



licensed as an attorney, but is no longer authorized to practice law in California.

Significant claims in this case are based upon judgments in state court proceedings. One is a judgment for more than \$1,000,000 which was entered by the State Superior Court and affirmed on appeal. Debtor in Possession has stated that he will diligently prosecute a motion to vacate that final judgment based on alleged fraud having been committed on the State Court judge by the plaintiff judgment creditor in that case. Another substantial claim is based on an alleged claim of malpractice by a former client of Debtor. The litigation was one in which the client was a co-plaintiff with the Debtor. Both claims relate to the pre-petition real estate development activities of Debtor and the litigation flowing therefrom.

Debtor has previously stated that there have been transfers of assets (substantial) real property into self-settled trusts, other entities, and Debtor's ex-spouse. While Debtor assures the court that such transfers are bona fide valid transactions and not subject to attack, the transfers appear to have taken place during either the state law fraudulent conveyance period or that provided in 11 U.S.C. § 548. For the trusts and other entities, Debtor's sister (Kathryn Machado, Ph.D.) is the trustee, managing member, or principal. Dr. Machado has (prior to his eligibility to practice law having been terminated) employed the Debtor as the attorney and developer expert for the properties transferred by Debtor into the trust and other entities.

After this court ruled that the bankruptcy judge could not vacate judgments and order entered by State Court and U.S. District Court judges, Debtor requested that the court dismiss the case. In light of the disclosed transfers of property within the state or federal law fraudulent conveyance periods, the court denied the motion to dismiss. Order and Civil Minutes; Dckts. 115, 113.

**ABILITY OF DEBTOR TO FULFILL OBLIGATIONS AND DUTIES OF DEBTOR IN POSSESSION AND PERSONALLY PARTICIPATE AS DEBTOR**

Debtor has filed two sets of pleadings advising the court that because of an automobile accident in July 2015 (from which Debtor was rendered unconscious, which Debtor states was not due to alcohol), Debtor has been, at least temporarily, unable to participate in these proceeds as either the Debtor or Debtor in Possession. The court has addressed this stated incapacity in two prior rulings. Dckts. 233, 251.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away or suffers from an incapacity, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991).

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16<sup>TH</sup> EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

**The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

*See also, Hawkins v. Eads, supra.* While the death of a debtor in a Chapter 13

case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

#### **FEDERAL RULES OF CIVIL PROCEDURE AND BANKRUPTCY PROCEDURE CONCERNING COMPETENCY**

As a basic requirement for a person to have his or her rights determined in federal court, that person must meet the basic requirements for legal competency. FN.1. To be clear for all parties in interest, the court is addressing the issue of whether a personal representative must be appointed to act in the place of the Debtor (as Debtor and Debtor in Possession, if a bankruptcy trustee is not appointed). The COURT IS NOT DETERMINING WHETHER A CONSERVATOR SHOULD BE APPOINTED.

MOORE'S FEDERAL PRACTICE, CIVIL § 17.21, provides a good survey of the federal competency requirement.

§ 17.21 Capacity of Individual Litigant Acting on Its Own Behalf Determined by Law of Domicile

[1] Domicile Tested at Time of Filing

The capacity of an individual engaged in litigation to enforce its own right, not acting as a representative of another, is determined by the law of the litigant's domicile...

[3] Persons Lacking Legal Capacity Must Have Adequate Representation

[a] Court May Appoint Guardian

Although persons lacking legal capacity may not sue or be sued, Rule 17(c) provides that their interests may be represented in litigation in federal courts (see also § 17.10[3][c] (guardian's and guardian *ad litem*'s real party in interest status); § 17.22 (capacity of representatives of persons lacking legal capacity)). If a minor or other incompetent person has a representative appointed by law, such as a guardian, committee, conservator, or other similar fiduciary, this representative may sue or defend on behalf of the minor or incompetent person. A minor or incompetent who has no duly appointed representative may sue by a next friend or by a guardian ad litem. If a minor or incompetent is sued and is not represented in the action, the court must appoint a guardian ad litem or make some other proper order to protect the minor or incompetent. Similarly, if a party becomes incompetent during the course of the litigation, the court must appoint a guardian ad litem or make some other proper order. The language of the rule is mandatory and requires the court to appoint a guardian ad litem or make some other provision once the court determines that the individual is incompetent. However, the rule does not place an affirmative

obligation on the district court to inquire *sua sponte* into the individual's capacity unless evidence showing that the individual has been adjudged incompetent or other clear evidence of incompetence is brought to the district court's attention. Bizarre behavior alone is insufficient to trigger a mandatory inquiry into a litigant's competency.

The function of the representative or guardian *ad litem* is to make decisions concerning the litigation on behalf of the minor or incompetent person, and not necessarily to represent the person as an attorney. [With limited parent child exceptions.]...

If a general guardian fails or refuses to sue or defend in a particular case, or if there is a conflict of interest between the minor or incompetent person and the guardian or next friend, federal courts may appoint a guardian or attorney *ad litem* to protect the interest of the represented party in the case.

To determine whether an individual is considered a minor or incompetent person, Rule 17(c) must be read in conjunction with Rule 17(b). Under Rule 17(b)(1), the capacity of an individual to sue or be sued is determined by the law of the individual's domicile. Once the court applies the law of the individual's domicile and determines that the individual is underage or is otherwise incompetent, the provisions of Rule 17(c) come into play. If the minor or incompetent already has a general guardian, conservator, or like fiduciary, that representative may sue or defend on behalf of the minor or incompetent. Whether an individual or entity is the type of fiduciary that has the legal authority to represent the minor or incompetent person is also determined according to state law. If the minor or incompetent has no such representative, the court must appoint a guardian *ad litem* or make some other provision for the protection of the individual. At this stage in the process, the court is not guided by state law but rather should be guided by the protection of the individual's interests. The court is not required to follow procedures set out by state law to determine incompetency, but may follow whatever procedures are appropriate within the bounds of due process.

[b] Protective Measures Implemented at Court's Discretion

The directive that courts protect the interests of persons lacking legal capacity is not tantamount to a requirement that courts appoint a representative. Rather, when the court finds that a litigant lacks legal capacity, the court may either appoint a guardian *ad litem* "or issue another appropriate order ... to protect a minor or incompetent person who is unrepresented in an action." The necessity of a guardian is determined at the court's discretion. The court need only inquire whether the incompetent's interests are adequately protected.

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FN.1. The court provides the extensive citations and quotations in these Minutes for the Status Conference for several reasons. First, to make it clear to all parties, whether represented by counsel or in pro se, the Federal Rule of Civil Procedure, Federal Rule of Bankruptcy Procedure, and federal case law provide a well established basis for this court to determine the legal competency of any party. Second, to clearly set out the statutes and case law of what constitutes legal competency for all parties in interest. Third, the Debtor and several other parties have been "challenged" in this case to cite the court to the relevant federal law on issues presented to the court. The court wants to avoid further confusion from parties in interest casting about trying to construct what they might believe (or want to believe) is the law and the obligations of this court.  
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Some of the authorities cited by MOORES in the section above include the following cases.

Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 134-135 (3rd. Cir. 2002).

"While the New Jersey Court Rule is relevant to our inquiry and will be discussed further in the next section, we do not begin our analysis with this Court Rule. Instead, we must look to Federal Rule of Civil Procedure 17, which explains the capacity of a party to sue or be sued, and may therefore be used to determine how a person is appointed a 'legal representative' within the meaning of § 183b(c). We apply the Federal Rules instead of the New Jersey Court Rules because state rules regarding the appointment of guardians *ad litem* are procedural and therefore do not apply, in the first instance, to cases brought in federal courts. See *M.S. v. Wermers*, 557 F.2d 170, 174 n.4 (8th Cir. 1977); 6A C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1571, at 511-12 (1991); see generally *Hanna v. Plumer*, 380 U.S. 460, 471-72, 14 L. Ed. 2d 8, 85 S. Ct. 1136 (1965) (federal courts apply on-point Federal Rules of Civil Procedure instead of state procedural practices).

United States v. Mandycz, 447 F.3d 951, 962 (6th Cir. 2006).

"So while the commencement of a civil case does not suspend the Due Process Clause, it does alter the fairness requirements of the Clause. Whereas due process protects incompetent criminal defendants by imposing an outright prohibition on trial, it protects incompetent civil parties by requiring the court to appoint guardians to protect their interests and by judicially ensuring that the guardians protect those interests. See Fed. R. Civ. P. 17(c) ('The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.');

see also *Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 203 (2d Cir. 2003) ('[T]he district judge should be aware that due process considerations attend an incompetency finding and the

subsequent appointment of a guardian ad litem.');

*Salomon Smith Barney, Inc. v. Harvey*, 260 F.3d 1302, 1309 (11th Cir. 2001), vacated on other grounds, 537 U.S. 1085, 123 S. Ct. 718, 154 L. Ed. 2d 629 (2002); *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 652 (2d Cir. 1999); *Garrick v. Weaver*, 888 F.2d 687, 693 (10th Cir. 1989); *Genesco, Inc. v. Cone Mills Corp.*, 604 F.2d 281, 285 (4th Cir. 1979). Independent of the court's duty to appoint a guardian to look after his interests, Mandycz of course also is entitled to the other basic protections of due process in a civil setting. See *United States v. Kairys*, 782 F.2d 1374, 1384 (7th Cir. 1986) ('[B]ecause denaturalization is civil and equitable in nature, due process [is] satisfied by a fair trial before an impartial decisionmaker. [concluding that there is no right to jury trial for denaturalization proceeding]')."

*Berrios v. N.Y. City Housing Authority*, 564 F.3d 130, 134 (2nd Cir. 2009).

"A minor or incompetent person normally lacks the capacity to bring suit for himself. See, e.g., N.Y. C.P.L.R. 1201 (McKinney 1997); Fed. R. Civ. P. 17(b)(1) (capacity of an individual claim owner to sue is determined by 'the law of the individual's domicile'). Rule 17(c) provides that a minor or incompetent person may be represented by a general guardian, a committee, a conservator, or a similar fiduciary, see Fed. R. Civ. P. 17(c)(1), and that

'[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem--or issue another appropriate order--to protect a minor or incompetent person who is unrepresented in an action,'

Fed. R. Civ. P. 17(c)(2) (emphasis added). Thus, as to a claim on behalf of an unrepresented minor or incompetent person, the court is not to reach the merits without appointing a suitable representative.

...

On remand, the district court should first determine whether Berrios is a suitable guardian *ad litem* for Travieso. If it finds that he is not suitable and that it is not clear that a substantial claim could not be asserted on Travieso's behalf, the court should appoint another person to be Travieso's guardian *ad litem*. If the court either finds that Berrios is a suitable guardian or if it appoints a suitable guardian who is a non-attorney, it should not dismiss the action without affording such guardian the opportunity to retain counsel or to seek representation from a pro bono attorney or agency. If the guardian secures an attorney or is an attorney, the court should not dismiss the complaint for failure to state a claim without giving counsel an opportunity to file an amended complaint. If the guardian is not an attorney and does not obtain counsel, and if it is not clear to the court whether a

substantial claim might be asserted on Travieso's behalf, the court should decide whether to appoint counsel, taking into "consider[ation] the fact that, without appointment of counsel, the case will not go forward at all," *Wenger*, 146 F.3d at 125. If counsel is not secured or appointed, the court may dismiss the complaint, but without prejudice."

*Sam M. v. Carcieri*, 608 F.3d 77, 85-86 (1st Cir. 2010).

