

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**February 20, 2025 at 2:00 p.m.**

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1. <a href="#">24-90343</a> -E-11 <a href="#">CAE-1</a>	<b>MARTINEZ PALLET SERVICES, INC.</b>	<b>CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-21-24 <a href="#">[1]</a></b>
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**Items 1 thru 2**

Debtor's Atty: Gabriel E. Liberman

Notes:

Continued from 1/30/25

[GEL-4] Notice of Withdrawal of Plan Confirmation Hearing filed 2/14/25 [Dckt 113]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**FEBRUARY 20, 2025 STATUS CONFERENCE**

On February 14, 2025, the Debtor/Debtor in Possession filed a Withdrawal of Plan Confirmation Hearing. Dckt. 113. The Debtor/Debtor in Possession advises the court that it is "currently working on an amended plan to resolve objections filed against the current plan and anticipates filing an amended plan within 30 days, as the current Plan is not confirmable." *Id.*

At the Status Conference, XXXXXXX

**JANUARY 30, 2025 STATUS CONFERENCE**

On January 16, 2025, the Debtor/Debtor in Possession filed a Status Conference Statement. Dckt. 89. The information provided in the Statement include the following. The court has entered an order authorizing the use of cash collateral through June 25, 2025. A hearing on the proposed Subchapter V Plan has not yet been set in light of comments provided by several Creditors.

On December 10, 2024, the Debtor/Debtor in Possession filed the First Amended Subchapter V Plan. Dckt. 75. The confirmation hearing was set for January 30, 2025. Order; Dckt. 76. Pursuant to the request of the Debtor/Debtor in Possession, the court issued an Order rescheduling the Confirmation Hearing to February 20, 2025. Dckt. 86.

**February 20, 2025 at 2:00 p.m.**

**- Page 1 of 111 -**

At the Status Conference, counsel for the Debtor/Debtor in Possession summarized the Status Reports relating to the cash withdrawals, supplements to the Monthly Operating Reports have been filed, and that for the December 2024 Report, there are no cash withdrawals, and that all of such payments are being made by cashier's checks.

The Status Conference is continued to 2:00 p.m. on February 20, 2025.

#### **DECEMBER 12, 2024 STATUS CONFERENCE**

The Debtor/Debtor in Possession filed an Updated Status Report on November 27, 2024. Dckt. 72. It reports that the adequate protection payments have been made and the First Amended Plan draft is now being circulated.

The Debtor/Debtor in Possession suggests continuing the Status Conference approximately 60 days so it can be coordinated with a tentative confirmation hearing date.

The Subchapter V Trustee reported that there are several points to be addressed. A former employee has filed a proof of claim that post-petition wages are unpaid. The Subchapter V Trustee has received information about the Tesla contract, but not a completed, signed contract.

The Trustee finds the Monthly Operating Reports do not appear to be complete and are confusing. This is described on the Record for the Status Conference.

#### **OCTOBER 31, 2024 STATUS CONFERENCE**

Martinez Pallet Services, Inc., the Debtor/Debtor in Possession, filed its Status Conference Statement on October 24, 2024. Dckt. 57. The Debtor/Debtor in Possession reports that the use of cash collateral by the Debtor/Debtor in Possession has been done pursuant to this court's Interim Order (Dckt. 53). The Debtor/Debtor in Possession reports that the Subchapter V Plan was filed on September 19, 2024 (Dckt. 51). The court notes that it does not appear to have received a proposed order from the Debtor/Debtor in Possession a proposed order setting a confirmation hearing, EDC Form 6-202 (Order Setting Subchapter V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines, Paragraph 4; Dckt. 8) , or a motion to set a confirmation hearing date.

At the Status Conference, several issues concerning the workers were discussed. The Parties agreed to extend the use of Cash Collateral through the end of the year based on the existing budget. The court has entered a separate order thereon for relief pursuant to the Motion to Use Cash Collateral.

**Final Ruling**

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**The Plan Confirmation Hearing is dismissed without prejudice.**

Martinez Pallet Services, Inc., Debtor in Possession, having filed an Ex Parte Motion to Dismiss the pending Confirmation Hearing, Docket 113; no prejudice to the responding party appearing by the dismissal of the Hearing; the Debtor in Possession having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the various creditors in this case at Docket 109; the Ex Parte Motion is granted, the Debtor in Possession's Confirmation Hearing is dismissed without prejudice, and the court removes this Hearing from the calendar.

The court shall issue an 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 Confirmation Hearing filed by Martinez Pallet Services, Inc., Debtor in Possession, having been presented to the court, the Debtor in Possession having requested that the Hearing itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Docket 113, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Debtor in Possession's Confirmation Hearing is dismissed, and the proposed Subchapter V First Amended Plan is not confirmed.

Debtor's Atty: David C. Johnston, Brian S. Haddix

Notes:

Continued from 2/22/24. Debtor/Debtor in Possession Plan Administrator to file the 2024 Annual Profit and Loss Statement on or before 2/13/25.

**The Status Conference is XXXXXXX**

#### **FEBRUARY 20, 2025 POST-CONFIRMATION STATUS CONFERENCE**

On February 23, 2024, the court entered its Order continuing the Post-Confirmation Status Conference and ordering the Debtor/Debtor in Possession to file the 2024 Annual Profit and Loss Statement on or before February 13, 2025. Order; Dckt. 122.

The Docket shows that the 2024 Annual Profit and Loss Statement has not been filed as of the court's 11:40 a.m. review of the Docket on February 18, 2025.

At the Post-Confirmation Status Conference, XXXXXXX

#### **FEBRUARY 22, 2024 POST-CONFIRMATION STATUS CONFERENCE**

No updated Status Conference Report has been filed. On February 16, 2024, the Debtor/Debtor in Possession filed a Profit and Loss Comparison for Calendar Year 2023. Dckt. 119. The information provided on the Profit and Loss Comparison includes:

- A. The Debtor/Debtor in Possession operating under the Subchapter V Plan had sales income of \$190,556.69.
- B. After deducting (\$38,660) for costs of goods sold, the Debtor/Debtor in Possession shows a gross profit of \$151,895.
- C. However, the Debtor/Debtor in Possession lists having (\$221,465.94) in additional expenses, which results in the Debtor/Debtor in Possession having a Net Operating Loss of (\$69,570.08) for the 2023 Calendar Year.
- D. The Debtor/Debtor in Possession then lists "Other Income" (Reimbursement for Payroll) of \$8,702.30, which reduces the Net Operating Loss to (\$60,867.78).
- E. The Expenses listed include:
  - 1. (\$47,839.00) for Depreciation Expense.

2. (\$14,495.84) for Interest Expenses
  - a. At the hearing, counsel for the Debtor/Debtor in Possession explained this Interest Expense as being related to financed vehicles, SBA Loan, and the contractor with a mechanic's lien.
3. (\$45,445.25) for Rent & Lease
4. (\$6,334.03) for Property Tax
5. (\$9,770.46) for Repairs & Maintenance
6. (\$20,058.13) for Utilities

Looking at the 2023 Profit and Loss Comparison, it appears that even after removing the depreciation as a expense, the operation of the Debtor/Debtor in Possession's resulted in an actual negative cash flow of (\$13,028.78). Thus, it appears that the Debtor/Debtor in Possession has been operating the business at a loss and has no source of monies to fund the Plan. The Confirmed Plan provides for the Debtor/Debtor in Possession to fund the Plan with the positive cash flow from operating the business. Modified Plan, Article 7; Dckt. 86.

At the hearing, counsel for the Debtor/Debtor in Possession explained, that the principals of the Debtor/Debtor in Possession were funding the Plan by transferring funds (effectively capital contributions) to fund the operation of the business. The reason for funding this negative financially business was stated to be because both of the Members have also secured Debtor's secured loans with each of their homes.

The Post-Confirmation Status Conference is continued to 2:00 p.m. on February 20, 2025.

The Debtor/Debtor in Possession Plan Administrator shall file the 2024 Annual Profit and Loss Statement on or before February 13, 2025.

#### **FEBRUARY 16, 2023 POST-CONFIRMATION STATUS CONFERENCE**

The Subchapter V Plan was confirmed on May 19, 2022. Order, Dckt. 86. On November 16, 2022, the court entered its order allowing fees for the Subchapter V Trustee. Dckt. 108. No fees have been allowed by the court for counsel for the Debtor/Debtor in Possession.

On February 1, 2023, the Subchapter V Trustee filed a Report of No Distribution. Dckt. 109. The Subchapter V Trustee reports that he was paid his allowed fees, but there are no other payments to be made to the Subchapter V Trustee for distribution under the plan.

On February 6, 2023, the Debtor/Debtor in Possession Plan Administrator filed a Profit and Loss Statement showing that in 2022 the business lost (\$60,364.85) from the operation of the reorganized business.

The court notes that in computing this loss, there is (\$61,830) in “Depreciation Expense” and ((\$44,567.55) in rent and lease. Dckt. 112, p. 2. Looking at the Profit and Loss Statement included with the April 2022 Monthly Operating Report (Dckt. 91), there are no depreciation expenses.

The Debtor/Debtor in Possession Plan Administrator then states that it is unable to propose a modification in light of the 2022 losses.

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator that payments are current. No addition “profit” dividend on general unsecured claims is due for 2022.

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

4. [23-90111-E-11](#)  
[BSH-6](#)

**MICHAEL HOFMANN**  
**Brian Haddix**

**CONTINUED CONFIRMATION OF  
AMENDED PLAN  
10-11-24 [\[358\]](#)**

**Item 4 thru 6**

**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.

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

Sufficient Notice not Provided. There is no proof of service on file for the Confirmation Hearing for the Fourth Amended Plan.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) 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 Plan of Reorganization is <span style="color: red;">XXXXXXX</span>.</b>
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**February 20, 2025 Hearing**

Much has transpired since the continuation of this hearing. The court originally continued the hearing as the Parties indicated an evidentiary hearing would be pursued. The Debtor/Debtor in Possession has filed Supplemental Pleadings in the prosecution of this Case.

However, the Debtor/Debtor in Possession has filed a Motion to Dismiss this Case if the Chapter 11 Plan is not confirmed. Additionally, Debtor/Debtor in Possession's attorney has moved to withdraw as counsel. Those Motions are being heard in conjunction with this Motion.

### **Confirmation of Plan**

Debtor/Debtor in Possession has filed four Supplemental Documents in support of Confirmation. Dockets 430, 431, 433, and 446. Supplemental Document at Docket 430 is Debtor/Debtor in Possession's supplemental points and authorities setting forth the legal explanation as to why Debtor/Debtor in Possession is able to claim his partner Carol Matthews as his dependent on his tax returns. Supplemental Document at Docket 433 is the budget in support of Confirmation. The expenses appear reasonable, there being a decrease in the pet expenditure from \$416 to \$150 moving forward.

The Debtor/Debtor in Possession provides his Declaration providing some factual testimony as to why his partner is a dependent. Dckt. 431.

On February 13, 2025, Debtor in Possession filed his Evidentiary Hearing Statement. Docket 446. Debtor in Possession walks through his side of the case, arguing why the disposable income is Debtor in Possession's best efforts and the Plan is Fair and Equitable, among other arguments in support of confirmation. Creditor has not filed any Evidentiary Hearing Statement in response.

In computing the projected disposable income, the Debtor/Debtor in Possession cites the court to the provisions of 42 U.S.C. § 407 with respect to the Debtor/Debtor in Possession's Social Security income and that it is excluded from the computation of projected disposable income. 42 U.S.C. § 407 provides (emphasis added):

TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 164)  
CHAPTER 7. SOCIAL SECURITY (Titles I — XXI)  
TITLE II. FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY  
INSURANCE BENEFITS (§§ 401 — 434)

#### **§ 407. Assignment of benefits**

(a) In general. **The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.**

(b) Amendment of section. No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes. Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this title, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 [by the person entitled to such benefit or such person's representative payee.

Also of note, the Subchapter V Trustee has withdrawn his objection to the confirmation of this Plan. Docket 445.

At the hearing, **XXXXXXX**

## REVIEW OF MOTION

The Plan Proponent has complied with some, but not all, of the Service and Filing Requirements for Confirmation:

1. On or before October 15, 2024, the Plan Proponent was to serve a copy of this Order (Docket 360), a copy of the Subchapter V Plan, a ballot for voting on the Subchapter V Plan, and a copy of a notice of confirmation hearing on the case trustee, or standing trustee, the United States Trustee, and all creditors and other parties of interest. Within (3) days after service of the forging Plan Proponent was to file a certificate of service demonstrating compliance with Paragraph 2. No Certificate of Service has been filed with the court documenting service.

2. November 14, 2024: Last Day to File Objections to Confirmation. Objections were filed on November 14 and November 15m 2924. Dockets 394, 396.

3. December 5, 2024: Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service. The Tabulation of Ballots was filed on December 9, 2024. Docket 417.

## Table of Classes

Creditor/Class	Treatment	
	Claim Amount	est. \$0
Class 1: Priority Claims	Impairment	Unimpaired
	Debtor does not anticipate any Priority Claims. In the event, however, that a Priority Claim is allowed, Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order.	



Class 2: Mercedes Benz	<b>Claim Amount</b>	
	<b>Impairment</b>	Unimpaired
	Class 2 is unimpaired by this Plan, and Class 2 shall retain its security interest according to the instruments and statutes creating same. Debtor in possession will surrender his interest in the collateral and the claim will be paid by the co-obligor pursuant to the terms of the original documents with no modification by this Plan.	
Class 3: Noninsider nonpriority unsecured creditors	<b>Claim Amount</b>	
	<b>Impairment</b>	Impaired
	Class 3 is impaired in this Plan. Class 3 consists of ten creditors. Allowed Class 3 claims shall be paid a total of 1.39% principal payments paid in one lump sum commencing no later than 30 days after the effective date of the plan. All provisions of judgement (except for Paragraph 1(a) on pages 2-3 “RESIDENCE PORTION OF THE REAL PROPERTY”, and Paragraphs 3(e)(vi), 3(e)(viii)(1)-(2) on page 5 of the Second Amended Interlocutory Judgment attached as Exhibit C), loan or credit documentation of the General Unsecured Creditors shall be null and void during the period there is no Plan Default with respect to the treatment of Class 3. The Proofs of Claim filed, any pleadings determining the Allowed amount of a General Unsecured Claim, the Confirmation Order, and the Plan shall replace all Prepetition documentation of the General Unsecured Creditors.	

## Opposition to Plan

Walter R. Dahl, Subchapter V Trustee (“Trustee”) objects on the following grounds:

1. The Plan is likely not consensual and must be confirmed pursuant to 11 U.S.C. § 1191(b). The Plan does not satisfy either of the requirements of 11 U.S.C. § 1191(c)(2). Debtor states his projected disposable income is \$3,605 per month. Over the three year period commencing upon the date the first payment is due, Debtor’s projected disposable income will total \$129,780. If the court were to fix the duration of the Plan over five years, Debtor’s projected disposable income will total \$216,300. Opp’n 1:22-2:1, Docket 394.

2. In contrast, the Plan provides: [t]o complete this plan, Debtor shall submit to the supervision and control of the trustee, as is necessary for the execution of the plan, a single lump sum payment in the amount of \$13,000. The Plan is not “fair and equitable”, and thus not eligible for confirmation pursuant to 11 U.S.C. § 1191(b). Opp’n 2:2-6.

Creditors Sharon and Gary Hofmann (“Creditor”) object on the same ground as Trustee, arguing that Debtor has a monthly net income of \$3,605.00. Over a three-year period pursuant to 11 U.S.C. § 1191,

Debtor should have included the sum of \$3,605.00 multiplied by 36 months, or \$129,780.00, in the Fourth Amended Plan. Similarly, a five-year period would have yielded the sum of \$3,605.00 multiplied by 60 months, or \$216,300.00. In any event, Debtor has severely under-reported his projected disposable income in violation of 11 U.S.C. § 1191. Opp'n 2:12-19, Docket 396.

### **Debtor's Response**

Debtor filed a Response to the Oppositions on December 5, 2024. Debtor spends much of the Response arguing Trustee has not diligently performed his Subchapter V Trustee duties. Debtor eventually states:

1. Section 207 of the Social Security Act, codified as 42 U.S.C. § 407, states that any monies paid under the Social Security Act shall not be subject to “execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.” 42 U.S.C. § 407 (emphasis added). In other words, Social Security payments are statutorily exempt from the bankruptcy process. In turn, it follows that Social Security benefits cannot be subjected to the “operation” of the PDI test. Response 8:26-9:3, Docket 411.
2. To be clear, Social Security income is excluded from disposable income under 42 U.S.C. § 407 and the Bankruptcy Code’s definition of “current monthly income” in 11 U.S.C. § 101(10A). Response 9:15-20, Docket 411.
3. After excluding social security, Debtor’s disposable income is \$185. To satisfy the minimum requirement of § 1191(c)(2)(B), the Plan must provide for payments in the three-year period following the effective date, having a present value of not less than \$6,660 or in the five-year period following the effective date, having a present value of not less than \$11,100. Because the Plan provides for distribution on the effective date in the amount of \$13,000, it satisfies § 1191(c)(2)(B). Opp’n 10:24-28, Docket 411.

### **Declarations in Support of Confirmation**

The Declaration of Michael Hofmann, the Debtor/Debtor in Possession, has been filed in support of confirmation. Dckt. 415. In it, Debtor/Debtor in Possession provides the following testimony (as summarized by the court):

- A. Debtor/Debtor in Possession provides his legal opinion that the Plan complies with all applicable provisions of the Bankruptcy Code. Dec., p. 2:1-10; Dckt. 415.
- B. Debtor/Debtor in Possession provides his legal opinion that the Debtor, as proponent of the Plan has “complied with all applicable provisions of the Bankruptcy Code.” *Id.*; p. 2:12-13.
- C. Debtor/Debtor in Possession provides his legal conclusion and his finding of fact that the Plan has been proposed in good faith.

- D. Debtor/Debtor in Possession testifies that all administrative expenses will be paid in full, priority wage and tax claims will be paid in full, and impaired classes of claims shall not receive less than they would through a Chapter 7 liquidation (no computation is provided). *Id.*; p. 2:7-16.
- E. Debtor/Debtor in Possession provides his legal conclusion and factual finding that the Plan is feasible. *Id.*; p. 2:18-24. Debtor/Debtor in Possession does not authenticate any projection of income and expenses or incorporate it into his testimony.
- F. The Declaration includes a disclosure that it was drafted with the assistance of generative artificial intelligence. *Id.*; p. 3:15-22.

Exhibits A - H are filed in support of Confirmation. Dckt. 412. These include the “handbook for Small Business Chapter 11 Subchapter V Trustee, February 2020 (Exhibit B), and an ABI Journal Article “Are Social Security Benefits ‘Disposable Income’ for Purposes of Subchapter V, ABI Journal, September 30, 2021.”

### **Tabulation of Ballots:**

For the three classes of creditors, it appears no one voted on the Plan. Tabulation of Ballots, Docket 417.

### **DISCUSSION**

The United States Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(b)(2) that:

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.

With respect to confirmation of a Subchapter V Plan, 11 U.S.C. § 1191 states:

(a) Terms.—

The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title [1] are met.

(b) Exception.—

Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs 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.

(c) Rule of Construction.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

(2) As of the effective date of the plan—

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)

(A) The debtor will be able to make all payments under the plan; or

(B)

(i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable Income.—For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

In defining current monthly income under 11 U.S.C. § 101(10A), explicitly excluded from that definition are benefits received under the Social Security Act.

