

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

**July 31, 2013 at 2:30 p.m.**

1. [10-51508-E-7](#) JOSE/DOLLYE SOTELO  
RAH-1

STATUS CONFERENCE RE: MOTION TO  
CONVERT CASE FROM CHAPTER 13 TO  
CHAPTER 7  
2-6-13 [[46](#)]

Debtors' Atty: Richard A. Hall

**Final Ruling: The court's decision is to remove the Status Conference From the Calendar.** No appearance at the July 31, 2013 Status Conference is required.

Notes:

Co-Debtor, Dollye V. Sotelo, passed away on 3/3/11

No order designating a representative of the deceased Co-Debtor having been filed; the record not being clear if the parties are seeking the entry of a discharge for the deceased Co-Debtor; the court having entered a discharge for the surviving Debtor.

Status Conference Statement filed 7/22/13 [Dckt 100]

**July 31, 2013 Status Conference**

This case was originally commenced by debtors Jose F. Sotelo and Dollye V. Sotelo. Dollye V. Sotelo passed away on March 30, 2011. Debtor Status Conference Report, Dckt. 100. It is further reported that at the time of her passing the Debtors were four months into a Chapter 13 Plan. The surviving Debtor, Jose F. Sotelo converted the case to one under Chapter 7 on February 27, 2013.

Jose F. Sotelo confirms in his Status Report that no discharge is sought for the late Dollye V. Sotelo. The Clerk of the Court has entered a discharge for Jose F. Sotelo only. Discharge, Dckt. 95.

The Debtor and his counsel having confirmed that no discharge is sought for Dollye V. Sotelo, the Status Conference is removed from the calendar.

**July 31, 2013 at 2:30 p.m.**

- Page 1 of 46 -

2. [13-24512-E-13](#) AMOS SNELL  
[13-2171](#)  
SNELL V. DEUTSCHE BANK  
NATIONAL TRUST COMPANY ET AL

STATUS CONFERENCE RE: COMPLAINT  
5-21-13 [[1](#)]

Plaintiff's Atty: Megan A. Dailey  
Defendant's Atty: Sara Firoozeh

Adv. Filed: 5/21/13  
Answer: 6/13/13

Nature of Action:  
Recovery of money/property - fraudulent transfer  
Recovery of money/property - other  
Injunctive relief - other  
Declaratory judgment  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

**The court's decision is to continue the status conference to October 2, 2013, at 2:30 p.m. No appearances necessary.**

Notes:

Jury Trial Requested filed 5/21/13 [Dckt 1]

[SJE-1] Motion of Defendants Next Generation Capital, LLC, Cary P. Greisen, Esq., and Greisen Law Corporation to Dismiss Adversary Complaint for Failure to State a Claim Upon Which Relief Can Be Granted filed 6/20/13 [Dckt 10]; granted

[SF-1] Defendant Deutsche Bank National Trust Company's Motion to Dismiss Plaintiff's Adversary Proceeding Complaint filed 6/20/13 [Dckt 14]; set for hearing 8/8/13 at 1:30 p.m.

[DIS-1] Defendants' Law Offices of Les Zieve and Jennifer Bender's Motion to Dismiss Plaintiff's Complaint or in the Alternative Motion for a More Definite Statement filed 6/20/13 [Dckt 20]; not granted

#### **July 31, 2013 Status Conference**

On July 25, 2013, the court granted a motion to dismiss all but three defendants. The motion to dismiss the complaint as to the remaining defendants was denied without prejudice. New counsel for the Plaintiff is to communicate with the remaining defendants whether a new motion is necessary or if the Plaintiff is voluntarily dismissing the Adversary Proceeding.

3. [12-41713-E-11](#) MARVIN/ARNELLE BROWN

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-20-13 [[1](#)]

Debtors' Atty: Stephen M. Reynolds

Notes:

Continued from 2/20/13

Operating Reports filed: 3/20/13 [Feb], 3/21/13 [Mar], 4/11/13 [Mar 2012], 5/14/13 [Apr], 7/15/13 [Jun], 7/15/13 [May], 7/25/13 [amd May], 7/25/13 [amd Jun]

#### STATUS CONFERENCE SUMMARY

##### July 31, 2013 Status Conference

At the May 16, 2013 hearing, the court did not approve the Disclosure Statement proposed by the Debtors in Possession. Civil Minutes, Dckt. 54. The deficiencies included: (1) not providing a liquidation analysis, (2) not all claims were provided for in the Disclosure Statement, (3) the anticipated rental income was not stated, (4) the Disclosure Statement failed to provide the current financial information and projections upon which confirmation would be predicated, and (5) the Disclosure Statement did not list the amount of the claims in the secured classes, but only the amount of the monthly interest payment.

No amended disclosure statement has been filed and no action appears to have been taken in this case by the Debtors in Possession since the May 2013 denial of approval of the proposed Disclosure Statement.

The Monthly Operating Reports list "net income for Marvin Brown." Dckt. 1. On Schedule I Marvin Brown lists having gross income of \$10,816.53 from being employed by the Federal Government. From this gross pay he has deducted \$1,218.42 for a voluntary retirement fund (Thrift Savings Plan) and \$1,539.86 to repay a TSP Loan. Schedule I, *Id.* Schedule I lists \$1960.00 a month in rental income and \$1,455.00 from a pension or retirement.

##### February 20, 2013 Status Conference

The Debtors in Possession have obtained orders pursuant to 11 U.S.C. § 506(a) determining the following secured claims: Pentagon Federal Credit Union claim secured by third deed of trust to have a value of \$0.00, and Self Help Federal Credit Union claim secured by a second deed of trust to have a value of \$0.00.

##### Preliminary Status Conference Report Filed January 3, 2013

In their Preliminary Status Conference Report the Debtors state that the Debtors' family unit consists of 6 persons (Debtors and 4 children under the age of twelve). The Debtors anticipate a plan which provides for a 9% dividend to creditors holding general unsecured claims.

MONTHLY OPERATING REPORT CONFERENCE SUMMARY

June 2013 Report		Untimely Filed: July 25, 2013	
INCOME	Current		Cumulative
Rents	\$ 1,000.00		\$ 8,726.00
Arnelle Brown - Pampered Chef	\$ 0.00		\$ 459.00
Marvin Brown - Net Income	\$ 7,857.00		\$ 46,657.00
VA Disability	\$ <u>0.00</u>		\$ <u>7,149.00</u>
<b>Total</b>	\$ 8,857.00		\$ 62,991.00
<b>EXPENSES</b>	\$ (10,927.00)		\$ (52,328.00)
<b>PROFIT/(LOSS)</b>	\$ (2,070.00)		\$ 10,663.00
<b>Specific Expenses</b>			
Rent/Mortgage	\$ (2,470.00)		
Household Expenses	\$ (7,456.00)		
Car Payments	\$ (1,001.00)		
ACCOUNTS RECEIVABLE	\$ 0.00		
ACCOUNTS PAYABLE	\$ 0.00		

May, 2013 Report		Untimely Filed: July 25, 2013	
INCOME	Current		
Rents	\$ 1,000.00		
Arnelle Brown - Pampered Chef	\$ 0.00		
Marvin Brown -	\$ 8,130.00		

VA Disability	\$ 1,327.00			
<b>Total</b>	\$ 10,457.00			
<b>EXPENSES</b>	\$ (10,655.00)			
<b>PROFIT/(LOSS)</b>	\$ (198.00)			
<b>Specific Expenses</b>				
Household Expense	\$ (6,568.00)			
Mortgage Expense	\$ (2,470.00)			
Car Payments	\$ (1,617.00)			
ACCOUNTS RECEIVABLE	\$ 0.00			
ACCOUNTS PAYABLE	\$ 0.00			

<b>April 2013 Report</b>		<b>Filed: May 14, 2013</b>		
<b>INCOME</b>	<b>Current</b>			
Rents	\$ 1,000.00			
Arnelle Brown - Pampered Chef	\$ 73.00			
Marvin Brown - Net Income	\$ 12,195.00			
VA Disability	\$ 1,327.00			
<b>Total</b>	\$ 14,595.00			
<b>EXPENSES</b>	\$ (13,476.00)			
<b>PROFIT/(LOSS)</b>	\$ 1,119.00			
<b>Specific Expenses</b>				

Household Expense	\$ (8,960.00)		
Mortgage Expense	\$ (2,470.00)		
<b>Car Payments</b>	<b>\$ (2,046.00)</b>		
ACCOUNTS RECEIVABLE	\$ 0.00		
ACCOUNTS PAYABLE	\$ 0.00		

