

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**January 18, 2017, at 2:30 p.m.**

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<b>1.</b>	<b><u>15-28108-E-11</u></b>	<b>WILLARD BLANKENSHIP</b> <b>Stephen Reynolds</b>	<b>CONTINUED STATUS CONFERENCE</b> <b>RE: VOLUNTARY PETITION</b> <b>10-17-15 <a href="#">[1]</a></b>
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**Final Ruling:** No appearance at the January 18, 2017 Status Conference is required.

Debtor's Atty: Stephen M. Reynolds

<p><b>The Status Conference is continued to 2:00 p.m. on May 31, 2017.</b></p>
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Notes:

Continued from 9/21/16 to allow the Parties to address post-confirmation issues, including motions for allowance of administrative expenses and attorneys' fees for professionals representing the Debtor in Possession.

Operating Report filed: 11/4/16

[RLC-8] Order Confirming Plan filed 10/11/16 [Dckt 153]

[RLC-7] Motion for Final Allowance of Fees as Counsel for Debtor-in-Possession filed 11/2/16 [Dckt 156];  
Order granting filed 11/19/16 [Dckt 171]

[RLC-9] Motion for Sale of Assets filed 11/9/16 [Dckt 164], set for hearing 1/12/17 at 10:30 a.m.

[RLC-10] Motion for Sale of Property of the Estate filed 12/14/16 [Dckt 175], set for hearing 1/12/17 at 10:30 a.m.

**JANUARY 18, 2017 STATUS CONFERENCE**

The court continues the Status Conference in light of the Plan Administrator/Debtor actively prosecuting the Plan, the recent orders granted approving sales (January 12, 2017 hearings), and to allow the Parties to focus on the performance of the plan without otherwise unnecessary Status Conferences.

**January 18, 2017, at 2:30 p.m.**

**- Page 1 of 22 -**

2. [15-28108-E-11](#) WILLARD BLANKENSHIP CONTINUED STATUS CONFERENCE  
[16-2010](#) RE: AMENDED COMPLAINT  
KLETCHKO ET AL V. BLANKENSHIP 1-29-16 [[11](#)]  
ET AL

**Final Ruling:** No appearance at the January 18, 2017 Status Conference is required.  
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Plaintiff's Atty: Marc Y. Lazo  
Defendant's Atty: Thomas G. Mouzes; Stephen M. Reynolds

Adv. Filed: 1/19/16  
Answer: none  
Amd. Cmplt. Filed: 1/29/16  
Answer: 2/29/16

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

Notes:

Joint Request for Dismissal of Complaint Objecting to Discharge filed 12/6/16 [Dckt 48]; Order granting filed 12/9/16 [Dckt 49]

3. [15-28108-E-11](#) WILLARD BLANKENSHIP CONTINUED STATUS CONFERENCE  
[16-2068](#) RE: COMPLAINT  
BLANKENSHIP V. KLETCHKO ET AL 4-4-16 [[1](#)]

Plaintiff's Atty: Stephen M. Reynolds  
Defendant's Atty: unknown

Adv. Filed: 4/4/16  
Answer: none

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

Notes: Notice of Dismissal of Complaint to Avoid Preferential Transfer filed 12/6/16 [Dckt 9]; Order dismissing filed 12/9/16 [Dckt 10]

4. [11-28815](#)-E-13      JESSUP/SAREELA LAL  
[16-2222](#)  
LAL ET AL V. WELLS FARGO BANK  
N.A.

STATUS CONFERENCE RE:  
COMPLAINT  
10-18-16 [[1](#)]

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

Adv. Filed: 10/18/16  
Answer: none

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

Notes:

Notice of Dismissal of Adversary Complaint filed 12/7/16 [Dckt 7]; Order dismissing filed 12/9/16 [Dckt 9]

5. [07-27123](#)-E-13      DOREEN GASTELUM  
PGM-6                  Peter Macaluso

CONTINUED MOTION TO MODIFY  
ORDER FOR EVIDENTIARY HEARING  
6-12-15 [[186](#)]

**Final Ruling:** No appearance at the January 18, 2017 Status Conference is required.

**The Motion is dismissed as moot**, the matter which is the subject of the referenced evidentiary hearing having been dismissed pursuant to the Stipulation of the Parties.

