UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 15, 2016, at 2:00 p.m.

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1. 16-90500-E-11 **ELENA DELGADILLO** **MOTION TO APPOINT TRUSTEE OR MOTION TO CONVERT CASE TO CHAPTER 7**
David Johnston **11-23-16 [65]**

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.

Correct Notice Not Provided. No Proof of Service has been filed. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) (twenty-one days' notice required for Chapter 7, 11, and 12 cases).

The Motion to Appoint Trustee or Motion to Convert Case to Chapter 7 was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and 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. At the hearing, ----------.

The Motion to Appoint Trustee or Motion to Convert Case to Chapter 7 is denied without prejudice.

NO PROOF OF SERVICE FILED

No Proof of Service has been filed for this Motion. Local Bankruptcy Rule 9014-1(e) requires that a Proof of Service be filed within three days of filing the Motion and that it be its own separate

document bearing the Docket Control Number. Without that having been done, the Motion is denied without prejudice.

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 Appoint Trustee or Motion to Convert Case to Chapter 7 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT FILES THE PROOF OF SERVICE FOR THIS MOTION INDICATING TIMELY SERVICE UPON PARTIES

Creditor Sacramento Lopez moves pursuant to 11 U.S.C. § 1104(a) & (b) and for good cause for the court to appoint a Chapter 11 Trustee on behalf of Elena Delgadillo ("Debtor in Possession"). FN.1. Alternatively, Creditor move pursuant to 11 U.S.C. § 1112(b) for the case to be converted to one under Chapter 7.

FN.1. Creditor is reminded that Local Bankruptcy Rule 9014-1(c) requires the use of a Docket Control Number on all motions. Here, Creditor has not provided a Docket Control Number. That is not correct practice in this court. Local Bankruptcy Rule 1001-1(g) establishes that not complying with procedural rules is a ground for dismissing an action.

Creditor argues that appointment of a trustee or conversion of the case is in the best interest of creditors because Debtor in Possession has failed and refused to perform certain stipulated benchmarks, which Creditor alleges were established to administer her estate efficiently. Creditor believes that Debtor in Possession's behavior demonstrates her inability and unwillingness to protect creditors' interests. Creditor has provided the declaration of Andrew Ditlevsen to provide details about the stipulation established for Debtor in Possession to administer the Estate, which Debtor in Possession failed to follow.

U.S. TRUSTEE'S RESPONSE

The United States Trustee filed a Response in support of the Motion on November 29, 2016. Dckt. 73. The U.S. Trustee asserts three grounds in support:

A. Delay that is prejudicial to creditors.

1. Debtor in Possession transferred eleven parcels of real property before the case, and despite professing an intention to sell the properties, she has not reconveyed all of the properties and has not filed an application to hire a realtor or a disclosure statement and plan.

B. Delinquent operating reports.

1. Debtor in Possession has not filed any monthly operating reports.

C. Gross mismanagement of the case.

1. Debtor in Possession has only reconveyed some of the improperly transferred properties, and she has not taken any other actions in furtherance of her fiduciary duties.

11 U.S.C. § 1104(a) permits the court to appoint a trustee at any time after commencement of the case and before confirming a plan, or on request of a party in interest or of the United States Trustee. The appointment can be made for cause (§ 1104(a)(1)) or in the best interest of creditors (§ 1104(a)(2)).

Here, both a party in interest (Creditor) and the U.S. Trustee have requested the appointment of a trustee, and they have established both cause for appointment of a trustee and that such appointment is in the best interest of creditors. Debtor in Possession was to administer the Estate according to a stipulation, but has failed to do so. Debtor in Possession transferred eleven properties, then expressed intention to sell them, but has since not reconveyed all of the properties and has not filed a motion to employ a realtor. Debtor in Possession also has not filed a disclosure statement, a plan, or the required monthly operating reports. Debtor in Possession's conduct is evidence of gross mismanagement, and there is cause for the court to appoint a trustee in this case.

Movant originally sought a motion for order shortening time to have this motion heard in late November 2016. Motion to Shorten Time, Dckt. 60. The court set a special Status Conference for this case on November 22, 2016, having received word in connection with another case that Debtor in Possession's counsel was suffering from an illness which was limiting his ability to address legal matters.

A Status Conference was conducted on November 22, 2016, with counsel for the Debtor in Possession appearing. As stated in the U.S. Trustee's pleading, the Debtor in Possession has not been filing monthly operating reports (being in default for the months of July 2016 and each month thereafter through November 2016) and has not taken steps to engage a real estate broker to market the property or advance a Chapter 11 Plan. Counsel for the Debtor in Possession reports that the Debtor in Possession has limited English language skills and everything is translated through her son. However, no explanation is provided for why an accountant or other professional has not been hired to assist in the preparation of the necessary reports, why the son or other family member is not working with the Debtor in Possession to

prosecute this case, or why or how the Debtor can fulfill the duties of a debtor in possession given her conduct to date.

Cause has been shown for the appointment of a Chapter 11 trustee in this case. Debtor has not fulfilled her basic duties as a debtor in possession and has not advanced a plan in this case. Though some properties have been recovered from the family members to which they were transferred, nothing further is developing.

Appointment of a Chapter 11 trustee will afford Debtor and Debtor's counsel, as well as creditor counsel and Mr. Sacramento, to collaborate with a trustee and form a plan which can properly provide for creditor claims other than through a Chapter 7 liquidation of properties. If after conferring with the Chapter 11 trustee the parties were to determine that a Chapter 7 liquidation by that trustee would be a more cost effective method of providing for creditor claims without unnecessarily diminishing the rights and interests of the Debtor, the case can be converted at that time.

The Motion is granted, and the court appoints a Chapter 11 Trustee in this case.

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 Appoint Trustee or Motion to Convert Case to Chapter 7 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 Appoint Trustee is granted, and the court appoints a Chapter 11 Trustee in this case.

2. **16-90500-E-11** **ELENA DELGADILLO**
David Johnston

CONTINUED SUPPLEMENTAL STATUS CONFERENCE RE: VOLUNTARY PETITION
6-9-16 [1]

Debtor's Atty: David C. Johnston

Notes:
Continued from 11/22/16 to allow the court to consider the case, IP's counsel's ability to continue in this case, and a vehicle to rekindle the productive communication between the parties.

SUPPLEMENTAL STATUS CONFERENCE

At the November 22, 2016 Supplemental Status Conference it was reported to the court that Debtor in Possession Counsel was working with the Debtor. Creditor Lopez will set for hearing the Motion to Convert or Dismiss on December 15, 2016 at 2:00.

December 15, 2016 Supplemental Status Conference

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Order for Supplemental Status Conference

Elena Delgadillo, the Chapter 11 Debtor in Possession, (IP) commenced this case on June 6, 2016. On November 14, 2016, Sacramento Lopez (Creditor) filed a Motion for Order Shortening Time for a hearing on a Motion to appoint a Chapter 11 Trustee or convert the above-captioned bankruptcy case to one under Chapter 7. Motion, Dckt. 60. The Motion for Order Shortening Time states with particularity the grounds (Fed. R. Bankr. P. 9013) upon which the requested relief is based:

A. Pursuant to L.B.R. 9014-1(f)(3), Creditor Sacramento Lopez hereby submits the following Application for Order Shortening Time for Hearing on Motion to Appoint a Chapter 11 Trustee, or, in the Alternative, to Convert Action to Chapter 7.

B. Creditor requests a hearing on December 1, 2016, at 10:30 p.m, or as soon as the matter may be heard.

C. This Application is made on the grounds that good cause exists for the hearing of this motion on shortened time.

D. This Application is based on the Declaration of Andrew J. Ditlevsen filed and served herewith.

Motion, Dckt. 60. On its face, the grounds stated are only the legal conclusion that good cause exists. The Motion then instructs the court to read another pleading and tease from it what grounds could be stated in the courts opinion.

In reading the Declaration (Dckt. 61), much of the testimony relates not to the grounds upon which an order shortening time is requested, but the history of the dealings between Creditor and the IP. The Declaration makes reference to a Stipulation that Creditor and the IP executed, which stipulation has not been authorized by the court.

Notwithstanding the above shortcomings, the court recognizes that Creditor and Creditors counsel have been a positive force in this bankruptcy case, working productively with IPs counsel. Without such constructive, positive efforts, this case could well descend into a legal morass.

Creditor identifies a lack of communication by the IP and IPs counsel, and the failure of IP to meet certain benchmarks in the stipulation. Creditor, not unexpectedly, fears the worst and that IP and IPs counsel have gone South on their collective efforts.

It has come to the courts attention in an unrelated case (J&B Dairy, Bankr. E.D. Cal. 16-90923) that IPs counsel has suffered from a recent sick spell that has prevented him from working. While such an illness is not an excuse, it provides an explanation for what appears to be a withdrawal from the former productive activities.

Creditor, bringing this to the courts attention, has prompted the court to set an immediate supplemental status conference to consider the status of the case, IPs counsels ability to continue in this case, and a vehicle to rekindle the productive communication between the parties. The court concludes that before sending the respective parties down the contested matter gauntlet, a Supplemental Status Conference may be of assistance in keeping the parties focused on achieving their mutually advantageous goals that they have developed previously.

3. **15-90502-E-7** **ANNA STARR**
16-9006
EDMONDS V. STARR ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-10-16 [1]

ADV. PROC. DISMISSED 12/9/16

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: Peter G. Macaluso

The Adversary Proceeding having been dismissed, **the Status Conference is removed from the calendar.**

4. **13-91315-E-7 APPLEGATE JOHNSTON, INC.**
15-9030
MCGRANAHAN V. ACE AUTOMATIC GARAGE DOORS, INC.

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT FOR (1) AVOIDANCE OF PREFERENTIAL TRANSFERS AND (2) RECOVERY OF AVOIDED TRANSFERS
7-9-15 [1]

Plaintiff's Atty: Daniel L. Egan
Defendant's Atty: Helga A. White

Adv. Filed: 7/9/15
Answer: 8/6/15

Nature of Action:
Recovery of money/property - preference

The Pre-Trial Conference is continued to 2:00p.m. on January 26, 2017, to afford the Parties the opportunity to consummate the settlement and dismiss this Adversary Proceeding.

Notes:
Continued from 10/20/16. The Parties reported that the matter has been settled.

SUMMARY OF COMPLAINT

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

A. Bankruptcy case filed on July 16, 2013.

B. Payment of $24,704.27 made to Defendant ACE Automatic Garage Doors, Inc. on May 16, 2013.

SUMMARY OF ANSWER

In the Answer, Defendant admits and denies specific allegations in the Complaint. Defendant asserts six affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 3,4, Dckt. 1. At the Initial Status Conference, Defendant Ace Automatic Garage

Doors, Inc. confirmed on the record that the claims in the Complaint seeking relief pursuant to 11 U.S.C. § 547 and the related relief thereto under § 550, are core proceedings for which the bankruptcy judge issues all orders and the final judgment.

PLAINTIFF-TRUSTEE'S PRETRIAL STATEMENT

Plaintiff-Trustee, Michael McGranahan, filed his Pretrial Statement on September 6, 2016. Dckt. 18.

DEFENDANT'S PRETRIAL STATEMENT

Defendant Ace Automatic Garage Doors, Inc. filed its Pretrial Statement on September 6, 2016. Dckt. 20.

Defendant suggests that the setting of this trial should be coordinated with the trial in Adversary Proceeding 15-09038 so that the issue of solvency of the Debtor be adjudicated in one proceeding rather than in a series of trials, with potentially conflicting results.

A challenge in Defendant's request for coordinating the trial with that in Adversary Proceeding 15-09038 is that though that Adversary Proceeding has been pending for more than a year, and the discovery schedule has already been continued, those defendants are again requesting that the court delay that trial setting and further continue discovery. The defendants in that Adversary Proceeding have argued that it is unreasonable for them to expend any money in hiring experts to conduct discovery, to defend a $1,000,000 preference action, and demand that the Chapter 7 Trustee assemble all of the discovery requested from the electronic books and records of the Debtor. The court has quested the merits of that defendant's contention that it is diligently prosecuting that Adversary Proceeding.

In support of the request to continue the Pretrial Conference, Defendant Ace Automatic Garage Doors, Inc. directs the court to the Reply of Chester C. Lehmann Co, Inc., the defendant in Adversary Proceeding 15-09038, to the plaintiff-trustee in that proceeding opposition to the request for a second extension of discovery. This Defendant assert that such reply is relevant in the current Adversary Proceeding because:

> "Defendant in this case does not have the funds to conduct extensive discovery and Plaintiff has provided no documents to Defendant voluntarily in Case No. 2015-09030, whereas Defendant has voluntarily provided numerous documents (several boxes) to Plaintiff. Defendants in other cases have more at stake and are therefore more able and willing to conduct extensive discovery. Defendant is aware of the motion filed by Chester C. Lehmann Inc. Dba Electrical Distributors, Co. in case No. 2015-09038 to extend deadlines and continue the pretrial conference in that case because Plaintiff allegedly has not provided any of the requested documents which shed light on Applegate's solvency or insolvency during the preference period or relate to other factual and legal issues common to all adversary actions. A copy of the Defendant's reply filed in case No. 2015-09038 is attached hereto as Exhibit 'A'."

Defendants' Pretrial Statement, p. 711–21; Dckt. 20.

Because Defendant has adopted the arguments of the defendant in Adversary Proceeding 15-09038, the court considers them as they apply in this Adversary Proceeding. Any comments or conclusions of the court as they apply to Defendants in this Adversary Proceedings are not determinations as to the defendants in Adversary Proceeding 15-09038.

First, in considering Defendant's arguments in this Adversary Proceeding, it appears to be one of "I don't want to have to comply with the rules of discovery in federal court, we'd rather not incur the reasonable and necessary costs and expenses, and the Plaintiff-Trustee will not voluntarily give us whatever he thinks that we need to win." No explanation is provided as to why and how merely engaging in normal federal court discovery is an unreasonable burden and something for which this Defendant, of all the defendants in federal judicial proceedings, should be given an exemption.

Defendant seeks to slide in the contentions of the defendants in Adversary Proceeding 15-09038 that those defendants feel that the plaintiff-trustee in that action should have to produce whatever they demand, and that it is even too burdensome for those defendants to file motions to compel production.

Defendant directs the court to read, and apparently wholeheartedly adopt (subject to the certifications of Federal Rule of Bankruptcy Procedure 9011, the various statements, allegations and contentions made therein. The allegations and statements set forth in the Reply include the following:

A. Defendant Chester C. Lehmann, Inc. disputes the plaintiff-trustee's contention that the plaintiff-trustee has been diligent in prosecuting the adversary proceedings in connection with the Applegate Johnson, Inc. bankruptcy case.

B. One contention that the plaintiff-trustee has not been diligent is stated as, "For instance, Plaintiff inexplicably did not send demand letters to either one of the Defendants prior to initiating the lawsuits against them in spite of the fact that Defendants' counsel and Plaintiff's counsel were in direct communication after Debtor's bankruptcy filing in regard to other matters pertaining to the bankruptcy and Defendant's case is by far the largest case Plaintiff is pursuing."

C. With respect to discovery and the unreasonable conduct of the plaintiff-trustee, defendant Chester C. Lehmann Co, Inc. directs the court to the following: "Additionally, Plaintiff has not noticed any depositions in Defendants' cases."

D. Another contention is that nineteen of the thirty-four adversary proceedings to recover preference were dismissed.

E. As to the settling defendants, defendant Chester C. Lehmann Co, Inc. argues:

> "All the defendants who have settled thus far did so having received little to nothing in the way of a document production from Plaintiff, and as Plaintiff notes, most of the depositions were noticed by one law firm, Hopkins and

Carley LLP, which represents three defendants. (Plaintiff's Opposition, at p.3) The other defendants have not actively deposed the relevant parties. In fact, almost all of the cases were resolved before Plaintiff even produced a copy of Debtor's server, where Plaintiff claims that all of Debtor's documents are kept."

F. Defendant Chester C. Lehmann Co, Inc. further argues,

"Defendants' counsel spoke with several of the attorneys for the other defendants in these adversary cases and the unanimous consensus was that though the claims against their clients ultimately would not prevail at trial, taking their cases to trial was not economically prudent in light of the lesser amounts of money sought by the Plaintiff against their clients."

G. Defendant Chester C. Lehmann Co, Inc. asserts that such preference litigation is "unfair" because,

"The Plaintiff, on the other hand, is in the more economically advantageous position of being able to minimize his legal expenses by using almost the same set of facts and legal arguments for all 34 adversary actions. The settlement of the other cases highlights the inequitable financial nature of this litigation rather than any great diligence by Plaintiff."

H. As to defendant Chester C. Lehmann Co, Inc.'s active prosecution of discovery, it is stated,

"Defendants have not yet filed a motion to compel against Plaintiffs and neither has Plaintiff filed any against Defendants, though the two have been involved in a discovery dispute since December 2015."

I. With respect to defendant Chester C. Lehmann Co, Inc.'s diligent prosecution of discovery, it is asserted:

"Defendant has taken all necessary steps to litigate this lawsuit. Defendant timely answered the Complaint, provided opposing counsel with all requested documents through informal discovery, was the first to propound discovery, cooperated in all meet and confer efforts, agreed to attend mediation, and has insisted that opposing party seek extensions of deadlines or has sought those extensions itself when it became clear that Plaintiff's delays in document production were jeopardizing Defendants ability to litigate this matter."

"Noticing depositions has been premature in Defendants' cases because Debtor's financial documents, contracts, correspondence, etc. have still not been made available by Plaintiff. Defendant's counsel has spoken with a number of Debtor's former employees and principals and they have informed

> him that Debtor's finances and projects were closely tracked, but all of Debtor's records were left with the Plaintiff after Debtor's bankruptcy filing."
>
> "Filing motions to enforce the outstanding subpoenas and deposing all parties that might have some information about Debtor is imprudent and unfair when Plaintiff has a duty to produce all the information that Defendant seeks related to Plaintiff's claims."

