint.

In addition to pleading whether basic federal court jurisdiction exists or does not exist, Federal Rule of Bankruptcy Procedure 7012(b) imposes an affirmative duty on defendants to expressly plead whether the adversary proceeding is a core proceeding and whether the parties consent or non-consent to determination of non-core matters by the bankruptcy judge.

7012(b) :

(b) Applicability of Rule 12(b)-(i) F. R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

The Defendants also plead Nine Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In there answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and thereon deny. Answer ¶ 1, Dckt. 14.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property transferred pre-petition by the Debtor as a preference and as a fraudulent conveyance.

To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding 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)(H). Complaint ¶¶ 1, 2, 3, Dckt. 1. In there answer the Plaintiffs do not admit or deny the allegations of jurisdiction and core proceeding, but state that they lack information to respond and thereon deny. Answer ¶¶ 2, Dckt. 11.

The Complaint states statutory and Constitutionally core matters arising under the Bankruptcy Code and in the bankruptcy case. The Complaint seeks recovery of or the value of property of the bankruptcy estate transferred post-petition by the then Debtor in Possession. The Complaint also seeks to have the Debtor held in contempt and civil sanctions awarded for violating the duties and obligations

March 19, 2014 at 2:30 p.m.

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arising under 11 U.S.C. § 1107.

To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before -----, 2014.

c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.

e. Dispositive Motions shall be heard before -----, 2014.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

11. [10-45051-E-13](#) RONALD/JUANITA TYESKEY
[13-2352](#)
TYESKEY ET AL V. JPMORGAN
CHASE BANK N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-6-13 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Joseph V. Quattrocchi

Adv. Filed: 11/6/13
Summons Reissued: 12/18/13

Answer: 1/31/14

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

Notes:

Continued from 1/8/14. If the Plaintiffs fail to file, on or before February 1, 2014, a certificate of service documenting that the Reissued Summons and the Complaint were served on the Defendant on or before January 31, 2014, this Adversary Proceeding shall be dismissed without prejudice. If the then current Reissued Summons and Complaint have not been timely served by January 31, 2014, this Adversary Proceeding shall be dismissed without prejudice.

Certificate of service documenting service of Reissued Summons and Complaint filed 1/8/14 [Dckt 11]

Stipulation to Extend Defendant's Time to Respond to Complaint filed 1/15/14 [Dckt 16]; Order granting filed 1/22/14 [Dckt 18]

Answer filed 1/31/14 [Dckt 19]

Joint Status Conference Report - Discovery Plan filed 3/11/14 [Dckt 21]

JANUARY 8, 2014 STATUS CONFERENCE

Plaintiffs' Status Conference Statement notifies the court that it has been determined that the original summons and complaint were not properly served. On December 18, 2013, a Reissued Summons was obtained, with proper service having been made on December 19, 2013. No certificate of service has been filed relating to the Reissued Summons.

Plaintiffs also report that on January 3, 2014, counsel for Plaintiffs was contacted by an attorney for Defendant JPMorgan Chase Bank, N.A. In the course of that conversation the parties discussed being able to resolve the reconveyance on the Deed of Trust without having to pursue further litigation. Plaintiffs request that the Status Conference be continued to allow the parties to address these issues and possible settlement.

In light of this adversary proceeding relating to the lien of the defendant in light of the Chapter 13 Plan having been completed, the court will grant Plaintiffs' request. Though Plaintiffs have not shown that they timely and properly served the Reissued summons and the complaint, they have

completed their Chapter 13 Plan. In light of the holidays in December, such a filing error is not inexcusable.

The court continues the status conference to 2:30 p.m. on March 19, 2014. However, this Adversary Proceeding must be diligently prosecuted. As a condition of continuing the hearing. On or before February 1, 2014, the Plaintiffs shall file proof that a Reissued Summons and the Complaint were served on the Defendant on or before January 31, 2014. If such certificate of service is not timely filed or the Reissued Summons and Complaint not timely served, this Adversary Proceeding shall be dismissed without prejudice, without further notice or hearing.

MARCH 19, 2013 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Plaintiff Debtors have filed a Complaint to clear title to real property with respect to a second deed of trust which was provided for in their Chapter 13 Plan. That claim was valued by the court to be a \$0.00 secured claim. The Fourth Cause of Action asserts a claim under the Rosenthal Fair Debt Collection Practices Act. The Complaint asserts that the Defendant is attempting to collect a debt which the Plaintiff-Debtors do not have a legal obligation to pay.

The Fifth Cause of Action asserts a claim arising under the California Constitution Article 1, Section 1 right of privacy. The Sixth Cause of Action asserts a claim under California Civil Code § 2941(d) for failure to reconvey a deed of trust when there is no underlying obligation for it to secure. The Seventh Cause of Action alleges a violation of the Federal Fair Credit Reporting Act for continuing to report "derogatory information."

SUMMARY OF ANSWER

JPMorgan Chase Bank, N.A. has filed an answer in which it specifically admits and denies allegations in the complaint.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), Complaint ¶¶ 1, 2, Dckt. 1. Plaintiff-Debtors assert that Defendant has a claim, as defined 11 U.S.C. § 101(5) in their Chapter 13 bankruptcy case, which claim is the subject of this Adversary Proceeding. That claim is Proof of Claim No. 4 filed in the Plaintiff-Debtors' bankruptcy case. 10-45051, Clerk of the Court Official Registry of Claims.

In its answer, JPMorgan Chase Bank, N.A. admits that the Adversary Proceeding was commenced in connection with the Plaintiff-Debtors' bankruptcy case. It is also asserted that the allegations of federal court jurisdiction are "conclusions of law to which no answer is required." Answer ¶ 1, Dckt. 19.

JPMorgan Chase Bank, N.A. admits that it has a claim against the Plaintiff-Debtors in their bankruptcy case and that the First (Ratification of Valuation of Security), Second (Determination of the Extent of Second

Trust Deed Claim), and Third (Extinguishment of the Second Deed of Trust Claim) Causes of Action are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Answer ¶ 2.

JPMorgan Chase Bank, N.A. further pleads that the Fourth (Rosenthal Fair Debt Collection Practices Act), Fifth (California Constitutional Right to Privacy), and Sixth (Federal Fair Credit Reporting Act) Causes of Action are not core proceedings and does not consent to the bankruptcy judge issuing final orders and the judgment on those causes of action. *Id.*

The Answer pleads three affirmative defenses, which include the reasonable policies and procedures defenses under the Rosenthal Fair Debt Collection Practices Act and the Federal Fair Credit Reporting Act.

The bankruptcy court shall proceed to adjudicate the claims stated in the First, Second, and Third Causes of Action as statutory and Constitutional core matters before this court. The bankruptcy judge shall issue all final orders and judgment on those three causes of action, as they are currently pleaded. 28 U.S.C. § 157(b)(1) and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. If these causes of action are amended, the Defendant may address any core or non-core issues which arise if the First, Second, or Third Causes of Action are amended. To the extent that any issues in the First, Second, or Third Causes of Action is Adversary Proceeding, as they are currently pleaded, are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

For the Fourth, Fifth, and Sixth Causes of Action, the court shall conduct proceedings thereon as related to, non-core matters for which the final orders and judgment shall be issued by the District Court judge. 28 U.S.C. § 157(c)(1).

If either or both parties believe that the adjudication of all matters in this Adversary Proceeding should be heard before the United States District Court judge, a motion to withdraw the reference shall be filed on or before May 15, 2014.

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

a. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), Complaint ¶¶ 1, 2, Dckt. 1. Plaintiff-Debtors assert that Defendant has a claim, as defined 11 U.S.C. § 101(5) in their Chapter 13 bankruptcy case, which claim is the subject of this Adversary Proceeding. That claim is Proof of Claim No. 4 filed in the Plaintiff-Debtors' bankruptcy case. 10-45051, Clerk of the Court Official Registry of Claims.

In its answer, JPMorgan Chase Bank, N.A. admits that the Adversary Proceeding was commenced in connection with the Plaintiff-Debtors' bankruptcy case. Answer ¶ 1, Dckt.

19.

JPMorgan Chase Bank, N.A. admits that it has a claim against the Plaintiff-Debtors in their bankruptcy case and that the First (Ratification of Valuation of Security), Second (Determination of the Extent of Second Trust Deed Claim), and Third (Extinguishment of the Second Deed of Trust Claim) Causes of Action are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Answer ¶ 2.

JPMorgan Chase Bank, N.A. pleads that the Fourth (Rosenthal Fair Debt Collection Practices Act), Fifth (California Constitutional Right to Privacy), and Sixth (Federal Fair Credit Reporting Act) Causes of Action are not core proceedings and does not consent to the bankruptcy judge issuing final orders and the judgment on those causes of action. *Id.*

The First, Second, and Third Causes of Action as statutory and Constitutional core matters before this court. The bankruptcy judge shall issue all final orders and judgment on those three causes of action, as they are currently pleaded. 28 U.S.C. § 157(b)(1) and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. If these causes of action are amended, the Defendant may address any core or non-core issues which arise if the First, Second, or Third Causes of Action are amended. To the extent that any issues in the First, Second, or Third Causes of Action is Adversary Proceeding, as they are currently pleaded, are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The Fourth, Fifth, and Sixth Causes of Action are deemed to be related to, non-core matters for which the final orders and judgment shall be issued by the District Court judge. 28 U.S.C. § 157(c)(1).

