

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 1, 2016, at 2:00 p.m.

- | | | | |
|----|---------------------------------------|--|--|
| 1. | <u>16-90002</u> -E-11 | 1263 INVESTORS LLC
Stephen Reynolds | CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-5-16 [1] |
|----|---------------------------------------|--|--|

Final Ruling: No appearance at the December 1, 2016 status conference is required.

The Status Conference is continued to 2:00 p.m. on February 9, 2017.

The Debtor in Possession is attempting to present a proposed disclosure statement to the court. In two prior attempts, the court issued orders shortening time to allow the hearing to be conducted on an expedited basis. Unfortunately, due to clerical errors the hearings were not noticed.

While not successful to date, the Debtor in Possession is prosecuting the case.

- | | | | |
|----|--|--|---|
| 2. | <u>16-90309</u> -E-7
<u>16-9010</u> | MARK/JULIANNA RUNYON
MARCHANT V. RUNYON | CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-1-16 [1] |
|----|--|--|---|

Final Ruling: No appearance at the December 1, 2016 status conference is required.

The Status Conference is continued to 2:00 p.m. on January 26, 2017.

The Plaintiff has filed a motion for entry of default judgment, which the court has issued a tentative ruling granting. The court continues the Status Conference to afford Plaintiff the opportunity to have the judgment entered.

3. [16-90309-E-7](#) **MARK/JULIANNA RUNYON** **CONTINUED STATUS CONFERENCE RE:**
[16-9011](#) **HERRA V. RUNYON ET AL** **COMPLAINT**
7-1-16 [[1](#)]

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXX.

On September 7, 2016, the default of the Defendant-Debtor was entered. The court continued the September 8, 2016 Status Conference to December 1, 2016 to allow for the filing of a motion for entry of default judgment. The court has been advised in other cases of an illness affecting Plaintiff's counsel and his inability to work during the Fall of 2016.

4. [16-90513-E-7](#) **TIRZAH HAMILTON** **CONTINUED STATUS CONFERENCE RE:**
[16-9012](#) **EDMONDS V. HAYES ET AL** **COMPLAINT**
8-24-16 [[1](#)]

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXX.

SUMMARY OF COMPLAINT

Irma Edmonds, the Chapter 7 Trustee in the Tirzah Hamilton bankruptcy case ("Plaintiff-Trustee"), has filed a Complaint to avoid transfers and recover the value of property from Brian Hayes, Delores Hamilton, and Valerie Tan ("Defendants"). It is alleged that within one year of the commencement of the Chapter 7 bankruptcy case by Tirzah Hamilton ("Debtor"), real property commonly known as 2401 Walnut Park Drive, Modesto, California, was transferred by Debtor to Defendants for less than adequate consideration. It is alleged that the consideration paid was \$180,000.00, and from the proceeds a gift of \$8,600.47 was made by Debtor to defendant Valerie Tan. It is further alleged that the property had a value of at least \$195,000.00 at the time of the transfer. Plaintiff-Trustee seeks to have the two transfers avoided and the property and money recovered by the bankruptcy estate.

SUMMARY OF ANSWER

The Defendants have filed an Answer, each in pro se. Dckt. 10. In answer to the Complaint, Defendants provide detailed responses or counter allegations, including:

- A. Defendant Hayes is the ex-boyfriend and father of two children with Debtor.
- B. Defendant Tan was the former owner of the property transferred and was rightfully owed the money she was paid from escrow as the seller of the property to Debtor earlier in the year prior to the filing of bankruptcy.

- C. Wells Fargo Bank, N.A. “denied” the transfer of the property from Defendant Tan to Debtor. (This appears to be a statement that Wells Fargo Bank, N.A. did not consent to the sale and chose to exercise its due on sale clause, as a creditor cannot prevent a person from exercising the right to alienate (transfer) real property.)
- D. It is asserted that the quitclaim deed by which Debtor acquired title was “invalid.”
- E. When the property was transferred to Defendants, the obligation owed to Wells Fargo Bank, N.A. had to be satisfied and a new loan obtained by Defendants.
- F. It is asserted that the transfer did not make Debtor insolvent, but she did not have any gainful employment for a significant period of time prior to and after the transfer.
- G. Based on appraisals, the value of the property was \$180,000.00 when transferred.
- H. The \$10,000 held in escrow for Ms. Tan was pursuant to the 2013 contract by which the property was transferred to Debtor.