On this point of discovery and documents, the court recalls an exchange with counsel for defendant Chester C. Lehmann Co, Inc. concerning why third parties who had the documents (such as the insurance or bonding companies who had the financial statements of the Debtor upon which they relied in issuing the insurance or bonds) were not subpoenaed, defendant Chester C. Lehmann Co, Inc.'s counsel's response was that such third-parties would not comply with such discovery, so instead that defendant wanted to make the plaintiff-trustee provide it. No good explanation was provided as to why the third-parties could ignore a federal subpoena and why defendant Chester C. Lehmann Co, Inc. would not compel compliance (including the recovery of the necessary costs and expenses in compelling compliance with a federal subpoena).

J. It is further asserted,

> "Since the beginning of this discovery process Plaintiff had represented that almost all of Debtor's records were stored on its server. (Id., at ¶ 9.) This assertion seems to have no foundation however. In Defendant's conversations with Debtor and its former employees in the aftermath of said production, it became clear that many of Debtor's documents were in fact stored on the laptops and desktops that Plaintiff destroyed in 2013. (Id., at ¶ 20.) There is no rational reason for Defendant to pay outside consultants to scour for information that should be provided at Plaintiff's expense and which might not even be located on the hard drives and server that Plaintiff provided."

Exhibit A, Dckt. 49.

Whether the court allows discovery to be extended for defendant Chester C. Lehmann Co, Inc., which is defending a $1,000,000+ preference action, it is not grounds for excusing this Defendant from the diligent prosecution of this Adversary Proceeding. The court has expressed serious reservations that it has been and is unreasonable for defendant Chester C. Lehmann Co, Inc. to exercise its rights under the Federal Rules of Civil Procedure to conduct discovery to defend a $1,000,000+ preference action.

It appears that Defendant in this Adversary Proceeding is now attempting to use the litigation strategy action, or inaction, of defendant Chester C. Lehmann Co, Inc. in not enforcing its rights and actively conducting discovery as a reason for this Defendant not to go to trial.

The court does not find this contention to be reasonable, credible, or a basis for delaying trial in this Adversary Proceeding. If Defendant and its counsel thought that defendant Chester C. Lehmann Co, Inc. was a critical part of their discovery in this Adversary Proceedings, Defendant and its experienced

counsel have had more than a year to coordinate discovery with counsel in the other Adversary Proceeding. Instead, Defendant now argues that it would be "unfair" for it to continue in the diligent prosecution of their defense while Chester C. Lehmann Co, Inc. and its counsel request/demand/implore the court to extend discovery for a second time so they can continue to argue about discovery, for which in over a year Chester C. Lehmann Co, Inc. has not attempted to enforce its rights to conduct discovery concerning the $1,000,000+ preference action being prosecuted against it.

If Defendant believed that conducting discovery with Chester C. Lehmann Co, Inc. was an important part of its trial strategy, it would have done so over this past year. Defendant has not. In the best light, it appears that this request for a continuance in this Adversary Proceeding is an attempt to take advantage of a fortuitous coincidence of a defendant in another action arguing with the plaintiff-trustee. To a more jaundiced eye, one might believe it is part of a preconceived, coordinated scheme to derail the proper administration of justice and the court's management of the cases and adversary proceedings before it. Given Defendant's experienced counsel and her reputation, the court presumes that it is the former.

REQUEST FOR CONTINUANCE

At the hearing, the Parties requested a one-month continuance to allow for further settlement discussions.

The Parties in their respective Pretrial Conference Statements, Dckts. 18, 20, have stated in this Adversary Proceeding the following facts and issues of law:

Plaintiff-Trustee	Defendant
Jurisdiction and Venue: 1. Core Proceeding as stated on the record at the October 1, 2015 Status Conference. Civil Minutes, Dckt. 13, and Scheduling Order, Dckt. 14.	Jurisdiction and Venue: 1. Core Proceeding as stated on the record at the October 1, 2015 Status Conference. Civil Minutes, Dckt. 13, and Scheduling Order, Dckt. 14.
Undisputed Facts: 1. Debtor Applegate Johnston made a transfer to Defendant on or after May 16, 2013 in the amount of $24,704.27 (the "Challenged Payment.") The transfer was made by check, a copy of which is attached as Exhibit 14. 2. The Challenged Payment was a transfer of property of the Debtor. 3. At the time of the transfer, Defendant	Undisputed Facts: 1. None

was a creditor of Debtor. 4. The Challenged Payment was made on account of an antecedent debt owed by Chapter 7 Debtor to Defendant for installation of a commercial door. 5. Debtor commenced a Chapter 7 bankruptcy case on July 16, 2016. The Challenged Payment was made within 90 days of the bankruptcy filing. 6. The Challenged Payment was made on account of a debt that was unsecured as to Debtor. Defendant had no security interest in property of the Debtor to secure the payment. 7. The distribution to unsecured creditors in Debtor's case will be less than 100% of the amount of the debt. 8. Defendant did not provide any new value contemporaneously with the Challenged Payment. 9. Defendant did not provide any new value to Debtor after the Challenged Payment.	
Disputed Facts: 1. Defendant may seek to challenge the presumption that Debtor was insolvent in the 90 days prior to the bankruptcy case. 2. Defendant contends that the Challenged Payment was made in the ordinary course of business or financial affairs of the Debtor and the transferee, or that it was made according to ordinary business terms.	Disputed Facts: 1. Defendant alleges, but Plaintiff disputes, that the long delay in bringing the within adversary action was made in bad faith and was a deliberate attempt to prejudice Defendant's claim under the Payment Bond. 2. Defendant alleges, but Plaintiff disputes, that the funds used to pay Defendant were not property of the estate but instead were earmarked and held in trust by Applegate to pay the Sub-Contractors who worked on the Project. Neither the Trustee nor the

	general unsecured creditors of the bankruptcy estate are members of the class entitled to share in these funds. 3. Defendant alleges, but Plaintiff disputes, that Applegate's payment to Defendant was made in the ordinary course of business according to ordinary business terms. 4. Defendant alleges, but Plaintiff disputes, that the payment was a simultaneous exchange for new value. 5. Defendant alleges, but Plaintiff disputes, that Applegate's payment to Defendant was offset by new value received from Defendant. 6. Defendant alleges, but Plaintiff disputes, that Applegate was solvent at the time of payment. 7. Defendant alleges that Applegate received fair and reasonably equivalent value in exchange for the payment made to Defendant. Defendant does not know if Plaintiff disputes this factual assertion. 8. Defendant alleges, but Plaintiff disputes, that Defendant did not receive more from the payment alleged in the complaint than what it would have received 9. Defendant alleges that recovery of the funds listed in the complaint by the Trustee, that were paid by the City of San Jose for the construction of the Project, would be a violation of California and Federal law, the Performance Bond and the Payment Bond. Defendant believes that Plaintiff disputes this factual assertion.
Disputed Evidentiary Issues:	Disputed Evidentiary Issues:

1. None Identified.	1. Defendant asserts that Plaintiff waived its right to present expert testimony in this lawsuit. Plaintiff did not provide any expert declaration to Defendant.
Relief Sought: 1. Trustee seeks avoidance and recovery of the Challenged Payment.	Relief Sought: 1. Defendant requests the Court to deny Plaintiff's complaint. Defendant seeks attorney's fees and costs.
Points of Law: 1. 11 U.S.C. § 547(b); Preference Avoidance. 2. *In re Sierra Steel, Inc.*, 96 B.R. 275, 279 (B.A.P. 9th Cir. 1989.); 11 U.S.C. § 547(b)(3), presumption of insolvency. 3. *In re Lewis W Shurtleff, Inc.*, 778 F.2d 1416,1421 (9th Cir. 1985); 11 U.S.C. § 547(b)(5), comparison to Chapter 7 distribution.	Points of Law: 1. The Miller Act (40 U.S.C. Section 3131 et seq.), as to application of the "earmarking doctrine." (No authorities cited for application of such doctrine.) 2. 11 U.S.C. § 547(c)(2); payments made according ordinary business terms. 3. 11 U.S.C. § 547(c)(1)(a), payments were contemporaneous exchanges for new value. 4. The Trustee received fair and reasonably equivalent value for the payment made to Defendant.
Abandoned Issues: 1. None	Abandoned Issues: 1. None
Witnesses: 1. Miguel Hernandez 2. Liberty Mutual (by deposition transcript)	Witnesses: 1. Charles A. DeLucci Jr., who will testify as an expert. 2. Dustin Torrez, who will testify as an

	expert. 3. Jennifer Turner, who will testify as an expert. 4. Miguel Hernandez, who will also testify as an expert. 5. Representative of Applegate Johnson Inc. Identity to be determined.
Exhibits: 1. Notice of Deposition 2. Proposal 3. Contract Agreement 4. Subcontract Change Order 5. Invoice dated 11/28112 6. Invoice dated 11128112 7. Payment Receipt 8. Payment Receipt 9. Payment Receipt 10. Payment Receipt 11. Check Stub 12. Email from Ku to Ace Automatic dated 7/24/13 13. Declaration of Miguel Hernandez 14. Check dated 5116113 to Ace Automatic Garage Doors. Inc.	Exhibits: 1. Invoices, change orders, pay-roll information, correspondence as to work performed and invoices provided and payments made - all related to the Project. 2. Contracts related to the Project. 3. Performance Bond. 4. Payment Bond. 5. Claims made to, and payments received from, Liberty Mutual under the Bonds. 6. Correspondence by and between Liberty Mutual's counsel and Defendant' counsel. 7. Payments, reports and correspondence by and between the City of San Jose and Defendant regarding the Project. 8. Applegate's bankruptcy schedules. 9. Lien documents, including but not limited to, preliminary notices, stop notices, conditional releases and unconditional releases. 10. Correspondence by and between Defendant, Applegate and the City of San

	Jose. 11. Information as to funding of the Project. 12. Documents produced by Liberty Mutual. 13. Information as to collateral offered by Applegate and/or its owners for issuance of Performance and Payment Bonds. 14. Deposition testimony by representatives of the City of San Jose and Liberty Mutual. 15. Any and all additional documents that might be discovered by other Defendants in other adversary actions filed in Applegate's bankruptcy case which relate to the Project.
Discovery Documents: 1. Subpoena for documents to Central Valley Community Bank, and responsive documents. 2. Subpoena for documents to Central Valley Community Bank, and responsive documents 3. Deposition of Liberty Mutual 4. Deposition of Miguel Hernandez 7:11-15 8:19-21 13:21-14:16 15:13-16:8 16:17-17:25 21:19-22 21:23-22:12	Discovery Documents: 1. Deposition testimony of representative of City of San Jose. 2. Deposition testimony of representative of Liberty Mutual.
Further Discovery or Motions: 1. None Identified	Further Discovery or Motions: 1. None Identified

Stipulations: 1. None Identified	Stipulations: 1. None identified
Amendments: 1. None Identified	Amendments: 1. None Identified.
Dismissals: 1. None Identified	Dismissals: 1. None Identified
Agreed Statement of Facts: 1. None Identified	Agreed Statement of Facts: 1. None Identified
Attorneys' Fees Basis: 1. No Attorneys' Fees Requested	Attorneys' Fees Basis: 1. No Basis for Attorneys' Fees Identified
Additional Items 1. None Identified	Additional Items 1. None Identified.
Trial Time Estimation:	Trial Time Estimation: One (1) Day.

5. **13-90219-E-7** **DOUGLAS KENNEDY** **CONTINUED STATUS CONFERENCE**
13-9041 **RE: COMPLAINT**
KENNEDY V. INTERNAL REVENUE SERVICE **12-23-13 [1]**

ADV. PROC. CLOSED 11/28/2016

This Adversary Proceeding having been settled and judgment entered, the **Status Conference is removed from the calendar.**

6. **12-92723-E-7** **JOHN/KRISTINE ROBINSON** **STATUS CONFERENCE RE:**
13-9004 **COMPLAINT**
GRANT BISHOP MOTORS, INC. V. ROBINSON, IV ET AL **1-17-13 [1]**

Final Ruling: No appearance at the December 15, 2016 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Gregory J. Goodwin

The Parties reporting that the settlement is being performed, the Status Conference is continued to 2:00 p.m. on December 14, 2017. The Parties shall file a status report advising the court of the status of the settlement if this Adversary Proceeding has not been dismissed prior to that time.

Notes:
Continued from 10/22/15. Status Reports to be filed on or before 12/1/16 advising the court of the status of the performance under the Settlement and issues, if any, the parties seek to address at the Status Conference. Steven Altman, counsel for Plaintiff, is designated as the attorney responsible for filing the Status Report. Any other party may file their individual status report to identify issues to be addressed.

Joint Status Conference Statement of Plaintiff and Defendants filed 11/23/16 [Dckt 122]

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

Final Ruling: No appearance at the December 15, 2016 Status Conference is required.

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown
Adv. Filed: 9/9/16
Answer: none
Amd Cmplt Filed: 9/22/16
Answer: none
Nature of Action:
Objection/revocation of discharge

The Status Conference is continued to 2:00 p.m. on January 26, 2017, to allow for the court issuing order to show cause why this Adversary Proceeding should not be dismissed.

Notes:
Continued from 12/1/16. The court to issue an order to show cause as to why this case should not be dismissed for failure to prosecute and failure of corporation to have counsel.

Civil Minute Order filed 12/7/16 [Dckt 11]

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, 20102 (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).

8. 12-93049-E-11 **MARK/ANGELA GARCIA** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 11-30-12 [1]**

Final Ruling: No appearance at the December 15, 2016 Status Conference is required.

Debtors' Atty: Mark J. Hannon

The court having determined that the appointment of replacement plan administrators or conversion of this case to one under Chapter 7 is necessary due to the conduct of the Plan Administrators/Debtors, **the Status Conference is continued to 2:00 p.m. on January 26, 2017,** to allow the U.S. Trustee time to file the motion for appointment of replacement plan administrators or conversion of this case.

Notes:
Continued from 9/29/16

Operating Reports filed: 11/15/16 [Quarterly ending 9/30/16]; 11/15/16 [Quarterly by joint debtor]; 11/15/16 [Monthly ending October]

[MJH-17] Order Denying Motion to Sell [5672 Eleanor Road, Oakdale, CA] filed 10/25/16 [Dckt 870]

[MJH-17] Motion for Authority to Sell Real Property [5672 Eleanor Road, Oakdale, CA] filed 10/25/16 [Dckt 871]; Order granting filed 11/17/16 [Dckt 894]

DECEMBER 15, 2016 STATUS CONFERENCE

As addressed in the Civil Minutes for the hearing on the Plan Administrators/Debtors to sell their residence to a limited liability company (for which Debtor Mark Garcia provided false testimony under penalty of perjury testifying that Debtors had no interest in the purchaser), the court has determined that the Plan Administrators/Debtors have breached their duties and must be replaced or the case converted to one under Chapter 7. Civil Minutes, Dckt. 896

9. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH CEMG/FOX HOLLOW HOA CREDITORS**
HSM-10 **Pro Se** **11-17-16 [476]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Approval of Compromise 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 for Approval of Compromise is granted/denied.

In this bankruptcy case, now filed more than two years ago, the Chapter 7 Bankruptcy Trustee, other creditors, and the court continue to be sucked into the Richard Sinclair–Andrew Katakis et al. Litigation Vortex which has consumed thousands of hours of the lives of the parties, tens of thousands of pages of pleadings, and huge amounts of time for judges, justices, and court staff in the United States District Court for the Eastern District of California, the California Superior Court, and the California Court of Appeal. For Mr. Sinclair, no judgment or order of any court is ever final. For his nemesis, Katakis et al., there is no litigation that they seem able to get to a final judgment and enforce. Rather, it has become an unending avocation of litigation.

Mr. Sinclair did not end up in bankruptcy by accident and was not forced into bankruptcy by his nemesis or other creditors commencing an involuntary bankruptcy case. Debtor-Sinclair chose to voluntarily file this case, seeking to use Chapter 11 of the Bankruptcy Code and a bankruptcy judge to "overrule" United States District Court judges, California Superior Court judges, and California District Court of Appeals justices.

As discussed below, Debtor-Sinclair is an experienced, highly educated, knowledgeable lawyer and business person. However, his conduct in this bankruptcy case has demonstrated a willingness to not be bound by the law or facts. An example of this is that upon filing this case, Debtor-Sinclair attempted to have this court purport to vacate orders and judgments issued by district court and state court judges and justices. After an extensive, twelve page discussion of federal judicial power to address fraud on the court, Debtor-Sinclair stated in his Opposition and Request to Set Aside Judgment to the Katakis et al. motion to convert this case,

> **The Bankruptcy Court should** deny the motion and **set aside judgments**

Opposition, p. 11:22; Dckt. 87 (emphasis added).

> This Court should not assist Andrew Katakis and Greg Durbin in their fraud on the Court and should not assist Andrew Katakis in his 80 Unclean Hands and 2 Criminal Foreclosure Frauds. **The court should set aside all awards to Andrew Katakis for his wrongdoing**.

Id., p. 37:6-9; Dckt. 87 (emphasis added).

The judgments to be set aside include the $1,200,000 state court judgment (Cal. Sup., Stanislaus County, no. 332233), which was affirmed on appeal, and other judgments obtained by Katakis et al. This court addressed the impropriety of such attempts by Debtor-Sinclair to have this court purport to vacate orders and judgments of other courts at the February 26, 2015 hearing on the Katakis et al. motion to convert and in the Civil Minutes (Dckt. 113) for that hearing. In describing the litigation strategy of Debtor-Sinclair, this court stated:

> The Debtor's opposition provides no clarification but instead adds further confusion to what appears to be a convoluted and complicated history in the courts. Debtor's mountain of documents in opposition and the vague, general request that this court vacate judgments and order of other courts lends credibility to Movants contention that nothing productive can come of this Chapter 11 case while the Debtor in Possession remains in control of the estate.

