

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 29, 2018 at 2:00 p.m.

1. [18-90428-E-11](#) **RANDHAWA TRUCKING, LLC** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-7-18 [1]**

Debtor's Atty: Brian S. Haddix

Notes:
Continued from 7/12/18

Operating Report filed: 7/16/18, 8/14/18, 9/20/18, 10/17/18, 11/14/18

Trustee Report at 341 Meeting lodged 7/19/18

[JM-1] Motion for Relief from Automatic Stay [Creditor PG14, LLC] filed 9/24/18 [Dckt 42]; heard 11/8/18 and continued to 11/29/18 at 10:00 a.m.

NOVEMBER 29, 2018 STATUS CONFERENCE

The Monthly Operating Report for October 2018, reflects that in the first five post-petition months the estate has generated a positive cash flow of \$14,929 on \$1,256,629 in gross receipts (a 1.2% "profit" margin).

At the Status Conference, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

JULY 12, 2018 STATUS CONFERENCE

This Chapter 11 case was filed on June 7, 2018. The Schedules and Statement of Financial Affairs were filed on June 29, 2018. Dckt. 29. The major asset of the Bankruptcy Estate is real property located at 1200 G Street, which is stated to have a value of \$1,300,000. *Id.* at 6. The Estate has no significant assets other than \$6,000 in Lottery Tickets and a 2017 Mercedes GLE 350 with a stated replacement value of \$45,000. *Id.* at 3-6.

The secured claims on Schedule D include \$1,100,000 encumbering the real property (two deeds of trust) and a \$40,000 claim secured by the \$45,000 2017 Mercedes Benz.

The U.S. Trustee's Report from the First meeting of Creditors is that the representative of Debtor in Possession and Debtor did not appear, but counsel for Debtor in Possession did appear. No motion to employ counsel has been filed.

At the Status Conference Counsel states that the estate is operating the mini-mart gas station. At the Status Conference the court addressed a number of issues concerning the good faith prosecution of this case and the related case of Ashwinder Singh (the sole member and manager of this LLC Debtor), 18-90425. It was stated at the Status Conference that the Schedules were inaccurate and would have to be corrected. Additionally, counsel for this Debtor in Possession and counsel for Mr. Singh in his bankruptcy case explained that it was "necessary" for Mr. Singh to have his various entities pay for late model Mercedes Benz for he and his family to drive to work at the businesses of his LLCs.

The first Monthly Operating Report is due later in July. The Schedules, as now filed (though stated as inaccurate by counsel for the Debtor in Possession) show no significant assets, other than the real property in the estate. Counsel for the Debtor in Possession stated that this is an active, operating gas station mini-mart.

2. [18-90029-E-11](#) **JEFFERY ARAMBEL**
[18-9002](#)

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
4-16-18 [1]**

LOPEZ V. ARAMBEL

Final Ruling: No appearance at the November 29, 2018 Status Conference is required.

Plaintiff's Atty: Michael F. Babitzke
Defendant's Atty: Iain A. Macdonald

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
 2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

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

Notes:
Continued from 9/27/18

Defendant's Status Report filed 11/20/18 [Dckt 26]

<p>The Status Conference is continued to 2:00 p.m. on April 18, 2019.</p>
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NOVEMBER 29, 2018 STATUS CONFERENCE

On November 20, 2018, the Defendant filed an updated Status Report. Dckt. 26. The Plaintiff joins in the Status Report and request for further continuance. Dckt. 28.

Defendant reports that an amended complaint has not been filed and that settlement discussions have been unproductive. The parties request that the Status Conference be continued to April 18, 2019 (the court's regular Modesto hearing date in April 2019), to allow the parties to focus on the Chapter 11 Plan.

The Court shall enter an order in substantially the following form:

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

The Status Reports having been reviewed by the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on April 18, 2019. The Parties shall file updated status reports on or before April 1, 2019.

3. [18-90029-E-11](#) JEFFERY ARAMBEL

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-17-18 [1]

Debtor's Atty: Reno F.R. Fernandez; Iain A. Macdonald; Matthew J. Olson

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxxx, 2019.

Notes:

Continued from 6/21/18

Operating Reports filed: 8/23/18 [Jun]; 8/23/18 [Jul]; 9/17/18 [Aug]; 10/15/18 [Sep]; 11/16/18 [Oct]

[MF-23] First Interim Application for Compensation and Reimbursement of Expenses for General Counsel for Debtor in Possession filed 6/21/18 [Dckt 428]; Order granting filed 7/19/18 [Dckt 531]

[AB-1] First Interim Application for Approval of Compensation and Reimbursement of Expenses for Period March 29, 2018 to May 31, 2018 for Arch & Beam Global, LLC as Financial Adviser for Debtor in Possession filed 6/21/18 [Dckt 433]; Order granting filed 7/19/18 [Dckt 532]

[MF-22] Order granting Motion for Authority to Use Monies of the Bankruptcy Estate and Order setting continued hearing filed 6/27/18 [Dckt 451 & 452]; Debtor in Possession's *Ex Parte* Motion to Amend Order re Motion to Approve Use of Funds Pursuant to Budget filed 7/6/18 [Dckt 486]; Order granting filed 7/9/18 [Dckt 495]; continued hearing held 9/27/18, Order granting filed 10/1/18 [Dckt 664]

[MF-24] Debtor In Possession's Motion for Authority to Sell Real Property Free and Clear of Liens (Ellery Ranch) filed 6/28/18 [Dckt 452]; Order granting motion to sell filed 7/26/18 [Dckt 540]

[MF-25] Debtor In Possession's Motion for Authority to Sell Real Property Free and Clear of Liens (Maring Ranch) filed 6/28/18 [Dckt 459]; Order granting motion to sell filed 7/26/18 [Dckt 546]

[MF-26] Debtor In Possession's Motion for Authority to Sell Real Property Free and Clear of Liens (Grayson Ranch) filed 6/28/18 [Dckt 466]; Amended Order granting motion to sell filed 8/31/18 [Dckt 584]

[MF-27] Debtor in Possession's Motion to Approve Stipulation for Relief from the Automatic Stay in Favor of American AGCredit, FLCA [Zacharias Ranch] filed 6/28/18 [Dckt 473]; Order granting filed 7/26/18 [Dckt 539]

[MF-6] Order Approving Supplemental Application for Authority to Employ Business Debt Solutions, Inc. dba Business Capital as Loan Broker for Debtor in Possession filed 7/9/18 [Dckt 496]

