

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**January 17, 2018, at 2:00 p.m.**

1. [10-22004-E-13](#) JUNE ANGELES  
[17-2192](#)

**STATUS CONFERENCE RE:  
COMPLAINT  
10-25-17 [1]**

**ANGELES V. DLJ MORTGAGE  
CAPITAL, INC. ET AL**

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty: Theron S. Covey

Adv. Filed: 10/25/17

Answer: 11/27/17

Nature of Action:

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

**The Status Conference is XXXXXXXXXXXXX.**

Notes:

**SUMMARY OF COMPLAINT**

June Angeles ("Plaintiff Debtor") has filed this Adversary Proceeding to quiet title to her property, to assert a breach of contract (Chapter 13 Plan and Deed of Trust), and to assert a right to statutory damages. Plaintiff Debtor asserts that under her Chapter 13 Plan Defendant's secured claim had been valued pursuant to 11 U.S.C. § 506(a) and that the secured claim was provided for in the Plan. Plaintiff Debtor asserts that she has completed her Chapter 13 Plan, that there remains no obligation secured by Defendant's Deed of Trust, that Defendant has failed to reconvey the Deed of Trust, and that the Deed of Trust continues to improperly encumber her property.

**SUMMARY OF ANSWER**

DLJ Mortgage Capital, Inc. and Ocwen Loan Servicing, LLC ("Defendant") have filed an Answer admitting and denying specific allegations in the Complaint. Dckt. 8.

**January 17, 2018, at 2:00 p.m.**

**- Page 1 of 33 -**

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶¶ 2, 3, Dckt. 1. In its Answer, DLJ Mortgage Capital, Inc. and Ocwen Loan Servicing, LLC assert that the allegations, including allegations of jurisdiction and core matter issues, are “legal conclusions” that do not require a response. However, as required by Federal Rule of Bankruptcy Procedure 7008(b) Defendant DLJ Mortgage Capital, Inc. and Ocwen Loan Servicing, LLC, and each of them, admit that jurisdiction exists and consent to the entry of all final orders and judgment in this Adversary Proceeding (for the Complaint as currently written). Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

## ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶¶ 2, 3, Dckt. 1. In its Answer, DLJ Mortgage Capital, Inc. and Ocwen Loan Servicing, LLC assert that the allegations, including allegations of jurisdiction and core matter issues, are “legal conclusions” that do not require a response. However, as required by Federal Rule of Bankruptcy Procedure 7008(b) Defendant DLJ Mortgage Capital, Inc. and Ocwen Loan Servicing, LLC, and each of them, admit that jurisdiction exists and consent to the entry of all final orders and judgment in this Adversary Proceeding (for the Complaint as current written). Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before January 31, 2018.
- c. Expert Witnesses shall be disclosed on or before -----, **2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2018**.
- e. Dispositive Motions shall be heard before -----, **2018**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2018**.

2. [11-37716-E-13](#)      **MILTON/TANISHA FLOWERS**      **CONTINUED STATUS CONFERENCE**  
[17-2138](#)      **RE: COMPLAINT**  
7-26-17 [\[1\]](#)

**FLOWERS ET AL V. U.S. BANK  
NATIONAL ASSOCIATION ET AL**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiffs' Atty: Peter G. Macaluso

Defendants' Atty:

Joseph E. Addiego [JPMorgan Chase Bank, N.A.] - *dismissed from adversary 11/16/17*

Jennifer C. Wong [Select Portfolio Servicing, Inc.; U.S. Bank National Association]

Adv. Filed: 7/26/17

Answer: 11/7/17 [Select Portfolio Servicing, Inc.; U.S. Bank National Association]

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)

<p><b>The Status Conference is continued to 2:00 p.m. on March 21, 2018, to afford the Parties the opportunity to consummate the reported settlement.</b></p>
---

Notes:

Continued from 11/16/17

JPMorgan Chase Bank, N.A. dismissed from adversary proceeding by order filed 11/16/17 [Dckt 48]

Joint Status Statement filed 1/10/18 [Dckt 51]

### **JANUARY 17, 2018 STATUS CONFERENCE**

A Joint Status Report (Dckt. 51) was filed in which the Parties report that they have agreed to settlement terms and are in the process of drafting a settlement agreement. Under the terms of the settlement, the parties anticipate filing a stipulation dismissing this Adversary Proceeding in the next forty-five days.

The court continues the Status Conference to allow the parties to focus on getting their consensual resolution completed.