Civil Minutes, Dckt. 113 at 5.

Though such reservations were clearly stated, this court hoped that Debtor-Sinclair would focus on the prosecution of this case and taking advantage of his rights under the Bankruptcy Code, and the bankruptcy court not merely being another forum to be used in an attempt to re-litigate ruling from other courts. Debtor-Sinclair was allowed to continue to "run the show" as the debtor in possession for a year before the case was converted to one under Chapter 7.

When Debtor-Sinclair realized that this court would not re-litigate judgments and orders issued by other courts and would not purport to vacate judgments and orders of other courts, he quickly (seven days later) filed a motion to dismiss this bankruptcy case. Dckt. 116. In denying the motion to dismiss, the court stated that in light of Debtor-Sinclair admitting to having made a number of transfers of his assets (while

the Katakis et al. litigation was proceeding through more than a decade), dismissal of the case at that time was improper. Debtor-Sinclair was still left in control as the debtor in possession to run the Chapter 11 case and seek proper relief under the Bankruptcy Code.[1]

Because the only opposition to the Motion is that of Debtor-Sinclair and in large part rests on his arguments and opinions, the court in this Decision reviews the litigation practices and conduct of Debtor-Sinclair in this case, and cites to other judicial and California State Bar proceedings and decisions.

After receiving Debtor-Sinclair's Opposition, the court issued an Order for Supplemental Briefing. Dckt. 499. In his Opposition, as discussed below, Debtor-Sinclair argues that the estate has large, longstanding claims against Katakis et al. which he, Debtor-Sinclair, will prosecute in the future that are a thousand times more valuable than the proposed $40,000.00 settlement. Debtor-Sinclair further argues that it would be unfair for the court to make Debtor-Sinclair bid on the asset (claims being settled) against his nemesis, Katakis et al., which nemesis Debtor-Sinclair states has vowed to use its $60 million fortune to take Debtor-Sinclair down.

In addition to asking Debtor-Sinclair to address what appear to be factually inaccurate statements in the Opposition and for the Bankruptcy Trustee and Katakis et al. to address issues relating to the effect of the release on Debtor-Sinclair, the court also offered the opportunity for Debtor-Sinclair and the transferees of what has been represented to be millions of dollars of assets in "bona fide, good faith" transfers (as characterized by Debtor-Sinclair) to present to the court and the Bankruptcy Trustee a $40,000.00 offer to purchase the claims—effectively seeking a right of first refusal.

While there can be much debate over the credibility of Debtor-Sinclair's opinions of what claims may exist, which final state court judgments and orders may be vacated someday, and the (increasing) value of claims against Katakis et al., a third-party putting up money today is something that the court can evaluate. Mrs. Sinclair (Debtor-Sinclair's spouse), Kathryn Machado, PhD (trustee of the Richard Sinclair Trust and managing member of limited liability companies) and the Sinclair Children who are all transferees or beneficiaries of the transfers are afforded the opportunity to come forward with Debtor-Sinclair and make such $40,000.00 offer to the Bankruptcy Trustee if they concur in Debtor-Sinclair's valuation of the claims against Katakis et al. For his sister, Dr. Machado, she has been working extensively prior to and during this case in her capacity as trustee of the Richard Sinclair Trust and managing member of the transferee entities and is no stranger to the bankruptcy process.

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[1] An inference from this quick motion to dismiss could well be drawn that Debtor-Sinclair, realizing that he could not mislead a bankruptcy judge into purporting to vacate judgments and orders of other courts or allow Debtor-Sinclair to re-litigate such final judgments and orders in this court, sought to slip out of bankruptcy, unable to abuse the Bankruptcy Code. Whether that was the motivation to seek the dismissal or not, the court allowed Debtor-Sinclair to continue as debtor in possession for a year to allow him in good faith to avail himself of the extraordinary relief and benefits afforded by Congress in the Bankruptcy Code. As the parties now see, Debtor-Sinclair chose not to prosecute the Chapter 11 case, nor to avail himself of the extraordinary relief and remedies available under the Bankruptcy Code.

If as Debtor-Sinclair argues that these claims have a value of $40 Million, then the Richard Sinclair Trust, the limited liability companies, or Mrs. Sinclair can "buy a piece of the action" and turn $40,000.00 into $20 Million (presuming that Debtor-Sinclair would split the recovery with the persons funding his desire to continue in the litigation with Katakis et al. If Mrs. Sinclair, Dr. Machado, and the Sinclair Children make the economic decision that it is not worth $40,000.00 to buy these claims that Debtor-Sinclair thinks are so valuable, that is the marketplace at work, providing the court with real time economic data.

REVIEW OF MOTION AND OPPOSITION

Gary Farrar, the Bankruptcy Trustee ("Bankruptcy Trustee"), requests that the court approve a compromise and settle competing claims and defenses with Capital Equity Management Group, Inc., formerly known as California Equity Management Group, Inc., New Century Townhomes of Turlock Owners Association, formerly known as Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Katakis et al."). The claims and disputes to be resolved by the proposed settlement are related to a state court action and a district court action with claims by Katakis et al. against Debtor-Sinclair and cross-claims of the bankruptcy estate which are asserted to exist by Debtor-Sinclair against Katakis et al..

Bankruptcy Trustee and Katakis et al. have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 481):

A. The term "Settled Claims" is defined in the Settlement agreement (¶ E) to be:

1. "Trustee and the Bankruptcy Estate, on the one hand, and each of the [Katakis et al.] Creditors on the other hand, now desire to confirm the terms of their settlement of all claims and disputes each may have against the other, **which claims include, but are not limited to**, **any and all claims**, debts, liabilities, rights, obligations, loss, costs, expenses or causes of action, including attorney's fees, of any kind or nature, whatsoever, **known or unknown**, foreseen or unforeseen, accrued or unaccrued, **which they may have against the other** or the others' officers, directors, shareholders, owners, employees, agents, predecessors, successors, affiliated companies, attorneys, assigns and beneficiaries, save and **except** that this Agreement and the **Releases** contained herein **shall not in any way apply** to or affect any of the **rights and claims** asserted by any **of the [Katakis et al.] Parties** in their **Proof of Claim 4-1** filed in the Bankruptcy Estate, or asserted by either or both of **CEMG and Fox Hollow HOA in their Proof of Claim 26-1** filed in the Bankruptcy Estate (the 'Settled Claims')."

Proof of Claim 4, as amended June 3, 2016, asserts an unsecured claim in the amount of $1,066,530.52, which is based on the judgment obtained by Katakis et al. in the 2003 State Court Action (defined *infra*). Proof of Claim No. 26, as amended June 3, 2016, asserts a claim in the amount of $7,847,292.08, plus attorneys' fees and costs, which is sought in the pending action in the United States District Court for the Eastern District of California, Case No. 1:03-cv-054391; 03-cv-05439.

B. Somebody (the source is unidentified in the Settlement Agreement) is to pay the Bankruptcy Trustee $20,000.00.

C. Upon receipt of the $20,000.00 from an unidentified source, the Bankruptcy Trustee shall provide a general release of the Estate's interests in the settled claims against any one or more of Katakis et al. and any of their officers, directors, shareholders, owners, employees, agents, predecessors, successors, affiliated companies, attorneys, assigns, and beneficiaries, including but not limited to any claim of the Estate arising out of the RICO action or any right of the Estate to appeal the judgment of the RICO action.

D. Except as stated in paragraph 6 of the Settlement Agreement, Katakis et al. (the Settlement Agreement does not state "and each of them") provide a General Release to:

1. The Bankruptcy Estate;
2. The Bankruptcy Trustee, and
3. The Bankruptcy Trustee's Professionals, and agents; of

of all known or unknown, foreseen or unforeseen, and accrued or unaccrued, claims, rights, and liability, including but not limited to the "Settled Claims."

E. The state court action for the Malicious Prosecution Action (California Superior Court, Stanislaus County Case No. 668157), including the claims and cross-claims of the parties, and its related proof of claim filed in this bankruptcy case by Katakis et al. is finally and completely resolved as follows:

1. The state court action shall be dismissed with prejudice, with each of the parties bearing its own attorneys' fees and costs of litigation;

2. Katakis et al. will irrevocably withdraw Proof of Claim No. 7-1 (filed in an estimated amount of $1 Million), associated with the state court action, within ten days of dismissal of the state court action. Mr. Katakis, Capital Equity Management Group, and any other entity in which Mr. Katakis has an interest, agree not to refile such proof of claim or any future proof of claim arising from the same facts alleged in Proof of Claim No. 7-1; and

3. Capital Equity Management Group, Inc. And New Century Townhomes of Turlock Owners Association shall make an additional payment of $20,000.00 to the Estate on settlement of Debtor-Sinclair's cross-claims in the state court action, which is in addition to the payment referenced in this settlement and which shall be allocated between the Estate and Debtor-Sinclair according to respective interests. Katakis et al. shall be responsible for drafting the pleadings to dismiss the state court action. The $20,000.00 payment to the Estate shall be paid within ten days after entry of the order of the Stanislaus

Superior Court dismissing the state court action in its entirety. The Estate waives all rights to appeal that dismissal.

This provision makes reference to settlement of "Mr. Sinclair's" cross-claim and not "claims of the estate which are identified in the proposed fourth amended complaint which Mr. Sinclair seeks to file if those rights are abandoned to him from the bankruptcy estate." It may be a simple drafting shortcut, but the court is not clear prior to the hearing whether the payment of the $20,000.00 to the estate is dependant on the "settlement" of rights held by someone other than the bankruptcy estate and the Bankruptcy Trustee.

F. Bankruptcy Trustee and Katakis et al. agree that the settlement shall act as a full and final release of all claims, known or unknown, whether or not asserted, arising from the alleged claims and causes of action referenced. If the facts supporting the settlement are found to be different than now believed, each party expressly accepts and assumes the risks of such possible difference in facts and agrees that the settlement shall remain effective.

G. Any and all rights under California Civil Code § 1542 are waived.

H. All Proofs of Claim filed by Katakis et al. currently on file shall remain in full force and effect, except for Claim No. 7-1, and Bankruptcy Trustee shall not file an objection to said claims.

The claims not included in the release appear from the Settlement Agreement to be Proof of Claim 4 and Proof of Claim 26, as amended June 3, 2016. But this provision of the Settlement Agreement intimates that there could be others beyond that from the court's review prior to the hearing.

I. Katakis et al. shall not seek allowance of an administrative claim based on attorneys' fees and costs incurred by Katakis et al. that may have benefitted the Estate.

J. Katakis et al. shall post $5,000.00 with Bankruptcy Trustee upon execution of the settlement. The deposit shall be non-refundable, but will become refundable only if:

1. This Motion is not granted;

2. The Estate fails to perform under the terms of the settlement; or

3. Katakis et al. is outbid for the claims/assets described and elects not to be approved as a backup bidder.

K. For bidding, Bankruptcy Trustee shall request that the court provide the initial increase in bidding be $5,000.00 with each successive bid a minimum of $1,000.00.

As has been demonstrated in this case, there are no matters which can be resolved to the extent that they relate to Debtor-Sinclair and Katakis et al. To consider this Motion and whether settlement for the bankruptcy estate is appropriate the court must consider not only the opposition asserted by Debtor-Sinclair,

but also the totality of the circumstances in this bankruptcy case and how it fits into the decades of disputes and litigation between Debtor-Sinclair and Katakis et al.

DEBTOR-SINCLAIR'S OPPOSITION

Debtor-Sinclair filed an Opposition on December 1, 2016. Dckt. 487. The short version of Debtor-Sinclair's Opposition is that he asserts the settlement is not fair and equitable because: (1) he was not included in the compromise and (2) the settlement amount of $40,000.00 is too low because he claims the bankruptcy estate has claims totaling at least $40 Million. Debtor-Sinclair asserts that Bankruptcy Trustee's position lacks any reasoned analysis. Debtor-Sinclair states that he has offered Bankruptcy Trustee 15% of any amount he recovers in litigation, but Bankruptcy Trustee rejected it. Overall, Debtor-Sinclair argues that settlement as provided is not fair and equitable.

Given the court having to review in detail (and so stating in this Decision for the benefit of any appellate court) prior pleadings, testimony, evidence, and legal arguments of Debtor-Sinclair in this case, the significant points made by Debtor-Sinclair in the seventeen (17) page, single spaced, Opposition include:

A. Debtor-Sinclair has been left out of the settlement. It is only Debtor-Sinclair "who knows the debtors [sic] side of the story and proof." Debtor-Sinclair Opposition ("Dbt Opp"), p. 2, Dckt. 487.

B. The settlement of $40,000.00 is only 1/1000 of the $40 Million that Debtor-Sinclair states that these claims are worth.

C. Debtor-Sinclair has filed a "60d" motion in the state court, but is was blocked by Katakis et al. because the Bankruptcy Trustee was not prosecuting the motion.[2]

D. For this court to approve the proposed settlement, this court must effectively "try" the underlying validity of the claims asserted by the estate, for which Debtor-Sinclair must first obtain an order vacating the final judgment in the state court.

E. Debtor-Sinclair has offered the Bankruptcy Trustee 15% of whatever may be recovered by Debtor-Sinclair's prosecution of the claims (which now span decades without having been prosecuted by Debtor-Sinclair), but the Bankruptcy Trustee rejected his promise of later payment if any recovery is obtained by Debtor-Sinclair.

[2] Presumably the reference is to Federal Rule of Civil Procedure 60(d), allowing a federal judge to set aside a judgment or order in that action due to fraud. Such Federal Rule would not apply in state court. While Debtor-Sinclair may just be short-handing his reference to a court's power to vacate orders or judgments in that court, the inaccurate statement of the law pervades Debtor-Sinclair's pleadings and arguments to the court.

F. Debtor-Sinclair states that this court's tentative ruling from August 25, 2016, determines that he has an interest in the claims superior to the estate.[3]

G. Debtor-Sinclair wants to prosecute a fourth amended complaint against Katakis et al.

H. Exhibit 1 to the Opposition is a letter dated January 27, 2003 in which Debtor-Sinclair states that claims exist against Katakis et al., accusing Katakis et al. of committing extortion and other crimes. (January 27, 2003, is almost fourteen full years before the present hearing on December 15, 2016.

BANKRUPTCY TRUSTEE'S REPLY TO DEBTOR-SINCLAIR'S OPPOSITION

Bankruptcy Trustee filed a Reply to Debtor-Sinclair's Opposition on December 8, 2016. Dckt. 503. Bankruptcy Trustee notes that Debtor-Sinclair listed on Schedule B a value of $6,000,000.00 for his claims against Katakis et al., not the $40 Million he now asserts in opposition to the Motion. Bankruptcy Trustee responds to allegations that he did not analyze settlement fair and equitably by showing that the Motion analyzes each factor individually, concluding that they favor settlement. Additionally, he asserts that settlement is an area where not every single disputed legal and factual issue is adjudicated. Instead, bankruptcy courts determine whether a proposed settlement is within the range of settlements appropriate in a given case, with weight given to a trustee's business judgment (citing *In re Equity Funding Corp.*, 519 F.2d 1274, 1277 (9th Cir. 1975); *In re Rake*, 363 B.R. 146 (Bankr. D. Idaho 2007)).

Bankruptcy Trustee notes that the Opposition fails to address any issue of setoff, which was a factor in Bankruptcy Trustee's decision-making process. Bankruptcy Trustee points out that the Opposition is incorrect to state that the court determined that the state court action is exempt in bankruptcy. Regardless, exemption is distinct from the settlement. If settlement is approved, Debtor-Sinclair will then have to prove what portion, if any, of the settlement attributable to the state court litigation is exempt.

Bankruptcy Trustee goes further, stating that he does not purport to bind Debtor-Sinclair. The settlement requires the dismissal of the state court action, which is defined as encompassing both claims made by Katakis et al. against Debtor-Sinclair and cross claims made by Debtor-Sinclair and Katakis et al. However, the settlement, if approved, does "bind" Debtor-Sinclair to the claims having been settled and the claims released.

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[3] As discussed in this Ruling, the court's tentative decision did not so state, and the portion of the tentative decision is merely the section in which the court summarizes the opposition filed to that motion by Debtor-Sinclair. The failure of Debtor-Sinclair, an experienced, highly educated, self-admitted excellent attorney to cite to the court's actual final ruling (Dckt. 455), and to mis-cite the court to that portion of the tentative ruling which clearly is just summarizing the arguments of Debtor-Sinclair cannot be a mistake. Rather, it is consistent with the litigation strategy of Debtor-Sinclair to say and assert whatever is in his interest, and deny, delay, and attempt to re-argue extraneous matters and attempt to mislead the court into re-litigating matters which are the subject of final rulings and orders of other courts.

In his response, the Bankruptcy Trustee does not address if and how the releases obtained by the Bankruptcy Trustee may apply to Katakis et al.'s claims that have been released and withdrawn from the bankruptcy case after the Bankruptcy Trustee closes the case.

ORDER ISSUED BY THE COURT FOR SUPPLEMENTAL STATUS REPORTS

The court ordered Debtor-Sinclair and Bankruptcy Trustee to file supplemental status reports by December 12, 2016, addressing the court's points if they so desired. Dckt. 499. For Debtor-Sinclair, the court requested that he: (1) Identify provisions of the settlement by which Debtor-Sinclair asserts that he is not included; (2) Address why the $40 Million asserted valuation of his claim is credible and how he has diligently prosecuted such rights; (3) Address whether Debtor-Sinclair, Debtor-Sinclair's wife, Debtor-Sinclair's sister, and Debtor-Sinclair's children have offered Bankruptcy Trustee $40,000.00 to match the settlement offer or will have $40,000.00 in certified funds available at the December 15, 2016 hearing as no offer of a right of first refusal to them; (4) Identify what court(s) do not want to decide the merits of a "60d motion" and what legal authorities exist for a bankruptcy judge can set aside judgments and orders of other federal and state; and (5) Identity the specific tentative rulings in which the court stated that judgments could be avoided, that Debtor-Sinclair's Fifth and Fourteenth Amendment rights were violated, or that Debtor-Sinclair has an exemption in the claims being settled.