(10A)The term “current monthly income”—

(A)**means the average monthly income from all sources** that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i)the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii)the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B)

(i)includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and, in a joint case, the debtor’s spouse if not otherwise a dependent); and

(ii)**excludes—**

**(I)benefits received under the Social Security Act (42 U.S.C. 301 et seq.);**

(II)payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

(III)payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

(IV)any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay

exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

11 U.S.C. § 101(10A) [emphasis added]. While “current monthly income” may not be “projected disposable income,” this treatment is relevant to this discussion.

As stated by Debtor/Debtor in Possession in the Reply, Congress expressly addresses Social Security benefits and “protections” granted for such benefits, including in connection with bankruptcy cases.

§ 407. Assignment of benefits

(a) In general. **The right of any person to any future payment under this title** [42 U.S.C. §§ 401 et seq.] shall not be transferable or assignable, at law or in equity, **and none of the moneys paid or payable or rights existing under this title shall be subject** to execution, levy, attachment, garnishment, or other legal process, **or to the operation of any bankruptcy or insolvency law.**

(b) Amendment of section. No other provision of law, enacted before, on, or after the date of the enactment of this section [enacted April 20, 1983], may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes. Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this title, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person’s representative payee.

42 U.S.C. § 407 [emphasis added].

The Ninth Circuit has held that, at least in the Chapter 13 context, “Congress has spoken directly, and it explicitly excluded Social Security income from the calculation of disposable income.” *Drummond v. Welsh* (*In re Welsh*), 711 F.3d 1120 (9th Cir. 2013). The court in *Welsh* addresses whether Social Security income is included in computing the projected disposable income, stating:

Just as we cannot add to what Congress has enacted "under the guise of interpreting 'good faith,'" so too we cannot ignore the explicit repayment requirements that Congress has chosen to enact. When Congress speaks directly to one of the good faith factors, the judicial good faith inquiry is narrowed accordingly. *See, e.g., Educ. Assistance Corp. v. Zellner*, 827 F.2d 1222, 1227 (8th Cir. 1987) (noting that § 1325(b)'s "'ability to pay' criteria subsume[d] most" of the factors under the totality of the circumstances test). **Congress has spoken directly, and it explicitly excluded Social Security income from the calculation of disposable income.** We thus join every court of appeals that has decided the issue in concluding that, "[w]hen a Chapter 13 debtor calculates his repayment plan payments exactly as the Bankruptcy Code and the Social Security Act allow him to, and thereby

**excludes [Social Security income], that exclusion cannot constitute a lack of good faith."** *Anderson v. Cranmer (In re Cranmer)*, 697 F.3d 1314, 1319 (10th Cir. 2012); *see also Beaulieu v. Ragos (In re Ragos)*, 700 F.3d 220, 227 (5th Cir. 2012) ("Having already concluded that Debtors' plan fully complied with the Bankruptcy Code, it is apparent that Debtors are not in bad faith merely for doing what the Code permits them to do."); *cf. Fink v. Thompson (In re Thompson)*, 439 B.R. 140, 144 (B.A.P. 8th Cir. 2010) ("Standing alone, the Debtors' retention of Social Security income is insufficient to warrant a finding of bad faith under § 1325(a)(3)." (internal quotation marks omitted)).<sup>56</sup>

56.

The Welshes argue in the alternative that, even if Congress's adoption of the means test did not preclude courts from considering debtors' retention of Social Security income in assessing good faith, such consideration nevertheless would be prohibited by 42 U.S.C. § 407; that section provides in relevant [\*\*31] part:

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject . . . to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

42 U.S.C. § 407(a)-(b) (2006) (emphasis added). Because we conclude that Congress's adoption of the means test precludes us from considering, as part of our good faith inquiry, a debtor's retention of Social Security income, we have no occasion to decide whether such consideration would violate § 407's prohibition.

*Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1131-1132 (9th Cir. 2013).

While not clear in the Response, it appears that Debtor/Debtor in Possession's argument is that he has no projected disposable income since he has "only" \$9,496 in monthly net income from his business and an additional \$3,420.00 in Social Security income, which after deducting his "reasonable and necessary" expenses of (\$9,284.00) a month, that leaves only \$3,605.00, of which \$3,420.00 is the Social Security benefits excluded from bankruptcy.

## Computation of Projected Disposable Income

The Debtor/Debtor in Possession provides as Exhibit B copies of Amended Schedules I and J. Dckt. 358. These were filed on October 3, 2024, which was 18 months after the March 20, 2023 filing of this Bankruptcy Case. Filed as “Amended Schedules,” these are statements that the original Schedules I and J needed to be corrected and that these “Amended Schedules” provide information accurate as of the March 20, 2023 commencement of this Bankruptcy Case.

No current November 2024 income and expense information is provided by the Debtor/Debtor in Possession. If the “Amended Schedules” I and J were intended to state information that was accurate as of October 2024, the court notes the following:

- A. While the Debtor/Debtor in Possession states having monthly net business income of \$9,469.00, the Debtor/Debtor in Possession neglects to provide the required statement to Schedule I, as stated in ¶ 8a of Schedule I:

Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income

- B. Debtor/Debtor in Possession has no dependants and lists expenses as being reasonable and necessary for himself, which raise some questions, of:
1. (\$4,100.00) for rent (the Debtor/Debtor in Possession not having residential real property for which a mortgage is being paid in this Case);
  2. (\$600.00) Electricity, heat, natural gas;
  3. \$0.00 Water, sewer, garbage;
  4. \$0.00 Phone, internet, cable;
  5. (\$1,100.00) for food and housekeeping supplies;
  6. (\$400.00) Medical and dental expenses;
  7. (\$400.00) Gas and car maintenance;
  8. (\$750.00) Health insurance (for which Debtor has (\$400.00 a month in out of pocket medical expenses);
  9. (\$376.00) Vehicle insurance;
  10. (\$707.00) Self employment tax; and
  11. (\$150.00) Pet expense.



Looking at the original Schedules filed by Debtor reported having \$15,032.00 in after tax, Medicare, and Social Security deductions income, which included \$3,290.00 in Social Security Income. Dckt. 32 at 33-34. Then on original Schedule J Debtor listed having (\$9,650.00) in expenses, which included:

- A. Nothing for rent or mortgage, the Debtor then residing in the family property that was the subject of the State Court Action;
- B. (\$700.00) Home maintenance and repairs;
- C. (\$1,960.00) Food and housekeeping;
- D. (\$1,000.00) Medical and dental;
- E. (\$300.00) Gas and car maintenance;
- F. (\$430.00) Health insurance;
- G. (\$420.00) Vehicle insurance;
- H. (\$4,000) LLC; and
- I. (\$350.00) Pet expenses.

*Id.* at 35-36. Even with the (\$4,000.00) LLC expense, this left the Debtor with \$5,382.00 in monthly net income, which after deducting \$3,290.00 for Social Security benefits, left \$2,092.00 of projected disposable income.

On Schedule A/B Debtor states that he has no non-farm animals, such as “Dogs, cats, birds, horses.” It is unclear what pet expenses Debtor could have.

It is clear that Debtor/Debtor in Possession has grossly changed the expenses, as well as income. No explanation is provided. No detailed income and expense information for Debtor/Debtor in Possession’s business is provided. The court notes that it has been represented to the court that Debtor has a significant other with which he resides, however, it is not clear what the significant other contributes toward housing, food, maintenance, and other expenses.

## **Review of the Plan**

The main point of contention among the Parties is whether Debtor/ Debtor in Possession is in compliance with 11 U.S.C. § 1191(b) in actually committing all disposable income to the non-consensual Plan. Debtor/ Debtor in Possession has presented evidence that social security benefits are not part of the monthly disposable income calculation, so the Plan indeed commits all disposable income and is confirmable.

The court is presented with the Original Schedules A/B and Amended Schedules A/B which just provide the court with net business income and fail to show how that is computed.

Looking at the recent Monthly Operating Reports filed by the Debtor/Debtor in Possession, the court notes the following information for the most recent Report filed:

A. February 2024 Report (filed October 3, 2024); Dckt. 351.

1. Cash Receipts.....\$7,704.11
2. Cash Disbursements.....(\$11,280.40)
  - a. The monthly Expenses include:
    - (1) Meals and Entertainment.....(\$250.00)
    - (2) Payroll Expenses.....(\$3,453.61)
    - (3) Pet Expenses.....(\$375.70)
    - (4) Utilities.....(\$1,161.83)
3. Monthly Net Cash Flow.....(\$3,576.29)
4. Bank of America Account Statement, 9328 includes:
  - a. Mission Lane LLC payment.....(\$1,100.00)
  - b. Mission Lane LLC payment.....(\$ 700.00)
  - c. Mission Lane LLC payment.....(\$500.00)
  - d. Mission Lane Payment.....(\$100.00)
  - e. Veterinary
    - (1) 1/05/24.....(\$624.35)
    - (2) 2/08/24.....(\$256.92)
    - (3) 2/14/24.....(\$677.80) [UCD VMTH]
    - (4) 2/20/24.....(\$310.00) [UCD Vet Med Teaching HO]
    - (5) 2/20/24.....(\$1,390.00) "
  - f. Cash Withdrawals
    - (1) 2/26/24.....(\$800.00)
    - (2) 2/26/24.....(\$500.00)
  - g. WINRED Steve Garv.....(\$36.44) ["political contribution"]

On October 3, 2024, the Debtor/Debtor in Possession filed a number of other Monthly Operating Reports, which provide the following information of income and expenses for each period:

B. December 2023; Dckt. 347.

1. Cash Receipts.....\$7,923.53
2. Cash Disbursements.....(\$12,059.39)

3. Monthly Net Cash Flow.....(\$4,135.86)

C. Amended November 2023; Dckt. 346.

1. Cash Receipts.....\$38,534.07  
2. Cash Disbursements.....(\$13,485.50)  
3. Monthly Net Cash Flow.....\$26,051.57

D. October 2023; Dckt. 345.

1. Cash Receipts.....\$17,592.12  
2. Cash Disbursements.....(\$21,591.40)  
3. Monthly Net Cash Flow.....(\$3,999.28)

E. September 2023; Dckt 344.

1. Cash Receipts.....\$7,168.50  
2. Cash Disbursements.....(\$37,673.77)  
3. Monthly Net Cash Flow.....(\$30,505.27)

Looking at the September 2023 Monthly Operating Report, Exhibit D, there are Pet Expenses totaling (\$18,030.02). Dckt. 344 at 7.

F. Amended August 2023; Dckt. 343.

1. Cash Receipts.....\$5,209.75  
2. Cash Disbursements.....(\$5,314.64)  
3. Monthly Net Cash Flow.....(\$104.89)

G. Amended July 2023; Dckt. 341.

1. Cash Receipts.....\$4,920.06  
2. Cash Disbursements.....(\$5,032.33)  
3. Monthly Net Cash Flow.....(\$112.27)

H. Amended June 2023; Dckt. 339

1. Cash Receipts.....\$4,571.30  
2. Cash Disbursements.....(\$16,147.01)  
3. Monthly Net Cash Flow.....(\$11,575.71)

The cash disbursements included: (1) \$2,000.00 to Valley Home Rice, (2) \$1,000.00 to Valley Home Rice, \$500.00 to Valley Home Rice, and then a (\$3,503.85) to Valley Home Rice. Additionally, there were "Health Insurance Expenses" of: (1) \$32.80, (2) 356.33, (3) \$760.00, (4) \$2,002.00, (5) \$1,750.00, and (6) \$375.60. Dckt. 339 at 7.

I. Amended May 2023; Dckt. 337.

1. Cash Receipts.....\$6,895.43
2. Cash Disbursements.....(\$18,988.76)
3. Monthly Net Cash Flow.....(\$12,093.33)

The cash disbursements include: (1) \$399.58 pet expense, (2) \$1,430.75 pet expense, and (3) \$10,200.00 pet expense. Dckt. 337 at 7.

One might argue that this Debtor/Debtor in Possession has no projected disposable income, but losses money each month of existence.

On the other hand, one might conclude that the Debtor/Debtor in Possession is spending money unnecessarily and unreasonably so as to create the appearance of not having projected disposable income.

In the Creditor's Objection, they raise the liquidation valuation issue with regard to what portion of the Estate's interest in the proceeds from the sale of the real properties can be claimed as exempt by Debtor.

On Amended Schedule C filed on January 25, 2024, Debtor listed the following major exemptions:

- A. \$455,575.00 exemption in Debtor's \$43,600.00 interest in the 13330 Valley Home Rd Property pursuant to California Code of Civil Procedure § 704.730. (This section of the California Code of Civil Procedure states the amount of a homestead exemption.)
- B. \$142,122.00 exemption in Debtor's \$142,122.00 interest in "Settoff Credit vs siblings/Trust" pursuant to California Code of Civil Procedure § 704.730.

At the hearing significant issues were discussed, with the Debtor/Debtor in Possession requesting time to file supplement pleadings to provide information about the business and personal expenses, as well as income from all sources (including Debtor's interests in limited liability companies like Valley Home Rice). Additionally, Debtor will file Supplemental Schedules I and J.

The Debtor shall file and serve the supplemental pleadings on or before January 15, 2025.

The court shall issue an 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 Confirmation of the Subchapter V Plan having been presented to the court, and good cause appearing,

**IT IS ORDERED** that the Plan of Reorganization is **XXXXXXX**.

**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 not Provided. Moving party has not filed a Certificate of Service related to this Motion. At the hearing, **XXXXXXX**

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, Chapter 11 Subchapter V Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
-----.

**The Motion to Dismiss Case is **XXXXXXX**.**

The Debtor/Debtor in Possession, Michael Erich Hofmann, filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and 1112(b)(1).

The Motion states that the case should be dismissed if the Fourth Amended Plan is not confirmed, there no longer being a reasonable likelihood of reorganization in bankruptcy.

Debtor/Debtor in Possession filed his own Declaration to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 441.

## DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

(4) For purposes of this subsection, the term “cause” includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Ninth Circuit has held that, although “section 1112(b) does not explicitly require that cases be filed in ‘good faith,’ courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis.” *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court’s finding that the Chapter 11 Petition was not filed in good faith when “the debtor’s Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond.” *Id.* at 829.

Here Debtor/Debtor in Possession asserts that he will not be able to propose a Plan different from the Fourth Amended Plan, and so if it is not confirmed, the case should be dismissed.

At the hearing, **XXXXXXX**

The court shall issue an 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 Dismiss filed by Michael Erich Hofmann (“ΔIP”) 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 **XXXXXXX**.

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

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

-----

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

Sufficient Notice not Provided. Moving party has not filed a Certificate of Service related to this Motion. At the hearing, **XXXXXXX**

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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, -----

<b>The Motion to Withdraw as Attorney is <b>XXXXXXX</b>.</b>
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Brian Haddix (“Movant”), counsel of record for Michael Erich Hofmann (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant appeals to Rule 1.16(a)(3) for the requested withdrawal, asserting that “continued representation would not only prejudice the Debtor’s case, given Counsel’s compromised capacity to advocate without fear, but potentially place Counsel’s health at risk also. Fresh counsel, free from what Counsel believes is the Court’s negative view of his current representation, will best serve the Debtor’s interests.” Mot. 3:7-10.

#### **APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*



Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(8) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively. . .

CAL. R. PROF'L CONDUCT 1.16(b)(8).

## DISCUSSION

Movant's motivations regarding withdrawal appear to stem from the hearing held in December of 2024 and Movant not receiving responses from interested parties regarding the proposed Plan of Reorganization.

However, with the Plan appearing confirmable, at the hearing, **XXXXXXX**

The court shall issue an 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 Withdraw as Attorney filed by Brian Haddix (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Withdraw as Attorney is **XXXXXXX**.

7. [22-90415-E-7](#)      **JOHN MENDOZA**  
[23-9011](#)  
**WVJP 2021-4, LP V. MENDOZA**

**CONTINUED PRE-TRIAL CONFERENCE**  
**RE: COMPLAINT FOR**  
**NON-DISCHARGEABILITY**  
**6-16-23 [1]**

**Item 7 thru 11**

Plaintiff’s Atty: Brian C. Aton, Jamie P. Dreher  
Defendant’s Atty: Peter G. Macaluso

Adv. Filed: 6/16/23  
Answer: 7/9/23

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

Notes:  
Continued from 1/16/25

<b>The Pretrial Conference is <b>XXXXXXX</b></b>
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**FEBRUARY 20, 2025**  
**CONTINUED PRE-TRIAL CONFERENCE**

A review of the Docket for this Adversary Proceeding the morning of February 18, 2025, revealed that no updated pleadings have been filed.

At the Continued Pre-Trial Conference, **XXXXXXX**

## **SUMMARY OF COMPLAINT**

The Complaint filed by WVJP 2021-4, LP (“Plaintiff”), Dckt. 1, asserts claims for the nondischargeability of debt. Plaintiff is an assignee of a judgment awarded against the Defendant-Debtor. The Complaint includes detailed allegations of multiple transfers of properties, the creation of entities (asserted to be shell entities) which were owned or controlled by Defendant-Debtor for such transfers, and other acts of Debtor.

The First Claim for Relief is one for nondischargeability of debt based on fraud (fraudulent conveyances) pursuant to 11 U.S.C. § 523(a)(2)(A). It is asserted that Defendant-Debtor injured Plaintiff by engaging in fraudulent schemes and committing actual fraud. The fraud consists of alleged fraudulent conveyances by which Defendant-Debtor moved properties through various (shell) entities.

The Second Claim for Relief is for the nondischargeability of Plaintiff’s debt by the various alleged fraudulent conveyances. Having made such alleged fraudulent conveyances, Plaintiff asserts that “injury” was cause Plaintiff.

11 U.S.C. § 523(a)(6) provides that a debt will be nondischargeable “(6) for willful and malicious injury by debtor to another entity; . . . .”

Plaintiff seeks judgement for amounts proven at trial, punitive damages, costs and expenses, and that such judgment is nondischargeable.

## **SUMMARY OF ANSWER**

John Pierre Mendoza (“Defendant-Debtor”) has filed an Answer, Dckt. 8, which first states a general denial of each and every allegation in the Complaint. No exceptions to the general denial are stated.

Defendant-Debtor admits the allegations of federal court jurisdiction, venue, and that this is a Core Matter proceeding.

Defendant-Debtor also denied and admits specific allegations as stated in paragraph 3, 4, and 5 of the Answer. Defendant-Debtor also expressly reserves stating affirmative defenses in the future as discovery proceeds.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff WVJP 2021-4, LP 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). Complaint ¶¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; 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 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.

## **JANUARY 16, 2025 PRE-TRIAL CONFERENCE**

Plaintiffs Gary Farrar, Trustee, and WVJP 2021-4, LP filed their Combined Pre-Trial Statement on January 9, 2025. Dckt. 39. Defendant-Debtor John Mendoza filed his Pre-Trial Statement on January 2, 2025. Dckt. 38.

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients in related Adversary Proceeding 24-9004, which is to be tried with this Adversary Proceeding. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filing of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza's counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza's (Jenae-Desiree Mendoza's father) counsel that the court should just set the trial and when she doesn't show up to present a defense enter judgments against her and La Estrella Enterprises, LLC.

Counsel for Plaintiff and Counsel for John Mendoza each argued that they could not proceed with the litigation in these related Adversary Proceeds without also including obtaining a judgment in the Adversary Proceeding against Ms. Estrella and La Estrella Enterprises, LLC

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025;**
- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
  1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.

- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.
1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

### Pre-Trial Conference Statements

The Parties in their respective Pretrial Conference Statements, Dckts. 39 and 38, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>Plaintiff WVJP 2021-4, LP 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). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; 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 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.</p> <p>This is confirmed in the Plaintiffs Pretrial Statement (p. 1:12-18; Dckt. 39) and Defendant-Debtor’s Pretrial Statement (p. 1:22-28; Dckt. 38).</p>	
<p>Undisputed Facts:</p> <p><u>Citing to the Defendant-Debtor’s Pre-Trial Statement in Adversary Proceeding 24-09004:</u></p>	<p>Undisputed Facts:</p> <p>1. The Debtor filed a voluntary chapter 7 on</p>

<p>1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).</p> <p>2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Cedar Hill Property”).</p> <p>3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.</p> <p>4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035 18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.</p> <p>5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, are not relevant]</p> <p>6. [Whether the Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].</p> <p>7. La Estrella Enterprises, LLC (“La Estrella”) was assigned to Jenae-Desiree Mendoza in 2019.</p> <p>8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor’s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].</p> <p>9. Since the formation of La Estella, Defendant-Debtor has had “control” over Estrella;</p> <p>10. The Civic Plaza, LLC (“The Civic Plaza”) was registered October 17, 2014.</p> <p>11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p> <p><u>Citing to Defendant Lupe Martin’s Pretrial Statement Transmitted to Plaintiffs’ Counsel</u></p> <p>12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent,</p>	<p>November 10, 2022 (“Petition Date”).</p> <p>2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Property”).</p> <p>3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.</p> <p>4. The Debtor scheduled: (a) a vacant lot at 12539 Quail Dr, Placida, FL 33946, (b) a rental house at 1035 18th St., Merced CA 95340, (c) a rental house at 1027 W. 18th St., Merced, Ca 95430, (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and (e) the “Property.”</p> <p>5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.</p> <p>6. The Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21.</p> <p>7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.</p> <p>8. La Estrella was</p>
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<p>servicing debt, and maintaining the properties</p>	<p>capitalized with \$7,500.00.</p> <p>9. Since the formation of La Estrella, Defendant has had “control” rather advisory role, and as a Father.</p> <p>10. The Civic Plaza was registered October 17, 2014.</p> <p>11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p>
<p>Disputed Facts:</p> <p><b>ADV 24-9004</b></p> <p>1. Defendants transferred property with an actual intent to hinder and/or delay (and possibly defraud creditors of the Debtor, including one or more of the following properties (one or more collectively, the “Fraudulently Transferred Property”):</p> <p>a. 1727 N Street, Merced, CA.</p> <p>b. Two (2) Parcels consisting of 6 lots located in Merced County California (commonly known as 1022, 1032 and 1040 W. 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed, recorded in Merced County on July 29, 2014, recordation number 2014-022996.</p> <p>c. One (1) lot located in Tuolumne County, California, commonly known as 20272 Starr King Drive, Soulsbyville, CA), transferred to La Estrella via grant deed, recorded in Tuolumne County on December 15, 2014, recordation number 2014013159. The Debtor transferred this property to La Estrella pursuant to California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same, claiming zero transfer taxes.</p> <p>d. 18361 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013398.</p>	<p>Disputed Facts:</p> <p>1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.”</p> <p>2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.</p> <p>3. The Debtor denies having control over either LLC’s.</p> <p>4. The “vast majority” of these transfers were fraudulent conveyances.</p> <p>5. There are distinct differences between La Estrella and The Civic Plaza.</p> <p>6. The Debtor did not, at all times control La Estrella and The Civic Plaza.</p> <p>7. The Debtor did not</p>

<p>e. 18373 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013399.</p> <p>f. Two (2) Parcels located in Jamestown California (commonly known as 18369 and 18371 Main Street, Jamestown, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003567. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor's sister, Lupe Martin, as the "CEO/Manager" of La Estrella.</p> <p>g. One (1) lot located in Soulsbyville California (commonly known as 20400 Starr King Drive, Soulsbyville, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003568. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>h. One (1) Parcel / portion of NE ¼, located in Twain Harte, California (commonly known as 22622 Twain Harte Drive, Twain Harte, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003566. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>i. Two (2) lots located in Merced California (commonly known as 1014 W 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015010044. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>j. Four (4) lots located in Merced California (commonly known as 2127 O Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015-010043. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>k. One (1) Parcel located in Merced County, California (commonly known as 6845 Camellia Drive, Atwater, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County,</p>	<p>intentionally hinder, delay, or defraud creditors.</p> <p>8. The Defendant did not transfer any properties for less than fair market value.</p> <p>9. The Defendant did not retain either possession or control of any of the transferred properties.</p> <p>10. The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.</p> <p>11. The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.</p> <p>12. The Defendant did not conceal and property of the Estate Post-Petition Date.</p> <p>13. The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.</p> <p>14. The Defendant did not fail to disclose in his schedules his beneficial interests in real property.</p> <p>15. The failure to qualify as a homestead exemption is not due to the Defendant failing to reside at the Property, on the day of filing, but from not continuously residing</p>
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<p>California, on April 15, 2015, recordation number 2015-012181. The grant deed, signed by the Debtor April 15, 2015, identifies the Debtor as the "Manager" of La Estrella.</p> <p>1. One (1) lot located in Merced County, California (commonly known as 1226 Brookdale Drive, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on August 23, 2017, recordation number 2017027149. The grant deed, signed by the Debtor on August 23, 2017, identifies the Debtor's sister, Lupe Martin, as the "Custodian and Manager" of La Estrella.</p> <p>m. 18375 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on or about December 18, 2017, recordation number 2017014570, one week after the Abstract of Judgment of the California Sister-State Judgment was recorded on December 11, 2017, in Tuolumne County, California, and without receiving equivalent value in exchange. The grant deed, signed by the Debtor on December 15, 2017, identifies the Debtor's sister, Lupe Martin, as the "CEO, Manager" of La Estrella.</p> <p>2. The transfers at issue were from Debtor to one or more insider(s), including without limitation the Debtor's daughter and/or sister.</p> <p>3. The Debtor maintained possession and/or control over the fraudulently transferred property.</p> <p>4. Before the transfers were made, the Debtor had been sued or threatened with suit.</p> <p>5. The fraudulent nature of the transfers was concealed and/or not disclosed by the Debtor.</p> <p>6. The transfers, taken together, were of substantially all the Debtor's assets.</p> <p>7. The Debtor either removed his assets, and/or concealed his assets by making it appear that they had been removed from his estate when they had not.</p> <p>8. The Debtor did not receive consideration for the transfers that was reasonably equivalent to the value of the properties transferred by the Debtor.</p> <p>9. The Debtor was insolvent or became insolvent shortly after some or all of the transfers were made.</p>	<p>thereon.</p> <p>16. The Trustee should not recover money/property pursuant to 11 U.S.C. 542.</p>
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10. The transferee of the fraudulently transferred property was not a good faith transferee, did not pay anything for the transfer(s) and may not even have been aware of the transfers at the time they were made (and/or may not have agreed to accept the transfer of the property).

11. In the Debtor's related bankruptcy case, there exists one or more creditors holding unsecured claims that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code, who could have avoided, under California Civil Code § 3439.04, the Fraudulent Transfers.

12. At all material times: (a) the Debtor controlled La Estrella and The Civic Plaza; (b) the Debtor treated the assets of La Estrella and The Civic Plaza as his own; and (c) the Debtor used La Estrella and The Civic Plaza, in conspiracy with (and/or as aided and abetted by) the Defendants, to intentionally hinder, delay, and/or defraud creditors.

13. The Fraudulently Transferred Property was transferred to an insider of the Debtor, to the Debtor himself, or to an entity formed, controlled and operated by the Debtor.

14. The Fraudulently Transferred Property was transferred at the direction of or under the control of the Debtor.

15. The Debtor retained *de facto* possession, custody and/or control of the property transferred, after each of the transfer of the Fraudulently Transferred Property.

16. The Debtor had been sued or threatened with suit before each of the transfers described above were made.

17. Altogether, the transfers of the Fraudulently Transferred Property constituted the transfer of substantially all of the Debtor's assets, and/or left him with insufficient assets to satisfy obligations.

18. The Debtor, Defendants, and others played active roles in the acts and Fraudulent Transfers described above with the actual intent to assist in defrauding the Debtor's creditors; (b) the named Defendant(s) herein, and those acting in concert with them (including without limitation the Debtor's sister and daughter), did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy to deceive and defraud the Debtor's creditors, and to hinder and delay them from collecting amounts owed to them by the Debtor; and (c) the Debtors actions in refinancing the property in May 2022, constituted the last (currently known) overt act in furtherance of the conspiracy to

defraud the Debtor's creditors (such that any otherwise applicable statutes of limitation would have been tolled through this date).

19. As of approximately May 2022, according to loan documents apparently created by a lender, the Debtor sought to refinance a loan secured by a property held by La Estrella, in an effort to release a personal guaranty under said loan, thereby using La Estrella's assets for his own personal benefit. When confronted with this transaction in his 2004 examination, the Debtor claimed not to know what a personal guaranty even was – despite having testified to having purchased and sold over 100 properties.

20. The statute of limitations for fraudulent transfer is further extended to the extent that the Internal Revenue Service is a creditor of the Debtor's bankruptcy estate.

21. The Debtor's bankruptcy estate (and/or the Trustee acting on behalf of said estate) is the equitable owner of the trust *res*.

22. Defendants are constructive trustees of said property (and said title ownership) for the benefit of the true owner (the Debtor's bankruptcy estate).

23. The transfers of Fraudulently Transferred Property alleged herein were made under circumstances showing that the transferee(s) were not intended to take the beneficial interest of the transferred property, but rather that they would receive bare record title thereto, while the Debtor continued to enjoy all the beneficial interests of the property despite passage of record title).

24. After transfer, the Debtor still *de facto* exercised ownership and control over said properties, through the transferee companies he created, and which he installed himself and/or his immediately family as said transferee(s)' owner(s) and/or controllers.

25. After transfer, the Debtor treated the Fraudulently Transferred Property as his own, as if there were no separation of ownership or interest between himself and the entities he created.

26. The Civic Plaza was the interim title holder of the commercial property located at 1727 N Street, Merced, CA, between the Debtor and La Estrella, and in October 2014, the Debtor executed a grant deed of the property to The Civic Plaza stating that the transfer resulted solely in a change in the method of holding title and in which ownership interests remain the same, such that the Debtor was to retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another.

27. Debtor effectively treated The Civic Plaza as an extension of himself, operated it as if it were his dba, and acted as if there were no separate ownership or interest between himself and The Civic Plaza.

28. In November 2021, Transcounty Title Co. handled an escrow for La Estrella involving the disbursement of \$1,424,645.64 in loan proceeds. The Debtor's daughter, acting as La Estrella's manager, attested to signing the documents but later stated she did not recall doing so. The disbursement included hundreds of thousands of dollars in loan payoffs (the "Payoffs"), although she was unaware of the purpose of these Payoffs or whether the loans being paid off were connected to property her father owned personally

29. The Debtor directed these payoffs, and he was able to satisfy his personal debts/loans with these proceeds.

30. With regard to 20272 Starr King Drive, Soulsbyville, California, the Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County on or about December 15, 2014, recordation number 2014013159 (the "20273 Deed") through which the Debtor publicly disclosed a tax exemption for the transfer under California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same.

31. The 20272 Deed evidences: (a) the Debtor's intent that he retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another; and (b) this shows that the Debtor effectively treated La Estrella as an extension of himself, operated it as if it were his dba, and acted as if there were no separation between himself and La Estrella.

32. These filings, essentially asserting that the Debtor's transfers to La Estrella and The Civic Plaza resulted in the mere change in the method of holding title and in which ownership interests remain the same, constitute evidence of the parties' (including the Debtor's) intent, understanding and agreement (whether express, tacit or implied) that the beneficial interest in the properties transferred by the Debtor to La Estrella and The Civic Plaza (i.e., the two properties referenced above and, indeed, all other transfers of property by the Debtor to these entities) was intended to remain with the transferor (i.e., the Debtor), and that the transferred properties in equity and conscience belong to the Debtor's bankruptcy estate and should be used for the benefit of the Debtor's estate.

33. As late as November 8, 2021, the Debtor was still signing

documents on behalf of La Estrella, even though he was no longer even a manger of La Estrella – including an Amendment to Authorization to Register Lender and Fee Agreement, which the Debtor signed on behalf of La Estrella and his daughter signed on behalf of herself individually.

34. As late as approximately May 2022, the Debtor was filling out personal financial statements in his own handwriting, on behalf of his daughter, for her use in obtaining loans on behalf of La Estrella – claiming that La Estrella’s property had a net worth of nearly \$7 million. So too, as late as approximately May 2022, the Debtor was seeking a loan against property whose title was in the name of La Estrella, in order to pay off (or otherwise remove) one or more personal obligations of the Debtor – here again, essentially treating La Estrella (and its property) as if it were his own dba.

35. La Estrella was operated by the Debtor as if it were his own dba, such that in equity and good conscience the Court should disregard the corporate or other legal form of La Estrella in order to hold it liable for the debts of the Debtor, as La Estrella was effectively organized and controlled, and its affairs conducted, so as to make it merely an instrumentality, agency, conduit, or adjunct of the Debtor.

36. Notwithstanding the purported transfers of Fraudulently Transferred Property, said properties are (or should be deemed or determined in equity and good conscience to be) held in a resulting trust by Defendant(s) in order to enforce the intent of the parties (including the Debtor) to the transfer, and Defendants can and should be compelled to transfer all of their interests in said transferred property (including without limitation record title thereto) to the Debtor’s estate.

37. Such a resulting trust has never been repudiated (nor formally acknowledged) by Defendants), no one material party has had actual knowledge or breach of any repudiation of said trust, no one has indicated that he, she or it is holding the property adversely to Plaintiff (or the Debtor’s estate), and/or to the extent there was any repudiation of the trust, or indication that the transferred properties were being held adversely to the transferor (or Plaintiff), said repudiation or indication first arose less than four years from the date of filing of this action.

38. As a result of the foregoing: (a) Defendants received a benefit; and (b) Defendants are unjustly retaining that benefit at the expense of another (in this case, since the Debtor has filed a petition for bankruptcy, at the expense of the Debtor’s estate and, more particularly, the Debtor’s creditors who, without recovery of said

property or the monetary value of the equity lost through the transfers of said property, will not be paid in full on the debts owed to them by the Debtor).

39. Consequently, in equity and good conscience, Defendants can and should be compelled to transfer said property (and record title thereto) to the Debtor's estate, and/or pay the estate an amount equal to the amount by which Defendants have been unjustly enriched as a result of said transfers.

40. As a result of the foregoing: (a) La Estrella is a mere shell and/or instrumentality of the Debtor, that La Estrella is functionally (and functioning as) the Debtor's alter ego, and that all assets and profits of La Estrella belong in equity and good conscience to the Debtor's estate, the Debtor having filed a petition for bankruptcy; and/or (b) there is (or was) a relationship between the Debtor and La Estrella that reflects a degree of confidentiality or closeness.

41. Also as a result of the foregoing, there was (and is): (1) a relationship between the parties that requires an accounting; and (2) a balance due the Plaintiff and that can only be ascertained fully by an accounting.

42. Accordingly, under each of the causes of action alleged above, and under the allegations incorporated herein, Plaintiff (as Trustee of the Debtor's estate) is entitled to an accounting of all assets and profits of La Estrella.

43. As a result of the foregoing, there is an actual and justiciable controversy whether the transferred properties alleged herein were fraudulently transferred (such that a constructive trust should be imposed over the properties for the benefit of the Debtor's estate), or whether the properties were legitimately transferred with an actual or implied promise that only legal title would transfer and that beneficial ownership would remain with the Debtor (such that a resulting trust should be acknowledged over the properties for the benefit of the Debtor's estate), or whether the transfers and conduct herein alleged involved no wrongdoing capable of remediation for the benefit of the Debtor's estate.

44. Accordingly, the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.

ADV 23-9020

45. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed property of the Estate post-Petition Date, including, without limitation to amended according to proof at trial, the following:

- (a) 1727 N Street, Merced, California;
- (b) 18375 Main Street, Jamestown, California;
- (c) 1226 Brookdale Drive, Merced, California;
- (d) 20272 Starr King Drive, Soulsbyville, California;
- (e) 1014 W. 18th Street, Merced, California;
- (f) 1022 W. 18th Street, Merced, California;
- (g) 1032 W. 18th Street, Merced, California;
- (h) 1040 W. 18th Street, Merced, California;
- (i) 18361 Main Street, Jamestown, California;
- (j) 18369 Main Street, Jamestown, California;
- (k) 18371 Main Street, Jamestown, California;
- (l) 18373 Main Street, Jamestown, California;
- (m) 22622 Twain Harte Drive, Twain Harte, California;
- (n) 2127 O Street, Merced, California; and
- (o) 6845 Camellia Drive, Atwater, California.

46. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed and hid assets in which Defendant has an interest by failing to list in his Schedules all assets in which Defendant has an interest.

47. That Defendant knowingly and fraudulently made a false oath or account, including, without limitation to amendment according to proof at trial, the following: (a) failing to disclose in his Schedules his beneficial interests in real property; (b)

<p>claiming on his schedules that his residence is the Property.</p> <p>ADV 23-9011</p> <p>48. Defendant-Debtor committed actual fraud by fraudulently conveying real property to shell entities controlled by Defendant-Debtor. La Estrella was formed by Defendant-Debtor, with the sole member being Defendant-Debtor's then-13 year old daughter. At the time of the transfers at issue, La Estrella's purported "sole member" had not reached the age of majority. Defendant-Debtor identified himself as the CEO or Manager and therefore beneficiary of the transfers.</p> <p>49. Defendant-Debtor, as the beneficiary and recipient of these transfers, obtained the properties through the fraudulent conveyance. Defendant-Debtor did not obtain reasonably equivalent value for any of the conveyances and has not been paid on any of the notes or deeds of trusts on which he is the beneficiary.</p> <p>50. Defendant-Debtor intentionally engaged in the fraudulent conveyances for the purpose of defrauding Plaintiff and frustrating Plaintiff's efforts to enforce its debt.</p> <p>51. Defendant-Debtor's activities described above were conducted with knowledge that he was engaged in a fraudulent scheme.</p> <p>52. Defendant-Debtor injured Plaintiff by knowingly engaging in the fraudulent schemes and committing actual fraud.</p> <p>53. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, had the subjective motive to inflict injury to his creditors, including but not limited to Plaintiff.</p> <p>54. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, believed injury to his creditors was substantially certain to result from the transfers.</p> <p>55. Defendant-Debtor's willful and malicious conduct caused Plaintiff's injury.</p>	
<p>Disputed Evidentiary Issues:</p>	<p>Disputed Evidentiary Issues:</p>



1. None Identified.	1. None identified.
<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. The transfers or real property be set aside and declared void.</li> <li>2. A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property.</li> <li>3. Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and that under Section 551 all liens avoided will be preserved for the benefit of the estate.</li> <li>4. That an order be made declaring that Defendants hold all of the transferred real property described above in trust for Plaintiff, whether involuntarily or voluntarily.</li> <li>5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate.</li> <li>6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants.</li> <li>7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers.</li> <li>8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants.</li> <li>9. For costs and attorneys' fees.</li> </ol>	<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. The Non-Discharge of Debtor.</li> <li>2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.</li> </ol>

<p>10. For punitive damages pursuant to statute and according to proof</p> <p>11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).</p>	
<p>Points of Law:</p> <p>Adv. 24-9004.</p> <p>1. Cal Civ Code § 2223.</p> <p>2. Cal Civ Code § 2224.</p> <p>3. Imposition of a constructive trust, resulting trust. <i>In re Real Estate Associates Ltd. Partnership Litig.</i>, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); <i>Murphy v. T. Rowe Price Prime Reserve Fund, Inc.</i>, 8 F.3d 1420, 1422 (9th Cir.); <i>Burlesci v. Petersen</i>, 68 Cal. App. 4th 1062, 1069 (1998); <i>Martin v. Kehl</i>, 145 Cal. App. 3d 228, 238 (1983); <i>Laing v. Laubach</i>, 233 Cal.App.2d 511, 515 (1965); <i>Berniker v. Berniker</i>, 30 Cal. 2d 439, 447-448 (1947); <i>Majewsky v. Empire Constr. Co.</i>, 2 Cal. 3d 478, 485 (1970) <i>Goodrich v. Briones (In re Schwarzkopf)</i>, 626 F.3d 1032, 1037 (9th Cir. 2010); <i>Cadles of W. Va., LLC v. Alvarez</i>, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal. 2023); <i>Estrada v. Garcia</i>, 132 Cal. App. 2d 545, 552 (1955);</p> <p>4. Resulting trust statute of limitations. <i>Estate of Yool</i>, 151 Cal. App. 4th 867, 875 (2007); <i>Murphy v. Am. Gen. Life Ins. Co.</i>, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).</p> <p>5. Cal Civ § 3439.04(a) statute of limitations. <i>Monastra v. Konica Bus. Machines, U.S.A., Inc.</i>, 43 Cal. App. 4th 1628, 1645 (1996); <i>Wyatt v. Union Mortgage Co.</i>, 24 Cal. 3d 773, 786 (1979); <i>Munoz v. Ashcroft</i>, 339 F.3d 950, 956-957 (2003).</p> <p>6. Constructive trust statute of limitations. <i>Higgins v. Higgins</i>, 11 Cal. App. 5th 648, 659 (2017).</p> <p>7. Unjust enrichment statute of limitations. <i>First Nationwide Savings v. Perry</i>, 11 Cal. App. 4th 1657, 1670 (1992).</p> <p>8. Accounting action statute of limitations. <i>Glue-Fold, Inc. v. Slautterback Corp.</i>, 82 Cal. App. 4th 1018, 1023 (2000); <i>Estate of Peebles</i>, 27 Cal. App. 3d 163, 166 (1972).</p> <p>9. Declaratory relief statute of limitations. <i>Bank of New York Mellon v. Citibank, N.A.</i>, 8 Cal. App. 5th 935, 943; <i>North Star</i></p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(2), (a)(6).</p>

Reinsurance Corp. v. Superior Court, 10 Cal. App. 4th 1815, 1822 (1992).