Attached to the Answer are several documents which include the following:

- A. Exhibit 1b is a letter from Wells Fargo Bank, N.A. asserting the right to accelerate the obligation secured by the property pursuant to the due on sale clause in the deed of trust.
- B. Exhibit 4 is an appraisal concluding that the property has a value of \$180,000.00.

What is not clear to the court is how much of an obligation was owed to Wells Fargo Bank, N.A. that was secured by the property (assuming that there was an obligation and the lien on the property was properly perfected—11 U.S.C. § 544).

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff-Trustee 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, it is alleged that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(E), (H), (K), and (O). Plaintiff-Trustee consents to the bankruptcy judge determining any non-core issues. Complaint, 3, Dckt. 1.

Defendant admits that this court has “jurisdiction” for this Adversary Proceeding. Answer, 3, Dckt. 1. The Answer does not clearly deny, or consent, to this court entering all orders and the final judgment for any non-core issues in this Adversary Proceedings. See Federal Rule of Bankruptcy Procedure 7008 requiring a party to state whether the any issues are non-core, and if non-core, whether such consent to entry of final orders and judgment is given.

DECEMBER 1, 2016 CONTINUED STATUS CONFERENCE

Defendants failed to appear at the October 20, 2016 Status Conference. Civil Minutes, Dckt. 13. On October 25, 2016, the court issued an order continuing the Status Conference and ordering the parties to appear. Order, Dckt. 14.

The Plaintiff-Trustee filed an updated Status Conference Statement on November 17, 2016. Dckt. 19. Defendants have again failed to file a Status Conference Statement.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. The Plaintiff-Trustee alleges 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)(E), (H), (K), and (O). Plaintiff-Trustee consents to the bankruptcy judge determining any non-core issues. Complaint, 3, Dckt.

Defendant admits that this court has “jurisdiction” for this Adversary Proceeding and does not deny the allegation that this is a core proceeding, and that consent has been given for the bankruptcy judge to issue final orders and judgment for all non-core matters. Answer, 3, Dckt. 1.

- B. Initial Disclosures shall be made on or before **December 10, 2016**.
- C. Discovery closes, including the hearing of all discovery motions, on **March 24 2017**.
- D. Dispositive Motions shall be heard before **May 5, 2017**.
- E. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on June 29, 2017**.

5. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. PRE-TRIAL CONFERENCE RE:
[15-9026](#) MCGRANAHAN V. STEPHEN CIARI COMPLAINT FOR (1) AVOIDANCE OF
PLUMBING AND HEATING, INC. PREFERENTIAL TRANSFERS; (2)
RECOVERY OF AVOIDED TRANSFERS
AND (3) OBJECTION TO CLAIM
7-9-15 [1]

Final Ruling: No appearance at the December 1, 2016 pre-trial conference is required.

The Pre-Trial Conference is continued to 2:00 p.m. on January 5, 2017, by prior order of the court.

6. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. CONTINUED PRE-TRIAL CONFERENCE
[15-9029](#) MCGRANAHAN V. STRUCK RE: COMPLAINT FOR AVOIDANCE OF
PREFERENTIAL TRANSFERS AND
RECOVERY OF AVOIDED TRANSFERS
7-9-15 [1]

Final Ruling: No appearance at the December 1, 2016 pre-trial conference is required.

The Pre-Trial Conference is continued to 2:00 p.m. on January 26, 2017.

DECEMBER 1, 2016 CONTINUED PRE-TRIAL CONFERENCE

The Plaintiff-Trustee and Defendant have each filed a Pre-Trial Conference Statement advising the court that a settlement has been reached in this Adversary Proceeding, with a hearing on the Plaintiff-Trustee's Motion for Approval of Compromise (Fed. R. Bankr. P. 9019) set for December 15, 2016.

7. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. PRE-TRIAL CONFERENCE RE:
[15-9037](#) MCGRANAHAN V. INDEPENDENT COMPLAINT FOR (1) AVOIDANCE OF
ELECTRIC SUPPLY, INC. PREFERENTIAL TRANSFERS; AND
7-13-15 [1] (2) RECOVERY OF AVOIDED
TRANSFERS

Final Ruling: No appearance at the December 1, 2016 pre-trial conference is required.

The Pre-Trial Conference is continued to 2:00 p.m. on January 26, 2017.