[MF-29] Motion to Approve Stipulation for Authority to Use Cash Collateral (MetLife; \$75,000.00) filed 7/10/18 [Dckt 497]; Order granting filed 8/5/18 [Dckt 550]

[MF-21] Order Granting Debtor in Possession's Motion to Approve Settlement with SBN V Ag I LLC (JEA2, LLC Guaranty) filed 7/11/18 [Dckt 501]

[NAR-1] Notice of And Order for Evidentiary Hearing [Irrigation Design & Construction, Inc.'s Motion for Relief from Stay] filed 7/19/18 [Dckt 530]; Order granting motion for relief filed 10/3/18 [Dckt 667]

[MF-30] *Ex Parte* Application for Authority to Employ Braun International Real Estate as Real Estate Broker for Debtor in Possession filed 7/26/18 [Dckt 541]; Order granting filed 7/27/18 [Dckt 548]

[MF-31] Debtor in Possession's Motion to Approve Settlement and Release of Claims with SBN V Ag I LLC filed 8/29/18 [Dckt 558]; Order denying filed 10/1/18 [Dckt 661]

[MF-32] Motion for Orders (I) Authorizing Post-Petition Junior Secured Debtor-In-Possession Financing and (II) Authorizing the Debtors to Use Cash Collateral filed 8/29/18 [Dckt 563]; Order denying filed 10/1/18 [Dckt 662]

[MF-33] Application for Order Authorizing Employment of George J. Demos as Real Estate Advisor filed 8/29/18 [Dckt 568]; Order denying filed 10/1/18 [Dckt 665]

[MF-34] *Ex Parte* Application for Authority to Employ Bachecki, Crom & Co., LLP, Certified Public Accountants for Debtor in Possession filed 9/13/18 [Dckt 591]; Order granting filed 9/16/18

[MF-35] Debtor in Possession's Second Motion to Extend Exclusivity Periods filed 9/13/18 [Dckt 597]; Order denying filed 10/1/18 [Dckt 663]

[MF-36] Motion to Use Cash Collateral filed 10/24/18 [Dckt 678], matter heard 10/30/18 and continued to 11/20/18

[JCW-1] Motion for Relief from Automatic Stay [Creditor, Wells Fargo Bank, N.A.] heard 11/8/18 and continued to 11/20/18

[STJ-1] Joint *Ex Parte* Application for Order Granting Incidental Relief to Related Estate filed 11/10/18 [Dckt 698]; Order granting filed 11/13/18 [Dckt 704]

Status Conference Statement filed 11/21/18 [Dckt 721]

NOVEMBER 29, 2018 STATUS CONFERENCE

The Debtor in Possession reports that it is still negotiating with creditor for a consensual plan that will be funded from the sale of properties, operating income, and possible further financing. Status Report, Dckt. 721.

The court approved sales of properties have not yet closed. The inspection period for the buyer of a portion of the Arambel Business Park has been extended into January 2019. For the second Arambel Business Park parcel, the Debtor in Possession extended the inspection period into December 2018.

The sale of a portion of the Grayson Ranch has not been consummated because the lot line adjustment has not yet been approved by the County.

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXX**

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

Debtor's Atty: Michael St. James

Notes:

Continued from 8/30/18

Operating Reports filed: 9/17/18 [Aug]; 10/15/18 [Sep]; 11/13/18 [Oct]

[MF-11] *Ex Parte* Application for Authority to Employ Bachecki, Crom & Co., LLP, Certified Public Accountants for Debtor in Possession filed 9/13/18 [Dckt 309]; Order granting filed 9/16/18 [Dckt 313]

[STJ-15] First Interim Fee Application (St. James Law, P.C.) filed 9/27/18 [Dckt 318], set for hearing 11/29/18 at 2:00 p.m.

[AB-1] First Interim Application for Approval of Compensation and Reimbursement of Expenses for Period June 1, 2018, to August 31, 2018, for Arch & Beam Global, LLC for Debtor in Possession filed 9/27/18 [Dckt 325]; Order granting filed 10/18/18 [Dckt 349]

[MF-12] *Ex Parte* Application for Approval of Compensation and Reimbursement of Expenses for Special Counsel for Debtor in Possession filed 9/27/18 [Dckt 330]; Order granting filed 10/18/18 [Dckt 350]

[STJ-6] Order denying Motion to Extend Exclusivity Period filed 10/1/18 [Dckt 336]

[STJ-8] Order approving Motion to Sale Free and Clear of Claims, Liens, Leases and Interests filed 10/17/18 [Dckt 342]

[STJ-7] *Ex Parte* Application for Supplemental Order Approving Sale filed 11/10/18 [Dckt 362]; Supplemental Order filed 11/13/18 [Dckt 368]

Supplemental Case Status Conference Report filed 11/20/18 [Dckt 370]

NOVEMBER 29, 2018 STATUS CONFERENCE

On November 20, 2018 the Debtor in Possession filed its Supplemental Status Report. Dckt. 370. The Debtor in Possession reports that the lot line adjustment for the \$8.5mm sale of the ten acres has been approved and the buyer has increased the non-refundable deposit to \$500,000. The Buyer has notified the Debtor in Possession that it is prepared to fund the purchase.

The Debtor in Possession is negotiating plan terms with creditor. The focus of those discussions is on obtaining a voluntary subordination of the disputed guarantee to the claims of all other creditors.

It is asserted that if such agreement could be reached, Summit would be the only voting creditor and the confirmation process could be expedited (or truncated).

On November 27, 2018, the Debtor in Possession filed its Second Supplemental Case Status Conference Report. Dckt. 372. The buyer of the ten acre parcel is requesting to close the sale on November 28, 2018.

The Debtor identifies two groups of creditors being an impediment to closing and the Estate recovering \$8mm+ in sales proceeds. The first is a concern that the Filbin Creditors will submit a claim into escrow which will include interest in excess of the California usury laws. The order approving the sale is not one pursuant to 11 U.S.C. § 363(f) and the title company will not close without the undisputed demand of the Filbin Creditors.

Clearly, the parties, seeking payment of claims in good faith, have a simple solution. From the sales proceeds the principal and undisputed portion of the interest is paid directly from escrow. The remaining \$6mm +/- of proceeds remains subject to the lien of the Filbin creditors and an adequate amount is set aside in a blocked account or deposited with the court.

In the Second Supplemental Report the Debtor in Possession argues that the Filbin Creditors are not seeking a reasonable resolution of the dispute, but are trying to block the sale to force the Debtor in Possession to pay amounts in excess of what the Debtor in Possession and its counsel in good faith believe is owed. (The court expresses no belief as to whether such contentions are true.)