10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).

11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).

12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of Merced*, 146 Cal. App. 4th 1238, 1250 (2007).

Additional for Adv. 23-9020 and 23-9011.

13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).

14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).

15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).

16. Intent inferred from actions of debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985); *United States v. Swenson (In re Swenson)*, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Freelife, Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .

17. 11 U.S.C. § 727(a)(4)(A); *Song v. Acosta (In re Song)*, 2011 Bankr. LEXIS 4796 at \*13 (B.A.P. 9th Cir. 2011); *In re Retz*, 606 F.3d at 1196; *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); *In re Caneva*, 550 F.3d at 761.

18. Accuracy of schedules and statement of financial affairs. *In re Searles*, 317 B.R. at 377.

19. 11 U.S.C. § 523(a) and preponderance of the evidence standard. *Grogan v. Garner*, 489 U.S. 279, 291 (1991).

20. 11 U.S.C. § 523(a)(2); *In re Lewis*, 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016); *In re Tran*, 301 B.R. 576, 582 (Bankr. N.D. Cal.

2003).	
21. 11 U.S.C. § 523(a)(6); <i>Carrillo v. Su (In re Su)</i> , 290 F.3d 1140, 1143-47 (9th Cir. 2002); <i>Petralia v. Jercich (In re Jercich)</i> , 238 F.3d 1202, 1209 (9th Cir. 2001).	
Abandoned Issues:  1. None identified.	Abandoned Issues:  1. None identified.
Witnesses:  1. Gary Farrar, Chapter 7 Trustee.  2. Loris Bakken, Esq.  3. John Pierre Mendoza.  4. Jenae-Desiree Mendoza.  5. John McCallum.  6. Paul Quinn.	Witnesses:  1. John Pierre Mendoza.  2. Gary Farrar, Chapter 7 Trustee
Exhibits:  1. See Attachment A, Dckt. 39 at pp. 32-38.	Exhibits:  1. Debtor's Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.  2. 2013 John-Pierre Mendoza 2013 Trust Agreement.  3. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 "O" Street, Merced, CA 95340, for \$250,000.00.  4. Grant Deed, Dated 3/30/2015, to La Estrella

	<p>Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.</p> <p>5. Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for \$168,000.00.</p> <p>6. Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.</p> <p>7. Debtor's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.</p> <p>8. The Civic Plaza, LLC's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.</p> <p>9. JANAE-DESIREE MENDOZA 2015 TAX RETURNS.</p> <p>10. JOHN-PIERRE MENDOZA 2019 TAX RETURNS.</p> <p>11. JOHN-PIERRE MENDOZA 2020 TAX RETURNS.</p> <p>12. JOHN-PIERRE MENDOZA 2021 TAX RETURNS.</p> <p>13. JOHN-PIERRE</p>
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	<p>MENDOZA 2022 TAX RETURNS.</p> <p>14. LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.</p> <p>15. JOHN-PIERRE MENDOZA 2023 TAX RETURNS.</p> <p>16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.</p> <p>17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.</p> <p>18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024 1. 23955 Cedar Hill Ln</p> <p>19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024 1. 1022 W. 18TH St. 2. 1027 W. 18th St. 3. 1032 W. 18TH St. 4. 1035 W 18th St 5. 1040 W. 18TH St. 6. 20272 Starr King Dr. 7. 20400 Starr King Dr. 8. 18373 Main St. 9. 18361 Main St. 10. 2127 O St. 11. 1014 W. 18th St. 12. 22622 Twain Hart Dr. 13. 18369 Main St. 14. 18371 Main St. 15. 18375 Main St. 16. 6845 W. Camellia Dr. 17. 1226 Brookdale Dr. 18. 1727 N St.</p>
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	<p>20. DWELLING FIRE POLICY EFFECTIVE 7/23-24 (23955 Cedar Hill Lane)</p> <p>21. RENTS RECEIVED AND AMOUNTS PAID 11/22 - 8/31/24</p> <p>1. 1027 w. 18TH St. 2. 1035 W. 18th St. 3. 23955 Cedar Hill Ln.</p> <p>22. 22. PROPERTY ANALYSIS CALENDAR YEAR 2012.</p> <p>23. PROPERTIES SOLD TO LA ESTRELLA 2014 - 2022.</p> <p>24. PROPERTY VALUES LA ESTRELLA 2015.</p> <p>25. PROPERTIES SOLD TO LEEC 1980 - 2006</p> <p>1. 1022 W. 18th St. 2. 1032 W. 18th St. 3. 1040 W. 18th St. 4. 20272 Starr King Dr. 5. 20400 Starr King Dr. 6. 18373 Main St. 7. 18361 Main St. 8. 2127 O St. 9. 1014 W. 18th St. 10. 22622 Twain Harte Rd. 11. 18369 Main St. 12. 18371 Main St. 13. 18375-18377 Main St. 14. 6845 Camellia St. 15. 1226 Brookdale Dr.</p> <p>26. APPRAISAL 1032 W. 18TH ST. 6/08/11</p>
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	27. APPRAISAL 1014 W. 18TH ST. 6/08/11
	28. APPRAISAL 1226 BROOKDALE RD. 6/10/11
	29. APPRAISAL 18375-18377 MAIN ST 9/13/11
	30. APPRAISAL 18371 MAIN ST. 9/13/11
	31. APPRAISAL 18369 MAIN ST. 9/13/11
	32. APPRAISAL 20400 STARR KING DR 9/13/11
	33. APPRAISAL 20272 STARR KING DR 9/13/11
	34. LOAN MOD. EATON, MICHIGAN 4/01/12
	35. 2013 TRUST AGREEMENT 10/15/13
	36. OPERATING AG. LA ESTRELLA 4/07/14
	37. ART. OF OR. LA ESTRELLA 4/07/14
	38. ART. OF OR. CIVIC PLAZA 4/17/14
	39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14
	40. OP AGREE. LA ESTRELLA, LLC 4/07/14
	41. MORTGAGE MODIFICATION 6/24/14



	42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14
	43. CONTRACT FOR DEED 8/18/14
	44. OFFER 18361/18373 MAIN ST 9/30/14
	45. GRANT DEED PARCEL 031-044-018 9/18/14
	46. JUDGMENT EATON. MICHIGAN 4/03/15
	47. ORDER GRANTING MOTION TO SELL 4/20/15
	48. PROMISSORY NOTE 6/01/15
	49. 2015 FORM 1099-S 6/12/15
	50. SELLER'S CLOSING STATEMENT 6/12/15
	51. PROPERTY MGMT AGREEMENT 7/01/15
	52. DEBTOR'S REPORT OF SALE 8/27/15
	53. ORDER GRANTING SJM 5/23/17
	54. CONTRACT FOR DEED 6/10/17
	55. GRANT DEED 12/18/17
	56. GRANT DEED

	<p>12/18/17</p> <p>57. GRANT DEED 7/06/16</p> <p>58. WARRANTY DEED 7/06/16</p> <p>59. SELLER PACKAGE 10/23/19</p> <p>60. JPM RESIDENTIAL LEASE 11/23/22</p> <p>61. SECOND AMENDED OP AGREEMENT 11/23/22</p>
<p>Discovery Documents:</p> <p>1. Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.</p> <p>2. Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.</p> <p>3. Deposition of Defendant John Mendoza, taken December 8, 2023.\</p> <p>4. Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.</p> <p>5. Deposition of Lupe Martin, taken September 24, 2024.</p> <p>6. Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.</p>	<p>Discovery Documents:</p> <p>1. None identified.</p>
<p>Further Discovery or Motions:</p> <p>1. None identified.</p>	<p>Further Discovery or Motions:</p> <p>1. None identified.</p>
<p>Stipulations:</p> <p>1. None identified.</p>	<p>Stipulations:</p> <p>1. None identified.</p>

Amendments:  1. None identified.	Amendments:  1. None identified.
Dismissals:  1. None identified.	Dismissals:  1. None identified.
Agreed Statement of Facts:  1. None identified.	Agreed Statement of Facts:  1. None identified.
Attorneys' Fees Basis:  1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller &amp; Associates, Inc.</i> , 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.	Attorneys' Fees Basis:  1. "Pursuant to 11 U.S.C. §"
Additional Items  1. None identified.	Additional Items  1. None identified.
Trial Time Estimation: 3-5 days.	Trial Time Estimation: 2 days.

8. [22-90415-E-7](#)      **JOHN MENDOZA**  
[23-9020](#)  
**FARRAR V. MENDOZA**

**CONTINUED PRE-TRIAL CONFERENCE**  
**RE: COMPLAINT FOR DENIAL OF**  
**DEBTOR'S DISCHARGE**  
**10-16-23 [1]**

Plaintiff's Atty: Jeffrey I. Golden, Beth E. Gaschen  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 10/16/23  
Answer: 10/24/23

Nature of Action:  
Objection / revocation of discharge

Notes:  
Continued from 1/16/25

<b>The Pre-Trial Conference is <span style="color: red;">XXXXXXX</span></b>
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**FEBRUARY 20, 2025**  
**CONTINUED PRE-TRIAL CONFERENCE**

A review of the Docket for this Adversary Proceeding the morning of February 18, 2025, revealed that no updated pleadings have been filed.

At the Continued Pre-Trial Conference, XXXXXXX

**SUMMARY OF COMPLAINT**

The Complaint filed by Gary Farrar, the Chapter 7 Trustee in Bankruptcy Case 22-90415, ("Plaintiff-Trustee"), Dckt. 1 , asserts claims for entry of a discharge in Defendant-Debtor's Chapter 7 Bankruptcy Case. The basis for such relief stated in the Complaint include the following. It is alleged that beginning in 2014 Defendant-Debtor has owned as many as 37 properties and has engaged in a series of transfers to prevent creditors from reaching such assets. It is alleged that Defendant-Debtor organized limited liability companies to be the transferees of such properties.

It is alleged that these limited liability companies were controlled by Defendant-Debtor and Defendant-Debtor's family members (including minor children being named as the sole member of the LLC). It is alleged that Defendant-Debtor continues in the control and management of these assets. The Complaint contains a very detailed statement of the basis for the claims asserted against Defendant-Debtor. Denial of discharge is requested pursuant to 11 U.S.C. § 727(a)(2)(B) [transfer, removal, destruction of

property of the estate after the filing of the petition] and § 727(a)(4)(A) [knowing and fraudulent false oath or account in connection with the bankruptcy case].

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff-Trustee 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)(A), (J), and (O). Complaint ¶¶ 1, Dckt. 1. In the Answer, Defendant-Debtor admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 2; Dckt. 1. 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.

## **JANUARY 16, 2025 PRE-TRIAL CONFERENCE**

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients in related Adversary Proceeding 24-9004, which is to be tried with this Adversary Proceeding. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filing of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza’s counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza’s (Jenae-Desiree Mendoza’s father) counsel that the court should just set the trial and when she doesn’t show up to present a defense enter judgments again her and La Estrella Enterprises, LLC.

Counsel for Plaintiff and Counsel for John Mendoza each argued that they could not proceed with the litigation in these related Adversary Proceeds without also including obtaining a judgment in the Adversary Proceeding against Ms. Estrella and La Estrella Enterprises, LLC

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025;**

- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.
- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.
1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

### Pre-Trial Conference Statements

The Parties in their respective Pretrial Conference Statements, Dckts. 35 and 34, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

Jurisdiction and Venue:

Plaintiff WVJP 2021-4, LP 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). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; 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 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.

This is confirmed in the Plaintiffs Pretrial Statement (p. 1:12-18; Dckt. 35) and Defendant-Debtor's Pretrial Statement (p. 1:25-28, 2:1-3; Dckt. 34).

Undisputed Facts:

Citing to the Defendant-Debtor's Pre-Trial Statement in Adversary Proceeding 24-09004:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date").
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the "Cedar Hill Property").
3. The Debtor did not qualify for the "Homestead" exemption because he did not continuously reside at the Property.
4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035 18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.
5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor's pre-trial statement as undisputed fact 5, are not relevant]
6. [Whether the Defendant's sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor's pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
7. La Estrella Enterprises, LLC ("La Estrella") was assigned to Jenae-Desiree Mendoza in 2019.
8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor's pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
9. Since the formation of La Estrella, Defendant-Debtor has had "control" over Estrella;
10. The Civic Plaza, LLC ("The Civic Plaza") was registered October 17, 2014.

Undisputed Facts:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date").
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the "Property").
3. The Debtor did not qualify for the "Homestead" exemption because he did not continuously reside at the Property.
4. The Debtor scheduled:
  - (a) a vacant lot at 12539 Quail Dr, Placida, FL 33946,
  - (b) a rental house at 1035 18th St., Merced CA 95340,
  - (c) a rental house at 1027 W. 18th St., Merced, Ca 95430,
  - (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and
  - (e) the "Property."
5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.
6. The Defendant's sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21.

<p>11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p> <p><u>Citing to Defendant Lupe Martin’s Pretrial Statement Transmitted to Plaintiffs’ Counsel</u></p> <p>12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties</p>	<p>7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.</p> <p>8. La Estrella was capitalized with \$7,500.00.</p> <p>9. Since the formation of La Estrella, Defendant has had “control” rather advisory role, and as a Father.</p> <p>10. The Civic Plaza was registered October 17, 2014.</p> <p>11. The Civic Plaze was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p>
<p>Disputed Facts:</p> <p>ADV 24-9004</p> <p>1. 1. Defendants transferred property with an actual intent to hinder and/or delay (and possibly defraud creditors of the Debtor, including one or more of the following properties (one or more collectively, the “Fraudulently Transferred Property”):</p> <p>a. 1727 N Street, Merced, CA.</p> <p>b. Two (2) Parcels consisting of 6 lots located in Merced County California (commonly known as 1022, 1032 and 1040 W. 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed, recorded in Merced County on July 29, 2014, recordation number 2014-022996.</p> <p>c. One (1) lot located in Tuolumne County, California, commonly known as 20272 Starr King Drive, Soulsbyville, CA), transferred to La Estrella via grant deed, recorded in Tuolumne County on December 15, 2014, recordation number 2014013159. The Debtor transferred this property to La Estrella pursuant to California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same, claiming zero transfer</p>	<p>Disputed Facts:</p> <p>1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.”</p> <p>2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.</p> <p>3. The Debtor denies having control over either LLC’s.</p> <p>4. The “vast majority” of these transfers were fraudulent conveyances.</p> <p>5. There are distinct differences between La Estrella and The Civic Plaza.</p>



<p>taxes.</p> <p>d. 18361 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013398.</p> <p>e. 18373 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013399.</p> <p>f. Two (2) Parcels located in Jamestown California (commonly known as 18369 and 18371 Main Street, Jamestown, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003567. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor's sister, Lupe Martin, as the "CEO/Manager" of La Estrella.</p> <p>g. One (1) lot located in Soulsbyville California (commonly known as 20400 Starr King Drive, Soulsbyville, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003568. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>h. One (1) Parcel / portion of NE ¼, located in Twain Harte, California (commonly known as 22622 Twain Harte Drive, Twain Harte, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003566. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>i. Two (2) lots located in Merced California (commonly known as 1014 W 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015010044. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>j. Four (4) lots located in Merced California (commonly known as 2127 O Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015-010043. The grant deed,</p>	<p>6. The Debtor did not, at all times control La Estrella and The Civic Plaza.</p> <p>7. The Debtor did not intentionally hinder, delay, or defraud creditors.</p> <p>8. The Defendant did not transfer any properties for less than fair market value.</p> <p>9. The Defendant did not retain either possession or control of any of the transferred properties.</p> <p>10. The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.</p> <p>11. The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.</p> <p>12. The Defendant did not conceal and property of the Estate Post-Petition Date.</p> <p>13. The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.</p> <p>14. The Defendant did not fail to disclose in his schedules his beneficial interests in real property.</p> <p>15. The failure to qualify as a homestead exemption is not due to the Defendant failing</p>
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<p>signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.</p> <p>k. One (1) Parcel located in Merced County, California (commonly known as 6845 Camellia Drive, Atwater, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on April 15, 2015, recordation number 2015-012181. The grant deed, signed by the Debtor April 15, 2015, identifies the Debtor as the "Manager" of La Estrella.</p> <p>l. One (1) lot located in Merced County, California (commonly known as 1226 Brookdale Drive, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on August 23, 2017, recordation number 2017027149. The grant deed, signed by the Debtor on August 23, 2017, identifies the Debtor's sister, Lupe Martin, as the "Custodian and Manager" of La Estrella.</p> <p>m. 18375 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on or about December 18, 2017, recordation number 2017014570, one week after the Abstract of Judgment of the California Sister-State Judgment was recorded on December 11, 2017, in Tuolumne County, California, and without receiving equivalent value in exchange. The grant deed, signed by the Debtor on December 15, 2017, identifies the Debtor's sister, Lupe Martin, as the "CEO, Manager" of La Estrella.</p> <p>2. The transfers at issue were from Debtor to one or more insider(s), including without limitation the Debtor's daughter and/or sister.</p> <p>3. The Debtor maintained possession and/or control over the fraudulently transferred property.</p> <p>4. Before the transfers were made, the Debtor had been sued or threatened with suit.</p> <p>5. The fraudulent nature of the transfers was concealed and/or not disclosed by the Debtor.</p> <p>6. The transfers, taken together, were of substantially all the Debtor's assets.</p> <p>7. The Debtor either removed his assets, and/or concealed his</p>	<p>to reside at the Property, on the day of filing, but from not continuously residing thereon.</p> <p>16. The Trustee should not recover money/property pursuant to 11 U.S.C. 542.</p> <p>17. The Defendant should not be denied a discharge pursuant to 11 U.S.C. 727(a)(2).</p> <p>18. The Defendant should not be denied a discharge pursuant to 11 U.S.C. 727(a)(4)(A).</p>
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assets by making it appear that they had been removed from his estate when they had not.