3. [11-41822-E-13](#)      **MICHAEL/CAROLYN RANGEL**      **CONTINUED STATUS CONFERENCE**  
[17-2067](#)      **RE: AMENDED COMPLAINT**  
7-27-17 [\[36\]](#)

**RANGEL ET AL V. CHASE HOME  
FINANCE, LLC ET AL**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.

-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Heather E. Stern

Adv. Filed: 4/19/17  
Answer: none

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

<p><b>The Adversary Proceeding having been dismissed (Order, Dckt. 57), the Status Conference is concluded and removed from the calendar.</b></p>
---

Notes:  
Order Dismissing Adversary Proceeding with Prejudice filed 12/12/17 [Dckt 58]

4. [12-26623-E-13](#) NAVRAJ/INDU JASUJA  
[17-2210](#)

STATUS CONFERENCE RE:  
COMPLAINT  
11-15-17 [[1](#)]

JASUJA ET AL V. U.S. BANK,  
N.A.

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.

-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Meagan S. Tom

Adv. Filed: 11/15/17  
Answer: 12/13/17

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

<p><b>The Status Conference is continued to 2:00 p.m. on March 21, 2018, to afford the Parties time to complete their settlement negotiations.</b></p>
--

Notes:  
Plaintiffs' Status Statement filed 1/10/18 [Dckt 10]

#### **JANUARY 17, 2018 STATUS CONFERENCE**

On January 10, 2018, Plaintiff filed a Status Report (Dckt. 10) advising the court that the Deed of Trust asserted to be clouding title has been reconveyed, and the Parties are engaged in settlement discussions to resolve the remaining issues (breach of contract and statutory damages for asserted failure to timely reconvey the deed of trust). Plaintiff requests a sixty-day continuance of the Status Conference.

Though not a joint status report, the Answer filed by Defendant admits and denies specific allegations in the Complaint and clearly addresses the issues presented. This is consistent with a party and counsel who know how to resolve this type of action. Plaintiff's counsel has demonstrated in other adversary proceedings that he understands how to properly resolve this type of adversary proceeding when facing a knowledgeable defendant prosecuting a defense in good faith.

The court continues the Status Conference to allow the Parties to focus on getting the matter concluded and avoid additional cost and expense of an initial status conference to confirm what Plaintiff's counsel has communicated to the court.

5. [11-41628-E-13](#)      **EDDIE DAKI**  
[17-2122](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
7-11-17 [[1](#)]

**DAKI V. J.P. MORGAN CHASE BANK**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Matthew S. Henderson

Adv. Filed: 7/11/17  
Answer: none

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

<p><b>The Adversary Proceeding having been dismissed (Stip. Dism., Dckt. 36), the Status Conference is concluded and removed from the calendar.</b></p>
---

Notes:  
Continued from 12/5/17 by court order filed 11/15/17 [Dckt 33]  
  
Joint Stipulation of Dismissal with Prejudice filed 1/9/18 [Dckt 36]

6. [16-20734-E-13](#) EUGENE SPENCER  
[16-2059](#)

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
3-25-16 [\[1\]](#)

SPENCER V. SPENCER, III

Plaintiff's Atty: Mark A. Serlin  
Defendant's Atty: Pro Se

Adv. Filed: 3/25/16  
Answer: 4/25/16

Counterclaim & Jury Demand Filed: 4/25/16  
Answer: 5/9/16  
Amd. Answer: 5/10/16

Nature of Action:  
Dischargeability - fraud as fiduciary, embezzlement, larceny

**The Status Conference is XXXXXXXXXXXXXXXXXXXX.**

Notes:

Continued from 11/1/17 to afford the Parties time for the entry of the State Court Judgment and the filing of any dispositive pleadings (in whole or in part) concerning issues in this Adversary Proceeding.

#### **JANUARY 17, 2018 STATUS CONFERENCE**

Plaintiff Desarie Spencer filed her last Status Report on October 23, 2017. Dckt. 48. In it, she stated that the State Court trial had been concluded and that she prevailed on the breach of fiduciary duty claims against Defendant Debtor. The State Court Ruling was filed as Exhibit A to the Status Report. Dckt. 49. In her October Status Report, Plaintiff stated that entry of that State Court judgement was anticipated "shortly" and anticipated that she would be filing a dispositive motion in this Adversary Proceeding "shortly." No dispositive motion has been filed, and no updated status report has been filed.

At the January 17, 2018 Status Conference, Counsel for Plaintiff advised the court  
XXXXXXXXXXXXXXXXXX.

7. [10-46636-E-13](#)      **JOSEPH/KIMBERLY OLIVA**  
[17-2105](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
**6-19-17 [1]**

**OLIVA ET AL V. CITIMORTGAGE,  
INC.**

Plaintiffs' Atty: Rick Morin  
Defendant's Atty: Jonathan C. Cahill

Adv. Filed: 6/19/17  
Answer: none

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

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXXXXXXX</span>.</b>
--

Notes:

Continued from 10/5/17, the Parties reporting that the settlement should be completed and the Adversary Proceeding dismissed within the next sixty days.