It is further asserted that the title company is requiring the Filbin Creditors, as a creditor having a lien on the property prior to the sale closing, to approve the lot line adjustments and associated deeds. Thus, it appears that the Filbin Creditors hold this key to getting paid the monies due on their secured claim.

In describing the reluctance of the Filbin Creditors to approve the necessary deeds, the Debtor in Possession further reports that the tile company is also requesting that the Filbin Creditors indemnify the title company for any claims arising out of the recorded document. It does not appear that the indemnification is limited to the Filbin Creditors being the Filbin Creditors who have a lien on the property.

It is curious that such a mess has been created out of a sale of property of the bankruptcy estate. The first several points can be easily resolved by and for the Filbin Creditors. As to the indemnification, it is not clear what and why the title company would seek what is described as such a broad indemnification.

At the hearing, the parties presented their well thought out legal and business positions, stating
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5. [18-90030-E-11](#)
[STJ-15](#)

FILBIN LAND & CATTLE
CO., INC.

CONTINUED MOTION FOR
COMPENSATION FOR MICHAEL ST.
JAMES, DEBTOR'S ATTORNEY
9-27-18 [\[318\]](#)

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, creditors, and Office of the United States Trustee on September 26, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Allowance of Professional Fees is granted and pursuant to the prior order allowed \$50,000.00 in First Interim Fees and \$2,168.17 in costs and expenses (Dckt. 32). No further fees or expenses are approved for the period covered by the First Interim Application are approved. This order is without prejudice to requesting additional fees for the First Interim Period in a subsequent application.

Michael St. James., the Attorney ("Applicant") for Filbin Land & Cattle Co., Inc., the Debtor in Possession ("ΔIP"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 13, 2018, through September 13, 2018. The order of the court approving employment of Applicant was entered on March 25, 2018. Dckt. 125. Applicant requests fees in the amount of \$104,906.25 and costs in the amount of \$2,168.17.

This is the first fee application for Applicant. In the Application he recounts the order authorizing employment being entered on March 27, 2018. No prior interim application for fees has been made.

Prior Interim Authorization of Interim Fees

Because the court continued the hearing on this Motion, and recognizing that Applicant was working on this case for the ΔIP, the court issued an initial interim fee order authorizing the payment of \$50,000 in fees and \$2,168.17 in expenses. Order, Dckt. 352.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

The court finds the services described, *infra*, and within the Motion and supporting pleadings were beneficial to ΔIP and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

In his Declaration in support of the Motion (Dckt. 320), Applicant testifies that he is an attorney and authenticates the billing records and communication with his client concerning the present Application.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories. In reviewing the task billing, Applicant has identified specific tasks for which there was no charge to the client. Some of these relate to coordinating with the special counsel in this case and the debtor in possession counsel in the Jeffery Arambel case.

Arambel Coordination : Applicant spent 20.9 hours in this category, but has opted not to seek fees for these services. Applicant attended weekly meetings of the Debtors in Possession's insolvency professionals were scheduled, undertook to be conversant with the status and development of matters in the companion case and provided its counsel and advice regarding such developments, and attended many hearings in the companion case..

Special Counsel Coordination: Applicant is seeking fees for 3 hours in this category, which Applicant describes as being heavily reduced. Applicant engaged in a certain amount of communication and coordination with special counsel to determine matters to delegate.

Consolidation: Applicant spent 0.6 hours in this category. Applicant reviewed a memo in which the U.S. Trustee expressed concerns about administrative consolidation; conferred with special counsel and Filbin DIP regarding the merits and demerits of administration consolidation; and thereafter reviewed and approved a form of pleading withdrawing the administrative consolidation Motion.

Schedules: Applicant spent 2.1 hours in this category. Applicant reviewed and analyzed iterations of the amended Schedules and counseled Filbin DIP regarding them (though primary responsibility for the preparation of the Amended Schedules was assigned to special counsel). Applicant also reviewed and analyzed the current circumstances of an ADA claim and concluded that it was properly characterized as disputed in the Amended Schedules.

Professionals: Applicant spent 18.4 hours in this category. Applicant performed services regarding its employment application, the application for employment of an accountant firm to prepare monthly operating reports, applications of employment for a broker and negotiation of that broker's fee, and the potential need for a tax planning professional.

Filbin Creditors : Applicant spent 4.45 hours in this category. Applicant conferred with counsel for Filbin Creditors regarding their settlement proposal, the circumstances of the case, potential consensual Plan treatment, and various other concerns of Filbin Creditor throughout the case.

Summit: Applicant spent 15.4 hours in this category. Applicant performed services regarding Creditor Summit's guaranty claim, originally asserted in the amount of \$16 million, and ultimately filed in the amount of \$42 million, including analysis concluding the claim was potentially avoidable as a fraudulent transfer and related settlement negotiations.

Case Status Conference: Applicant spent 7.25 hours in this category. Applicant performed services regarding the Case Status Conference, including corresponding with special counsel and preparing a case status report for the impending.

Exclusivity: Applicant spent 6.1 hours in this category. Applicant performed services to extend the exclusivity period including performing legal research, drafting motions and supporting documents, and appearing at court.

Monthly Operating Reports: Applicant spent 4.15 hours in this category. Applicant performed services related to the filing of Monthly Operating reports, including review and analysis of the draft filings.

Cash Collateral: Applicant spent 5.95 hours in this category. Applicant performed services regarding the use of cash collateral, including the analysis of the issue discovered through the Monthly Operating Reports and appearance at court for a motion to use cash collateral.

Initial Plan: Applicant spent 8.85 hours in this category. Applicant performed services related to the formulation of Debtor in Possession’s initial plan for reorganization, including conferring with Debtor in Possession and drafting of Plan provisions.

SARE Motion: Applicant spent 8.6 hours in this category. Applicant performed services related to determining whether this was a SARE case, including counseling Debtor in Possession on the issue and drafting a SARE motion and supporting pleadings. ^{Fn.1.}

FN.1. This Single Asset Real Estate “Motion” is one of the types of activities that raises some concerns for the court as Applicant and the Debtor in Possession have spent time and engendered adversarial proceedings in this case. As set forth in the Civil Minutes for the hearing on this Motion, Dckt. 154, the Debtor in Possession was short on the law and long on arguments for the relief requested. The court concluded that what the Debtor in Possession sought was an order to delay prosecution of this case, not diligently prosecute the case, with the court’s conclusions including:

But Debtor in Possession does not request that [diligently prosecuting a plan] and instead requests that the court put the case on hold for the negotiations. Debtor in Possession does not have the support of the few creditors in this case, either unwilling or unable to impress on them the reasonableness of putting a hold (rather than Debtor persuading the court of the reasonableness to s-l-o-w-d-o-w-n the confirmation process. Rather, Debtor in Possession just asks for a 120-stay of doing anything— no plan prosecution, no adequate protection payments.