<b>March 2013 Report</b>		<b>Filed: April 11, 2013</b>	
<b>INCOME</b>	<b>Current</b>		
Rents	\$ 1,000.00		
Arnelle Brown - Pampered Chef	\$ 0.00		
Marvin Brown - Net Income	\$ 6,042.00		
VA Disability	\$ 1,327.00		
<b>Total</b>	<b>\$ 8,369.00</b>		
<b>EXPENSES</b>	<b>\$ (10,207.00)</b>		
<b>PROFIT/(LOSS)</b>	<b>\$ (1,838.00)</b>		
<b>Specific Expenses</b>			
Household Expense	\$ (6,516.00)		
Mortgage Expense	\$ (2,470.00)		
Car Payments	\$ (1,221.00)		
ACCOUNTS RECEIVABLE	\$ 0.00		
ACCOUNTS PAYABLE	\$ 0.00		

February 2013 Report		Filed: March 21, 2013		
<b>INCOME</b>	<b>Current</b>			
Rents	\$ 1,980.00			
Arnelle Brown - Pampered Chef	\$ 129.00			
Marvin Brown - Net Income	\$ 5,585.00			
VA Disability	\$ 1,327.00			
<b>Total</b>	\$ 9,021.00			
<b>EXPENSES</b>	\$ (7,721.00)			
<b>PROFIT/(LOSS)</b>	\$ 1,300.00			
<b>Specific Expenses</b>				
Household Expense	\$ (4,016.00)			
Mortgage Expense	\$ (2,470.00)			
<b>Car Payments</b>	<b>\$ (1,235.00)</b>			
ACCOUNTS RECEIVABLE	\$ 0.00			
ACCOUNTS PAYABLE	\$ (1.00)			

January 2013 Report		Filed: February 14, 2013		
<b>INCOME</b>	<b>Current</b>		<b>Cumulative</b>	
Rents	\$ 1,980		\$ 2,746	
Pampered Chef	\$ 0		\$ 55	
Marvin Brown	\$ 6,575		\$ 9,120	
VA Disability	\$ <u>1,327</u>		\$ <u>1,841</u>	
<b>Total</b>	\$ 9,882		\$ 13,762	

<b>EXPENSES</b>	\$ (12,554)		\$ (15,624)	
<b>PROFIT/(LOSS)</b>	\$ (2,672)		\$ (1,862)	
<b>Specific Expenses</b>				
Rent/Mortgage		(\$2,869)		(\$3,980)
Household Expenses Including:		(\$8,446)		(\$9,943)
<i>Bank of America</i>		(\$2,470)		
<i>Southwood</i>		(\$540)		
<i>Ally Car</i>		(\$220)		
<i>Redwood Credit Union</i>		(\$190)		
<i>Acura</i>		(\$829)		
<i>Homeowner's Ins</i>		(\$226)		
<i>Earthquake Insurance</i>		(\$194)		
<i>Life Insurance - Husband</i>		(\$360)		
<i>Franchise Tax Board</i>		(\$328)		
Car Payments		(\$1,239)		(\$1,719)

<b>December 2012 Report</b>		<b>Untimely Filed: February 14, 2013</b>		
<b>INCOME</b>	<b>Current</b>			
Rents	\$766			
Pampered Chef	\$55			
Marvin Brown Net Income	\$2,545			
VA Disability	\$514			
<b>Total</b>	\$3,880			
<b>EXPENSES</b>	(\$3,088)			
<b>PROFIT/(LOSS)</b>	\$792			
<b>Specific Expenses</b>				
Rent/Mortgage		(\$1,111)		
Household Expenses		(\$1,497)		
Car Payments		(\$480)		

**SUMMARY OF SCHEDULES**

<b>Real Property Schedule A</b>	<b>FMV</b>	<b>LIENS</b>	
1943 Northwood Dr Apt. 2 Rental	\$45,000	\$0	
2943 Northwood Dr Apt. 1 Rental	\$45,000	(\$60,538)	Nationstar 1 <sup>st</sup> DOT
2000 Day Break Residence	\$350,000	(\$703,029)	Bank of America, NA 1 <sup>st</sup> DOT (\$372637)
			Self-Help Fed CU 2 <sup>nd</sup> DOT (\$154,460)
			Pentagon Fed CU 3 <sup>rd</sup> DOT (\$175,932)

<b>Personal Property Schedule B</b>	FMV	LIENS	
Roth IRA	\$3,000		
TSP	\$170,000		
2012 Tax Refund	\$10,000		
2006 Honda Odyssey 80,000 miles	\$9,890		
2012 Acura MDX 3,500 Miles	\$38,404	(\$45,000)	Acura Financial Services \$825 per month, 72 months
2012 Chevy Cruz Co-Owned by Adult Daughter	\$9,780	(\$5,736)	Ally Bank

<b>Secured Claims Schedule D</b>	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Bank of America, NA 1 <sup>st</sup> DOT 2000 Day Break	(\$372,637)	\$350,000	(\$22,637)
Self-Help Fed CU 2 <sup>nd</sup> DOT 2000 Day Break	(\$154,460)		(\$154,460)
Pentagon Fed CU 3 <sup>rd</sup> DOT 2000 Day Break	(\$175,932)		(\$175,932)
Nationstar 1 <sup>st</sup> DOT 1943 Northwood, Apt. 1	(\$60,000)	\$45,000	(\$15,538)
Acura Financial Services 2012 Acura MDX	(\$45,000)	\$38,404	(\$6,596)
Ally bank 2012 Chevy Cruz	(\$5,736)	\$19,670	\$0

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
None			

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	TOTAL AMOUNT OF CLAIMS		
	(\$78,849)		
Redwood CU		(\$8,048)	
Redwood CU		(\$9,926)	
Pentagon Federal CU		(\$1,948)	
Pentagon Federal CU		(\$7,892)	
Discover Bank		(\$14,242)	
Cap One		(\$5,057)	
Capital One Bank			
Wffnatbank		(\$6,499)	

<b>INCOME, SCHEDULE I</b>		
Total Average Monthly Income		
Wages	\$10,816.00	
Taxes and Social Security	(\$2,205.00)	
Insurance	(\$760.50)	
Retirement	(\$140.80)	
TSP-FERS	(\$1,218.42)	
TSP Loan Repay	(\$1,539.86)	
FEGLI	(\$3.60)	
Real Property Income	\$1,960.00	
Pension	\$1,455.00	
Net Monthly Income	\$8,362.82	

<b>EXPENSES, SCHEDULE J</b>		
Total Average Monthly Expenses	(\$7,789.15)	
Rent/Mortgage	(\$2,469.00)	Not Including Taxes or Insurance

Food	(\$750.00)	
Transportation	(\$350.00)	
Homeowner's Insurance	(\$100.00)	
Auto Insurance	(\$87.00)	
Property Tax For Residence and Rental Apartments	(\$517.05)	
Auto Payment	(\$826.00)	
Chevy Cruz Payment	(\$220.00)	
Northwood Apt 1 Mortgage Payment	(\$399.00)	
Alimony and Support Paid to Another	(\$50.00)	
Pool Maintenance	(\$54.00)	
HOA Assessment	(\$560.00)	
No expenses listed for rental properties (insurance, repairs, maintenance)		

**STATEMENT OF FINANCIAL AFFAIRS**

**Question 1 Income**

2012 YTD	\$114,719	
2011	\$128,829	
2010	\$168,084	

**Question 2 Non-Business Income**

2012	None	
2011	None	
2010	None	

**Question 3 Payments within 90 days**

Creditor	Amount	Date
Bank of America, N.A.	\$7,407	Monthly Mortgage Payments
Acura Financial Services	\$828	November 24, 2012
Nationstar Mortgage	\$1,197	Monthly Mortgage Payments
Ally Bank	\$660	Monthly Car Payments, Chevy Cruz

**Payments within one year**

Creditor	Amount	Date
None		

**Question 10 Transfers Not in the Ordinary Course of Business During 2 Year Period**

Creditor	Amount	Date
None		

4. [07-27123-E-13](#) DOREEN GASTELUM  
[12-2295](#)  
GASTELUM V. MORTGAGE  
ELECTRONIC REGISTRATION

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-6-12 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso

Defendants' Atty:

Marc B. Koenigsberg

[City of Chicago, a municipal corp; City of Chicago Dept of Revenue; City of Chicago Dept of Streets and Sanitation; City of Chicago Dept of Buildings; Dept of Police City of Chicago; Markoff Kransy, LLC; Law Offices of Talan and Ktsanes]

Regina J. McClendon and Stephanie A. Chambers

[Mortgage Electronic Registration Systems, Inc.; Select Portfolio Servicing, Inc.]

James F. McShane and Robert K. Sahyan

[Fifth Third Bank]

Monique Jewett-Brewster

[Greenpoint Mortgage Funding, Inc.]

