

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 4, 2020 at 2:00 p.m.

1. [18-27524-E-11](#) **DAVID FOYIL**

CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
12-1-18 [1]

Debtor's Atty: David Foyil

Notes:

Continued from 11/20/19. At the hearing, the Debtor in Possession reported that the IRS has updated its proof of claim, and there may still be several issues to address.

Operating Reports filed: 12/14/19; 1/14/20; 2/14/20

[DEF-11] Notice of Withdrawal of Motion to Approve the Third Amended Disclosure Statement filed 12/11/29 [Dckt 217]

Status Report filed 2/17/20 [Dckt 227]

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

MARCH 4, 200 STATUS CONFERENCE

The Monthly Operating Report for January 2020 was timely filed on February 14, 2020. Dckt. 225. This bankruptcy case was filed December 1, 2018. For the month of January 2020, the Debtor in Possession reports there being a negative of (\$1,148) of cash accrual, the expenses exceeding that amount. For the twenty-four months that this case has been pending, there has been a \$12,495.00 of cash accrual, approximately \$1,000.00 a month for this Bankruptcy Estate.

In the most recent Status Report filed on February 17, 2020 (Dckt. 227), the Debtor in Possession discusses the operation of this legal practice as a solo practitioner. The Debtor in Possession states that the state and federal tax returns for the individual debtor and the "Corporation" have been filed 2015, 2016, and 2017. The Debtor in Possession states that he believe that the Internal Revenue Service would have amended its proof of claim to be consistent with these returns, but it has not.

The Status Report states that a Plan has been filed, but it references the one that the Debtor in Possession voluntarily dismissed in December 2019.

There is no Chapter 11 Plan or Disclosure Statement pending before this court.

The Internal Revenue Service has filed its amended claim asserting a claim in the amount of (\$1,076,408.22), of which: (1) (\$140,717.82) is secured and (2) (\$935,690.40) is unsecured. Of the unsecured, (\$551,385.17) is asserted to be priority taxes.

At the Status Conference **XXXXXXXXXX**

NOVEMBER 20, 2019 STATUS CONFERENCE

This case was commenced on December 1, 2018, as a Chapter 13 case. This is the Debtor's fourth bankruptcy case since October 29, 2014. The prior cases are: 14-30370, Chapter 11, Dismissed February 19, 2015; 16-22194, Chapter 11, Dismissed June 29, 2016; and 18-26678, Chapter 13, dismissed November 16, 2018. This case was converted to one under Chapter 11 pursuant to the motion of the debtor. A Chapter 11 Plan and Disclosure Statement were filed, but dismissed. The Debtor in Possession and a creditor with a significant claim appear to have focused the issues concerning the claim. All monthly operating reports have been filed.

At the hearing, the Debtor in Possession reported that the IRS has updated its proof of claim, and there may still be several issues.

2. [17-26125-E-7](#) **FIRST CAPITAL RETAIL, LLC** **STATUS CONFERENCE RE:**
[19-2112](#) **HUSTED V. IKAHN CAPITAL LLC ET AL** **COMPLAINT**
9-11-19 [\[1\]](#)

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Jennifer M. Millier

Adv. Filed: 9/11/19
Answer: none

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

Notes:
Rescheduled from 1/8/20 by request of the Parties; Order filed 11/29/19 [Dckt 13]

The Status Conference is XXXXXXXXXX

Pursuant to a Joint Motion of the Parties (Dckt.8) the court continued the Status Conference from January 8, 2020, to March 4, 2020. This was to allow the Parties to focus on their discussions to resolve this Adversary Proceeding without trial.

At the Status Conference the Parties reported, XXXXXXXXXX

Debtor's Atty: Stephan M. Brown

Notes:

Continued from 1/8/20. Counsel for Debtor in Possession trying to locate a Realtor.

Operating Reports filed: 1/23/20 [Nov, Dec]; 2/14/20

[TBG-3] *Ex Parte* Application of Debtor in Possession to Employ Nick Sadek Sotheby's International Realty as Real Estate Broker filed 1/21/20 [Dckt 30]; Order granting filed 1/22/20 [Dckt 33]

Debtor in Possession's Status Report Statement filed 2/19/20 [Dckt 39]

[TBG-4] Motion to Approve Stipulation for Relief from the Automatic Stay - 1824 Swan Falls LLC filed 2/20/20 [Dckt 41], set for hearing 3/5/20 at 10:30 a.m.