"Rule 17(c) of the Federal Rules of Civil Procedure governs a minor or incompetent's access to federal court. It directs that a minor or incompetent may sue in federal court through a duly appointed representative which includes a general guardian, committee, conservator, or like fiduciary. Fed. R. Civ. P. 17(c)(1). If a minor lacks a general guardian or a duly appointed representative, Rule 17(c)(2) directs the court either appoint a legal guardian or Next Friend, or issue an order to protect a minor or incompetent who is unrepresented in the federal suit. Fed. R. Civ. P. 17(c)(2).

The appointment of a Next Friend or guardian *ad litem* is not mandatory. Thus, where a minor or incompetent is represented by a general guardian or a duly appointed representative, a Next Friend need not be appointed. See *Developmental Disabilities Advocacy Ctr., Inc. v. Melton*, 689 F.2d 281 (1st Cir. 1982) (declining to appoint Next Friend where plaintiffs had general guardians or duly appointed guardians who opposed the federal suit); *Garrick v. Weaver*, 888 F.2d 687, 693 (10th Cir. 1989)(holding that a minor's mother lacked authority to proceed as Next Friend in federal suit where the federal court had appointed a guardian *ad litem* to represent the child). However, Rule 17(c) 'gives a federal court power to authorize someone other than a lawful representative to sue on behalf of an infant or incompetent person where that representative is unable, unwilling or refuses to act or has interests which conflict with those of the infant or incompetent.' *Ad Hoc Comm. of Concerned Teachers v. Greenburgh No. 11 Union Free Sch. Dist.*, 873 F.2d 25, 29 (2d Cir. 1989); *Melton*, 689 F.2d at 285 (stating that Rule 17(c) allows federal courts to appoint a Next Friend or guardian *ad litem* where there is a conflict of interest between the minor and her general representative).

The minor's best interests are of paramount importance in deciding whether a Next Friend should be appointed, but the ultimate 'decision as to whether or not to appoint [a Next Friend or guardian *ad litem*] rests with the sound discretion of the district court and will not be disturbed unless there has been an abuse of its authority. *Melton*, 689 F.2d at 285. See also *Fernandez-Vargas v. Pfizer*, 522 F.3d 55, 66 (1st Cir. 2008)."

*Garrick v. Weaver*, 888 F.2d 687, (10th Cir. 1989).

"Rule 17(c) flows from the general duty of the court to

protect the interests of infants and incompetents in cases before the court. See *Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978); *Noe v. True*, 507 F.2d 9, 11-12 (6th Cir. 1974). Garrick through her attorney requested the appointment of the guardian ad litem because her interests might be adverse to her children's interests as they were each claimants to the same finite fund. When the court determines that the interests of the infant and the infant's legal representative diverge, appointment of a guardian *ad litem* is appropriate. *Noe*, 507 F.2d at 11-12. Once appointed, the guardian *ad litem* is 'a representative of the court to act for the minor in the cause, with authority to engage counsel, file suit, and to prosecute, control and direct the litigation.' *Id.* at 12. We hold that a guardian ad litem sufficiently meets the "other fiduciary" requirement of Rule 17(c) so as to deprive Garrick of standing to represent her children in the same action for which the guardian ad litem was appointed. Garrick's standing to represent her minor children in other actions remains unaffected."

*Dacanay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978).

"It is an ancient precept of Anglo-American jurisprudence that infant and other incompetent parties are wards of any court called upon to measure and weigh their interests. The guardian *ad litem* is but an officer of the court. *Cole v. Superior Court*, 63 Cal. 86, 89 (1883); *Serway v. Galentine*, 75 Cal. App. 2d 86, 170 P.2d 32 (1940). While the infant sues or is defended by a guardian *ad litem* or next friend, every step in the proceeding occurs under the aegis of the court. See generally Solender, *Guardian Ad Litem: A Valuable Representative or an Illusory Safeguard*, 7 Tex.Tech.L.Rev. 619 (1976); Note, *Guardians Ad Litem*, 45 Iowa L. Rev. 376 (1960)."

*Robidoux v. Rosengren*, 638 F.3d 1177, (9th Cir. 2011).

"District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c), to safeguard the interests of litigants who are minors. Rule 17(c) provides, in relevant part, that a district court 'must appoint a guardian *ad litem*—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.' Fed. R. Civ. P. 17(c). In the context of proposed settlements in suits involving minor plaintiffs, this special duty requires a district court to 'conduct its own inquiry to determine whether the settlement serves the best interests of the minor.' *Dacanay v. Mendoza*, 573 F.2d 1075, 1080 (9th Cir. 1978); see also *Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983) (holding that 'a court must independently investigate and evaluate any compromise or settlement of a minor's claims to assure itself that the minor's interests are protected, even if the settlement has been recommended or negotiated by the minor's parent or guardian *ad litem*')."

*Scannavino v. Florida Department of Corrections*, 242 F.R.D. 622, 664, 666-667

(M.D. Fla. 2007).

"Although under Rule 17(b) a district court determining a party's capacity must use the law of that party's domicile, the court need not adopt any procedure required by state law but must only satisfy the requirements of due process. *Cohen v. Office Depot, Inc.*, 184 F.3d 1292, 1296 (11th Cir. 1999) (explaining that 'if the state law conflicts with a federal procedural rule, then the state law is procedural for *Erie/Hanna* purposes regardless of how it may be characterized for other purposes. '); *Thomas*, 916 F.2d at 1035 ('[W]e reject the notion that in determining whether a person is competent to sue in federal court a federal judge must use the state's procedures for determining competency or capacity.'). In the absence of a clear test for determining a party's incapacity or incompetence under Florida law, 'a federal procedure better preserves the integrity and the interests of the federal courts.' *Id.* at 1035.

'It is a well-understood tenant of law that all persons are presumed to be competent' and that the 'burden of proof of incompetency rests with the party asserting it.' *Weeks v. Jones*, 52 F.3d 1559, 1569 (11th Cir. 1995). Because '[a] person may be competent to make some decisions but not others,' the test of a party's competency 'varies from one context to another.' *United States v. Charters*, 829 F.2d 479, 495 n.23 (4th Cir. 1987). In general, "to be considered competent an individual must be able to comprehend the nature of the particular conduct in question and to understand its quality and consequences." *Id.* (quoting B. FREEDMAN, *COMPETENCE, MARGINAL AND OTHERWISE: CONCEPTS AND ETHICS*, 4 INT'L. J. OF L. & PSYCHIATRY 53, 56 (1981)). In the context of federal civil litigation, the relevant inquiry is whether the litigant is 'mentally competent to understand the nature and effect of the litigation she has instituted.' *Bodnar v. Bodnar*, 441 F.2d 1103, 1104 (5th Cir. 1971); *Donnelly v. Parker*, 158 U.S. App. D.C. 335, 486 F.2d 402, 407 (D.C. Cir. 1973) (stating that Rule 17(c) may require an inquiry into the plaintiff's 'capacity to understand the meaning and effect of the litigation being prosecuted in her name').

...

The rights of an incompetent litigant in a federal civil proceeding are protected by Rule 17(c), Federal Rules of Civil Procedure, which provides that a district court 'shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.' Fed. R. Civ. P. 17(c). An incompetent litigant is 'not otherwise represented' under Rule 17(c) if she has no 'general guardian, committee, conservator, or other like fiduciary.' *Neilson v. Colgate-Palmolive Co.*, 199 F.3d 642, 656 (2d Cir. 1999). The parties stipulated at the competency hearing that the plaintiff lacks a general guardian and is not otherwise represented within the meaning of Rule 17(c).

The decision to appoint a 'next friend' or guardian ad litem rests with the sound discretion of the district court and will be disturbed only for an abuse of discretion. *In re Kloian*, 179 Fed. Appx. 262, 265 (6th Cir. 2006) (quoting *Gardner v. Parson*, 874 F.2d 131, 140 (3d Cir. 1989)). Unlike a determination of competency, a district court's decision whether to appoint a guardian ad litem is purely procedural and wholly uninformed by state law. *Gibbs v. Carnival Cruise Lines*, 314 F.3d 125, 135-36 (3d Cir. 2002) ('A district court need not look at the state law, however, in determining what factors or procedures to use when appointing the guardian ad litem.');

*Burke v. Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001) ('It is well settled that the appointment of a guardian ad litem is a procedural question controlled by Rule 17(c)').

...

Under Rule 17(c), a district court must appoint a guardian ad litem if it receives 'verifiable evidence from a mental health professional demonstrating that the party is being or has been treated for mental illness of the type that would render him or her legally incompetent.' *Ferrelli v. River Manor Health Care Ctr.*, 323 F.3d 196, 201 (2d Cir. 2003). An exhaustive review of the record, as well as the evidence adduced at the competency hearing (and other evidence properly before the court), commends the appointment of a guardian ad litem to protect the plaintiff's interests in this case. Indeed, failure to appoint a guardian ad litem undermines the plaintiff's interests and would default both the court's obligation under Rule 17(c) and the requirements of justice."

#### **DETERMINATION OF LEGAL COMPETENCY**

California provides the following guidance to a determination of legal competency (whether partial or full).

#### **California Probate Code §§ 810 et seq.**

##### **§ 810. Legislative findings and declarations regarding legal capacity**

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on

evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

**§ 811. Unsound mind or incapacity**

(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decisionmaking process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

#### **§ 812. Capacity to make decision**

Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

(a) The rights, duties, and responsibilities created by, or affected by the decision.

(b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable

alternatives involved in the decision.

The Due Process in Competence Determinations Act, Prob. Code, §§ 810 to 813, 1801, 1881, 3201, and 3204, offers a wide range of potential mental deficits that may support a determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act. *In re Marriage of Greenway*, 217 Cal. App. 4th 628, 640 (Cal. App. 4th Dist. 2013).

In California, a party is incompetent if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case. See Cal. Prob. Code § 1801; *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); *Elder-Evins v. Casey*, 2012 U.S. Dist. LEXIS 92467 (N.D. Cal. July 3, 2012).

Federal Rule of Civil Procedure 17 also provides that the court "must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action." Fed. R. Civ. P. 17(c)(2). When a "substantial question exists regarding the mental competence of a party proceeding pro se," courts should "conduct a hearing to determine whether or not the party is competent, so that a representative may be appointed if needed." *Krain v. Smallwood*, 880 F.2d 1119, 1121 (9th Cir. 1989); see also *Allen v. Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005).

A guardian ad litem may be appointed for an incompetent adult only (1) if he or she consents to the appointment or (2) upon notice and hearing. *Jessica G.*, 93 Cal. App. 4th. at 1187-88.

California also consider the issue of "competency" in the context of the appointment of a conservator to take over the assets and affairs of a legally incompetent person. The court takes those factors into account as well in determining this more narrow issue of legal competency in this specific federal proceeding.

#### **Cal Prob Code § 1801**

(a) A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, except as provided for the person as described in subdivision (b) or (c) of Section 1828.5.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for that person as described in subdivision (b) or (c) of Section 1828.5. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. A limited conservatorship may be utilized only as necessary to

promote and protect the well--being of the individual, shall be designed to encourage the development of maximum self--reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

(e) The standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.

**§ 1872. Effect of conservatorship on legal capacity of conservatee**

(a) Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.

(b) Except as otherwise provided in the order of the court appointing a limited conservator, the appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions.