The court requested that the Bankruptcy Trustee: (1) Respond to the allegation that the settlement excludes Debtor-Sinclair; (2) Identify over-encumbered properties, liens, and date of the secured obligations on the transferred properties; (3) Address how Bankruptcy Trustee anticipates litigation with Debtor-Sinclair, who has been disbarred as an attorney, if the Bankruptcy Trustee is suing third party transferees; and (4) Advise the court whether Bankruptcy Trustee has reported any threatening or improper hindrance to the U.S. Trustee for review.

The court also afforded Katakis et al. was offered an opportunity to address: (1) The scope of the release; (2) Debtor-Sinclair's status upon closing the bankruptcy case when he succeeds to the Chapter 7 Bankruptcy Trustee; (3) The dismissal of all claims against the bankruptcy estate; (4) The effect of California Civil Code § 877; and (5) Debtor-Sinclair's contention that the settlement would strip him of all the claims he asserts against the settling parties but subject Debtor-Sinclair to further litigation and liability for all of the release and dismissed claims to his predecessors in interest, the Chapter 7 Bankruptcy Trustee, and the Estate.

Debtor-Sinclair's Supplemental Responses

No supplemental responses were filed by Debtor-Sinclair.

Trustee's Supplemental Responses

The Bankruptcy Trustee filed a Supplemental Status Report on December 12, 2016. Dckt. 514. The information in that Report is summarized as follows. First, the Trustee reports that Debtor and Deborah Sinclair are legally married, not divorced as indicated in other pleadings filed in this case.

He confirms that Debtor a non-cash offer, based on litigation to vacating the existing final judgment against Debtor (2003 State Court Action judgment) and litigation of the claims asserted to exist by Debtor. The Bankruptcy Trustee provides information of his inspection of the properties and use of real estate professionals in determining possible values for the bankruptcy estate. The Bankruptcy Trustee reports that he has attempted to engage counsel with respect to possible avoidance actions, but based on their review, no such employment was possible.

The Bankruptcy Trustee reports that the settlement agreement resolves the bankruptcy estate's interest and provides for Proof of Claim No. 7 to be withdrawn. The settlement does not include Debtor-Sinclair. The extent of the settlement and Debtor-Sinclair's status is stated by the Trustee to be an issue between Debtor and Katakis et al. The Trustee does not address what impact, if any, it may have for Debtor-Sinclair after the close of the bankruptcy case.

The Trustee also reports that his consideration takes into account the litigation undertaken by Debtor when he was a licensed attorney, and the possible litigation that would ensue in connection with any actions taken by the Trustee. In light of the low value of the assets at this time, the possible cost of litigation is not justified by such value.

The final point to be addressed is whether the Trustee believes he has been threatened or improperly hindered from fulfilling his duties, and if so, whether such has been reported to the U.S. Trustee. The Trustee responds that he has taken into account the costs of litigation and the litigious nature of Debtor and his family members, but has not been threatened or unduly influenced by any persons in the performance of the Trustee's duties.

Supplemental Status Report by Katakis et al.

On December 12, 2016, Katakis et al. filed a Supplemental Status Report. Dckt. 516. It is reported that Katakis et al. desire to bring an end to the 13 years of litigation and settle any possible causes of action that Debtor could have against Katakis et al.

Katakis et al. state that they are willing to clarify the terms of the settlement to grant Debtor Richard Sinclair a release for all claims - except the 2003 State Court Action judgment ($1,066,530.52) and whatever judgment is issued in the District Court Action, 053-cv-04539, Eastern District of California. Whether such obligations survive the bankruptcy discharge will be determined in the two nondischargeability actions and the objection to discharge being pursued by these settling creditors.

With respect to any contentions by Debtor-Sinclair that he may assert an exemption in the various claims that are being settled, that has been previously addressed by the court, with the exception of an asserted "personal injury" exemption, which will be determined by the court in a pending objection to claim of exemption.

Katakis et al. assert that if Debtor-Sinclair is not included in the release, liability for any possible claims would exist only: (1) to the extent they were determined nondischargeable or Debtor-Sinclair was denied his discharge (with Katakis et al. currently prosecuting adversary proceedings to have both determined against Debtor-Sinclair); and (2) only for claims which have not been determined in the existing

judgment and the pending District Court Action, and only to the extent that the applicable statutes of limitations have not expired.

The discussion of this issue by Katakis et al. includes the following statement which is set out in Footnote 1 of the Katakis et al. Supplemental Status Report:

> Once the claims and cross-claims in the malicious prosecution action are dismissed with prejudice, the liability underlying the remaining adversary proceeding brought by the [Katakis et al.] Creditors to have that liability determined non-dischargable, would become moot and therefore that adversary proceeding (AP No. l5-9007) will be dismissed once the dismissal in the malicious prosecution action is completed.

Dckt. 516, p. 3. Though Adversary Proceeding 15-9007 would be dismissed, Katakis et al. continue to pursue Adversary Proceedings 15-9008, 15-9009, and 16-9008, to have other debts determined nondischargeable and for Debtor-Sinclair be denied his discharge (making all debts nondischargeable).

At the hearing counsel for Katakis et al. shall address for the court the significance of the representations made in above Footnote 1 and how it demonstrates that the settlement will significantly reduce the ongoing litigation in the Richard Sinclair–Andrew Katakis et al. Litigation Vortex.

LEGAL ABILITY AND KNOWLEDGE, AND FINANCIAL KNOWLEDGE OF RICHARD SINCLAIR

It is Debtor-Sinclair opposing the Motion, asserting his personal and professional opinion that the claims of the estate have a value of $40 Million and that he, Debtor-Sinclair will successfully prosecute those claims. Nobody else has surfaced in opposition. This "value fact" is asserted based upon Debtor-Sinclair's personal statement of value. In light of the pleadings filed in this case by Debtor-Sinclair, the action taken by other courts relating to the conduct of Debtor-Sinclair as an attorney and a party, and contentions by Debtor-Sinclair that he has suffered from a temporary disability, the court considers Debtor-Sinclair's abilities and credibility not only as a party, but also as an attorney.

The court's consideration of the credibility of Debtor-Sinclair begins with whether the court concurs with Debtor-Sinclair's repeated representations to this court that he is a highly educated, accomplished attorney and businessman. He has cited to the court that not only does Debtor-Sinclair hold a Juris Doctorate degree and was previously licensed as an attorney in California, but he also was awarded an L.L.M. in taxation and has been involved in big dollar legal and real estate deals. Though now disbarred, he blames his financial failures and the loss of his law license on the bad conduct of Katakis et al., Debtor-Sinclair did practice law for forty years.

The court accepts Debtor-Sinclair as a very intelligent person, who has sophisticated business knowledge, and a very extensive knowledge of the law. To the extent that Debtor-Sinclair makes representations to the court, advances legal arguments, files evidence, and advocates positions, the court finds that he does so intentionally and with full knowledge of the law and the merit, or lack of merit, of what he is trying to do.

This conduct and the use, and misuse, of the law and judicial proceedings has not served Debtor-Sinclair well, leading to him losing his law license. Some of the proceedings and actions in which other courts and the State Bar addressed Debtor-Sinclair's conduct are discussed below.

Attached to this Ruling in Appendix A is the court's review of some of the statements, representations, and legal pleadings made and filed by Debtor-Sinclair which results in the above conclusion.

[The Appendix will be attached to the final ruling and is not attached to the Tentative Ruling.]

RULINGS OF OTHER COURTS AND THE CALIFORNIA STATE BAR CONCERNING THE CONDUCT OF DEBTOR-SINCLAIR

This court has been presented with rulings of other courts concerning the conduct of Debtor-Sinclair, both as a party and an attorney. The court does not make such references in this section of the Decision as findings or determinations by other courts upon which this court relies in making any determinations as to the credibility of Debtor-Sinclair or this intentional litigation strategy. It is interesting to note that other courts and the California State Bar have reached similar conclusions as to Debtor-Sinclair's concepts of good faith, proper litigation, and prosecuting claims with merit in judicial proceedings.

The court's review of these rulings of other courts and the State Bar are attached as Appendix B. These matters are *Fox Hollow of Turlock Owner's Association v. Mauctrst, LLC, et al.*, E.D. Cal. No. 1:03-CV-05439, Dckt. 1184 ("Dist. Ct. Case 03-5439); and California State Bar Proceedings *In the Matter of Richard C. Sinclair*, Case Nos. 13-O-10657-PEM, 13-O-11618 (Cons.).

[The Appendix will be attached to the final ruling and is not attached to the Tentative Ruling.]

DEBTOR-SINCLAIR'S ASSERTED DISABILITY, FAILURE TO PRODUCE CREDIBLE EVIDENCE OF ANY ALLEGED DISABILITY, AND DETERMINATION BY THE BANKRUPTCY COURT THAT DEBTOR-SINCLAIR IS LEGALLY COMPETENT IN THIS BANKRUPTCY CASE

In this bankruptcy case the court was presented with Debtor-Sinclair's purported "disability" and his demand that all proceedings had to be stayed. Initially, the "disability" was stated to be only for a short period of time, and then, as the case was not progressing as Debtor-Sinclair desired, the "disability" became open-ended.

On July 28, 2016, Debtor-Sinclair filed a document titled "Status - 2004 Examinations and Court Orders" ("2016-07-28 Disability Notice"). Dckt. 220. In the 2016-07-28 Disability Notice, Debtor-Sinclair prepared and filed a notice that Debtor-Sinclair: (1) totaled his car on July 11, 2015; (2) suffered a concussion and was required to get seventeen (17) staples in his head, and would need a one month extension in the court ordered discovery. *Id.* No copies of hospital emergency room records, doctor records, or any declarations (other than Debtor-Sinclair himself) were provided in support of the asserted disability.

The court continued the discovery to afford Debtor-Sinclair the opportunity to seek the necessary medical and legal assistance to allow for the continued prosecution of this as a Chapter 11 case.

On August 3, 2014, Debtor Sinclair filed a Status Report in response to the U.S. Trustee's Notice of Non-Compliance ("2015-08-03 Status Report"). Dckt. 222. Debtor-Sinclair stated that the accident impeded his ability to provide the U.S. Trustee with required documents and information.

On September 8, 2016, Debtor-Sinclair filed a Declaration, Notice of Disability, and Status Report ("2016-09-08 Status Report"). Dckt. 244. In it he states that he will "soon be competent to testify," but that his examination needs to be delayed further.

While in the report stating that he is and has been "disabled," Debtor-Sinclair continued to file various documents asserting that the proceedings needed to be delayed. Though "disabled" to an extent asserted to preclude his being examined as provided in Federal Rule of Bankruptcy Procedure 2004, Debtor-Sinclair not only provided this notice, but also a detailed points and authorities asserting with extensive citations why he could seek to have his examination delayed. No declaration from any doctor or other evidence of any medical impairment was presented to the court.

When Katakis et al. filed a motion to have Debtor-Sinclair found in contempt for failing to comply with the orders of this court compelling discovery, the court's findings include the following:

> "Mr. Sinclair has twice stated under penalty of perjury that since his automobile accident in July 2015 that he is not mentally able to participate in this case as the debtor or as the debtor in possession. **However, these statements are suspect because they are made at a time Mr. Sinclair states he is unable to fulfill the obligations of a party in this case and the fiduciary obligations as the Debtor in Possession** to the impairment. For the court to order a party who has stated that he is not legally competent to do something is only inviting even more litigation between these parties.
>
> At the hearing, Richard Sinclair and explained that he believes he had a stroke, which caused his car to go into a ditch. He further believes that by the end of October he could be able to participate in the bankruptcy case and adversary proceedings. **However, the only medical information provided** by a doctor **is** the **"Mr. Sinclair should** be able to **return to work/school** August 31, 2015. The court addressed with Mr. Sinclair the need for the court to be satisfied that he is legally competent, or to appoint a personal representative. The court requested that Mr. Sinclair's doctor provide a professional opinion declaration concerning Mr. Sinclair's condition and legal competency (as a represented party or as pro se party)."

October 1, 2015 Civil Minutes, p. 5; Dckt. 261 (emphasis added).

When Debtor-Sinclair failed to provide credible evidence of a medical impairment, the court issued a supplemental order for Debtor-Sinclair to file competent medical testimony of any disability, which

evidence would be filed under seal. October 9, 2015 Disability Evidence Order ("DEO"), Dckt. 275. The grounds stated in the DEO which led to its issuance include:

A. "To corroborate Mr. Sinclair's testimony [declaration], a hearsay document is attached to the Declaration-Points and Authorities-Exhibit Document filed on September 8, 2015. This is a two sentence form which has the names of two doctors, two nurse practitioners, an address, phone number, and fax number centered at the top of the page. It has the typed name Upinder K. Basi, MD and date on the signature line. There is illegible writing scrawled diagonally under the typed name." DEO, p. 2:8-15.

B. "The pre-printed text [on the hearsay document] states, 'Please Excuse [Blank Field No. 1] From work/school due to illness for the following dates: [Blank Field No. 2] May return on [Blank Field No. 3] with/without restrictions.' For the Blank Field No. 1, the name 'Sinclair, Richard' is typed in. For Blank Field No. 2 the dates '8/31/15-9/30/15' is typed in. Finally, for Blank Field No. 3 the date '10/1/15' is typed in." *Id.* at 16-22.

C. "The court is further concerned that Mr. Sinclair may not be able to fully communicate Dr. Basi's concern and prognosis for when Mr. Sinclair will be legally competent to personally continue in these proceedings. The two sentence form provides little information." *Id.*, p. 3:11-15.

D. "It says nothing about Mr. Sinclair's legal competence, but merely that he should be excuses [sic] from work or school. Legal proceedings are neither work nor school." *Id.*, p. 3:15-17.

E. In the DEO, the court:

> "[r]equests that Upinder K. Basi, M.D., the person identified as signing a form stating that Richard Sinclair should be excused from "work/school due to illness" provide a written declaration under penalty of perjury providing the court with the nature, scope, and projected duration of the "illness."" *Id.*, p. 5:16-21.

F. Further, in the DEO the court:

> "[r]equests that Dr. Basi also provide [her] professional opinion and medical diagnosis of: (1) the legal competency of Mr. Sinclair to proceed in this bankruptcy case, both as a party and a pro se party representing himself; (2) the basis for determining that he should be excuses from work or school activities until September 30, 2015; (3) any concerns, limitations, or inabilities of Mr. Sinclair to proceed as a party or in representing himself in these legal proceedings; (4) and any other factors, limitations, conditions, or matters which Dr. Basi believes the court should consider in determining how these judicial proceedings will be conducted, Mr. Sinclair's ability to

participate as a party, the need of the court to appoint a personal representative in the place of Mr. Sinclair, and Mr. Sinclair being able to represent himself." *Id.*, p. 5:21-28, 6:1-8.

G. The court did not order Dr. Basi to provide such declaration, but requested it, believing that if such disability exists then Dr. Basi would act in the best interests of Debtor-Sinclair based on such disability.

No declaration was ever provided to the court by Dr. Basi or any other person testifying to the disability asserted by Debtor-Sinclair. On October 20, 2015, Debtor-Sinclair provided his declaration asserting further disability and another hearsay document purportedly from Dr. Basi. Dckt. 281 ("2015-10-20 Debtor Status Report"). In the declaration and status report, Debtor-Sinclair recounts his sister's granddaughter having a concussion and copies of pages of magazine articles about concussions. Though professing a "disability," Debtor-Sinclair continued in attacking Katakis et al.

Without any medical testimony, the court continued the hearing on determining whether Debtor-Sinclair suffered from a "disability." October 22, 2015 Civil Minutes, Dckt. 282.

The court then issued an Order for Determination of Legal Competency of Debtor-Sinclair ("Competency Hrg. Ord'). Dckt. 307. The history of the "disability" and discovery fight between Debtor-Sinclair and Katakis et al. is reviewed in the Competency Hrg. Ord. In expressing its concern over Debtor-Sinclair's conduct, the court stated in the Competency Hrg. Ord.:

> Presumably, a doctor who has previously been expressing her medical opinion that Richard Sinclair could not attend "work/school" or "work" for specified time periods had conducted reasonable and necessary medical tests to render such opinions. The court is concerned that these summary form letters provided on the doctor's letterhead merely work to postpone the prosecution of this case, consistent with a time line that Richard Sinclair and Dr. Machado originally argued for when Richard Sinclair was representing Dr. Machado and the various entities.
>
> This perception of a delay strategy is heightened by Dr. Machado failing for two months to obtain counsel for the various entities she purports to be the trustee, member, or officer. . . .

Competency Hrg. Ord., p. 12:25–28, 13:1–10.

The court, after allowing Debtor-Sinclair months to provide the court with evidence from his doctors of any medical impairment, concluded the hearings on a determination of Debtor-Sinclair's mental competency on December 17, 2015. Civil Minutes, Dckt. 337. As stated in the court's ruling, throughout this bankruptcy case Kathryn Machado, PhD, Debtor-Sinclair's sister, has been extensively involved in this case. Dr. Machado is the trustee of the Richard Sinclair Trust and managing member of the limited liability companies into which assets were transferred by Debtor-Sinclair, transfers that she and Debtor-Sinclair assert are unassailable. Until he was disbarred by the California State Bar, Debtor-Sinclair served as the

attorney for Dr. Machado individually, as trustee of the Richard Sinclair Trust, and as the managing member of the limited liability company transferees.