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

MARCH 4, 2020 STATUS CONFERENCE

The Debtor in Possession filed an Updated Status Report on February 19, 200. Dckt. 39. The Debtor in Possession reports that the Realtor authorized to be employed is aggressively marketing the property of the Bankruptcy Estate.

A Motion to Approve a Stipulation for Relief From the Stay with Creditor 1824 Swan Falls, LLC is set for hearing on March 5, 2020. Dckt. 41.

JANUARY 8, 2020 STATUS CONFERENCE SUMMARY

This voluntary Chapter 11 case was commenced October 29, 2019. The Status Report filed on November 22, 2019 (Dckt. 17), explains that the Debtor is "generally retired," but provides some services as a personal trainer. Debtor holds a majority interest in a small workout studio in Roseville, California.

The Report discusses that Debtor purchased her current residence for \$6,900,000. Debtor liquidated her retirement and investment accounts, made a down payment of approximately 50% and the sellers are the payees on a note for the balance of the purchase price in the amount of (\$3,750,000) that is secured by the residence.

Debtor was unable to generate the monies to pay off the (\$3,750,000) note, has unpaid tax liabilities from liquidating her retirement and investment accounts, and has credit card liabilities.

For a bankruptcy plan, Debtor intends to have the home sold and creditors paid in full.

This bankruptcy case was filed on October 29, 2019. A review of the Docket indicates that in the past two months the Debtor in Possession has not sought authorization for the employment of a Realtor to market and sell the \$7,000,000 home.

The Monthly Operating Report for November 2019 was filed on December 31, 2019. Dckt. 24. For income, the Debtor in Possession reports \$0.00. For expenses, Debtor reports having paid (\$4,310) in expenses.

Review of Schedules

On Schedule A/B Debtor lists her Granite Bay residence with a value of \$7,960,000, and a second property in which she claims a 50% interest having a value of \$500,00. For personal property, Debtor's household goods are listed as having a value of \$295,600. Debtor also lists a \$25,000 "Crystal Singing Bowl Collection."

Debtor lists having \$8,000 in cash and \$1,700 deposited at banks.

On Schedule D, Debtor lists approximately (\$5,400,000) in claims secured by the real property, which includes state and federal tax claims totaling approximately (\$1,600,000) that are also secured by other assets.

For Debtor's residence, there are (\$71,924) in secured property taxes listed as a claim of Placer County.

Debtor's Atty: Lucas B. Garcia
Trustee's Atty: Barry H. Spitzer

Notes:

Continued from 11/20/19. Counsel for Plaintiff-Debtor reported that the Chapter 7 Trustee has obtained possession of the property and a request for dismissal of the Adversary Proceeding [19-2098] shall be filed by the Plaintiff-Debtor and the Trustee.

[BHS-3] Motion for Sale of Estate's Interest in Real Property Commonly Known as 11563 Quartz Drive, #3, Auburn, California 95602 and Authority to Pay Real Estate Broker's Commission filed 12/5/19 [Dckt 162]; Order granting filed 1/17/20 [Dckt 171]

The Status Conference is XXXXXXXXXX.
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MARCH 4, 2020 STATUS CONFERENCE

The Chapter 7 Trustee has pursued the sale of the 11563 Quartz Drive, #3 Property. Order, Dckt. 171.

At the Status Conference, XXXXXXXXXX

5. [17-22333-E-7](#) **THOMAS WARREN**
[19-2098](#)
WARREN V. CHILDE

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
7-30-19 [1]

Plaintiff's Atty: Lucas B. Garcia
Defendant's Atty: unknown

Adv. Filed: 7/30/19
Answer: none

Nature of Action:
Recovery of money/property - turnover of property

Notes:

Continued from 11/20/19. Counsel for Plaintiff-Debtor reported that the Chapter 7 Trustee has obtained possession of the property and a request for dismissal of this Adversary Proceeding shall be filed by the Plaintiff-Debtor and the Trustee.

The Status Conference is XXXXXXXXXX

MARCH 4, 2020 STATUS CONFERENCE

At the November 20, 2020 Status Conference Plaintiff advised the court that this Adversary Proceeding would be dismissed, the Chapter 7 Trustee having obtained possession of the property at issue.