8. The Debtor did not receive consideration for the transfers that was reasonably equivalent to the value of the properties transferred by the Debtor.

9. The Debtor was insolvent or became insolvent shortly after some or all of the transfers were made.

10. The transferee of the fraudulently transferred property was not a good faith transferee, did not pay anything for the transfer(s) and may not even have been aware of the transfers at the time they were made (and/or may not have agreed to accept the transfer of the property).

11. In the Debtor's related bankruptcy case, there exists one or more creditors holding unsecured claims that are allowable under section 502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code, who could have avoided, under California Civil Code § 3439.04, the Fraudulent Transfers.

12. At all material times: (a) the Debtor controlled La Estrella and The Civic Plaza; (b) the Debtor treated the assets of La Estrella and The Civic Plaza as his own; and (c) the Debtor used La Estrella and The Civic Plaza, in conspiracy with (and/or as aided and abetted by) the Defendants, to intentionally hinder, delay, and/or defraud creditors.

13. The Fraudulently Transferred Property was transferred to an insider of the Debtor, to the Debtor himself, or to an entity formed, controlled and operated by the Debtor.

14. The Fraudulently Transferred Property was transferred at the direction of or under the control of the Debtor.

15. The Debtor retained *de facto* possession, custody and/or control of the property transferred, after each of the transfer of the Fraudulently Transferred Property.

16. The Debtor had been sued or threatened with suit before each of the transfers described above were made.

17. Altogether, the transfers of the Fraudulently Transferred Property constituted the transfer of substantially all of the Debtor's assets, and/or left him with insufficient assets to satisfy obligations.

18. The Debtor, Defendants, and others played active roles in the acts and Fraudulent Transfers described above with the actual intent to assist in defrauding the Debtor's creditors; (b) the named Defendant(s) herein, and those acting in concert with them (including without limitation the Debtor's sister and daughter), did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy to deceive and defraud the Debtor's creditors, and to hinder and delay them from collecting amounts owed to them by the Debtor; and (c) the Debtors actions in refinancing the property in May 2022, constituted the last (currently known) overt act in furtherance of the conspiracy to defraud the Debtor's creditors (such that any otherwise applicable statutes of limitation would have been tolled through this date).

19. As of approximately May 2022, according to loan documents apparently created by a lender, the Debtor sought to refinance a loan secured by a property held by La Estrella, in an effort to release a personal guaranty under said loan, thereby using La Estrella's assets for his own personal benefit. When confronted with this transaction in his 2004 examination, the Debtor claimed not to know what a personal guaranty even was – despite having testified to having purchased and sold over 100 properties.

20. The statute of limitations for fraudulent transfer is further extended to the extent that the Internal Revenue Service is a creditor of the Debtor's bankruptcy estate.

21. The Debtor's bankruptcy estate (and/or the Trustee acting on behalf of said estate) is the equitable owner of the trust *res*.

22. Defendants are constructive trustees of said property (and said title ownership) for the benefit of the true owner (the Debtor's bankruptcy estate).

23. The transfers of Fraudulently Transferred Property alleged herein were made under circumstances showing that the transferee(s) were not intended to take the beneficial interest of the transferred property, but rather that they would receive bare record title thereto, while the Debtor continued to enjoy all the beneficial interests of the property despite passage of record title).

24. After transfer, the Debtor still *de facto* exercised ownership and control over said properties, through the transferee companies he created, and which he installed himself and/or his immediately family as said transferee(s)' owner(s) and/or controllers.

25. After transfer, the Debtor treated the Fraudulently Transferred Property as his own, as if there were no separation of ownership or interest between himself and the entities he created.

26. The Civic Plaza was the interim title holder of the commercial property located at 1727 N Street, Merced, CA, between the Debtor and La Estrella, and in October 2014, the Debtor executed a grant deed of the property to The Civic Plaza stating that the transfer resulted solely in a change in the method of holding title and in which ownership interests remain the same, such that the Debtor was to retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another.

27. Debtor effectively treated The Civic Plaza as an extension of himself, operated it as if it were his dba, and acted as if there were no separate ownership or interest between himself and The Civic Plaza.

28. In November 2021, Transcounty Title Co. handled an escrow for La Estrella involving the disbursement of \$1,424,645.64 in loan proceeds. The Debtor's daughter, acting as La Estrella's manager, attested to signing the documents but later stated she did not recall doing so. The disbursement included hundreds of thousands of dollars in loan payoffs (the "Payoffs"), although she was unaware of the purpose of these Payoffs or whether the loans being paid off were connected to property her father owned personally

29. The Debtor directed these payoffs, and he was able to satisfy his personal debts/loans with these proceeds.

30. With regard to 20272 Starr King Drive, Soulsbyville, California, the Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County on or about December 15, 2014, recordation number 2014013159 (the "20273 Deed") through which the Debtor publicly disclosed a tax exemption for the transfer under California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same.

31. The 20272 Deed evidences: (a) the Debtor's intent that he retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another; and (b) this shows that the Debtor effectively treated La Estrella as an extension of himself, operated it as if it were his dba, and acted as if there were no separation between himself and La Estrella.

32. These filings, essentially asserting that the Debtor's transfers to La Estrella and The Civic Plaza resulted in the mere change in the method of holding title and in which ownership interests remain the same, constitute evidence of the parties' (including the Debtor's) intent, understanding and agreement (whether express, tacit or implied) that the beneficial interest in the properties transferred by the Debtor to La Estrella and The Civic Plaza (i.e., the two properties referenced above and, indeed, all other transfers of property by the Debtor to these entities) was intended to remain with the transferor (i.e., the Debtor), and that the transferred properties in equity and conscience belong to the Debtor's bankruptcy estate and should be used for the benefit of the Debtor's estate.

33. As late as November 8, 2021, the Debtor was still signing documents on behalf of La Estrella, even though he was no longer even a manager of La Estrella – including an Amendment to Authorization to Register Lender and Fee Agreement, which the Debtor signed on behalf of La Estrella and his daughter signed on behalf of herself individually.

34. As late as approximately May 2022, the Debtor was filling out personal financial statements in his own handwriting, on behalf of his daughter, for her use in obtaining loans on behalf of La Estrella – claiming that La Estrella's property had a net worth of nearly \$7 million. So too, as late as approximately May 2022, the Debtor was seeking a loan against property whose title was in the name of La Estrella, in order to pay off (or otherwise remove) one or more personal obligations of the Debtor – here again, essentially treating La Estrella (and its property) as if it were his own dba.

35. La Estrella was operated by the Debtor as if it were his own dba, such that in equity and good conscience the Court should disregard the corporate or other legal form of La Estrella in order to hold it liable for the debts of the Debtor, as La Estrella was effectively organized and controlled, and its affairs conducted, so as to make it merely an instrumentality, agency, conduit, or adjunct of the Debtor.

36. Notwithstanding the purported transfers of Fraudulently Transferred Property, said properties are (or should be deemed or determined in equity and good conscience to be) held in a resulting trust by Defendant(s) in order to enforce the intent of the parties (including the Debtor) to the transfer, and Defendants can and should be compelled to transfer all of their interests in said transferred property (including without limitation record title thereto) to the Debtor's estate.

37. Such a resulting trust has never been repudiated (nor formally acknowledged) by Defendants), no one material party has had actual knowledge or breach of any repudiation of said trust, no one has indicated that he, she or it is holding the property adversely to Plaintiff (or the Debtor's estate), and/or to the extent there was any repudiation of the trust, or indication that the transferred properties were being held adversely to the transferor (or Plaintiff), said repudiation or indication first arose less than four years from the date of filing of this action.

38. As a result of the foregoing: (a) Defendants received a benefit; and (b) Defendants are unjustly retaining that benefit at the expense of another (in this case, since the Debtor has filed a petition for bankruptcy, at the expense of the Debtor's estate and, more particularly, the Debtor's creditors who, without recovery of said property or the monetary value of the equity lost through the transfers of said property, will not be paid in full on the debts owed to them by the Debtor).

39. Consequently, in equity and good conscience, Defendants can and should be compelled to transfer said property (and record title thereto) to the Debtor's estate, and/or pay the estate an amount equal to the amount by which Defendants have been unjustly enriched as a result of said transfers.

40. As a result of the foregoing: (a) La Estrella is a mere shell and/or instrumentality of the Debtor, that La Estrella is functionally (and functioning as) the Debtor's alter ego, and that all assets and profits of La Estrella belong in equity and good conscience to the Debtor's estate, the Debtor having filed a petition for bankruptcy; and/or (b) there is (or was) a relationship between the Debtor and La Estrella that reflects a degree of confidentiality or closeness.

41. Also as a result of the foregoing, there was (and is): (1) a relationship between the parties that requires an accounting; and (2) a balance due the Plaintiff and that can only be ascertained fully by an accounting.

42. Accordingly, under each of the causes of action alleged above, and under the allegations incorporated herein, Plaintiff (as Trustee of the Debtor's estate) is entitled to an accounting of all assets and profits of La Estrella.

43. As a result of the foregoing, there is an actual and justiciable controversy whether the transferred properties alleged herein were fraudulently transferred (such that a constructive trust should be imposed over the properties for the benefit of the Debtor's estate), or

whether the properties were legitimately transferred with an actual or implied promise that only legal title would transfer and that beneficial ownership would remain with the Debtor (such that a resulting trust should be acknowledged over the properties for the benefit of the Debtor's estate), or whether the transfers and conduct herein alleged involved no wrongdoing capable of remediation for the benefit of the Debtor's estate.

44. Accordingly, the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.

ADV 23-9020

45. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed property of the Estate post-Petition Date, including, without limitation to amended according to proof at trial, the following:

- (a) 1727 N Street, Merced, California;
- (b) 18375 Main Street, Jamestown, California;
- (c) 1226 Brookdale Drive, Merced, California;
- (d) 20272 Starr King Drive, Soulsbyville, California;
- (e) 1014 W. 18th Street, Merced, California;
- (f) 1022 W. 18th Street, Merced, California;
- (g) 1032 W. 18th Street, Merced, California;
- (h) 1040 W. 18th Street, Merced, California;
- (i) 18361 Main Street, Jamestown, California;
- (j) 18369 Main Street, Jamestown, California;
- (k) 18371 Main Street, Jamestown, California;
- (l) 18373 Main Street, Jamestown, California;
- (m) 22622 Twain Harte Drive, Twain Harte, California;
- (n) 2127 O Street, Merced, California; and



(o) 6845 Camellia Drive, Atwater, California.

46. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed and hid assets in which Defendant has an interest by failing to list in his Schedules all assets in which Defendant has an interest.

47. That Defendant knowingly and fraudulently made a false oath or account, including, without limitation to amendment according to proof at trial, the following: (a) failing to disclose in his Schedules his beneficial interests in real property; (b) claiming on his schedules that his residence is the Property.

ADV 23-9011

48. Defendant-Debtor committed actual fraud by fraudulently conveying real property to shell entities controlled by Defendant-Debtor. La Estrella was formed by Defendant-Debtor, with the sole member being Defendant-Debtor's then-13 year old daughter. At the time of the transfers at issue, La Estrella's purported "sole member" had not reached the age of majority. Defendant-Debtor identified himself as the CEO or Manager and therefore beneficiary of the transfers.

49. Defendant-Debtor, as the beneficiary and recipient of these transfers, obtained the properties through the fraudulent conveyance. Defendant-Debtor did not obtain reasonably equivalent value for any of the conveyances and has not been paid on any of the notes or deeds of trusts on which he is the beneficiary.

50. Defendant-Debtor intentionally engaged in the fraudulent conveyances for the purpose of defrauding Plaintiff and frustrating Plaintiff's efforts to enforce its debt.

51. Defendant-Debtor's activities described above were conducted with knowledge that he was engaged in a fraudulent scheme.

52. Defendant-Debtor injured Plaintiff by knowingly engaging in the fraudulent schemes and committing actual fraud.

<p>53. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, had the subjective motive to inflict injury to his creditors, including but not limited to Plaintiff.</p> <p>54. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, believed injury to his creditors was substantially certain to result from the transfers.</p> <p>55. Defendant-Debtor's willful and malicious conduct caused Plaintiff's injury.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None identified.</p>
<p>Relief Sought:</p> <p>1. The transfers or real property be set aside and declared void.</p> <p>2. A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property.</p> <p>3. Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and that under Section 551 all liens avoided will be preserved for the benefit of the estate.</p> <p>4. That an order be made declaring that Defendants hold all of the transferred real property described above in trust for Plaintiff, whether involuntarily or voluntarily.</p> <p>5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate.</p> <p>6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La</p>	<p>Relief Sought:</p> <p>1. The Non-Discharge of Debtor.</p> <p>2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.</p>

<p>Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants.</p> <p>7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers.</p> <p>8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants.</p> <p>9. For costs and attorneys' fees.</p> <p>10. For punitive damages pursuant to statute and according to proof</p> <p>11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).</p> <p>12.</p>	
<p>Points of Law:</p> <p>Adv. 24-9004.</p> <p>1. Cal Civ Code § 2223.</p> <p>2. Cal Civ Code § 2224.</p> <p>3. Imposition of a constructive trust, resulting trust. <i>In re Real Estate Associates Ltd. Partnership Litig.</i>, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); <i>Murphy v. T. Rowe Price Prime Reserve Fund, Inc.</i>, 8 F.3d 1420, 1422 (9th Cir.); <i>Burlesci v. Petersen</i>, 68 Cal. App. 4th 1062, 1069 (1998); <i>Martin v. Kehl</i>, 145 Cal. App. 3d 228, 238 (1983); <i>Laing v. Laubach</i>, 233 Cal.App.2d 511, 515 (1965); <i>Berniker v. Berniker</i>, 30 Cal. 2d 439, 447-448 (1947); <i>Majewsky v. Empire Constr. Co.</i>, 2 Cal. 3d 478, 485 (1970) <i>Goodrich v. Briones (In re Schwarzkopf)</i>, 626 F.3d 1032, 1037 (9th Cir. 2010); <i>Cadles of W. Va., LLC v. Alvarez</i>, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal. 2023); <i>Estrada v. Garcia</i>, 132 Cal. App. 2d 545, 552 (1955);</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 727(a)(2), (a)(4)(A).</p>

4. Resulting trust statute of limitations. *Estate of Yool*, 151 Cal. App. 4th 867, 875 (2007); *Murphy v. Am. Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).
  5. Cal Civ § 3439.04(a) statute of limitations. *Monastra v. Konica Bus. Machines, U.S.A., Inc.*, 43 Cal. App. 4th 1628, 1645 (1996); *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 786 (1979); *Munoz v. Ashcroft*, 339 F.3d 950, 956-957 (2003).
  6. Constructive trust statute of limitations. *Higgins v. Higgins*, 11 Cal. App. 5th 648, 659 (2017).
  7. Unjust enrichment statute of limitations. *First Nationwide Savings v. Perry*, 11 Cal. App. 4th 1657, 1670 (1992).
  8. Accounting action statute of limitations. *Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000); *Estate of Peebles*, 27 Cal. App. 3d 163, 166 (1972).
  9. Declaratory relief statute of limitations. *Bank of New York Mellon v. Citibank, N.A.*, 8 Cal. App. 5th 935, 943; *North Star Reinsurance Corp. v. Superior Court*, 10 Cal. App. 4th 1815, 1822 (1992).
  10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).
  11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).
  12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of Merced*, 146 Cal. App. 4th 1238, 1250 (2007).
- Additional for Adv. 23-9020 and 23-9011.
13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).
  14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).
  15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson*

<p>(<i>In re Lawson</i>), 122 F.3d 1237, 1240 (9th Cir. 1997).</p> <p>16. Intent inferred from actions of debtor. <i>In re Devers</i>, 759 F.2d 751, 753-54 (9th Cir. 1985); <i>United States v. Swenson (In re Swenson)</i>, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); <i>In re Adeeb</i>, 787 F.2d 1339, 1343 (9th Cir. 1986); <i>Freelife, Int'l, LLC v. Butler (In re Butler)</i>, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .</p> <p>17. 11 U.S.C. § 727(a)(4)(A); <i>Song v. Acosta (In re Song)</i>, 2011 Bankr. LEXIS 4796 at *13 (B.A.P. 9th Cir. 2011); <i>In re Retz</i>, 606 F.3d at 1196; <i>Hansen v. Moore (In re Hansen)</i>, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); <i>In re Caneva</i>, 550 F.3d at 761.</p> <p>18. Accuracy of schedules and statement of financial affairs. <i>In re Searles</i>, 317 B.R. at 377.</p> <p>19. 11 U.S.C. § 523(a) and preponderance of the evidence standard. <i>Grogan v. Garner</i>, 489 U.S. 279, 291 (1991).</p> <p>20. 11 U.S.C. § 523(a)(2); <i>In re Lewis</i>, 551 B.R. 41, 48 (Bankr. E.D. Cal. 2016); <i>In re Tran</i>, 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003).</p> <p>21. 11 U.S.C. § 523(a)(6); <i>Carrillo v. Su (In re Su)</i>, 290 F.3d 1140, 1143-47 (9th Cir. 2002); <i>Petralia v. Jercich (In re Jercich)</i>, 238 F.3d 1202, 1209 (9th Cir. 2001).</p>	
<p>Abandoned Issues:</p> <p>1. None identified.</p>	<p>Abandoned Issues:</p> <p>1. None identified.</p>
<p>Witnesses:</p> <p>1. Gary Farrar, Chapter 7 Trustee.</p> <p>2. Loris Bakken, Esq.</p> <p>3. John Pierre Mendoza.</p> <p>4. Jenae-Desiree Mendoza.</p> <p>5. John McCallum.</p> <p>6. Paul Quinn.</p>	<p>Witnesses:</p> <p>1. John Pierre Mendoza.</p> <p>2. Gary Farrar, Chapter 7 Trustee</p>

Exhibits:

1. See Attachment A, Dckt. 39 at pp. 32-38.

Exhibits:

1. Debtor's Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.
2. 2013 John-Pierre Mendoza 2013 Trust Agreement.
3. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 "O" Street, Merced, CA 95340, for \$250,000.00.
4. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.
5. Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for \$168,000.00.
6. Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.
7. Debtor's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.
8. The Civic Plaza, LLC's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.