As the court concludes in the ruling, it is significant that Dr. Machado and the various other family members who are presented as the beneficiaries of Debtor-Sinclair's transfers and with whom he is working never thought he suffered such a significant impairment that the appointment of a state court conservator or a personal representative in this case was warranted.

> Dr. Machado is a well-educated and intelligent woman. She has appeared before the court numerous times throughout the case and has shown not only a knowledge of the various assets of the case but also a legitimate concern over her brother and the various assets. All the while the Debtor-in-Possession has been asserting his disability and incompetency, Dr. Machado has not attempted to be appointed as the Debtor-in-Possession's personal representative in either the instant case or in state court. **If the disability is as perverse as the Debtor-in-Possession has repeatedly represented to the court,** though unauthenticated in doctor reports, **Dr. Machado would most have certainly attempted to protect her brother's interest and her own in not only the Trust but also the Sinclair Ranch**. The **failure of Dr. Machado** to seek personal representation for the Debtor-in-Possession during his alleged incompetency further **evidences that the Debtor-in-Possession is not in fact disabled or incompetent**.

Civil Minutes, p. 13; Dckt. 337 (emphasis added).

With respect to Debtor-Sinclair asserting that he suffered from an impairment which precluded his ability to participate in these proceedings and the court ordered discovery, this court states, "Though professing an inability to participate, Mr. Sinclair continues to file extensive documents. He continues to argue and reargue issues." *Id.* at 14. The court's ruling refers back to the discussion of Debtor-Sinclair professing to have a medical "disability," but then actively pursuing the litigation he thought was in his advantage in the ruling in Dist. Ct. Case 03-54389 discussed above.

In concluding that Debtor-Sinclair did not have evidence of any actual "disability," the court states:

> Though months have passed for Mr. Sinclair's doctors to provide credible, competent medical opinions as to Mr. Sinclair's legal competency, no such credible testimony has been provided. The court has served the orders requiring such testimony on the doctors themselves so that they personally would know what was at stake, not merely reply on Mr. Sinclair to communicate with them. The response from the doctors has been lacking.
>
> The original excuse from a doctor was the "excuse from school or work" form note from Doctor Upinder K. Basi. Exhibit A, Dckt. 244. In this form note, Dr. Basi stated her medical opinion that Mr. Sinclair may return to "school or work" on

> October 1, 2015. Dr. Basi did not even complete the part of the note to designate whether the return to "school or work" was "with/without restrictions."
>
> Though professing incapacity, Mr. Sinclair filed a responsive pleading in which he addressed facts and allegations (favorable to his position) to oppose his creditor opponents. Response, Dckt. 222, filed August 3, 2015. He then filed another pleading on August 25, 2015, asserting an inability to comply with court orders. Declaration and Memorandum of Points and Authorities, Dckt. 232. On September 8, 2015, Mr. Sinclair filed a Declaration, Request for Delay, Memorandum of Points and Authorities, asserting his position why the case should not proceed due to his incapacity. Dckt. 244.

Civil Minutes, p. 15; Dckt. 15. In the Civil Minutes the court recounts the continued filings by Debtor-Sinclair and the "excuse notes" purportedly from Dr. Basi. Further, Debtor-Sinclair was able to recall alleged facts and find documents which he could present to advance his case, while professing a "disability" to fulfill his discovery obligations.

The conclusions of the court in determining that Debtor-Sinclair did not suffer from a "disability" and that he should be allowed to continue to delay these proceedings, include:

> It has been demonstrated that **Mr. Sinclair does not suffer from a disability or capacity impairment**. Rather, as in his other cases, **while professing an impairment he is litigating the case.** The court notes that just prior to the "impairment," Mr. Sinclair was advocating that discovery be put on hold until the end of the summer. Due to the "impairment," such discovery has effectively been put on hold until December 2015.
>
> **During this time he has litigated the case with his sister, Dr. Machado**. The court has to believe that if the impairment existed, Dr. Machado would have acted to insure that her brother received the necessary medical and legal assistance. Instead, Dr. Machado (who is the principal of entities which received what may be fraudulent conveyances) has benefitted from the "impairment delay," without taking any overt action to assist her brother.

Civil Minutes, p. 16; Dckt. 337 (emphasis added).

Though afforded multiple opportunities, and having the orders sent directly to the doctor who was purporting to state that Debtor-Sinclair suffered from a "disability," no evidence was presented, other than Debtor-Sinclair's self-serving statements. It has never been demonstrated by Debtor-Sinclair that he suffered from any "disability." As it turned out, the asserted "disability" worked to

DEBTOR-SINCLAIR'S REPRESENTATION AS AN ATTORNEY OF CONFLICTING INTERESTS IN THIS BANKRUPTCY CASE

While serving as the debtor in possession (the fiduciary of the bankruptcy estate in lieu of a bankruptcy trustee being appointed) during the Chapter 11 period of this case, Debtor-Sinclair purported to represent himself as the debtor in possession but also his sister, Dr. Machado, the trustee of the Richard Sinclair Trust and the managing member of the limited liability companies that received the various transfers during the applicable fraudulent conveyance periods (which extend back in time to ten years). Debtor-Sinclair, as the debtor in possession and counsel for the debtor in possession, had the fiduciary duty to properly investigate the transfers, assert claims to avoid transfers, and recover transfers for the benefit of the estate and creditors.

But Debtor-Sinclair also undertook to represent Dr. Machado to advise her how to defeat any possible rights and interests of the estate to avoid fraudulent conveyances. Though the court raised this issue several times to both Debtor-Sinclair and Dr. Machado, neither appeared to have any concern that Debtor-Sinclair was professionally taking on the job of representing Dr. Machado to oppose Debtor-Sinclair as the debtor in possession and as the attorney for the debtor in possession. Dr. Machado continued to use Debtor-Sinclair to represent her against Debtor-Sinclair as the debtor in possession and Debtor-Sinclair as the attorney for the debtor in possession.

Because of the palpable animosity and bad blood litigation between Debtor-Sinclair and Katakis et al., the court did not *sua sponte* push this issue. Sufficient time existed for the appointment of a bankruptcy trustee to review the transfers and exercise the estate's rights, as well as possible claims arising from the use of Debtor-Sinclair as the attorney for Dr. Machado. Additionally, the main fight in the case was with Katakis et al., which was represented by knowledgeable counsel who could protect its interests in this regard in the short-run, and correspondingly protect the interests of other creditors and the bankruptcy estate.

In the summer of 2015, Debtor-Sinclair was suspended from the practice of law. The court issued an Order to Appear for Dr. Machado, in her capacity as the trustee of the Richard Sinclair Trust and managing member of the limited liability companies, to appear with new counsel in this case if she, consistent with her fiduciary duties as a trustee and managing member, wanted to assert and protect the rights and interests of the Richard Sinclair Trust and limited liability companies. Order, Dckt. 235. Dr. Machado and her new counsel were ordered to appear on October 1, 2015, giving Dr. Machado a full month to interview and engage a licensed attorney to represent her.

On October 1, 2015, the court conducted a status conference in the Chapter 11 case. See Civil Minutes for October 1, 2015 Status Conference, Dckt. 258. When the court questioned how Dr. Machado, in good faith, had not yet retained a licensed attorney to represent her, she told the court she had, but for some reason the attorney was not at the hearing. As stated by the court in the Civil Minutes, such statement was quickly admitted to be a false statement by Dr. Machado. The court's findings and conclusions on this point are:

> The court also addressed with Dr. Machado the failure to substitute in as counsel for Dr. Machado and the entities for which she is the managing member,

trustee, or representative. **At the hearing Dr. Machado represented, several times, that she had retained as counsel for herself and the entities Ian Macdonald.** Additionally, that she did not know why he was not at the hearing, since he had been so employed. The court requested that the court's staff call Mr. Macdonald's office during the hearing to determine if he was on his way to court or was unaware of the hearing. The staff reported that he was not at the office.

The court then stated that it would issue an order for Mr. Macdonald to appear the next week in the Sacramento courtroom to address Dr. Machado's representations that Mr. Macdonald was the attorney for the doctor and the entities. Dr. Machado stated that she was available to appear. Then the court noted that if it was an inaccurate statement that Mr. Macdonald had been engaged as counsel and the court wasted Mr. Macdonald's time by bringing him to Sacramento based on Dr. Machado's representations, then the court would sanction Dr. Machado and the entities for the loss of Mr. Macdonald's time. Estimating Mr. Macdonald to have at least a $400 an hour billing rate and the hearing exhausting at least six hours of time, the sanctions could be between $2,500 and $3,000.

At that point Dr. Machado stated that while she had signed the engagement letter, she had not sent Mr. Macdonald the $10,000 retainer which was required as a condition of employment. Rather, Dr. Machado stated that she proposed that Mr. Macdonald commence the representation and that a retainer would be funded out of some future escrow. **[Dr. Machado] then conceded that Mr. Macdonald had not yet been employed as counsel.**

Dr. Machado then represented to the court that she would engage counsel, even if it was less expensive counsel. The court noted to Dr. Machado that Mr. Sinclair has a very distinctive writing and advocacy style. If the court were to see a newer attorney signing pleadings, but they were written in the same style and legal content as Mr. Sinclair's pleadings, then the court would be concerned that the new attorney was merely lending his or her bar license to Mr. Sinclair to engage in the unlicensed practice of law. **The court expressed concern that it could appear from the file that Dr. Machado was already promoting the unlicensed practice of law by having Mr. Sinclair draft pleadings for and provide legal advise to Dr. Machado and the entities, which Dr. Machado would then sign purportedly in pro se**.

Civil Minutes, p. 18–19; Dckt. 258 (emphasis added).

The court also conducted a hearing on the Order to Appear. Civil Minutes, Dckt. 263. In these Civil Minutes the court recounts having addressed on May 19, 2015, (citing to the Civil Minutes from that hearing, Dckt. 200) the conflict of interest in having Debtor-Sinclair be the debtor in possession and attorney for debtor in possession, and then represent Dr. Machado in her capacity as the representative of the entities that received transfers from Debtor-Sinclair within the fraudulent (federal and state law)

conveyance periods. The Civil Minutes also reflect that the courtroom deputy printed off and provided Dr. Machado with a copy of Judge Ishi's decision in Dist. Ct. Case 03-5439 (discussed above).

At the October 22, 2015 hearing on the Order to Appear, Jessica Dorn, Esq. appeared as counsel for Dr. Machado personally, but not for her as trustee of the Richard Sinclair Trust or for any of the entities for which she is the managing member. Civil Minutes, p. 6; Dckt. 289. As discussed in the Civil Minutes, though disbarred, Debtor-Sinclair attempted to represent Dr. Machado as trustee and managing member.

> No explanation was provided as to why, if these were bona fide trusts and other entities, to which Dr. Machado owes a fiduciary duty, counsel had not been retained. Dr. Machado was provided more fifty-two days after the disbarment of Mr. Sinclair to obtain such counsel. As the court noted at the Status Conference, Dr. Machado had previously provided documents for herself and the entities which indicate that each have resources to engage counsel to in good faith act to protect their respective bona fide rights and interests.
>
> Several time during the hearing Mr. Sinclair, former counsel for Dr. Machado and the entities in this bankruptcy case prior to his being disbarred, tried to speak for Dr. Machado and the entities. The court did not allow Mr. Sinclair to engage in the unlicensed practice of law.
> . . .
> To the extent that Dr. Machado has chosen to not engage counsel to represent the various entities, she has done so with full knowledge of such requirement and the risks inherent for unrepresented parties at depositions and bankruptcy proceedings.

Id. It appeared that Dr. Machado was attempting to have Debtor-Sinclair engage in the unlicensed practice of law, ignoring California law and her duties as trustee and managing member.

On December 15, 2015, a substitutions of attorney was filed, with Holly R. Coates, Esq., of Borton Petrini, LLP, (the same firm in which Jessica Dorn, Esq. is an attorney), substituted in for two of the limited liability companies. Dckts. 325, 327. The court cannot find a substitution of attorney for anyone to represent Dr. Machado as the trustee of the Richard Sinclair Trust which received transfers from Debtor-Sinclair during the fraudulent conveyance period.

Since obtaining such counsel, Dr. Machado has disappeared from these proceedings.

VARYING VALUATIONS OF CLAIMS AT ISSUE BY DEBTOR-SINCLAIR

Throughout this bankruptcy case Debtor-Sinclair has stated that the claims that are the subject of the present Motion have had various values, with those values appearing to crescendo with the Opposition now before the court.

When he filed this bankruptcy case, Debtor-Sinclair stated under penalty of perjury that the estate had the following claims against others:

> "Katakis case for malicious prosecution plus Truax case" with a value of "approx $6 million."

Schedule B, Dckt. 42, p. 3.

In his motion for this court to vacate a state court judgment and opposition to a motion by Katakis et al. to have the bankruptcy case converted, Debtor-Sinclair's statement of value of the claims grew to $25 Million. Opposition, p.9: 20.5–21.5; Dckt. 87. Debtor-Sinclair then repeats this increased $25 Million value in his reply to the Katakis et al. opposition to Debtor-Sinclair's subsequent motion to have his bankruptcy case dismissed, in which he states,

> Sinclair also has a $25 million suit filed against Katakis and soon will be filing a new suit for $25 million for the Fraud on the Court pursuant to Rule 60 (d) and CC 3294 in both State and Federal Court and will seek injunctions to stop Katakis stalking of Sinclair since 1995. 20 years is long enough.

Reply, p. 6:18.5–21.5; Dckt. 125. The judgment Debtor-Sinclair seeks to avoid based on the alleged "fraud" was issued on June 18, 2010. Adv. Pro. 15-9007; Exhibit 4 to Complaint, Dckt. 9. This judgment was affirmed on appeal, with the decision filed on January 23, 2013. *Id.*; Exhibit 5, Dckt. 10. If vacating the judgment for fraud is a straight-forward affair, Debtor-Sinclair offers no explanation as to why in was not accomplished in the four years and five months from it being issued in June 2010 and Debtor-Sinclair commencing this bankruptcy case on November 24, 2014. Nor, why it was not addressed in the year that passed after filing bankruptcy in November 2014 and this case being converted to one under Chapter 7 on December 18, 2015.

In his motion to dismiss Debtor-Sinclair states that the Katakis et al. claims (which Debtor-Sinclair disputes) are about half of Debtor-Sinclair's debts. Motion to Dismiss, p. 6:17-19; Dckt. 116.

In opposing an earlier motion filed by Katakis et al. to convert this case to one under Chapter 7, Debtor-Sinclair stated that the bankruptcy estate had "$50 million in suits against Katakis and Truax." Opposition Statement (a supplement to his opposition), p.2 ¶ 8; Dckt. 99. Debtor-Sinclair further argued that it was likely that he would confirm a plan in his Chapter 11 case.

It appears that the valuation of these claims by Debtor-Sinclair is not based on a rational analysis, but what number sounds like it supports Debtor-Sinclair's interests. In his November 16, 2016 filed Status Report, Debtor-Sinclair states that he now computes the damages as his "losses" caused by Katakis et al. Status Report, p. 3:3-4. The court is not provided with any explanation as to what "losses" have occurred since November 2014 that have caused the value of this asset to increase to whatever portion of the $6 Million stated on Schedule B under penalty of perjury when this case was filed to now $40 Million.

STATEMENT OF APPLICABLE LAW AND CORRECT APPLICATION BY A BANKRUPTCY COURT

Debtor-Sinclair has provided the court with extensive briefs on the proper standard of review by a bankruptcy judge in considering whether a compromise by a bankruptcy trustee, as the fiduciary of the

bankruptcy estate, should be approved after hearing as provided in Federal Rule of Bankruptcy Procedure 9019. In substance, it appears that Debtor-Sinclair's contention is that the bankruptcy judge must effectively conduct a mini-trial on the underlying claims.

Starting with the basics, the Supreme Court has enacted Federal Rule of Bankruptcy Procedure 9019 which provides that upon motion of the bankruptcy trustee the court may approve a compromise or settlement. Rule 9019 does not grant a right to compromise, but merely provides a procedure for a bankruptcy trustee (debtor in possession or other person allowed to exercise powers of a bankruptcy trustee) to obtain a court order approving the compromise.

The ability for a bankruptcy trustee to enter into a comprise has its roots in 11 U.S.C. § 704 which requires (using the word "shall" in the statute) the Chapter 7 bankruptcy trustee to collect and reduce to money property of the estate. Property of the estate includes claims or rights of the debtor which exist as of the commencement of the bankruptcy case 11 U.S.C. § 541(a)(1), and other post-bankruptcy rights specified in 11 U.S.C. § 541 and property which may be recovered by a bankruptcy trustee (11 U.S.C. § 544 *et seq.*).

As noted in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 9019.02, the various Circuit Courts of Appeals have taken the "cue" in setting the standards for approval of compromises from the Supreme Court in *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). The compromise at issue in *TMT Trailer Ferry, Inc.* did not arise under the Bankruptcy Code or in a Chapter 7 case, but in a Bankruptcy Act Chapter X reorganization plan. The Supreme Court applied the general plan. Some of the pertinent statements of the Supreme Court in *TMT Trailer Ferry* include the following:

A. "The fact that courts do not ordinarily scrutinize the merits of compromises involved in suits between individual litigants cannot affect the duty of a bankruptcy court to determine that a proposed compromise forming part of a reorganization plan is fair and equitable. In re Chicago Rapid Transit Co., 196 F.2d 484 (C. A. 7th Cir. 1952)." *Id.*, 424.

B. "There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated." *Id.*

C. "Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. " *Id.*

D. "The record before us leaves us completely uninformed as to whether the trial court ever evaluated the merits of the causes of actions held by the debtor, the prospects and problems of litigating those claims, or the fairness of the terms of compromise. More

> than this, the record is devoid of facts which would have permitted a reasoned judgment that the claims of actions should be settled in this fashion." *Id.,* 440–41.

