

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 4, 2014 at 2:30 p.m.

1. [13-91938-E-7](#) OSCAR CARDENAS
[14-9001](#)
TURLOCK IRRIGATION DISTRICT V.
CARDENAS, JR.

PRE-TRIAL CONFERENCE RE:
COMPLAINT OBJECTING TO
DISCHARGEABILITY OF DEBT
1-22-14 [[1](#)]

Plaintiff's Atty: Ken R. Whittall-Scherfee
Defendant's Atty: John C. Brewer

Adv. Filed: 1/22/14
Answer: 2/14/14

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Scheduling Order -
Initial disclosures by 4/21/14
Disclose experts by 5/5/14
Exchange expert reports by 6/9/14
Close of discovery 7/9/14
Dispositive motions heard by 8/21/14

Plaintiff's Pretrial Statement filed 8/22/14 [Dckt 19]

Substitution of Attorney [Defendant] filed 8/26/14 [Dckt 21]; No Proposed
Order of Substitution Lodged With The Court.

Defendant's Pretrial Statement filed 8/26/14 [Dckt 22]

The Plaintiff alleges that jurisdiction exists for this 28 Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523 (the federal statutory grounds arising under the Bankruptcy Code). Further, that this nondischargeability action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, 3, Dckt. 1. In his Answer, the Defendant-Debtor does not deny the allegations of jurisdiction or that this is a core proceeding. This Adversary Proceeding to determine the nondischargeability of a debt pursuant to 11 U.S.C. § 523 is a core proceeding for which the bankruptcy judge issues all orders and the final judgment.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.

C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.

F. The Trial shall be conducted at ----x.m. on -----, 201x.

The Parties in their respective Pretrial Conference Statements, Dckts. 19 and 22, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff -

Turlock Irrigation District ("TID")

Defendant(s)

Oscar Cardenas, Jr.

<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1. Federal Court jurisdiction is pursuant to 28 U.S.C. §§ 1334 and 157.2. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I).	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1. Agree as to Jurisdiction, Venue, and Core Proceeding in Bankruptcy Court.
<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. TID provided electric service to the real property commonly known as 1441 Lucchesi Lane, Ceres, California.	<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. TID provided electric service to the real property commonly known as 1441 Lucchesi Lane, Ceres, California
<p>Disputed Facts:</p> <ol style="list-style-type: none">1. Defendant denies he resided at or was in control of the Property.2. Defendant denies altering or damaging any of TID's equipment located on the Property.	<p>Disputed Facts:</p> <ol style="list-style-type: none">1. Denies living on the Property.2. Denies any knowledge of the alleged diversion of electricity.3. Denies any intent to steal any services.

<p>3. Defendant denies diversion of electric services.</p>	<p>4. Denies alleged diversion occurred after Defendant arranged for TID services to be provided to the Property.</p> <p>5. Denies benefitting any way from the alleged diversion.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>
<p>Relief Sought:</p> <p>1. \$78,759.36 judgment, plus costs and attorneys' fees.</p> <p>2. Determination that judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(4).</p>	<p>Relief Sought:</p> <p>1. Judgment for Defendant, Plaintiff's claim is dischargeable.</p>
<p>Points of Law:</p> <p>1. Cal. Civ. §§ 1882-1882.6 (theft of utility services).</p> <p>2. Rebuttable presumption of theft - § 1882.3</p> <p>3. 11 U.S.C. § 523(a)(4).</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(4) and cases give Defendant "presumption of dischargeability."</p>
<p>Abandoned Issues:</p> <p>1. None.</p>	<p>Abandoned Issues:</p> <p>1. None.</p>
<p>Witnesses:</p> <p>1. Kevin Edwards (TID Employee)</p> <p>2. Tracy Jones (TID Employee)</p> <p>3. Oscar Cardenas</p>	<p>Witnesses:</p> <p>1. Oscar Cardenas</p> <p>2. Maria Villalobos</p> <p>3. Juan Cardoza</p>
<p>Exhibits:</p> <p>1. Property Detail Report</p>	<p>Exhibits:</p> <p>1. Rental Agreement for Defendant's Residence During Times at Issue.</p>

2. TID Report of Power Usage 3. Grow House Equipment Inventory 4. TID Power Theft Report. 5. Revenue Recovery-Power Diversion Charges. 6. TID Invoices for the Property. 7. Transcript of First Meeting of Creditors for Cardenas. 8. Summary of Attorneys' Fees and Costs Incurred by TID.	2. Bank Statements Showing Rent Paid.
Discovery Documents: 1. Special Interrogatories Propounded by TID and Defendant's Response. 2. Request for Production of Documents and Defendant's Response. 3. Requests for Admission and Defendant's Response.	Discovery Documents: 1. None Identified.
Further Discovery or Motions: 1. None Anticipated.	Further Discovery or Motions: 1. None.
Stipulations: 1. None.	Stipulations: 1. None.
Amendments: 1. None.	Amendments: 1. None.
Dismissals: 1. None.	Dismissals: 1. None.
Agreed Statement of Facts:	Agreed Statement of Facts:

1. None.	1. None.
Attorneys' Fees Basis: 1. Cal. Civ. § 1882.2.	Attorneys' Fees Basis: 1. None Requested.
Additional Items 1. Set Trial After October 1, 2014.	Additional Items 1. Set Trial After December 1, 2014.
Trial Time Estimation: 4 Hours	Trial Time Estimation: Four Hours

2. [08-91491](#)-E-7 ERICA/DAVID BURDG
[08-9101](#)
GONZALES ET AL V. BURDG ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-13-08 [[1](#)]

Plaintiff's Atty: Michael Linn
Defendant's Atty: pro se

Adv. Filed: 11/13/08
Answer: 12/1/08; 4/20/09

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

Notes:

Continued from 9/26/13

Letter from Defendants filed 8/22/14 [Dckt 53]

September 4, 2014 Minutes

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September 26, 2013 Minutes

It was reported that Erica Burdg has entered a nolo plea in the state court criminal proceeding. Restitution has been ordered in the criminal action. In the state court civil action a number of that action. In the civil action June 2014 trial date. Plaintiff is seeking modification from

the stay to conduct discovery. The settlement being negotiating may result in the state court action being dismissed as to the Defendants in this Adversary Proceeding.

Notes of 3/7/13 status conference hearing: Mr. Linn reported that the Burdg criminal trial was set for 12/4/12. Defendant Burdg substituted counsel, which delayed the state court criminal trial to 5/7/13. The state court civil proceeding was set for jury trial on 7/16/13.