Unknown [Rahm Emanuel]

Unknown [US Bank National Association]

Adv. Filed: 7/6/12

Amd Cmplt Filed: 10/30/12

Answer: none

Nature of Action:

Declaratory judgment

Injunctive relief - other

Validity, priority or extent of lien or other interest in property

Notes:

Continued from 3/27/13

Plaintiff's Status Conference Statement filed 7/23/13 [Dckt 158]

[JMN-1] Defendant Greenpoint Mortgage Funding, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint for Damages and Equitable Relief filed 3/1/13 [Dckt 116]; Stipulation to Dismiss Adversary Proceeding as to Defendant Greenpoint Mortgage Funding, Inc. filed 5/30/13 [Dckt 146]; Order granting stipulation filed 6/10/13 [Dckt 147]

[LL-2] Order granting extension of time through and including 9/6/13 for Mortgage Electronic Registration Systems, Inc. to file responsive pleadings, filed 6/12/13 [Dckt 157]

**STATUS CONFERENCE - JULY 31, 2013**

**July 31, 2013 at 2:30 p.m.**

**- Page 14 of 46 -**

Plaintiff's Status Conference Statement (filed July 23, 2013): The Plaintiff reports that the City of Chicago has discussed a settlement with the Plaintiff and the settlement agreement is being drafted. The basic terms of the settlement provide that the City will not attempt to enforce any of the obligations against the Plaintiff personally, but limit their recovery to the property subject to its lien. This will resolve the Adversary Proceeding.

**STATUS CONFERENCE - MARCH 27, 2013**

**Plaintiff's Status Conference Report**

The Plaintiff reports that there is a Motion to Dismiss filed by Greenpoint Mortgage Funding. The Plaintiff anticipates filing an motion to file a further amended complaint.

**MERS; U.S. Bank, N.A., Trustee; Select Portfolio Servicing, Inc., Greenpoint Mortgage Funding, Inc.; and Fifth Third Bank**

These Defendants filed a joint status conference statement reporting that in their opinion the Plaintiff has taken "no concrete steps" to list and market the properties for sale. Plaintiff has not provided any "compelling, verified information demonstrative financial hardship" which would warrant writing down the liens on the properties. These Defendants take exception with some of the "necessary" expenses identified by the Plaintiff

5. [11-37725-E-13](#) **THAN PHUNG**  
[11-2684](#)  
**ZHANG V. PHUNG ET AL**

**CONTINUED PRE-TRIAL CONFERENCE**  
**RE: COMPLAINT TO DETERMINE**  
**DISCHARGEABILITY OF DEBT**  
10-24-11 [[1](#)]

Plaintiff's Atty: Alexander Chen  
Defendant's Atty: Aldon L. Bolanos

Adv. Filed: 10/24/11  
Answer: 11/23/11

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

**Tentative Ruling:** The parties have requested that the court schedule a judicial mediation as part of their good faith efforts to resolve this matter. April 3, 2013 Ex Parte Motion, Dckt. 109. No order setting the judicial mediation was issued.

At the July 31, 2013 the court shall issue an order setting a judicial mediation schedule and judge for the parties.

Notes:

Continued from 3/27/13. The Parties shall engage in BDRP Mediation or judicially supervised settlement conference. The Parties are to lodge with the court the BDRP form or an ex parte motion for judicially supervised mediation on or before 4/5/13.

Motion for Relief from Matters Deemed Admitted and to Continue Trial filed 3/11/13 [Dckt 92]; Order denying filed 3/27/13 [Dckt 108]

[AC-2] Parties' Joint Stipulation for *Ex Parte* Motion to Request for Judicially Supervised Settlement Conference filed 4/3/13 [Dckt 109]  
[hearing date on pleading states 7/31/13 at 2:30 p.m.; clerk requested order on 4/4/13; order pending; NOT set on calendar]

6. [13-26330-E-13](#) BARRY HENNING STATUS CONFERENCE RE: COMPLAINT  
[13-2167](#) 5-15-13 [[1](#)]  
HENNING V. LINCOLN FINANCIAL  
SERVICES ET AL

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty:  
Thomas V. Clements [Lincoln Financial Services]  
Carl P. Blaine [A-1 Adjustment Services, Inc.]

Adv. Filed: 5/15/13

Answer:  
Lincoln Financial Services 6/5/13  
A-1 Adjustment Service, Inc. 6/20/13

Cross-Complaint Against Defendant Lincoln Financial Services:  
filed by A-1 Adjustment Service, Inc. 6/20/13

Answer to Cross-Complaint Against Defendant Lincoln Financial Services:  
7/3/13

Cross-Complaint Against Defendant A-1 Adjustment Service, Inc.:  
filed by Lincoln Financial Services 7/3/13

Nature of Action:  
Declaratory judgment  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Plaintiff's Discovery Plan filed 7/19/13 [Dckt 12]

Discovery Plan of A-1 Adjustment Services, Inc. and Lincoln Financial Services filed 7/21/13 [Dckt 15]

Plaintiff's Status Conference Statement filed 7/22/13 [Dckt 21]

**STATUS CONFERENCE SUMMARY**

**Plaintiff Status Conference Report - Filed July 22, 2013**

Plaintiff confirms that the vehicle and personal property have been returned. However, the Plaintiff has incurred \$2,500.00 in attorneys' fees and other (unstated) damages for which recovery is sought.

**Discovery Plans Filed by the Parties**

The parties have not filed a joint discovery plan. The Plaintiff filed a discovery plan on July 19, 2013. The deadlines for discovery and prosecution of the Adversary Proceeding proposed by Plaintiff are:

Designation of Expert Witnesses	September 4, 2013
Designation of Rebuttal Expert Witnesses	September 18, 2013
Close of Non-Expert Discovery (including discovery motions)	Not Stated
Last Day to Exchange Expert Reports	October 2, 2013
Close of Expert Discovery (including discovery motions)	October 2, 2013
Last Day for Dispositive Motions to be Heard	November 6, 2013
Pre-Trial Conference	December 2013
Trial	January 2014

The parties filed a joint discovery plan on July 21, 2013, agreeing that Initial Disclosures would be made on or before July 22, 2013. Dckt. 15.

Lincoln Financial Services filed an objection to the Plaintiff's Discovery Schedule. It is asserted that there are active settlement discussions and mediation through the court's BDRP process may allow the parties to avoid otherwise unnecessary litigation expenses.

**SUMMARY OF COMPLAINT**

The Plaintiff (Debtor) files this Complaint asserting a violation of the automatic stay and recovery of a vehicle. It is alleged that Defendant Lincoln Financial Services repossessed (on an unstated date, less than 10 days prior to the commencement of the bankruptcy case) the Debtor's vehicle. After the repossession, Defendant Lincoln Financial Services was provided notice of the Plaintiff's bankruptcy filing and demand made for return of the vehicle, but did not return the vehicle. The vehicle was held by A-1

Adjustment Service, Inc., which refused to release the vehicle to the Debtor.

It is alleged that counsel for the Plaintiff made a number of communications with the Defendants for the return of the vehicle. On May 10, 2013 (the bankruptcy case having been filed on May 7, 2013) A-1 Adjustment Service, Inc. advised that a charge of \$387.00 would be required for the release of the vehicle and personal property inside the vehicle. On May 14, 2013, A-1 Adjustment Service, Inc. advised the Debtor that an additional \$985.00 was required for the release of the personal property, in addition to a \$75.00 delivery fee.

The First Cause of Action seeks declaratory relief as to whether the automatic stay was violated by Defendants refusing to return the pre-petition repossessed vehicle once the bankruptcy case was filed.

The Second Cause of action is a claim for violation of the automatic stay for allegedly "filing, prosecuting, and collecting the post-petition wage garnishment...." (No other statements are made concerning a post-petition wage garnishment.)

The Third Cause of action is for damages pursuant to 11 U.S.C. § 362(k)(1). It is alleged that the refusal to turn over possession of the vehicle to the Debtor and conditioning the turn over on the payment of in excess of \$1,000.00 is a violation of the automatic. Damages sought to be recovered are attorneys' fees and emotional distress damages.

#### **SUMMARY OF ANSWER BY LINCOLN FINANCIAL SERVICES**

The Answer admits and denies specific allegations in the complaint, and asserts several affirmative defenses. The Defendant asserts that it has insufficient knowledge or information for a number of allegations, including those of jurisdiction and that this is a core proceeding. Complaint Paragraphs 11 and 12. Answer ¶ 3, Dckt. 8.

In answering a complaint, a defendant must affirmative address the issues of federal court jurisdiction and whether it is a core proceeding. Federal Rule of Bankruptcy Procedure 7012(b) not only incorporates Federal Rule of Civil Procedure 12(b)-(I), but mandates the response as to jurisdiction (emphasis added),

(b) Applicability of Rule 12(b)-(i) F. R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall admit or deny an allegation that the proceeding is core or non-core.** If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

#### **SUMMARY OF ANSWER BY A-1 ADJUSTMENT SERVICES, INC.**

The Answer admits and denies specific allegations in the Complaint. It also denies, based solely on a lack of information and belief, the jurisdictional and core allegations in Paragraphs 11 and 12 of the Complaint. Answer ¶¶ 11, 12, Dckt. 9.