- b. Initial Disclosures shall be made on or before -----, 2014.
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

12. [10-30359-E-13](#) ELIZABETH LUCHINI
[13-2321](#)
LUCHINI V. JPMORGAN CHASE BANK
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-21-13 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 10/21/13
Answer: none

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

Final Ruling: The default of the Defendant having been entered an a Motion
for Entry of Default Judgment filed, **the Status Conference is continued to
2:30 p.m. on May 28, 2014.** No appearance at the March 19, 2014 Status
Conference is required.

Notes:

Continued from 1/8/14

[PLC-3] Motion for Default Judgment filed 3/10/14 [Dckt 21], set for hearing
4/24/14 at 1:30 p.m.

13. [09-46360-E-13](#) MARGUERITE GALVEZ
[13-2313](#)
GALVEZ V. WELLS FARGO BANK,
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-9-13 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: David M. Newman; Matthew J. Pero

Adv. Filed: 10/9/13
Answer: 1/6/14

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

Notes:

Continued from 3/4/14

SUMMARY OF COMPLAINT

Plaintiff Debtors have filed a Complaint to clear title to real property with respect to a second deed of trust which was provided for in their Chapter 13 Plan. That claim was valued by the court to be a \$0.00 secured claim. The Fourth Cause of Action asserts a claim under the Rosenthal Fair Debt Collection Practices Act. The Complaint asserts that the Defendant is attempting to collect a debt which the Plaintiff-Debtors do not have a legal obligation to pay.

The Fifth Cause of Action asserts a claim arising under the California Constitution Article 1, Section 1 right of privacy. The Sixth Cause of Action asserts a claim under California Civil Code § 2941(d) for failure to reconvey a deed of trust when there is no underlying obligation for it to secure. The Seventh Cause of Action alleges a violation of the Federal Fair Credit Reporting Act for continuing to report "derogatory information."

SUMMARY OF ANSWER

In the Answer, Wells Fargo Bank, N.A. denies most of the allegations, including federal court jurisdiction and core matter allegations based on lack of information or belief, legal conclusions, or affirmatively denied.

Federal Rule of Bankruptcy Procedure 7012(b) does not permit a defendant to "pass" on addressing whether the proceedings are core or non-core.

Federal Rule of Bankruptcy Procedure 7012

(b) Applicability of Rule 12(b)-(i) F. R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core

proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

The Answer states eleven Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer Wells Fargo Bank, N.A. did not address the core, non-core pleadings requirements of Federal Rule of Bankruptcy Procedure 7012(b). Answer ¶¶ 1, 2, Dckt. 21. At the hearing, Wells Fargo Bank, N.A. stated **XXXXXXXXXXXXXXXXXXXXXXXXXX**. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

- a. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer Wells Fargo Bank, N.A. did not address the core, non-core pleadings requirements of Federal Rule of Bankruptcy Procedure 7012(b). Answer ¶¶ 1, 2, Dckt. 21. At the hearing, Wells Fargo Bank, N.A. stated **XXXXXXXXXXXXXXXXXXXXXXXXXX**. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before -----, **2014**.
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

14. [10-35270-E-13](#) DOROTHY HOCKING CONTINUED STATUS CONFERENCE RE:
[13-2325](#) COMPLAINT
HOCKING V. CITIFINANCIAL SERVICES, INC. 10-22-13 [[1](#)]
ADV. CASE DISMISSED 3/3/14

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 10/22/13
Answer: none

Final Ruling: The Adversary Proceeding having been Dismissed, **the Status Conference is removed from the calendar.** No appearance at the March 19, 2014 Status Conference is required.

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

Notes:

Continued from 1/8/14. Plaintiff reported that the adversary proceeding had been settled.

Notice of Dismissal of Plaintiff's Adversary Proceeding filed 3/3/14 [Dckt 12]

15. [11-37074-E-13](#) TIMOTHY/LUANN HAWKINS STATUS CONFERENCE RE: COMPLAINT
[14-2021](#) 1-17-14 [[1](#)]
HAWKINS ET AL V. NAVY FEDERAL CREDIT UNION

Plaintiff's Atty: Scott A. CoBen
Defendant's Atty: unknown

Adv. Filed: 1/17/14
Answer: none

Final Ruling: The Adversary Proceeding having been Dismissed, **the Status Conference is removed from the calendar.** No appearance at the March 19, 2014 Status Conference is required.

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

Notes:

Notice Dismissing Adversary filed 3/7/14 [Dckt 10]

16. [08-24574-E-13](#) EARL/CATHERINE BROWN STATUS CONFERENCE RE: COMPLAINT

BROWN ET AL V. CHASE HOME
FINANCE, LLC

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 1/22/14
Answer: none

Final Ruling: No Answer having been filed and the Plaintiff stating in the status report that a "safe harbor" notice has been sent before requesting the entry of a default, **the Status Conference is continued to 2:30 p.m. on April 16, 2014.**

If no answer or other responsive pleading has been filed, if the entry of default has not been requested by March 28, 2014, or the Motion for Entry of Default Judgment has not been filed by the April 19, 2014 continued hearing, the court shall dismiss the Complaint without prejudice for failure of Plaintiff to prosecute the Adversary

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

Notes:

Plaintiff's Status Statement filed 3/12/14 [Dckt 8]

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 Status Conference in this Adversary Proceeding having been scheduled, no Answer having been filed, the Plaintiff having sent a "safe harbor" letter to the Defendants, no request for entry of default having been filed, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:30 p.m. on April 16, 2014.

IT IS FURTHER ORDERED that if no answer or other responsive pleading has been filed, if the entry of default has not been requested by March 28, 2014, or the Motion for Entry of Default Judgment has not been filed by the April 19, 2014 continued hearing, the court shall dismiss the Complaint without prejudice for failure of Plaintiff to prosecute the Adversary Proceeding. if no answer or other responsive pleading filed by the April 19, 2014 continued hearing, the court shall dismiss the Complaint without prejudice for failure of Plaintiff to prosecute the Adversary Proceeding.

17. [10-23577-E-11](#) GLORIA FREEMAN
GMF-20 Pro Se

DEBTOR'S COUNTER MOTION FOR AN
ORDER DIRECTING TRUSTEE TO; (A)
CLAIM FOR AN ADMINISTRATIVE
EXPENSE REIMBURSEMENT FOR
AMOUNTS EXPENDED FOR THE
BENEFIT OF THE BANKRUPTCY
ESTATE; (B) RETURN OF DEBTOR
IRA FUNDS; (C) OFFSET VS. THE
TAX REFUND
3-5-14 [[1368](#)]

Local Rule 9014-1(i) Motion.

Correct Notice Provided. The Proof of Service states that the Counter Motion and supporting pleadings were served on the Plan Administrator, all creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Counter Motion for an Order Directing the Trustee to Claim a Administrative Expense Reimbursement for Amounts Expended for the Benefit of the Bankruptcy Estate; Return Debtor's IRA Funds; and Offset the Tax Refund was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(i). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Counter Motion. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Gloria Freeman ("Debtor") moves for an order directing the Chapter 11 Trustee, now the Plan Administrator, to claim an administrative expense reimbursement for amounts expended for the benefit of the bankruptcy estate; return Debtor's IRA funds and offset the tax refund.

PROCEDURAL ISSUES

First, Local Bankruptcy Rule 9014-1(i) allows a countermotion or other motion "related to the general subject matter of the original motion set for hearing pursuant to this Local Rule" may be filed. The motion does not reference the "original motion" to which it is countering. The court presumes since the counter motion was filed and set to be heard with the Plan Administrator's pending Objection to Exemption, that is the "original motion" to which Debtor wishes to counter. However, in addition to the other issues laid out below, the requested relief does not "relate to" the Plan Administrator's Objection to Exemption (the only issue being the tax refund). Debtor appears to be requesting an administrative expense, return of funds and an offset, none of which appear to relate to the original Objection to Exemption. Therefore, Local Bankruptcy Rule does not appear to apply to the requested relief. This is sufficient to deny the counter motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Motion seeks to have the court allow an administrative expense, return the Debtor's IRA funds and offset a tax refund. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join several different types of relief in one motion.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

Notwithstanding the procedural issues, the court denies the counter motion for the following substantive issues.

COUNTER MOTION

The Motion appears to be a request for an administrative expense. Debtor alleges that she paid the following administrative expenses in order to preserve the bankruptcy estate:

1. September 2011 Debtor paid **\$9,900** to Staff USA, Inc. for maintenance expenses by employees of Staff USA at the Moss Lane Property (Mr. Freeman's separate property residence); these were to ensure that all payroll taxes were paid off by Staff USA.
2. June 1011, Debtor paid **\$4,212.89** to the Franchise Tax Board for taxes for Laurence Freeman for the 2009 year (unstated what the taxes were regarding). Debtor states that Mr.

Freeman had paid the taxes, but the estate of Gloria Freeman filed first and took all the tax payments that he had made.

3. Debtor paid (no date stated) **\$907.52** to Wells Fargo for two secured loans on the Moss Lane Property and \$248.17 to PGE for electricity on the same property.
4. Debtor paid Stephen Berniker in 2011 two checks totaling **\$3,354.50** (for unstated work for an unstated period of time).