DECEMBER 1, 2016 CONTINUED PRE-TRIAL CONFERENCE

The Plaintiff-Trustee has filed a Pre-Trial Conference Statement advising the court that a settlement has been reached in this Adversary Proceeding, with a hearing on the Plaintiff-Trustee's Motion for Approval of Compromise (Fed. R. Bankr. P. 9019) set for December 15, 2016.

8. [13-91315-E-7](#) APPLEGATE JOHNSTON, INC. PRE-TRIAL CONFERENCE RE:
[15-9048](#) MCGRANAHAN V. WPCS COMPLAINT FOR (1) AVOIDANCE OF
INTERNATIONAL PREFERENTIAL TRANSFERS; AND (2)
7-13-15 [1] RECOVERY OF AVOIDED TRANSFERS

DECEMBER 1, 2016 PRETRIAL CONFERENCE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUMMARY OF COMPLAINT

The complaint seeks to avoid pursuant to 11 U.S.C. § 547 from WPCS International \$78,091.94 in payments alleged to have been made within ninety days of the commencement of the bankruptcy case.

SUMMARY OF ANSWER

Defendant WPCS International - Suisun City, Inc. filed its First Amended Answer, which admits and denies specific allegations in the Complaint. Dkt. 15. The defenses asserted include that the monies transferred to Defendant were not monies of the Debtor.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2) and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 15.

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

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2017**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2017**.
- F. The Trial shall be conducted at ----**x.m.** on -----, **2017**.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, 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(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2) and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 15.</p>	<p>Jurisdiction and Venue:</p> <p>The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2) and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3, 4, Dckt. 1. In its answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 3, 4, Dckt. 15.</p>
<p>Undisputed Facts:</p> <p>a. Debtor Applegate Johnston made two transfers</p>	<p>Undisputed Facts:</p> <p>1. Debtor Applegate Johnston, Inc.</p>

<p>as follows (the “Challenged Payments”):</p> <ul style="list-style-type: none"> i. Transfer by check made payable jointly to Debtor and Defendant in the amount of \$6,142.57 dated as of April 16, 2013, a copy of which is attached as Exhibit 1. ii. Transfer by check made payable jointly to Debtor and Defendant in the amount of \$71,949.37 dated as of April 23, 2013, a copy of which is attached as Exhibit 2. <p>b. The Challenged Payments were transfers of property of the Debtor.</p> <p>c. At the time of the transfers, Defendant was a creditor of Debtor.</p> <p>d. The Challenged Payments were made on account of an antecedent debt owed by Debtor to Defendant.</p> <p>e. At the time of the Challenged Payments, Debtor was insolvent.</p> <p>f. Debtor commenced a Chapter 7 bankruptcy case on July 16, 2016. The Challenged Payments were made within ninety days of the bankruptcy filing.</p> <p>g. The Challenged Payments were made on account of debts that were unsecured as to Debtor. Defendant had no security interest in property of the Debtor to secure the payment.</p> <p>h. The distribution to unsecured creditors in Debtor’s case will be less than 100% of the amount of the debt.</p> <p>i. Defendant did not provide any new value to Debtor after the Challenged Payment.</p>	<p>(“Applegate”) became indebted to the Defendant WPCS International - Suisun City, Inc. (“WPCS”) by way of subcontracts or purchase orders relating to construction.</p> <p>2. WPCS admits receiving \$78,091.94.</p>
--	--

<p>Disputed Evidentiary Issues:</p> <p>1. None</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None</p>
<p>Relief Sought:</p> <p>1. Avoidance of the Challenged Payments.</p>	<p>Relief Sought:</p> <p>1. Judgment for Defendant by which Plaintiff-Trustee is awarded nothing.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 547(b)</p> <p>2. 11 U.S.C. § 547(b)(3) presumption that the Debtor is insolvent in the ninety days prior to the bankruptcy filing.</p> <p>3. 11 U.S.C. § 547(b)(5); <i>In re Lewis W. Shurtleff, Inc.</i>, 778 F.2d 1416, 1421 (9th Cir. 1985)</p>	<p>Points of Law:</p> <p>1. Whether each of the alleged transfers to Defendant under the joint check arrangement was ever the property of the estate under 11 U.S.C. § 547(b) and thus not subject to avoidance.</p> <p>2. Any transfers were contemporaneous exchange for new value under 11 U.S.C. § 547(c)(1).</p> <p>3. Transfers were made in the ordinary course of business under 11 U.S.C. § 547(c)(2).</p> <p>4. Stop notice claimant can pursue only the release bond surety and the direct contractor for payment. <i>Cal-Pacific Material Co. v. Redondo Beach City Sch. Dist.</i> (1979) 94 CA3d 652, 156.</p> <p>5. Civil Code § 9100, et seq. Persons Entitled to Give Stop Notice.</p> <p>6. Civil Code § 9300–9306(a)(1)(2). Regarding preliminary notice.</p> <p>7. Civil Code § 9350, et seq. Regarding Stop Payment Notice.</p> <p>8. Civil Code § 9500, et seq. Regarding Enforcement of Payment of Claim Stated in Stop Payment Notice.</p> <p>9. Hawaii Revised Statutes, Section 103D-324. Contract performance and payment bonds, and</p>