At the March Status Conference, XXXXXXXXXX

6. [19-22653-E-7](#) REECE/RODINA VENTURA
[19-2156](#)
GAUNIA V. VENTURA ET AL

STATUS CONFERENCE RE:
COMPLAINT
12-22-19 [1](#)

Plaintiff's Atty: Michael J. Harrington
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 12/22/19
Answer: 1/20/20

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

Adela Bon Gaunia ("Plaintiff") seeks to obtain a judgment determining that obligation resulting from Plaintiff's employment by Defendant-Debtor, directly or by one of Defendant-Debtor's corporations operating care facilities. Plaintiff asserts that Defendant-Debtor did not comply with California wage and employment laws including the proper withholding of taxes. Plaintiff filed and was prosecuting a state court action asserting such claims, which was pending when Defendant-Debtors commenced their Chapter 7 bankruptcy case. Plaintiff asserts that the obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6).

SUMMARY OF ANSWER

Reece Ventura and Rodina Ventura ("Defendant-Debtor") have filed an Answer (Dckt. 6), admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Adela Bon Gaunia alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. 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 Adela Bon Gaunia alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. **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 15, 2020**.
- c. Expert Witnesses shall be disclosed on or before **April 26, 2020**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **May 26, 2020**.
- d. Discovery closes, including the hearing of all discovery motions, on **September 1, 2020**.
- e. Dispositive Motions shall be heard before **October 15, 2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on November 18, 2019**.

7. [19-22653-E-7](#) **REECE/RODINA VENTURA**
[19-2157](#)
VILLANUEVA V. VENTURA ET AL

STATUS CONFERENCE RE:
COMPLAINT
12-22-19 [1]

Plaintiff's Atty: Michael J. Harrington
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 12/22/19
Answer: 1/20/20

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

Notes:

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

Benjamin Villanueva ("Plaintiff") seeks to obtain a judgment determining that obligation resulting from Plaintiff's employment by Defendant-Debtor, directly or by one of Defendant-Debtor's corporations operating care facilities. Plaintiff asserts that Defendant-Debtor did not comply with California wage and employment laws including the proper withholding of taxes. Plaintiff filed and was prosecuting a state court action asserting such claims, which was pending when Defendant-Debtors commenced their Chapter 7 bankruptcy case. Plaintiff asserts that the obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6).

SUMMARY OF ANSWER

Reece Ventura and Rodina Ventura ("Defendant-Debtor") have filed an Answer (Dckt. 6), admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Benjamin Villanueva alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. 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 Benjamin Villanueva alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Reece Ventura and Rodina Ventura admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 2, 3, 4; Dckt. 6. **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 15, 2020**.
- c. Expert Witnesses shall be disclosed on or before **April 26, 2020**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **May 26, 2020**.
- d. Discovery closes, including the hearing of all discovery motions, on **September 1, 2020**.
- e. Dispositive Motions shall be heard before **October 15, 2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on November 18, 2019**.

8. [19-22653-E-7](#) **REECE/RODINA VENTURA**
[20-2001](#)
VENTURA ET AL V. HARRINGTON ET AL

STATUS CONFERENCE RE:
COMPLAINT
1-3-20 [1]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Peter C. Bronson

Adv. Filed: 1/3/20
Answer: 2/19/20

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

Notes:

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

Reece Ventura and Rodina Ventura, ("Plaintiff-Debtor") has filed a Complaint alleging violation of the automatic stay. It is alleged that Defendant had commenced several state court actions in 2015. Plaintiff-Debtor commenced their bankruptcy case in April 2019. It is further alleged that in December 2019, an email was sent by Defendant to Rodina Ventura making reference to her having been served, a fraud determination would be obtained, and that the judgment will survive bankruptcy.

It is alleged that this email violated the automatic stay, having been sent with knowledge of Plaintiff-Debtor's bankruptcy case.

Punitive damages are requested for the violation of the automatic stay.

The Complaint does not state whether the communication was in connection with the State Court Actions, the bankruptcy court nondischargeability actions referenced in the Answer, or whether it was unclear from the email to which it related.

SUMMARY OF ANSWER

Michael J. Harrington ("Defendant") has filed an Answer that admits and denies specific allegations in the Complaint. Dckt. 7. Defendant also lists eight affirmative defenses.