Motion, Dckt. 1368.

Debtor states several other "facts" that do not appear relevant to the request (allegations against the Plan Administrator, references to the Settlement Agreement from an adversary proceeding, emails regarding the tax refund, etc.) or that request any specific relief, but concludes that the court should allow as an administrative expense for the maximum amount of **\$15,555.69 plus \$3,354.50** for attorneys fees (allegedly given to Mr. Berniker) and **\$2,299.97** for property Debtor's IRA that was taken from her account ending in 32877.

DISCUSSION

11 U.S.C. § 503 of the Bankruptcy Code provides for the "allowance" of administrative expenses. Section 503(b)(1)(A) allows as administrative expenses "the actual, necessary costs and expenses of preserving the estate." The burden of proving an administrative expense is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091 (9th Cir. 1995). The claimant must show that the debt asserted to be an administrative expense (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity; and (2) directly and substantially benefitted the estate. *Id.* In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," § 503(1)(A), are construed narrowly. *In re Palau*, 139 Bankr. 942, 944 (9th Cir. B.A.P 1992), *aff'd*, 18 F.3d 746 (9th Cir. 1994).

Expenses for Home Occupied by Gloria Freeman

Here, Debtor has not met her burden showing that the requested administrative expenses directly and substantially benefitted the estate of Gloria Freeman or were necessary to preserve the estate of Gloria Freeman. First, the taxes allegedly paid in 2011 to Staff USA, Inc. for "maintenance expenses by employees of Staff USA at the Moss Lane Property in Granite Bay, CA" to "ensure all payroll taxes were paid by Staff USA" does not appear to directly or substantially benefit the estate of Gloria Freeman. FN.1. Further this "expense" does not appear to be necessary to preserve the estate of Gloria Freeman. It may have benefitted the Estate of Staff USA, Inc. and possibly Laurence Freeman, but no facts have been alleged or evidence presented that it directly benefitted the estate of Gloria Freeman.

FN.1. The court is also concerned that Debtor, a fiduciary of the estate of Gloria Freeman, was paying Staff USA (also in bankruptcy) for expenses unrelated to the bankruptcy case.

While serving as Debtor in Possession and then after the appointment of the Chapter 11 Trustee, Gloria Freeman continued to live in and occupy the 5135 Moss Lane Property as her personal residence. This has continued after Laurence Freeman and the Chapter 11 Trustee reached a settlement by which that property was determined to be the sole and separate property of Laurence Freeman (the Chapter 11 Trustee transferring all interests of the estate, asserted to be community property, to Laurence Freeman). These "maintenance expenses" are not specified, but merely a lump sum which Gloria Freeman testifies that she paid to the related entity which she controlled. Further, "maintenance expenses" sound in the nature of the normal expenses provided for the use, wear, and tear caused by a person using property. For expenses such as Pacific Gas and Electric, the Debtor was using and consuming that gas and electricity for her comfort and to maintain her lifestyle.

Earlier in this case a dispute existed between the Trustee and Debtor for possession of the Moss Lane Property. The Debtor asserted the right to occupy and use the Property. At one point the court faced having to order the Debtor to vacate the Property and turn it over to the Trustee so that it could be marketed and sold. That ended up not being necessary because of the Settlement Laurence Freeman reached with the Trustee to have the Moss Lane Property determined to be Laurence Freeman's separate property.

As Debtor in Possession and Debtor Gloria Freeman did not pay the estate rent or otherwise compensate the estate for the use of the 5135 Moss Lane Home, the estate was not obligated to pay her for living there. From the Motion as pleaded and evidence, Gloria Freeman is requesting to have the estate pay her for living in and using the house.

Further, to the extent that the payment of the expenses preserved the value of the property, it has inured to the benefit of Laurence Freeman and his contention that the property belonged to him. No theory has been advanced as to why Laurence Freeman, through the estate or to Gloria Freeman, should be liable for expenses that Gloria Freeman voluntarily paid for the house she was living in during this bankruptcy case.

Additionally, Debtor has not provided evidence or explanation that the payments made to Wells Fargo for secured loans on Moss Lane Property and to PG&E for the property maintenance were for the direct benefit of the estate of Gloria Freeman. Again, Gloria Freeman used and occupied the Moss Lane Property and fails to show any basis for the estate paying her to so use and occupy the Property. The Moss Lane Property ultimately was determined pursuant to the Stipulation to be the separate property of Laurence Freeman.

Payment of Laurence Freeman Taxes

The same concept applies to the amount allegedly paid to the Franchise Tax Board for taxes for Laurence Freeman. There is no evidence or argument from Debtor that this payment directly or substantially benefitted the estate of Gloria Freeman. In fact, Debtor does not state what that the taxes were paid for (property tax, employment taxes, etc.).

Berinker Attorneys' Fees

March 19, 2014 at 2:30 p.m.

- Page 29 of 56 -

As for the request for attorney's fees paid to Mr. Berniker, Debtor does not provide any information as to what the fees were paid for or for what period of time the fees covered. The Debtor states that the payment was made in 2011, however, Mr. Berniker was not approved as counsel for Debtor (*nunc pro tunc*) until October 24, 2013. The court does not have sufficient information or evidence regarding this alleged payment to allow an administrative expense. Therefore, this request for relief is denied.

Further, the court has approved and authorized the payment of fees to Mr. Berniker for his services provided to the bankruptcy estate. Because Gloria Freeman, as Debtor in Possession, failed to obtain authorization to employ Mr. Berniker as special counsel, he was not entitled to receive any fees for the services he provided. This led to Mr. Berniker filing a motion for the authorizing his employment *nunc pro tunc*. As stated by the court,

"It is not for the court or a bankruptcy trustee in one of the multiple related cases to provide counsel with legal advice. Gloria Freeman, as the Debtor in Possession, was represented by knowledgeable, experienced bankruptcy counsel. The authorization for a debtor in possession to employ counsel is such a fundamental and universally known (for knowledgeable bankruptcy attorneys and those who conduct even a modicum of research) it is all but unfathomable how approval for the employment was not obtained by the Debtor in Possession.

...

The court gives Mr. Berniker the benefit of the doubt, and believes that he was the innocent state court counsel who was not provided with the guidance from the Debtor in Possession and her bankruptcy counsel that authorization for the Debtor in Possession (who as the fiduciary, is a separate legal entity from the Debtor herself) to employ or continue the employment of Mr. Berniker in litigating rights and interests of the bankruptcy estate. Further, the court also considers the overall resolution of this case and neither Trustee [Gloria Freeman Estate and Staff USA Estate] opposing this motion."

Civil Minutes, Dckt. 1167. Gloria Freeman, as Debtor in Possession, and her bankruptcy counsel appear to have used monies of various bankruptcy estates to pay attorneys, who were not authorized to be employed monies that they had not been approved by the court to be paid.

In his motion for employment *nunc pro tunc*, Mr. Berniker identified payments received from the **Gloria Freeman Bankruptcy Estate** in the month of October 2011. Motion, Dckt. 1098; Berniker Declaration, Dckt. 1152. In approving the employment, the court expressly determined and ordered as follows,

"IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, **are deemed to be an advance payment of fees and to be property of the estate.**

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount."

Order, Dckt. 1191.

Gloria Freeman commenced the bankruptcy case on February 16, 2010. She then subsequently spent money that was property of the bankruptcy estate to pay legal fees she and her bankruptcy counsel chose to pay. The bankruptcy estate does not reimburse Gloria Freeman for spending money of the bankruptcy estate

This court has been troubled by the ethical lapses and the fiduciary breaches by Gloria Freeman while serving as Debtor in Possession and her attorney, W. Austin Cooper (who is no longer licensed to practice law in the State of California), who represented the Debtor prior to the commencement of this case, as Debtor in Possession, and then as Debtor after the Chapter 11 Trustee was appointed. These concerns are stated in various Civil Minutes of the Court, including the following:

Civil Minutes, Dckt. 741, Gloria Freeman Motion to Covert Case to Chapter 7.

"The court also notes that much of the difficulties in this case have been caused by the strategies imposed by Gloria Freeman and her counsel, originally as Debtor in Possession and as Debtor. This includes her litigation against her ex-husband (or husband, depending on how they interpret their state court dissolution proceedings) and then when she allied with him after being deposed with the appointment of the Chapter 11 Trustee. The attempt to convert or dismiss this case, as is her attempt to dismiss or convert the Staff USA case is merely thinly veiled trustee shopping, hoping that she can get rid of the current Trustee. This Chapter 11 Trustee is currently prosecuting claims against Gloria Freeman's counsel, who also has represented a series of related debtors in possession, and her ex-husband (husband) Lawrence Freeman. This is similar to the judge shopping that Gloria Freeman and her counsel engaged in when they filed the Staff USA bankruptcy case in the Northern District of California. That case was transferred to the Eastern District of California, the judge in the Northern District of California concluding that it was improperly filed in that District."