	<p>the timing for making the claim.</p> <p>10. Hawaii Revised Statutes, Section 507-41, et seq., regarding Hawaii's mechanics lien laws as used and referenced in Hawaii Revised Statutes, Section 103D-324.</p>
<p>Abandoned Issues:</p> <p>1. None</p>	<p>Abandoned Issues:</p> <p>1. None</p>
<p>Witnesses:</p> <p>1. Michael D. McGranahan</p> <p>2. Marilyn Auch</p> <p>3. Liberty Mutual Insurance Company (by deposition)</p>	<p>Witnesses:</p> <p>1. Marilyn L. Auch</p> <p>2. Robert "Butch" Roller</p> <p>3. Charles Ferrell</p> <p>4. Rick Miller</p> <p>5. John Stephen Moore</p> <p>6. Elyse Thomas</p>
<p>Exhibits:</p> <p>1. Check dated April 12, 2013, in the amount of \$6,142.57</p> <p>2. Check dated April 16, 2013, in the amount of \$71, 949.37</p> <p>3. Job #13154 Maui Deposits with Cash Receipts</p> <p>4. Job #13174 Pacific Grove Deposits with Cash Receipts</p> <p>5. Applegate Johnston Construction Subcontract</p> <p>6. Stop Payment Notice</p>	<p>Exhibits:</p> <p>WPCS - Documents (Provided from Client)</p> <p>1. Checks to WPCS regarding Project Works, 00001, 00003, 00024, 00035</p> <p>2. Applegate Johnston's Invoices, 00002, 00031, 00033</p> <p>3. California Preliminary Notice, 00004</p> <p>4. WPCS Invoices, 00006, 00029, 00030, 00032, 00052,</p> <p>5. Stop Payment Notice (PGUSD), 000007, 00036</p>

7.	Liberty Mutual	6. Joint Check Agreements, 00009, 00013, 00020
8.	Email from Tammy Evans dated November 16, 2012	7. Deposit with Cash Receipts, 00010
9.	Email from Eric Marshall dated March 6, 2013	8. Partial Release of Stop Payment Notice, 00012, 00014
10.	Email from Butch Roller dated March 20, 2013	9. Emails, 00015, 00021
11.	Email from Butch Roller dated April 1, 2013	10. Conditional Waiver and Release, 00025, 00034, 00038
		11. Aging Detail, 00027
		12. Unconditional Waiver and Release on Final Payment, 00028
		13. Applegate Johnston Construction Subcontract, 00039
		14. WPCS Letters RE Scope of Work, 00044
		15. Emails, 00045, 00056,
		16. Liberty Mutual Surety, 00061
		F&H Construction - Maui Project Documents
		1. F&H Construction Subcontract Agreement, 00001
		2. Labor and Material Payment Bond (Surety), 00019
		3. Letters between Counsel, 00024
		4. F&H Construction Monthly Progress Payment Reports, 00027–00036, 00044, 00055
		5. Cost Status Reports, 00037
		6. Emails Regarding Payments, 00040, 00062, 00065, 00071, 00072
		7. Conditional Waiver and Release on Progress