The Answer also asserts twenty-two affirmative defenses. It is alleged that on May 15, 2013, the vehicle (with no reference to the other personal property alleged to be held) was returned to the Plaintiff. It is contended that this renders the Complaint moot under Article III of the United States Constitution.

**CROSS-CLAIM OF A-1 ADJUSTMENT SERVICES, INC.**

A-1 Adjustment Services, Inc. filed a Cross-Complaint against Lincoln Financial Services. It asserts claims for equitable and express indemnity against Lincoln Financial Services.

**CROSS-CLAIM OF LINCOLN FINANCIAL SERVICES**

Lincoln Financial Services filed a Cross-Complaint against A-1 Adjustment Services, Inc. for claims of implied and equitable indemnity

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O). Complaint ¶¶ 11, 12, Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2) **(A), (N), and (O)**. **First Amended** Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before -----, 2013.

- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2013.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2013.
- e. Dispositive Motions shall be heard before -----, 2013.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2013.

7. [10-21236-E-13](#) [13-2184](#) MATTHEW/NOELL THOMPSON STATUS CONFERENCE RE: COMPLAINT  
 THOMPSON ET AL V. CITIMORTGAGE, INC. 6-5-13 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs  
 Defendant's Atty: unknown

Adv. Filed: 6/5/13  
 Answer: none

Nature of Action:  
 Validity, priority or extent of lien or other interest in property  
 Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

[DBJ-1] Motion for Default Judgment filed 7/16/13 [Dckt 11]; set for hearing 9/18/13 at 1:30 p.m.

Plaintiff's Status Conference Statement filed 7/16/13 [Dckt 16]

**Final Ruling: The Status Conference is continued to 2:30 p.m. on October 3, 2013.** No appearance at the July 31, 2013 Status Conference is required.

The Plaintiffs have filed a motion for entry of a default judgment, the hearing on which is to be conducted on September 18. The motion requests that the court (1) determine that the deed of trust securing Defendant's claim is void based on the Chapter 13 Plan having been completed and the court having valued the secured claim at \$0.00 pursuant to 11 U.S.C. § 506(a), and (2) award attorneys fees pursuant to the contractual provisions in the Note upon which creditor's secured claim is based and California Civil Code § 1717(a) [making such provisions reciprocal]. Continuing the hearing to allow the Plaintiffs to prosecute the motion for entry of default judgment is proper.

8. [10-26337](#)-E-13 CERLITO/LORNA TACULAD

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
3-15-10 [[1](#)]

Debtors' Atty: Peter A. Bermejo

Notes:

Set by order dated 6/11/13 for a discharge status conference re deceased Co-Debtor, Cerlito Taculad

Trustee's Status Report filed 7/17/13 [Dckt 83]

#### **JULY 31, 2013 STATUS CONFERENCE**

The court ordered that a Status Conference be conducted concerning the possible discharges to be granted in this case. The Debtor Cerlito Taculad is reported by the surviving Debtor Lorna Taculad to having passed away on April 22, 2012, one year prior to the completion of the Chapter 13 Plan.

The Chapter 13 Trustee has filed a Status Report confirming that all payments required under the Chapter 13 Plan were made by the Debtor.

The Trustee further reports that he was not made aware of the death of Cerlito Taculad until the Status Conference was set by the court. There has been no notice of death or a substitution of a representative of the deceased debtor to continue the prosecution of this case.

No disclosure has been made to the trustee of the existence or non-existence of any life insurance in which the bankruptcy estate may have an interest. None was disclosed on Schedule B.

The Trustee also states that no information was provided as to how the surviving Debtor was able to continue with the plan payments or what were the change in expenses with the death of one Debtor.

Schedule I lists Cerlito Taculad as having monthly income of \$2,440.53 a month. Dckt. 1 at 27. Loran Taculad is listed as having income of \$669.15 a month. The Debtors listed expenses of \$2,825.63 a month in expenses, including a \$1,200.49 a month mortgage payment. Schedule J, *Id.* at 29. The Debtors state their Monthly Net Income to be \$180.97 on Schedule J.

Under the Debtors' First Amended Plan confirmed in this case, they are required to make monthly plan payments of \$312.01. To make these payments, the Debtors needed contributions from two other family members.

9. [11-27845-E-11](#) IVAN/MARETTA LEE STATUS CONFERENCE RE: COMPLAINT  
[13-2150](#) 5-2-13 [[1](#)]  
LEE ET AL V. SPECIALIZED LOAN  
SERVICING, LLC ET AL  
ADV. DISMISSED 6/28/13

Dismissed 6/28/13  
Closed 7/19/13

**Final Ruling:** The Adversary Proceeding having been dismissed, **the Status Conference is removed from the calendar.** No appearance at the July 31, 2013 Status Conference is required.

10. [09-20846-E-13](#) GARY/KIMBERLEY KINNEY CONTINUED STATUS CONFERENCE RE:  
[13-2070](#) COMPLAINT  
KINNEY ET AL V. COUNTRYWIDE 2-25-13 [[1](#)]  
HOME LOANS, INC. ET AL

Plaintiff's Atty: Scott A. CoBen  
Defendant's Atty: unknown

Adv. Filed: 2/25/13  
Answer: none

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

**Tentative Ruling: None**

Notes:

Continued from 4/25/13 to afford Plaintiffs sufficient opportunity to file and have heard a motion for entry of default judgment.

Default Judgment filed 6/6/13 [Dckt 24]  
[Bank of America, N.A.]  
[BAC Home Loan Servicing, Inc.]  
[Countrywide Home Loans, Inc.]

Civil Minute Order granting default judgment filed 6/12/13 [Dckt 28]

**JULY 31, 2013 STATUS CONFERENCE**

On June 12, 2013, the court issued its order granting the motion for entry of a default judgment which fully resolves the adversary proceeding (including attorneys's fees and California Civil Code § 20941(d) damages).

Counsel for the Plaintiff has not lodge with the court a proposed judgment consistent with the order granting the motion for summary judgment.

11. [11-48050-E-11](#) STAFF USA, INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
9-1-11 [[1](#)]

Debtor's Atty: W. Austin Cooper

Notes:

Continued from 6/26/13. Counsel for the Trustee is holding the monies on the accounts receivable and trying to collect more from the state of California. U.S. Bank has a lien on the receivables. Gloria Freeman objected to the continued Chapter 11 proceedings, believing that conversion to a Chapter 7 or dismissal is in everyone's best interests. The creditors appearing at the status conference did not agree that conversion (at this point) or dismissal is in the best interests of creditors.

Operating Report filed: 7/10/13

Trustee's Status Report filed 7/15/13 [Dckt 254]

[MHK-4] Trustee's Motion for Order to Show Cause filed 7/18/13 [Dckt 257]; set for hearing 8/29/13 at 10:30 a.m.

#### **JULY 31, 2013 STATUS CONFERENCE**

The Chapter 11 Trustee filed a Status Report on July 15, 2013 (Dckt. 254). As of June 30, 2013, the Trustee is holding approximately \$55,997.00 in estate funds. U.S. Bank, N.A. asserts a security interest in such funds as pre-petition accounts receivable.

The Trustee reports that he is continuing to collection accounts receivable. He states that the face amount is \$30,281, and the projected recovery over the next 120 days is \$19,400. The Trustee is also recovery of monies from the Gloria Freeman bankruptcy estate.

The Trustee has determined that no plan will be filed by the Trustee in this case and he will seek to convert or dismiss the case at the appropriate time.

The Status Report does not address whether any of the accounts receivable are not subject to the lien of U.S. Bank, N.A., and if none are, what agreement has been reached for the recovery of the administrative costs and expenses of the estate in collecting the accounts receivable and what beneficial interest there is for the estate in collecting the accounts receivable.

12. [10-23577-E-11](#) GLORIA FREEMAN

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-16-10 [[1](#)]

Debtor's Atty: Pro Se

Notes:

Continued from 5/8/13

Operating Reports filed: 5/14/13, 6/6/13, 7/17/13

[GMF-1] Civil Minute Order granting Debtor's motion to substitute attorney filed 5/16/13 [Dckt 677]

[GMF-5] Civil Minute Order denying Debtor's motion for an order directing the Trustee to provide Debtor a living allowance filed 5/16/13 [Dckt 678]

[WFH-35] Trustee's Motion for Order Authorizing Abandonment of Certain Exempt Assets filed 5/23/13 [Dckt 687]; Order granting filed 6/12/13 [Dckt 758]

Amended Schedule B, Schedule C, Summary of Schedules, and Statement of Financial Affairs filed 5/23/13 [Dckt 691]

[GMF-9] Motion to Remove David Flemmer as Trustee and Disgorge His Fees for the Estate of Gloria Freeman and Other Entities in the Eastern District of California filed 5/23/13 [Dckt 695]; Order denying filed 7/15/13 [Dckt 854]; Notice of Appeal filed 7/18/13 [Dckt 862]

[WFH-33] Application for Third Interim Allowance of Fees and Costs of Wilke Fleury Hoffelt Gould & Birney, LLP filed 4/29/13 [Dckt 626]; Order granting filed 7/1/13 [Dckt 832]

Amended Schedule B and Schedule C filed 5/31/13 [Dckt 715]

Amended Schedule B, Schedule C, Schedule I, and Summary of Schedules filed 6/14/13 [Dckt 767]

[APN-1] Motion by Secured Creditor, Wells Fargo Bank, N.A., for Relief from the Automatic Stay re Its Interest in Real Property Located at 5135 Moss Lane, Granite Bay, CA [1st Deed of Trustee] filed 6/26/13 [Dckt 795]; set for hearing 7/25/13 at 9:30 a.m.