In paragraph 5 of the Answer Defendant states that in December 2019, Defendant commenced two adversary proceedings, 19-2156 and 19-2157, to have alleged debts determined nondischargeable and the email related to these adversary proceedings.

APPROPRIATENESS OF ADVERSARY PROCEEDING

The Ninth Circuit Court of Appeals has held that an alleged violation of the automatic stay and the relief arising therefrom is properly determined by motion, not an adversary proceeding. Such violation is treated as contempt of court, the violation of the statutorily created stay order. See 3 COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362[12]. Federal Rule of Bankruptcy Procedure 9020 provides that relief arising from such contempt is sought as a contested matter as provided in Federal Rule of Bankruptcy Procedure 9014.

Here, no other relief is sought beyond the contempt (such as quieting title).

At the hearing, counsel for Plaintiff addressed the appropriateness of commencing this Adversary Proceeding, rather than the much more swiftly proceeding contested matter, stating **XXXXXXXXXX**

9. [19-24755-E-13](#) **HOWARD REDMOND**
[19-2111](#)
REDMOND V. ACCREDITED HOME
LENDERS INC. ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
9-11-19 [1]

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 9/11/19
Answer: none

Nature of Action:
Recovery of money/property - turnover of property

Notes:
Continued from 1/8/20 to be heard in conjunction with the court's Order to Show Cause re Dismissal of this Adversary Proceeding.

<p>The Status Conference is continued to 11:00 a.m. on April 9, 2020.</p>
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MARCH 4, 2020 STATUS CONFERENCE

The court issued an Order to Show Cause, Kai'la Redmond failing to attend the Status Conferences in this Adversary Proceeding she commenced. The related bankruptcy case filed by Ms. Redmond for a probate estate has been dismissed.

Though ordered to appear at the March 4, 2020 hearing on this Order to Show Cause, Kai'la Redmond sent a Response to the court on February 19, 2020, advising the court that she would not comply with the court's order because she "will be out of the state and previously arranged commitments." Response, p. 1; Dckt. 16. Ms. Redmond also requested that the court postpone the ordered hearing for thirty days.

In reviewing the file in this case the court notes that Ms. Redmond failed to appear at the January 8, 2020 Status Conference, or the November 20, 2019 Status Conference in this Adversary Proceeding that Kai'la Redmond commenced.

JANUARY 8, 2020 STATUS CONFERENCE

A review of the Docket indicates that the Plaintiff is not taking any action to prosecute this Adversary Proceeding. The Bankruptcy Case to which it relates was dismissed on September 27, 2019. Chapter 13 Case No. 19-24755; Order, Dckt. 30. The court's findings and conclusions concerning the dismissal of the Chapter 13 case are stated in the Civil Minutes from the hearing on the Motion to Dismiss. *Id.*; Dckt. 29.

The court shall issue an Order to Show Cause why this Adversary Proceeding should not be dismissed without prejudice due to lack of prosecution.

NOVEMBER 20, 2019 STATUS CONFERENCE

The Complaint Adversary Proceeding was filed on September 11, 2019, with the Plaintiff identified in the caption as “Kai’la Cynthia Redmond: Family of Redmond as Heir apparent for Howard James Redmond Sr, Plaintiff/Debtor.” Dckt. 1 at 1. The Complaint states that it is an action to avoid a preferential transfer as provided in 11 U.S.C. § 547(a)(b). Id.

The bankruptcy case to which this Adversary Proceeding relates is Case No. 19-24755, for which Howard James Redmond, Sr. is the named Debtor, with the bankruptcy case filed in pro se. The Bankruptcy Petition is not signed by Mr. Redmond, but by “Kai’la Cynthia Redmond, Heir-Apparent.” 19-24755; Petition, Dckt. 1 at 6.

The Chapter 13 bankruptcy case filed in the name of Howard James Redmond, Sr. was dismissed on September 27, 2019. Id. at 30.

The bankruptcy case for Mr. Redmond was dismissed on September 27, 2019. Id.; Order, Dckt. 30. In the court’s Civil Minutes for the hearing on the dismissal, the court addresses the estate of a decedent not being a proper bankruptcy estate debtor, there being no plan advanced, reviews the Complaint in this Adversary Proceeding, and a related District Court action that has been dismissed. Id.; Dckt. 29. A copy of the Docket in the District Court Action is attached as an exhibit to the Complaint.