Civil Minutes, Dckt. 154 at 8-9. The court also reviewed the statutory definition of “Single Asset Real Estate” and the specific exclusion for a “family farmer.”

Plan of Reorganization: Applicant spent 6.65 hours in this category. Applicant performed services related to the confirmation of a Plan of Reorganization, including expansion of the Plan of Reorganization.

Disclosure Statement: Applicant spent 12.85 hours in this category. Applicant performed services related to obtaining approval of the Disclosure Statement, including conferencing with Debtor in Possession and performing extensive drafting. ^{Fn.2.}

FN.2. There is no active plan that was being prosecuted in this case, but merely a “placeholder” from which the Debtor in Possession sought to have the court stay anybody from doing anything with respect to a plan.

Initial Sale: Applicant spent 18 hours in this category. Applicant performed services related to the sale of real property held by Debtor in Possession, including conferencing with Debtor in Possession, reviewing a sale agreement, and appearing at court hearings. ^{Fn.3.}

FN.3. For this Initial Sale Work, \$11,125.00 is requested in fees. Much of this appears to be work done to facilitate Jeffery Arambel, the responsible representative of the Debtor in Possession, to attempt in his personal efforts to be the “unofficial real estate broker” and market property of the bankruptcy estate. Mr. Arambel and Applicants, as fiduciaries of the bankruptcy estate, rejected hiring a real estate professional to market and facilitate the sale of multi-million dollar properties, preferring to have Mr. Arambel continue in his pre-petition business efforts which ultimately led to this and Mr. Arambel’s personal bankruptcy cases.

Sale Motion : Applicant spent 13.1 hours in this category. Applicant drafted a motion seeking preliminary approval of the Sale Agreement with Boyett Petroleum and the establishment of bidding procedures respecting potential overbids, in addition to drafting supporting documents and conferring with Debtor in Possession. ^{Fn.4.}

FN.4. For the sale motion, Applicant seeks \$8,062.50 in fees. This is the sale that Applicant assisted Mr. Arambel, not an experienced real estate professional, to try and do for the bankruptcy estate.

As addressed by the court in the Civil Minutes for the July 19, 2018 hearing, the Debtor in Possession and Applicant sought to have the court approve a sale of property by the Debtor (personally), not the Debtor in Possession. The sale was to include personal property not identified in the motion or sales agreement. The Motion then requested that the court “approve” the proposed sale agreement, but then conduct another hearing to consider overbids. No authority was provided for the court issuing an order “approving” the sale and then conducting further hearings.

The court did set a bidding procedure and a break-up fee for a final hearing on the Motion. Order, Dckt. 238.

Sale Free and Clear: Applicant spent 22.5 hours in this category. Applicant performed services related to the sale free and clear of liens of real property held by Debtor in Possession, including counseling Debtor in Possession, evaluating concerns about a tenant on the real property, drafting the motion and supporting documents, and reviewing opposition arguments and motions. ^{Fn.5.}

FN.5. In addition to the \$8,062.50 for the Motion, Applicant requests an additional \$13,093.75 in fees for “Sale Free and Clear.” With this, the fees would total, at this point, \$21,156.25 for the Motion and Sale.

These services include drafting pleadings, reviewing objections, and the hearing.

Overbid : Applicant spent 20.3 hours in this category. Applicant performed services related to finding overbidders for the sale of Debtor in Possession’s real property, including drafting the notice of

opportunity to overbid, preparing disclosures to read into the record at the outset of the auction on the real property, and conferring with Debtor in Possession regarding the hire broker's recommendation's. ^{FN.6.}

FN.6. In addition to the \$21,156.25 for legal services relating to the motion to sell the property and underlying contract, Applicant seeks an additional \$11,375.00 for "Overbid" services, for an increased total of \$31,531.25 in legal fees relating to the sale. It appears that the work done here is what a real estate professional should have assisted the Debtor in Possession doing, or Mr. Arambel himself should have been doing given he and Applicant saw no need to engage a real estate professional to market a multi-million dollar property of the bankruptcy estate.

Lot Line Adjustment: Applicant spent 4.7 hours in this category. In order to effectuate the sale referenced, *supra*, Applicant researched the process for lot line adjustments, and conferred with Debtor in Possession and an engineer regarding the submission of a lot line adjustment.

Closing the Sale: Applicant spent 0.9 hours in this category. Applicant performed services related to the closing of the sale discussed, *supra*, including conferring with Debtor in Possession about escrow companies.

Remaining Property: Applicant spent 1.2 hours in this category. Applicant conferred with Debtor in Possession and the hired broker in this case regarding the marketing of remaining real property held by Debtor in Possession; sought and obtained the broker's opinion of value and listing agreement. Following the Auction; and reviewed and analyzed a back-up bidder's expression of interest in a portion of the remaining property and participated in an exchange of memos regarding it.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,168.17 pursuant to this application. While not large in the context of the fees requested, two points stand.

First, Applicant does not provide information as to how many copies were made and the cost per page.

Second, counsel, who is billing the estate \$625.00 an hour, also seeks to charge \$41.20 each time he made a telephonic appearance. The use of telephonic appearance to broaden the geographic range for which an attorney can economically do business is a cost of overhead included in the hourly rate, not an extra charge. The allowance of phone appearances allow attorneys throughout the District to competitively seek clients. For knowledgeable attorneys, the use of a telephonic appearance allows the attorney to even more effectively bill. While waiting on hold for the matter to be called and charging a reasonable amount of time for that client, the attorney can also be working on another matter. While not "double billing," the attorney is able to leverage the use of a phone appearance to his or her economic advantage.

