

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

MODESTO DIVISION CALENDAR

February 27, 2020 at 2:00 p.m.

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| 1. | <u>15-28908-E-13</u> WILLIAM/SARAH McGARVEY
<u>18-2053</u>
McGARVEY V. USAA SAVINGS BANK | STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-18 <u>18</u> |
|----|--|---|

Plaintiff's Atty: Kyle W. Schumacher, Elliot Gale, Joseph Angelo

Defendant's Atty: Jaime Y. Ritton, Joshua N. Kastan

Adv. Filed: 4/27/18

Reissued Summons: 4/30/18

Answer: none

Amd. Cmplt. Filed: 7/6/18

Reissued Summons: 7/6/18

Answer: 9/6/18

Nature of Action:

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

Notes:

Set by order of the court dated 1/30/20 [Dckt 64]

Order granting request for extension of all deadlines re pre-trial filed 11/29/19 [Dckt 62]; pre-trial set for 7/1/20 at 2:00 p.m.

[DKM-3] Memorandum Opinion and Decision filed 2/21/20 [Dckt 66]; Order re Summary Judgment filed 2/21/20 [Dckt 67]

The Scheduling Conference is XXXXXXXXXX

FEBRUARY 27, 2020 SCHEDULING CONFERENCE

The court issued the (long patiently waited for) Memorandum Opinion and Decision on Defendant's Motion for Judgment on the Pleadings. Dckt. 67. As stated in the Decision, judgment will be

entered for Defendant on all claims, except for the claim for violation of the automatic stay for failing to update the information provided to the consumer reporting agency to disclose that the obligation reported was included in the Plaintiff-Debtor's current Chapter 13 bankruptcy case. It is alleged that this failure to report was part of active debt collection activities in violation of the automatic stay. Whether such was part of any collection activities, whether such collection activities existed, and what damages flowed from such collection activities if shown to have occurred remains to be determined.

At the Scheduling Conference **XXXXXXXXXX**

Debtor's Atty: David C. Johnston

Notes:

Order setting deadlines filed 1/22/20 [Dckt 5]

Operating Reports filed: 2/14/20

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 2/15/20 [Dckt 17]

Debtor in Possession's Chapter 11 Status Report filed 2/15/20 [Dckt 20]

Trustee Report at 341 Meeting lodged 2/19/20

The Status Conference is XXXXXXXXXX

FEBRUARY 27, 2020 STATUS CONFERENCE

This voluntary Chapter 11 case was filed by the Debtor on January 21, 2020, with the Debtor in Possession now serving as the fiduciary of the bankruptcy estate. The Managing Member executing the bankruptcy Petition is Kathryn Machado.

On Schedule A/B the Debtor lists owning one asset, real property described as 141 acres, Sims Road, Chinese Camp, Tuolumne County, California, stated to have a value of \$4,390,000. Dckt. 1 at 5. Debtor lists owning no personal property. *Id.* at 4-5.

Ms. Machado's name and the property appeared familiar to the court, and reviewing the court's files appears to tie this property and Ms. Machado to the Chapter 7 case (converted from Chapter 11) filed by Richard Sinclair, who was identified as Ms. Machado's brother. 14-91565. The real property is property that Richard Sinclair asserted had been gifted to Golden Hills Chinese Camp, LLC. *Id.*, Motion to Abandon, Dckt. 554.

On Schedule D, Debtor lists two creditors. The first is Superior Loan Servicing (which does not appear to be the actual creditor but a loan servicer for the actual creditor), with a claim of (\$662,500.00). Dckt. 13 at 8. The Debtor also lists the Tuolumne County Tax Collector as having a secured claim for (\$2,200.00) *Id.*

For priority unsecured claims, Debtor states on Schedule E/F owing (\$2,000.00) for the "annual franchise tax." *Id.* at 10. No creditors with general unsecured claims are listed.

On the Statement of Financial Affairs for income in 2020, Debtor lists \$0.00. For income in 2019, Debtor lists \$0.00. For income in 2018, Debtor lists \$0.00. *Id.* at 14. Debtor further reports that Sun-One, LLC has been in real estate development since July 21, 2013.^{FN. 1.}

FN. 1. The California Secretary of State reports that Sun-One, LLC's status is "FTB Suspended."
<https://businesssearch.sos.ca.gov/CBS/Detail>.

The Secretary of State reports that Golden Hills Chinese Camp, LLC is also a suspended entity. The managing member of that entity is also Kathryn Machado, with the same address as the Kathryn Machado in this case. The original Articles of Organization were filed April 29, 2003, with Richard Sinclair identified as the agent for service of process and organizer of that entity.

On February 15, 2020, the Debtor in Possession filed an initial Status Report. Dckt. 20. Counsel for the Debtor in Possession states that the property is to be developed, but the tentative entitlements have expired. However, the Debtor in Possession believes that the development can be revived "once working capital is available." *Id.*, Dckt. p. 1:27 -2:1.