Civil Minutes, Dckt. 823, Motion for Compensation For Counsel for Chapter 11 Trustee

"In reviewing all of the litigation, contentions made by Lawrence Freeman, positions advanced by the Debtor and counsel while as

Debtor in Possession and now as Debtor, the asserted conflicts of interest by the Debtor against her attorney, and the attorney who represented the estate while the Debtor served as Debtor in Possession now representing Lawrence Freeman against the estate, the court is convinced that a significant amount of these legal expenses are the Debtor's own doing. These have arisen not because of mistake or inadvertence, but the intentional conduct and strategy of the Debtor and her attorney representing the estate when she was Debtor in Possession and now [the Debtor's attorney] attempting to represent Lawrence Freeman against the Chapter 11 Trustee.

The court has also been reminded a number of times by the Debtor's statements under penalty of perjury, that due to illness, Lawrence Freeman is asserted not to be of sound mind and mentally capable of handling his business and legal affairs. When Lawrence Freeman fired his attorney, after allegedly meeting with the Debtor's attorney outside of the presence of Lawrence Freeman's then attorney of record, the court considered the appointment of a conservator to represent Lawrence Freeman's interests free from possible undue influence of the Debtor and her attorney. No conservator was appointed in light of Lawrence Freeman obtaining the services of Mr. Merrill, who appeared to be providing independent legal representation. When Mr. Merrill unexpectedly died, another attorney represented Lawrence Freeman. At that point, Lawrence Freeman was able to resolve his legal issues with the Trustee. It now appears that Lawrence Freeman is operating under the influence of the attorney for the estate who has represented Gloria Freeman as Debtor and Debtor in Possession. This has led to disputes and now a pending motion for the court to remove that counsel from the pending Adversary Proceeding against the estate."

In addition, the above Civil Minutes (Dckt. 823) contain a detailed history of the litigation between Gloria Freeman and Lawrence Freeman, the allegations by Gloria Freeman and Austin Cooper, her attorney as Debtor and Debtor in Possession, that Lawrence Freeman was not legally competent and that his assets were community property of Gloria Freeman, and Austin Cooper's conduct in "representing" Lawrence Freeman to have the Settlement set aside, the determination that the assets were Lawrence Freeman's separate property, and revive Gloria Freeman's contention that the Lawrence Freeman separate property was Gloria Freeman's community property.

**Civil Minutes, Dckt. 66, Motion To Dismiss Or Convert Case,
At Which Court Determined That Appointment Of A Trustee
Was Necessary And In The Best Interests Of Creditors And The Estate**

"From a review of the Schedules and claims filed in this case, this Chapter 11 case involves significant assets and claims. There is significant and substantial work to be done under the Bankruptcy Code in this case for the proper administration of these assets and payment of creditor claims. That burden has fallen to the Debtor severing as the Debtor in Possession.

From reviewing the file, it appears that the Debtor has been or is unable to fulfill her obligations as Debtor in Possession. While complex in assets and claims, for purposes of advancing a plan, this case appears to be fairly straightforward. The Debtor in Possession must obtain the assets of the estate to pay creditor claims. Through a Chapter 11 the Debtor in Possession to maximize the value of the assets, use profits to pay creditors under the Chapter 11 Plan, and enhance the surplus estate to be divided in the divorce.

The Debtor, in her capacity as Debtor in Possession, has failed to advance any plan. Rather, her focus appears to be solely on the fight over UNG with Movant [Laurence Freeman]. The Schedules reflect significant other assets and businesses, but no action has been taken regarding those assets.

...

This court is also gravely concerned about the interests of the estate and creditors. It does not appear that either the Debtor nor the Movant [Laurence Freeman] have any focus on the rights of creditors. If cause exists for granting relief under 11 U.S.C. §1112(b) the court considers those interests in deciding whether to convert or dismiss the case. Additionally, 11 U.S.C. §1104(a)(3) expressly provides that if grounds exist to convert or dismiss the case under section 1112, the court may appoint a Chapter 11 trustee if the court determines such is in the best interests of the estate and creditors.

Movant has clearly demonstrated grounds for granting relief under 11 U.S.C. §1112(b). The Debtor, serving as debtor in possession, has demonstrated an inability to manage the estate, protect the assets of the Estate, and prosecute the Chapter 11 case. The court finds that:

(1) There is substantial and continuing loss to and diminution of the estate. What is represented by all parties to be a significant community property asset, UNG, has been allowed by the Debtor to be operated outside the bankruptcy case. Further, the Debtor argues that Movant and his agents are refusing to provide even information concerning the asset. Though the Debtor commenced an adversary proceeding in August 2010 to recover this asset, no action has been taken to protect the rights of the estate in UNG. The Debtor argues that a substantial community property asset, UNG, has been seized and is being run by the Movant and his agents. The named agents have been sued in the adversary proceeding for in excess of \$500,000.00, and have failed to file a proper answer or take other action to protect themselves. This lack of business world knowledge and action causes the court to infer that the UNG asset is at significant risk of further loss or diminution in value.

Further, now ten months into the case, there is no

proposed plan and no indication of any reorganization effort. It appears that the case has been filed, the adversary proceeding filed, and then nothing.

(2) The Debtor, action as debtor in possession, has not properly managed the estate. This is identified as a multi-million dollar estate with related entities owned by the estate. No court authorization has been granted for the estate to engage any professionals to represent the estate. No authority to employ any lawyers, accountants, or professionals other than a real estate agent, has been sought.

The Debtor states that the Monthly Operating Reports are not complete and accurate because Movant and his agents refuse to provide her with information concerning UNG. However, the Debtor has not taken any action to obtain this information concerning this community property which is an asset of the estate.

(3) From the information provided, the Debtor has been engaged in unproductive state court litigation for dissolution of her marriage to Movant. Given the assets scheduled and as described in connection with this motion, the dissolution of the marriage is in substance a de-merger of their significant business interests. While the court does not intend to make the bankruptcy process an impediment to reconciliation, the Debtor having chosen to commence the Chapter 11 case must now fulfill her fiduciary obligation to the estate. She has not and is not fulfilling that obligation.

...
The assets in this bankruptcy estate include assets having a value of \$11,105,353.00 (taking Debtor's statements under penalty of perjury in Schedules A and B as true). The Debtor states on Schedules D and F that she has only \$5,874,401 in creditor claims. The Debtor also improperly lists on Schedule E (unsecured priority claims) a claim of \$7,000,000 to Bank of America for debt she has guaranteed on real estate loans. This appears to relate to assets in entities owned by the Debtor.

In reviewing the proofs of claim filed in this case, the amounts asserted by Bank of America on personal guarantees is approximately half that listed by the Debtor. An unsecured creditor, Rebecca Bertancchi [Debtor's sister-in-law] has filed claims for \$230,666.04 (proof of claim no. 20) and \$585,000.00 (proof of claim no. 21). The Internal Revenue Services has filed a proof of claim for \$74,862.90 (approximately twice that alleged by the Debtor). The claim is for the 2009 tax year and states that no return has been filed.

The court has also addressed the motion purportedly by Laurence Freeman to vacate the Settlement with the Chapter 11 Trustee by which property of Laurence Freeman was determined to be Laurence Freeman's separate property and not subject to community property claims of Gloria Freeman. In ruling on the motion to vacate the order approving a

settlement, which was jointly filed by Gloria Freeman and Laurence Freeman in pro se (Dckt. 1031), the court stated,

However, the court is very concerned with this request from Mr. Freeman.

As the court explained in the Order for Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, filed September 12, 2013, Dckt. 1044, the court is very concerned that Mr. Freeman may not be understanding the documents he is purporting to sign. The court is not willing to proceed with the requested relief until Mr. Freeman is properly represented.

Further, the court has issued its order setting a hearing as to whether a personal representative needs to be appointed pursuant to Federal Rule of Civil Procedure 25 and 17, and Federal Rule of Bankruptcy Procedure 7025, 7017, and 9014. Order, Dckt. 1044. This court is not going to alter any of Laurence Freeman's rights until it is convinced that he is mentally and physically able to participate in these proceedings and that he, or his representative, has the assistance of independent legal counsel.

Civil Minutes, Motion to Vacate Settlement, Dckt. 1059. The above Civil Minutes reference the court having set a hearing on whether Laurence Freeman was legally competent to be a real party in interest or, as Gloria Freeman and W. Austin Cooper testified under penalty of perjury and alleged in pleadings (subject to the Fed. R. Bankr. P. 9011 certifications). See Order For Status Conference on Ability of Laurence Freeman to Participate in Bankruptcy Court Proceedings and Appearance of Independent Counsel, Dckt. 1044.

The court ultimately conducted an evidentiary hearing on the issue of Laurence Freeman's ability to participate as a real party in interest or whether a legal representative needed to be appointed due to a legal incompetency. The court ordered that Laurence Freeman, with the assistance of independent counsel and other independent professionals (including his accountants and doctors) was legally competent. Order, Dckt. 1333. At the evidentiary hearing, for which the court's findings of fact and conclusions of law are stated on the record, Laurence Freeman testified who advised him to set aside the Settlement and order which determined that his property was separate property and not subject to community property claims of Gloria Freeman. It was W. Austin Cooper, Gloria Freeman's attorney who sued Laurence Freeman and presented evidence that Laurence Freeman was not legally competent and that his separate property was Gloria Freeman's property.