**§ 1873. Court order affecting legal capacity of conservatee**

(a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may, by order, authorize the conservatee, subject to Section 1876, to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the

transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse or domestic partner of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

**DEBTOR'S ABILITY TO UNILATERALLY CONFIRM THAT  
NO INCOMPETENCY CONTINUES**

Where a party, such as this Debtor, affirmatively states that he is suffering from an inability to conduct his legal affairs in a federal court proceeding, the court is faced with an additional challenge of assessing the credibility of that parties statement of renewed legal competency. Merely "assuring" the court that the legal incompetency has been abated is not something which the court can blindly accept. The continuing legal incompetency may be so severe that the party could be deluding him or herself into improperly concluding that he or she is incompetent. For the court to blindly accept the assurances of the self-identified legally incompetent person could well only foster future litigation by that person contending that they were never competent, the judge was in error, and all of the orders, judgments, and other rules made during the incompetency need to be vacated. Such would cause a tremendous waste of judicial time and resources, as well as the resources of the parties in interest (not to say of the emotional toll on the incompetent party floundering through the proceedings).

The court also notes that the United States District Court recently addressed the prior asserted incapacities of Debtor in an action for which the court has modified the automatic stay. In *Fox Hollow of Turlock Owner's Association v. Mauctrust, LLC et al.*, E.D. Cal. No. 03-5439, Judge Ishi recounted the legal gyrations of the parties, asserted incapacities of Debtor,

and evidence of litigation by Debtor during those alleged incapacities. 03-05429, Dckt. 1184. The District Court Judge noted that even after Debtor concurred that the legal incapacities did not occur, that Debtor did not act to comply with the orders of the court.

2. [14-91565-E-11](#) RICHARD SINCLAIR  
HAR-6

AMENDED MOTION FOR CONTEMPT  
9-8-15 [[245](#)]

**No Tentative Ruling:** The Amended Motion for Contempt 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).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Creditors, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Amended Motion for Contempt 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 defaults of the non-responding parties and other parties in interest are entered.

**The Amended Motion for Contempt is -----.**

California Equity Management Group, Inc. and Fox Hollow of Turlock Owner's Association ("Creditor") filed this Motion for Contempt on September 8, 2015. Dckt. 245. Creditor alleges that Richard Sinclair ("Debtor"), the trustee of the Richard Sinclair Trust ("Sinclair Trust"), KCM, LLC, Sun one,

LC, Dustykay, LLC, Golden Hills Camp, LLC (collectively the "LLC Witnesses"), and Kathryn Machado, PhD (Machado) have violated certain requirements, described below. Machado is alleged to be the Trustee for the Sinclair Trust and the agent for service of process for the LC Witnesses. Dckt. 245 ¶ 3.

Creditor provide a thorough review of the case history as the basis for their motion for contempt. In summation, Creditor alleges that Debtor, Machado as Trustee and agent for service, the Sinclair Trust, and the LLC Witnesses violated several discovery requirements, including disregarding various requests in the Federal Rules of Bankruptcy Procedure 2004 examination subpoenas and disobeying this court's orders to produce testimony or documentation. Dckt. 173, 177, 200, 202 (orders relating to Richard Sinclair); Dckt. 175, 179, 192, 200, 202 (orders relating to Sinclair Trust and LLC Witnesses).

Based on the background provided, Creditor requests that the court issue an order that compels the Sinclair Trust and the LLC Witnesses to conduct a reasonable and diligent search for, and to produce, all responsive documents within their possession, custody, or control, that respond to certain listed subpoena requests. Creditor also requests this court to issue an order for Debtor to produce the one-half inch of unsigned documents and billing statements identified in a status report on May 30, 2015, and to conduct a reasonable and diligent search for, and produce, all responsive documents in his possession, custody, or control in response to listed subpoena request. Creditor requests these various documents be provided to counsel for Creditor by October 15, 2015, with a statement under oath by each that a reasonable and diligent search was conducted. In the event contemnors fail to fully and timely comply, Creditor requests the court to sanction each at \$200 daily until complete compliance in made. Dckt. 245 ¶ 22.

In addition to the above, Creditor seeks to have Debtor and Machado, as Trustee of the Sinclair Trust and as a designated representative of the LLC Witnesses, to appear and resume their individual 2004 examinations.

#### **DEBTOR AND MACHADO'S NONOPPOSITION**

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law." Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

Richard Sinclair and I have another tub to deliver when we appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's September 24, 2015 review of the docket in this case, no substitution has been filed.)
2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

#### **CREDITOR'S REPLY**

On September 24, 2015, the Creditor filed a reply. Dckt. 254. Appearing to restate points in the original Motion, the Creditor restates that it has shown that the parties are in contempt of the court order for production and that Debtor's "disability" does not excuse their contempt.

Furthermore, the Creditor seeks that each of the contemnors should be required to state under oath at the hearing that he or she:

1. Has made a reasonable and diligent search for all of the documents requested in the subpoena;
2. Has completed such search; and
3. Is producing all of the responsive documents.

Lastly, the Creditor requests that the court order new dates for the resumption and conclusion of the 2004 examinations.

#### **APPLICABLE LAW**

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct

by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058.

## DISCUSSION

The ability of the court to order Mr. Sinclair to produce documents is dependant on the court(1) determining that Mr. Sinclair is legally competent to continue in *pro se* as the Debtor and Debtor in Possession, (2) determining that Mr. Sinclair sufficiently competent to continue as the Debtor and Debtor in Possession with the assistance of legal and other professionals, (3) determining that Mr. Sinclair is legally competent to continue as the Debtor in *pro se* or with the assistance of legal and other professionals, but not continue as Debtor in Possession; and (4) determining that Mr. Sinclair is not legally competent appoint a personal representative to act in his place as a debtor, and (a) have the personal representative fulfill Debtor's duties as the debtor in possession, (b) appoint a Chapter 11 trustee, or (c) convert the case to one under Chapter 7.

Mr. Sinclair has twice stated under penalty of perjury that since his automobile accident in July 2015 that he is not mentally able to participate in this case as the debtor or as the debtor in possession. However, these statements are suspect because they are made at a time Mr. Sinclair states he is unable to fulfill the obligations of a party in this case and the fiduciary obligations as the Debtor in Possession to the impairment. For the court to order a party who has stated that he is not legally competent to do something is only inviting even more litigation between these parties.

At the hearing, xxxxx

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 for Contempt filed by Creditors 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 Motion is **xxxx**.

October 1, 2015 at 2:00 p.m.

3. [14-91565](#)-E-11 RICHARD SINCLAIR  
RHS-2

ORDER FOR KATHRYN MACHADO, PHD  
AND SUBSTITUTE COUNSEL TO  
APPEAR RE REPRESENTATION OF  
THIRD PARTIES  
8-31-15 [[235](#)]

No Tentative Ruling: 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:

-----  
The Order to Appear was served by the Clerk of the Court on Richard Sinclair ("Debtor"), Kathryn Machado, PhD., KMC, LLC, Sun-one, LLC, Hold Hills, Chinese Camp, LLC, Richard C Sinclair Family Trust, and the Office of the U.S. Trustee on September 3, 2015. The court computes that 28 days' notice has been provided.

**The Order to Appear is xxxxxx**

On August 31, 2015, the court issued the instant Order for Kathryn Machado, PhD and Substitute Counsel to Appear RE Representation of Third Parties. Dckt. 235. In the order, the court ordered the following:

**IT IS ORDERED** that the court shall conduct a hearing regarding representation of third parties at 2:00 p.m. on October 1, 2015, in Department E of the United States Bankruptcy Court, 1200 I Street, Second Floor, Modesto, California, for the following persons:

1. Kathryn Machado, PhD,
2. KMC LLC,
3. Sun-One, LLC,
4. Gold Hills,
5. Chinese Camp, LLC, and
6. Richard C. Sinclair Family Trust;

for those persons to have substituted new counsel to represent each of them in the place of Richard Sinclair.

**IT IS FURTHER ORDERED** that Kathryn Machado, PhD, individually and as the representative of the above listed entities and their respective attorneys who have or will substitute in place of Richard Sinclair as the attorney(s) of record shall appear at the October 1, 2015 hearing, no telephonic appearances permitted for the parties and attorneys ordered to appear.

October 1, 2015 at 2:00 p.m.

**BACKGROUND**

This voluntary Chapter 11 case was commenced by Richard Sinclair on November 24, 2015. In addition to being the Debtor, he has continuously served as the fiduciary to the Chapter 11 bankruptcy estate as the Debtor in Possession. In addition, Richard Sinclair has been the attorney of record for Kathryn Machado, PhD (his sister) personally and as the managing member, trustee, or principal of (1) KMC LLC, (2) Sun-One, LLC, (3) Gold Hills, Chinese Camp, LLC, and (4) the Richard C. Sinclair Family Trust. The California State Bar ordered Richard Sinclair's license as an attorney in the State of California into Involuntary Inactive status, effective August 27, 2015. FN.1.

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FN.1. California State Bar Decision and Order of Involuntary Inactive Enrollment, with the Involuntary Inactive Status effective August 27, 2015. <http://members.calbar.ca.gov/fal/Member/Detail/68238>.  
-----

Richard Sinclair, his license to practice law being in Involuntary Inactive status, cannot serve as the attorney for Dr. Machado or any of the entities for which she is the responsible representative. Cal. B&P § 6125. While Dr. Machado could elect to appear in pro se for herself personally, she may not do so for any of the other entities for which she is the trustee, managing member, officer, or other representative. Those non-individual, legal entities must be represented by a licensed attorney. Rowland v. California Men's Colony, 506 U.S. 194, 201-202 (1993); In re America West Airlines, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); Church of the New Testament v United States, 783 F2d 771, 773 (9th Cir 1986); and Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

**DISCUSSION**

There being ongoing discovery which is pending involving all of the entities and Dr. Machado, as well as Richard Sinclair as the Debtor, it is necessary and proper for Dr. Machado to obtain counsel for these various entities and have that attorney substitute in the place of Richard Sinclair as their attorney. Additionally, Dr. Machado must either substitute in pro se for Richard Sinclair if she now intends to represent herself personally, or have an attorney substitute in to represent her. These substitutions must be obtained immediately.

The court also notes that May 19, 2015, the court addressed with the Debtor in Possession and Dr. Machado the apparent legal conflict which could exist with Dr. Machado hiring the Debtor in Possession to represent her in her personal capacity with respect to the transactions with the Debtor (including the transfer of properties from Debtor to trusts and other entities). Civil Minutes, p. 11; Dckt. 200. At that time Dr. Machado expressed displeasure about possibly not being able to be represented by her brother, acting as the attorney for Dr. Machado and the various entities for which she is the trustee, managing member, or principal. At a subsequent hearing the court was advised the Dr. Machado was in the process of considering replacement counsel.

The potential conflict arises due to the fiduciary duty when the Debtor in Possession owes a bankruptcy estate. In this bankruptcy case, Debtor stating that he has transferred properties (apparently without consideration) into trusts and other entities in which he asserts he has no interests, the fiduciary Debtor in Possession must in good faith evaluate the merits of claims of the estate to recover the properties for the benefit of the bankruptcy estate. How the Debtor in Possession could evaluate such claims against Dr. Machado (personally and in her various representative capacities) while having an attorney client relations with Dr. Machado (personally and in her representative capacities) concerning those transfers and those entities, was not explained to the court.

The court has allowed the parties in interest to proceed, in part based on the prior representation that Dr. Machado was investigating hiring new counsel. Additionally, during the early stages of this case the court relief upon the creditors and their attorneys to engage in initial discovery, and Dr. Machado to not feel her brother, the Debtor in Possession, was given the "bums rush" out the door before Dr. Machado was given an opportunity to investigate the issues and obtain independent legal advice.