[APN-2] Motion by Secured Creditor, Wells Fargo Bank, N.A., for Relief from the Automatic Stay re Its Interest in Real Property Located at 5135 Moss Lane, Granite Bay, CA [2nd Deed of Trust] filed 6/26/13 [Dckt 802]; set for hearing 7/25/13 at 9:30 a.m.

Amended Plan filed 6/26/13 [Dckt 809]

Disclosure Statement filed 6/26/13 [Dckt 810]

Appeal documents/information filed 7/23/13 [Dckt 871]

[GMF-11] Motion to Remove Daniel Egan and Wilke, Fleury, Hoffelt, Gould and Birney, LLP and Disgorge Their Fees for the Estate of Gloria Freeman and

Other Entities in the Eastern District of California filed 6/27/13 [Dckt 811]; heard 7/11/13 and continued to 7/25/13 at 10:30 a.m.. The Motion was denied.

**JULY 31, 2013 STATUS CONFERENCE**

The court has addressed a series of motions filed by the Debtor seeking to remove the Trustee and counsel for the Trustee. The court also has pending contested matters to recover monies from Austin Cooper, former counsel for the Debtor and Debtor in Possession, and several related entities of the Debtor which are or were owned by the estate.

**Debtor Motion to Remove Accountant:** On July 25, 2013, the Debtor filed a motion to remove Flemmer and Associates as the accountants for the Chapter 11 Trustee, to disgorge fees, and to appoint Julie Heath as the accountant for the Chapter 11 Trustee. The court summarizes the grounds stated with particularity in that motion as follows:

- A. The Chapter 11 Trustee has announced that he is terminating Flemmer and Associates as the accountants for the estate and will be employing other professionals.
- B. Flemmer and Associates has a connection with through one of its members with a business that competes with Ulrich, Nash and Gump (the ownership of which the Debtor, as Debtor in Possession, asserted was property of the bankruptcy estate).
- C. The Trustee has not completed all the required tax returns. (Reference is made as to the Trustee competing tax returns for "various entities," however, the Trustee is just the trustee of the bankruptcy estate in this case and not for the "various entities.")
- D. The Debtor seeks to have the court order the trustee to engage the services of Ms. Julie Heath, CPA. While Ms. Heath provides a declaration that it is her opinion that the taxes for the estate of Gloria Freeman have not been properly filed as the community share allocation of income is required in each year of 2010, 2011, and 2012. Declaration, Dckt. 876. Ms. Heath does not explain to the court what the error is, what information she has been provided in rendering her opinion, and what prior or current connections she has with either Gloria Freeman or Laurence Freeman.
- E. The Motion does not address the authority of the Debtor to seek an order from the court mandating the Trustee to hire a specific professional. In her declaration, Ms. Heath does not state what basis she has for joining in the motion to have the court order her to be employed by the Chapter 11 Trustee.

13. [09-26655](#)-E-13 TOREN VALONE AND MARISA CONTINUED STATUS CONFERENCE RE:  
[12-2611](#) SALO COMPLAINT  
VALONE ET AL V. BANK OF 10-18-12 [[1](#)]  
AMERICA, N.A. ET AL

Plaintiff's Atty: Robert W. Fong  
Defendant's Atty: unknown

Adv. Filed: 10/18/12  
Amd. Cmplt Filed: 3/4/13  
Summons Reissued: 3/5/13

Answer: none

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

**The court's decision is to remove this status conference from the calendar.**  
No appearance at the July 31, 2013 Status Conference is required.

Judgment (Dckt. 25) and order granting attorneys' fees and costs (Dckt. 37) have been issued by the court.

Notes:

Continued from 5/8/13

Civil Minute Order granting motion for default judgment filed 6/13/13  
[Dckt 24]

Judgment filed 6/20/13 [Dckt 25]

[RWF-5] Motion to Approve Bill of Costs filed 6/24/13 [Dckt 28]; granted

14. [13-20155-E-13](#) JEFFREY AKZAM  
[13-2103](#)  
AKZAM V. OPTION ONE MORTGAGE  
CORPORATION ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
3-26-13 [[1](#)]

Plaintiff's Atty: Pro Se  
Defendant's Atty: Nichole L. Glowin

Adv. Filed: 3/26/13  
Reissued Summons: 3/26/13

Answer: none

Nature of Action:  
Injunctive relief - imposition of stay  
Injunctive relief - other  
Recovery of money/property - preference  
Recovery of money/property - other  
Validity, priority or extent of lien or other interest in property

**Final Ruling: The Status Conference is continued to September 4, 2013 at 2:30 p.m.** The court has granted Defendants' motion to dismiss, and an amended complaint, if any, must be filed and served on or before August 12, 2013. No appearance at the July 31, 2013 Status Conference is required.

Notes:

Continued from 7/11/13. Status Conference continued by the court to 9/4/13 at 2:30 [Dckt 56]

Amended Civil Minute Order filed 7/24/13 [Dckt 59] -  
Ordered that the Motion to Dismiss is granted as to all claims against Defendants Homeward Residential, Inc, f/k/a American Home Mortgage Servicing, Inc., Wells Fargo Bank, N.A., as Trustee for Option One Mortgage Loan Trust 2007-2, Asset-Backed Certificates, Series 2007-2, and Power Default Services, Inc., with leave to amend. An amended complaint, if any, shall be filed and served on or before August 12, 2013. If not filed on or before that date, the Clerk of the Court shall close this Adversary Proceeding without further order of the court.

15. [10-20368-E-13](#) VIRGINIA KUECKER  
[13-2154](#)  
KUECKER V. JPMORGAN CHASE  
BANK, N.A.  
ADV. DISMISSED 6/26/13

STATUS CONFERENCE RE: COMPLAINT  
5-6-13 [[1](#)]

Dismissed 6/26/13  
Closed 7/15/13

**Final Ruling:** The Adversary Proceeding having been dismissed, **the Status Conference is removed from the calendar.** No appearance at the July 31, 2013 Status Conference is required.

16. [09-33870-E-13](#) [12-2703](#) GERALD/JEANIE GONZALES CONTINUED STATUS CONFERENCE RE:  
GONZALES V. US BANK NA ET AL COMPLAINT  
12-4-12 [[1](#)]

Plaintiff's Atty: John G. Downing  
Defendant's Atty:  
Tara L. Elgie [GreenPoint Mortgage Funding, Inc.]  
unknown [GMAC Mortgage, LLC]  
unknown [US Bank NA]

Adv. Filed: 12/4/12  
Answer: none

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

Notes:

Continued from 4/25/13 to allow the Plaintiff to file the motion for entry of default judgment with the dismissal of Greenpoint Mortgage Funding, Inc. on or before 5/10/13. Motion not filed as of 7/26/13

[CRD-1] Order Dismissing Greenpoint Mortgage Funding, Inc. from Adversary Proceeding filed 4/24/13 [Dckt 16]

**Tentative Ruling: The court's decision is to dismiss the Adversary Proceeding without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **July 31, 2013 STATUS CONFERENCE**

On February 20, 2013, the court entered the defaults of GMAC Mortgage, LLC and US Bank, N.A. Dckts. 13, 14. The court continued the February 20, 2013 Status Conference to April 25, 2013 to afford the Plaintiffs the opportunity to prosecute the Adversary Proceeding and file a timely motion for entry of default judgment. The Plaintiffs were ordered to file a motion for entry of default judgment within 30 days of February 20, 2013. Dckts. 13, 14.

At the time of the April 25, 2013 Status Conference the Debtors had not complied with the Orders of the court entering the defaults and requiring the filing of motions for entry of default judgments. Counsel for Plaintiffs appeared and stated that the Plaintiffs were then ready to file

the motions for entry of default judgments. The court directed counsel to have the motions filed and serve on or before May 10, 2013.

No motions for entry of default judgments have been filed by Plaintiffs. No further action has been taken by Plaintiffs in this Adversary Proceeding since having their counsel appear at the April 25, 2013 Status Conference.

The Order entering the Defaults and requiring the timely filing of the motions further directs,

Failure to comply with this order may result in the imposition of sanctions pursuant to Fed.R.Civ.P 16(f), including, without limitation, dismissal fo this adversary proceeding without further notice or hearing.