	<p>9. JANAE-DESIREE MENDOZA 2015 TAX RETURNS.</p> <p>10. JOHN-PIERRE MENDOZA 2019 TAX RETURNS.</p> <p>11. JOHN-PIERRE MENDOZA 2020 TAX RETURNS.</p> <p>12. JOHN-PIERRE MENDOZA 2021 TAX RETURNS.</p> <p>13. JOHN-PIERRE MENDOZA 2022 TAX RETURNS.</p> <p>14. LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.</p> <p>15. JOHN-PIERRE MENDOZA 2023 TAX RETURNS.</p> <p>16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.</p> <p>17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.</p> <p>18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024 1. 23955 Cedar Hill Ln</p> <p>19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024 1. 1022 W. 18TH St.</p>
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	<p>2. 1027 W. 18th St.  3. 1032 W. 18TH St.  4. 1035 W 18th St  5. 1040 W. 18TH St.  6. 20272 Starr King Dr.  7. 20400 Starr King Dr.  8. 18373 Main St.  9. 18361 Main St.  10. 2127 O St.  11. 1014 W. 18th St.  12. 22622 Twain Hart Dr.  13. 18369 Main St.  14. 18371 Main St.  15. 18375 Main St.  16. 6845 W. Camellia Dr.  17. 1226 Brookdale Dr.  18. 1727 N St.</p> <p>20. DWELLING FIRE  POLICY EFFECTIVE  7/23-24 (23955 Cedar Hill  Lane)</p> <p>21. RENTS RECEIVED  AND AMOUNTS PAID  11/22 - 8/31/24</p> <p>1. 1027 w. 18TH St.  2. 1035 W. 18th St.  3. 23955 Cedar Hill Ln.</p> <p>22. 22. PROPERTY  ANALYSIS CALENDAR  YEAR 2012.</p> <p>23. PROPERTIES SOLD  TO LA ESTRELLA 2014 -  2022.</p> <p>24. PROPERTY VALUES  LA ESTRELLA 2015.</p> <p>25. PROPERTIES SOLD  TO LEEC 1980 - 2006</p> <p>1. 1022 W. 18th St.  2. 1032 W. 18th St.</p>
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	<p>3. 1040 W. 18th St.</p> <p>4. 20272 Starr King Dr.</p> <p>5. 20400 Starr King Dr.</p> <p>6. 18373 Main St.</p> <p>7. 18361 Main St.</p> <p>8. 2127 O St.</p> <p>9. 1014 W. 18th St.</p> <p>10. 22622 Twain Harte Rd.</p> <p>11. 18369 Main St.</p> <p>12. 18371 Main St.</p> <p>13. 18375-18377 Main St.</p> <p>14. 6845 Camellia St.</p> <p>15. 1226 Brookdale Dr.</p> <p>26. APPRAISAL 1032 W. 18TH ST. 6/08/11</p> <p>27. APPRAISAL 1014 W. 18TH ST. 6/08/11</p> <p>28. APPRAISAL 1226 BROOKDALE RD. 6/10/11</p> <p>29. APPRAISAL 18375-18377 MAIN ST 9/13/11</p> <p>30. APPRAISAL 18371 MAIN ST. 9/13/11</p> <p>31. APPRAISAL 18369 MAIN ST. 9/13/11</p> <p>32. APPRAISAL 20400 STARR KING DR 9/13/11</p> <p>33. APPRAISAL 20272 STARR KING DR 9/13/11</p> <p>34. LOAN MOD. EATON, MICHIGAN 4/01/12</p> <p>35. 2013 TRUST AGREEMENT 10/15/13</p> <p>36. OPERATING AG. LA ESTRELLA 4/07/14</p>
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	37. ART. OF OR. LA ESTRELLA 4/07/14
	38. ART. OF OR. CIVIC PLAZA 4/17/14
	39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14
	40. OP AGREE. LA ESTRELLA, LLC 4/07/14
	41. MORTGAGE MODIFICATION 6/24/14
	42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14
	43. CONTRACT FOR DEED 8/18/14
	44. OFFER 18361/18373 MAIN ST 9/30/14
	45. GRANT DEED PARCEL 031-044-018 9/18/14
	46. JUDGMENT EATON. MICHIGAN 4/03/15
	47. ORDER GRANTING MOTION TO SELL 4/20/15
	48. PROMISSORY NOTE 6/01/15
	49. 2015 FORM 1099-S 6/12/15
	50. SELLER'S CLOSING STATEMENT 6/12/15
	51. PROPERTY MGMT AGREEMENT 7/01/15

	<p>52. DEBTOR'S REPORT OF SALE 8/27/15</p> <p>53. ORDER GRANTING SJM 5/23/17</p> <p>54. CONTRACT FOR DEED 6/10/17</p> <p>55. GRANT DEED 12/18/17</p> <p>56. GRANT DEED 12/18/17</p> <p>57. GRANT DEED 7/06/16</p> <p>58. WARRANTY DEED 7/06/16</p> <p>59. SELLER PACKAGE 10/23/19</p> <p>60. JPM RESIDENTIAL LEASE 11/23/22</p> <p>61. SECOND AMENDED OP AGREEMENT 11/23/22</p>
<p>Discovery Documents:</p> <p>1. Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.</p> <p>2. Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.</p> <p>3. Deposition of Defendant John Mendoza, taken December 8, 2023.\</p> <p>4. Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.</p> <p>5. Deposition of Lupe Martin, taken September 24, 2024.</p>	<p>Discovery Documents:</p> <p>1. None identified.</p>

6. Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.	
Further Discovery or Motions: 1. None identified.	Further Discovery or Motions: 1. None identified.
Stipulations: 1. None identified.	Stipulations: 1. None identified.
Amendments: 1. None identified.	Amendments: 1. None identified.
Dismissals: 1. None identified.	Dismissals: 1. None identified.
Agreed Statement of Facts: 1. None identified.	Agreed Statement of Facts: 1. None identified.
Attorneys' Fees Basis: 1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller &amp; Associates, Inc.</i> , 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.	Attorneys' Fees Basis: 1. "Pursuant to 11 U.S.C. §"
Additional Items 1. None identified.	Additional Items 1. None identified.
Trial Time Estimation: 3-5 days.	Trial Time Estimation: 2 days.

9. [22-90415-E-7](#)      **JOHN MENDOZA**  
[24-9004](#)  
**FARRAR V. MENDOZA ET AL**

**CONTINUED PRE-TRIAL CONFERENCE**  
**RE: COMPLAINT FOR FRAUDULENT**  
**TRANSFER, CONSTRUCTIVE TRUST,**  
**RESULTING TRUST, UNJUST**  
**ENRICHMENT, ACCOUNTING AND**  
**DECLARATORY RELIEF**  
**3-28-24 [1]**

Plaintiff's Atty: Jeffrey I. Golden, Beth E. Gaschen

Defendant's Atty:

Peter G. Macaluso [John Pierre Mendoza]

Calvin John Massey [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]

David C. Johnston [Lupe Martin]

Adv. Filed: 3/28/24

Answer:

4/25/24 [La Estrella Enterprises, LLC; Jenae-Desiree Mendoza]

4/30/24 [John Pierre Mendoza]

7/10/24 [Lupe Martin]

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Continued from 1/16/25

Order Continuing Pre-Trial Conference and Order to Appear filed 1/23/25 [Dckt 95]

Status Statement [Defendants La Estrella Enterprises, LLC & Jenae-Desiree Mendoza] filed 2/12/25 [Dckt 103]

<b>The Pre-Trial Conference is <span style="color: red;">XXXXXXX</span></b>
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**FEBRUARY 20, 2025**

**CONTINUED PRE-TRIAL CONFERENCE**

On February 12, 2025, a Status Statement was filed for the Defendants. Dckt. 103. In the report, counsel states that Ms. Mendoza has contacted her counsel and is actively participating in settlement negotiations. No pleadings have been filed documenting that a settlement has been reached.

At the Continued Pre-Trial Conference, XXXXXXX

## **SUMMARY OF COMPLAINT**

**February 20, 2025 at 2:00 p.m.**

**- Page 77 of 111 -**

The Complaint filed by Gary Farrar (“Plaintiff-Trustee”), Dckt. 1 , asserts claims for avoidable transfers of property to his minor daughter and to a series of limited liability companies under the Defendant-Debtor’s control. The named defendants in this Adversary Proceeding are: (1) John Pierre Mendoza (the Debtor), La Estrella Enterprises, LLC, Lupe Martin, and Jenae-Desiree Mendoza.

The First Cause of Action seeks to recover the transfers as fraudulent conveyances. The Second Cause of Action seeks to impose a constructive trust for the transferred properties. The Third Cause of Action asserts that a resulting trust exists with respect to the properties transferred. The Fourth Cause of Action asserts a claims for unjust enrichment. The Fifth Cause of Action seeks an accounting from La Estrella Enterprises, LLC. The Sixth Cause of Action is for declaratory relief, requesting that “the Court can and should determine what, if any, remedies the Debtor’s estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.” This does not appear to be a request for declaratory relief, but a court summary of the First Five Causes of Action.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Chapter 7 Trustee Gary Farrar, “Plaintiff-Trustee, 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 ¶¶ 7, Dckt.1. In the Co-Defendants Answer filed by La Estrella Enterprises, LLC and Jenae-Desiree Mendoza, they admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 7; Dckt. 7. In the Debtor-Answer, Defendant John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 7; Dckt. 7.

## **JANUARY 16, 2025 PRE-TRIAL CONFERENCE**

### **Motion for Counsel to Withdraw From Representation for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC**

On January 10, 2025, counsel for Jenae-Desiree Mendoza and La Estrella Enterprises, LLC filed Motion to withdraw from representation of his two clients. Dckts. 85, 89. Counsel states that his clients have ceased communicating with him and notwithstanding repeated attempts by counsel, he has had no communication with them during the 45-day period prior to the filling of the Motions to Withdraw.

At the Pre-Trial Conference, the court addressed with the Parties the need for the participation of Jenae-Desiree Mendoza, both personally and as the managing member of La Estrella Enterprises, LLC. Ms. Mendoza’s counsel appropriately addressed with the court the lack of communication with his client.

Counsel reported that there was a prior period of non-communication by Ms. Mendoza, but during the times the was attorney-client communications the case was advanced. Counsel further reported that there is a settlement that has been negotiated which fully resolves this matter.

The court raised the issue of whether Ms. Mendoza was legally competent to proceed with this complex litigation relating to herself and La Estrella Enterprises, LLC. The court did not find meritorious the arguments presented by Plaintiffs counsel and John Mendoza’s (Jenae-Desiree Mendoza’s father)

counsel that the court should just set the trial and when she doesn't show up to present a defense enter judgments against her and La Estrella Enterprises, LLC.

To afford Ms. Estrella and her counsel an opportunity to communicate, and quite possibly settle this Adversary Proceeding in an advantageous way for Ms. Estrella and La Estrella Enterprises, LLC, the court:

- A. Continues the Pre-Trial Conference to **2:00 p.m. on February 20, 2025**;
- B. Will issue an order for Jenae-Desiree Mendoza to communicate with Calvin Massey, Esq., the attorney of record for Jenae-Desiree Mendoza and La Estrella in Adversary Proceeding 24-9004, on or before noon on February 7, 2025.
  - 1. On or before February 13, 2025, Calvin Massey, Esq., counsel for Jenae-Desiree Mendoza and La Estrella Enterprises LLC, shall file and serve a Status Statement advising the court whether Ms. Mendoza has contacted on or before noon on February 7, 2025. The information provided in the Status Statement will be limited to just whether such contact was made.
- C. Will issue an order for Jenae-Desiree Mendoza and Calvin Massey, Esq., her attorney, and each of them, to appear in person at the February 20, 2025 Status Conference, with no telephonic appearances permitted for the forgoing persons ordered to appear.
  - 1. The court order the appearances of Ms. Mendoza and her counsel in person to afford Ms. Mendoza to observe the court in person and understand that the judicial process and that this Bankruptcy Court does not allow parties, witnesses, or attorneys to be abused by others. This Federal Court process is one that is professionally and respectfully conducted by the parties, witnesses, attorneys, and the court itself.
- D. If Jenae-Desiree Mendoza does not contact her counsel or is not able to attend the hearing in person, the court will refer this situation to Adult Protective Services to contact Ms. Mendoza and provide the court with a report as to whether they assess Ms. Mendoza able to work with her attorney, assert her defenses and claims, and prosecute this litigation.

### **Pre-Trial Conference Statements**

The Parties in their respective Pretrial Conference Statements, Dckts. 83, 80, 79, 78, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant John Pierre Mendoza

Jurisdiction and Venue:

Plaintiff WVJP 2021-4, LP 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). Complaint ¶ 5, Dckt. 1. In the Answer, Defendant-Debtor John Pierre Mendoza admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 4; 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 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.

This is confirmed in the Plaintiffs Pre-Trial Statement (p. 1:12-18; Dckt. 83), Defendant Martin’s Pre-Trial Statement (p. 1:26-27, 2:1; Dckt. 80), Defendants Jenae-Desiree Mendoza and La Estrella Enterprises, LLC Pre-Trial Statement (p. 1:25-28, 2:1-2; Dckt. 79), and Defendant-Debtor John Mendoza’s Pre-Trial Statement (p. 1:27-28, 2:1-3; Dckt. 78).

Undisputed Facts:

Citing to the Defendant-Debtor’s Pre-Trial Statement in Adversary Proceeding 24-09004:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Cedar Hill Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled: a vacant lot at 12539 Quail Dr, Placida, FL 33946, a rental house at 1035 18th St., Merced CA 95340, a rental house at 1027 W. 18th St., Merced, Ca 95430, a commercial building located at 115 East Green St., Michigan 49058, and the Cedar Hill Property.
5. [The dates of the meeting of creditors, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, are not relevant]
6. [Whether the Defendant’s sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21, stated as an undisputed factual issue in Defendant-Debtor s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore disputed].
7. La Estrella Enterprises, LLC (“La Estrella”) was assigned to Jenae-Desiree Mendoza in 2019.
8. [Whether La Estrella was capitalized with \$7,500.00, stated as an undisputed factual issue in Defendant-Debtor’s pre-trial statement as undisputed fact 5, is subject to conflicting testimony and therefore

Undisputed Facts:

1. The Debtor filed a voluntary chapter 7 on November 10, 2022 (“Petition Date”).
2. The Debtor resided at 23955 Cedar Hill Lane, Twain Harte, CA 95383 (the “Property”).
3. The Debtor did not qualify for the “Homestead” exemption because he did not continuously reside at the Property.
4. The Debtor scheduled:
  - (a) a vacant lot at 12539 Quail Dr, Placida, FL 33946,
  - (b) a rental house at 1035 18th St., Merced CA 95340,
  - (c) a rental house at 1027 W. 18th St., Merced, Ca 95430,
  - (d) a commercial building located at 115 East Green St., Marshall, Michigan 49058, and
  - (e) the “Property.”
5. The Meeting of Creditor was held on 12/22/22, and continued to 1/19/23.
6. The Defendant’s sister was the



<p>disputed].</p> <p>9. Since the formation of La Estella, Defendant-Debtor has had “control” over Estrella;</p> <p>10. The Civic Plaza, LLC (“The Civic Plaza”) was registered October 17, 2014.</p> <p>11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p> <p><u>Citing to Defendant Lupe Martin’s Pretrial Statement Transmitted to Plaintiffs’ Counsel</u></p> <p>12. Defendant [John Pierre] Mendoza exercised full control over the properties transferred to Defendant La Estrella, collecting the rent, servicing debt, and maintaining the properties</p>	<p>custodian for Jenae-Desiree Mendoza until she reached the age of 21.</p> <p>7. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.</p> <p>8. La Estrella was capitalized with \$7,500.00.</p> <p>9. Since the formation of La Estella, Defendant has had “control” rather advisory role, and as a Father.</p> <p>10. The Civic Plaza was registered October 17, 2014.</p> <p>11. The Civic Plaza was dissolved September 9, 2019, after failing at a Chapter 11 Reorganization.</p>
<p>Disputed Facts:</p> <p>ADV 24-9004</p> <p>1. 1. Defendants transferred property with an actual intent to hinder and/or delay (and possibly defraud creditors of the Debtor, including one or more of the following properties (one or more collectively, the “Fraudulently Transferred Property”):</p> <p>a. 1727 N Street, Merced, CA.</p> <p>b. Two (2) Parcels consisting of 6 lots located in Merced County California (commonly known as 1022, 1032 and 1040 W. 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed, recorded in Merced County on July 29, 2014, recordation number 2014-022996.</p> <p>c. One (1) lot located in Tuolumne County, California, commonly known as 20272 Starr King Drive, Soulsbyville, CA), transferred to La Estrella via grant deed, recorded in Tuolumne County on December 15, 2014, recordation number 2014013159. The Debtor transferred this property to La Estrella pursuant to California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same, claiming zero transfer taxes.</p> <p>d. 18361 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013398.</p>	

- e. 18373 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on December 19, 2014, recordation number 2014013399.
- f. Two (2) Parcels located in Jamestown California (commonly known as 18369 and 18371 Main Street, Jamestown, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003567. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor's sister, Lupe Martin, as the "CEO/Manager" of La Estrella.
- g. One (1) lot located in Soulsbyville California (commonly known as 20400 Starr King Drive, Soulsbyville, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003568. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
- h. One (1) Parcel / portion of NE ¼, located in Twain Harte, California (commonly known as 22622 Twain Harte Drive, Twain Harte, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on March 27, 2015, recordation number 2015003566. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
- i. Two (2) lots located in Merced California (commonly known as 1014 W 18th Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015010044. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
- j. Four (4) lots located in Merced California (commonly known as 2127 O Street, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on March 30, 2015, recordation number 2015-010043. The grant deed, signed by the Debtor March 27, 2015, identifies the Debtor as the "CEO/Manager" of La Estrella.
- k. One (1) Parcel located in Merced County, California (commonly known as 6845 Camellia Drive, Atwater, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on April 15, 2015, recordation number 2015-012181. The grant deed, signed by the Debtor April 15, 2015, identifies the Debtor as the "Manager" of La Estrella.

1. One (1) lot located in Merced County, California (commonly known as 1226 Brookdale Drive, Merced, CA). The Debtor transferred this property to La Estrella via grant deed recorded in Merced County, California, on August 23, 2017, recordation number 2017027149. The grant deed, signed by the Debtor on August 23, 2017, identifies the Debtor's sister, Lupe Martin, as the "Custodian and Manager" of La Estrella.
- m. 18375 Main Street, Jamestown, California. The Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County, California, on or about December 18, 2017, recordation number 2017014570, one week after the Abstract of Judgment of the California Sister-State Judgment was recorded on December 11, 2017, in Tuolumne County, California, and without receiving equivalent value in exchange. The grant deed, signed by the Debtor on December 15, 2017, identifies the Debtor's sister, Lupe Martin, as the "CEO, Manager" of La Estrella.
2. The transfers at issue were from Debtor to one or more insider(s), including without limitation the Debtor's daughter and/or sister.
3. The Debtor maintained possession and/or control over the fraudulently transferred property.
4. Before the transfers were made, the Debtor had been sued or threatened with suit.
5. The fraudulent nature of the transfers was concealed and/or not disclosed by the Debtor.
6. The transfers, taken together, were of substantially all the Debtor's assets.
7. The Debtor either removed his assets, and/or concealed his assets by making it appear that they had been removed from his estate when they had not.
8. The Debtor did not receive consideration for the transfers that was reasonably equivalent to the value of the properties transferred by the Debtor.
9. The Debtor was insolvent or became insolvent shortly after some or all of the transfers were made.
10. The transferee of the fraudulently transferred property was not a good faith transferee, did not pay anything for the transfer(s) and may not even have been aware of the transfers at the time they were made (and/or may not have agreed to accept the transfer of the property).
11. In the Debtor's related bankruptcy case, there exists one or more creditors holding unsecured claims that are allowable under section

502 of the Bankruptcy Code or that are not allowable only under section 502(e) of the Bankruptcy Code, who could have avoided, under California Civil Code § 3439.04, the Fraudulent Transfers.

12. At all material times: (a) the Debtor controlled La Estrella and The Civic Plaza; (b) the Debtor treated the assets of La Estrella and The Civic Plaza as his own; and (c) the Debtor used La Estrella and The Civic Plaza, in conspiracy with (and/or as aided and abetted by) the Defendants, to intentionally hinder, delay, and/or defraud creditors.

13. The Fraudulently Transferred Property was transferred to an insider of the Debtor, to the Debtor himself, or to an entity formed, controlled and operated by the Debtor.

14. The Fraudulently Transferred Property was transferred at the direction of or under the control of the Debtor.

15. The Debtor retained *de facto* possession, custody and/or control of the property transferred, after each of the transfer of the Fraudulently Transferred Property.