As of the court's September 30, 2015, review of the Docket for this case, no substitution of attorney has been filed for Dr. Machado or any of the entities for which she is the trustee, managing member, or representative.

No papers have been filed in connection with the instant Order.

At the hearing, xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Appear 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 Order to Appear is **xxxxx**.

No Tentative Ruling: 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:

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<p>The Order on Notice of Disability is xxxxxx</p>
--

On September 24, 2015, the court issued the instant Order on Notice of Disability. Dckt. 251. In the order, the court ordered the following:

Therefore, upon review of the second statement on not being legally competent (at least temporarily) due to the July 2015 auto accident filed by Mr. Sinclair (Dckt. 244), documents which appear to have been prepared by Mr. Sinclair for Dr. Machado in this case after Mr. Sinclair's law license was placed in involuntary inactive status, Dr. Machado and Mr. Sinclair stating that they have been in contempt of court, Dr. Machado failing to substitute counsel (for herself personally and in her capacity as trustee and managing member of entities ordered to produce documents) to respond to the Contempt Motion, and good cause appearing;

**IT IS ORDERED** that the hearing on the issues concerning the legal capacity of Mr. Sinclair and ability of Kathryn Machado to participate individually and as the representative of other entities in light of Mr. Sinclair not being allowed to practice law, and the effect of Mr. Sinclair and Kathryn Machado having each stated that they are in contempt of court, shall be conducted at 2:00 p.m. on October 1, 2015, in conjunction with the Status Conference in this case and the Contempt Motion.

**BACKGROUND**

On August 31, 2015, this court issued an order denying the request of Richard Sinclair, the Chapter 11 Debtor and Debtor in Possession ("Mr. Sinclair"), to stay all matters until September 15, 2015. Order, Dckt. 233. That order included a brief survey of this case, the parties, and the pleading deficiencies. The court denied the request for the stay in light of there (1) being no hearings pending prior to September 15, 2015, (2) Mr. Sinclair stating that the disability was expected to abate August 31, 2015, and (3) the upcoming hearings would be conducted in conjunction with the Status Conference in this bankruptcy case, at which time the court would conduct a preliminary

consideration of Mr. Sinclair's legal capacity to proceed without the appointment of a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 1016, 7025, and 9014.

On September 8, 2015, Mr. Sinclair filed the document titled "Declaration of Richard C. Sinclair, Request For Notice of Disability and Delay of All Time Frames and Actions, Memorandum of Points and Authorities, Status Report." Dckt. 244. In addition to again failing to comply with the basic document requirements under the Local Bankruptcy Rules in this District, the Points and Authorities portion of the document only cites to California law and California Rules of Court. The only case law cited is from the state courts. Neither federal rules nor federal case law as apply in federal court is cited.

These documents filed by Mr. Sinclair follow shortly after Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association filed a motion to have Mr. Sinclair held in contempt for failure to comply with the Rule 2004 subpoenas. ("Contempt Motion") Dckt. 238.

As discussed in a separate Order to Appear, Kathryn Machado, PhD, who, individually and as the managing member or trustee of KMC LLC, Sun-One, LLC, Gold Hills, Chinese Camp, LLC, and Richard C. Sinclair Family Trust, was formerly represented by Mr. Sinclair until the California State Bar placed Mr. Sinclair on Involuntary Inactive status. Dckt. 235. The court issued the Order to Appear for Dr. Machado in light of Mr. Sinclair being placed on involuntary inactive status by the State Bar and his inability to practice law or represent other persons (individual or entities) in legal proceedings.

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law." Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

Richard Sinclair and I have another tub to deliver when we appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's September 24, 2015 review of the docket in this case, no substitution has been filed.)
2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

Mr. Sinclair has been a licensed attorney for several decades in California and has represented to the court on several occasions his experience, success, and abilities as an attorney. Presumably, he understands the significance of his not being allowed to practice law in California.

From reviewing the two non-oppositions in which Mr. Sinclair and Dr. Machado admit that "we were in contempt of court..." it appears all-but-obvious that Mr. Sinclair has continued to prepare pleadings for Dr. Machado, a third-party, to be filed in this case.

#### **DISCUSSION**

The court is conducting a preliminary review of Mr. Sinclair's statement that he has been rendered legally incompetent to proceed, at least temporarily, in this case at the October 1, 2015 at 2:00 p.m. hearing. The court shall consider Mr. Sinclair's legal competency, since the July 2015 auto accident, relating to the Contempt Motion at that time as well.

No papers have been filed in connection with the instant Order.

At the hearing, xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order on Notice of Disability 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 Order on Notice of Disability is  
xxxxx.

5. [14-91565-E-11](#) RICHARD SINCLAIR  
[15-9009](#)  
KATAKIS ET AL V. SINCLAIR

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

Plaintiff's Atty: Hilton A. Ryder  
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15  
Answer: 3/30/15

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



Notes:

Continued from 7/2/15. The Defendant-Debtor did not appear.

#### **SUMMARY OF COMPLAINT**

Andrew Katakis, Fox Hollow of Turlock Owners' Association, and California Equity Management Group, Inc., Plaintiffs, assert that a judgment debt in the original amount of \$1,337,073.72, plus interest and post-petition fees and costs, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6).

#### **SUMMARY OF ANSWER**

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

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), the claim arising under the Bankruptcy Code to determine the nondischargeability of debt. Complaint, p.11:11-12; Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.

6. [14-91565](#)-E-11 RICHARD SINCLAIR  
[15-9055](#)  
FLAKE V. SINCLAIR

STATUS CONFERENCE RE: COMPLAINT  
7-24-15 [[1](#)]

Plaintiff's Atty: Kelly L. Pope; Jamie P. Dreher  
Defendant's Atty: unknown

Adv. Filed: 7/24/15  
Answer: none

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



Notes:

Plaintiff's Status Conference Report filed 9/17/15 [Dckt 8]

**SUMMARY OF COMPLAINT**

In the Complaint, Stanley Flake (Plaintiff) alleges that a claim in excess of \$750,000, plus punitive damages, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), § 523(a)(4) and § 523(a)(6).

**SUMMARY OF ANSWER**

**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), the claim arising under the Bankruptcy Code to determine the nondischargeability of debt. Complaint ¶ 3, Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.



F. Payment of \$13,440.00 made to Defendants C&T and Cal West on April 30, 2013.

The Complaint also alleges that the following transfers are avoidable as fraudulent conveyances pursuant to 11 U.S.C. §§ 544 and 548, and California Civil Code § 3439.05:

- A. Payment of \$90,222.36 made to Defendant Skyline on June 4, 2013.
- B. Payment of \$4,361.31 made to Defendants Ahern and Skyline on May 24, 2013.
- C. Payment of \$32,535.32 made to Defendant Ahern on April 16, 2013.
- D. Payment of \$13,440.00 made to Defendant Cal West on April 16, 2013.

Plaintiff-Trustee requests relief against each of the Defendants pursuant to 11 U.S.C. § 550.

**SUMMARY OF ANSWERS**

C&T Welding, Inc., Skyline Steel Erectors, Inc., and Cal West Steel Detailing, LLC filed an answer with specific admissions and denials. While in the Answer these Defendants asserted that they did not consent to the Bankruptcy Court determining "state law issues, citing to *Stern v. Marshall*. As addressed on the record at the first status conference, these Defendants confirmed that the 11 U.S.C. § 547 and related § 550 issues are core proceedings, for which the bankruptcy court will issue all orders and the final judgment.

With respect to the claims for fraudulent conveyances asserted under federal and state law ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 7, 8, Dckt. 1. At the Initial Status Conference, Defendants C&T Welding, Inc., Skyline Steel Erectors, Inc., and Cal West Steel Detailing, LLC confirmed on the record that the claims in the Complaint seeking relief pursuant to 11 U.S.C. § 547 and the related relief thereto under § 550, are core proceeding for which the bankruptcy judge issues all orders and the final judgment.

With respect to the claims for fraudulent conveyance pursuant to 11 U.S.C. §§ 544 and 548, and the related relief under 11 U.S.C. § 550; and the California Civil Code § 3439.05.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 7, 8, Dckt. 1. At the Initial Status Conference, Defendants C&T Welding, Inc., Skyline Steel Erectors, Inc., and Cal West Steel Detailing, LLC confirmed on the record that the claims in the Complaint seeking relief pursuant to 11 U.S.C. § 547 and the related relief thereto under § 550, are core proceeding for which the bankruptcy judge issues all orders and the final judgment.

With respect to the claims for fraudulent conveyance pursuant to 11 U.S.C. §§ 544 and 548, and the related relief under 11 U.S.C. § 550; and California Civil Code § 3439.05

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- e. Dispositive Motions shall be heard before -----, 2015.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.



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

c. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. At the Initial Status Conference, Defendant ~~xxxxxxx~~ confirmed on the record that the claims in the Complaint seeking relief pursuant to 11 U.S.C. § 547 and the related relief thereto under § 550, are core proceeding for which the bankruptcy judge issues all orders and the final judgment.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.

- d. Initial Disclosures shall be made on or before -----, 2015.
- e. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- f. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- g. Dispositive Motions shall be heard before -----, 2015.
- h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.



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), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, American Express Bank, FSB admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 13. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- e. Dispositive Motions shall be heard before -----, 2015.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.



The Struck Firm between May 24, 2013 and July 3, 2015.

#### SUMMARY OF ANSWER

In the Answer, Defendant admits and denies specific allegations in the Complaint. Defendant asserts six 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), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, James D. Struck, dba The Struck Firm admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 10.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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:

- c. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, James D. Struck, dba The Struck Firm admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 10. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.
- d. Initial Disclosures shall be made on or before -----, 2015.
- e. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- f. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- g. Dispositive Motions shall be heard before -----, 2016.
- h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

October 1, 2015 at 2:00 p.m.

12. [13-91315-E-7](#) [15-9031](#) APPLGATE JOHNSTON, INC.  
MCGRANAHAN V. FRYER ROOFING  
CO., INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-9-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: unknown

Adv. Filed: 7/9/15  
Answer: none

Nature of Action:  
Recovery of money/property - preference

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

Notes:

Continued from 9/3/15

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

- a. Bankruptcy case filed on July 16, 2013.
- b. Payment of \$12,000.00 made to Defendant Fryer Roofing Co., Inc. on May 16, 2013.

#### SUMMARY OF ANSWER

No Answer has been filed by Defendant

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, ~~XXXXXXXXXX~~ admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 13. ~~To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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:

- c. The Complaint alleges that jurisdiction for this Adversary

Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, xxxxxxxxx admits the allegations of jurisdiction and core proceedings. Answer ¶¶ x,x, Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.

- d. Initial Disclosures shall be made on or before -----, 2015.
- e. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- f. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- g. Dispositive Motions shall be heard before -----, 2015.
- h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.



The allegation of federal court jurisdiction response in the Answer, in this Adversary Proceeding are stated as follows.

Allegation of Federal Court Jurisdiction - Paragraph 3 of Complaint,

"3. The court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. sections 1334, 157(a), and 157(b)."

Response in Answer to allegation of federal court jurisdiction,

"3. Paragraph 3 of the Complaint contains legal arguments or conclusions, to which no responsive pleading is required by Defendant. To the extent the allegations of Paragraph 3 require any responsive pleading, Defendant admits that the Bankruptcy Court, in general, maintains jurisdiction over 11 U.S.C. §§ 547 and 550 actions. Defendant does not, however, consent to the Bankruptcy court's rendering of a final judgment as to state law issues pursuant to *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and subsequent case law based thereon."