Dckts. 13, 14.

Federal Rule of Civil Procedure 16(f) and Federal Rule of Bankruptcy Procedure 7016 that the court may impose sanctions for a party's failure to obey a scheduling or other pre-trial order of the court. The Plaintiffs have demonstrated that they are not prosecuting this case, quite possibly the time is not ripe for them. Rather than imposing monetary sanctions on the Plaintiffs or their counsel, the court will only dismiss this adversary proceeding without prejudice. When the Plaintiffs are ready, willing, and able to prosecute an adversary proceeding, they may do so.

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 Court having entered defaults against all remaining defendants in this Adversary Proceeding, the Court having ordered Plaintiffs to file on or before March 22, 2013 motions for entry of default judgments against all of the remaining defendants, the Plaintiffs failing to file motions for entry of default judgments by March 22, 2013, the Plaintiffs subsequently requesting and the court extending the time for filing motions for entry of default judgments to May 10, 2013, the Plaintiffs having failed to file motions for entry of default judgments as of July 30, 2013, the court having considered alternative sanctions for the failure to prosecute the case, the court considering the disproportionate impact of imposing monetary sanctions on the Plaintiffs in the event that the failure to prosecute this case is intentional, determining that dismissal without prejudice is in this case a less onerous sanction, and good cause appearing,

**IT IS ORDERED** that the Adversary Proceeding is dismissed without prejudice.

17. [09-32070-E-13](#) CIBONAY CORDOVA  
[13-2151](#)  
CORDOVA V. HSBC MORTGAGE  
SERVICES ET AL

STATUS CONFERENCE RE: COMPLAINT  
5-3-13 [[1](#)]

Plaintiff's Atty: Scott D. Shumaker  
Defendant's Atty: unknown

Adv. Filed: 5/3/13  
Answer: none  
Certificate of Service: None Filed

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

**Tentative Ruling: None**

Notes:

**JULY 31, 2013 STATUS CONFERENCE MINUTES**

This Adversary Proceeding was commenced with the filing of the Complaint on May 3, 2013. The Complaint seeks to have the court determine that the deed of trust securing defendant's claim is void, the Plaintiff having completed a Chapter 13 Plan and the court having determined that the secured claim to be paid under the Plan has a value of \$0.00. The Plaintiff also requests an award of attorneys' fees, though the claim for attorneys' fees and the basis (specific contractual provision or statute) is not stated in the Complaint. The Complaint is a series of 25 paragraphs without any headings or specific causes of action stated. While reference is made to California Civil Code § 2941(a), that paragraph relates to a mortgage and not a deed of trust. No reference is made to California Civil Code § 2941(b), which requires that a deed of trust be reconveyed within 30 days of satisfaction, or § 2941(d), which imposes a statutory forfeiture of \$500.00. Reference is made to California Civil Code § 2939, which refers to a "recorded mortgage."

The Complaint asserts that the court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). That Code Section is not the granting of federal court jurisdiction over any matter, but only statutorily defines the "determination of the validity, extent, or priority of liens" to be a "core proceeding."

No Certificate of Service has been filed by Plaintiff attesting to the service of the summons and Complaint on any defendants.

18. [13-27771-E-11](#) ANGELA CATARATA

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
6-6-13 [[1](#)]

Debtor's Atty: Mark Lapham

Notes:

Debtor's Status Report filed 7/10/13 [Dckt 54]

Operating Report filed: 7/18/13

Application for Employment of Attorney for Debtor filed 7/18/13 [Dckt 68] stating hearing is set for 8/29/13 at 3:00 p.m.; Notice of Hearing filed 7/18/13 [Dckt 69]

[MWL-1] Amended Notice of Hearing re application to employ attorney filed 7/19/13 setting hearing for 8/29/13 at 10:30 a.m. [Dckt 67]; certificate of serviced filed 7/19/13 [Dckt 79] [tagged to MWL-2]

Application Use of Cash Collateral filed 7/18/13 [Dckt 67] stating hearing is set for 8/29/13 at 3:00 p.m.; **no notice of hearing or certificate of service filed and served**

[MWL-2] Amended Application for Use of Cash Collateral filed 7/19/13 [Dckt 78] stating hearing is set for 8/29/13 at 10:30 a.m.; certificate of service for amended application filed 7/19/13 [Dckt 79]; **no notice of hearing filed and served**

[BNF-1] Seterus, Inc. Servicer for Federal National Mortgage Association's Motion for Order Confirming No Stay Is In Effect filed 7/1/13 [Dckt 36]; Stipulation to continue hearing from 7/25/13 to 8/8/13 at 10:30 a.m. filed 7/18/13 [Dckt 57]; Order granting stipulation filed 7/19/13 [Dckt 80]

Debtor's Motion to Impose the Automatic Stay filed 7/7/13 [Dckt 48]; set for hearing 8/8/13 at 10:30 a.m.

U.S. Trustee's Report at 341 Meeting filed 7/12/13

#### JULY 31, 2013 STATUS CONFERENCE MINUTES

The Chapter 11 Debtor commenced this case on June 6, 2013. The Debtor has commenced the following prior cases in this District.

Case Number and Chapter	Dates Filed and Dismiss	Attorney	
13-22883 Chapter 11	Filed: March 4, 2013 Dismissed: May 10, 2013	Mark Lapham	Voluntary dismissal

12-40475 Chapter 13	Filed: November 26, 2012 Dismissed: January 8, 2013	In Pro Se and Mark Lapham	Dismissed by court prior to counsel being engaged. Failure to file pleadings.
12-34580 Chapter 7	Filed: August 9, 2012 Dismissed: August 27, 2012	In Pro Se	Dismissed by court, failure to file pleadings.

**STATUS CONFERENCE SUMMARY**

**Debtor in Possession Status Report - Filed July 10, 2013**

The Debtor in Possession reports to the court that she is a nurse and manages several rental properties. The "Mortgage Crisis" cause several of the Debtor's properties to become worth less than the liens secured by the properties and tenants stopped paying rent.

Through this bankruptcy case the Debtor in Possession intends to prosecute a plan to retain all seven properties. The Debtor in Possession estimates that there is a combined equity of \$900,000 in the properties. The Debtor in Possession intends to seek loan modifications for the debts secured by the property of the estate.

The Debtor in Possession reports that she is using cash collateral from the properties to "fix and maintain the properties and secure the current tenant base." No consent to the use of cash collateral or order authorizing the use of cash collateral is reported. The Debtor does state that she intends to file a motion to use cash collateral no later than July 12, 2013. (A motion for use of cash collateral was filed on July 19, 2013, Dckt. 78. Filed with the Motion is a budget, however, the Motion does not identify the creditors against whom relief is sought, how much cash collateral of each creditor is sought to be used, and the period for which such use is requested. The motion is set for hearing on August 8, 2013, two months after the case was commenced. FN.1.

-----  
FN.1. In addition to not identifying in the motion the persons against whom relief is requested and the specific relief, the motion suffers from several other deficiencies. Though reference is made to a exhibit which is the budget, no exhibits are filed in support of the motion. Further, no declarations are filed in support of the motion. All the court has is the motion (Dckt. 78). A certificate of service is filed for this motion, Dckt. 79, which attests to serving amended schedules, motion to use cash collateral, an "Affidavit in support of various motions," application to employ, amended notice of motion to employ, and monthly operating report. No notice of hearing was filed or served for the motion to use cash collateral.

Most charitably, the Debtor and counsel have dumped a mass of documents onto the court docket, court, and creditors; and then told everyone to dig through it and figure out what applies where.

The Debtor and counsel should review Federal Rule of Civil Procedure 7(b), Federal Rule of Bankruptcy Procedure 9013 and 9014, Local Bankruptcy Rules 9004-1 and 9014-1, and the Revised Local Guidelines for Preparation of Pleadings.