OCTOBER 18, 2018 HEARING

At the October 18, 2018 hearing, the court also noted that it has had concerns about the representation provided, the level of “sophistication,” and the lack of any “knowledge” or awareness of Applicant that the Debtor in Possession, whose only asset was real property subject to a deed of trust and for which the only income were rents, used cash collateral without authorization. The court has had further concern that the sophisticated professional financial managers could not generate monthly operating reports for six months (while the Debtor in Possession was using cash collateral without authorization), and could only do so when the Debtor in Possession had a proposed sale for \$2,700,000 (the effect of which would nullify the angst of the creditor whose cash collateral was being secretly used). Applicant also assisted the principal of the Debtor in Possession (whose business acumen had resulted in the two related bankruptcy cases filed and the prospect of losing reportedly hundreds of millions of dollars of real property) in trying to sell real property, as the fiduciary of this bankruptcy estate, without hiring a real estate professional. The Debtor in Possession had a purchaser for \$2,700,000 (which the court refused to “preliminarily approve as the buyer”), but then after the court refused to proceed with the approval of the sale and required the employment of a real estate broker, at the continued hearing active bidding occurred and the property sold for \$8,300,000, with two \$8,000,000 +/- back up buyers approved.

In the Application the various *bona fides* of Applicant are cited: Business Bankruptcy Law Certified, State Bar Legal Special Certification in Bankruptcy, “Super Lawyer” since 2006, and “Best Lawyer” since 2007. Applicant further directs the court to various articles he has written and notes that he has represented Debtors in Possession, Trustees, Creditors’ Committees, Reorganization Trustees, landlords, and creditors “in some of the largest and most complex bankruptcy cases in the Bay Area.”

However, much of the legal services provided do not appear to be that commensurate with a \$625.00 an hour billing rate. Some of the time spent appears to be of limited value to a fiduciary debtor in possession (but may be consistent with the wishes of a financially less-than-educated debtor who is bound and determined to do things his way - without regard to his fiduciary duties as a debtor in possession or the responsible representative of a debtor in possession).

While the court indicated concerns, it also stated Applicant is entitled to fair compensation, which may well be the \$100,000+ fees herein sought. The court issued an Order granting First Interim Fees Michael St. James as counsel for the Debtor in Possession in the amount of \$50,000.00 and expenses in the amount of \$2,168.17. Order, Dckt. 352. The court further continued the hearing on the Motion to November 15, 2018 at 10:30 for consideration of additional fees. *Id.*

EX PARTE APPLICATION TO CONTINUE HEARING

After considering an Ex Parte Application filed by Michael St. James and St. James Law, P.C., the court continued the hearing on the Motion to November 29, 2018 at 2:00p.m. to be heard alongside other matters in the case. Dckt. 354.

DECLARATION OF JEFFERY ARAMBEL IN SUPPORT OF THE MOTION

Applicant filed the Declaration of Jeffrey Arambel in Support of the Motion on November 27, 2018. Dckt. 374. The Arambel Declaration states Arambel has worked with Applicant on a weekly basis with respect to his duties in this bankruptcy case. Dckt. 374 at ¶ 2. Arambel states further he has found Applicant's advice to be extremely valuable, creating benefits which far exceed his hourly rate., *Id.* at ¶ 3.

Arambel acknowledges "challenges" in this case, but states they were not the result of Applicant's advice or experience. *Id.* at ¶ 4. Arambel final states that Applicant's services have led to savings for Debtor in Possession that far exceed Applicant's total requested fees.

What Mr. Arambel ignores in saying that he has found Applicant's services "very valuable," is that much of the services were utilized for Mr. Arambel to treat the bankruptcy case as his personal business endeavor to continue his pre-bankruptcy business practices. While Mr. Arambel seeks to fall on his sword for his shortcomings as a fiduciary and leave Applicant blameless, counsel for a debtor in possession does not have a duty to dance to the debtor's, serving as the debtor in possession, tune for running the case as the debtor wants. The court does not concur that Applicant "ably guided [Mr. Armbel] in the discharge of my duties and any failings in the administration of the estate should not be charged against him." Declaration ¶ 4, Dckt. 374. The court also does not see how Mr. Arambel could state under penalty of perjury, "In my opinion, [Applicant's] services to the FLCC estate have led to savings for the FLCC estate which far exceed his total requested fee." *Id.*, ¶ 5. Other than stating this conclusion, Mr. Arambel provides no analysis.

DISCUSSION

After hearing the court's concerns about representation provided, the level of "sophistication," and the lack of any "knowledge" or awareness Mr. Arambel's conduct in this case, Applicant's sole supplemental pleading in support of the Motion is the Declaration of Mr. Arambel.

In reviewing the Application, the court allows the prior interim order to stand, authorizing the payment of the \$50,000.00 in fees and \$2,168.17 for the first interim application period. No further fees are approved, without prejudice to Applicant seeking them in a future application. At the time of such future applicant, Applicant my consider which fees represent productive, compensable work; which represent requests for relief for which no legal basis was provide; and what services represent those of a real estate professional that the fiduciaries of the estate should have engaged rather than the Debtor and Applicant doing the work of a licensed real estate professional for the marketing and sale of multi-million property of the bankruptcy estate.

The court shall issue an 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 Allowance of Fees and Expenses filed by Michael St. James ("Applicant"), Attorney for Filbin Land & Cattle Co., Inc., the Debtor in Possession,

having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court has by prior order allowed \$50,000.00 in First Interim Fees and \$2,168.17 in costs and expenses (Dckt. 32). No further fees or expenses are approved for the period covered by the Application for the first interim period. This denial is without prejudice to Applicant seeking such fees in a subsequent interim or final applicant for fees as appropriate.

6. [11-92235](#)-E-11 JAMES/LORI SARAS

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-22-11 [1]**

Debtors' Atty: Mikalah R. Liviakis

Notes:

Continued from 8/23/18

Quarterly Operating Reports filed: 10/25/18 [ending Jun]; 10/25/18 [ending Sep]; 10/25/18 [ending Dec]

[DMS-3] Supplemental Order for Disbursement from Registry of Court (Supplements August 27, 108 Order, Dckt. 854) filed 8/31/18 [Dckt 856]

[DMS-4] Motion for Final Decree and to Provide that Unclaimed Property Revert Back to the Debtor filed 10/26/18 [Dckt 865], set for hearing 11/29/18 at 10:30 a.m.

The Status Conference is XXXXXXXXXXXXXXXXXXXX

7. [18-90339-E-7](#) **KIMBERLY SOLARIO**
[18-9014](#)

**STATUS CONFERENCE RE:
COMPLAINT
8-17-18 [1]**

DE JONG V. SOLARIO

Plaintiff's Atty: Michael R. Tener
Defendant's Atty: Pro Se

Adv. Filed: 8/17/18
Answer: 9/7/18

Nature of Action:
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

The Status Conference is XXXXXXXXXXXXXXXX

Notes:

[NEU-2] Plaintiff's Motion to Stay Discovery and to Waive Initial Disclosures, Discovery Conference, and Discovery Plan filed 10/2/18 [Dckt 8], set for hearing 11/29/18 at 2:00 p.m.