The Debtor in Possession further reports that in March 2018, the Debtor obtained a high interest rate, high fees loan of \$600,000. The interest only payments on this loan are stated to be \$6,250.00 a month, which indicates an interest rate of 12.5% for a grossly oversecured (by the Debtor's estimate of value) loan. Being unable to make the interest payments, the creditor proceeded with foreclosure, and this bankruptcy case was filed to stop the foreclosure (a valid use of bankruptcy – so long as it is done with the intention to prosecute the bankruptcy case and possible plan in good faith).

The Debtor in Possession states that the Debtor in Possession plans on filing a plan of reorganization (not liquidation) by April 20, 2020.

The U.S. Trustee's report of the First Meeting of Creditors states that counsel for the Debtor in Possession appeared, but no responsible representative appeared for the Debtor or Debtor in Possession. U.S. Trustee February 19, 2020 Docket Entry Report. The first meeting was continued to February 27, 2020.

At the Status Conference **XXXXXXXXXX**

3. [19-90751-E-7](#) **KAMALDIP DHAMI**
[19-9021](#)

STATUS CONFERENCE RE:
COMPLAINT
12-16-19 [1]

**WILMINGTON TRUST, NATIONAL
ASSOCIATION V. DHAMI**

Plaintiff's Atty: Glen R. Segal
Defendant's Atty: Harry B. Gill

Adv. Filed: 12/16/19
Summons Reissued: 12/17/19
Answer: 1/31/20

Nature of Action:
Objection/revocation of discharge

Notes:

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

Wilmington Trust, N.A., as Trustee ("Plaintiff") filed its Complaint (Dckt. 1) on December 16, 2019, objecting to the Defendant-Debtor being granted a discharge in his Chapter 7 Case. The allegations in the Complaint include:

A. Plaintiff holds a judgment against the Defendant-Debtor and one of Defendant-Debtor's corporations, Kirksville Hospitality, Inc. The judgment is for \$3,381,117.17.

B. Plaintiff alleges that the following statements made by the Defendant-Debtor under oath in the bankruptcy case were not true:

1. Defendant-Debtor stated that he had no income from employment or business during the current and two years proceeding the filing of bankruptcy. However, it is alleged that during that time Defendant-Debtor was working as a real estate agent and receiving commissions.
2. Defendant-Debtor stated that he did not make any gifts to any person with a total value of more than \$600.00 in the two years preceding the commencement of his bankruptcy case. However, it is alleged that Defendant-Debtor transferred a half interest in the Bridget Marie Drive property to his sister in November 2017, which is within two year of

Defendant-Debtor filing his Chapter 7 case on August 19, 2019 (Case No. 19-90751).

3. Defendant-Debtor stated that within four years of filing bankruptcy he only owned or had an interest in Kirksville Hospitality, Inc. and Kirksville Hotel Management, LLC. However, it is alleged that Defendant-Debtor owned or had an interest in Gold Management, Inc., HS Gold Mine, LLC, K&K Gold, LLC, and Dhami Investments, LLC.
4. Defendant-Debtor stated that he did not hold negotiable or non-negotiable notes; however, it is alleged that Defendant-Debtor was the holder of three promissory notes totaling more than \$350,000.
5. Defendant-Debtor stated that there were no tax refunds due him, however, it is alleged that Defendant-Debtor failed to disclose that he was entitled to a \$3,000 tax refund.
6. Defendant-Debtor stated that he did not own or have any legal or equitable interests in any business related property and that no property transfers had been made within two year of Defendant-Debtor filing his bankruptcy case. Hhowever, it is alleged that Defendant-Debtor had a legal or equitable interest in various properties, including:
 - a. 7041-7047 W. Florissant Ave., St. Louis, Missouri;
 - b. 9955 Lewis and Clark Blvd., St. Louis, Missouri;
 - c. 1101 E. Normal, Kirksville, Missouri;
 - d. 13210 New Halls Ferry Rd., Florissant, Missouri;
 - e. 19 Dunn Rd., Florissant, Missouri;
 - f. 7116 Page Ave., St. Louis, Missouri;
 - g. 1801 N. Baltimore St., Kirksville, Missouri;
 - h. 2324 Lake Ave., Fort Wayne, Indiana;
 - i. 7000-7010 Hughson Ave., Hughson, California;
 - j. 1801 Mitchell Rd., Ceres, California; and
 - k. 5519 E. Hatch Rd., Hughson, California

C. Plaintiff asserts that Defendant-Debtor should be denied a discharge as provided in 11 U.S.C. § 727(a)(4).

SUMMARY OF ANSWER

Kamaldip Dhami (“Defendant-Debtor”), represented by counsel, filed an Answer (Dckt. 9) that admits and denies specific allegations in the Complaint. The Defendant-Debtor asserts affirmative defenses, including: (1) Doctrine of Setoff and Recoupment, (2) Doctrine of Estoppel, and (3) that Defendant-Debtor has amended his Schedules in the bankruptcy case.