	<p>Payments, 00048</p> <p>8. Conditional Waiver and Release on Final Payments, 00049, 00061, 00064, 00069</p> <p>9. Unconditional Waiver and Release on Final Payments, 00050</p> <p>10. Joint Check Payments</p> <p>11. Invoices on Final Payments, 00067, 00070, 00075</p> <p>12. Subcontract Change Order, 00083</p> <p>13. Change Order, 00084</p> <p>PGUSD - Pacific Grove Project</p> <p>1. WPCS Subpoena for Production of Documents, 00001</p> <p>2. PGUSD Bid Proposal Form, 00008</p> <p>3. Applegate/WPCS Contract, 00019, 00032, 00094, 00205,</p> <p>4. WPCS Letter RE Scope of Work, 00024, 00036, 00099, 00210,</p> <p>5. Stop Payment Notice, 00027, 00076, 00221, 00503,</p> <p>6. Communications (Letters), 00028, 00063, 00087, 00125, 00203, 00211,</p> <p>7. California Preliminary Notice, 00029, 00077, 00223, 00505,</p> <p>8. Emails, 00030, 00038, 00069, 00113, 00115, 00121, 00126, 00227, 00467, 00511, 00526, 00530, 00536, 00547, 00569, 00577, 00587, 00601, 00610, 00784,</p> <p>9. Total Payments Reports, 00055, 00083, 00102,</p>
--	--

	<p>10. Contractor's Application and Certificate of Payment, 00056, 00071, 00085, 00565,</p> <p>11. Conditional Waiver and Release of Progress Payment, 00058, 00068, 00073, 00567,</p> <p>12. Applegate Cost Proposals, 00059, 00086, 00088, 00089,</p> <p>13. Bid Summary Reports, 00062,</p> <p>14. Applegate Johnston Invoices, 00064, 00074, 00102, 00104, 00107, 00108, 00118, 00112, 00216, 00224, 00461, 00528, 00575, 00585, 00600, 00607,</p> <p>15. Joint Check Agreements, 00078, 00089, 00112, 00116, 00215, 00219, 00539,</p> <p>16. Joint Check Issued, 00053, 00080, 00093, 00101, 00106, 00114, 00117, 00524,</p> <p>17. WPCS Invoices, 00082,</p> <p>18. Tax Information, 00213, 00534, 00553,</p> <p>19. Photos, 00465, 00533,</p> <p>20. PGUSD - Board Meeting Docs, 00629,</p> <p>21. PGUSD - Annual Financial Report, 00786,</p>
<p>Discovery Documents:</p> <p>1. Defendant's Responses to Interrogatories.</p> <p>2. Defendant's Responses to Request for Production of Documents.</p> <p>3. Deposition Transcript of Marilyn Auch.</p>	<p>Discovery Documents:</p> <p>1. None</p>

Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. None
Stipulations: 1. None	Stipulations: 1. None
Amendments: 1. None	Amendments: 1. None
Dismissals: 1. None	Dismissals: 1. None
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. None
Attorneys' Fees Basis: 1. None Requested	Attorneys' Fees Basis: 1. None
Additional Items 1. None	Additional Items 1. None
Trial Time Estimation: Not Stated	Trial Time Estimation: 3 Days

9. [16-90923](#)-E-12 J & B DAIRY
David Johnston

CONTINUED NOTICE OF INCOMPLETE
FILING AND NOTICE OF INTENT TO
DISMISS CASE IF DOCUMENTS ARE
NOT TIMELY FILED
10-11-16 [4]

The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

DECEMBER 1, 2016 STATUS CONFERENCE

The Clerk of the Court filed a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed on October 11, 2016. The Notice indicates that the following documents have not been filed with the court:

- A. Attorney's Disclosure Statement
- B. Schedule A/B—Real and Personal Property
- C. Schedule D—Secured Creditors
- D. Schedule E/F—Unsecured Claims
- E. Schedule G—Executory Contracts
- F. Schedule H—Codebtors
- G. Statement of Financial Affairs
- H. Summary of Assets and Liabilities

On October 24, 2016, the court granted a Motion to Extend Deadlines to File Missing Documents and Extension of Time for Dismissal of Case and extended the deadline to November 4, 2016. Dckt. 14. The court declared that no additional extensions would be awarded.

A review of the docket shows that a Disclosure of Compensation of Attorney has been filed (Dckt. 13), but none of the other documents have been filed.

RESPONSE OF COUNSEL

On November 15, 2016, the Debtor in Possession filed a Status Report. Dckt. 21. No declaration is provided for the facts alleged therein, but given the nature of the reported medical issues reported for counsel, the lack of evidence is not fatal to the prosecution of this case.

What is not clear is whether it is reasonable for current counsel to continue as counsel for the Debtor in Possession, or whether the health issues create a sufficient impairment that new counsel is necessary.

At the November 16, 2016, hearing, it was reported by counsel for Debtor in Possession that he has returned part-time and anticipates having the Schedules completed next week. He has scheduled a meeting with the partners of his client this weekend.