-----

**MONTHLY OPERATING REPORT SUMMARY**

June 2013 Report		Filed: July 18, 2012	
INCOME	Current		Cumulative
Rents	\$ 6,998		\$ 6,998
Wages	\$ 7,567		\$ 7,567
Disability	\$ 3,660		\$ 3,660
CO 34 Benefits	\$ 0		\$ 0
<b>Total</b>	\$ 18,225		\$ 18,225
<b>EXPENSES</b>	\$ (17,940)		\$ (17,940)
<b>PROFIT/(LOSS)</b>	\$ 285		\$ 285
<b>Specific Expenses</b>			
Administrative		(\$5,271)	(\$5,271)
Capital Expenditures		(\$3,036)	(\$3,036)
Interest		(\$39)	(\$39)
Management Fees		(\$297)	(\$297)
Meals Medical		(\$242)	(\$242)
Mark Lapham		(\$4,700)	(\$4,700)
Student Loan		(\$960)	(\$960)
HOA		(\$1,439)	(\$1,439)
Education		(\$1,506)	(\$1,506)
ACCOUNTS RECEIVABLE			
ACCOUNTS PAYABLE			



**SUMMARY OF SCHEDULES**

<b>Real Property Schedule A</b>	<b>FMV</b>	<b>LIENS</b>	
9961 Nestling - Residence	\$288,000	\$0	
5212 Blossom - Rental "Equitable Interest"	\$315,000	\$0	
5225 Meadow Park Way - Rental "Equitable Interest"	\$81,000	\$0	
2302 Sea Ranch - Rental "Equitable Interest"	\$83,572	\$0	
6206 Sun Dial Way - Rental "Equitable Interest"	\$84,600	\$0	
107 Roundtree - Rental "Equitable Interest"	\$59,000	\$0	
1027 Johnfer Way - Rental "Equitable Interest"	\$170,000	\$0	
8042 Kingsdale - Rental "Equitable Interest"	\$69,000	\$0	
6908 Alleghany Residence of Ex-Husband On Title to Maintain Interest for Children	none stated		
8505 Center Parkway Owned and operated by Ex- Husband On Title to Maintain Interest for Children	none stated		

<b>Personal Property Schedule B</b>	<b>FMV</b>	<b>LIENS</b>	
Retirement - 401k	\$183,019		
Tax Refund	\$3,500		

<b>Secured Claims Schedule D</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>FMV</b>	<b>UNSECURED CLAIM PORTION</b>
America's Servicing Co 5212 Blossom	(\$396,013)	\$380,000	(\$16,013)
Bank of America Home Loans 5225 Meadow Park	(\$122,000)	\$98,000	(\$24,000)
No First Deed of Trust Listed 2302 Sea Ranch, 1st Deed of Trust			
Bank of America Home Loans 2302 Sea Ranch, 2 <sup>nd</sup> Deed of Trust	(\$166,000)		(\$166,000)
Bank of America Home Loans 6206 Sun Dial	(\$159,500)	\$159,000	(\$500)
			\$0
Seterus Condo	(\$89,600)	\$89,000	(\$600)
Wells Fargo Home Mortgage Residence	(\$430,514)	\$400,000	(\$30,514)
Wells Fargo Home Mortgage 1027 Johnfer	(\$270,000)	\$200,000	(\$70,000)
Wells Fargo Home Mortgage 8042 Kings Dale	(\$166,459)	\$166,000	(\$459)

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>PRIORITY</b>	<b>GENERAL UNSECURED</b>
None Listed			

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	TOTAL CLAIM AMOUNT		
Total General Unsecured Claims	(\$218,734)		
Bank of America		(\$42,000)	
Bank of America		(\$8,667)	
Calvalry SPV 1		(\$60,939)	
Vanguard Fiduciary		(\$22,345)	
Wells Fargo Home Mortgage		(\$75,000)	

<b>INCOME, SCHEDULE I</b>	List 9 dependants, 8 children 3-26 years of age, and 72 year old mother	
Total Average Monthly Income		
Wages	\$11,571	43% of gross wages
Payroll Taxes and Social Security	(\$4,980)	
401k Loan 1	(\$389)	
Real Property Income	\$3,953	Rental Utilities and Maintenance (\$6,300) a month
Adoption Assistance Program	\$4,777.00.	

<b>EXPENSES, SCHEDULE J</b>	(\$15,562) Total Expenses Per Month	
Total Average Monthly Expenses		
	Rent/Mortgage	(\$2,250)
	Food	(\$600)
	Life Insurance	(\$1,259)
	HOA Stonelake	(\$79)
	HOA Roundtree	(\$442)

	College Living Expenses For 2 Children	(\$1,500)
	Student Loans	(\$330)
	Renatus/UNAC/Education	(\$489)
	Metrolist	(\$201)
	Rental Utilities/Maintenance	(\$6,300)

**STATEMENT OF FINANCIAL AFFAIRS**

**Question 1 Income**

2013 YTD	\$170,666	Employment
2012	\$157,358	Employment
2012	\$0	Real Estate Agent
2011	\$161,288	Employment
2011	\$8,591	Real Estate Agent
2010	\$8,050	Real Estate Agent

**Question 2 Non-Business Income**

2013 YTD	None Stated	Rents
2012	\$38,224	Rents
2011	\$61,709	Rents
2010	\$51,217	Rents

**Question 3 Payments within 90 days**

Creditor	Amount	Date
None		

**Payments within one year**

Creditor	Amount	Date
Seterus	\$5,244	May 17, 2013

**Question 10 - Other Transfers**

Transferee	Amount	Date
Cherise Evangelista (Relationship not Stated)	Interest in Lion Gate Property  Debtor to receive payment of \$15,000 in June 2017	No Date of Transfer Given
Cherise Evangelista (Relationship not Stated)	5 Nunes Court  \$30,000	Transferred in 2012
Angela Catarata Family Trust	6908 Alleghany Way \$60,000  8505 Center Parkway \$75,000	2004  States Debtor's ex-husband lives in Alleghany Way property and rents Center Parkway Property.  Debtor is stated to be on title for the "interests of her children"

19. [09-43680-E-13](#) MICHAEL/JEANNETTE BASHAW

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
10-30-09 [[1](#)]

*Discharged 5/16/13*

Debtors' Atty: Guillermo F. Geisse

Notes:

Continued from 5/8/13

[RHS-1] Civil Minute Order discharging order to appear filed 5/10/13  
[Dckt 126]

Status Conference Statement filed 7/3/13 [Dckt 131]

**Final Ruling:** The overpayment to HSBC Auto Finance having been recovered by the Debtors, the Status Conference is removed from the Calendar. No appearance at the July 31, 2013 Status Conference is required.

#### **JULY 31, 2013 STATUS CONFERENCE**

The Debtors' Status Conference Report, filed in pro se, states that the overpayment of \$1,521.59 to HSBC Auto Finance has been recovered by the Debtors. The Debtors report that their counsel assisted in communicating with both HSBC Auto Finance and Santander to recover the overpayment. The Chapter 13 Trustee assisted by sending his correspondence instructing that the refund of the overpayment be sent directly to the Debtors since they had completed their Chapter 13 Plan.

20. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN CONTINUED PRE-TRIAL CONFERENCE  
[10-2141](#) RE: FIRST AMENDED COMPLAINT  
GUZMAN ET AL V. ONEWEST BANK, 5-29-12 [[87](#)]  
FSB ET AL

Plaintiff's Atty: Mark A. Wolff  
Defendant's Atty:  
Joshua A. del Castillo [OneWest Bank, FSB; IndyMac Mortgage Servicing]  
unknown [IndyMac Federal Bank]

Adv. Filed: 3/15/10  
Amd Cmplt filed: 5/29/12

Answer: 4/14/10 [OneWest Bank, FSB; IndyMac Mortgage Servicing]  
Answer to Amd Cmplt: 6/29/12 [OneWest Bank, FSB; IndyMac Mortgage Servicing]

Nature of Action:  
Injunctive relief - other  
Recovery of money/property - other  
Validity, priority or extent of lien or other interest in property

**Tentative Ruling: None**

The court continued the Pre-Trial Conference, which is redesignated as a Status Conference, to afford the parties an opportunity to engage in final settlement discussions before incurring the costs and expense of preparing pre-trial statements.

Notes:

Continued from 6/6/10, the court having continued the hearing on Defendants' motion for summary judgment to 7/31/13 at 2:30 p.m. and the parties engaged in substantive settlement discussions.

21. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN CONTINUED MOTION FOR SUMMARY  
[10-2141](#) JAD-2 JUDGMENT  
GUZMAN ET AL V. ONEWEST BANK, 5-9-13 [[108](#)]  
FSB ET AL

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiffs, Counsel for Plaintiff, and the U.S. Trustee on May 9, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The court having granted the motion for summary judgment on one claim in the Complaint, the Plaintiffs having dismissed on the record the claim for emotional distress damages, and the court denying all other relief requested in the Motion (Order, Dckt. 130), **the matter is removed from the calendar.** No appearance at the July 31, 2013 hearing is required.

It appear that the matter was set for the July 31, 2013 due to a typographical error of the court in the June 13, 2013 order which erroneously states that the hearing on the motion is continued.

22. [10-27399](#)-E-13 DAN GOODLOW  
PGM-2

CONTINUED MOTION TO MODIFY PLAN  
4-11-12 [[37](#)]

CONT. FROM 6-26-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2012. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

**Tentative Ruling:** If all parties are in accord that hearing on the status of the Motion to Modify Chapter 13 Plan should be continued to xxxx, to allow for continued settlement negotiations.

**The court's tentative decision is to continue the hearing on Motion to Modify the Chapter 13 Plan to xxxx to allow for continued settlement negotiations.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### DISCUSSION

The Status Conference Statement filed by Dorice Goodlow in Adversary Proceeding 12-2195 advises the court that the parties are proceeding with the Eastern District Bankruptcy Dispute Resolution Program (mediation), with the BDRP Conference set for June 14, 2013, with Russell Cunningham serving as the mediator.