The Answer also makes a demand for a jury trial on the question of whether Defendant-Debtor should be denied a discharge.

STATUS CONFERENCE STATEMENTS

The Parties filed a Joint Discovery Plan on February 25, 2020. Dckt. 10. The Joint Discovery Plan addresses in detail the scheduling issues.

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matters are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

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

Fed. R. Bank. P. 7012(b) (emphasis added).

In the Answer, with respect to the allegations in the Complaint of federal court jurisdiction (Complaint ¶ 1), that the determination of whether Defendant-Debtor is entitled to a discharge in this bankruptcy case is a core proceeding (Complaint ¶ 4), and that venue in this court where Defendant-Debtor’s underlying Chapter 7 case is pending is proper (*Id.*), Defendant-Debtor responds:

1. The allegations of paragraph 1 of the Complaint are jurisdictional allegations and legal conclusions to which no response is required.
4. The allegations of paragraph 4 of the Complaint are jurisdictional allegations and legal conclusions to which no response is required.

As discussed in 2 Moore's Federal Practice - Civil § 8.07,

§8.07 Failure to Deny Averments in Pleadings

[1] Averments to Which Responsive Pleading Required Deemed Admitted If Not Denied

Failure to deny an averment in a pleading to which a responsive pleading is required, other than as to the amount of damages, is deemed an admission. Responsive pleadings are required to the complaint, a counterclaim denominated as such, an answer containing a crossclaim, and a third-party complaint. The court may order a reply to an answer or a third-party answer (see Ch. 7, *Pleadings Allowed; Form of Motions and Other Papers*).

An equivocal or otherwise improper denial will be deemed an admission. However, the deemed admission rule is not inflexible when there is no unfairness or ambiguity as to what the answering party is admitting or denying.

As to subject matter jurisdiction, such is not a matter that can be waived or admitted to exist where the federal court does not have subject matter jurisdiction. However, a party filing an answer in good faith should clearly state whether a subject matter jurisdiction issue exists and not waste the court's, other parties', and their own time and money litigating a case where the court, once it learns what is being asserted, would have to dismiss the action for lack of jurisdiction (Fed. R. Civ. P. 12(h)(3)), or "springing the surprise" on the eve of trial.

However, with respect to core or non-core are not "mere" jurisdictional allegations or "mere" legal conclusions which can be ignored. Federal Rule of Bankruptcy Procedure 7012(a) imposes an affirmative obligation to respond. Failure to respond can constitute the consent of a defendant to the bankruptcy judge issuing all orders and the final judgment on a non-core, related to matter.

At the hearing, Defendant-Debtor's counsel addressed the issue of whether this was a core or non-core matter, **XXXXXXXXXX**

Demand for Jury Trial

The Answer makes a demand for a jury trial. The issue presented to the court arises under the Bankruptcy Code enacted by Congress in 1978. It is not clear what Constitutional ^{FN.2.} basis exists for a jury trial demand for the adjudication of the issues arising under these 20th Century statutory issues arising under 11 U.S.C. § 727.

FN. 2. U.S. Constitution, Amendment VII provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

At the hearing, **XXXXXXXXXX**

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Wilmington Trust, N.A., as 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)(7), for the determination of whether Defendant-Debtor should be granted a discharge in his Chapter 7 bankruptcy case. Complaint ¶¶ 1, 4, Dckt. 1. In the Answer, Defendant Kamaldip Dhami does not admit or deny the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 4, Dckt. 9. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff Wilmington Trust, N.A., as 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)(7), for the determination of whether Defendant-Debtor should be granted a discharge in his Chapter 7 bankruptcy case. Complaint ¶¶ 1, 4, Dckt. 1. In the Answer, Defendant Kamaldip Dhami does not admit or deny the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 4, Dckt. 9. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **March 6, 2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on **November 6, 2020**.
- e. Dispositive Motions shall be heard before **January 29, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on February TBD, 2021**.

4. [19-90659-E-13](#) **ARTIE RAZO**
[19-9019](#)
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG V. RAZO

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-31-19 [1]

DISMISSED 2/21/20

Plaintiff's Atty: Jacob J. Stettin
Defendant's Atty: David C. Johnston

Adv. Filed: 10/31/19
Answer: 12/2/19

Nature of Action:
Dischargeability - false pretenses, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 1/9/20 by request of the Parties to give them sufficient time to document a dismissal of this Adversary Proceeding which acknowledges the continuing effect of the prior final judgment of this court.