If current counsel cannot proceed, then Anthony Johnston is intending to substitute in as replacement counsel.

Bank of Stockton appeared, asserting a claim secured by the various assets of the Debtor. This case was filed in October 2016, at which time negotiations were ongoing about payment to the Bank. In July and August 2016, the Bank learned that the partners of the Debtor were selling the collateral.

Bank of Stockton requests that the Debtor in Possession file monthly operating reports. That is a reasonable request, in which the Chapter 12 Trustee concurs. The Debtor in Possession shall use the same forms and comply with the requirements for monthly operating reports in Chapter 11 cases, with the first report, for the month of October 2016, to be filed on or before November 28, 2016, and then timely for each month thereafter.

The court continued the hearing to 2:00 p.m. on December 1, 2016. Dckt. 24.

At the December 1, 2016 Status Conference, it was reported that the October 2016 operating report **was / was not** filed (Dckt. **xx**) and that **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 hearing on the Notice of Intent to Dismiss Case if Documents Are Not Timely Filed having been set by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **xxxxx**.

10. [16-90424-E-7](#) SANDRA ESPINO-ORTEGA STATUS CONFERENCE RE: AMENDED COMPLAINT
[16-9013](#)
PACIFIC MOTORS, INC. V.
ESPINO-ORTEGA 9-12-16 [6]

The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

DECEMBER 1, 2016 STATUS CONFERENCE

This Adversary Proceeding was commenced on September 9, 2016. On September 9, 2016, a First Amended Complaint was filed, and a new summons was issued. No certificate of service has been filed attesting to the First Amended Complaint and Reissued Summons being timely served.

The Complaint is filed by Pacific Motors, Inc., a corporation. It purports to be filed in *pro se*. Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceedings in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993); *In re America West Airlines*, 40 F.3d 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 F.2d 771, 773 (9th Cir. 1986); *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), *aff'd*, 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

11. [16-90736-E-11](#) RONALD/SUSAN SUNDBURG CONTINUED STATUS CONFERENCE RE:
Stephan Brown VOLUNTARY PETITION
8-11-16 [1]

The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

DECEMBER 1, 2016 STATUS CONFERENCE

XXXXXXXXXXXXXXXXXXXX

MONTHLY OPERATING REPORT SUMMARY

October 2016 Report		Filed: November 14, 2016		
INCOME	Current		Cumulative	
Rents	\$ 3,200		\$ 6,400	

Salaries	\$ 8,035		\$ 20,628	
Salary Emerg. Cline	\$ 2,807		\$ 4,793	
Profit Dist.	<u>\$ (200)</u>		<u>\$ 3,400</u>	
Total	\$ 13,842		\$ 35,221	
EXPENSES	\$ (8,998)		\$ (28,028)	
PROFIT/(LOSS)	\$ 4,844		\$ 7,193	
Specific Expenses		Current		Cumulative
Principal Payments on Mtg		(\$684)		(\$2,030)
Principal Payments on Jennison Loan		(\$549)		(\$1,637)
Principal Payments on Auto Loan		(\$562)		(\$1,121)
Interest Payment		(\$2,774)		(\$7,870)
Real Property Rent		(\$244)		(\$533)
Mortgage Pmt to Escrow		(\$350)		(\$1,057)
Insurance		(\$509)		(\$1,307)
Misc. Household		(\$2,676)		(\$11,823)
US Trustee Fees		(\$650)		(\$650)
Net Increase/Decrease		\$4,844		\$7,192
Cash Balance, Beginning of Period		\$2,364		\$16
Cash Balance, End of Period		\$7,208		\$7,208

SUMMARY OF SCHEDULES

Real Property Schedule A	FMV	LIENS	
Adams Rd Prop.	\$375,000		
Yosemite Blvd Prop (Clinic)	\$90,000		
Las Vegas Blvd Prop (Timeshare)	\$1,000		

Personal Property Schedule B	FMV	LIENS	
Total	\$66,086		
Significant Assets			
Veterinary Clinic Furniture and Equipment	\$10,620		
2015 Dodge Ram	\$35,096		
2007 Chevy Silverado	\$3,417		
2007 Chevy Trailblazer	\$2,468		