Contrary to the contention that Defendant need not plead a dispute to an allegation of federal court subject matter jurisdiction, such a response is required. The court reads the response to be that defendant admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550.

Further, Defendant has an affirmative duty to "admit or deny that the **proceeding** is core or non-core." Fed. R. Bankr. P. 7012(b) [emphasis added]. The Answer appears to attempt to evade this simple pleading requirement by stating that Defendant does not "consent to the bankruptcy court rendering a 'final judgment' as to state law issues." Merely referencing "state law issues" is not a response as required by Federal Rule of Bankruptcy Procedure 7012(b). The court reads the full response in Paragraph 3 of the Answer to state that Defendant concurs with the allegation that a proceeding to determine claims arising under 11 U.S.C. § 547 and recovery pursuant thereto as provided in 11 U.S.C. § 550 is a "core proceeding" for which the bankruptcy judge issues all orders and the final judgment.

The allegation of core proceeding in Paragraph 4 of the Complaint and response in the Answer, Paragraph 4, are stated as follows.

Allegation of Federal Court Jurisdiction - Paragraph 4 of Complaint,

"This is a core proceeding pursuant to 28 U.S.C. sections 157(b)(2)(A), (E), and (0)."

The response in Defendant's Answer, Paragraph 4 to the allegation of federal court jurisdiction states,

"4. Paragraph 4 of the Complaint contains legal arguments or conclusions, to which no responsive pleading is required by

Defendant. To the extent the allegations of Paragraph 4 require any responsive pleading, Defendant admits that the Bankruptcy Court, in general, maintains jurisdiction over 11 U.S.C. §§ 547 and 550 actions. Defendant does not, however, consent to the Bankruptcy court's rendering of a final judgment as to state law issues pursuant to Stern v. Marshall, 131 S.Ct. 2594 (2011) and subsequent case law based thereon."

Contrary to the contention that Defendant need not plead a dispute to an allegation of Defendant that it need not respond to or expressly state whether this is a core of non-core "proceeding," as discussed above, such is required pursuant to Federal Rule of Bankruptcy Procedure 7012(b). The court reads the full response in Paragraph 4 of the Answer to state that Defendant concurs with the allegation that a proceeding to determine claims arising under 11 U.S.C. § 547 and recovery pursuant thereto as provided in 11 U.S.C. § 550 is a "core proceeding" for which the bankruptcy judge issues all orders and the final judgment. Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.

In Paragraph 5 of the Complaint Plaintiff-Trustee alleges that venue is proper in this court for the Adversary Proceeding. Defendant responds to the allegation of venue with the same boiler-plate response to federal court jurisdiction and core proceeding allegations stated in Paragraphs 3 and 4 of the Answer. Defendant does not deny the allegation that venue, for this California Corporation in this bankruptcy court in the Eastern District of California, is proper, and thereby admits that venue is proper.

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), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In the Answer, Paragraphs 3 and 4, Defendant concurs that federal court jurisdiction exists for this Adversary Proceeding and that the claim for avoiding a preferential transfer pursuant to 11 U.S.C. § 547 and the relief related thereto pursuant to 11 U.S.C. § 550 are core proceedings.
- b. Initial Disclosures shall be made on or before **October 10, 2015**.
- c. Expert Witnesses shall be disclosed on or before -----, **2016**, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

**October 1, 2015 at 2:00 p.m.**

14. [13-91315-E-7](#) [15-9038](#) APPLGATE JOHNSTON, INC. STATUS CONFERENCE RE: COMPLAINT  
7-13-15 [[1](#)]  
MCGRANAHAN V. ELECTRICAL  
DISTRIBUTORS, CO.

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Gleb Finkelman

Adv. Filed: 7/13/15  
Answer: 9/16/15

Nature of Action:  
Recovery of money/property - preference

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

Notes:

Discovery Plan filed 9/16/15 [Dckt 14]

**SUMMARY OF COMPLAINT**

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

- a. Bankruptcy case filed on July 16, 2013.
- b. Payment of \$1,035,578.21 made to Defendant Electrical Distributors, Co. between April 1, 2013 and June 18, 2013.

**SUMMARY OF ANSWER**

In the Answer, Defendant admits and denies specific allegations in the Complaint. Defendant asserts twenty-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(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Electrical Distributors, Co. admits the allegations of jurisdiction and core proceedings for the claims arising under 11 U.S.C. §§ 547 and 550. Answer, p.2:1-20, Dckt. 13. Defendant does not consent to the bankruptcy judge issuing the orders and final judgment on state law claims not arising under 11 U.S.C. §§ 547 and 550.

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

- c. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Electrical Distributors, Co. admits the allegations of jurisdiction and core proceedings for the claims arising under 11 U.S.C. §§ 547 and 550. Answer, p.2:1-20, Dckt. 13. Defendant does not consent to the bankruptcy judge issuing the orders and final judgment on state law claims not arising under 11 U.S.C. §§ 547 and 550.
- d. Initial Disclosures shall be made on or before **October 30, 2015**.
- e. Expert Witnesses shall be disclosed on or before January 15, 2016, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- f. Discovery closes, including the hearing of all discovery motions, on -----, **2016**.
- g. Dispositive Motions shall be heard before -----, **2016**.
- h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on -----, 2016**.

15. [13-91315-E-7](#) [15-9039](#) APPLGATE JOHNSTON, INC.  
MCGRANAHAN V. JOHNSTON

STATUS CONFERENCE RE: COMPLAINT  
7-13-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Charles L. Hastings

Adv. Filed: 7/13/15  
Answer: 8/13/15

Nature of Action:  
Recovery of money/property - preference

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

#### SUMMARY OF COMPLAINT

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

- a. Bankruptcy case filed on July 16, 2013.
- b. Payment of \$183,505.404 made to Defendant Tim Johnson between June 1, 2012, and July 12, 2013.

The Plaintiff-Trustee also objects to Defendant's claim as provided in 11 U.S.C. § 502(d).

#### SUMMARY OF ANSWER

In the Answer, Defendant Tim Johnson admits and denies specific 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(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Tim Johnson admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 7. ~~To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Tim Johnson admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 7. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **-----, 2015.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2016.**
- d. Discovery closes, including the hearing of all discovery motions, on **-----, 2016.**
- e. Dispositive Motions shall be heard before **-----, 2016.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016.**

16. [13-91315-E-7](#) [15-9040](#) APPLGATE JOHNSTON, INC.  
MCGRANAHAN V. PROTECH SECURITY  
& ELECTRONICS, INC.

STATUS CONFERENCE RE: COMPLAINT  
7-13-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Michael L. Wilhelm

Adv. Filed: 7/13/15  
Answer: 9/16/15

Nature of Action:  
Recovery of money/property - preference

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

Notes:

Discovery Plan filed 9/17/15 [Dckt 9]

**SUMMARY OF COMPLAINT**

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

- a. Bankruptcy case filed on July 16, 2013.
- b. Payment of \$56,908.80 made to Defendant Protech Security & Electronics, Inc. on May 21, 2013.

Plaintiff-Trustee also objects to Defendant's claim pursuant to 11 U.S.C. § 502(d).

**SUMMARY OF ANSWER**

In the Answer, Defendant admits and denies specific allegations in the Complaint. Defendant asserts 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(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant Protech Security & Electronics, Inc. admits the for the avoidance of a preference and recovery thereof pursuant to 11 U.S.C. § 547 and § 550 is a core proceeding. Defendant does not consent to the bankruptcy judge issuing orders and the final judgment for non-core claims. Answer ¶¶ 3, 4, Dckt. 7. ~~Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.~~

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. **Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.**
- b. Initial Disclosures shall be made on or before **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016**.



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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Tekstar Systems, Inc. admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 7. Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.
- b. Initial Disclosures shall be made on or before **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 16, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2015**.



- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, I.C. Electrics, Inc. admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 7. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016**.



Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, RFI Communications, Inc. admits the allegations of jurisdiction and core proceedings. Answer ¶¶ x, x, Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.



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 **October 30, 2015.**
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016.**
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016.**
- e. Dispositive Motions shall be heard before **July 21, 2016.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016.**



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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Eric Consulting admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 13. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **October 31, 2015**.
- c. Expert Witnesses shall be disclosed on or before -----, **2016**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2016**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2016**.
- e. Dispositive Motions shall be heard before -----, **2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2016**.



and deadlines:

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Securecom, Inc. admits the allegations of jurisdiction and core proceedings. Answer ¶¶ x,x, Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016**.



- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, ICS Integrated Communications Systems admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 9. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **-----, 2015.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2016.**
- d. Discovery closes, including the hearing of all discovery motions, on **-----, 2016.**
- e. Dispositive Motions shall be heard before **-----, 2016.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016.**



Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, WPCS International admits the allegations of jurisdiction and core proceedings. Answer ¶¶ x,x, Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.



- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Johnson Electronics admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 7. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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 **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2016**.



maintains jurisdiction over 11 U.S.C. §§ 547 and 550 actions. SG does not, however, consent to the Bankruptcy Court's rendering of a final judgment as to state law issues pursuant to Stern v. Marshall, 131 S.Ct. 2594 (2011) and subsequent case law based thereon."

Answer, ¶¶ 3 and 4, Dckt. 15.

Contrary to the contention that Defendant need not plead a dispute to an allegation of federal court subject matter jurisdiction, such a response is required. The court reads the response to be that defendant admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550.

Further, Defendant has an affirmative duty to "admit or deny that the **proceeding** is core or non-core." Fed. R. Bankr. P. 7012(b) [emphasis added]. The Answer appears to attempt to evade this simple pleading requirement by stating that Defendant does not "consent to the bankruptcy court rendering a 'final judgment' as to state law issues." Merely referencing "state law issues" is not a response as required by Federal Rule of Bankruptcy Procedure 7012(b). The court reads the full response in Paragraphs 3 and 4 of the Answer to state that Defendant concurs with the allegation that a proceeding to determine claims arising under 11 U.S.C. § 547 and recovery pursuant thereto as provided in 11 U.S.C. § 550 is a "core proceeding" for which the bankruptcy judge issues all orders and the final judgment.

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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Simplexgrinnell, LP admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3,4, Dckt. 15. Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.
- b. Initial Disclosures shall be made on or before **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2016**.

October 1, 2015 at 2:00 p.m.



court does not have subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Additionally, Federal Rule of Bankruptcy Procedure 7012(b) requires that "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."

The allegation of federal court jurisdiction response in the Answer, in this Adversary Proceeding are stated as follows.

Allegation of Federal Court Jurisdiction - Paragraph 3x of Complaint,

"3. The court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. sections 1334, 157(a), and 157(b)."

The response in Defendant's Answer (Dckt. 7), Paragraph 3 to the allegation of federal court jurisdiction states,

"3. The defendant has insufficient information or knowledge to admit or deny the allegations in paragraph 3 of the Complaint, and therefore denies those allegations."

Contrary to the contention that Defendant and Defendant's counsel that they may just use a boilerplate contention of "no knowledge" to deny the fundamental issue of federal court jurisdiction, it must respond. The court reads the lack of response to be that Defendant admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550.

The Plaintiff-Trustee, in Paragraph 4 of the Complaint alleges that this Adversary Proceeding asserting a claim uniquely arising under 11 U.S.C. § 547 is a "core proceeding."