Stipulation for Dismissal of Complaint to Determine Non-Dischargeability of Debt filed 2/21/20 [Dckt 18];
Order granting filed 2/21/20 [Dckt 19]

The Adversary Proceeding having been dismissed by order of the court (Dckt. 19), **the Status Conference is concluded and removed from the Calendar.**

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

5. [19-90159-E-11](#) **BARRENO ENTERPRISES, LLC** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-25-19 [1]**

Debtor's Atty: David C. Johnston

Notes:
Continued from 11/7/19

Operating Reports filed: 11/25/19; 12/13/19; 1/15/20; 2/13/20

[RAC-2] Order Granting Motion to Sell Property filed 12/31/19 [Dckt 108]; Order granting filed 2/7/20 [Dckt 130]

[RAC-3] First Interim Application for Fees and Expenses of Blakeley LLP filed 1/9/20 [Dckt 116]

Chapter 11 Trustee's Status Report for February 27, 2020 Status Conference filed 2/13/20 [Dckt 131]

The Status Conference is continued to 2:00 p.m. on XXXXXXXXXX , 2020.

FEBRUARY 27, 2020 STATUS CONFERENCE

David Sousa, the Chapter 11 Trustee, filed a Status Report on February 13, 2020. Dckt. 131. The Trustee reports that the sale of the assets of the Merced location closed on December 27, 2019. The remaining assets of the bankruptcy estate are reported to be: (1) cash in the amount of \$28,466; (2) a scheduled claim against Brixton Mall, LLC and Billie Phone, and (3) potential preference claims.

The Trustee reviews the Debtor being in a prior Chapter 11 case, no. 18-90196 ("First Chapter 11"). The First Chapter 11 was filed on March 26, 2018, and dismissed on December 6, 2018. The Trustee states that during the First Chapter 11 Case the "Debtor" (it not being clear if the reference is to the Debtor in that case or the Debtor in Possession) entered into an agreement to sell property of the bankruptcy estate. The "Debtor" did not seek authorization to sell property of the bankruptcy estate.

Given the limited assets, the Trustee concludes that it does not appear that this will be a case in which confirmation of a Chapter 11 plan would be sought.

6. [19-90382-E-7](#) TRACY SMITH
[19-9017](#)
KAUFMAN ET AL V. SMITH

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-24-19 [\[1\]](#)

Final Ruling: No appearance at the February 7, 2020 Status Conference is required.

Plaintiff's Atty:
Defendant's Atty:

Adv. Filed:
Answer:

Nature of Action:

Notes:

Continued from 12/19/19. The default of Defendant having been entered and *ex parte* motion to extend time for filing motion for entry of default judgment being before the court.

[MB-2] Order Approving *Ex Parte* Application for Enlargement of Time and Enlarging Time filed 12/28/19
[Dckt 25]

The Status Conference is continued to 2:00 p.m. on April 23, 2020.

FEBRUARY 27, 2020 STATUS CONFERENCE

On December 28, 2019, the court entered an order extending the time for Plaintiff to request entry of default in this Adversary Proceeding to 90 days from December 28, 2019.

The court having now entered the Judgment denying the Defendant-Debtor a discharge in the Adversary Proceeding prosecuted by the U.S. Trustee, the Plaintiff in this Adversary Proceeding can determine whether a judgment will be sought or this Adversary Proceeding dismissed. That determination can be made and acted on in advance of the continued Status Conference date.

7. [19-90382](#)-E-7 TRACY SMITH
[19-9018](#)
U.S. TRUSTEE V. SMITH

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-24-19 [\[1\]](#)

Final Ruling: No appearance at the February 27, 2020 Status Conference is required.

Plaintiff's Atty: Jason Blumberg
Defendant's Atty: unknown

Adv. Filed: 10/24/19
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:
Continued from 12/19/19 to allow for the filing of and hearing on a motion for entry of default judgment.

Plaintiff's Application for Entry of Default Judgment filed 1/6/20 [Dckt 17]; Order granting filed 2/7/20 [Dckt 25]

Default Judgment filed 2/17/20 [Dckt 28]

The Default Judgment having been entered on February 17, 2020, and there being no remaining issues pending before this court, **the Status Conference is concluded and removed from the calendar.**

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

8. [17-90492](#)-E-7 **JED GLADSTEIN**
[17-9020](#)
GLADSTEIN V. DEPARTMENT OF
EDUCATION

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-20-19 [71]

Plaintiff's Atty: Randall K. Walton
Defendant's Atty: Jeffrey J. Lodge

Adv. Filed: 11/12/17

Nature of Action:
Dischargeability - student loan

Notes:
Continued from 12/19/19. Plaintiff to met with replacement counsel.

[USA-1] United States' Motion to Dismiss filed 1/29/20 [Dckt 92], set for hearing 2/27/20 at 10:30 a.m.

The Status Conference is XXXXXXXXXX