Safe Credit Union Account

Lastly, the request for the Trustee (now Plan Administrator) to turn over or "offset" \$2,299.97 from Safe Federal Credit Union that was withdrawn by on December 28, 2011, does not appear to be a request for an administrative expense. Debtor testifies that "the trustee more than likely

took the funds out of the account since [she] was unable to withdraw or do anything with his 32877 account." Declaration ¶ 10, Dckt. 1370. This is not sufficient evidence that the Plan Administrator has these funds or that Debtor is entitled to them.

The court notes that on February 28, 2014, the court abandoned the asset described as "Safe Credit Union, 7475 Madison Avenue, Citrus Heights, CA 95610, IRA Account # 32877-60 and 32877-61, in the amount not to exceed \$25,865.98." Order, Dckt. 1359. The court presumes this is Debtor's "IRA ending in 32877" to which the Debtor refers. The Debtor offers no evidence that the Plan Administrator has "taken" any of the funds from the Safe Credit Union account. The court is also not certain what legal authority Debtor moves under to request these funds or "off set" from the Plan Administrator. Therefore, this request for relief is also denied.

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 Counter Motion for an Order Directing the Trustee to Claim a Administrative Expense Reimbursement for Amounts Expended for the Benefit of the Bankruptcy Estate; Return Debtor's IRA Funds; and Offset the Tax Refund ("Counter Motion") filed by Debtor 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 Counter Motion is denied.

18. [10-23577-E-11](#) GLORIA FREEMAN
WFH-36 Pro Se

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
6-21-13 [[784](#)]

CONT. FROM 12-12-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 11 Trustee, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 69 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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).

PRIOR HEARINGS

Initial Draft Ruling

David Flemmer, Chapter 11 Trustee objects to portions of the assets claim exempt on each of the amended schedules filed May 23, 2013; May 31, 2013 and June 14, 2013. The Trustee objects to exemptions on the grounds that Schedule C fails to provide sufficient information to identify the interests subject to the claim of exemption. Other exemptions are objectionable because they exceed the statutory amount of exemption. The Trustee also argues that the amendment to Schedule C should be denied because of bad faith or prejudice to creditors.

Debtor has now filed an another amended schedule on July 30, 2013.

Trustee objects to a number of claimed exemptions on the grounds that the claims are not made with sufficient specificity. First, there is a category of assets that do not specifically describe the asset being claimed as exempt. For instance, a collection of exemptions is asserted in financial accounts or brokerages with no account number attached. Other assets are listed with a value of "unknown" or \$0.00. Some assets are listed, with no statement of the value of the claimed exemption at all. By not listing an amount of the exemption, the Trustee cannot determine the exact interest being claimed exempt, and the claim of exemption is objectionable.

The Trustee objects to the following accounts listed with no account numbers:

Checking, Savings or other Financial Accounts	CCP 703.140(b)(5)	Not stated
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Charles Schwab 34502814 211Main Street, SFO	CCP703.140(b)(5)	\$2,646.02
E*TRADE Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140(b)(5)	\$0.00
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(5)	\$0.00
School Employ C.U.	CCP 703.140(b)(5)	\$578.16
E*Trade Securities LLC Box 1542, Merrifield VA	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA	\$64,812.51
SEP IRA	Not in Bankruptcy Estate 11U.S.C. 541(c) SEP IRA	Not stated
SAFE Federal Credit Union	CCP 703.140(b)(10)(E)	\$25,856.98
SPS Advantage Westlake Grahl, Glover 9625 Sierra College Blvd Granite Bay, CA 95746	CCP 703.140(b)(10)(E) 11 U.S.C. 541(c) SEP IRA Qualified Pension not in	\$62,603.00
SPS Advantage (H) Westlake, Grahl, Glover	CCP 703.140(b)(10)(E) 11U.S.C 541(c) SEP IRA Qualified Pension not in	\$341,705.24
American United Life Insurance	CCP 703.140(b)(10)(E) 11U.S.C. 541(c) IRA	\$11,323.63

The Trustee argues that the claim of exemption as to these assets is insufficient. For instance, Debtor's schedule B discloses that Debtor has two accounts with E-Trade Securities, LLC. Trustee states he has located a third, undisclosed account. In her Schedule C Debtor claims an exemption in an account with E-Trade, but fails to specify which account is claimed as exempt. This description is not sufficient to inform the Trustee of the nature of the interest to which the exemption is claimed. The Trustee argues that the same flaw applies to the Charles Schwab, RiverSource Longterm Care, AAA Homeowners Ins., E*Trade Securities, LLC, School Employ C.U., SAFE Federal Credit Union, SPS Advantage and American United Life accounts.

The Trustee argues that the Debtor has listed exemptions in the amount of \$0.00, which is nonsensical. Trustee states Debtor will receive \$0.00 if the Trustee elects to liquidate these assets and if Debtor intends a different result, the intent does not sufficiently appraise the Trustee of the claimed exemption to allow him to evaluate the claims. Trustee argues these exemptions should be disallowed.

Additionally, the Trustee argues the claims of exemptions asserted in the amount "unknown" or without stating an amount at all are objectionable because Schedule C omits at least some of the information necessary to satisfy Schwab or Section 521(1).

Debtor's Third Amended Schedule C

Trustee states that Debtor's Third Amended Schedule C lists the following assets not in existence on the petition date and purports to exempt these assets from the estate:

EXEMPT EARNINGS 2011/2012/2013		
Benefit Payments State of Calif (Chase, BA)	703.140(b)(10)(A)-(D) 2013	\$12,000.00
EDD State of California (AHRP)	703.140(b)(10)(A)-(D) 2012	\$12,150.00
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2013	\$25,000.00
Sedgwick Compensation, pending	703.140(b)(10)(A)-(D) 2012/2013 et al	
Hartford Benefits Short Term (Wells Fargo)	703.140(b)(10)(A)-(D) 2012 estimated	\$10,327.00
Payment in Compensation for Loss of Future	703.140(b)(11)(e)	Unknown
EDD (Bank of America) State of	703.140(b)(10)(A)-(D) 2013, pending	
Hartford Benefits Long Term	703.140(b)(10)(A)-(D) 2013, pending	
EDD (US Bank) State of	703.140(b)(10)(A)-(D) 2011	\$2,700.00

Trustee argues that because the claimed exemptions are asserted in post-petition assets, the objection should be granted.

Furthermore, the Trustee states California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825 (as of February 16, 2010.) Debtor has claimed exemptions under this section in amounts in excess of \$87,652.73. Trustee states that because Debtor is not allowed to exempt more than \$21,825 under Section 703.140(b)(5), the Court should disallow all of the following claimed exemptions and require Debtor to amend her Schedule C in the aggregate amount:

Refund in Retainer from Harrison Goodwin	CCP 703.140(b)(5)	\$0.00
Tax Refunds		Not stated
Possible 2009 IRS Refund and FTB Refund	CCP 703.140(b)(5)(1)	Unknown
Tax Refunds received 2011/2012, unknown est	CCP 703.140(b)(5)(1)	\$26,428.55
Checking, Savings or other Financial Accounts	CCP 703.140(b)(5)	Not stated

Charles Schwab 34502814 211Main Street, SFO	CCP703.140{b}(5)	\$2,646.02
E*Trade Sec. 5727-9969 Box 1542, Merifield, VA	CCP 703.140(b)(5)	'
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(S)	\$0.00
School Employ C.U.	CCP 703.140(b)(5)	\$578.16
Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit	CCP 703.140(b)(5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140(b)(S)	\$0.00
Common Stock Staff USA, Inc.	CCP 703.140(b)(5)	\$0.00
LLC Interest in Sunfair LLC	CCP 703.140(b)(5)	\$0.00
LLC Interest in Plazaria LLC	CCP 703.140(b)(5)	\$0.00

The Trustee also objects to Debtor's exemptions in the amount of \$23,123 (plus "unknown") in life insurance policies, claimed pursuant to Cal. Code Civ. Pro. "703.140(b)(7)(8)" and 703.140(b)(10)(E). Trustee assumes that Debtor asserts these exemptions pursuant to Section 703.140(b)(7). The applicable exemption amount, for cases commenced before April 1, 2010, is \$11,075. Thus, Trustee states the claimed exemptions exceed the statutory amount and are improper.

Bad Faith

The Trustee objects to the amendment of five (5) exemptions because they run afoul of the requirements of good faith and lack of prejudice. Trustee argues that three and a half years after the Chapter 11 case was filed, Debtor asserts exemptions in the following previously undisclosed assets:

Tax Refunds received 2011/2012, unknown est	CCP 703.140(b)(5)(1)	\$26,428.55
Bank of America xxx07250, xxx-4632	CCP 703.140(b)(5)	\$0.00
School Employ C.U.	CCP 703.140(b)(5)	\$578.16
American United Life Insurance	CCP 703.140(b)(10)(E) 11 U.S.C. 541(c) IRA	\$11,323.63

Tools of the Trade (Business Property)	CCP 703.140(b)(6)	\$2,200.00
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Prejudice

The Trustee also argues that the following exemptions should be denied because the amendment will prejudice creditors and the estate:

Other Contingent and Unliquidated Claims vs. Laurence Freeman & Landmark Missionary Baptist Church for mismanagement and obtaining alleged donations over the past eight years by fraud and deceit dba Ulrich, Nash and Gump (legal education company)	CCP 703.140(b)(5)	Not Stated
Common Stock of Fortune West Enterprises, Inc.	CCP 703.140(b)(5)	\$0.00
SPS Advantage (H) Westlake, Grahl, Glover	CCP 703.140(b)(10)(E) 11 U.S.C. 541(c) SEP IRA Qualified Pension not in Bankruptcy Estate	\$341,705.24

Trustee states that the exemptions set forth above now claim an interest in assets transferred to Larry Freeman pursuant to the settlement. Thus, Debtor's delay in asserting these exemptions will prejudice both Mr. Freeman and the creditors receiving the proceeds of a settlement obtained through Trustee's efforts. Trustee states he has already filed a plan and disclosure statement based on the receipt of the proceeds obtained through the settlement.