### **JANUARY 17, 2018 STATUS CONFERENCE**

At the October 5, 2017 Status Conference, the Parties reported to the court that this matter has been settlement and that they simply required some additional time to memorialize the settlement and dismiss this Adversary Proceeding. Civil Minutes, Dckt. 30. The court, at the request of the respective counsel, continued the Status Conference to allow the Parties to diligently conclude their settlement and dismissal of this Adversary Proceeding.

The court's January 16, 2018 review of the Docket in this Adversary Proceeding reveals that no notice of settlement has been filed and that the Parties have not dismissed this Adversary Proceeding. At the January 17, 2018 Status Conference, counsel for XXXXXXXXXXXXXXXXXXXXXXXXXXXX.



8. [11-39552-E-13](#) CHRISTINA LAXTON  
[17-2171](#)

STATUS CONFERENCE RE:  
COMPLAINT  
9-10-17 [[1](#)]

LAXTON V. JPMORGAN CHASE BANK  
NA

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Matthew S. Henderson

Adv. Filed: 9/10/17  
Answer: none

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

By prior Order of the court (Dckt. 18), **the Status Conference has been continued to 2:00 p.m. on February 21, 2018**, to allow the Parties time to consummate their reported settlement.

Notes:  
Joint Stipulation to Set Aside Entry of Default filed 11/22/17 [Dckt 9]

Order vacating entry of default filed 12/11/17 [Dckt 12]

Joint Notice of Settlement and Request to Continue Status Conference filed 1/10/18 [Dckt 15]; Order pending

9. [16-27854](#)-E-11 GARY STEINGROOT

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
11-29-16 [\[1\]](#)

Debtor's Atty: Edward A. Smith

**The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxx.**

Notes:

Continued from 9/6/17 to be heard in conjunction with the hearing on the disclosure statement.

Operating Reports filed: 9/14/17; 10/14/17; 11/14/17; 12/14/17

[ASW-1] Motion for Relief from the Automatic Stay [creditor Citizens Bank, N.A., fka RBS Citizens] filed 11/10/17 [Dckt 123]; Order granting filed 12/11/17 [Dckt 147]

Status Report filed 1/3/18 [Dckt 165]

### **JANUARY 17, 2018 STATUS CONFERENCE**

At the Status Conference, xxxxxxxxxxxxxxxxx

10. [16-27854-E-11](#) **GARY STEINGROOT**  
**TBG-8** **Stephan Brown**

**CONTINUED CONFIRMATION OF  
AMENDED PLAN OF REORGANIZATION  
FILED BY DEBTOR-IN-POSSESSION  
9-14-17 [[101](#)]**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2017. By the court's calculation, 96 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Confirmation of Plan of Reorganization is <span style="color: red;">XXXXXXXXXX</span>.</b>
---

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 2, 2017 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 4, 2017 Last Day for Submitting Written Acceptances or Rejections

December 4, 2017 Last Day to File Objections to Confirmation

December 11, 2017 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

<b>Administrative Expenses</b>	<b>Estimated Amount Owed</b>	<b>Treatment</b>
Expenses arising in the ordinary course of business after petition date	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Broker's professional fees, as approved by the court	Estimated to be 5% of the fair market value of the 1055 Hutley Way, Granite Bay, California, property sale, or \$37,500.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Debtor in Possession's attorney's fees, as approved by the court	Estimated to be \$35,000.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Other administrative expenses	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later, subject to court approval
Clerk's office fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
<b>TOTAL</b>	<b>\$72,500.00</b>	

Creditor/Class	Treatment	
Class 1: Secured Claim of SunTrust Mortgage, Inc.	<b>Claim Amount</b>	\$455,042.01
	<b>Impairment</b>	Impaired
	<p>Claim No. 1 filed on December 14, 2016. The claim was filed in the amount of \$455,042.01 and is secured by a first priority deed of trust against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-petition interest shall accrue pursuant to the underlying loan documents filed. Proof of Claim 1, pp. 2, 48. The value of 1055 Hutley Way is estimated at \$750,000.00 per Debtor in Possession's amended schedules. Dckt. 16, p.12. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. The Class 1 secured claim will be paid through escrow upon court approval of a motion to sell 1055 Hutley Way.</p> <p>To provide adequate protection, Debtor in Possession will make monthly interest payments to the Class 1 secured claim at the contract rate of 4.5%. Payments will commence on the first of the month following the effective date of the Plan.</p>	
Class 2: Secured Claim of Capital One	<b>Claim Amount</b>	\$5,603.00
	<b>Impairment</b>	Impaired
	<p>No claim has been filed. This claim was scheduled as claim 2.1 in Debtor in Possession's amended petition. This claim is valued in the amount of \$5,603.00 secured by a judgment lien against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-judgment interest, from before and after Debtor's petition filing date, will continue to accrue pursuant to applicable nonbankruptcy law, California Code of Civil Procedure § 685.010. The Class 2 secured claim of Capital One is junior to Class 1. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. Each holder of a Class 2 secured claim will be paid in full through escrow upon court approval of a motion to sell 1055 Hutley Way.</p>	
Class 3: General Unsecured Claim of CACH, LLC (Allowed)	<b>Claim Amount</b>	\$9,874.79
	<b>Impairment</b>	Unimpaired