NOVEMBER 29, 2018 STATUS CONFERENCE

The Plaintiff seeks to have determined nondischargeable a judgment obtained in state court. That judgment is now on appeal.

The court has stayed the proceedings in this Adversary Proceeding pending the diligent prosecution of the appeal.

At the Status Conference, the Parties reported.

8. [18-90339-E-7](#)
[18-9014](#)

KIMBERLY SOLARIO
NEU-2

**CONTINUED MOTION TO STAY
DISCOVERY AND/OR MOTION TO
WAIVE INITIAL DISCLOSURES,
DISCOVERY CONFERENCE, AND
DISCOVERY PLAN
10-2-18 [8]**

DE JONG V. SOLARIO

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant (*pro se*) on October 2, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Stay Discovery is ~~XXXXXXXXXXXX~~.

Plaintiff in this Adversary Proceeding, Craig De Jong ("Plaintiff") seeks an order staying discovery pending further order of the court and relieving the parties from the requirement to provide initial disclosures, conduct a discovery conference, or prepare a discovery plan.

Plaintiff argues stay of discovery is in the best interest of the parties and judicial economy here because the non-dischargeability Adversary Proceeding is significantly reliant on an underlying state court action. Plaintiff has filed a motion relief from stay (Dckt. 41) set to be heard the same day as the hearing on this Motion for in order to pursue appeal of the underlying state court action. Plaintiff believes the appeal will make *res judicata* and collateral estoppel applicable, which would significantly limited any discovery.

No opposition has been filed to this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 26 applies in a bankruptcy case adversary proceeding. FED. R. BANKR. P. 7026. That rule permits the court discretion to alter the requirements of initial disclosure and conference of the parties. The rule specifically provides:

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. **Except as exempted** by Rule 26(a)(1)(B) or as otherwise stipulated **or ordered by the court**, a party must, without awaiting a discovery request, provide to the other parties: . . .

(f) Conference of the Parties; Planning for Discovery.

(1) Conference Timing. **Except in a proceeding exempted from initial disclosure** under Rule 26(a)(1)(B) **or when the court orders otherwise**, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b) . . .

FED. R. CIV. P. 26(a)(1), (f)(1).

NOVEMBER 8, 2018 HEARING

At the November 8, 2018, hearing, the court granted the Motion and stayed the requirements of initial discovery and conference of the parties, pursuant to Federal Rule of Civil Procedure 26, pending the resolution of the state court litigation in the Superior Court of California, County of San Joaquin, *De Jong v. Beach et al*, case no. 39-2014-00314863-CU-OR-STK /STK-CV-URP-2014-0008188, and on appeal in the California Court of Appeal for the Third Appellate District, case nos. C085462 and C086926 (“State Court Litigation”). Order, Dckt. 17.

The court further continued the hearing on the Motion to November 29, 2018, to be conducted in conjunction with the Status Conference for determination of further continuance based on the reported status of the appeal. *Id.*

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Stay Discovery and/or to Waive Initial Disclosures, Discovery Conference and Discovery Plan filed by Plaintiff in this Adversary Proceeding, Craig De Jong (“Plaintiff”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXXXXXXXX**.

9. [17-90346-E-7](#) **ENRIQUEZ/LISA SANCHEZ**
[17-9011](#)

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT**

SANCHEZ V. SANCHEZ ET AL 8-21-17 [1]

Plaintiff's Atty: Mahanvir S. Sahota
Defendant's Atty: Len ReidReynoso

Adv. Filed: 8/21/17
Answer: 9/18/17

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

The Status Conference is XXXXXXXXXXXXXXXXXXXX

Notes:

Continued from 7/12/18, the Parties reporting that the settlement is being concluded and should be resolved in the next sixty days.

[HSM-24] Non-Opposition to Motion to Modify Previously Approved Compromise of Controversies, Related Settlement Agreement, and Related Sale of Assets filed 11/20/18 [Dckt 20]

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference the Parties reported XXXXXXXXXXXX

JULY 12, 2018 STATUS CONFERENCE

At the Status Conference, the Parties reported that the settlement is being concluded and should be resolved in the next sixty days.

MARCH 8, 2018 STATUS CONFERENCE

No further pleadings have been filed in this Adversary Proceeding. At the Status Conference, it was reported that a settlement is being worked on with the Chapter 7 Trustee, which would resolve this Adversary Proceeding.

OCTOBER 19, 2017 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Maria Sanchez (“Plaintiff”) has filed a Complaint seeking a determination of nondischargeability of the debt owed to her by Defendant-Debtors. Dckt. 1. The Complaint alleges that Defendant-Debtors’ conduct constitutes nondischargeable fraud pursuant to 11 U.S.C. § 523(a)(2). There is pending a state court action for fraud and to quiet title to the property to which the contentions of fraud relate.

It is also asserted that Defendant-Debtors’ conduct also renders the obligation nondischargeable pursuant to 11 U.S.C. § 523(a)(4) [fraud or defalcation in a fiduciary capacity, embezzlement, or larceny]. It is further alleged that the conduct renders the obligation nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious injury].

SUMMARY OF ANSWER

Enriquez and Lisa Mona Sanchez (“Defendant-Debtors”) have filed an Answer admitting and denying specific allegations in the Complaint. Dckt. 7.

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional pleading requirement concerning whether the matters in the complaint are core or non-core:

Rule 8 F. R. Civ. P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.**

FED. R. BANKR. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceedings. FED. R. BANKR. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matters are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(b) Applicability of Rule 12(b)-(I) F.R.Civ.P. Rule 12(b)-(I) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall include a statement that the party does or does not consent** to entry of final orders or judgment by the bankruptcy court.”

FED. R. BANKR. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 523 and 727 (no claim for relief under 11 U.S.C. § 727 is pled in the Complaint). Complaint ¶ 5, Dckt. 1. Plaintiff does not allege, as required in Federal Rule of Bankruptcy Procedure 7008 whether this is a core proceeding. The court notes that the claims for relief arising pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(5) are claims arising under the Bankruptcy Code and are statutorily and Constitutionally core proceedings. 28 U.S.C. § 157(b)(I).