The related District Court Action is titled *Hakeim El By v. Accredited Home Lenders, Inc. and Wells Fargo Bank*. E.D. Cal. 17-02237. Judgment was entered for the defendants in the District Court Action. Orders and Findings, E.D. Cal. 17-02237; Dckts. 44, 43, 42. The findings include:

- A. Plaintiff Hakeim El Bey was dead. The family members who appeared at the Status Conference were Kalia El Bey and Brian El Bey. Id.; Dckt. 21 Minutes.
- B. The family members were given thirty days to obtain counsel and seek an order substituting in as a personal representative as permitted under L.R. 230 and the Federal Rules of Civil Procedure. The court addressed that an executor or representative of an estate of a decedent cannot appear in pro se.
- C. The thirty days expired and no substitution was sought.
- D. The judgment was to dismiss the District Court Action without prejudice.

Debtor's Atty: Arasto Farsad

Notes:

Continued from 11/20/19; 1/21/20

Operating Reports filed: 12/20/19

[AF-7] First and Final Application for Compensation filed 2/18/20 [Dckt 99], set for hearing 3/26/20 at 10:30 a.m.

[AF-6] Order granting motion to confirm Plan filed 2/20/20 [Dckt 104]

[AF-6] Order Confirming Chapter 11 Plan Dated August 8, 2019 filed 2/20/20 [Dckt 105]

The Status Conference is continued to XXXXXXXXXX
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MARCH 4, 2020 STATUS CONFERENCE

On February 20, 2020, the court entered its order confirming the Chapter 11 Plan in this case.

At the Status Conference, XXXXXXXXXX

11. [19-25168-E-7](#) MATHEW LAKOTA
[19-2140](#)
LUCAS V. LAKOTA

STATUS CONFERENCE RE:
COMPLAINT
11-14-19 [\[1\]](#)

Plaintiff's Atty: Raymond L. Sandelman
Defendant's Atty:

Adv. Filed: 11/14/19
Answer: 11/26/19

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Plaintiff's Status Conference Statement filed 2/19/20 [Dckt 12]

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

Lisa Lucas ("Plaintiff") has filed a complaint seeking to have alleged obligations to be determined nondischargeable in connection with Defendant-Debtor's bankruptcy case. Plaintiff obtained a judgement against her ex-husband, and assigned the judgment to Defendant-Debtor for collection. Under the terms of the assignment, 33% of the monies collected would be paid to Defendant-Debtor and 67% to Plaintiff.

Plaintiff's ex-husband filed a Chapter 13 bankruptcy case, the confirmed plan in which provided for 100% payment of Plaintiff's judgment. Plaintiff alleges that Defendant-Debtor improperly retained and took \$3,931.71 of Plaintiff's portion of the monies paid on the judgment that was assigned for collection. Plaintiff commenced and was prosecuting a state court action asserting her claims when Defendant-Debtor commenced his Chapter 7 bankruptcy case. Plaintiff asserts that her claims are nondischargeable pursuant to 11 U.S.C. § 523(a)(4), embezzlement, breach of fiduciary duty; (a)(6), willful and malicious injury; and her claim for punitive damages.

SUMMARY OF ANSWER

Mathew Lakota ("Defendant"), in pro se, filed an Answer (Dckt. 8) that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Lisa Lucas 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)(B) and d(I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Mathew Lakota admits the allegations of jurisdiction and core proceedings. Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and 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 Lisa Lucas 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)(B) and d(I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Mathew Lakota admits the allegations of jurisdiction and core proceedings. Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and 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 15, 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 -----, **2020**.
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on --**
-----, **2019**.

Debtor's Atty: Judson H. Henry

Notes:

[HEM-1] Motion to Extend Stay filed 1/16/20 [Dckt 10]; Order granting filed 2/11/20 [Dckt 31]

[JHH-1] Substitution of Attorney for Herbert Miller filed 1/28/20 [Dckt 26]; Order granting filed 2/2/20 [Dckt 27]

Preliminary Status Report filed 2/7/20 [Dckt 28]

Trustee Report at 341 Meeting lodged 2/12/20. Continued to 3/17/20 at 3:30 p.m.