	No claim has been filed. This claim is scheduled as claim 4.3 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Allowed Class 3 claims total \$9,874.79. Each holder of a Class 3 claim will be paid in full on the effective date of the Plan out of the funds available in Debtor in Possession's bank account.	
Class 4: General Unsecured Claims (Not Allowed)	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	No claims have been filed. These claims schedules as claims 4.1, 4.2, and 4.4 through 4.11 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Each holder of a Class 4 general unsecured claim is not an allowed claim under 11 U.S.C. § 502(b)(1) because these claims are time-barred pursuant to applicable non-bankruptcy law, California Code of Civil Procedure § 337.	
Class 5: Interest of the individual Debtor in property of the Estate	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	To be distributed upon successful completion of the Plan.	

## CREDITOR'S OBJECTION

Citizens Bank, N.A. FKA RBS Citizens ("Creditor") filed an Objection on December 5, 2017. Dckt. 140. FN.1. Creditor argues that the Plan does satisfy 11 U.S.C. § 1129(a)(8) because Class 1 (containing Creditor's claim) has rejected the Plan. Additionally, Creditor argues that the Plan violates 11 U.S.C. § 1129(a)(3) & (11) because Debtor in Possession has proposed an "illusory" plan that calls for sale of property within six months, even though the property is not being marketed in any meaningful way. Creditor argues that the Plan is merely an attempt to delay Creditor from exercising its rights.

FN.1. Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion, but a consistent Docket Control Number when responding to a particular motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party used a new Docket Control Number. That is not correct. The Court will consider the objection, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny relief. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

## TABULATION OF BALLOTS

Class	Voting	Result
Class 1 (Impaired)	For: 0 Against: 1	Rejected
Class 2 (Impaired)	For: 0 Against: 0	No ballots cast
Class 3 (Unimpaired)	For: 0 Against: 0	No ballots cast
Class 4 (Unimpaired)	For: x Against: x	
Class 5 (Unimpaired)	For: x Against: x	

Debtor in Possession argues that even though Creditor rejected the Plan originally, it indicated at the December 7, 2017 hearing that it was open to plan amendments. Dckt. 152. Debtor in Possession's counsel indicated that amendments would be proposed to satisfy Creditor's objection, which presumably would lead to Creditor accepting the Plan.

## DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed a Reply on December 11, 2017. Dckt. 149. Debtor in Possession argues that terms were presented at the December 7, 2017 hearing that address Creditor's objection. Debtor in Possession states that an amended plan will be filed to include the terms of the amendments. Debtor in Possession argues that Creditor's objection is now moot because it will presumably accept the amendments.

Debtor in Possession requests that the court confirm the Plan, as later amended. *Id.* at 2:9.5.

## SECOND AMENDED PLAN

Debtor in Possession filed a Second Amended Plan on December 12, 2017. Dckt. 156. It contains two major changes. First, Class 1 contained adequate protection language that has been changed to read:

Pursuant to the Court Order dated December 7, 2017, Docket Number 145, Debtor will make monthly payments to Creditors in Class 1 in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.

If a monthly payment is not timely made by the 15th day of the month, Creditor may seek relief from the automatic stay by a supplemental ex parte motion to amend the

adequate protection order of the court. This motion shall be supported by competent, credible evidence of such default in timely payment. The ex parte motion and supporting pleadings [*sic*] shall be served on the Debtor in Possession, counsel for Debtor in Possession, and the U.S. Trustee.

The Debtor in Possession shall have 10 days to file an opposition to the ex parte motion, with the only issue being whether the Debtor in Possession failed to make the timely payment. The Debtor in Possession shall notice a hearing on the ex parte motion to amend the Court's order for the first regular law and motion hearing date on this court's Modesto calendar which is at least 10 days after service of the ex parte Motion by the Class 1 Creditor. The only issues for the Court at the hearing is whether the Debtor in Possession defaulted in timely making the monthly payment as asserted in the ex parte motion and supporting evidence.

If no opposition is timely filed, Creditor shall lodge with the Court a proposed order granting relief from the automatic stay.