While not providing specific criteria dealing with a compromise which was part of a reorganization plan under the former Bankruptcy Act, the Supreme Court is clear that the trial judge is not merely the rubber stamp for the advocate of the stipulation plan term, nor for the opponent of the stipulation plan term.

In discussing the application of the "informed and independent judgment" of the bankruptcy judge in approving or not approving a settlement, COLLIER continues:

> The TMT rule does not require the bankruptcy judge to hold a full evidentiary hearing [6] or even a "mini-trial" [7] before a compromise can be approved. Otherwise, there would be no point in compromising; the parties might as well go ahead and try the case. Instead, the obligation of the court is to "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'"[8]
>
> Footnote 6. *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 31 C.B.C.2d 1525 (7th Cir. 1994).
>
> Footnote 7. *Depoister v. Mary M. Holloway Found*., 36 F.3d 582, 586, 31 C.B.C.2d 1525 (7th Cir. 1994); *Port O'Call Inv. Co. v. Blair (In re Blair)*, 538 F.2d 849 (9th Cir. 1976); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493 (Bankr. S.D.N.Y. 1991). Similarly, it was not an abuse of discretion when a bankruptcy court cancelled a scheduled hearing on a motion to approve a compromise when all the parties, including the objector, agreed that the matter could be decided on their written submissions. *Tri-State Financial, LLC v. Lovald*, 525 F.3d 649, 655 (8th Cir.), cert. denied, 555 U.S. 1046, 129 S. Ct. 630, 172 L. Ed. 2d 610 (2008) .
>
> Footnote 8. *In re Drexel Burnham Lambert Group, Inc*., 134 B.R. 493 (Bankr. S.D.N.Y. 1991) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir.), *cert. denied sub nom.* 464 U.S. 822, 104 S. Ct. 89, 78 L. Ed. 2d 97 (1983)); *In re Doctors Hospital of Hyde Park, Inc.*, 474 F.3d 421, 428-30 (7th Cir. 2007).

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 9019.02.

As stated by the Ninth Circuit Court of Appeals in affirming the determination of the bankruptcy judge in approving the settlement in a liquidation, as opposed to a Chapter X reorganization as addressed by the Supreme Court in *TMT Trailer Ferry, Inc.*,

> When considering whether to approve a compromise in liquidation bankruptcy proceedings, the trustee and bankruptcy judge

should weigh the probable costs and benefits. They should consider factors such as the complexity and hazards of litigation, the expense (attorney's fees and the costs of court and discovery), the time required, and whether disapproval of the compromise would likely result in the wasting of assets.

Considering the lengthy delay occasioned by this appeal and the additional attorneys' fees and appellate costs, this appeal may be an example of asset wasting. The bankruptcy judge and the district court may, in a case such as this, give weight to the opinions of the trustee, the parties, and their attorneys. The judge and court may consider the principals' belief that the factors outlined above (and others) have been explored and considered and that the compromise is fair, reasonable, and the wisest course. Consideration should also be given to the principle that the law favors compromise and not litigation for its own sake.

Appellant asserts that even in a liquidation bankruptcy compromise proceeding, there must be a mini-trial on the merits of claims sought to be compromised. We reject the notion. The decision as to whether there should be a mini-trial in a liquidation bankruptcy as to the merits of the compromised claims and defenses is best left to the sound discretion of the bankruptcy judge upon an application and showing of necessity by the interested parties or by creditors of the bankrupt.

This is not the same as a Chapter X proceeding and there are sound reasons for drawing the distinction. A corporate reorganization is a continuing business affair requiring close supervision and affecting many interested parties. The success or failure of a reorganization may hinge upon the very compromise at issue. [2] A liquidation bankruptcy is a terminal affair. The bankrupt's financial affairs are beyond repair. Liquidation is to be accomplished as rapidly as possible consistent with obtaining the best possible realization upon the available assets and without undue waste by needless or fruitless litigation.

2. *In Protective Committee for Independent Stockholders, etc. v. Anderson*, *supra*, 390 U.S. at 423, the lower court judgment "was rendered without considering the future estimated earnings of the reorganized company." Such a vital issue is not involved in a liquidation bankruptcy compromise.

Port O'Call Inv. Co. v. Blair (In re Blair), 538 F.2d 849, 851–52 (9th Cir. 1976)

More recently, the Ninth Circuit Court of Appeals addressed the proper consideration of a proposed compromise as follows:

> The bankruptcy court has great latitude in approving compromise agreements. *See Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1380-81 (9th Cir.), cert. denied sub nom. Martin v. Robinson, 479 U.S. 854, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986). However, the court's discretion is not unlimited. The court may approve a compromise only if it is "fair and equitable." *Id.* at 1381; see 11 U.S.C. § 1129(b)(1) (1982) (reorganization plans must be "fair and equitable" as to nonconsenting class); *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 20 L. Ed. 2d 1, 88 S. Ct. 1157 (1968) (applying standard of section 1129's precursor to compromises). Moreover, in passing on the proposed compromise, the court must consider:
>
> > "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises [asset at issue]."
>
> *A & C Properties*, 784 F.2d at 1381 (citation omitted); *see Anderson*, 390 U.S. at 424.

Woodson v. Fireman's Fund Insurance Company (In re Woodson); 839 F.2d 610, 620 (9th Cir. 1987).

Bankruptcy Trustee argues that the four factors have been met. Under the settlement, Bankruptcy Trustee shall recover $40,000.00 ultimately in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $6,000,000.00, from Katakis et al.. Bankruptcy Trustee asserts that the property can be recovered for the Estate for the claim it has against Katakis et al.. This proposed settlement allows Bankruptcy Trustee to recover for the Estate $40,000.00 without further cost or expense and is 0.67% of the maximum amount of the claim identified by Bankruptcy Trustee.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor-Sinclair, are fully and completely settled, with all such claims released. Katakis et al. has granted a corresponding release for Debtor-Sinclair and the Estate.

Probability of Success

xxxxxxxxxxxxxxxxxxxxxx

Difficulties in Collection

xxxxxxxxxxxxxxxxxxxxxx

Complexity of the Litigation

xxxxxxxxxxxxxxxxxxxxxx

Expense, Inconvenience, and Delay of Continued Litigation

xxxxxxxxxxxxxxxxxxxxx

Paramount Interest of Creditors

xxxxxxxxxxxxxxxxxxxxx

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Bankruptcy Trustee to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is/is not in the best interest of the creditors as set forth in this ruling. The Motion is granted/denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the Trustee ("Bankruptcy 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 for Approval of Compromise between Bankruptcy Trustee and Capital Equity Management Group, Inc., formerly known as California Equity Management Group, Inc., New Century Townhomes of Turlock Owners Association, formerly known as Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Settlor") is granted/denied, ~~and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 481)~~.

12. **14-91565-E-7** **RICHARD SINCLAIR** **CONTINUED STATUS CONFERENCE**
15-9007 **RE: COMPLAINT**
KATAKIS ET AL V. SINCLAIR **2-20-15 [1]**

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

The Status Conference is xxxxx.

Notes:
Continued from 10/20/16. Gary Farrar, Trustee, and Aaron A. Avery, counsel for the Trustee to appear in person.

SUMMARY OF COMPLAINT

Andrew Katakis, California Equity Management Group, and New Century Townhomes of Turlock Owners' Association (fka Fox Hollow of Turlock Owners' Association), the Plaintiff's ("Katakis et al.") have filed a Complaint alleging that the obligations owed by Richard Sinclair ("Defendant-Debtor") to be awarded in a Superior Court malicious prosecution action, *Katakis et al. v. Stanley Flake et al.*, Cal. Sup. Court, County of Stanislaus Case No. 668157, is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). This claim for relief states the following basic elements:

A. In April 2003, Defendant-Debtor and others filed an action against Katakis et al. in the Superior Court, Stanislaus County, Case No. 332233 ("2003 State Court Action").

B. After a thirty-six (36) day bench trial, judgement was entered for Katakis et al. and against Defendant-Debtor and the other plaintiffs in the 2003 State Court Action.

C. The state court judge issued a written decision which is asserted to state twenty-eight (28) separate counts of "unclean hands," which Katakis et al. assert demonstrate a "Pattern of Misconduct and Deception" by Defendant-Debtor. A copy of the Statement of Decision in the 2003 State Court Action is attached as Exhibit 2 (Dckt. 7) to the Complaint.

D. An amended judgment in the 2003 State Court Action was filed on June 21, 2010, which: (1) denied all relief requested by Defendant-Debtor, (2) denied Katakis et al. relief on the cross-complaint, and (3) awarded Katakis et al. $783,141.67 against Defendant-Debtor (joint and several liability with the other plaintiffs in the 2003 State Court Action). Exhibit 4, Dckt. 9.

E. That judgment was affirmed on appeal, with a copy of the California Fifth District Court of Appeal filed as Exhibit 5 (Dckt. 10) to the Complaint. The appellate court directed the trial court to determine what attorneys' fees should be awarded Katakis et al. for legal services on appeal.

F. Katakis et al. have pending an action in California Superior Court, Stanislaus County Case No. 668157, against Defendant-Debtor for malicious prosecution ("Katakis Malicious Prosecution Action"). A copy of the first amended complaint in the Katakis Malicious Prosecution Action is filed as Exhibit 6 (Dckt. 11) to the Complaint. The allegations of Malicious prosecution relate to the 2003 State Court Action.

G. Katakis et al. seek damages for the loss of business opportunities, loss of profits, from the sale of properties necessary to pay for the costs of defending Katakis et al. in the 2003 State Court Action, and punitive damages.

SUMMARY OF ANSWER

In his Answer, Defendant-Debtor admits and denies specific allegations in the Complaint. Dckt. 16. The Answer also asserts twenty-three (23) affirmative defenses.

DECEMBER 15, 2016 STATUS CONFERENCE

Xxxxxxxxxxxxxxxxxxxxx

OCTOBER 20, 2016 STATUS CONFERENCE

Plaintiff again filed a unilateral Status Report. Dckt. 49. It is reported that, from Plaintiffs' perspective, there are no new developments in this matter. The Trustee is still reviewing the possible claims and rights of the estate.

The Plaintiff reports that they are awaiting the entry of judgment in the District court action. This court continues the Status Conference to consider which of the Sinclair matters can be set for discovery and which overlap with the District Court Action.

AUGUST 4, 2016 STATUS CONFERENCE

Plaintiff's filed a unilateral Status Report on July 26, 2016. Dckt. 44. No new developments are reported, with the court being advised that the Trustee is still reviewing the possible claims in the state court action. September 12, 2016, is the continued status conference in the state court action, at which the Trustee is to address the matters in the state court.

At the hearing, Counsel for Plaintiff reported that the Chapter 7 Trustee and Plaintiff are in the midst of settlement concerning the possible claims that Mr. Sinclair identified as ones that could be asserted.

APRIL 28, 2016 STATUS CONFERENCE

Plaintiffs' Unilateral Status Report

On April 14, 2016, Plaintiffs filed their Unilateral Status Report. Dckt. 38. Plaintiffs report that the Chapter 7 Trustee is reviewing the pending State Court Action. Plaintiffs believe that this Adversary Proceeding should be continued to afford more time to address these issues with the Chapter 7 Trustee and determine how the Trustee's decision to prosecute or not prosecute the State Court Action impacts the litigation in this Adversary Proceeding.

JANUARY 14, 2016 STATUS CONFERENCE

The Plaintiff appeared and requested that the Status Conference be continued while the Trustee investigated the case. Richard Sinclair did not appear at the Status Conference.

Plaintiffs filed a Unilateral Status Report on January 6, 2016. Dckt. 36. The court has stayed further proceedings in this Adversary Proceeding, having modified the automatic stay to allow the Parties to litigate the pending State Court Action. Plaintiffs report the following updated information:

A. On July 22, 2015, filed a notice of conditional settlement with one of the non-debtor defendants, Stanley Flake, and dismissed Mr. Flake from the State Court Action on September 10, 2015.

B. Richard Sinclair filed a Third Amended Cross-Complaint in June 2015 against Plaintiffs.

C. In July 2015, Plaintiffs filed a demurrer to the Third-Amended Complaint and a motion to strike.

D. In August 2015, Mr. Sinclair filed a notice of disability, which asserted substantially the same disability as presented to this court in August 2015.

E. The State Court granted an extension to Mr. Sinclair to September 29, 2015, to file an opposition to the demurrer.

F. Mr. Sinclair filed an opposition to the demurrer and the hearing on the demurrer was set for November 10, 2015.

G. Prior to the November 10, 2015 hearing, the U.S. Trustee filed a motion to covert Mr. Sinclair's bankruptcy case to one under Chapter 7.

H. Upon being provided notice of the pending motion to convert the bankruptcy case, the State Court dropped the demurrer and other pending motions, believing that if the case were converted and a trustee was appointed, it would not have "jurisdiction" over the cross-claim.

I. Mr. Sinclair's bankruptcy case was converted to one under Chapter 7 in December 2015. The State Court Action has been "put on hold" to allow the Chapter 7 Trustee to investigate the cross-claim.

The Chapter 7 Trustee having been recently appointed, Plaintiffs request that this Status Conference be continued until after mid-March, 2016, to allow the newly appointed Trustee time to investigate the issues relating to the State Court Action, this Adversary Proceeding, and the Bankruptcy Case.

13. **14-91565-E-7** **RICHARD SINCLAIR** **STATUS CONFERENCE RE: MOTION FOR SUMMARY JUDGMENT**
15-9007
KATAKIS ET AL V. SINCLAIR **10-28-16 [53]**

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Order Staying Motion for Summary Judgment and Setting Motion Status Conference filed 11/3/16 [Dckt 64]

The Status Conference on the Motion for Summary Judgment is xxxxxxxxxxxxx.

DECEMBER 15, 2016 STATUS CONFERENCE

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Katakis et al. Status Report

Pursuant to the order of the court, Katakis et al. have filed a Status Report relating to this Motion. Dckt. 66. In it, Katakis et al. state:

A. As an initial matter, Katakis et al. state that the only relief sought in this Adversary Proceeding is for a determination that the state court judgment in the Katakis Malicious Prosecution Action (California Superior Court, Stanislaus County Case No. 668157), and not a determination of nondischargeability of the $783,141.67 in attorneys' fee that is part of the judgment obtained in the 2003 State Court Action, which 2003 State Court Action judgment is the subject of a separate adversary proceeding.

The court's re-review of the Complaint in this Adversary Proceeding indicates while the $783,141.67, the relief sought is only that as may be granted in the Katakis Malicious Prosecution Action. The Status Report states that the judgment from the 2003 State Court Action is now $1,337,073.72. (The District Court of Appeal directed the trial court to determine what attorneys' fees and costs should be awarded Katakis et al. for legal services relating to the appeal.)

B. Katakis et al. identify the following Adversary Proceedings pending in this court involving Katakis et al. and the Defendant-Debtor.

1. Adversary Proceeding 15-9009. Katakis et al. request that the court determine the obligation, now asserted to be $1,337,073.72, of the Defendant-Debtor is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

2. Adversary Proceeding 15-9007. Katakis et al. request that the court determine that the judgment obtained in the Katakis Malicious Prosecution Action in state court is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

3. Adversary Proceedings 15-9008. California Equity Management Group and Fox Hollow of Turlock Owners' Association (the "et al." of Katakis et al.) request the court to determine that the obligations of Defendant-Debtor for any judgment entered by the United States District Court in case no. 1:03-cv-05439 is nondischarageable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).

C. In this Adversary Proceeding, Katakis et al. asserts the following final judgments as a basis for the determination of nondischargeability:

1. Mauctrst v. Katakis - Case no. 33233 –

a. Statement of Decision entered on August 18, 2009, in Stanislaus Superior Court, attached as Exhibit 2 to the Complaint.

b. Judgment entered on August 18, 2009, in Stanislaus Superior Court, attached as Exhibit 3 to the Complaint.

c. Amended Judgment entered on June 21, 2010, in Stanislaus Superior Court, attached as Exhibit 4 to the Complaint.

2. *Mautrst v. Katakis*- Case No. F058822 –

a. Opinion of the Court of Appeal, State of California, Fifth Appellate District, filed on February 20, 2015, confirming the Judgment entered in case no. 33233, attached as Exhibit 5 to the Complaint.

D. In addition, Katakis et al. seek to use the final judgment and findings thereon in the Katakis Malicious Prosecution as a basis for a determination of nondischargeability in this Adversary Proceeding.

E. The Status Report explains that in the Katakis Malicious Prosecution Action:

1. The First Amended Complaint was filed by Katakis et al. in December 2013.

2. Defendant-Debtor filed a demurrer and motion to strike, which were denied.

3. Defendant-Debtor filed two First Amended Cross-Complaints on August 13, 2014, one for Debtor-Defendant as Cross-Plaintiff and one for his son as Cross-Plaintiff in the Katakis Malicious Prosecution Action.

4. The state court directed that second amended cross-complaints be filed by November 21, 2014.

5. With the filing of the bankruptcy case in November 2014, the Katakis Malicious Prosecution Action proceeding were stayed.

6. In March 2015, the court granted Defendant-Debtor (who was then serving as the debtor in possession during the Chapter 11 period of this Defendant-Debtor's bankruptcy case) leave to file a second amended cross-complaint.

7. In May 2015, the bankruptcy court modified the automatic stay to allow for the full prosecution of the claims and cross-claims in the Katakis Malicious Prosecution Action.

8. In June 2015, Defendant-Debtor filed a third amended cross-complaint in the Katakis Malicious Prosecution Action. In response Katakis et al. filed a motion for judgment on the pleadings. The state court judge denied the motion for judgment on the pleadings because of the non-specific damages requested.

9. Katakis et al. intend to bring a motion to bifurcate the determination of liability (based on the findings for the 2003 State Court Action judgment) and damages.

10. Before the motion to bifurcate was heard, the Defendant-Debtor's bankruptcy case was converted to Chapter 7. The state court judge placed the Katakis Malicious Prosecution Action on hold pending the Chapter 7 Trustee's review of the claims therein.