Secured Claims Schedule D	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Jennison Yosemite Blvd Prop	(\$76,059)	\$90,000	
Bank of America Yosemite Blvd Prop	(\$290,413)	(above)	(\$276,473)
Jennison S Abbie Prop	(\$27,380)	\$80,000	
Lendmark 2007 Chevy Silverado	(\$5,558)	\$3,417	(\$2,141)
Wells Fargo Dealer Services 2015 Dodge Ram	(\$37,219)	\$35,096	(\$2,123)
Wells Fargo Home Mtg Adams Road Prop.	(\$366,676)	\$375,000	
Wells Fargo Bank, N.A. Adams Road Prop.	(\$42,476)	(above)	(\$34,152)
Stanislaus Co. Tax Collector Yosemite Blvd Prop.	(\$3,876)		

PRIORITY UNSECURED CLAIMS SCHEDULE E	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
Employment Development Dept.	(\$2,422)	(\$2,422)	
Franchise Tax Board	(\$4,552)	(\$4,552)	
Franchise Tax Board	(\$1,367)	(\$1,367)	
Internal Revenue Service	(\$28,246)	(\$28,246)	
Internal Revenue Service	(\$32,827)	(\$32,827)	
Internal Revenue Service	(\$31,691)	(\$31,691)	
Internal Revenue Service	(\$16,073)	(\$16,073)	
Internal Revenue Service	(\$9,846)	(\$9,846)	
Internal Revenue Service	(\$15,830)	(\$15,830)	
Internal Revenue Service	(\$3,590)	(\$3,590)	
Internal Revenue Service	(\$164)	(\$164)	

GENERAL UNSECURED CLAIMS SCHEDULE F	TOTAL CLAIM AMOUNT		
Total	(\$235,397)		
Specific Debt			
American Express		(\$22,759)	
Bank of America		(\$24,794)	
Bank of the West		(\$25,304)	
Can Capital Asset Servicing		(\$50,201)	

INCOME, SCHEDULE I		
Total Average Monthly Income		
Wages	\$15,630	
Equipment Lease	\$450	

EXPENSES, SCHEDULE J		
Total Average Monthly Expenses		
Total	(\$9,085)	
Specific Expenses		
Mortgage	(\$3,079)	
Food/Housekeeping	(\$1,348)	
Clothing/Laundry	(\$250)	
Medical/Dental Exp.	(\$580)	
Entertainment	(\$450)	
Health Ins.	\$0	
Car Payment	(\$654)	
Car Payment	(\$225)	
Travel	(\$208)	

STATEMENT OF FINANCIAL AFFAIRS

Part 2, Question 4 Income

2016 YTD	\$41,577	
2015	\$108,380	
2014	\$158,249	

Part 2, Question 5 Non-Business Income

2016 YTD	\$0	
2015	\$58,827	[\$58,779 life insurance income]
2014	\$55	[Interest/Dividends]

- | | | | |
|-----|---------------------------------------|---|---|
| 12. | <u>13-90643</u> -E-12 | GARY/CHRISTINE TAYLOR
Anthony Johnston | CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
4-4-13 <u>1</u> |
|-----|---------------------------------------|---|---|

The Status Conference is XXXXXXXXXXXXXXXXXXXX.

The Chapter 12 Plan was confirmed in this case on October 22, 2013. The Debtor/Plan Administrator filed a Status Report on November 18, 2016. Dckt. 162. The Debtor/Plan Administrator reports that all required plan payments have been made to date.

- | | | | |
|-----|---------------------------------------|--|--|
| 13. | <u>15-90358</u> -E-11 | LAWRENCE/JUDITH SOUZA
Anthony Asebedo | CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
4-10-15 [<u>1</u>] |
|-----|---------------------------------------|--|--|

The Status Conference is XXXXXXXXXXXXXXXXXX.

DECEMBER 1, 2016 STATUS CONFERENCE

On November 16, 2016, the Debtor in Possession filed a Status Report. Dckt. 446. The Debtor in Possession reports that while administering various assets since the commencement of this case, there is not a plan now being presented to the court.

14. [14-91565](#)-E-7 RICHARD SINCLAIR
[15-9055](#)
FLAKE V. SINCLAIR

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR
NON-DISCHARGEABILITY
7-24-15 [1]

The Pre-Trial Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

DECEMBER 1, 2016 PRETRIAL CONFERENCE

The Complaint was filed on July 24, 2015. An answer was filed five months later. On February 5, 2016, the court entered its Scheduling and Pretrial Conference Order. Discovery has closed in this Adversary Proceeding, and it is ready to be set for trial.