Dckt. 156 at 6–7. Article VIII also contains new language. Section 8.02 adds a sentence at the end that reads “These remedies are in addition to, and not limited by, those remedies outlined in Articles II through IV. Section 8.03 reads:

Modification of Automatic Stay by Court Order. Unless otherwise ordered by the Court, pursuant to the order dated December 7, 2017, Docket Number 145, the automatic stay is modified effective July 1, 2018, to allow the Class 1 Creditor to foreclose on, and the buyer to obtain possession of, 1055 Hutley Way.

*Id.* at 11.

## **DECEMBER 19, 2017 HEARING**

At the hearing, the court continued the hearing to 2:00 p.m. on January 17, 2018. Dckt. 162, 164.

## **DEBTOR IN POSSESSION'S STATUS REPORT**

Debtor in Possession filed a Status Report on January 3, 2018. Dckt. 165. Debtor in Possession pleads that SunTrust Mortgage, Inc. has expressed concerns about the Second Amended Plan, and Debtor in Possession plans to address those concerns with a third amended plan.



## MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONFIRMATION

The Memorandum of Points and Authorities filed in support of confirmation provides argument (but not evidence) of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

### 11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

**Argument:** Dckt. 151, pg. 7

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

**Argument:** Dckt. 151, pg. 7

3. The plan has been proposed in good faith and not by any means forbidden by law.

**Argument:** Dckt. 151, pg. 9

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

**Argument:** Dckt. 151, pg. 9

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

**Argument:** Dckt. 151, pg. 9 (stating that this provision is inapplicable)

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

**Argument:** Dckt. 151, pg. 9 (stating that this provision is inapplicable)

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

**Argument:** Dckt. 151, pg. 10

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

**Argument:** Dckt. 151, pg. 10

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

**Argument:** Dckt. 151, pg. 10

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim;  
or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

**Argument:** Dckt. 151, pg. 10

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

**Argument:** Dckt. 151, pg. 10

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

**Argument:** Dckt. 151, pg. 10–11

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

**Argument:** Dckt. 151, pg. 11

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

**Argument:** Dckt. 151, pg. 11

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

**Argument:** Dckt. 151, pg. 12 (stating that this provision is inapplicable)

#### **11 U.S.C. § 1129(b)**

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph

if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

**Argument:** Dckt. 151, pg. 12–13

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

**Argument:** Dckt. 151, pg. 12–13

(B) With respect to a class of unsecured claims—

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

**Argument:** Dckt. 151, pg. 13

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

**Argument:** Dckt. 151, pg. 13

## **DISCUSSION**

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Nothing on the docket indicates that Creditor has accepted the Plan at this time. At the December 7, 2017 hearing on Creditor's Motion for Relief from the Automatic Stay, the parties stipulated to the following terms:

- A. Debtor shall make monthly payments to Creditor in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.
- B. If a monthly payment is not timely made by the fifteenth day of the month, Creditor may seek relief from the automatic stay by a supplemental *ex parte* motion to amend the court's adequate protection order. That supplemental *ex parte* motion shall be filed using the Docket Control Number for the Motion for Relief contested matter (ASW-1), and no additional filing fee would be required. The *ex parte* motion and supporting pleadings shall be served on Debtor in Possession, Debtor in Possession's counsel, and the United States Trustee.
- C. Debtor in Possession shall have ten days to file an opposition to the *ex parte* motion, with the only issue being whether Debtor in Possession failed to make the timely payment. Debtor in Possession shall notice a hearing on the *ex parte* motion to amend the court's order for the first regular law and

motion hearing date on the court's Modesto calendar that is at least ten days after service of the *ex parte* motion.

1. The only issue for the court at the hearing would be whether Debtor in Possession defaulted in timely making the monthly payment as asserted in the *ex parte* motion and supporting evidence.
- D. If no opposition is timely filed, Creditor shall lodge with the court a proposed order granting relief from the automatic stay.
- E. The automatic stay is modified effective July 1, 2018, to allow Creditor to foreclose on, and the buyer obtain possession of, 1055 Hutley Way, Granite Bay, California.

Dckt. 145.

At the hearing, Creditor stated **xxxxxxxxxxxxx**.

Debtor in Possession **confirmed that a third amended plan is being drafted and moved orally to dismiss this Motion.**

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 Confirm the Amended Chapter 11 Plan filed by Gary Steingroot ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **xxxxxxxxxxxxx**.

11. [14-29361-E-7](#) [17-2178](#) WALTER SCHAEFER

STATUS CONFERENCE RE:  
COMPLAINT  
9-20-17 [\[1\]](#)

HUSTED V. PECHBRENNER

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiff's Atty: J. Russell Cunningham; Nicholas L. Kohlmeyer

Defendant's Atty: unknown

Adv. Filed: 9/20/17

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

Declaratory judgment

**The Status Conference is continued to 2:00 p.m. on March 21, 2018, to allow the Plaintiff to complete the hearing on the Motion for Entry fo Default Judgment and issue of judgment thereon, if granted.**

Notes:

Request for Entry of Default by Plaintiff [default of Michael Pechbrenner] filed 11/28/17 [Dckt 8]

[DNL-1] Application for Default Judgment filed 12/12/17 [Dckt 12], hearing set for 1/25/18 at 11:00 p.m.