On January 9, 2013 the court continued the hearing to the date of the status conference in adversary proceeding number 12-2195.

On October 17, 2012 the court continued the hearing to allow the court to conduct a status conference. The Debtor is prosecuting an adversary proceeding which must be resolved or made part of the Chapter 13 Plan.

On April 25, 2013 the court continued the hearing to follow the tentatively schedule June 14th BDRP date in adversary proceeding number 12-2195.

On June 26, 2013 the court continued the hearing to follow the tentatively schedule June 14th BDRP date in adversary proceeding number 12-2195.

### **History of Hearings**

On September 5, 2012 the court continued the hearing to allow Debtor to file and serve evidence in support of the court's tentative ruling from the September 5, 2012 hearing.

On May 22, 2012 the court continued the hearing on Motion to Confirm and ordered Debtor to file and serve evidence as set forth in the tentative ruling. A review of the docket indicates that Debtor has not filed any additional information.

### **Adversary Proceeding**

The Debtor filed adversary proceeding number 12-02195 to determine the estate's interest in the Bald Creek Road Property and that of asserted co-owners. The proposed plan modification does not take that litigation into account and the consequences of a determination that the Debtor does not have any interest in the property. The court cannot identify what is asserted to be the "unknown transfers of title to [the Debtor's] property."

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor seeks to modify the plan because of a restraining order was entered against him, title to his property was allegedly transferred to others without his knowledge, and he has retained an attorney to defend him in an unidentified action. Debtor does not explain how these issues changed his ability to make plan payments; no expense related to any of these matters is listed on Schedules I or J. However, Schedule I states that Debtor is not residing in his home and is "in a fight over the home." Debtor does not budget for rent, but is proposing to maintain mortgage payments on the home he does not live in.

The Trustee challenges the feasibility of the proposed plan payment in light of the unknown costs associated with the attorney the Debtor has hired – who may be a professional of the estate – and the unknown costs associated with the Debtor's living arrangements outside of his home. These unknown costs impair the feasibility of the proposed plan payment and are cause to deny confirmation. 11 U.S.C. § 1325(a)(6).

Additionally, the Trustee suggests that payment on the claim secured by the loan may work unfair discrimination to holders of general unsecured claims. However, the court declines to reach this issue in light of the pending adversary proceeding the Debtor has commenced to determine his interest in the property and the independent cause to deny confirmation.

The court is further concerned that the proposed modification to the plan does not comport with the reality of this case. The Motion requesting the modification does not state with particularity the grounds relating to a restraining order or possession on the residence being changed by an order of a non-bankruptcy court. The confirmed plan in this case provides that the property of the estate has not reverted in the Debtor. (Dckt. 5). The Motion merely instructs the court to read the Debtor's declaration and choose whatever statements made therein the court thinks the Debtor should allege as the grounds for this Motion.

The declaration makes a reference to there being a domestic violence restraining order, an unknown transfer of title to the property (which is property of the bankruptcy estate), and that the Debtor now has to hire an attorney to represent him (presumably with respect to the restraining order and title issue). The Debtor testifies that he is \$2,500.00 in arrears in the confirmed plan, and that he owes \$6,552.67 on the obligation secured by his home (which is the subject of an unidentified title transfer). He further states that this claim, which is held by Acqua Loan Servicing, will be paid off during the term of the plan.

In support of the Motion the Debtor has provided current financial information using the Schedule I and J forms filed as Exhibits 1 and 2. Dckt. 40. These exhibits are not authenticated by the Debtor and he does not attest that the information provided therein is true and correct under penalty of perjury. The information provided therein raises significant questions.

First, the Debtor states that the total income for he and his wife is \$1,084.00, consisting solely of his social security income. No income is shown for his wife, who is listed as retired. Though not stated by the Debtor, presumably there has been a separation and her income of \$1,400 a month (as stated on Original Schedule I, Dckt. 1) is no longer available to the Debtor. The expense information, Exhibit 2, lists only \$409 a month in expenses, which does not include any utilities, insurance, medical expenses, taxes or other amounts. It provides for a food expense of \$150.00.

Second, the information concerning the Debtor's interest in real property is conflicting. On Schedule A the Debtor lists one property identified as 1148 Bald Rock Road, Berry Creek, California. Dckt. 1. It states that the Debtor's interest in the property is \$184,500, and the property is subject to a secured claim in the amount of \$129,000. Further on Schedule A the Debtor states that he has a 1/4 interest in this property and that 1/4 interest is worth \$87,500.00.

Schedule D states that EMC Mortgage Corporation has a 1<sup>st</sup> Deed of Trust against an unidentified property in the amount of \$42,600, with the collateral having a value of \$148,000.00. (This appears to be a typographical error given that on Schedule A the Debtor states that the only real property he owns has a value of \$184,000.) A second secured claim is listed in the amount of \$20,000.00 secured by a judgment lien, with the Debtor stating that he asserts this obligation has been paid in full and is listed only as a precaution.

On Schedule C the Debtor states that he asserts a \$150,000.00 homestead exemption. The Bald Creek Road Property is listed as the Debtor's address on his petition.

In the present Motion the Debtor asserts that the creditor having a deed of trust on the Bald Creek Road Property has a claim of only \$6,552.67, not the \$42,600 as listed on Schedule D.

#### **Debtor's Supplemental Declaration**

The court first addressed these issues at the initial hearing on May 22, 2012 and has continued the hearing three times to allow the Debtor to file supplemental information.

On October 2, 2012 Debtor filed a supplemental declaration that is identical to the original declaration filed in support of the motion to modify. Debtor has not provided any additional evidence that would resolve Trustee's concerns regarding attorneys' fees for the adversary proceedings or the unknown costs associated with the Debtor's living arrangements outside of his home. Debtor still has not explained how these issues affect his ability to make plan payments.

### **Analysis**

In addition to unresolved issues raised by the Chapter 13 Trustee, the Status Conference Statement filed on October 10, 2012 indicates that issues surrounding the ownership of the real property have not been resolved. (Adv. Proc. No. 12-02195, Dckt. 33).

The court's review of the docket in Adversary Proceeding Number 12-02195 indicates that the following has occurred since the court continued the hearing in bankruptcy case number 10-27399. The court entered an order allowing Wargo & French LLP to withdraw as counsel of record for EMC Mortgage Corp. and permitting McCarthy & Holthus LLP to substitute in as counsel of record. On October 17, 2012 the court continued the status conference in the adversary proceeding in order to allow the parties to negotiate the terms of a potential settlement since all parties are now represented by counsel. (Dckt. 39). There is no indication that the parties have reached a settlement.

Debtor has not addressed the Trustee's or the court's concerns with regard to feasibility of the proposed plan. Further, Debtor's potential ownership interest in the Bald Creek Road Property has not been resolved and it appears that settlement negotiations in the adversary proceeding are ongoing.

### **ADVERSARY PROCEEDING**

The court's review of the docket in adversary proceeding number 12-2195 indicates that on July 22, 2013 the parties filed a status conference statement. The statement indicates that the parties made great progress towards resolving the dispute after the BDR conference. Plaintiffs counsel submitted a written proposal to Defendant and hopes for fair and equitable resolution of the matter. Defendant asserts that she has been in the hospital with pneumonia and has not conferred fully with counsel and is hopeful when she is released from the hospital the matter will be concluded shortly.

The court continues the hearing on motion to confirm to xxxx to allow for continued settlement negotiations.

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 Modify the Chapter 13 Plan filed by the Debtor 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 hearing on motion to confirm is continued to xxxx to allow for continued settlement negotiations.

23. [10-27399-E-13](#) DAN GOODLOW  
[12-2195](#)  
GOODLOW V. MARTIN ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
4-27-12 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso  
Defendants' Atty:  
Kelly M. Raftery [EMC Mortgage Corp.]  
Douglas B. Jacobs [Dorice Goodlow]  
unknown [Acqura Loan Services; Calvin Hutson; Antoinette Johnson; Robert Martin]

Adv. Filed: 4/27/12  
Answer:  
5/29/12 [Johnson, Goodlow, Martin, Wellington]  
7/30/12 [EMC, LLC]

Nature of Action:  
Declaratory judgment

Notes:

Continued from 6/26/13 to be heard in conjunction with the Motion to Modify Plan. Parties reported they are negotiating a global settlement which resolves not only the bankruptcy court issues, but family law issues.

**Tentative Ruling: The Status Conference is continued to 2:30 p.m. on -----, 2013.**

The parties report one of the parties has suffered from a medical ailment when has impaired that person's ability to actively participate in resolving the last \$10,000.00 which is in dispute. Both parties express confidence that they should be able to further whittle down the amount at issue (in light of the cost of litigation if the parties cannot resolve it).