DEBTOR'S RESPONSES

Debtor filed four (4) different responses to the Trustee's Objection. Debtor first responded asserting that the objections filed by the Trustee are now moot because she filed amended schedule on July 30, 2013, which address the Trustee's objections.

Debtor then filed a ten (10) page response to the objection, also stating that the amended schedules filed on July 30, 2013 address the Trustee's objections. Debtor further argues that the Statements of Financial Affairs, including the schedules, were not reviewed by debtor and signed by Debtor due to the attorney's legal mistake and therefore, there is no bad faith or prejudice on part of the Debtor.

Debtor states she in "good faith" provided answers to the Trustee at the 2004 exam, without access to her records. Debtor states that the Trustee took her computer and personal files and had no way to amend her schedules without the records.

Debtor argues that the disputed tax returns are the separate property of Mr. Freeman and are not part of the estate. Debtor also argues that the IRS refund may be barred by *res judicata* and collateral estoppel.

Additionally, Debtor states she did disclose at the 2004 examination the Insurance IRA, the School Employee Credit Union and the Bank of America Account.

Debtor states she has not acted in bad faith but has demonstrated good faith through various actions.

Debtor's third response continues the argument of "bad faith" and Debtor argues that the Trustee has not shown sufficient "bad faith" on her part. Debtor argues if the court does find bad faith, it was due to actual inadvertence or mistake and there is no bad faith on part of the debtor concerning the exemptions in the amended schedules.

Debtor's fourth response appears to be a duplicate of the third.

DISCUSSION

Subsequently to the Trustee filing this objection, Debtor filed another amended Schedule C on July 30, 2013. This is Debtor's fifth version of Schedule C. The following are the previous filings of Schedule C:

Date of Filing	Version Schedule C	DCN
March 2, 2010	Original	10
May 23, 2013	First Amended	691
May 31, 2013	Second Amended	715
June 14, 2013	Third Amended	767
July 30, 2013	Fourth Amended	888

Federal Rule of Bankruptcy Procedure 1009(a) provides that a voluntary petition, list, schedule, or statement may be amended by a debtor as a matter of course at any time before the case is closed. No court approval is required for an amendment under Federal Rule of Bankruptcy Procedure 1009(a), and amendments are and should be liberally allowed at any time absent a showing of bad faith or prejudice to third parties. *In re Magallanes*, 96 B.R. 253, 256 (B.A.P. 9th Cir. Cal. 1988)

The latest version of Amended Schedule C significantly alters the previously filed versions. Several entries which the Trustee objected, have disappeared or have been altered or no longer correspond with the previous entries.

From the objections raised, Debtor does still appear to be over the amount allowed for wildcard exemptions. California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825 (as of February 16, 2010). Debtor has claimed exemptions under this section in amounts in excess of \$23,185.46.

Bad Faith

Section 522(1) of the Bankruptcy Code and Rule 4003(b) of the Federal Rules of Bankruptcy Procedure permit a party in interest to object to a debtor's claim of exemption. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code, "to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007); see also *Latman v. Burdette*, 366 F.3d 774, 784-86 (9th Cir. 2004) (recognizing inherent powers

of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure debtor does not exempt amount greater than allowed under Bankruptcy Code despite lack of express Code provision for equitable surcharge of exemptions).

A party objecting to a debtor's claim of exemption must prove bad faith by a preponderance of the evidence and not by clear and convincing evidence. *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622 (B.A.P. 9th Cir. 2010). Bad faith in claiming exemptions is determined by an examination of the "totality of the circumstances." *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004). Concealment of assets is the usual ground for a finding of "bad faith." *Id.* at 415. However, "a debtor's intentional and deliberate delay in amending an exemption for the purpose of gaining an economic or tactical advantage at the expense of creditors and the estate [also] constitutes 'bad faith.'" *Id.* at 416.

Intentional concealment can be inferred from the facts and circumstances of a case, including non-disclosure resulting from a debtor's reckless disregard for the truth of information furnished in the schedules and statements. See *Jordan v. Bren (In re Bren)*, 303 B.R. 610, 614 (8th Cir. BAP 2003) (stating that "multiple inaccuracies or falsehoods may rise to the level of reckless indifference to the truth, which is the functional equivalent of intent to deceive").

Furthermore, schedules and statements are signed under penalty of perjury. Fed. R. Bankr. P. 1008. Debtors are presumed to have read the schedules and statements before signing the documents, and are responsible for their contents. Debtors bear an independent responsibility for the accuracy of the information contained in their schedules and statements. *AT&T Universal Card Servs. Corp. v. Duplante (In re Duplante)*, 215 B.R. 444, 447 n.8 (9th Cir. BAP 1997) (noting that "schedules and statements of financial affairs are sworn statements, signed by debtors under penalty of perjury" and warning that "adopting a cavalier attitude toward the accuracy of the schedules and expecting the court and creditors to ferret out the truth is not acceptable conduct by debtors or their counsel").

SCHEDULING ORDER AND DISCOVERY

The Debtor's repeated filing of amended Schedules C has created an situation of confusion and would require multiple contested matters being filed by the Trustee. One could infer from these filings is that an attempt is being made to try and trip up the Trustee into missing the deadline for objecting to one of the multiple amended Schedules C.

The court and parties have resolved this confusion by agreeing that the current objection to claim of exemption is deemed an objection to the July 30, 2013 Amended Schedule C filed by the Debtor and the Final Amended Schedule C, if any, filed by the Debtor pursuant to the Scheduling Order to be issued by the court in this contested matter. Further, the court scheduled the filing of an amended objection to claim of exemption by the Trustee, if any, and response thereto by the Debtor.

It is necessary, in light of the Debtor filing multiple amended Schedules C after the Trustee files an objection to the prior amended Schedule C, to require the Debtor to file a Final Amended Schedule C from which her exemptions can be determined. While the amending of Schedule C exemptions is allowed, such amendments must be in good faith. The repeated amending of Schedule C can be misused as an abusive litigation tactic. Further, it can be used as a device to try and hide assets of the estate,

which when discovered by the Trustee, are then tried to be claimed as exempt.

Requiring the Debtor to file a final amended Schedule C provides her a fair and reasonable opportunity to identify all assets in which she desires to claim an exemption and the legal basis she asserts for those exemptions. This case was filed in 2010, so in the more than three years that it has existed the Debtor should know all of her assets and clearly disclose them to the court, creditors, Chapter 11 Trustee, and U.S. Trustee. The Debtor also has had more than 3 years to develop and understand the basis for the exemptions in assets. It is necessary and proper for this court to order the Debtor to file a Final Amended Schedule C so that the Trustee may raise and the court finally address the exemptions which the Debtor asserts and may properly be claimed in this case. 11 U.S.C. § 105(a).

The court therefore ordered that on or before September 30, 2013, the Debtor shall file and serve a Final Amended Schedule C, if any further amendments are necessary and appropriate. The court also ordered that the Trustee shall file and serve on or before October 28, 2013, an amended objection to exemptions, if he determines that any amendment is necessary for the exemption set forth in the Third Amended Schedule C, Fourth Amended Schedule C, and the Final Amended Schedule C, if any. The Debtor shall file and serve on or before November 12, 2013, a response, if any, to the amended objection to exemptions.

FIFTH AMENDED SCHEDULE C

Debtor filed the Fifth Amended Schedule C on September 19, 2013. Dckt. 1057. It appears the Trustee has not filed additional opposition to the motion.

The Fifth Amended Schedule C is substantially similar to the Fourth Amended Schedule C, filed July 30, 2013. Dckt. 888. Debtor reduced the value and corresponding exemption in the furs and jewelry under C.C.P. § 703.140(b)(4). Debtor decreased the exemption value of the 2003-2005 tax refunds from \$19,899.06 to \$18,448.60; the 2002 Acura VIN ending in 12350 from \$5,100.00 to \$3,300.00; and the items used in business from \$2,200.00 to \$2,075.00.