Status Report filed 12/19/17 [Dckt 17]

#### **JANUARY 17, 2018 STATUS CONFERENCE**

Plaintiff (Chapter 7 Trustee Kimberly Husted) has filed the Complaint in this Adversary Proceeding asserting several claims for relief. In Count I, Plaintiff seeks a judicial determination of the interests of the bankruptcy estate in the real property commonly known as 184 Los Delfines, Tambor, Costa Rica. It is asserted that Defendant asserts a lien against the property. In Count II, Plaintiff seeks a judgment and order for Defendant to turn over possession of the Property to Plaintiff.

In Count III, Plaintiff seeks the imposition of corrective sanctions pursuant to 11 U.S.C. § 105(a) for Defendant to comply with the court's turnover order.

The Motion for Entry of the Default Judgment is set for hearing on January 25, 2018. Plaintiff requests that the Status Conference be continued until after that scheduled hearing.



12. [13-24069-E-13](#)      **DAWN LAWSON**  
[17-2119](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
7-11-17 [\[1\]](#)

**LAWSON V. JPMORGAN CHASE BANK,  
N.A.**

Plaintiff's Atty: Aubrey L. Jacobsen  
Defendant's Atty: unknown

Adv. Filed: 7/11/17  
Answer: none

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

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXX</span>.</b>
--

Notes:

Continued from 11/1/17 to allow Plaintiff-Debtor to prosecute her Motion for Entry of Default Judgment in this Adversary Proceeding.

Order granting default judgment filed 11/19/17 [Dckt 31]

### **JANUARY 17, 2018 STATUS CONFERENCE**

The court granted Plaintiff-Debtor's Motion for Entry of Default Judgment on November 19, 2017. Order, Dckt. 31. The Order directed Counsel for Plaintiff-Debtor to file a proposed judgment consistent with the court's ruling on the Motion. No proposed judgment has been lodged with the court.

At the hearing, Counsel for Plaintiff-Debtor advised the court XXXXXXXXXXXXXXXXXXXXXX.

13. [17-21173](#)-E-13      ODETE CABRAL  
[17-2056](#)

**CONTINUED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
9-6-17 [33]**

**CABRAL V. NATIONSTAR MORTGAGE,  
LLC**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Dane W. Exnowski

Adv. Filed: 4/11/17  
Answer: none

Amd. Cmplt. Filed: 9/6/17  
Answer: 11/28/17

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

<p><b>At the request of the Parties, the Status Conference is continued to 2:00 p.m. on April 21, 2018.</b></p>
---

Notes:  
Continued from 11/16/17

[DWE-1] Order granting in part and denying in part Motion to Dismiss Plaintiff's Amended Complaint Without Leave to Amend filed 11/19/17 [Dckt 54]

Plaintiff's 6th Status Statement filed 1/10/18 [Dckt 57]

### **JANUARY 17, 2018 STATUS CONFERENCE**

Plaintiff-Debtor and Defendant have filed their respective updated Status Reports. Dckts. 57, 59. In them, they jointly request that the court continue the Status Conference sixty days to allow them to diligently work on a resolution by which this Adversary Proceeding may be dismissed. Based on the information provided, the court continues the Status Conference.

14. [17-24489-E-13](#) JAMES SEIBERT  
[17-2187](#)

STATUS CONFERENCE RE:  
COMPLAINT  
10-19-17 [\[1\]](#)

SEIBERT, JR. V. SEIBERT

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.  
-----

Plaintiff's Atty: Ralph E. Laird  
Defendant's Atty: Pro Se

Adv. Filed: 10/19/17 [Jury Demand]  
Answer: 11/27/17

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

Notes:  
[REL-4] Discovery Plan filed 1/9/18 [Dckt 8]

<b>The Status Conference is continued to 2:00 p.m. on February 21, 2018.</b>
--

## SUMMARY OF COMPLAINT

Robert Seibert, Jr. ("Plaintiff") alleges claims in his Complaint for determination of nondischargeability of debt based on: (1) First Cause of Action – fraud, 11 U.S.C. § 523(a)(2)(A); (2) Second Cause of Action – fraud or defalcation in a fiduciary capacity, 11 U.S.C. § 523(a)(4); and (3) financial abuse on a dependent adult, 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).

The Complaint requests entry of a monetary judgment (there being no existing non-bankruptcy court judgment) and a determination that the monetary judgment of this court is nondischargeable.