#### STIPULATED SETTLEMENT

The parties filed a Stipulated Settlement for Dismissal of Action on December 9, 2016. Dckt. 241. The court carefully reviewed the records, files, and agreement of the parties and ordered that—per the Stipulated Settlement—the Motion for Contempt (Dckt. 123) was dismissed with prejudice.

The court having approved the Stipulated Settlement for Dismissal of Action, this Motion is dismissed as moot.

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 Order for Evidentiary Hearing filed jointly by Debtor Doreen Gastelum and Creditor City of Chicago 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 dismissed as moot, the court having approved a Stipulated Settlement for Dismissal of the matter which is the subject of the Evidentiary Hearing (Dckt. 244).

6. [10-50941-E-13](#)      **JOEL/MAGGIE DAUGHERTY**      **CONTINUED STATUS CONFERENCE**  
[16-2192](#)      **RE: COMPLAINT**  
**DAUGHERTY ET AL V. FLAGSTAR**      **9-14-16 [1]**  
**BANK, FSB ET AL**

**Final Ruling:** No appearance at the January 18, 2017 Status Conference is required.

Plaintiff's Atty: Ryan C. Wood  
Defendant's Atty: unknown

Adv. Filed: 9/14/16  
Answer: none

<b>The Status Conference is continued to 2:00 p.m. on February 22, 2017.</b>
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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:

Continued from 11/16/16 to allow the Parties the opportunity to have adjudicated motions for entry of default judgments (the defaults of both Defendants having been entered).

Second Amended Notice of Hearing re Motion for Default Judgment Against Flagstar Bank, FSB filed 11/21/16 [Dckt 40], set for hearing 1/12/17 at 1:30 p.m.

Second Amended Notice of Hearing re Motion for Default Judgment Against NPA Associates, LLC filed 11/21/16 [Dckt 42], set for hearing 1/12/17 at 1:30 p.m.

The court having granted Plaintiff's Motion for Entry of a Default Judgment (January 12, 2017 hearing), the court continues the Status Conference to afford Plaintiff the opportunity to have the judgment entered.

7.     [16-27854-E-11](#)     **GARY STEINGROOT**     **STATUS CONFERENCE RE:**  
                                  **Edward Smith**                   **VOLUNTARY PETITION**  
  **11-29-16 [1]**

Debtor's Atty: Edward A. Smith

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxxxxx, 2017.</span></b>
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Notes:

Preliminary Status Report filed 12/16/16 [Dckt 19]

[TBG-1] Application of Debtor in Possession for Order Authorizing the Employment of the Bankruptcy Group, P.C. as Counsel for Debtor in Possession filed 12/28/16 [Dckt 21], set for hearing 2/2/17 at 10:30 a.m.

U.S. Trustee Report at 341 Meeting posted 12/29/16

## **JANUARY 18, 2017 STATUS CONFERENCE**

### **STATUS CONFERENCE SUMMARY**

This voluntary Chapter 11 case was commenced on November 29, 2016. No prior bankruptcy case filings by are reflected in the records of this court.

#### **December 16, 2017 Status Report (Dckt. 19)**

In the Status Report, ΔIP reports that his business is a sole proprietorship, I B Tan Tanning Resort. While Debtor had a substantial equity in his home, he was unable to make payments on his credit card and mortgage. The bankruptcy case was filed to stay foreclosure on the home so that the ΔIP could propose a plan and provide for the orderly sale of the home. For a plan, ΔIP projects being able to pay the creditors in full.