"4. This is a core proceeding pursuant to 28 U.S.C. sections I 57(b)(2)(A), (E), and (0)."

The Defendant responds in Paragraph 4 of the Answer, that it, and Defendant's attorneys lack the "knowledge or information" to fulfill the requirements of Federal Rule of Bankruptcy Procedure 9012(b).

"4. The defendant has insufficient information or knowledge to admit or deny the allegations in paragraph 4 of the Complaint, and therefore denies those allegations."

Defendant has an affirmative duty to "admit or deny that the **proceeding** is core or non-core." Fed. R. Bankr. P. 7012(b) [emphasis added]. The Answer appears to attempt to evade this simple pleading requirement by stating that Defendant, and Defendant's attorney do not have the "knowledge or information" to comply with the requirement to expressly address the core/non-core issue for this Adversary Proceeding. The court reads the Answer to admit that the claim to avoid a preference arising under 11 U.S.C. § 547 and the related relief pursuant thereto is a "core proceeding" for which the bankruptcy judge issues all orders and the final judgment.

Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.

#### **COMPLIANCE WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 9011**

Defendant and Defendant's attorneys filing an Answer which denies every allegation based on lack of knowledge or information may well not comply with, and violate the certifications made pursuant to, Federal Rule of Bankruptcy Procedure 9011, which include [emphasis added]:

"(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, **an attorney** or unrepresented party **is certifying** that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein **are warranted by existing law or by a nonfrivolous argument** for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the **allegations and other factual contentions have evidentiary support** or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, **are reasonably based** on a lack of information or belief."

The court is hard pressed to understand how knowledgeable attorneys for Defendant cannot comply with the requirements of Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7012(b). Further, the court is hard pressed to understand how Defendant and Defendant's attorneys "lack information or knowledge" to affirmatively respond to the allegation that venue is proper in this federal court for this preference action. See Answer, ¶ 5.

The credibility of Defendant is also impaired by its "lacking knowledge or information" to respond to any of the factual allegations, including the monies alleged to be paid to Defendant by Debtor. See Answer, ¶ 8; Complaint, ¶ 8.

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

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint

¶¶ 3,4, Dckt. 1. In its answer, Security National Insurance admits the allegations of jurisdiction and core proceedings. The court reads the lack of response to be that Defendant, in which it is purported to state that Defendant and Defendant's attorneys "lack knowledge or information" to comply with the mandatory pleadings requirements of Federal Rule of Civil Procedure 12(b) and Federal Rule of Bankruptcy Procedure 7012(b), admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550 and that it is a "core proceeding" in which the bankruptcy judge issues all orders and the final judgment. Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.

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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. In its answer, Security National Insurance admits the allegations of jurisdiction and core proceedings. The court reads the lack of response to be that Defendant, in which it is purported to state that Defendant and Defendant's attorneys "lack knowledge or information" to comply with the mandatory pleadings requirements of Federal Rule of Civil Procedure 12(b) and Federal Rule of Bankruptcy Procedure 7012(b), admits that federal court jurisdiction exists to determine the avoidance claims asserted under 11 U.S.C. § 547 and § 550 and that it is a "core proceeding" in which the bankruptcy judge issues all orders and the final judgment. Defendant does not consent at this time to the bankruptcy judge issuing orders or a final judgment for potential future non-core claims which may be amended into the complaint for this Adversary Proceeding.
- b. Initial Disclosures shall be made on or before **October 30, 2015**.
- c. Expert Witnesses shall be disclosed on or before **January 15, 2016**, and Expert Witness Reports, if any, shall be exchanged on or before **March 18, 2016**.
- d. Discovery closes, including the hearing of all discovery motions, on **May 31, 2016**.
- e. Dispositive Motions shall be heard before **July 31, 2016**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2016**.

October 1, 2015 at 2:00 p.m.

28. [13-91315-E-7](#) [15-9052](#) APPLGATE JOHNSTON, INC. STATUS CONFERENCE RE: COMPLAINT  
7-15-15 [[1](#)]  
MCGRANAHAN V. LAGUNA GOLD  
MORTGAGE, INC.

**Final Ruling: No appearance at the October 1, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Daniel L. Egan  
Defendant's Atty: Patrick Keene

Adv. Filed: 7/15/15  
Answer: none

Nature of Action:  
Recovery of money/property - preference

<p><b>The Status Conference is continued to 2:00 p.m. on November 12, 2015.</b></p>
---

Notes:

[RR-1] Motion to Dismiss for Failure to Join a Necessary and Indispensable Party filed 8/10/15 [Dckt 7], set for hearing 10/1/15 at 10:30 a.m.

#### **SUMMARY OF COMPLAINT**

In the Complaint the Plaintiff-Trustee alleges that the following transfers may be avoided as preferences pursuant to 11 U.S.C. § 547 and recovery pursuant to 11 U.S.C. § 550:

- A. Bankruptcy case filed on July 16, 2013.
- B. Payment of \$2,857.62 made to Defendant Laguna Gold Mortgage, Inc., dba LGM Construction on April 24, 2013.

#### **SUMMARY OF ANSWER**

No Answer has been filed.

The court has denied the Motion to Dismiss filed by the shareholder and office of Defendant. An answer or other responsive pleading is required to be filed and served by October 16, 2015.

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 conducted by the court, no answer having been filed, the court denying the Motion to Dismiss filed in pro se by the shareholder and officer of the Defendant, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on November 12, 2015.

IT IS FURTHER ORDERED that Defendant Laguna Gold Mortgage, Inc., dba LGM Construction shall file an answer or other proper responsive pleading as permitted pursuant to Federal Rule of Civil Procedure 12 and Federal Rule of Bankruptcy Procedure 7012 on or before October 16, 2015.

**Tentative Ruling:** The Motion to Approve Disclosure Statement 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).

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 42 days' notice was provided. 28 day's notice is required.

The Motion to Approve Disclosure Statement 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 defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Approve Disclosure Statement is approved.**

**REVIEW OF THE DISCLOSURE STATEMENT**

Case filed: July 16, 2014

Background:

Joseph Tedesco ("Debtor") has been involved in real estate investing for the past 43 years. Many of his investments were in single family homes in Stanislaus County, California, all of which were lost during a prior Chapter 7 case caused by the sharp downturn in real estate values. He presently owns only the Shopping Center, the Seascape Condo, and the Duplex. The Trustee in the Chapter 7 case evaluated the equity in each property at the time and determined there was none. Real estate values have rebounded and the Debtor was

able to obtain a substantial reduction in the claim secured by the Seascape Condo.

The Debtor is retired from active employment and receives \$826.00 per month in Social Security retirement benefits after deduction for Medicare.

This is not the Debtor's first, or second bankruptcy case. His first case was dismissed, with the court relying on Debtor's representation that he was not requesting the dismissal for an improper purpose or merely intending to refile a new Chapter 11 case (to avoid the consequences of his actions, or inactions, in the first case). Shortly after the first case was dismissed, Debtor filed a second Chapter 11 case. When that case was not prosecuted, the case was converted to one under Chapter 7. The Debtor benefitted from the conversion, obtaining a discharge of his debts.

With the discharge in hand, Debtor is left with only seven creditors who have filed claims in this case. Debtor and the surviving creditors with secured claims have been able to find common ground to move this case forward.

The immediate problem prompting the Chapter 11 petition was the failure of the Debtor's primary tenant in the Shopping Center, Jacobs Fine Dining, to pay its rent in full each month. The tenant made partial payments but slipped further behind and this made it impossible for the Debtor to pay real property taxes as they came due. The Debtor was forced to evict the delinquent tenant and thereafter secured a new tenant, an experienced restaurant operator, who opened a new Italian restaurant and began paying rent of \$5,500.00 per month in August, 2015.

The Shopping Center is reported to be now fully occupied with paying tenants who have scheduled rent increases.

When the petition was filed, the Debtor owned a very small, very old, rental home at 1509 Rose Avenue, Modesto, California. It was very difficult to retain and maintain responsible tenants. In July, 2015, the Court approved a sale of this property, which generated approximately \$30,000.00, of which \$25,000.00 was immediately remitted to the Tax Collector. To date, the Tax Collector has not negotiated the check.

Creditor/Class	Treatment	
Unclassified Claims:	Claim Amount	
	Impairment	

Administrative Claims

	<p>The holders of unclassified administrative claims will be paid in cash on the Effective Date of the Plan, unless they agree to a different treatment, which is expected. Other than ongoing U.S. Trustee quarterly fees, there are only two unclassified administrative claims: One is held by the attorney employed by the Debtor-in-Possession whose claim is expected to be \$15,000.00, and the other is held by Zeda Bertozzi, a friend, who loaned the Debtor-in-Possession \$17,500.00 on an unsecured basis to pay current real property taxes to avoid substantial penalties. Both claimants will defer payment to assist the Debtor</p> <p>Quarterly fees will be due to the U.S. Trustee until the case is dismissed, closed, or converted to a Chapter 7 case. The Debtor expects the case to be administratively closed in the fourth quarter of 2015, subject to being reopened.</p>	
<p>Unclassified claims: Priority tax claims</p>	<p><b>Claim Amount</b></p>	
	<p><b>Impairment</b></p>	
	<p>There is one unclassified priority tax claim originally asserted by the Internal Revenue Service for \$61,813.98 for unassessed liabilities which turned out to be groundless. Nothing is due to the Internal Revenue Service. However, to satisfy 11 U.S.C. § 1129(a)(9)(C)(ii), the Plan provides that the claim will be paid in full, with interest at the rate of 4% per annum, on or before July 1, 2019. The Debtor expects the claim will be withdrawn prior to confirmation of the plan.</p>	
<p>Class 1: Chase</p>	<p><b>Claim Amount</b></p>	
	<p><b>Impairment</b></p>	<p>Yes</p>
	<p>The claim of Chase is secured by a deed of trust on the Seascope Condo. The holder of the claim will receive its regular monthly payments without any modification, and the arrears, if any, over a 60 month period. The holder of the claim will retain its lien until the claim is paid in full.</p>	
<p>Class 2: Seterus</p>	<p><b>Claim Amount</b></p>	
	<p><b>Impairment</b></p>	<p>Yes</p>
	<p>The claim of Seterus is secured by the senior deed of trust on the Duplex. The holder of the claim will receive its regular monthly payments without any modification, and the arrears, if any, by March 31, 2016. The holder of the claim will retain its lien until the claim is paid.</p>	

Class 3: Batchelder	<b>Claim Amount</b>	
	<b>Impairment</b>	Yes
	Batchelder is secured by the junior deed of trust on the Duplex. The holder of the claim will receive modified monthly payments of \$1,000.00 per month until December 31, 2022, at which time the unpaid balance will be paid in full. The interest rate will be reduced from 10% per annum to 6% per annum. The holder of the claim will retain its lien until the claim is paid.	
Class 4: Tax Collector	<b>Claim Amount</b>	
	<b>Impairment</b>	Yes
	The Tax Collector is secured by a statutory lien on the Shopping Center. The holder of the claim will receive \$25,000.00 (which was tendered in August, 2015), \$3,000.00 per month, and payment in full no later than July 1, 2016 (but sooner if the Seascape Condo is sold). The holder of the claim will retain its lien until the claim is paid.	
Class 5: Westamerica	<b>Claim Amount</b>	
	<b>Impairment</b>	Yes
	Westamerica is secured by a deed of trust on the Shopping Center. The holder of the claim will receive a reduced monthly payment of \$11,500.00 each month for a period of ten years, at which time the balance will be fully paid. The interest rate will be set at 6% per annum fixed. The holder of the claim will retain its lien until the claim is paid.	
Class 6: General unsecured	<b>Claim Amount</b>	
	<b>Impairment</b>	
	General unsecured claim of the United States Trustee for \$325.00. It will be paid on the Effective Date of the Plan for administrative convenience.	
Class 7: Debtor's equity interests	<b>Claim Amount</b>	
	<b>Impairment</b>	
	There will be no change in ownership under the plan.	