## SUMMARY OF ANSWER

James Alex Seibert ("Defendant-Debtor") has filed a *pro se* Answer (Dckt. 7) using the court's on-line form, in which he: (1) alleges that this is a core proceeding, and (2) denies each and every allegation of the Complaint other than the procedural facts regarding the filing of the bankruptcy petition.

## FINAL BANKRUPTCY COURT JUDGMENT

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

Complaint ¶ 3, Dckt. 1. In his *pro se* Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7.

### **Request for Jury Trial**

In the Complaint, p. 9:1–2, Plaintiff makes a demand for trial by jury. The only causes of action asserted in the Complaint are for the claims (damages) asserted by Plaintiff to be determined nondischargeable under the Bankruptcy Code. These are core matters arising under the Bankruptcy Code, for which the bankruptcy judge determines facts, as well as making the legal conclusions, and issuing the judgment.

### **DISMISSAL OF DEFENDANT-DEBTOR’S BANKRUPTCY CASE**

This Adversary Proceeding is associated with the Chapter 13 Bankruptcy Case filed by Defendant-Debtor. Bankr. E.D. Cal. No. 17-24489. That bankruptcy case was dismissed on November 7, 2017.

This Adversary Proceeding was filed on October 19, 2017, prior to the dismissal of the Chapter 13 Bankruptcy Case.

On November 2, 2017, Defendant-Debtor, with the assistance of the same counsel as in the first bankruptcy case, filed a second Chapter 13 case. Case No. 17-24489 (“Second Bankruptcy Case”). That bankruptcy case is now before the Hon. Christopher D. Jaime (a different judge than the first case or this Adversary Proceeding).

In the Second Bankruptcy Case, Defendant-Debtor and his counsel are trying to dismiss that case. 17-24489; Motion, Dckt. 35. The Motion states that Defendant-Debtor’s two creditors support dismissal of the Second Bankruptcy Case. That court has not yet ruled on the Defendant-Debtor’s request to dismiss.

However, in ruling on objections to confirmation of the Chapter 13 Plan in the Second Bankruptcy Case, that court noted:

“First, the Debtor does not appear to have the ability to fund the plan. Debtor’s schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor’s prior case no. 17-24489 before the Honorable Ronald Sargis. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (see adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor’s case no. 17-24489 that was dismissed on November 7, 2017.”

17-24489; Civil Minutes, Dckt. 44. That court also notes that Defendant-Debtor: (1) failed to attend the First Meeting of Creditors; (2) failed to provide copies of tax returns to the Chapter 13 Trustee; and (3) failed to provide copies of payroll advices or other documentation of income.

## **STATUS CONFERENCE STATEMENT**

Plaintiff has filed a “Discovery Plan” in which it is requested that the court not set a discovery schedule because it is likely that this Adversary Proceeding will be dismissed. Dckt. 8. Plaintiff anticipates Defendant-Debtor’s Second Bankruptcy Case being dismissed. In the Report, Plaintiff states that there is a 2014 State Court Action pending in which various claims for damages are asserted against Defendant-Debtor. Plaintiff asserts that the first bankruptcy case (with this Department) was filed on the eve of the State Court issuing a writ of attachment in the State Court action.

The Motion to Dismiss the Second bankruptcy Case is set for hearing on January 23, 2018.

15. [17-24489-E-13](#)      **JAMES SEIBERT**  
[17-2190](#)

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**10-23-17 [1]**

**MILLER V. SEIBERT**

Plaintiff’s Atty: Felix G. Poggemann

Defendant’s Atty: Pro Se

Adv. Filed: 10/23/17

Answer: 11/27/17

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Dischargeability - other

<b>The Status Conference is continued to 2:00 p.m. on xxxxxxxxxx, 2018.</b>
---

Notes:

## **SUMMARY OF COMPLAINT**

Dana Miller (“Plaintiff”) is the wife (separated and dissolution proceedings pending) of Defendant-Debtor. Plaintiff seeks to have her claims (debts owed by Defendant-Debtor) determined nondischargeable: (1) for fraud, 11 U.S.C. § 523(a)(2)(A); for fraud, 11 U.S.C. § 523(a)(2)(B); for fraud or defalcation in a fiduciary capacity, 11 U.S.C. § 523(a)(4); and for damages caused by willful and malicious conduct, 11 U.S.C. § 523(a)(6).

## **SUMMARY OF ANSWER**

James Alex Seibert (“Defendant-Debtor”) has filed a *pro se* Answer (Dckt. 7) using the court’s on-line form, in which he: (1) alleges that this is a core proceeding, and (2) denies each and every allegation of the Complaint other than the procedural facts regarding the filing of the bankruptcy petition.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(i). Complaint ¶¶ 4, 2, Dckt. 1. In his *pro se* Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7.