In its Answer, Enriquez and Lisa Mona Sanchez, Defendant-Debtors admit the allegations of jurisdiction. Answer ¶ 5, Dckt. 7. Defendant-Debtors do not affirmatively plead whether this is a core proceeding, and if not, whether they consent to the bankruptcy judge issuing the final orders and judgment herein.

At the hearing, the Parties confirmed that the Complaint seeking relief pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6) asserts claims for which these are core matters.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

JOINT DISCOVERY PLAN

The Parties filed their Joint Discovery Plan on October 11, 2017. Dckt. 9. In the Joint Discovery Plan, the Parties request that the court stay these proceedings for four months in light of the actions being taken by the Chapter 7 Trustee in Defendant-Debtors’ case to recover property for the bankruptcy estate. The Parties believe that such recoveries may be sufficient to produce an adequate dividend for Plaintiff on her claim in the bankruptcy case, rendering this Adversary Proceeding unnecessary.

10. [18-90149-E-11](#) SOUZA PROPERTIES, INC.

**CONTINUED STATUS
CONFERENCE RE:
VOLUNTARY PETITION
3-8-18 [1]**

Debtor's Atty: David C. Johnston

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~

Notes:

Continued from 7/12/18

Operating Reports filed: 8/13/18 [Jul]; 9/11/18 [Aug]; 10/13/18 [Sep]

[KMR-1] Motion to Annul the Automatic Stay, or, in the Alternative, Confirmation of No Stay in Effect, and Relief from Automatic Stay filed 9/25/18 [Dckt 82]; Order granting filed 10/18/18 [Dckt 107]

[FWP-1] Ex Parte Motion for Relief from the Automatic Stay for Failure to Comply with Terms of Stipulated Order filed 10/2/18 [Dckt 90]; Order granting filed 10/23/18 [Dckt 108]

[AP-1] Motion for In Rem Relief from Automatic Stay [Movant U.S. Bank National Association] filed 10/9/18 [Dckt 97]; Order granting filed 11/8/18 [Dckt 118]

[AP-2] Motion for Annulment of the Automatic Stay or in the Alternative Confirm No Automatic Stay is in Effect as to the Property [Movant CIT Bank, N.A.] filed 10/26/18 [Dckt 109], set for hearing 11/29/18 at 10:00 a.m.

Debtor's Updated Chapter 11 Status Report filed 11/26/18 [Dckt 123]

11. [12-92570-E-12](#) COELHO DAIRY

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-28-12 [1]

Debtor's Atty: Thomas O. Gillis

The Status conference is ~~XXXXXXXXXXXXXXXXXXXX~~

Notes:

Continued from 11/30/17

[TOG-46] Order granting Motion for Approval of Compromise filed 12/6/17 [Dckt 708]

Status Report of Chapter 12 Trustee filed 10/1/18 [Dckt 710]

Status Report of the Plan Administrator filed 10/4/18 [Dckt 712]

NOVEMBER 29, 2018 STATUS CONFERENCE

In the Updated Status Report (Dckt. 712) the Debtor in Possession reports that the Plan payments are current, the dairy is being operated, the Plan Administrator is making improvements to the operation.

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXX~~

12. [18-90375-E-11](#) Y&M RENTAL PROPERTY
MANAGEMENT, LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-22-18 [1]

Debtor's Atty: David C. Johnston

The Status Conference is xxxxxxxxxxxxxxxx

Notes:

Continued from 7/12/18

[UST-1] United States Trustee's Motion to Dismiss or Convert Case filed 10/30/18 [Dckt 31], set for hearing 11/29/18 at 2:00 p.m.

Debtor's Updated Chapter 11 Status Report filed 11/26/18 [Dckt 34]

NOVEMBER 29, 2018 STATUS CONFERENCE

In the Status Conference Report the Debtor in Possession discusses one debt, which is disputed by the Debtor in Possession. This relates to a line of credit obtained by a prior order, for which the deed of trust was recorded a few days before the sale of the property. The title company that "missed" the deed of trust has gone out of business.

The U.S. Trustee has a Motion to Dismiss or Convert pending. Dckt. 31. The grounds are that the Debtor in Possession has not been filing the required monthly operating reports.

In the Debtor in Possession's response to the Motion (filed three days before the hearing), it is asserted that Debtor in Possession's counsel was to take on the burden of filing the monthly operating reports because the managing member of the Debtor in Possession has "limited accounting skills." Then it is discussed how Debtor in Possession's counsel's sibling has suffered a grave illness and hospitalization. Then counsel's wife suffer a debilitating accident, and is facing surgery. Then Debtor's father was involved in a car accident and is requiring convalescent care.

Though there are continuing, ongoing medical needs for counsel's family, the Debtor in Possession merely requests that more time be given. This case was filed in May 2018, with monthly operating reports for July, August, September, and October 2018 due and unfiled.

At the Status Conference xxxxxxxxxxxxxxxx

13. [18-90375-E-11](#)
[UST-1](#)

Y&M RENTAL PROPERTY
MANAGEMENT, LLC

**MOTION TO DISMISS CASE AND/OR
MOTION TO CONVERT CASE TO
CHAPTER 7
10-30-18 [31]**

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.

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, and creditors on October 30, 2018. By the court’s calculation, 30 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition).^{FN.1.}

FN.1. While 35 days’ notice was required, Debtor was provided substantial notice and has provided a Response in Opposition to the Motion and a hearing is required. The Motion substantially complying with requirements of the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure, the court waves the defect.

The Motion to Dismiss And/Or Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss And/Or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is ~~XXXXXXXXXXXXXXXXXX~~.

This Motion to Dismiss And/Or Convert the Chapter 11 bankruptcy case of Y&M Rental Property Management, LLC (“Debtor in Possession”) has been filed by Tracy Hope Davis, United States Trustee for Region 17 (“Movant”). Movant asserts that the case should be dismissed or converted because the Debtor has not filed monthly operating reports for June 2018, July 2018, August 2018, or September 2018. Movant argues cause therefore exists to dismiss this case pursuant to 11 U.S.C. § 1112(b)(4)(F).

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed a Response in Opposition on November 26, 2018. Dckt.35. Debtor in Possession's counsel states that Debtor in Possession has relied on counsel to produce monthly operating reports in this case, already having provided bank statements to counsel for that purpose. Debtor in Possession's counsel states further that he has been prevented from producing the monthly operating reports due to several unexpected hardships, including health issues and injuries of numerous family members.