Order to Show Cause re Dismissal of Case or Imposition of Sanctions, or Appointment of Trustee Combined with Notice Thereof [failure to pay installment payment(s)] filed 2/18/20 [Dckt 32], set for 3/5/20 at 10:30 a.m.

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

Debtor Herbert Miller commenced this voluntary Chapter 11 Case on January 13, 2020. The Debtor has had several other recent bankruptcy cases. These are summarize as follows:

Chapter 11 Case 19-23392	Filed: May 29, 2019	Dismissed: July 15, 2019
	The bankruptcy case was dismissed due to the failure of Debtor to pay the filing fee.	
Chapter 13 Case 18-26373	Filed: October 9, 2018	Dismissed: November 7, 2018
	Case Dismissed due to Debtor's failure to file documents. The court denied the Debtor's subsequent motion to vacate the dismissal and motion to convert the case, if the dismissal was vacated, to one under Chapter 11.	

Review of Schedules

On Schedule A/B Debtor lists owning the following significant real and personal property assets:

1.	Single Family Dwelling (“SFD”) Alta Mesa East Road.....	\$450,000
2.	SFD Hilton Dr.....	\$500,000
3.	Shadow Court.....	\$600,000
4.	Cash.....	\$ 80
5.	Bank Accounts.....	\$ 100
6.	Moreno Real Estate, LLC (owns 80%).....	\$ -0-
7.	Slo Brew Holding Company, LLC (owns 80%).....	\$ -0-
8.	Abacus Investment Group, Inc. (owns 50%).....	\$ unknown
9.	Business Related Property.....	\$ No
10.	Acres Imperial, LLC.....	\$ unknown

Dckt. 22.

On Schedule I, Debtor lists that he is employed as a “real property owner and manager,” and has been so employed for five years. *Id.* Debtor states that he has \$1,500 a month in net income from operation of his business and \$1,400 in Social Security income. No profit and loss statement attached to Schedule I for the business(es) that generates the \$1,500 a month net income for Debtor.

On Schedule J, Debtor reports having only (\$1,510) in monthly expenses. *Id.* No provision is made for payment of rent/insurance or a mortgage/taxes/insurance, or home maintenance. For food and housekeeping supplies, Debtor lists only (\$300) a month. Allowing (\$50) a month for housekeeping supplies, that leave (\$250) for food, which is (\$2.78) a mean in a thirty day month.

Debtor also states that he pays (\$0) for clothing, laundry, or dry cleaning. While listing two cars on Schedule A/B, Debtor has (\$0) for vehicle insurance on Schedule J.

Though Debtor is self-employed, no provision is made for payment of self-employment taxes, income taxes, or business insurance on Schedule J.

On the Statement of Financial Affairs, Debtor states that he had \$1,500 in business income in 2020 (bankruptcy filed in January 2020), \$0.00 in 2019, and \$4,500 in 2018. *Id.* at 39. For non-business income, Debtor states having received \$1,400 in 2020 and \$14,000 (starting March 2019) in 2019 of Social Security income. *Id.*

**APPEARANCES OF PETER G. MACALUSO,
COUNSEL FOR PLAINTIFF**

AND

**JOSEPH ABINANTI, THE DEFENDANT
(No Attorney Having Appeared for Defendant)**

REQUIRED FOR MARCH 4, 2020

NO TELEPHONIC APPEARANCES PERMITTED

**(If Either Counsel or the Defendant Fail to Appear, the
Court Shall Issue an Order for a Short Continuance and
an Order For Each to Appear and to Show Cause Why
Sanctions Should Not Be Ordered Due to the Failure to
All Parties to Be at the Status Conference and
Failure to Prosecute or Defend this Adversary Proceeding)**

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty: unknown

Adv. Filed: 6/3/19

Answer: none

Nature of Action:

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

Notes:

Continued from 1/8/20 to be heard in conjunction with the court's Order to Show Cause. The Plaintiff reported that the matter has been settled and requested a further continuance so such settlement may be documented.

Plaintiff's Fourth Status Statement filed 2/26/20 [Dckt 21]

The Status Conference is XXXXXXX

MARCH 4, 2020 STATUS CONFERENCE

Though this Adversary Proceeding was commenced on June 2, 2019, and is now ten months old, no answer has been filed, and while promised by Plaintiff's Counsel that the matter has been "settled," actually getting a settlement done and this Adversary Proceeding dismissed has eluded the Parties and their counsel.