Attached to the December 2016 Monthly Operating Report are copies of checks from the ΔIP account. The court notes a check for \$20,000.00 written to West America Bank on December 10, 2016. Dckt. 28 at 12. At the hearing, counsel for ΔIP explained, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

## MONTHLY OPERATING REPORT SUMMARY

December, 2016 Report		Filed: January 13, 2017		
INCOME	Current		Cumulative	
Sales	\$ 5,943		\$ 5,943	
Misc.	\$ 0		\$ 0	
<b>Total</b>	\$ 5,943		\$ 5,943	
<b>EXPENSES</b>	\$ (7,991)		\$ (7,991)	
<b>PROFIT/(LOSS)</b>	\$ (2,048)		\$ (2,048)	
<b>Specific Expenses</b>				
Business		(\$5,146)	(\$5,146)	
Personal		(\$2,049)	(\$2,049)	
		\$0	\$0	\$0

## SUMMARY OF SCHEDULES

Real Property Schedule A/B	FMV	LIENS	
Residence	\$750,000		

Personal Property Schedule B	FMV	LIENS	
Total	\$66,977		
Business Checking	\$44,880		

<b>Secured Claims Schedule D</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>FMV</b>	<b>UNSECURED CLAIM PORTION</b>
Capital One Real Property	(\$5,603)	\$750,000	
Suntrust Bank Real Property	\$454,756		

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

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	<b>GENERAL UNSECURED</b>
Total	(\$105,399)
Chase Card	(\$27,209)
Chase Card	(\$25,843)
Wells Fargo Bank	(\$11,807)

<b>INCOME, SCHEDULE I</b>		
Total Average Monthly Income		
Net Monthly Business Income	\$2,356	

<b>EXPENSES, SCHEDULE J</b> Total Average Monthly Expenses		
Total	(\$3,560)	
Rent/Mortgage	(\$2,776)	
Food	(\$150)	
Clothing/Laundry	(\$30)	
Transportation	\$0	
Entertainment	\$0	
Taxes	\$0	

<b>BUSINESS INCOME AND EXPENSES</b>		
Gross Income (12 month avg)	\$5,866	
<b>EXPENSES</b>		
Total	(\$3,510)	
Rent	(\$1,690)	
Inventory	(\$526)	
Utilities	(\$492)	
Taxes	\$0	



## STATEMENT OF FINANCIAL AFFAIRS

### Part 2 Gross Income

2016 YTD	\$23,065	
2015	(\$34)	
2014	(\$310)	

### Part 2 Non-Business Income

2016 YTD	None	
2015	None	
2014	None	

8. [10-32657-E-13](#)      **DANIEL/MARIA PEREZ**  
[16-2239](#)  
**PEREZ ET AL V. CENTRAL**  
**MORTGAGE COMPANY**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**11-9-16 [1]**

Plaintiff's Atty: Gary Ray Fraley  
Defendant's Atty: Renee M. Parker

Adv. Filed: 11/9/16  
Answer: 12/12/16

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

Notes:

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXX</span>.</b>
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## **JANUARY 18, 2017 STATUS CONFERENCE**

No Status Conference Statements were filed by either Plaintiff-Debtor or Defendant. At the Status Conference, **XXXXXXXXXXXXXXXXXXXXX.**

### **SUMMARY OF COMPLAINT**

Daniel and Maria Perez, the Plaintiff-Debtor, have filed a Complaint titled seeking: (1) Declaratory Relief to Void Lien Pursuant to 11 U.S.C. § 506(a); (2) Related Causes of Action; and Determination of Dischargeability of Debt Under FRBP 4007. The general allegations of the Complaint are that the secured claim of Defendant was valued by the court pursuant to 11 U.S.C. § 506(a) at \$0.00, such was provided for in the Plaintiff-Debtor's Chapter 13 Plan, and that said plan has been completed.

While titled as "Declaratory Relief," the First Cause of Action Requests that the court quiet title and issue a judgment that the deed of trust securing Defendant's claim is void.

In the First Cause of Action Plaintiff-Debtor states that the deed of trust provides a contractual basis for the recovery of attorneys' fees.

The First Cause of Action also requests that the court determine that the personal and in rem liability for the debt has been "discharged."