A. C. WILLIAMS FACTORS PRESENT

\_\_Y\_\_ Incidents that led to filing Chapter 11

\_Y\_ Description of available assets and their value

\_N\_ Anticipated future of the Debtor

\_Y\_ Source of information for D/S

\_Y\_ Disclaimer

\_Y\_ Present condition of Debtor in Chapter 11

\_Y\_ Listing of the scheduled claims

\_N\_ Liquidation analysis

\_N\_ Identity of the accountant and process used

\_N\_ Future management of the Debtor

\_Y\_ The Plan is attached

*In re A. C. Williams*, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

**OBJECTIONS:**

Westamerica Bank, as successor in interest to County Bank ("Westamerica") filed an objection on September 17, 2015. Dckt. 113

Westamerica objects to the Disclosure Statement on the ground that it lacks adequate information. Westamerica states that adequate information has not yet been provided and the cost of providing additional information is nominal. Specifically, Westamerica states the following needs additional disclosure and clarification:

1. Class 5 claim
  - a. Details as to date of interest accruing. Westamerica has requested clarification as to why Debtor is proposing that the interest be fixed from the petition date and not the effective date of the plan, as proposed in class 1. The discrepancy and disparate treatment among secured real property creditors.
  - b. The treatment of Class 5 claimant does not contain the same language as the treatment of Class 1, which states "all remaining terms of the note and deed of trust shall govern."
2. Tax Authority Claim
  - a. Payment of \$25,000.00 to Tax Collector. While the court approved the sale of the property which generated approximately \$25,000.00 to be paid to the Tax Collector, the Disclosure Statement states that the Tax Collector has

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not negotiated the check.

- b. The details of the scheduled tax sale are not disclosed in the Disclosure Statement. If the Tax Collector will not accept payment there is the possibility of a tax sale on November 6, 2015, prior to any plan being confirmed. The upcoming tax sale is especially important given that there may be no stay in effect in this bankruptcy preventing the sale.
  - c. The Debtor has not specified whether the default in the ongoing Tax Collector cure payments or in the final payment allow Westamerica to advance to the Tax Collector and/or foreclose on the Property. There is no remedy specified in the event of a breach.
3. The Debtor provides in his Disclosure Statement that the judgment against Noel Sanchez dba Jacobs Fine Dining may not be collectable although the judgment debtor is operating a business in downtown Modesto and is opening an additional business in downtown Modesto. This relates to a \$25,000.00 judgement of a former tenant on Westamerica's property. Debtor does not specify why this judgment is "uncollectible." He claims that Mr. Sanchez is operating one, and possibly two businesses, yet does not explain why he is unable to collect against him.
  4. The plan provides that Debtor will sell the Seascape Condo in order to pay the Tax Collector before the final payment is due and "failing which is the Debtor will sell the Shopping Center." Debtor provides no clarification or timeline as to the details of any sale of the Shopping Center. In the plan, Debtor references that he will "sign a listing agreement" and "will diligently attempt to sell the Shopping Center." However, the Disclosure Statement and the Plan provide no deadline for doing so and presumably the plan could go on indefinitely without any sale.

#### **DISCUSSION:**

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

Here, Westamerica's objections are well-taken. A review of the Disclosure Statement shows that it leaves out important information, facially the liquidation analysis, but also neglects to give adequate information as to the treatment of many of the claimants. The Disclosure Statement does not state each claim amount but instead provides short, nonspecific details as to the proposed treatment. The Disclosure Statement is littered with conclusions of law, for instance that Mr. Sanchez is a noncollectable judgment debtor, without providing any information or explanation as to how and why such conclusion was reached. There is discrepancy in the treatment of certain claimants which lack explanation, namely the treatment of Class 1 claimant, Chase, and Class 5 claimant, Westamerica.

While some of the defects can be viewed as objections to confirmation (the disclosure statements accurately stating the defective terms of the plan), there is little reason to approve a disclosure statement for a plan which is defective on its face. Additionally, putting the court, creditors, and U.S. Trustee at the disadvantage of the Debtor in Possession "springing" new terms for these fundamental issues (such as the marketing plan and sales schedule for the Seascape Property) only in response to objections or the court's tentative ruling is a waste of judicial time and resources, as well as creating otherwise unnecessary costs and expenses for parties in interest.

There are only six proofs of claim filed in this case (the benefit of this Chapter 11 case following the Debtor's recent Chapter 7 discharge). These claims are:

- I. Proof of Claim No. 1, Stanislaus County Tax Collector
  - A. Secured.....\$88,823.69
    - 1. Collateral.....2501 McHenry Ave, Modesto
- II. Proof of Claim No. 2, Internal Revenue Service (Amended POC filed on September 17, 2014)
  - A. Priority.....\$61,813.98
  - B. General Unsecured.....\$ 8,386.00
- III. Proof of Claim No. 3, WestAmerica Bank

- A. Secured.....\$1,891,865.95
  - 1. Collateral.....2501 McHenry Ave, Modesto
- IV. Proof of Claim No. 4, Federal National Mortgage Association (Seterus, Inc. as the servicer) FN.1.
  - A. Secured.....\$181,119.80
    - 1. Collateral.....2413-2415 Counts Court, Modesto
    - 2. Arrearage.....\$3,131.28
- V. Proof of Claim No. 5, United States Trustee
  - A. General Unsecured.....\$325.00
    - 1. Quarterly Fees due from prior case.
- VI. Proof of Claim No. 6, JPMorgan Chase Bank, N.A.
  - A. Secured Claim.....\$450,050.78
    - 1. Collateral.....533 Seascape, Aptos
    - 2. Arrearage.....\$8,721.35

In considering the treatment of some of the creditors' claims, the court notes the following:

- A. For the JPMorgan Chase Bank, N.A. Claim, the creditor will continue to receive its post-confirmation regular month payments and the arrearage will be paid sometime over a sixty month period. The monthly payment on this claim is projected to be \$2,349.00. The monthly payment amount stated on the Mortgage Proof of Claim Attachment to Proof of Claim No. 6 states that the monthly interest payment is \$2,850.76 (computed at the then variable interest rate of 3.084%).
- B. In the Plan, Debtor states that the monthly contractual payment is \$2,215.46, consisting of \$1,653.60 of principal and interest, plus \$561.86 for interest and taxes. This is consistent with the amount stated in the Disclosure attached to Proof of Claim No. 6. If the arrearage of \$8,721.35 stated in the Proof of Claim is amortized over sixty months, there is an additional \$145.36 a month. (The Plan actually provides for the arrearage to be so amortized over sixty months.)

Additionally, the plan provides that the Debtor may, but is not committed to, selling the Seascape Property, and if so, JPMorgan Chase Bank, N.A. will be paid from the sale. However, under another section the Disclosure Statement provides that the Debtor will sell the Seascape Property.

- C. The Class 4 Claim of the Tax Collector will be paid with a

\$25,000 lump sum payment from the sale of other property which has occurred pre-confirmation, monthly payments of \$3,000.00, and the balance no later than July 1, 2016. If Debtor sells the Seascope Property, The Tax Collector will be paid from the net proceeds. The Disclosure Statement does not indicate the source of the payment of the Tax Collector's \$88,823.69 claim from any sources other than the \$3,000 (which will aggregate approximately \$15,000)\_ and the \$25,000 lump sum payment.

- D. Though no proof of claim has been filed, Debtor lists Batcheldor having a \$160,000 claim secured by the 2413 and 2415 Counts Court Property. The Plan provides for this claim to be reamortized over seven years, with monthly payments of \$1,000, and the balance due in full on December 31, 2022. On schedule D, this claim is listed as being unsecured (due to the amount of the senior lien and value of the property) in the amount of \$92,138.00. No order bifurcating the debt into a secured claim and unsecured claim has been entered by the court.

Using the 6% per annum interest, the \$1,000 monthly payment, a seven year amortization, and a \$160,000 secured claim, the court projects that interest will negatively amortize at the rate of \$1,337.37 a month. FN.1.

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FN.1. Using the Microsoft Excel Simple Loan Calculator, a \$160,000 principal amount, amortized over 7 years at 6% interest, results in a monthly principal and interest payment of \$2,337.37.  
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With respect to the judgment against Noel Sanchez dba Jacobs fine Dining, the Plan and Disclosure Statement are unreasonably silent. While the Debtor, who is not an attorney, collection agency, or loan enforcement officer may believe that judgment is "uncollectable," the potential asset cannot be left to languish. Recovery of something on a \$25,000 judgment, which is accruing interest at 10% per annum by a contingent fee collection agency or attorney is better than Debtor merely writing off the judgment as not worth collecting (quite possibly in large part because the "money will just go to creditors").

While there are some confirmation issues which remain, for the few remaining creditors, the Disclosure Statement provides sufficient adequate information. Debtor in Possession will still have to convince the court as to feasibility, as well as address the amendments so that the Plan matches the agreements made with creditors.

The Disclosure Statement is approved, and the court shall issue an order setting the following dates and deadline:

- A. Joseph R. Tedesco, the Debtor in Possession, the "Plan Proponent," shall serve the approved disclosure statement, proposed plan, notice of confirmation hearing, a copy of this order approving the disclosure statement, and ballot on or before ~~xxxxx~~, 2015.

- B. Ballots shall be returned to counsel for the Plan Proponent on objections to confirmation, if any, filed and served on or before **xxxxxx, 2015**.
- C. The Ballot Tabulation Summary, evidence in support of confirmation, Responses to objections to confirmation, and proposed plan amendments, if any, shall be filed and served on or before **xxxxxx, 2015**.
- D. The Confirmation Hearing shall be conducted at 2:00 p.m. on **xxxxxx, 2015**.



- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 2016.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2016.
- F. The Trial shall be conducted at ----x.m. on -----, 2016.