On November 15, 2016, Stanley Flake, the Plaintiff, and Richard Sinclair, the Defendant-Debtor, filed a stipulation requesting that the court vacate the Pretrial Conference and stay the trial in this Adversary Proceeding, deferring to litigation in which Andrew Katakis and related parties are seeking to have this court deny the Defendant-Debtor his discharge. Stipulation, Dckt. 16.

The court declined to issue an order pursuant to the Stipulation to stay the trial in this Adversary Proceeding. November 20, 2016 Order, Dckt. 17. The Pretrial Conference statements were required to be filed by the Plaintiff and Defendant-Debtor by November 16, 2016. None were filed by Plaintiff and Defendant-Debtor, apparently believing that the court would concur with their request and put this Adversary Proceeding on an indefinite hold.

The court will not excuse the parties from diligently prosecuting this litigation based on other litigation between the Defendant-Debtor and Mr. Katakis. These parties have been involved in decades long litigation in District Court and the state court, never seeming able to obtain a final judgment.

The court is concerned that the Plaintiff/Defendant-Debtor Stipulation manifests an unwillingness to diligently prosecute this litigation and have a final judgment issued therein. Instead, it might appear that the parties are more concerned with being in litigation rather than concluding litigation.

The court sets the final Pretrial Conference in this Adversary Proceeding for 2:00 p.m. on January 26, 2017. The respective Pretrial Conference statements must be filed at least fourteen days (the period specified in the Pretrial Conference Order) before January 26, 2017.

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 having been conducted by the court, both Plaintiff and the Defendant-Debtor having failed to file their respective Pretrial Conference

Statements, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Pretrial Conference is continued to 2:00 p.m. on January 26, 2016.

IT IS FURTHER ORDERED that Stanley Flake, the Plaintiff, and Richard Sinclair, the Defendant-Debtor, shall file and serve their respective Pretrial Conference Statements on or before January 12, 2016.

15.	<u>12-92570</u> -E-12	COELHO DAIRY Thomas Gillis	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 9-28-12 [1]
-----	---------------------------------------	-------------------------------	--

The Status Conference is XXXXXXXXXXXXXXXXXXXX.

DECEMBER 1, 2016 STATUS CONFERENCE

The Chapter 12 Plan was confirmed on May 23, 2014.

The revested Debtor/Plan Administrator filed a Status Report on November 21, 2016. Dckt. 626. The Debtor/Plan Administrator's report is summarized as follows:

- A. The scheduled payments to the Trustee are current.
- B. Asserted Delinquency in Payments to Creditor
 1. West America Bank asserts that the Debtor/Plan Administrator is \$35,000.00 in default on loan payments.
 2. Debtor/Plan Administrator asserts that all payments have been made, and the Chapter 12 Trustee's records show all Plan payments have been disbursed to West America Bank as required by the Chapter 12 Plan.
 3. The Debtor/Plan Administrator states that the \$35,000.00 is for attorneys' fees paid by West America Bank in this case.
 4. Settlement discussions between the Debtor/Plan Administrator and West America Bank are ongoing.
 5. One possible settlement is for the Debtor/Plan Administrator to agree to such amount, with the payment amortized over six years. Because the plan

payments to the Chapter 12 Trustee are already so “huge” (as phrased by the Debtor/Plan Administrator), the Debtor/Plan Administrator seeks to make these payments directly, around the Chapter 12 Trustee.

6. The Report indicates that West America Bank is demanding an immediate lump sum payment.
7. If West America Bank and Debtor/Plan Administrator cannot agree, Debtor/Plan Administrator intends to contest the amount of the fees.

Chapter 12 Trustee Status Report

The Trustee reports that he does not have any issues to address with the court at the Status Conference. The Trustee reports the specific creditor payments made on secured claims and that there has been a 41.74% dividend disbursement to date for general unsecured claims. The Debtor/Plan Administrator has made \$690,509.11 in plan payments to the Chapter 12 Trustee.

- | | | | |
|-----|---------------------------------------|---|--|
| 16. | <u>12-92479</u> -E-12 | DAVID/ESPERANZA AGUILAR
Nelson Gomez | CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-17-12 <u>1</u> |
|-----|---------------------------------------|---|--|

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
--

DECEMBER 1, 2016 STATUS CONFERENCE

The Chapter 12 Plan was confirmed on September 24, 2014.