The Second Cause of Action seeks relief pursuant to California Civil Code § 2941(b)(1) for failure of Defendant to reconvey the deed of trust once there was no remaining obligation to be secured (upon completion of the plan and the 11 U.S.C. § 506(a) valuation of \$0.00 becoming fixed under the completed contract as modified by the completed Chapter 13 Plan). This Cause of Action requests \$500.00 in statutory damages.

The Third Cause of Action seeks damages under the California Rosenthal Fair Debt Collection Practices Act. It is alleged that the failure to reconvey the deed of trust is a violation of said Act.

The Fourth Cause of Action seeks damages for Slander of Title based on the deed of trust not having been reconveyed after completion of the Chapter 13 Plan.

The Fifth Cause of Action restates the basis for recovery of attorneys' fees, both based on contract and statutory (Cal. Civ. § 2941).

### **SUMMARY OF ANSWER**

Central Mortgage Company, "Defendant," has filed an Answer (Dckt. 7). Defendant admits and denies various allegations in the Complaint. The "denials" include curious language which may not either effectively admit or deny the allegations in the Complaint. As an example, Paragraph 1 of the Complaint (Dckt. 1), states:

“1. This adversary proceeding arises out of and is related to the above-captioned Chapter 13 case of Daniel Perez and Maria Perez, Case No. 2010-32657, of which the Plan was completed on May 27, 2015 and the discharge was granted on February 16, 2016. The plan and Motion to Value related to the lien with Defendants was approved by the Court and provided that the Defendants lien was void upon completion of the plan. Therefore, this court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334.”

In admitting or denying the allegations in this Complaint, Defendant responds with only the following statement:

“1. Defendant admits Paragraph 1 of the Complaint only to the extent the information contained therein is confirmed by documentation found in public record; otherwise, Defendant lacks information sufficient to form a belief as to the truth of the assertions stated in Paragraph 1 of the Complaint and therefore denies Paragraph 1 of the Complaint.”

Answer ¶ 1, Dckt. 7. This type of “admission” or “denial” is repeated throughout the Answer.

The Answer also asserts eight Affirmative Defenses.

## **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). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Central Mortgage Company states that it “admits” the allegations of federal court jurisdiction if they are “found in public record.” As to allegations that this is a “core” proceeding, Defendant states, “Defendant admits Paragraph 3 of the Complaint only to the extent the proceeding would be core to this Court....” Answer ¶¶ 2, 3, Dckt. 7. **At the hearing, xxxxxxxxxxxxxxxxxxxx.** 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 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.**

## **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(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Central Mortgage Company states that it “admits” the allegations of federal court jurisdiction if they are “found in public record.” As to allegations that this is a “core” proceeding, Defendant states,

“Defendant admits Paragraph 3 of the Complaint only to the extent the proceeding would be core to this Court....” Answer ¶¶ 2, 3, Dckt. 7. **At the hearing, xxxxxxxxxxxxxxxxxxxx.** 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 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.**

- B. Initial Disclosures shall be made on or before **-----, 2016.**
- C. Expert Witnesses shall be disclosed on or before **-----, 2017**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2017.**
- D. Discovery closes, including the hearing of all discovery motions, on **-----, 2017.**
- E. Dispositive Motions shall be heard before **-----, 2017.**
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2017.**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(2)).

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

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 201 West Syracuse Avenue, Turlock, California ("Property").

The proposed purchaser of the Property is Ruben Escareno ("Buyer"), and the terms of the sale are:

- A.        \$80,000.00 purchase price.
  - 1.        Buyer is to pay \$70,000.00 from escrow, plus an additional \$10,000.00 to the third-party lien holder (the Internal Revenue Service).
- B.        Buyer is to pay a \$5,000.00 deposit.
- C.        The sale is subject to approval of all existing lien holders as a short sale.

- D. Movant shall pay notary fees, title insurance, and transfer taxes.
- E. Movant shall pay a realtor's commission of 6% of the sale price paid from escrow, totaling \$4,200.00.
- F. The closing date is January 26, 2017.
- G. The Property is sold as-is, with no representations or warranties from Movant.