16. The Debtor had been sued or threatened with suit before each of the transfers described above were made.

17. Altogether, the transfers of the Fraudulently Transferred Property constituted the transfer of substantially all of the Debtor's assets, and/or left him with insufficient assets to satisfy obligations.

18. The Debtor, Defendants, and others played active roles in the acts and Fraudulent Transfers described above with the actual intent to assist in defrauding the Debtor's creditors; (b) the named Defendant(s) herein, and those acting in concert with them (including without limitation the Debtor's sister and daughter), did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy to deceive and defraud the Debtor's creditors, and to hinder and delay them from collecting amounts owed to them by the Debtor; and (c) the Debtors actions in refinancing the property in May 2022, constituted the last (currently known) overt act in furtherance of the conspiracy to defraud the Debtor's creditors (such that any otherwise applicable statutes of limitation would have been tolled through this date).

19. As of approximately May 2022, according to loan documents apparently created by a lender, the Debtor sought to refinance a loan secured by a property held by La Estrella, in an effort to release a personal guaranty under said loan, thereby using La Estrella's assets for his own personal benefit. When confronted with this transaction in his 2004 examination, the Debtor claimed not to know what a personal guaranty even was – despite having testified to having purchased and sold over 100 properties.

20. The statute of limitations for fraudulent transfer is further extended to the extent that the Internal Revenue Service is a creditor of the Debtor's bankruptcy estate.

21. The Debtor's bankruptcy estate (and/or the Trustee acting on behalf of said estate) is the equitable owner of the trust *res*.

22. Defendants are constructive trustees of said property (and said title ownership) for the benefit of the true owner (the Debtor's bankruptcy estate).

23. The transfers of Fraudulently Transferred Property alleged herein were made under circumstances showing that the transferee(s) were not intended to take the beneficial interest of the transferred property, but rather that they would receive bare record title thereto, while the Debtor continued to enjoy all the beneficial interests of the property despite passage of record title).

24. After transfer, the Debtor still *de facto* exercised ownership and control over said properties, through the transferee companies he created, and which he installed himself and/or his immediately family as said transferee(s)' owner(s) and/or controllers.

25. After transfer, the Debtor treated the Fraudulently Transferred Property as his own, as if there were no separation of ownership or interest between himself and the entities he created.

26. The Civic Plaza was the interim title holder of the commercial property located at 1727 N Street, Merced, CA, between the Debtor and La Estrella, and in October 2014, the Debtor executed a grant deed of the property to The Civic Plaza stating that the transfer resulted solely in a change in the method of holding title and in which ownership interests remain the same, such that the Debtor was to retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another.

27. Debtor effectively treated The Civic Plaza as an extension of himself, operated it as if it were his dba, and acted as if there were no separate ownership or interest between himself and The Civic Plaza.

28. In November 2021, Transcounty Title Co. handled an escrow for La Estrella involving the disbursement of \$1,424,645.64 in loan proceeds. The Debtor's daughter, acting as La Estrella's manager, attested to signing the documents but later stated she did not recall doing so. The disbursement included hundreds of thousands of dollars in loan payoffs (the "Payoffs"), although she was unaware of the purpose of these Payoffs or whether the loans being paid off were connected to property her father owned personally

29. The Debtor directed these payoffs, and he was able to satisfy his personal debts/loans with these proceeds.

30. With regard to 20272 Starr King Drive, Soulsbyville, California, the Debtor transferred this property to La Estrella via grant deed recorded in Tuolumne County on or about December 15, 2014, recordation number 2014013159 (the “20273 Deed”) through which the Debtor publicly disclosed a tax exemption for the transfer under California Revenue and Taxation Code § 11925, which provides for transfers of realty that result solely in a change in the method of holding title and in which ownership interests remain the same.

31. The 20272 Deed evidences: (a) the Debtor’s intent that he retain equitable and legal ownership of the property, despite the Deed otherwise (facially) purporting to transfer the property to another; and (b) this shows that the Debtor effectively treated La Estrella as an extension of himself, operated it as if it were his dba, and acted as if there were no separation between himself and La Estrella.

32. These filings, essentially asserting that the Debtor’s transfers to La Estrella and The Civic Plaza resulted in the mere change in the method of holding title and in which ownership interests remain the same, constitute evidence of the parties’ (including the Debtor’s) intent, understanding and agreement (whether express, tacit or implied) that the beneficial interest in the properties transferred by the Debtor to La Estrella and The Civic Plaza (i.e., the two properties referenced above and, indeed, all other transfers of property by the Debtor to these entities) was intended to remain with the transferor (i.e., the Debtor), and that the transferred properties in equity and conscience belong to the Debtor’s bankruptcy estate and should be used for the benefit of the Debtor’s estate.

33. As late as November 8, 2021, the Debtor was still signing documents on behalf of La Estrella, even though he was no longer even a manger of La Estrella – including an Amendment to Authorization to Register Lender and Fee Agreement, which the Debtor signed on behalf of La Estrella and his daughter signed on behalf of herself individually.

34. As late as approximately May 2022, the Debtor was filling out personal financial statements in his own handwriting, on behalf of his daughter, for her use in obtaining loans on behalf of La Estrella – claiming that La Estrella’s property had a net worth of nearly \$7 million. So too, as late as approximately May 2022, the Debtor was seeking a loan against property whose title was in the name of La Estrella, in order to pay off (or otherwise remove) one or more personal obligations of the Debtor – here again, essentially treating La Estrella (and its property) as if it were his own dba.

35. La Estrella was operated by the Debtor as if it were his own dba, such that in equity and good conscience the Court should disregard the corporate or other legal form of La Estrella in order to hold it liable for the debts of the Debtor, as La Estrella was effectively

organized and controlled, and its affairs conducted, so as to make it merely an instrumentality, agency, conduit, or adjunct of the Debtor.

36. Notwithstanding the purported transfers of Fraudulently Transferred Property, said properties are (or should be deemed or determined in equity and good conscience to be) held in a resulting trust by Defendant(s) in order to enforce the intent of the parties (including the Debtor) to the transfer, and Defendants can and should be compelled to transfer all of their interests in said transferred property (including without limitation record title thereto) to the Debtor's estate.

37. Such a resulting trust has never been repudiated (nor formally acknowledged) by Defendants), no one material party has had actual knowledge or breach of any repudiation of said trust, no one has indicated that he, she or it is holding the property adversely to Plaintiff (or the Debtor's estate), and/or to the extent there was any repudiation of the trust, or indication that the transferred properties were being held adversely to the transferor (or Plaintiff), said repudiation or indication first arose less than four years from the date of filing of this action.

38. As a result of the foregoing: (a) Defendants received a benefit; and (b) Defendants are unjustly retaining that benefit at the expense of another (in this case, since the Debtor has filed a petition for bankruptcy, at the expense of the Debtor's estate and, more particularly, the Debtor's creditors who, without recovery of said property or the monetary value of the equity lost through the transfers of said property, will not be paid in full on the debts owed to them by the Debtor).

39. Consequently, in equity and good conscience, Defendants can and should be compelled to transfer said property (and record title thereto) to the Debtor's estate, and/or pay the estate an amount equal to the amount by which Defendants have been unjustly enriched as a result of said transfers.

40. As a result of the foregoing: (a) La Estrella is a mere shell and/or instrumentality of the Debtor, that La Estrella is functionally (and functioning as) the Debtor's alter ego, and that all assets and profits of La Estrella belong in equity and good conscience to the Debtor's estate, the Debtor having filed a petition for bankruptcy; and/or (b) there is (or was) a relationship between the Debtor and La Estrella that reflects a degree of confidentiality or closeness.

41. Also as a result of the foregoing, there was (and is): (1) a relationship between the parties that requires an accounting; and (2) a balance due the Plaintiff and that can only be ascertained fully by an accounting.

42. Accordingly, under each of the causes of action alleged above,

and under the allegations incorporated herein, Plaintiff (as Trustee of the Debtor's estate) is entitled to an accounting of all assets and profits of La Estrella.

43. As a result of the foregoing, there is an actual and justiciable controversy whether the transferred properties alleged herein were fraudulently transferred (such that a constructive trust should be imposed over the properties for the benefit of the Debtor's estate), or whether the properties were legitimately transferred with an actual or implied promise that only legal title would transfer and that beneficial ownership would remain with the Debtor (such that a resulting trust should be acknowledged over the properties for the benefit of the Debtor's estate), or whether the transfers and conduct herein alleged involved no wrongdoing capable of remediation for the benefit of the Debtor's estate.

44. Accordingly, the Court can and should determine what, if any, remedies the Debtor's estate is entitled to receive as a result of the conduct herein, whether that be imposition or recognition of a constructive or resulting trust, monetary damages, provisional relief or some other remedy.

ADV 23-9020

45. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed property of the Estate post-Petition Date, including, without limitation to amended according to proof at trial, the following:

- (a) 1727 N Street, Merced, California;
- (b) 18375 Main Street, Jamestown, California;
- (c) 1226 Brookdale Drive, Merced, California;
- (d) 20272 Starr King Drive, Soulsbyville, California;
- (e) 1014 W. 18th Street, Merced, California;
- (f) 1022 W. 18th Street, Merced, California;
- (g) 1032 W. 18th Street, Merced, California;
- (h) 1040 W. 18th Street, Merced, California;
- (i) 18361 Main Street, Jamestown, California;
- (j) 18369 Main Street, Jamestown, California;
- (k) 18371 Main Street, Jamestown, California;
- (l) 18373 Main Street, Jamestown, California;



(m) 22622 Twain Harte Drive, Twain Harte, California;

(n) 2127 O Street, Merced, California; and

(o) 6845 Camellia Drive, Atwater, California.

46. That Defendant, with the intent to hinder, delay, or defraud creditors and the Trustee, concealed and hid assets in which Defendant has an interest by failing to list in his Schedules all assets in which Defendant has an interest.

47. That Defendant knowingly and fraudulently made a false oath or account, including, without limitation to amendment according to proof at trial, the following: (a) failing to disclose in his Schedules his beneficial interests in real property; (b) claiming on his schedules that his residence is the Property.

ADV 23-9011

48. Defendant-Debtor committed actual fraud by fraudulently conveying real property to shell entities controlled by Defendant-Debtor. La Estrella was formed by Defendant-Debtor, with the sole member being Defendant-Debtor's then-13 year old daughter. At the time of the transfers at issue, La Estrella's purported "sole member" had not reached the age of majority. Defendant-Debtor identified himself as the CEO or Manager and therefore beneficiary of the transfers.

49. Defendant-Debtor, as the beneficiary and recipient of these transfers, obtained the properties through the fraudulent conveyance. Defendant-Debtor did not obtain reasonably equivalent value for any of the conveyances and has not been paid on any of the notes or deeds of trusts on which he is the beneficiary.

50. Defendant-Debtor intentionally engaged in the fraudulent conveyances for the purpose of defrauding Plaintiff and frustrating Plaintiff's efforts to enforce its debt.

51. Defendant-Debtor's activities described above were conducted with knowledge that he was engaged in a fraudulent scheme.

52. Defendant-Debtor injured Plaintiff by knowingly engaging in the fraudulent schemes and committing actual fraud.

53. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and

at all times relevant hereto, had the subjective motive to inflict injury to his creditors, including but not limited to Plaintiff.

54. Defendant-Debtor, in causing, conveying, and benefitting from each of the above described fraudulent conveyances, and at all times relevant hereto, believed injury to his creditors was substantially certain to result from the transfers.

55. Defendant-Debtor's willful and malicious conduct caused Plaintiff's injury.

Disputed Facts:

1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.”
2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.
3. The Debtor denies having control over either LLC’s.
4. The “vast majority” of these transfers were fraudulent conveyances.
5. There are distinct differences between La Estrella and The Civic Plaza.
6. The Debtor did not, at all times control La Estrella and The Civic Plaza.
7. The Debtor did not intentionally hinder, delay, or defraud creditors.
8. The Defendant did not transfer any properties for less than fair market value.
9. The Defendant did not retain either possession or control of any of the transferred properties.
10. The Defendant lost his opposition to his claim of exemption in the Twain Harte Property.
11. The Defendant opposes the allegation that he transferred any real property, with the intent to hinder, delay, or defraud creditors.
12. The Defendant did not conceal and property of the Estate Post-Petition Date.
13. The Defendant did not conceal, nor hid assets in which he had an interest by failing to list in his schedules all assets in which the Defendant had an interest.

<p>14. The Defendant did not fail to disclose in his schedules his beneficial interests in real property.</p> <p>15. The failure to qualify as a homestead exemption is not due to the Defendant failing to reside at the Property, on the day of filing, but from not continuously residing thereon.</p> <p>16. The Trustee should not recover money/property pursuant to 11 U.S.C. 542.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None identified.</p>
<p>Relief Sought:</p> <p>1. The transfers or real property be set aside and declared void.</p> <p>2. A temporary restraining order/other provisional relief be granted restraining Defendants, and their representatives, agents, and attorneys from selling, transferring, conveying, or otherwise disposing of any of the real property.</p> <p>3. Judgment in favor of Plaintiff herein be declared a lien on the real property described above, and that under Section 551 all liens avoided will be preserved for the benefit of the estate.</p> <p>4. That an order be made declaring that Defendants hold all of the transferred real property described above in trust for Plaintiff, whether involuntarily or voluntarily.</p> <p>5. That the real property be determined property of the Debtor's estate, that Defendants be ordered to transfer said real property to the Debtor's estate, and that any trust over such real property administered by Defendants be terminated upon transfer of each such real property to the Debtor's estate.</p> <p>6. That Defendants be required to account to Plaintiff for: (a) all profits and proceeds earned from or taken in exchange for the real property described above; and (b) all profits and proceeds of La Estrella, including without limitation profits and proceeds earned in connection with the transfer(s) of said real property to La Estrella, and all payments made to, on behalf of or for the benefit for one or more of the Defendants.</p> <p>7. That the court orders the avoidance of the transfers or at plaintiff's election a judgment for the value of the assets transferred against the initial transferee and to any entity benefitting from such transfers.</p>	<p>Relief Sought:</p> <p>1. The Non-Discharge of Debtor.</p> <p>2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.</p>

<p>8. For general damages according to proof, including the value of property improperly transferred (and/or any income or appreciation in equity lost as a result) to the extent said property is returned to the Debtor's estate, as well as the value of any other money or property improperly used for the benefit of one or more Defendants.</p> <p>9. For costs and attorneys' fees.</p> <p>10. For punitive damages pursuant to statute and according to proof</p> <p>11. That the Debtor be denied a discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6), 727(a)(2) and 727(a)(4).</p> <p>12.</p>	
<p>Points of Law:</p> <p>Adv. 24-9004.</p> <p>1. Cal Civ Code § 2223.</p> <p>2. Cal Civ Code § 2224.</p> <p>3. Imposition of a constructive trust, resulting trust. <i>In re Real Estate Associates Ltd. Partnership Litig.</i>, 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002); <i>Murphy v. T. Rowe Price Prime Reserve Fund, Inc.</i>, 8 F.3d 1420, 1422 (9th Cir.); <i>Burlesci v. Petersen</i>, 68 Cal. App. 4th 1062, 1069 (1998); <i>Martin v. Kehl</i>, 145 Cal. App. 3d 228, 238 (1983); <i>Laing v. Laubach</i>, 233 Cal.App.2d 511, 515 (1965); <i>Berniker v. Berniker</i>, 30 Cal. 2d 439, 447-448 (1947); <i>Majewsky v. Empire Constr. Co.</i>, 2 Cal. 3d 478, 485 (1970) <i>Goodrich v. Briones (In re Schwarzkopf)</i>, 626 F.3d 1032, 1037 (9th Cir. 2010); <i>Cadles of W. Va., LLC v. Alvarez</i>, 2023 U.S. Dist. LEXIS 112881, *42, WL 4280786 (S.D. Cal. 2023); <i>Estrada v. Garcia</i>, 132 Cal. App. 2d 545, 552 (1955);</p> <p>4. Resulting trust statute of limitations. <i>Estate of Yool</i>, 151 Cal. App. 4th 867, 875 (2007); <i>Murphy v. Am. Gen. Life Ins. Co.</i>, 74 F. Supp. 3d 1267, 1281 (9th Cir 2015).</p> <p>5. Cal Civ § 3439.04(a) statute of limitations. <i>Monastra v. Konica Bus. Machines, U.S.A., Inc.</i>, 43 Cal. App. 4th 1628, 1645 (1996); <i>Wyatt v. Union Mortgage Co.</i>, 24 Cal. 3d 773, 786 (1979); <i>Munoz v. Ashcroft</i>, 339 F.3d 950, 956-957 (2003).</p> <p>6. Constructive trust statute of limitations. <i>Higgins v. Higgins</i>, 11 Cal. App. 5th 648, 659 (2017).</p> <p>7. Unjust enrichment statute of limitations. <i>First Nationwide Savings v. Perry</i>, 11 Cal. App. 4th 1657, 1670 (1992).</p> <p>8. Accounting action statute of limitations. <i>Glue-Fold, Inc. v.</i></p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 542.</p>

*Slautterback Corp.*, 82 Cal. App. 4th 1018, 1023 (2000); *Estate of Peebles*, 27 Cal. App. 3d 163, 166 (1972).

9. Declaratory relief statute of limitations. *Bank of New York Mellon v. Citibank, N.A.*, 8 Cal. App. 5th 935, 943; *North Star Reinsurance Corp. v. Superior Court*, 10 Cal. App. 4th 1815, 1822 (1992).

10. If IRS is a creditor, extension of the statute of limitations. 26 U.S.C. § 6502; , 11 U.S.C. § 544(b)(1); d *United States v. Summerlin*, 310 U.S. 414, 416 (1940).

11. Equitable tolling. *Milby v. Templeton (In re Milby)*, 875 F.3d 1229, 1232 (9th Cir. 2017).

12. Equitable estoppel. *Lantzy v. Centex Homes*, 31 Cal.4th 363, 383 (2003); *Sofranek v. County of Merced*, 146 Cal. App. 4th 1238, 1250 (2007).

Additional for Adv. 23-9020 and 23-9011.

13. Burden of proof. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 376 (B.A.P. 9th Cir. 2004); *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1297 (9th Cir. 1994); *Caneva v. Sun Cmtys. Operating Ltd. P'Ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008).

14. 11 U.S.C. §§ 727, 727(a)(2)(B); *In re Miller*, 2015 WL 3750830, at \*3 (Bankr. C.D. Cal. June 12, 2015); *Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727, 732 (B.A.P. 9th Cir. 1999).

15. Definition of transfer. 11 U.S.C. § 101(54); *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).

16. Intent inferred from actions of debtor. *In re Devers*, 759 F.2d 751, 753-54 (9th Cir. 1985); *United States v. Swenson (In re Swenson)*, 381 B.R. 272, 292 (Bankr. E.D. Cal. 2008); *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986); *Freelife, Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916 (Bankr. D. Utah 2006) .

17. 11 U.S.C. § 727(a)(4)(A); *Song v. Acosta (In re Song)*, 2011 Bankr. LEXIS 4796 at \*13 (B.A.P. 9th Cir. 2011); *In re Retz*, 606 F.3d at 1196; *Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 877 (B.A.P. 9th Cir. 2007); *In re Caneva*, 550 F.3d at 761.

18. Accuracy of schedules and statement of financial affairs. *In re Searles*, 317 B.R. at 377.

19. 11 U.S.C. § 523(a) and preponderance of the evidence standard. *Grogan v. Garner*, 489 U.S. 279, 291 (1991).

20. 11 U.S.C. § 523(a)(2); *In re Lewis*, 551 B.R. 41, 48 (Bankr.