Turlock Irrigation District filed its Pretrial Conference Statement on September 23, 2015. Dckt. 16. No Pretrial Conference Statement has been filed by Defendant-Debtor. As set forth in the Pretrial Conference Statement 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

Defendant

<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> <li>Jurisdiction exists pursuant to 28 U.S.C. §§ 157 and 1334.</li> <li>This is a core proceeding pursuant to 28 U. S. C. § 157 (b)(2)(1) to determine dischargeability of a particular debt owed to Turlock Irrigation District ("TID").</li> </ol>	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> <li>No Pretrial Conference Statement Filed by Defendant.</li> </ol>
<p>Undisputed Facts:</p> <ol style="list-style-type: none"> <li>None identified.</li> </ol>	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> <li>No Pretrial Conference Statement Filed by Defendant.</li> </ol>
<p>Disputed Facts:</p> <ol style="list-style-type: none"> <li>All.</li> </ol>	<p>Disputed Facts:</p> <ol style="list-style-type: none"> <li></li> </ol>
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>None identified.</li> </ol>	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>No Pretrial Conference Statement Filed by Defendant.</li> </ol>
<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>TID seeks judgment against Defendants and in favor of TID in the amount of</li> </ol>	<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>No Pretrial Conference Statement Filed by Defendant.</li> </ol>

<p>\$39,255.00 for TID's actual damages, plus treble damages.</p> <p>2. TID is requesting costs and attorneys' fees.</p> <p>3. That the monetary judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(4).</p>	
<p>Points of Law:</p> <p>1. California Civil Code §§ 1882 through 1882.6 regarding theft of utility services.</p> <p>2. California Civil Code § 1882.3, a rebuttable presumption exists that power theft occurred if a diversion device exists at premises where the customer received the direct benefit of utility service.</p> <p>3. 11 U.S.C. § 523(a)(4).</p>	<p>Points of Law:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Abandoned Issues:</p> <p>1. None.</p>	<p>Abandoned Issues:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Witnesses:</p> <p>1. Kevin Edwards, TID employee.</p> <p>2. Aaron, Power Theft Investigator, TID employee.</p>	<p>Witnesses:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Exhibits:</p> <p>1. Unsafe Condition Inspection Report</p> <p>2. TID Reports of power usage.</p> <p>3. Grow House Equipment Inventory.</p> <p>4. TID Power Theft Report.</p> <p>5. Revenue Recovery-Power</p>	<p>Exhibits:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>

<p>Diversion Charges.</p> <p>6. TID Invoices for the Property.</p> <p>7. Summary of Attorneys' Fees and Costs incurred by TID.</p> <p>8. Defendant's Schedules and Statements filed in their Chapter 7 Bankruptcy case.</p>	
<p>Discovery Documents:</p> <p>1. None.</p>	<p>Discovery Documents:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Further Discovery or Motions:</p> <p>1. None.</p>	<p>Further Discovery or Motions:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Stipulations:</p> <p>1. None.</p>	<p>Stipulations:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Amendments:</p> <p>1. None.</p>	<p>Amendments:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Dismissals:</p> <p>1. None.</p>	<p>Dismissals:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Agreed Statement of Facts:</p> <p>1. None.</p>	<p>Agreed Statement of Facts:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Attorneys' Fees Basis:</p> <p>1. California Civil Code § 1882.2.</p>	<p>Attorneys' Fees Basis:</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>

<p>Additional Items</p> <p>1. Trial requested after October 23, 2015.</p>	<p>Additional Items</p> <p>1. No Pretrial Conference Statement Filed by Defendant.</p>
<p>Trial Time Estimation: Four Hours.</p>	<p>Trial Time Estimation: No Pretrial Conference Statement Filed by Defendant.</p>



§ 157(b)(2)(J). Though not expressly stated, federal court jurisdiction for relief sought pursuant to 11 U.S.C. § 523 exists pursuant to 28 U.S.C. § 1334 and § 157, and the referral to this court by the United States District Court for the Eastern District of California. This is a core proceeding arising under 11 U.S.C. § 523(a)(2) and (6).

- b. Initial Disclosures shall be made on or before -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.



33. [14-90249](#)-E-7 SCOTT MYERS  
[14-9026](#)  
IMH FINANCIAL CORPORATION V.  
MYERS

PRE-TRIAL CONFERENCE RE:  
COMPLAINT TO REVOKE DISCHARGE  
9-22-14 [[1](#)]

*Adversary dismissed 9/17/15*

**Final Ruling:** No appearance at the October 1, 2015 Status Conference is required.

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The Adversary Proceeding having been dismissed pursuant to the Stipulation of the Parties and an order revoking Defendant-Debtor's Discharge having been entered in the bankruptcy case (14-90249, Dckt. 151), **The Pre-Trial Conference is removed from the Calendar.**



Amended complaint not filed as of 9/22/15.

**OCTOBER 1, 2015 STATUS CONFERENCE**

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**JULY 22, 2015 STATUS CONFERENCE**

**SUMMARY OF COMPLAINT**

The Complaint seeks to recover a "preferential transfer" from Defendant IRM Corporation. Plaintiff-Debtor asserts that within ninety days of the commencement of the bankruptcy case Defendant enforced a wage garnishment against the Plaintiff-Debtor, collecting \$932.30. Plaintiff-Debtor asserts that this is an avoidable transfer.

**SUMMARY OF ANSWER**

No Answer File.

**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 (not citing to any specific provision, but 28 U.S.C. § 157(b)(2)(F) identified as a basis for code proceeding determination).

The Status Conference is continued to allow Plaintiff additional time to investigate the identity of the successor entity to the judgment creditor.

36. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE  
[14-9025](#)  
HOUSE ET AL V. AMARAL

CONTINUED PRE-TRIAL CONFERENCE  
RE: COMPLAINT FOR: 1)  
DECLARATORY RELIEF; 2) EASEMENT  
BY PRESCRIPTION; 3)  
PRESCRIPTIVE EASEMENT; 4) QUIET  
TITLE; 5) CONTEMPT FOR  
VIOLATION OF THE AUTOMATIC  
STAY; 6) INJUNCTIVE RELIEF  
8-8-14 [[1](#)]

**Final Ruling:** No appearance at the October 1, 2015 Status Conference is required.

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Plaintiff's Atty: Robert M. Yaspan  
Defendant's Atty: Michael B. Ijams

Adv. Filed: 8/8/14  
Answer: 9/8/14

Nature of Action:  
Injunctive relief - imposition of stay  
Declaratory judgment

Pursuant to the Stipulation of the Parties, **the Status Conference is continued to 2:00 p.m. on January 14, 2016.**

Notes:

Continued from 7/2/15 to allow the surveyor to complete his critical services.

37. [08-92594-E-7](#)    ROBERT/STEPHANIE  
[15-9054](#)            ACHTERBERG  
ACHTERBERG, JR. ET AL V.  
CREDITORS TRADE ASSOCIATION,

STATUS CONFERENCE RE: COMPLAINT  
7-23-15 [[1](#)]

Plaintiff's Atty:    Malcolm D. Gross  
Defendant's Atty:    Unknown

Adv. Filed:        7/23/15  
Answer:            none

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



Notes:

**SUMMARY OF COMPLAINT**

In the Complaint Plaintiff-Debtor seeks declaratory relief that purported default judgments obtained by Defendant are void, having been obtained in violation of the automatic stay during the pendency of Plaintiff-Debtor's bankruptcy case. Further, that actions taken with respect to such void judgment violate the discharge injunction arising under 11 U.S.C. § 524. Plaintiff-Debtor also seeks to recover damages for violation of the automatic stay and discharge injunction.

**SUMMARY OF ANSWER**

No answer has been filed.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists and that this is a core proceeding pursuant to 28 U.S.C. § 157(a)(b)(1), (b)(2)(I) and 28 U.S.C. § 157 (a)(b)(2)(k). Complaint ¶¶ 1, Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. 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.

38. [13-91999-E-7](#) [14-9009](#) JESSE/WENDY WYLIE  
FALTON CUSTOM CABINETS, INC V.  
WYLIE

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-10-14 [[1](#)]

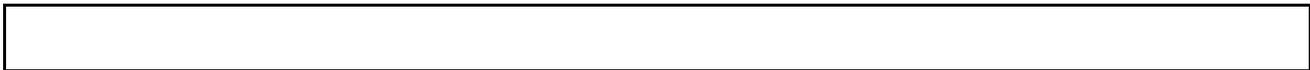
Plaintiff's Atty: Unknown [James A. Fonda not eligible to practice law]  
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 2/10/14

Answer: 3/10/14

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud



Notes:

Continued from 8/20/15 as a Trial Status Conference [Dckt 36]. Dates and deadlines in the 4/7/15 Trial Setting Order still in effect.

**OCTOBER 1, 2015 STATUS CONFERENCE**

No additional pleadings have been filed since the August 20, 2015 Status Conference. No substitution of attorney has been filed for counsel to represent the Defendant corporation.

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

**AUGUST 20, 2015 STATUS CONFERENCE**

The Status Conference was continued to October 1, 2015 at 2:00. The August 24 and 25, 2015 trial dates were vacated, to be reset by subsequent order of the court.

Trial in this Adversary Proceeding is scheduled for August 24 and 25, 2015. Trial Setting Order, Dckt. 27. The court set the following dates and deadlines in the Trial Setting Order:

- A. Evidence shall be submitted pursuant to Local Rule 9017-1.
- B. On or before May 26, 2015, Falton Custom Cabinets, Inc. ("Plaintiff") shall lodge with the court and serve on Jesse Wylie ("Defendant") direct testimony statements and exhibits. The Plaintiff's witnesses and exhibits are stated in Attachment A to the Trial Setting Order.
- C. On or before June 17, 2015, Defendant shall lodge with the court and serve on Plaintiff direct testimony statements and exhibits. The Defendant's witnesses and exhibits are stated in Attachment A to the Trial Setting Order.
- D. On or before June 24, 2015, evidentiary objections and trials briefs for both parties shall be lodged with the court and served.

E. On or before July 1, 2015, oppositions to evidentiary objections shall be lodged with the court and served.

On June 25, 2015, Plaintiff filed its trial brief. Dckt. 30. The trial brief states that false representations had been made to deceive Plaintiff to continue to provide labor and materials.

On June 26, 2015, Defendant filed an objection to Plaintiff providing testimony and exhibits at trial as part of its case in chief, asserting that no direct testimony statements and exhibits had been served on Defendant. No direct testimony statements and exhibits have been lodged with the court by Plaintiff. The timely lodging of the direct testimony statements and exhibits are required for the presentation of such witnesses and exhibits at the time of trial.

On August 13, 2015, a representative of Plaintiff notified the court that James A. Fonda, counsel of record for Plaintiff in this Adversary Proceeding, was no longer eligible to practice law and had been arrested. The California State Bar website lists that Plaintiff's counsel was ordered not eligible to practice law effective July 27, 2015, and continuing to the present. FN.1.

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FN.1. <http://members.calbar.ca.gov/fal/Member/Detail/45160>  
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Plaintiff was required to have lodged with the court and serve on Defendant direct testimony statements and exhibits. Failure to so lodge and serve the direct testimony statements subject the non-complying party to sanctions (L.B.R. 1001-1(g)), which includes not being permitted to present the testimony and exhibits which were not lodged with the court and served. Compliance with the Trial Scheduling Order is mandatory and essential to maintain a fair judicial process. To not enforce the order would immediately lead to gamesmanship and "sandbagging" of witnesses, testimony, and exhibits. The provisions of Local Bankruptcy Rule 9017-1 are mandatory ("shall," not "may" specified in this Rule).

All of these requirements for preparation and lodging with the court the direct testimony statements and exhibits predate Mr. Fonda being ordered ineligible to practice law. The Plaintiff's direct testimony statements had to have been lodged with the court and served no later than May 26, 2015. That was sixty-one days before Mr. Fonda was ordered ineligible to practice law. On June 25, 2015, Mr. Fonda was actively appearing in this case, filing Plaintiff's Trial Brief.

The Plaintiff being a corporation, which must be represented by counsel and ineligible to appear in pro se. To address the absence of counsel, the court set this emergency Pre-Trial Status Conference on August 20, 2015, to allow Plaintiff to present the court with its new counsel and status of its prosecution of the Adversary Proceeding.

Claudia Aceves appeared as the possible replacement counsel for Plaintiff. Ms. Aceves requested that the trial be continued to afford her the opportunity to investigate. The parties addressed the issue of the Plaintiff's client files and documents will have to be recovered from their former attorney, who is currently incarcerated (pending release on bail).