### **JANUARY 5, 2017 HEARING**

At the hearing, the court continued the matter to January 18, 2017, specially set for the Sacramento calendar, to allow Movant to evaluate tax consequences for the estate of a sale. Dckt. 466.

### **DISCUSSION**

No further pleadings have been filed with the court since the January 5, 2017 hearing.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides sufficient funds to pay the first lienholder a full agreed amount and permits a modest return for the Internal Revenue Service and its lien that extends to other properties, which in turn creates equity in those remaining properties.

Movant has also requested the fourteen-day stay of enforcement established by Federal Rule of Bankruptcy Procedure 6004(h) be waived for cause. Movant states that because of the short sale nature of this Motion, there is a risk of missing the closing date. A short-sale agreement with the first lienholder expires on January 26, 2017, twenty-one days after the hearing. Movant wishes to avoid delays with this transaction. The court grants the additional relief.

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 Sell Property filed by Lawrence Souza and Judith Souza, the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Lawrence Souza and Judith Souza, the Debtor in Possession, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Ruben Escareno

or nominee (“Buyer”), the Property commonly known as 201 West Syracuse Avenue, Turlock, California (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$80,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 456, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Debtor in Possession be and hereby is authorized to pay a real estate broker’s commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Debtor’s in Possession broker, Keller Williams Realty.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided by Federal Rule of Bankruptcy Procedure 6004(h) is waived.

10. [15-25168](#)-E-13      **DEBRA MCCLAIN**  
[15-2152](#)  
**MCCLAIN V. SULLIVAN ET AL**

**CONTINUED PRE-TRIAL  
CONFERENCE RE: AMENDED  
COMPLAINT FOR OBJECTION TO  
CLAIM; DECLARATORY RELIEF; AND  
RELATED STATED CAUSES OF ACTION  
11-3-15 [18]**

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Kirk Steven Rimmer

Adv. Filed: 8/3/15  
Answer: 9/11/15

Amd. Cmplt. Filed: 11/3/15  
Answer: 11/15/15

Nature of Action:  
Declaratory judgment  
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:  
Continued from 11/16/16 to allow the Parties to file their dismissal.

#### **JANUARY 18, 2017 PRETRIAL CONFERENCE**

At the Pretrial Conference, the Parties reported to the court **XXXXXXXXXXXXXXXXXX**.

#### **NOVEMBER 16, 2016 PRE-TRIAL CONFERENCE**

In the Complaint, the Plaintiff-Debtor asserts a claim for breach of fiduciary duty and objects to the claim of Defendants in Plaintiff-Debtor's Chapter 13 bankruptcy case. Plaintiff-Debtor's monetary claims are based on the same facts and circumstances relating to the objection to claim.

On October 13, 2016, the court issued an order dismissing Plaintiff-Debtor's Chapter 13 bankruptcy case. Bankr. E.D. Cal. 15-25168.

No pre-trial statements have been filed by either Plaintiff-Debtor or the Defendants. This Adversary Proceeding has not been dismissed by the Parties.



## **SUMMARY OF COMPLAINT**

The First Amended Complaint asserts that Defendant Sullivan breached fiduciary duties to Plaintiff-Debtor in connection with an \$80,000 loan made in September 2006. Plaintiff-Debtor first seeks to have the claim of Defendants disallowed in its entirety as unenforceable. The Second Cause of Action is stated as seeking a declaration of the rights and obligations of the parties, but further requests that the lien of Defendants be voided. The Third and Fourth Causes of Action assert claims for fraud. The Complaint also requests the award of contractual and statutory attorneys fees and costs.

## **SUMMARY OF ANSWER**

In the Answer, the Defendants admit and deny specific allegations in the First Amended Complaint. Defendants also assert four affirmative defenses.