Debtor in Possession argues 11 U.S.C. § 1112(b)(2) applies to this situation because the defect can be cured within a short period of time, the Debtor in Possession was diligent in providing the bank statements to its attorney, and there are reasons the attorney was unable to prepare the monthly operating reports.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter constitutes “cause.” 11 U.S.C. § 1112(b)(4)(F).

DISCUSSION

Here, Debtor in Possession has not timely filed monthly operating reports. Therefore, cause exists for the dismissal or conversion of this case. 11 U.S.C. § 1112(b)(4)(F).

Debtor in Possession's Response indicates very compelling reasons for delayed filing of monthly operating reports in this case. However, Debtor in Possession has not filed a Declaration or other evidence supporting assertions made in the Response.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis, United States Trustee for Region 17 (“the U.S. Trustee”) 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 to Convert is **XXXXXXXXXXXXXX**.

14. [17-90577-E-7](#)
[17-9019](#)

WILSON SARHAD

**CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT TO (1) DETERMINE
DISCHARGEABILITY OF A
PARTICULAR DEBT; AND (2)
DETERMINE DISCHARGEABILITY OF
ALL DEBTS
11-6-17 [1]**

GARCIA V. SARHAD

Plaintiff’s Atty: Michael R. Dennis
Defendant’s Atty: David C. Johnston

Adv. Filed: 11/6/17
Answer: 12/3/17

Nature of Action:
Dischargeability - willful and malicious injury
Objection/revocation of discharge

The Pretrial Conference is XXXXXXXXXXXXXXXXXXXX

Notes:
Continued from 8/23/18 at the request of the Parties. The Parties reported that they are working on a settlement.

15. [15-90680-E-7](#)
[18-9001](#)

JO GIBSON

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
6-21-18 [29]

**GIBSON V. NATIONAL RECOVERIES
ET AL**

Plaintiff's Atty: David Foyil

Defendant's Atty:

unknown [Direct Loans; National Recoveries]

Robert S. Lampl [Navient Solutions, Inc. (Navient Corporation)]

Jeffrey J. Lodge [United States Department of Education]

Adv. Filed: 4/5/18

Answer: 5/10/18 [United States Department of Education]

Amd. Cmplt. Filed: 6/21/18

Answer: 7/26/18 [United States Department of Education]

11/19/18 [Educational Credit Management Corporation]

Nature of Action:

Dischargeability - student loan

The Status Conference is XXXXXXXXXXXXXX

Notes:

Continued from 8/23/18. The court having entered an order for substitution of parties and Plaintiff needing to serve the Complaint on these successor parties in interest.

Plaintiff's Status Conference Report filed 10/5/18 [Dckt 47]

Answer of Defendant Educational Credit Management Corporation to First Amended Complaint filed 11/19/18 [Dckt 53]

16. [17-90981](#)-E-11

**THE LIVING CENTERS OF
FRESNO, INC.**

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-1-17 [1]**

Debtor's Atty: David C. Johnston

The Status Conference is XXXXXXXXXXXXXXXXXXXX

Notes:

Continued from 8/23/18

Operating Reports filed: 9/11/18 [Aug]; 10/13/18 [Sep]; 11/5/18 [Oct]

Debtor in Possession's Updated Status Report filed 11/26/18 [Dckt 95]

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference, the Debtor in Possession reported XXXXXXXXXXXXXXXX

17. [18-90196-E-11](#) **BARRENO ENTERPRISES, LLC** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-26-18 [1]**

Debtor's Atty: David C. Johnston

The Status Conference is xxxxxxxxxxxxxxxxxxxx

Notes:

Continued from 7/12/18

Stipulation for Entry of Order Granting Motion for Relief from Stay by Verducci Enterprises, LP [880 Broadway Ave., Suites C-1 and C02, Seaside, CA 93955] filed 7/21/18 [Dckt 47]; Order granting filed 7/31/18 [Dckt 48]

[UST-1] United States Trustee's Motion to Dismiss or Convert Case filed 10/30/18 [Dckt 53], set for hearing 11/29/18 at 2:00 p.m.

Debtor's Updated Chapter 11 Status Report filed 11/26/18 [Dckt 58]

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference, the Debtor in Possession reported xxxxxxxxxxxxxxxxxxxx

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.

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, and creditors on October 30, 2018. By the court’s calculation, 30 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days’ notice for written opposition). ^{FN.1.}

FN.1. While 35 days’ notice was required, Debtor was provided substantial notice and has provided a Response in Opposition to the Motion and a hearing is required. The Motion substantially complying with requirements of the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure, the court waves the defect.

The Motion to Dismiss And/Or Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss And/Or Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is ~~XXXXXXXXXXXXXXXXXXXX~~.

This Motion to Dismiss And/Or Convert the Chapter 11 bankruptcy case of Barreno Enterprises, LLC (“Debtor in Possession”) has been filed by Tracy Hope Davis, United States Trustee for Region 17 (“Movant”). Movant asserts that the case should be dismissed or converted because the Debtor has not filed the monthly operating reports April 2018, May 2018, June 2018, July 2018, August 2018, or September 2018. Movant argues cause therefore exists to dismiss this case pursuant to 11 U.S.C. § 1112(b)(4)(F).

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed a Response in Opposition on November 29, 2018. Dckt.56. Debtor in Possession's counsel states that Debtor in Possession has relied on counsel to covert franchise-dictated monthly operated reports for Debtor in Possession's Dickey's Barbeque Pit businesses to the format of monthly operating reports required by the court. Debtor in Possession's counsel states further that he has been prevented from producing the monthly operating reports due to several unexpected hardships, including health issues and injuries of numerous family members.

Debtor in Possession argues 11 U.S.C. § 1112(b)(2) applies to this situation because the defect can be cured within a short period of time, the Debtor in Possession was diligent in providing franchise-dictated monthly operated reports to its attorney, and there are reasons the attorney was unable to prepare the monthly operating reports.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter constitutes “cause.” 11 U.S.C. § 1112(b)(4)(F).

DISCUSSION

Here, Debtor in Possession has not timely filed monthly operating reports. Therefore, cause exists for the dismissal or conversion of this case. 11 U.S.C. § 1112(b)(4)(F).

Debtor in Possession's Response indicates very compelling reasons for delayed filing of monthly operating reports in this case. However, Debtor in Possession has not filed a Declaration or other evidence supporting assertions made in the Response.

At the hearing, **XXXXXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis, United States Trustee for Region 17 (“the U.S. Trustee”) 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 to Convert is **XXXXXXXXXXXXXX**.