11. After the conversion of Defendant-Debtor's bankruptcy case to one under Chapter 7, Defendant-Debtor filed a motion in the Katakis Malicious Prosecution Action for leave to file a fourth amended complaint. That motion is pending.

F. Katakis et al. do not intend to present any evidence in this Adversary Proceeding other than the judgments and decisions in the state court actions.

Defendant-Debtor Status Report

On December 1, 2016, Defendant-Debtor filed a Supplemental Status Report. Dckt. 55. The information in Defendant-Debtor's Supplemental Status Report is summarized as follows:

a. Defendant-Debtor attaches a copy of the proposed fourth amended cross-claim that he desires to file in the Katakis Malicious Prosecution Action.

b. The $40 Million fourth amended cross-claim relates to conduct dating back to 1996, and includes claims against Katakis et al.'s attorneys.

c. It is asserted that the judgments obtained by Katakis et al. were obtained in violation of Defendant-Debtor's 5th and 14th Amendment rights.

d. Defendant-Debtor filed the motion for summary judgment in this Adversary Proceeding:

   i. "To undo" the claims of Katakis et al. because "their attorneys and Mr. Katakis were deceitful in obtaining the judgments which did not contain fraudulent behavior on my behalf."

   ii. What has been submitted by Katakis et al. "is basically untrue and I need to eradicate their judgments."

e. Defendant-Debtor intends to proceed with a "60d" hearing in the 2003 State Court Action, but the Trustee would not join him in attempting to get that judgment vacate.

MOTION FOR SUMMARY JUDGMENT

Richard Sinclair, the Defendant-Debtor filed a Motion for Summary Judgment (Dckt. 53) on October 28, 2016. This Motion was filed shortly after the court issued its October 25, 2016 Order for there to be a Status Conference in this Adversary Proceeding. Order, Dckt. 52.

The court has modified the automatic stay to allow for the adjudication of these obligations, which relate to prior state court litigation, to be adjudicated in the state court.

REVIEW OF ADVERSARY PROCEEDING

On February 20, 2015, Andrew Katakis; California Equity Management Group, Inc.; and New Century Townhomes of Turlock Owners' Association ("Katakis et al.") commenced this Adversary Proceeding against Richard Sinclair ("Defendant-Debtor") seeking to have the obligations owed to Plaintiffs determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Complaint, Dckt. 1. This is one of many lawsuits involving some of these Katakis et al., the Defendant-Debtor, and other parties. Just in this bankruptcy case alone, there are five adversary proceedings, all to have debts determined nondischargeable. Further, the litigation of the Katakis et al. and Defendant-Debtor outside of bankruptcy are legendary, spanning from the California Superior Court to the District Court of Appeal, and more than a decade of litigation in the United States District Court for the Eastern District of California.

In this Adversary Proceeding and several others, the court has been continuing the Status Conferences to allow the state court and district court litigation to be completed as it relates to the

obligations which are the subject of this Adversary Proceeding. The Defendant-Debtor has not appeared and participated in the Status Conferences in this Adversary Proceeding. Civil Minutes, Dckts. 50, 45, 39, and 37.

On October 28, 2016, Defendant-Debtor filed a Motion for Summary Judgment (which is 47 pages in length). Dckt. 53. Defendant-Debtor's exhibits in support of the Motion are approximately 2,500 pages in length. Dckts. 56 - 61. The Motion begins with a 12-page recitation of facts beginning in the early 1990's, discusses the development of real properties in the 1990's, reviews various state court proceedings, discusses federal court proceedings, and recaps final judgments entered in other judicial proceedings. Much of the argument appears to be that the findings and conclusions of the judges in the other proceedings are not "right" and the various opponents made "misrepresentations" to those court, therefore the findings and conclusions of those courts should not be given collateral estoppel effect – thereby allowing Defendant-Debtor to re-litigate those issues in this Adversary Proceeding.

These facts stated in the Motion continue through litigation into the 2010's, with Defendant-Debtor asserting that the findings and conclusions of all the other courts are improper, and therefore should be ignored by this court.

14. 14-91565-E-7 RHS-3 | **RICHARD SINCLAIR** | **Pro Se** | **STATUS CONFERENCE RE: VOLUNTARY PETITION 11-24-14 [1]**

Debtor's Atty: Pro Se

Notes:
Set by order of the court dated 10/26/16 [Dckt 460]. Ordered to appear in person: Gary Farrar, Trustee; Trustee's counsel, Aaron A. Avery; Kathryn Machado, PhD; Dr. Machodo's counsel, Jessica Dorn and Holly R. Coats. The Trustee to file and serve a Status Report on or before 12/5/16.

[RHS-3] Trustee's Status Report in Connection with Order for Chapter 7 Status Conference filed 12/4/16 [Dckt 494]

[RHS-3] Order for Supplemental Status Report for December 15, 2016 Status Conferences and Motion to Approve Compromise filed 12/6/16 [Dckt 499]

[HAR-6] Order Granting Telephonic Appearance or in the Alternative, Special Appearance by Attorney Jessica Dorn filed 12/9/16 [Dckt 512]

The Status Conference is xxxxx.

DECEMBER 15, 2016 STATUS CONFERENCE

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On December 4, 2016, the Chapter 7 Trustee filed his Status Conference Report in this case. Dckt. 494. The information in the Report is summarized as follows:

A. The Trustee and the professionals employed by the Trustee have reviewed the assets of the estate, primarily claims against other persons, to determine how the bankruptcy estate should be administered.

B. The Trustee notes that the parties, Richard Sinclair, the Debtor, and Andrew Katakis, California Equity Management, Inc., and New Century Townhomes of Turlock Owners Association ("Katakis et al.) have expended millions of dollars in legal fees in their battles that have spanned almost two decades.

C. The Trustee has analyzed the various claims asserted by and against the Debtor in:

1. Eastern District of California Action 1:03-cv-05439.

2. California Superior Court, Stanislaus County Case No. 332233, ("2003 State Court Action") in which a judgment has been entered against Debtor.

3. California Superior Court, Stanislaus County Case No. 668157, ("Katakis Malicious Prosecution Action") in which Katakis et al. assert claims for malicious prosecution (the 2003 State Court Action) against Debtor.

4. The Trustee has reached a settlement with Katakis et al with respect to the various claims and counter claims.

5. The Trustee has been negotiating a settlement with Deutsche Bank National Trust Company, et al. in connection with a case that is now on appeal before the California Fifth District Court of Appeal.

6. The Trustee has reviewed, consulted with real estate and legal professionals, and concluded that there is not sufficient value for the Trustee to incur and expend the monies to try and avoid the transfers of such properties.

7. The Trustee has investigated the action *Mauctrst LLC et al v. Truax et al.*, California Superior Court, San Joaquin County Case No. 39-3010-00253617, and reports that it is a malpractice action against attorneys who now represent Katakis et al. The Trustee reports that Debtor was a plaintiff in this action, but that it was dismissed pursuant to terminating sanctions issued by the trial court. Debtor appealed the dismissal, but that the Debtor's appeal was also dismissed.

Debtor's Status Report

On December 1, 2016, Debtor filed his status report. Dckt. 488. The information provided by Debtor is summarized as follows:

A. Debtor claims that the judgment against him in the 2003 State Court Action was improperly obtained. Debtor claims that his 5th and 14th Amendment rights were violated.

B. Debtor describes himself as an attorney who "practiced tax, real estate and business law for 40 years, am still a pro-tern Judge of the Stanislaus County Superior Court, have an LLM in taxation from University of Miami, and a juris doctor from McGeorge School of Law, worked as a Administrative Law Judge for the State of California, a real estate salesman, my corporation was a licensed General Contractor, and I am listed in Who's Who in the World and Who's Who in America.

C. He asserts that Katakis et al. and their attorneys have worked to "take him down" and improperly caused the loss of Debtor's law license.

D. Debtor started transferring assets out of his name beginning in 1996 for what Debtor identifies as estate tax planning purposes.

E. In 2005 Debtor created a trust into which he transferred assets. The trust was made irrevocable (at an unstated time which appears to be within 10 years prior to the commencement of the bankruptcy case).

F. Debtor's wife filed for divorce in 2011. A marital settlement agreement was prepared by an unidentified person stated to be "Mrs. Sinclair's attorney, who then "retired" from representing Mrs. Sinclair.

G. Debtor filed bankruptcy in 1995. After that, Debtor states that he acquired $10.65 Million in real estate, had $2 Million in receivables, and owned two homes. In addition, Debtor had a 1/3 interest in property identified as "Sinclair Ranch."

Supplemental Status Reports

Having reviewed the Status Report of Debtor and the Status Report filed by the Trustee, the court issued an order for additional information to be provided for the Status Conference. Order, Dckt. 499. In large part this was driven by all of the assets that Debtor stated he owned and transferred, and the Trustee reporting that those assets had little if any recoverable value. The information provided by the two reports appear incomplete.

Trustee's Supplemental Status Report

The Trustee filed a Supplemental Status Report on December 12, 2016. Dckt. 514. The information in that Report is summarized as follows:

A. The Trustee reports that Debtor and Deborah Sinclair are legally married, not divorced as indicated in other pleadings filed in this case.

B. With respect to the proposed settlement with Katakis et al., Debtor communicated a non-cash offer, based on litigation to vacating the existing final judgment against Debtor (2003 State Court Action judgment) and litigation of the claims asserted to exist by Debtor.

C. From the Trustee's review of property which may be subject to possible recovery for the estate:

1. On January 18, 2016, the Trustee inspected the Oakdale and Chinese Camp properties.

2. Debtor attended the initial and continued First Meetings of Creditors on January 21, 2016, February 4, 2016, and March 3, 2016.

3. Trustee inspected the Oak View Property, Twain Harte Property, and Chinese Camp Property with Dr. Machado and real estate professionals employed by the Trustee.

4. 8218 Oak View Property

   a. Title held by Kathryn Machado, Trustee.
   b. On its Proof of Claim Deutsche Bank values the property at $891,045, for which it assets a secured claim in the amount of ($694,228.75).
   c. The real estate professional employed by the Trustee opined that a listing price for the property would be approximately the secured claim amount.
   d. The property is in a state of disrepair, with a possible six figure repair cost estimated.

5. 22734 Black Hawk Dr.

   a. Title is held by Kathryn Machado, Trustee.
   b. Real estate professionals employed by the Trustee opined that the value is less than the ($157,914) of debt that is secured by the property.

6. Sinclair Ranch - Chinese Camp - 7 Lots

a. Parcel 081-38

(1) Owner of record is Sun-One, LLC
(2) 141.5 acres

b. Parcel 081-40

(1) Owner of record is Deborah Sinclair
(2) 50.17 acres

c. Parcel 081-41

(1) Owner of record is Robert Guy Sinclair
(2) 50.17 acres

d. Parcel 081-45

(1) Owner of record is KCM, LLC
(2) 9.95 acres

e. Parcel 081-46

(1) Owner of record is KCM, LLC
(2) 9.35 acres

f. Parcel 081-47

(1) Owner of record is KCM, LLC
(2) 9.38 acres

g. Parcel 081-48

(1) Owner of record is KCM, LLC
(2) 10.0 acres.

The Trustee is informed that foreclosures have occurred on Parcels 081-45, 46, 47, and 48.

The Trustee has consulted other legal professionals for possible employment as special counsel to pursue litigation to recover property transferred by Debtor. After review, such attorneys did not agree to undertake such legal work.

Trustee-Katakis et al. Settlement Issues. In light of Debtor's assertion that the proposed settlement with Katakis et al. did not include him, the court requested clarification from the Trustee, Debtor,

and the other parties to the settlement. The Trustee reports that the settlement agreement resolves the bankruptcy estate's interest and provides for Proof of Claim No. 7 to be withdrawn. The settlement does not include Debtor. The extent of the settlement and Debtor's status is stated by the Trustee to be an issue between Debtor and Katakis et al.

The Trustee also reports that his consideration takes into account the litigation undertaken by Debtor when he was a licensed attorney, and the possible litigation that would ensue in connection with any actions taken by the Trustee. In light of the low value of the assets at this time, the possible cost of litigation is not justified by such value.

The final point to be addressed is whether the Trustee believes he has been threatened or improperly hindered from fulfilling his duties, and if so, whether such has been reported to the U.S. Trustee. The Trustee responds that he has taken into account the costs of litigation and the litigious nature of Debtor and his family members, but has not been threatened or unduly influenced by any persons in the performance of the Trustee's duties.

Supplemental Status Report by Katakis et al.

On December 12, 2016, Katakis et al. filed a Supplemental Status Report. Dckt. 516. It is reported that Katakis et al. desire to bring an end to the 13 years of litigation and settle any possible causes of action that Debtor could have against Katakis et al.

Katakis et al. state that they are willing to clarify the terms of the settlement to grant Debtor Richard Sinclair a release for all claims - except the 2003 State Court Action judgment ($1,066,530.52) and whatever judgment is issued in the District Court Action, 053-cv-04539, Eastern District of California. Whether such obligations survive the bankruptcy discharge will be determined in the two nondischargeability actions and the objection to discharge being pursued by these settling creditors.

15. **14-91565-E-7** **RICHARD SINCLAIR** **STATUS CONFERENCE RE: OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
HSM-9 **Pro Se** **11-10-16 [462]**

Debtor's Atty: Pro Se
Trustee's Atty: Aaron A. Avery

Notes:
To be heard in conjunction with the hearing on the Trustee's Motion to Approve Compromise of the claims that are the subject of this Objection.

[HSM-9] Status Report on Trustee's Amended Bifurcated Objection to Debtor's Claim of Exemption filed 11/17/16 [Dckt 472]

The Status Conference is xxxxx.

Notes:
To be heard in conjunction with the hearing on the Trustee's Motion to Approve Compromise of the claims that are the subject of this Objection.

[HSM-9] Status Report on Trustee's Amended Bifurcated Objection to Debtor's Claim of Exemption filed 11/17/16 [Dckt 472]

DECEMBER 15, 2016 STATUS CONFERENCE

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The court has issued a scheduling order (Dckt. 500), setting the following dates and deadlines:

A. The hearing on the Objection is continued to 10:30 a.m. on January 26, 2017.

B. December 29, 2016, for Debtor to file opposition to the Objection, including all supporting evidence, addressing only his alleged entitlement to the claimed exemption, and no other issues.

C. January 12, 2017, for the Trustee to file a reply to the Debtor's Opposition, as well as any evidence, if any.

D. January 19, 2017, for Debtor to file a surreply, replying only to the issues raised in the Trustee's reply.

16. **14-91565-E-7 RICHARD SINCLAIR** **CONTINUED STATUS CONFERENCE**
15-9008 **RE: COMPLAINT**
CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ET AL V. SINCLAIR **2-23-15 [1]**

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15
Answer: 3/30/15; 4/8/16

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

Notes:
Continued from 10/20/16

Supplemental Status Conference Statement [Defendant] filed 12/1/16 [Dckt 55]

Status Report by Plaintiffs filed 12/8/16 [Dckt 56]

DECEMBER 15, 2016 STATUS CONFERENCE

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Summary of Complaint

California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association, "Plaintiffs C&E" have filed a Complaint requesting that the court determine nondischargeable the obligation owning, if any, by Richard Sinclair, the "Defendant-Debtor," in the District Court Action, E.D. Cal. No. 1:03-cv-05439, (ED District Court Action) pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). Dckt. 1. The "wrongful acts" alleged as the basis for relief are the ones which are asserted to have been determined in the 2003 State Court Action.

Summary of Answer

Richard Sinclair, the Defendant-Debtor admits and denies specific allegations in the Complaint. Dckt. 9. The Answer includes twenty-three (23) affirmative defenses.

Supplemental Status Report - Plaintiff C&F

Plaintiff C&E filed a Supplemental Status Report on December 8, 2016. Dckt. 56. In it, Plaintiff C&E reports:

A. In the ED District Court Action a default prove-up hearing has been conducted and District Court Judge Ishi ordered the default judgment against Defendant-Debtor entered, with the amount of damages and other relief taken under submission. This was in May 2016.

B. Plaintiff C&E submitted proposed findings and conclusions to Judge Ishi, and Defendant-Debtor filed objections thereto in June 2016.

C. Defendant-Debtor has filed a motion for reconsideration of the default judgment, the hearing on said motion was set for July 25, 2016. That motion for reconsideration was taken under submission and no ruling has been issued by the District Court.

D. If and when judgment is entered in the ED District Court Action Plaintiff C&E intends to file a motion for summary judgment based on the District Court judgment and the findings made in issuance thereof.

E. Defendant-Debtor filed his Supplemental Status Report on December 1, 2016, and Plaintiff C&E includes responses thereto in their Supplemental Report. Plaintiff C&E asserts:

1. Defendant-Debtor is barred by the doctrines of *res judicata* and collateral estoppel from relitigating the determinations made in the Decision in the 2003 State Court Action granting judgment to Plaintiff C&E and against Defendant-Debtor. Plaintiff C&E asserts that the doctrines of res judicata and collateral estoppel apply to finding of the California State Bar in the proceedings which culminated in the disbarment of Defendant-Debtor

2. Defendant-Debtor cannot collaterally attack the awards of attorneys' fees as part of the final 2003 State Court Action Judgment (it having been affirmed on appeal before the California Fifth District Court of Appeal).