## **FINAL BANKRUPTCY COURT JUDGMENT**

The First Amended Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) [allowance or disallowance of claim]. First Amended Complaint 2,3; Dckt. 18. Plaintiff-Debtor further consents to the bankruptcy judge issuing all orders and final judgment for any non-core matters included in the First Amended Complaint. 6. *Id.*

In their Answer, Dusty Sullivan, Dusty Sullivan Profit Sharing Plan, Sierra Investments Robert Chonka Profit Sharing Plan, Poly Comp Trust Company and West America Bank for the benefit of Marilyn Chiang, Dean A. Howell Profit Sharing Plan, Kenneth Meyer IRA, Connie Holt IRA, Westamerica Bank, Polycomp FBO Margo Glendenning, IRA, David N. Muraki and Judy Muraki as joint tenants custodian for Peter Muraki, minor child, admit the allegations of jurisdiction and core proceedings. Answer 2, 3, Dckt. 24. Further, Defendants admit Paragraph 4 of the First Amended Complaint (consent to bankruptcy judge issuing all orders and final judgment for non-core matters), which the court accepts as Defendants, and each of them, consents to the bankruptcy judge issuing all orders and final judgment for any non-core matters that are included in the First Amended Complaint. 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 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. Civil Minutes, Dckt. 15; Original Scheduling Order, Dckt. 16.

11. [15-20081](#)-E-7 JANET ROBINSON  
[16-2016](#)  
HOPPER V. ROBINSON

PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR DENIAL OF  
DISCHARGE  
1-28-16 [\[1\]](#)

Plaintiff's Atty: Gabriel P. Herrera; Nabeel M. Zuberi  
Defendant's Atty: unknown

Adv. Filed: 1/28/16  
Answer: 3/4/16

The Complaint having been dismissed, the Pre-Trial Conference is removed from the Calendar.

12. [09-29681](#)-E-13 FERNANDO/ALAPE GELVERIO  
[16-2217](#)  
GELVERIO ET AL V. U.S. BANK  
CONSUMER FINANCE ET AL

STATUS CONFERENCE RE:  
COMPLAINT  
10-7-16 [\[1\]](#)

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: unknown

Adv. Filed: 10/7/16  
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)

Notes:  
Plaintiff's 1<sup>st</sup> Status Report filed 1/11/17 [Dckt 7]

The Status Conference is **XXXXXXXXXXXXXXXXXXXXX**.

## JANUARY 18, 2017 STATUS CONFERENCE

On January 11, 2017, Plaintiff-Debtor file a Status Report. Dckt. 7. It is reported by Plaintiff-Debtor that: (1) No answer has been filed by Defendant, (2) the Parties have not met and conferred

concerning this Adversary Proceeding; and (3) Plaintiff-Debtor may proceed to obtain entry of Defendant's default.

The Certificate of Service (Dckt. 6) states that the Complaint has been served on: (1) U.S. Bank Consumer Finance and (2) U.S. Bank, N.A. by mail. It does not state that the Summons and Complaint have been served by certified mail. Fed. R. Bank. P. 7004(h).

### **Summary of Complaint**

The basic allegations of the Complaint are that: (1) Defendant had a claim secured by a junior deed of trust in Plaintiff-Debtor's Chapter 13 bankruptcy case; (2) a motion to value Defendant's secured claim was "granted" (though it does not alleged that it was valued at \$0.00); (3) Plaintiff-Debtor's Chapter 13 Plan provides that the lien of Defendant shall be "void and stripped upon completion of the [Chapter 13] case;" (4) the Chapter 13 Plan has been completed; and (5) Defendant (named "First Financial Services, LLC dba The Lending Center aka U.S. Bank Consumer Finance") has not reconveyed the deed of trust which is now void.

### **Defendants In the Complaint**

In the Caption of the Complaint two defendants are named: (1) U.S. Bank Consumer Finance and (2) First NLC Financial Services DBA The Lending Center. The Certificate of Service does not indicate that "First NLC Financial Services has been served with the Complaint. Dckt. 6.

In Plaintiff-Debtor's Chapter 13 Bankruptcy Case Proof of Claim No. 14 was filed for an entity identified as "U.S. Bank Consumer Finance." The address for this entity is listed as being in Cincinnati, Ohio. The Proof of Claim also indicates that this entity was formerly known as First Finance and Star Bank Finance.