At the January 8, 2020 Status Conference counsel for Plaintiff-Debtor allayed the court's concerns, reporting (subject to the certifications of Fed. R. Bankr. P. 9011(b)) that the matter has been settled, and it merely needed to be documented. The court has given Plaintiff and Plaintiff's counsel two full months to have the settlement documented and this Adversary Proceeding dismissed.

On January 15, 2020, a "Settlement Agreement" was filed by Plaintiff. Dckt. 19. Unfortunately, only counsel for Plaintiff has signed the "Settlement Agreement." The "Settlement Agreement" states that Plaintiff and Defendant have "finalized" and are executing a settlement. Further, that Plaintiff merely "anticipates" dismissing this Adversary Proceeding prior to the March 4, 2020.

It is clear that "settlement" has alluded Plaintiff and that Plaintiff's conduct in failing to prosecute this Adversary Proceeding is an admission that Plaintiff is not going to, cannot, or will not prosecute this Adversary Proceeding.

Further, Plaintiff's conduct and failure to document a settlement and dismiss this case is evidence that the prior statements made to this court to obtain continuances of the Status Conference were not accurate. The continuances were not sought or obtained for the stated purpose of documenting a settlement, but merely delay any prosecution of this case.

At the hearing, counsel for the Plaintiff addressed the court dismissing this Adversary Proceedings for failure of Plaintiff to prosecute and the breach of the Federal Rule of Bankruptcy Procedure 9011(b) certifications. The evidence of the Plaintiff's failure to prosecute this case and the inaccuracy of the prior representations to the court that the Adversary Proceeding has been settled and the parties have documented the settlement, include Plaintiff's counsel's statements in the "Settlement Agreement:"

"Montelongo (hereinafter "Plaintiff"), and Defendant, Joseph P. Abinanti (hereinafter "Defendant"), have finalized and are executing a settlement"

Dckt. 19; when Plaintiff's counsel states in his most recent Status Report:

“B. MEET and CONFER

Plaintiff and Defendant are in the process of signing the settlement and dismissal of this action. . . .”

Dckt. 21. Plaintiff’s counsel admits that even after more than two months, the “settlement,” if one actually exists, has not been “signed.”

At the Status Conference, **XXXXXXXXXX**

JANUARY 8, 2020 STATUS CONFERENCE

This Adversary Proceeding was commenced with the filing of the Complaint on June 3, 2019. As discussed in the Minutes restated below from the prior Status Conferences, Plaintiff-Debtor has repeatedly requested that the Status Conference be continued because he was “talking” with the named Defendant. No answer has been filed.

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004, the Defendant must be served with the complaint within 90 days after the Complaint was filed. If not, then the action must be dismissed.

The Certificate of Service filed by Plaintiff-Debtor states that the Complaint was served on August 14, 2014, on a James R. Felton, an attorney in Southern California, not the named Defendant. It is not clear that the Complaint has been served as required by Federal Rule of Civil Procedure 4(m).

More significantly, it appears that the summons served on August 14, 2019, was the summons issued on June 3, 2019. The Order to Confer on Initial Disclosures and Setting Deadlines requires that the summons, complaint, and Order to Confer shall be served within 7 days of the issuance of the summons - the summons deadline expired on June 10, 2019, well before the August 14, 2019 mailing by Plaintiff-Debtor’s counsel.

The Summons permits the Plaintiff-Debtor to agree to only one extension of not more than 30 days from the deadline to respond to the summons, which was July 3, 2019 (30 days from the June 3, 2019 issuance of the summons). Dckt. 3.

This requirement is consistent with the provisions of Federal Rule of Bankruptcy Procedure 7004(e) which expressly provides that a summons expires 7 days after it was issued.

The Plaintiff-Debtor has demonstrated that he is not prosecuting this Adversary Proceeding. An effective, enforceable summons has not been served. Plaintiff-Debtor has not complied with the orders of this court for such service.

The Plaintiff-Debtor not prosecuting this Adversary Proceeding, the court shall issue an order to show cause why this Adversary Proceeding should not be dismissed without prejudice.