Supplemental Status Report Defendant-Debtor

On December 1, 2016, Defendant-Debtor filed a Supplemental Status Report. Dckt. 55. The information in Defendant-Debtor's Supplemental Status Report is summarized as follows:

f. Defendant-Debtor attaches a copy of the proposed fourth amended cross-claim that he desires to file in the Katakis Malicious Prosecution Action.

g. The $40 Million fourth amended cross-claim relates to conduct dating back to 1996, and includes claims against Katakis et al.'s attorneys.

h. It is asserted that the judgments obtained by Katakis et al. were obtained in violation of Defendant-Debtor's 5th and 14th Amendment rights.

i. Defendant-Debtor filed the motion for summary judgment in this Adversary Proceeding:

   i. "To undo" the claims of Katakis et al. because "their attorneys and Mr. Katakis were deceitful in obtaining the judgments which did not contain fraudulent behavior on my behalf."

   ii. What has been submitted by Katakis et al. "is basically untrue and I need to eradicate their judgments."

j. Defendant-Debtor intends to proceed with a "60d" hearing in the 2003 State Court Action, but the Trustee would not join him in attempting to get that judgment vacate.

OCTOBER 20, 2016 STATUS CONFERENCE

Plaintiffs filed a unilateral Status Report. Dckt. 47. Plaintiffs continue to litigate the underlying issues in the District Court Action now pending in Fresno. Defendant-Debtor's motion for reconsideration was taken under submission on July 19, 2016. No ruling on the motion for reconsideration is identified by Plaintiffs. The court's review of the District Court docket in that action shows the last action taken by that court to be the July 19, 2016 taking of the motion for reconsideration under submission.

The Plaintiff reports that they are awaiting the entry of judgment in the District court action. This court continues the Status Conference to consider which of the Sinclair matters can be set for discovery and which overlap with the District Court Action.

17. **14-91565-E-7** **RICHARD SINCLAIR** **CONTINUED STATUS CONFERENCE**
15-9009 **RE: COMPLAINT**
KATAKIS ET AL V. SINCLAIR **2-23-15 [1]**

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15
Answer: 3/30/15; 11/25/15

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 xxxxx.

Notes:
Continued from 10/20/16

Supplemental Status Conference Statement [Defendant] filed 12/1/16 [Dckt 66]

Status Report by Plaintiffs filed 12/8/16 [Dckt 67]

DECEMBER 15, 2016 STATUS CONFERENCE

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Summary of Complaint

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association, Plaintiffs, ("Katakis et al.) have filed a Complaint (Dckt. 1) in which it is asserted that the obligation of Richard Sinclair, the Defendant-Debtor for a judgment in California Superior Court, Stanislaus County Case No. 332233, (2003 State Court Action) is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). Katakis et al. compute the judgment obligation to total $1,337,073.72 as of the commencement of this case.

Summary of Answer

Defendant-Debtor admits and denies specific allegations of the Complaint in his Answer. Dckt. 9. Defendant-Debtor also asserts twenty-three (23) affirmative defenses.

Katakis et al. Supplemental Status Report

On December 8, 2016, Katakis et al. Filed a Supplemental Status Report in this Adversary Proceeding. Dckt. 67. Katakis et al. have amended their proof of claim in the Defendant-Debtor's bankruptcy case to reflect creditor for settlement payments received from other judgment debtors on the judgment in the 2003 State Court Action. Amended Proof of Claim No 4, filed on June 3, 2016, states the judgment debt owed by Defendant-Debtor to be $1,066,530.52.

Defendant-Debtor filed his Supplemental Status Report on December 1, 2016, and Katakis et al. Includes responses thereto in their Supplemental Report. Katakis et al. asserts:

k. Defendant-Debtor is barred by the doctrines of *res judicata* and collateral estoppel from relitigating the determinations made in the Decision in the 2003 State Court Action granting judgment to Katakis et al. and against Defendant-Debtor. Katakis et al. asserts that the doctrines of res judicata and collateral estoppel apply to finding of the California State Bar in the proceedings which culminated in the disbarment of Defendant-Debtor

l. Defendant-Debtor cannot collaterally attack the awards of attorneys' fees as part of the final 2003 State Court Action Judgment (it having been affirmed on appeal before the California Fifth District Court of Appeal).

Defendant-Debtor Supplemental Status Report

On December 1, 2016, Defendant-Debtor filed a Supplemental Status Report. Dckt. 66. The information in Defendant-Debtor's Supplemental Status Report is summarized as follows:

A. Defendant-Debtor attaches a copy of the proposed fourth amended cross-claim that he desires to file in the Katakis Malicious Prosecution Action.

B. The $40 Million fourth amended cross-claim relates to conduct dating back to 1996, and includes claims against Katakis et al.'s attorneys.

C. It is asserted that the judgments obtained by Katakis et al. were obtained in violation of Defendant-Debtor's 5th and 14th Amendment rights.

D. Defendant-Debtor filed the motion for summary judgment in this Adversary Proceeding:

1. "To undo" the claims of Katakis et al. because "their attorneys and Mr. Katakis were deceitful in obtaining the judgments which did not contain fraudulent behavior on my behalf."

2. What has been submitted by Katakis et al. "is basically untrue and I need to eradicate their judgments."

E. Defendant-Debtor intends to proceed with a "60d" hearing in the 2003 State Court Action, but the Trustee would not join him in attempting to get that judgment vacate.

OCTOBER 20, 2016 STATUS CONFERENCE

Plaintiffs filed a unilateral Status Report. Dckt. 56. Plaintiffs continue to litigate the underlying issues in the District Court Action now pending in Fresno. Defendant-Debtor's motion for reconsideration was taken under submission on July 19, 2016. No ruling on the motion for reconsideration is identified by Plaintiffs. The court's review of the District Court docket in that action shows the last action taken by that court to be the July 19, 2016 taking of the motion for reconsideration under submission.

The Plaintiff reports that they are awaiting the entry of judgment in the District court action. This court continues the Status Conference to consider which of the Sinclair matters can be set for discovery and which overlap with the District Court Action.

JULY 7, 2016 STATUS CONFERENCE

Though the obligation upon which this Adversary Proceeding is based is from State Court proceedings, Plaintiff asserts that the finding in the District Court Action (the obligation from which is the subject of Adversary Proceeding 15-9008) will also be asserted in this Adversary Proceeding.

Plaintiff filed an updated Status Report in Adversary Proceeding 15-9008 on June 28, 2016. Plaintiff reports that the prove up hearings have been conducted ("May 10, 2016") in the District Court action and the matter is under submission. Defendant-Debtor has filed a motion for reconsideration of the entry of Defendant-Debtor's default in the District Court action, which was set by Defendant-Debtor for hearing on July 25, 2016. Plaintiff has filed proposed findings of fact and conclusions of law, and Defendant-Debtor has filed objections thereto, in the District Court action.

FEBRUARY 4, 2015 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Plaintiffs") seek a determination that a judgment against Richard Sinclair, the Defendant-Debtor, in the amount of $1,337,073.72 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). This judgment is alleged to have been obtained in Stanislaus County Superior Court case no. 332233.

SUMMARY OF ANSWER

Defendant-Debtor, Richard Sinclair, the Defendant-Debtor, has filed two answers to the Complaint. The First Answer was filed on March 30, 2015. (The answer was filed twice, Docket Entries 8 and 9). The Second Answer was file don November 25, 2015. The Second Answer admits and denies

specific allegations in the Complaint, and includes more detailed responses as part of the admissions and denials. The Second Answer includes twenty-two affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint, unnumbered paragraph titled "Jurisdiction," p.11:11-13; Dckt. 1. Though extensive in admitting and denying the numbered paragraph allegations and asserting affirmative defenses, the Second Answer neither admits nor denies the allegations of jurisdiction and that this is a core proceeding. There is an affirmative obligation to admit or deny allegations of whether the matter is a core proceeding, and if contended non-core, whether the responding party consents to the bankruptcy judge issuing all orders and the final judgment.

The relief sought in the Complaint is for a determination of whether a debt is nondischargeable based on fraud, fraud or defalcation while in a fiduciary capacity, or wilful and malicious injury as provided by Congress in 11 U.S.C. § 523(a)(2), (4), and (6). These claims arise under the Bankruptcy Code and are core proceedings for which the bankruptcy judge issues all orders and the final judgment in this Adversary Proceeding, for the Complaint as it exists as of the February 4, 2016 Status Conference.

STATUS REPORT FILED BY PLAINTIFFS

Plaintiffs state that in the related Adversary Proceeding, 15-9008, the court has modified the automatic stay to allow Plaintiffs to prosecute to judgment in the United States District Court the underlying obligation which they assert in Adversary Proceeding 15-9008. This court has continued the status conference in that Adversary Proceeding to July 7, 2016, to allow time for judgment to be entered in that District Court action.

In this Adversary Proceeding (15-9009), Plaintiffs seek to have a state court judgment in the amount of $1,337,073.72 determined nondischargeable. In the Status Report Plaintiffs assert that the claims upon which the state court judgment are based on the same fraud that is the basis for the District Court claims. Plaintiffs suggest that this court should delay the prosecution of this Adversary Proceeding to allow the default judgment to be entered in the District Court action because under the default judgment, alleged facts can be deemed as admitted and true.

The court does not concur in delaying the prosecution of this Adversary Proceeding pending entry of judgment and final adjudication of the District Court action. Plaintiffs seek to have a determination made as to the Nondischargeability of the debt determined in a state court action. That state court action has been litigated, the judgment on those state court claims has been determined, the factual findings made, and the conclusions of law drawn by the state court.

Plaintiffs state that they intend to seek summary judgment in this Adversary Proceeding. The Status Report indicates that Plaintiffs would intend to simultaneously prosecute the two summary judgment motions in the two separate proceedings.

18. **14-91565-E-7 RICHARD SINCLAIR** **CONTINUED STATUS CONFERENCE**
16-9008 **RE: COMPLAINT**
CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ET AL V. SINCLAIR **3-23-16 [1]**

Plaintiff's Atty: Hilton A. Ryder, D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 3/23/16
Answer: 5/9/16

Nature of Action:
Objection/revocation of discharge

The Status Conference is xxxxx.

Notes:
Continued from 10/20/16

Supplemental Status Conference Statement [Defendant] filed 12/1/16 [Dckt 24]

Status Report by Plaintiffs filed 12/8/16 [Dckt 25]

DECEMBER 15, 2016 STATUS CONFERENCE

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association, Plaintiff. ("Katakis et al.") filed a complaint to have the discharge of Richard Sinclair, the Defendant-Debtor, denied.

Katakis et al. Supplemental Status Report

On December 8, 2016, Katakis et al. filed a Supplemental Status Report in this Adversary Proceeding. Dckt. 25. Katakis et al. asserts:

> m. Defendant-Debtor is barred by the doctrines of *res judicata* and collateral estoppel from relitigating the determinations made in the Decision in the 2003 State Court Action granting judgment to Katakis et al. and against Defendant-Debtor. Plaintiff C&E asserts that the doctrines of res judicata and collateral estoppel apply to finding of the California State Bar in the proceedings which culminated in the disbarment of Defendant-Debtor

n. Defendant-Debtor cannot collaterally attack the awards of attorneys' fees as part of the final 2003 State Court Action Judgment (it having been affirmed on appeal before the California Fifth District Court of Appeal).

Defendant-Debtor Supplemental Status Report. Dckt. 24.

On December 1, 2016, Defendant-Debtor filed a Supplemental Status Report. Dckt. 66. The information in Defendant-Debtor's Supplemental Status Report is summarized as follows:

A. Defendant-Debtor attaches a copy of the proposed fourth amended cross-claim that he desires to file in the Katakis Malicious Prosecution Action.

B. The $40 Million fourth amended cross-claim relates to conduct dating back to 1996, and includes claims against Katakis et al.'s attorneys.

C. It is asserted that the judgments obtained by Katakis et al. were obtained in violation of Defendant-Debtor's 5th and 14th Amendment rights.

D. Defendant-Debtor filed the motion for summary judgment in this Adversary Proceeding:

1. "To undo" the claims of Katakis et al. because "their attorneys and Mr. Katakis were deceitful in obtaining the judgments which did not contain fraudulent behavior on my behalf."

2. What has been submitted by Katakis et al. "is basically untrue and I need to eradicate their judgments."

E. Defendant-Debtor intends to proceed with a "60d" hearing in the 2003 State Court Action, but the Trustee would not join him in attempting to get that judgment vacate.

OCTOBER 20, 2016 STATUS CONFERENCE

The Plaintiff reports that they are awaiting the entry of judgment in the District court action. This court continues the Status Conference to consider which of the Sinclair matters can be set for discovery and which overlap with the District Court Action.

JUNE 16, 2016 STATUS CONFERENCE

The Plaintiff reports that in the related Adversary Proceedings have status reports set for July 7, 2016, in light of the district court Rico action being set for a May 2016 prove-up hearing. In that action, the Defendant-Debtor filed a motion for reconsideration. He also filed an objection to the proposed findings of fact and conclusions of law in that district court Rico action.

JUNE 2, 2016 STATUS CONFERENCE

At the Status Conference no parties appeared.

SUMMARY OF COMPLAINT

California Equity Management Group, Inc.; Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Plaintiff" or "Katakis et al.") assert claims to have Richard Sinclair ("Defendant-Debtor") denied his discharge in his Chapter 7 bankruptcy case (14-91565). The grounds for denial of discharge alleged are summarized (and are not a complete listing of the extensive allegations) as follows:

A. 11 U.S.C. § 727(a)(2) – with intent to hinder, delay or defraud a creditor or officer of the estate, Defendant-Debtor has, or permitted, transferred, removed, destroyed, mutilated, or concealed:

1. Within one year before the commencement of the case property of the Defendant-Debtor; or

2. After the case, property of the bankruptcy estate.

B. 11 U.S.C. § 727(a)(4)(A)- that Defendant-Debtor knowingly and fraudulently made a false oath

1. Failing to disclose:

a. Transfers made to family members;

b. Debtor's interest in the Oak View Drive Property and Black Hawk Drive Property;

c. Unrecorded deed for 50% interest in the Oak View Drive Property;

2. Falsely stating:

a. He has a multi-year lease of the Oak View Drive Property;

b. That he had recorded a homestead exemption in the Oak View Drive Property;

c. That he suffers, or suffered, from a medical impairment in connection with fulfilling his duties and obligations in this bankruptcy case;

d. The grounds surrounding the Defendant-Debtor's post-petition automobile accident;

C. 11 U.S.C. § 727(a)(4)(D) and (a)(6) - that Defendant-Debtor has refused to obey the orders of the court in this bankruptcy case, including:

1. Failure to produce documents on February 24, 2016;

2. Failure to appear at the First Meeting of Creditors following conversion of this case;

3. Failure to search for or produce documents for a May 22, 2015 Rule 2004 examination;

D. 11 U.S.C. § 727(a)(3) - Defendant-Debtor has failed to keep, preserve, or produce records of the various, multi-million dollar business transactions, including:

1. $1,200,000 of accounts receivable allegedly transferred;

2. Transactions involving Sinclair Ranch;

SUMMARY OF ANSWER

Richard Sinclair ("Defendant-Debtor") filed his Answer on May 9, 2016. Dckt. 7. The Answer admits and denies the specific paragraphs of the Complaint. Defendant-Debtor asserts twenty-four Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint, ¶¶ 2, 3, Dckt. 1. The Defendant-Debtor admits that is Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Answer, ¶ 2, Dckt. 7.

19. 09-94269-E-7 **SUSHIL/SUSEA PRASAD**
15-9018
FERLMANN V. MEYER WILSON CO., LPA ET AL

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
6-8-16 [156]

ADV. PROC. DISMISSED: 11/29/2016

Final Ruling: No appearance at the December 15, 2016 Status Conference is required.

Plaintiff's Atty: Matthew J. Olson
Defendant's Atty: William A. Munoz; Kristin L. Iversen

The Adversary Proceeding having been dismissed, **the Status Conference is removed from the Calendar.**

20. 12-90273-E-12 **MATTHEW/TRICIA PELLER**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
1-31-12 [1]

Debtors' Atty: David C. Johnston
Notes:
Continued from 9/8/16

The Status Conference is xxxxxxxxxxxxxxxxxxxxx.

DECEMBER 15, 2016 STATUS CONFERENCE

On September 9, 2016, the court filed its order dismissing without prejudice the Debtor's Motion for Entry of Discharge. As stated in the Civil Minutes from the hearing on the Motion for Entry of Discharge, "Debtors' Attorney has not filed the required documents for the court to rule on this Motion. The court does not have Debtors' Declaration, Notice of Hearing, and Proof of Service." Dckt. 131, p. 2. It was reported that Debtor had not contacted counsel, but attempted to obtain the discharge without the assistance of counsel. A proper motion for entry of discharge was to be filed by counsel. No motion has been filed. The court is aware in from other cases that Debtor's counsel has suffered from a medical incapacitation in the Fall of 2016.

21. **15-90984-E-7** **ANTONIO CANTO AND MARIA PEREIRA** **CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT FOR DETERMINATION OF DISCHARGEABILITY**
16-9005 **2-5-16 [1]**
ORNELAS TRANSPORTATION, INC.
V. CANTO ET AL

Plaintiff's Atty: Eric J. Sousa
Defendant's Atty: Eric D. Farrar

Adv. Filed: 2/5/16
Answer: 3/4/16

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

Notes:
Scheduling Order -
Initial disclosures by 4/1/16
Close of discovery 8/19/16
Dispositive motions heard by 9/29/16

Plaintiff's Pretrial Statement filed 12/6/16 [Dckt 22]
Defendants' Pretrial Statement filed 12/7/16 [Dckt 24]

22. **15-90087-E-7** **DIOLINDA MACHADO** **CONTINUED STATUS CONFERENCE**
15-9016 **RE: COMPLAINT**
MACHADO V. MACHADO **5-15-15 [1]**

Final Ruling: No appearance at the December 15, 2016 Status Conference is required.

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: Pro Se

Adv. Filed: 5/15/15
Answer: 6/22/15

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

Judgment determining that the state court award of restitution is nondischargeable, **the Status Conference is removed from the Calendar.**

Notes:
Continued from 9/29/16 to allow for the prosecution of the Motion for Summary Judgment
Judgment filed 11/30/16 [Dckt 37]