The Deed of Trust attached to Proof of Claim No. 14 identifies First NLC Financial Service, LLC, DBA The Lending Center as the lender and beneficiary. Proof of Claim 14, p. 3.

The California Secretary of State does not list any entity known as "U.S. Bank Consumer Finance as being registered to do business in California. <https://businesssearch.sos.ca.gov>. For First NLC Financial Services, LLC, it's status is listed as "FTB FORFEITED." *Id.*

### **Stated Causes of Action**

The First Cause of Action seeks "Declaratory Relief." It appears that this may actually be a claim for "quiet title" and a determination that the deed of trust is void and does not encumber the property.

The Second Cause of Action is titled as one for "Extinguishment of the Second Deed of Trust Claim." This Cause of Action appears to assert that the deed of trust is not void, but in full force and effect. It requests that the court then "extinguish" the not void deed of trust.

The Third Cause of Action asserts that Defendant failed to reconvey the deed of trust once no obligation existed for it to secure, and based thereon Plaintiff-Debtor has a statutory damages claim arising under California Civil Code § 2941(d). The statutory damages claim is stated in the amount of \$500 and “all attorneys fees and costs, as allowed for in the contract between the parties....”

A Fourth Cause of Action for Breach of Contract is asserted based on the failure to reconvey the deed of trust.

A Fifth (intentional) and Sixth (negligent) Causes of Action is asserted for violation of the Federal Fair Credit Reporting Act, citing 15 U.S.C. § 1681w. That specific code section relates to the Federal Trade Commission and several other entities issuing regulations relating to the disposal of consumer records. This Cause of Action then states that “defendant(s) deliberately and/or recklessly did not maintain reasonable procedures to protect against reporting erroneous personal financial information in violation of 15 U.S.C. 1681.” Nothing other than is legal conclusion is stated in this Cause of Action.

The Seventh Cause of Action states that Defendant is liable for “negligence per se” for reporting (unidentified) financial information in violation of 15 U.S.C. 1681. Nothing other than is legal conclusion is stated in this Cause of Action.

Plaintiff-Debtor requests attorneys’ fees and costs based on contract (deed of trust) and statutory (Cal. Civ. § 2941).

In the Prayer of the Complaint, the specific relief requested is:

- A. The court issue a judgment that the deed of trust is an unsecured lien and that the lien should be treated as an unsecured claim.
- B. The court issue a judgment voiding the second deed of trust.
- C. Award of attorneys’ fees based on contract and statute.
- D. \$500.00 Civil Penalty.
- E. For further relief.

No relief is requested for the various Fair Credit Reporting Act and Gramm-Leach-Bliley legal conclusion stated in the Complaint.

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

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

Notes:  
Continued from 2/2/16. The court approved a stipulation resolving this Adversary Proceeding. Since the dismissal of the Adversary Proceeding is dependent on the future completion of the Chapter 13 Plan, the status conference was continued for administrative management of this matter.

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span>.</b>
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#### **JANUARY 18, 2017 STATUS CONFERENCE**

At the Status Conference the Parties reported XXXXXXXXXXXXXXXXXXXX.

14. [13-32494-E-13](#)      **THEODORE/MOLLY MCQUEEN**      **CONTINUED STATUS CONFERENCE**  
[14-2027](#)      **RE: COMPLAINT**  
**MCQUEEN ET AL V. G & K**      **1-21-14 [1]**  
**HEAVEN'S BEST, INC.**

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

Notes:  
Continued from 2/2/16. The court approved a stipulation resolving this Adversary Proceeding. Since the dismissal of the Adversary Proceeding is dependent on the future completion of the Chapter 13 Plan, the status conference was continued for administrative management of this matter.

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span>.</b>
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#### **JANUARY 18, 2017 STATUS CONFERENCE**

At the Status Conference the Parties reported XXXXXXXXXXXXXXXXXXXX.