<p>E.D. Cal. 2016); <i>In re Tran</i>, 301 B.R. 576, 582 (Bankr. N.D. Cal. 2003).</p> <p>21. 11 U.S.C. § 523(a)(6); <i>Carrillo v. Su (In re Su)</i>, 290 F.3d 1140, 1143-47 (9th Cir. 2002); <i>Petralia v. Jercich (In re Jercich)</i>, 238 F.3d 1202, 1209 (9th Cir. 2001).</p>	
<p>Abandoned Issues:</p> <p>1. None identified.</p>	<p>Abandoned Issues:</p> <p>1. None identified.</p>
<p>Witnesses:</p> <p>1. Gary Farrar, Chapter 7 Trustee.</p> <p>2. Loris Bakken, Esq.</p> <p>3. John Pierre Mendoza.</p> <p>4. Jenae-Desiree Mendoza.</p> <p>5. John McCallum.</p> <p>6. Paul Quinn.</p>	<p>Witnesses:</p> <p>1. John Pierre Mendoza.</p> <p>2. Gary Farrar, Chapter 7 Trustee</p> <p>3. Lupe Martin</p> <p>4. Jenae-Desiree Mendoza</p>
<p>Exhibits:</p> <p>1. See Attachment A, Dckt. 39 at pp. 32-38.</p>	<p>Exhibits:</p> <p>1. Debtor's Chapter 7 petition, schedules, and other items appearing on the docket of his bankruptcy case #22-90415.</p> <p>2. 2013 John-Pierre Mendoza 2013 Trust Agreement.</p> <p>3. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 2127 "O" Street, Merced, CA 95340, for \$250,000.00.</p> <p>4. Grant Deed, Dated 3/30/2015, to La Estrella Enterprises, 1014 W. 18th St., Merced, CA 95340, for \$105,000.00.</p> <p>5. Grant Deed, Dated 4/15/2015, to La Estrella Enterprises, 6845 W. Camelia Dr., Atwater, CA 95340, for</p>

	<p>\$168,000.00.</p> <p>6. Grant Deed, Dated 8/23/2017, to La Estrella Enterprises, 1226 Brookdale Dr., Merced, CA 95340, for \$180,000.00.</p> <p>7. Debtor's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #11-93308.</p> <p>8. The Civic Plaza, LLC's Previous chapter 11 petition, schedules, and other items appearing on the docket of his bankruptcy case #14-91454.</p> <p>9. JANA-DESIREE MENDOZA 2015 TAX RETURNS.</p> <p>10. JOHN-PIERRE MENDOZA 2019 TAX RETURNS.</p> <p>11. JOHN-PIERRE MENDOZA 2020 TAX RETURNS.</p> <p>12. JOHN-PIERRE MENDOZA 2021 TAX RETURNS.</p> <p>13. JOHN-PIERRE MENDOZA 2022 TAX RETURNS.</p> <p>14. LA ESTELLA ENTERPRISES, LLC 2022 TAX RETURNS.</p> <p>15. JOHN-PIERRE MENDOZA 2023 TAX RETURNS.</p> <p>16. PROPERTY MANAGEMENT AGREEMENT JULY 1, 2015.</p> <p>17. SELLER'S CLOSING STATEMENT APRIL 15, 2015.</p> <p>18. PROPERTY TAX STATEMENT TAX YEAR 2023-2024</p> <p>1. 23955 Cedar Hill Ln</p>
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	<p>19. PROPERTY TAX STATEMENTS TAX YEAR 2023-2024</p> <ol style="list-style-type: none"> <li>1. 1022 W. 18TH St.</li> <li>2. 1027 W. 18th St.</li> <li>3. 1032 W. 18TH St.</li> <li>4. 1035 W 18th St</li> <li>5. 1040 W. 18TH St.</li> <li>6. 20272 Starr King Dr.</li> <li>7. 20400 Starr King Dr.</li> <li>8. 18373 Main St.</li> <li>9. 18361 Main St.</li> <li>10. 2127 O St.</li> <li>11. 1014 W. 18th St.</li> <li>12. 22622 Twain Hart Dr.</li> <li>13. 18369 Main St.</li> <li>14. 18371 Main St.</li> <li>15. 18375 Main St.</li> <li>16. 6845 W. Camellia Dr.</li> <li>17. 1226 Brookdale Dr.</li> <li>18. 1727 N St.</li> </ol> <p>20. DWELLING FIRE POLICY EFFECTIVE 7/23-24 (23955 Cedar Hill Lane)</p> <p>21. RENTS RECEIVED AND AMOUNTS PAID 11/22 - 8/31/24</p> <ol style="list-style-type: none"> <li>1. 1027 w. 18TH St.</li> <li>2. 1035 W. 18th St.</li> <li>3. 23955 Cedar Hill Ln.</li> </ol> <p>22. 22. PROPERTY ANALYSIS CALENDAR YEAR 2012.</p> <p>23. PROPERTIES SOLD TO LA ESTRELLA 2014 - 2022.</p> <p>24. PROPERTY VALUES LA ESTRELLA 2015.</p> <p>25. PROPERTIES SOLD TO LEEC 1980 - 2006</p> <ol style="list-style-type: none"> <li>1. 1022 W. 18th St.</li> <li>2. 1032 W. 18th St.</li> <li>3. 1040 W. 18th St.</li> <li>4. 20272 Starr King Dr.</li> <li>5. 20400 Starr King Dr.</li> <li>6. 18373 Main St.</li> </ol>
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	<p>7. 18361 Main St.</p> <p>8. 2127 O St.</p> <p>9. 1014 W. 18th St.</p> <p>10. 22622 Twain Harte Rd.</p> <p>11. 18369 Main St.</p> <p>12. 18371 Main St.</p> <p>13. 18375-18377 Main St.</p> <p>14. 6845 Camellia St.</p> <p>15. 1226 Brookdale Dr.</p> <p>26. APPRAISAL 1032 W. 18TH ST. 6/08/11</p> <p>27. APPRAISAL 1014 W. 18TH ST. 6/08/11</p> <p>28. APPRAISAL 1226 BROOKDALE RD. 6/10/11</p> <p>29. APPRAISAL 18375-18377 MAIN ST 9/13/11</p> <p>30. APPRAISAL 18371 MAIN ST. 9/13/11</p> <p>31. APPRAISAL 18369 MAIN ST. 9/13/11</p> <p>32. APPRAISAL 20400 STARR KING DR 9/13/11</p> <p>33. APPRAISAL 20272 STARR KING DR 9/13/11</p> <p>34. LOAN MOD. EATON, MICHIGAN 4/01/12</p> <p>35. 2013 TRUST AGREEMENT 10/15/13</p> <p>36. OPERATING AG. LA ESTRELLA 4/07/14</p> <p>37. ART. OF OR. LA ESTRELLA 4/07/14</p> <p>38. ART. OF OR. CIVIC PLAZA 4/17/14</p> <p>39. 2ND AMEND. OP AG. LA ESTRELLA 4/07/14</p>
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	<p>40. OP AGREE. LA ESTRELLA, LLC 4/07/14</p> <p>41. MORTGAGE MODIFICATION 6/24/14</p> <p>42. SALES MENDOZA TO LAW [sic] ESTRELLA 7/29/14</p> <p>43. CONTRACT FOR DEED 8/18/14</p> <p>44. OFFER 18361/18373 MAIN ST 9/30/14</p> <p>45. GRANT DEED PARCEL 031-044-018 9/18/14</p> <p>46. JUDGMENT EATON. MICHIGAN 4/03/15</p> <p>47. ORDER GRANTING MOTION TO SELL 4/20/15</p> <p>48. PROMISSORY NOTE 6/01/15</p> <p>49. 2015 FORM 1099-S 6/12/15</p> <p>50. SELLER'S CLOSING STATEMENT 6/12/15</p> <p>51. PROPERTY MGMT AGREEMENT 7/01/15</p> <p>52. DEBTOR'S REPORT OF SALE 8/27/15</p> <p>53. ORDER GRANTING SJM 5/23/17</p> <p>54. CONTRACT FOR DEED 6/10/17</p> <p>55. GRANT DEED 12/18/17</p> <p>56. GRANT DEED 12/18/17</p> <p>57. GRANT DEED 7/06/16</p>
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	<p>58. WARRANTY DEED 7/06/16</p> <p>59. SELLER PACKAGE 10/23/19</p> <p>60. JPM RESIDENTIAL LEASE 11/23/22</p> <p>61. SECOND AMENDED OP AGREEMENT 11/23/22</p>
<p>Discovery Documents:</p> <p>1. Defendants' Response to First Request for Admissions, dated/verified by Defendant-Debtor October 20, 2024.</p> <p>2. Deposition of Defendant-Debtor John Mendoza, taken November 17, 2023.</p> <p>3. Deposition of Defendant John Mendoza, taken December 8, 2023.\</p> <p>4. Deposition of Defendant Janae-Desiree Mendoza, taken January 16, 2024.</p> <p>5. Deposition of Lupe Martin, taken September 24, 2024.</p> <p>6. Defendant-Debtor's admission in Response to Plaintiff's First Request for Admissions: Nos. 4, 6, 8, 9, 19, 20.</p>	<p>Discovery Documents:</p> <p>1. None identified.</p>
<p>Further Discovery or Motions:</p> <p>1. None identified.</p> <p>Further Discovery or Motions:</p> <p>1.</p> <p>2.</p> <p>3.</p>	<p>Further Discovery or Motions:</p> <p>1. None identified.</p>
<p>Stipulations:</p> <p>1. None identified.</p>	<p>Stipulations:</p> <p>1. None identified.</p>
<p>Amendments:</p> <p>1. None identified.</p>	<p>Amendments:</p> <p>1. None identified.</p>

Dismissals:	Dismissals:
1. None identified.	1. None identified.
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None identified.	1. None identified.
Attorneys' Fees Basis:	Attorneys' Fees Basis:
1. Special damages arising from the tortious conduct of defendants. <i>Gray v. Don Miller &amp; Associates, Inc.</i> , 35 Cal.3d 498, 505 (1984), regarding tort of another. The underlying judgment that Defendants sought to avoid included an attorney's fees provision.	1. "Pursuant to 11 U.S.C. §"
Additional Items	Additional Items
1. None identified.	1. None identified.
Trial Time Estimation: 3-5 days.	Trial Time Estimation: 2 days.

**Defendants Jenae-Desiree Mendoza and  
La Estrella Enterprises, LLC**

**Defendant Lupe Martin**

Undisputed Facts:	Undisputed Facts:
1. The Debtor filed a voluntary chapter 7 on November 10, 2022 ("Petition Date").	1. Defendant John Pierre Mendoza ("Defendant Mendoza") transferred real property to Defendant La Estrella Enterprises, LLC ("Defendant La Estrella") for the benefit of his daughter, Jenae-Desiree Mendoza ("Defendant Jenae-Desiree"), who was then a minor.
2. The Defendant Jenae-Desiree Mendoza is the Debtor's daughter, who resides at 6845 Camellia Drive, Atwater, California, and is no longer a minor.	2. Defendant Martin was named as a custodian for her minor niece, Defendant Jenae-Desiree.
3. The Defendant's sister was the custodian for Jenae-Desiree Mendoza until she reached the age of 21.	3. Defendant Mendoza exercised full control over the properties transferred to Defendant La Estrella,
4. La Estrella was assigned to Jenae-Desiree Mendoza in 2019.	
5. La Estrella was capitalized with \$7,500.00, by the Debtor.	

	<p>collecting the rent, servicing debt, and maintaining the properties.</p> <p>4. Defendant Martin did not exercise any control over the properties transferred to Defendant La Estrella, did not receive the rent, did not service the debt, and did not maintain the properties.</p> <p>5. Defendant Martin has disclaimed any interest in the properties transferred to Defendant La Estrella.</p>
<p>Disputed Facts:</p> <ol style="list-style-type: none"> <li>1. The Debtor has not “systematically transferred, conveyed, or gifted his assets for the purpose of defrauding creditors.”</li> <li>2. The Debtor did not form La Estrella Enterprises, LLC nor The Civic Plaza, LLC to facilitate fraudulent transfers.</li> <li>3. The Debtor did have sole control over La Estrella.</li> <li>4. The transfers were fraudulent conveyances.</li> <li>5. The Defendant, Jenae-Desiree Mendoza did not control La Estrella.</li> <li>6. The Defendants did not intentionally hinder, delay, or defraud creditors.</li> <li>7. The Defendants did not transfer any properties.</li> <li>8. The Trustee should not recover money/property pursuant to 11 U.S.C. 542.</li> <li>9. Since the formation of La Estella, Debtor not Defendant Jenae-Desiree Mendoza has had control of all transactions.</li> </ol>	<p>Disputed Facts:</p> <ol style="list-style-type: none"> <li>1. Defendant Martin disputes that she was involved in a conspiracy with the other Defendants.</li> <li>2. Defendant Martin disputes that she has any information which would be responsive to claim for an accounting asserted by Gary Farrar, Chapter 7 Trustee (the “Plaintiff”).</li> <li>3. Defendant Martin disputes that she holds any property of the estate.</li> <li>4. Defendant Martin denies that has been unjustly enriched.</li> </ol>
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>

<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. The Non-Discharge of Debtor.</li> <li>2. Attorney's Fees for Trustee's Counsel in Prosecuting Case.</li> </ol>	<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. The adversary complaint seeks to set aside fraudulent transfers made by Defendant Mendoza, seeks to impose a constructive trust and/or resulting trust, seeks damages for unjust enrichment, seeks an accounting, and requests declaratory relief.</li> </ol>
<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. 11 U.S.C. §523(a)(2) &amp; (a)(6).</li> </ol>	<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. 11 U.S.C. § 544, which essentially incorporates California Civil Code § 3409.</li> <li>2. 11 U.S.C. § 548 is not applicable because the transfers occurred more than two years before the petition date.</li> <li>3. Defendant Martin has asserted the defense of the statute of limitations, California Civil Code § 3439.09</li> </ol>
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>
<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. John Pierre Mendoza.</li> <li>2. Gary Farrar, Chapter 7 Trustee.</li> <li>3. Jenae-Desiree Mendoza.</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Gary Farrar, Trustee.</li> <li>2. John Pierre Mendoza.</li> <li>3. Jenae-Desiree Mendoza.</li> </ol>

Exhibits:  1. None.	Exhibits:  1. None identified.
Discovery Documents:  1. None.	Discovery Documents:  1. Deposition or Rule 2004 Examination Transcripts (no specific ones identified).
Further Discovery or Motions:  1. None identified.	Further Discovery or Motions:  1. None identified.
Stipulations:  1. None identified.	Stipulations:  1. None identified.
Amendments:  1. None identified.	Amendments:  1. None identified.
Dismissals:  1. None identified.	Dismissals:  1. None identified.
Agreed Statement of Facts:  1. None identified.	Agreed Statement of Facts:  1. Believes that an agreed statement of facts is feasible.
Attorneys' Fees Basis:  1. "Pursuant to 11 U.S. C. §."	Attorneys' Fees Basis:  1. California Civil Code § 3439.07 does not provide for attorney's fees.
Additional Items  1. None identified.	Additional Items  1. None identified.

Trial Time Estimation: Two Days.	Trial Time Estimation: Three Days.

10. [22-90415-E-7](#)  
[24-9004](#)

**JOHN MENDOZA**  
**CJM-1**  
**Calvin Massey**

**FARRAR V. MENDOZA ET AL**

**CONTINUED MOTION BY CALVIN**  
**JOHN MASSEY TO WITHDRAW AS**  
**ATTORNEY**  
**1-10-25 [85]**

**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.

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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 Client, Plaintiff, Defendant, and Office of the United States Trustee on January 10, 2025. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Defendant, Debtor, creditors, 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 Withdraw as Attorney is <span style="color: red;">xxxxxxx</span>.</b></p>
---

Calvin J. Massey (“Movant”), counsel of record for defendant Janae-Desiree Mendoza (“Client”), filed a Motion to Withdraw as Attorney as Client’s counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1).
- B. Counsel cannot effectively represent Client due to lack of communication. Mot. 2:13-25.

#### **APPLICABLE LAW**



District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(B) The client

(4) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 1.16(b)(4).

## DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that communication has broken down between him and his client for a period of time, resulting in Movant's inability to represent the Client. Decl. 2:5-10.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. No relevant party has filed an opposition to this Motion. The court has expressed concerns over this Client's disappearance given the mental challenges she has been experiencing throughout this case. At the hearing, **XXXXXXX**

~~Under California Rule of Professional Conduct 3-700(C)(1)(d), Client's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out the employment and duties effectively. Those are sufficient reasons for permissive withdrawal.~~

The court shall issue an 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 Withdraw as Attorney filed by Calvin J. Massey ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for defendant Janae-Desiree Mendoza ("Client").~~

**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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Client, Plaintiff, Defendant, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

**The Motion to Withdraw as Attorney is xxxxxxx.**

Calvin J. Massey ("Movant"), counsel of record for defendant Janae-Desiree Mendoza ("Client"), filed a Motion to Withdraw as Attorney as Client's counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1).
- B. Counsel cannot effectively represent Client due to lack of communication. Mot. 2:13-25.

#### **APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

---

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

---

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(B) The client

(4) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 1.16(b)(4).

## DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that communication has broken down between him and his client for a period of time, resulting in Movant's inability to represent the Client. Decl. 2:5-10.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. No relevant party has filed an opposition to this Motion. The court has expressed concerns over this Client's disappearance given the mental challenges she has been experiencing throughout this case. At the hearing, **XXXXXXX**

~~Under California Rule of Professional Conduct 3-700(C)(1)(d), Client's conduct, such as the lack of response to correspondence from the Movant is hindering Movant's ability to carry out the employment and duties effectively. Those are sufficient reasons for permissive withdrawal.~~

The court shall issue an 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 Withdraw as Attorney filed by Calvin J. Massey ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~———— **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for defendant Janae-Desiree Mendoza ("Client").~~

# FINAL RULINGS

12. [25-90003-E-11](#)  
[CAE-1](#)

LA PLAZA MEXICO, LLC

STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-2-25 [\[1\]](#)

**DEBTOR DISMISSED: 01/21/25**

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Debtor's *Ex Parte* Motion to Dismiss Chapter 11 Case filed 1/17/25 [Dckt 20]; Order dismissing filed 1/21/25 [Dckt 23]

**The Chapter 11 Case having been Dismissed (Order; Dckt. 23), the Status Conference is concluded and removed from the Calendar.**

13. [20-90479-E-12](#)  
[24-9012](#)

JOE MACHADO  
CAE-1

STATUS CONFERENCE RE:  
COMPLAINT

12-15-24 [1]

MACHADO V. STATE OF  
CALIFORNIA, FRANCHISE TAX

**Final Ruling: No appearance at the February 20, 2025 Status Conference is required.**

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Plaintiff's Atty: David C. Johnston

Defendant's Atty: Brian D. Wesley, Donny P. Le

Adv. Filed: 12/15/24

Answer: none

Nature of Action:

Dischargeability - priority tax claims

Notes:

Stipulation to Extend Deadline to Respond to Complaint [to 2/14/25] filed 1/28/25 [Dckt 7]

California Franchise Tax Board's and Plaintiff's Stipulation and Settlement Agreement on Complaint filed 2/13/25 [Dckt 8]

Plaintiff's Notice of Dismissal of Complaint filed 2/13/25 [Dckt 9]

<p><b>The Adversary Proceeding having been dismissed by the Parties, the Status Conference is concluded and removed from the Calendar.</b></p>
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On February 13, 2025, Plaintiff-Debtor Joe Machado and Defendant State of California Franchise Tax Board filed their Stipulation dismissing this Adversary Proceeding and Plaintiff-Debtor filed a Notice of Dismissal. Dckts. 8,9.

The Clerk of the Court may close the file for this Adversary Proceeding.