## **DISMISSAL OF DEFENDANT-DEBTOR’S BANKRUPTCY CASE**

This Adversary Proceeding is associated with the Chapter 13 Bankruptcy Case filed by Defendant-Debtor. Bankr. E.D. Cal. No. 17-24489. That bankruptcy case was dismissed on November 7, 2017.

This Adversary Proceeding was filed on October 23, 2017, prior to the dismissal of the Chapter 13 Bankruptcy Case.

On November 2, 2017, Defendant-Debtor, with the assistance of the same counsel as in the first bankruptcy case, filed a second Chapter 13 case. Case No. 17-24489 (“Second Bankruptcy Case”). That bankruptcy case is now before the Hon. Christopher D. Jaime (a different judge than the first case or this Adversary Proceeding).

In the Second Bankruptcy Case, Defendant-Debtor and his counsel are trying to dismiss that case. 17-24489; Motion, Dckt. 35. The Motion states that Defendant-Debtor’s two creditors support dismissal of the Second Bankruptcy Case. That court has not yet ruled on the Defendant-Debtor’s request to dismiss.

However, in ruling on objections to confirmation of the Chapter 13 Plan in the Second Bankruptcy Case, that court noted:

“First, the Debtor does not appear to have the ability to fund the plan. Debtor’s schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor’s prior case no. 17-24489 before the Honorable Ronald Sargis. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (see adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor’s case no. 17-24489 that was dismissed on November 7, 2017.”

17-24489; Civil Minutes, Dckt. 44. That court also notes that Defendant-Debtor: (1) failed to attend the First Meeting of Creditors; (2) failed to provide copies of tax returns to the Chapter 13 Trustee; and (3) failed to provide copies of payroll advices or other documentation of income.

### **JANUARY 17, 2018 STATUS CONFERENCE**

No Status Report was filed by either Party to this Adversary Proceeding. It appears that the dismissal of the second bankruptcy case appears likely. The court continues the Status Conference.

16. [13-32494-E-13](#)      **THEODORE/MOLLY MCQUEEN**      **CONTINUED STATUS CONFERENCE**  
[14-2004](#)      **RE: COMPLAINT**  
1-4-14 [\[1\]](#)
- G & K HEAVEN'S BEST, INC. V.**  
**MCQUEEN ET AL**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.

-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14  
Answer: 2/5/14

Crossclaim Filed: 2/5/14  
Answer: 2/24/14

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

<b>The Status Conference is continued to 2:00 p.m. on November 14, 2018.</b>
--

Notes:

Continued from 1/18/17 to monitor the performance of the Stipulation and the status of the prosecution of this Adversary Proceeding.

Plaintiffs' 9th Status Statement filed 1/10/18 [Dckt 104]

## JANUARY 17, 2018 STATUS CONFERENCE

The Plaintiffs have filed a Status Report (Dckt. 104) advising the court that the Debtors are performing their Chapter 13 Plan and making the payments as required under the Settlement Agreement. It is requested that the court continue the Status Conference until October 2018 (September 2018 being the last plan payment) to allow the Defendant-Debtors to complete their Chapter 13 Plan payments and consummate the Settlement.

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 Continued Status Conference having been conducted by the court, Plaintiffs providing an updated Status Report advising the court that the Defendant-Debtors are making the settlement payments as required, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on November 14, 2018.

17. [13-32494](#)-E-13 THEODORE/MOLLY MCQUEEN CONTINUED STATUS CONFERENCE  
[14-2027](#) RE: COMPLAINT  
1-21-14 | [1](#)

**MCQUEEN ET AL V. G & K  
HEAVEN'S BEST, INC.**

**Final Ruling:** No appearance at the January 17, 2018 Status Conference is required.

Plaintiff's Atty: C. Anthony Hughes  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14  
Answer: 2/17/14

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

**The Status Conference is continued to 2:00 p.m. on November 14, 2018.**



Notes:

Continued from 1/18/17 to monitor the performance of the Stipulation and the status of the prosecution of this Adversary Proceeding.

Plaintiff's Continued Status Conference Statement filed 1/4/18 [Dckt 105]

Cross-Defendants' 9th Status Statement filed 1/10/18 [Dckt 107]

### **JANUARY 17, 2018 STATUS CONFERENCE**

The Plaintiffs have filed a Status Report (Dckt. 107) advising the court that the Debtors are performing their Chapter 13 Plan and making the payments as required under the Settlement Agreement. It is requested that the court continue the Status Conference until October 2018 (September 2018 being the last plan payment) to allow the Defendant-Debtors to complete their Chapter 13 Plan payments and consummate the Settlement.

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 Continued Status Conference having been conducted by the court, Plaintiffs providing an updated Status Report advising the court that the Defendant-Debtors are making the settlement payments as required, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on November 14, 2018.