The Exemptions Claimed on the Fifth Amended Schedule C are:

Assets As Stated On Fifth Amended Schedule C	Basis for Exemption	Amount Exempt	Value of Asset
Charles Schwab, 211 Main St, San Francisco, CA 94105- Acct # xxxx2814 (W) \$22,750.38 On Date of Filing, the exempted amount of 2468.09 plus any growth in the stock value remains in the account the remainder was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$2,468.09	\$2,468.09
Schools Federal Credit Union, 1485 Response Rd. #126, Sacramento, CA 95815, Acct # xxxx9710 \$578.16; the balance was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$457.31	\$457.31

Other Liquidated Debts Owing Debtor Including Tax Refund 2009 tax refund of appx \$24,000.00 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - this was given to the trustee and so no value to the estate	C.C.P. § 703.140(b)(5)	\$1.00	\$0.00
2003 - 2005 tax refunds of appx \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard	C.C.P. § 703.140(b)(5)	\$19,899.06	\$0.00
Firearms and Sports, Photographic and Other Hobby Equipment Camera, exercise bike, skis, 2 bikes, tennis racket, music key board and piano total value \$360.00	C.C.P. § 703.140(b)(5)	\$360.00	\$360.00
Automobiles, Trucks, Trailers, and Other Vehicles 2002 Acura VIN JHKA9602COI 2350 Mileage 130,000-value \$3,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$0.00	\$0.00
2006 Scion (UNG driven by husband) value \$11,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$5,100.00	\$0.00
Boats, Motors and Accessories, row boat \$20.00	C.C.P. § 703.140(b)(3)	\$20.00	\$20.00
Household Goods and Furnishings various furniture, gardening tool, wooden lights, Misc home repair tools, bed, shelf, cabinet, small table, 11 table lamps, vacuum cleaner, two twin beds, hall rug, office table and chair, book case, VCR, coffee table, 4 stacking tables, two wooden carriers, LCD HDTV, fire place tools, home stereo system, entertainment center, two piece hutch, two clay figures, two lamp tables, two area carpets, four couches, two coffee pots, refrigerator, pots and pans, washer and dryer, telephone, microwave, dishes, silverware, three barstools, toaster, clock, night table, dining table and either chairs, desk, side chair, mirror, two end tables, three side chairs, silver plated tray, two vases, china hutch, buffet desk, king size bed, linens, towels, drapes, 2 additional tables with chairs	C.C.P. § 703.140(b)(3)	\$3,725.00	\$3,725.00
Books, Pictures and Other Art Objects; Collectibles Family pictures, 15 framed prints, 8 small framed pictures, CD collection, book collection, no single item worth more than \$100.00 and most valued between \$5.00 and \$10.00 total value \$645.00	C.C.P. § 703.140(b)(3)	\$645.00	\$645.00
Wearing Apparel, Debtors Clothes	C.C.P. § 703.140(b)(3)	\$320.00	\$320.00

Furs and Jewelry, 2 furs, wedding ring \$1000.00 value, misc jewelry	C.C.P. § 703.140(b)(4)	\$1,525.00	\$1,525.00
Interests in Insurance Policies, State Farm Life Ins Co, 1555 Promontory Circle Greeley CO 80638 Policy # LF-1099-xxxx, current value \$4000.00 exempting maximum due to ongoing dividends	C.C.P. § 703.140(b)(10)(E)	\$11,075.00	\$4,000.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans, Safe Credit Union 7475 Madison Avenue Citrus Heights CA 95610, IRA Account \$25,856.98 at date of filing current value appx \$15,000.00	C.C.P. § 703.140(b)(10)(E)	\$25,856.98	\$25,856.98
E*Trade Securities LLC , P0 Box 1542 Merrifield VA 22116, SEP IRA \$64,812.51 on date of filing current value appx \$60,000.00	C.C.P. § 703.140(b)(10)(E)	\$64,812.51	\$64,812.51
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA worth on date of filing \$434,773.95 worth appx \$442,000.00 on 7/29113 this is property of the Non-Filing Spouse and has no value to the estate	C.C.P. § 703.140(b)(10)(E)	\$442,000.00	\$442,000.00
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA from 401k \$62,203.00	C.C.P. § 703.140(b)(10)(E)	\$62,203.00	\$62,203.00
American United life Ins Company P0 Box 368 Indianapolis IN 46206-0368, Qualified Pension \$11,323.63	C.C.P. § 703.140(b)(1)(E)	\$11,323.63	\$11,323.63
Alimony. Maintenance, Support, and Property Settlements Delinquent Support from Laurence Freeman - located no court order to support this asset	C.C.P. § 703.140(b)(10)(D)	\$92,853.58	\$92,853.58
Machinery, Fixtures, Equipment and Supplies Used in Business computers, fax machines, misc machinery, fixtures, equipment and supplies located at UNG, Staff USA and Premium Access included in business valuations; debtor would like exempt the computers and desks and electronics for tools fo the trade along with various other peices of office furniture - except any office equipment and furniture already liquidated, sold, or lost to landlords / secured creditors	C.C.P. § 703.140(b)(6)	\$2,200.00	\$0.00

Debtor no longer appears to be over the amount allowed for wildcard exemptions. California Code of Civil Procedure Section 703.140(b)(5) provides for a "wildcard exemption" in the aggregate value of \$21,825.00 (as of February 16, 2010). Debtor has claimed exemptions under this section in amounts in excess of \$21,375.00.

DECEMBER 12, 2013 HEARING

At the hearing the Trustee confirmed that there remains only one exemption as set forth in the Fifth Amended Schedule C for which there is an

exemption, which exemption is described as follows:

2003 - 2005 tax refunds of appx. \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard

C.C.P. § 703.140(b)(5)

Amount Claimed as Exempt: \$19,899.06

Value of Asset: \$0.00

The court issued an order which (1) determines that the only remaining objection to exemptions, for those as stated in the Fifth Amended Schedule C, is for the 2003-2005 tax return and (2) continuing the hearing, as the Objection is intertwined with the pending adversary proceeding between the Plan Administrator and Laurence Freeman, which includes whether the remaining asset (a tax refund) for which the Plan Administrator objections to the claim of exemption.

FEBRUARY 27, 2014 HEARING ON DEBTOR'S MOTION TO COMPEL

At the hearing on Debtor's Motion to Compel DCN GMF-19 (held in conjunction with the Plan Administrator's Motion to Abandon WFH-43), the parties agreed that the issues arising from this Objection to Exemptions so intertwined with the pending adversary (Case No. 13-2027) that the two should be conducted in conjunction with the testimony presented once. See Official Transcript, Dckt. 1377.

MARCH 19, 2014 HEARING

At the hearing xxxx

19. [10-23577-E-11](#) GLORIA FREEMAN
[13-2027](#)
FREEMAN V. FLEMMER

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-29-13 [[1](#)]

AT THE STATUS CONFERENCE PROPOSED ATTORNEYS FOR GLORIA FREEMAN SHALL ADDRESS FOR THE COURT AND PARTIES THE PROCEDURES THEY HAVE TAKEN WITH RESPECT TO ONE OF THEIR ATTORNEYS HAVING SERVED AS A LAW CLERK FOR THIS COURT WHO WORKED EXTENSIVELY ON THE GLORIA FREEMAN CASE AND RELATED PROCEEDINGS.

Plaintiff's Atty: Craig A. Simmermon
Defendant's Atty: Daniel L. Egan

Adv. Filed: 1/29/13
Answer: 2/27/13

Counterclaim Filed: 2/27/13
Answer to Counterclaim:
3/20/13 [Laurence Freeman]
3/27/13 [Gloria Freeman]
4/24/13 [Gloria Freeman - First Amended]

Nature of Action:
Declaratory judgment

Notes:

Continued from 1/8/14

Stipulation for Deposit of Disputed Funds in Segregated Account Maintained by Plan Administrator filed 2/28/14 [Dckt 63]; Order approving filed 3/10/14 [Dckt 67]

Substitution of Attorney [Barry Spitzer for Laurence H. Freeman] filed 3/7/14 [Dckt 65]; Order granting filed 3/10/14 [Dckt 68]

20. [12-34689-E-7](#) ALLEN HASSAN
[13-2396](#)
WOLFGRAM ET AL V. HASSAN ET AL

STATUS CONFERENCE RE: COMPLAINT
12-31-13 [[1](#)]

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

Adv. Filed: 12/31/13
Answer: none

Nature of Action:
Recovery of money/property - turnover of property
Recovery of money/property - fraudulent transfer
Objection/revocation of discharge
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

MARCH 19, 2014 STATUS CONFERENCE

On February 11, 2014, the court dismissed the Chapter 7 bankruptcy case of Allen Hassan, the Defendant-Debtor. The complaint seeks a determination that debts owed to Plaintiffs are nondischargeable and that Defendant-Debtor should be denied a discharge in the bankruptcy case. The bankruptcy case having been dismissed, those claims are rendered moot.

With the dismissal of the bankruptcy case, all remaining claims asserted for fraud do not arise under the Bankruptcy Code or arise in the bankruptcy case. To the extent that allegations are generally made that the Defendant-Debtor "abused the bankruptcy proceedings" and "abuse of both creditor and the bankruptcy court," such matters may be properly forwarded to and addressed by the U.S. Trustee and the U.S. Attorney. They are not private claims of the Plaintiffs. The basis for the federal court exercising jurisdiction arising under 28 U.S.C. §§ 1334 and 157 do not exist for what remains, if anything, of this Adversary Proceeding.

Notes:

Jury Demand [complaint Dckt 1]

21. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN CONTINUED PRE-TRIAL CONFERENCE
[10-2141](#) RE: FIRST AMENDED COMPLAINT
GUZMAN ET AL V. ONEWEST BANK, 5-29-12 [[87](#)]
FSB ET AL

MARCH 19, 2014 STATUS CONFERENCE

No updated Status Report was filed by the Parties concerning concluding the settlement of this Adversary Proceeding. At the Status Conference
XXXXXXXXXXXXXXXXXXXX

22. [10-23893](#)-E-13 MARCIA GRAMBUSCH CONTINUED STATUS CONFERENCE RE:
[13-2386](#) COMPLAINT
GRAMBUSCH V. BANK OF AMERICA 12-13-13 [[1](#)]
N.A.
ADV. CASE DISMISSED 2/25/14

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Monique D. Jewett-Brewster

Adv. Filed: 12/13/13
Answer: none

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

Final Ruling: The Adversary Proceeding having been Dismissed by the Parties, **the Status Conference is removed from the calendar.** No appearance at the March 19, 2014 Status Conference is required.

Notes:

Status conference continued by order of the court filed 2/6/14 [Dckt 11]

Notice of Dismissal Pursuant to FRBP § 7041 Stipulated Dismissal of Adversary Proceeding filed 2/25/14 [Dckt 14]

23. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN
[14-2004](#)
G & K HEAVEN'S BEST, INC. V.
MCQUEEN ET AL

STATUS CONFERENCE RE: COMPLAINT
1-4-14 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14
Answer: 2/5/14

Cross Claim Filed: 2/5/14
Answer: 2/24/14

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

Notes:

Plaintiffs' Status Conference Statement filed 3/10/14 [Dckt 15]

Plaintiffs' Discovery Plan filed 3/10/14 [Dckt 17]

SUMMARY OF COMPLAINT

Plaintiffs sold their business, "Heaven's Best Carpet and Upholstry Cleaning" to Defendant-Debtor for \$280,000.00. The obligation was evidenced by a promissory note secured by personal property. The First Cause of Action is for the court to determine that the obligation owed to Plaintiff is nondischargeable for fraud (11 U.S.C. § 523(a)(2)(A)). It is alleged that when purchasing the business the Defendant-Debtors were insolvent and misrepresented that they intended to pay the debt for the business purchased.

The Second Cause of Action seeks to have the debt determined nondischargeable for willful and malicious injury to the Plaintiffs (11 U.S.C. § 523(a)(6)) by "forcing litigation of frivolous matters, unsupported by law and without an evidentiary basis in order to force a [sic.] unreasonable and malicious injury, including but not limited to unnecessary legal fees.

Though the Complaint does not state a claim or basis for attorneys' fees (either in the general allegations or as a separate claim - see Fed. R. Bankr. P. 7008(b)), the prayer includes a request for legal fees.

SUMMARY OF ANSWER

The Defendant-Debtors have filed an answer which specifically admits and denied allegations in the Complaint.

The Defendant-Debtors have filed a Cross Complaint alleging several claims. The First Cross Cause of Action is for "Predatory Lending." It is alleged that the financing terms for the sale are abusive. The Second Cross Cause of Action is for "Fraudulent Misrepresentation," alleging that false representations were made concerning the business sold to Defendant-

Debtors/Cross-Plaintiffs. The Third Cross Cause of Action is for "Duress," alleging that Plaintiffs/Cross-Defendants "unlawfully induced [Defendant-Debtors/Cross-Plaintiffs] to purchase the business and sign the promissory note under the coercion that [Debtor] would otherwise end up unemployed."

CROSS ANSWER

The Cross Answer admits and denies the specific allegations in the Cross Complaint. It also asserts ten Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O). Complaint ¶¶ 2, 3, Dckt. 1. In the Answer, **Defendant-Debtors/Cross Plaintiffs** admit the allegations of jurisdiction and the Complaint being a core proceeding. Answer ¶ 1, Dckt. 8.

The Cross Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(C). Cross Complaint ¶¶ 5,6, Dckt. 10. In the Cross Answer, Plaintiffs/Cross Defendants admit the allegations of jurisdiction and the Cross Complaint being a core proceedings. Cross Answer ¶ 2, Dckt. 12.

To the extent that any issues in this Adversary Proceeding, as stated in the now filed Complaint and Counter Claim are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

a. The 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)(O). Complaint ¶¶ 2, 3, Dckt. 1. In the Answer, **Defendant-Debtors/Cross Plaintiffs** admit the allegations of jurisdiction and the Complaint being a core proceeding. Answer ¶ 1, Dckt. 8.

The Cross Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(C). Cross Complaint ¶¶ 5,6, Dckt. 10. In the Cross Answer, Plaintiffs/Cross Defendants admit the allegations of jurisdiction and the Cross Complaint being a core proceedings. Cross Answer ¶ 2, Dckt. 12.

To the extent that any issues in this Adversary Proceeding, as stated in the now filed Complaint and Counter Claim 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 31, 2014**.
- c. Expert Witnesses shall be disclosed on or before **June 25, 2014**, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Rebuttal Expert Witnesses shall be disclosed on or before **July 16, 2014**, and Rebuttal Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- e. Discovery closes, including the hearing of all discovery motions, on **September 26, 2014**.
- f. Dispositive Motions shall be heard before **October 30, 2014**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:30 p.m. on December 3, 2014**.

24. [13-32494-E-13](#) **THEODORE/MOLLY MCQUEEN** **STATUS CONFERENCE RE: COMPLAINT**
[14-2027](#) **MCQUEEN ET AL V. G & K** **1-21-14 [1]**
HEAVEN'S BEST, INC.

Plaintiff's Atty: C. Anthony Hughes
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14
Answer: 2/17/14

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - preference

Notes:

Defendants' Status Conference Statement filed 3/10/14 [Dckt 10]

Defendants' Discovery Plan filed 3/10/14 [Dckt 12]

SUMMARY OF COMPLAINT

The Complaint alleges that Defendant asserts a secured claim in the Plaintiff-Debtors' bankruptcy case. It is asserted that the lien securing the claim was perfected within 90-days of the commencement of the bankruptcy case and such lien may be avoided pursuant to 11 U.S.C. § 547 as a preference. The Plaintiff-Debtors also assert the right to avoid the lien pursuant to 11 U.S.C. § 522(h).

SUMMARY OF ANSWER

In the Answer the Defendants admit and deny specific allegations of the

Complaint. The Answer asserts ten Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F), (K). Complaint ¶¶ 2,3, Dckt. 1. In the Answer, Defendants admit the allegations of jurisdiction and the Complaint being a core proceeding. Answer ¶ 2, Dckt. 7. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2) **(A), (N), and (O)**. **First Amended** Complaint, ¶¶ **X, X**, Dckt. **X**. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ **X, X**, Dckt. **X**. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **March 31, 2014**.
- c. Expert Witnesses shall be disclosed on or before **June 25, 2014**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2014**.
- d. Rebuttal Expert Witnesses shall be disclosed on or before **July 16, 2014**, and Rebuttal Expert Witness Reports, if any, shall be exchanged on or before **-----, 2014**.
- e. Discovery closes, including the hearing of all discovery motions, on **September 26, 2014**.
- f. Dispositive Motions shall be heard before **October 30, 2014**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:30 p.m. on December 3, 2014**.

25. [11-48695-E-13](#) DALE GAGEL AND SUZANNE
MAY

STATUS CONFERENCE RE:
SUBSTITUTION OF ATTORNEY ON
CHAPTER 13 VOLUNTARY PETITION
12-12-11 [[1](#)]

Debtors' Atty: Aaron C. Koenig

Final Ruling: Counsel having substituted in for the Debtors in this Chapter 13 Case, **the Status Conference is removed from the calendar.** No appearance at the March 19, 2014 Status Conference is required.

Notes:

Set by order of the court filed 2/4/14 [Dckt 54] instructing Debtors to file application for substitution of attorney on or before 2/22/14. If filed, this status conference to be removed from calendar.

Application for Request of Substitution of Attorneys filed 2/10/14 [Dckt 59]; Order granting filed 2/13/14 [Dckt 60]

26. [13-21399-E-13](#) LARRY/MARIANNE HAVENS CONTINUED MOTION TO MODIFY PLAN
HDR-2 Harry D. Roth 1-23-14 [[60](#)]

CONT. FROM 3-4-14

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and all creditors on January 23, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the 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). The Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of Debtors' Modified Plan, however, on the basis that Debtors are delinquent \$350.00 under the proposed plan.

This case was filed on January 31, 2013, and 12 payments have come due

under the plan. Payments totaling \$4,200.00 have become due under the proposed modified plan, "\$300.00 per month for 4 months, \$600.00 per month for 5 months, \$0.00 per month for 3 months, \$350.00 per month for 9 months, \$400.00 per month for 9 months, \$745.02 per month for 30 months." Debtors have paid the Trustee \$3,850.00, with the last payment of \$350.00 posted on January 29, 2014.

At the March 4, 2014 hearing the Debtors advised the court of correcting amendments which could be made to this plan. The court continued the hearing to allow such amendments to be filed with the court and noticed on creditors. Any objections to the proposed amendments may be presented orally at the continued hearing.

The Debtors erroneously filed a new modified plan and supporting pleadings on February 28, 2014. Dckts. 70-75. The Debtors withdrew that modified plan, motion and supporting pleadings at the hearing. On or before March 7, 2014, the Debtors shall send notice of the withdrawal of the further modified plan, motion (DCN: HDR-3), and supporting pleadings.

No corrected amendments have been filed with the court to date. Based on the evidence before the court, the Plan as filed cannot be confirmed and creditors have not been provided with notice of proposed amendments.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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 Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.