It appears that this is a “simple” adversary proceeding to obtain a judgment declaring that a deed of trust is void, there being no obligation remaining to be secured by it after completion of the Plaintiff-Debtor’s Chapter 13 Plan. If that is the case, Plaintiff-Debtor and his counsel can commence a new Adversary Proceeding, diligently prosecute it, and clear a void deed of trust from Plaintiff-Debtor’s property.

At the Status Conference, the Plaintiff reported that the matter has been settled and requested a further continuance so such settlement may be documented.

NOVEMBER 11, 2019 STATUS CONFERENCE

On November 7, 2019, Plaintiff-Debtor filed a Second Status Report, advising the court that the Parties have ongoing settlement discussions and they request at least a 30 day continuance for the negotiations to be completed.

The court continues the Status Conference to January 2020, which should be sufficient for the parties to have the negotiations completed, the settlement documents, and this adversary proceeding resolved.

AUGUST 21, 2019 STATUS CONFERENCE

Plaintiff-Debtor filed a Status Report on August 14, 2019. Dckt. 8. Plaintiff-Debtor reports that while no answer has been filed, Defendant has met with Plaintiff-Debtor’s counsel concerning this Adversary Proceeding. Plaintiff-Debtor requests the court continue the Status Conference for thirty days to allow settlement negotiations to continue. Alternative, Plaintiff-Debtor requests that the court set an expedited discovery schedule for this Adversary Proceeding - one in which there is no defendant who has filed an answer.

The court will not set a unilateral discovery schedule. If no answer is filed, Plaintiff-Debtor may request the entry of a default and then seek the entry of a default judgment.

At the Status Conference counsel for Plaintiff stated that Defendant is working to value the property and determine whether there are any issues to fight about.

SUMMARY OF COMPLAINT

Ivan Montelongo, the Plaintiff Chapter 13 Debtor (“Plaintiff-Debtor”) has filed a Complaint to address a Second Deed of Trust that has not been reconveyed notwithstanding Plaintiff-Debtor completing his Chapter 13 Plan and the 11 U.S.C. § 506(a) valuation of Defendant’s secured claim.

1. Plaintiff-Debtor owns the real property located on Skyway Drive (“Property”), which is asserted to have had a value of \$170,000 when Plaintiff Debtor commenced his Chapter 13 case.
2. Owen Loan Servicing holds a claim in the amount of \$270,000 secured by the senior deed of trust recorded against the Property.

3. Defendant Joseph Abinanti has a promissory note in the amount of \$80,000 that is secured by a second deed of trust recorded against the Property.

4. Plaintiff-Debtor's confirmed Chapter 13 Plan provides that the second deed of trust will be void and stripped upon completion of the Chapter 13 Plan. Valuation of the claim was made as provided in 11 U.S.C. § 506(a).

In the First Cause of Action the Plaintiff-Debtor seeks no affirmative relief. Rather, Plaintiff-Debtor merely seeks a declaration that the Second Deed of Trust has been satisfied (though it is unclear how a security interest can be "satisfied") and that the Second Deed of Trust is of no force and effect. Plaintiff-Debtor also requests an informative declaration that the debt has been discharge and the security interest voided. It is unclear what Plaintiff-Debtor will then do with a declaration between Plaintiff-Debtor and Defendant. ^{FN. 1}

FN. 1. It does not appear that mere declaratory relief of what would occur in the future based upon alternative actions that the parties could elect once the court has entered a declaration of their existing rights is proper. Rather, it appears that Plaintiff-Debtor should be seeking to enforce his rights and interests.

In the Second Cause of Action Plaintiff-Debtor does seek to enforce his rights and interests in the Property asking this court to "void" the Second Deed of Trust and issue a judgment so providing that may be recorded with the County Recorder.

In the Third Cause of Action Plaintiff-Debtor states his claim for affirmative relief in the form of statutory and actual damages and attorney's fees pursuant to California Civil Code § 2941(b)(1) based on Defendant's failure to reconvey the deed of trust which no longer secures any obligation after the completion of the Chapter 13 Plan.

In the Fourth Cause of Action Plaintiff-Debtor asserts a claim for breach of contract (Second Deed of Trust) for Defendant's failure to reconvey the Second Deed of Trust.

Plaintiff-Debtor also requests statutory and contractual attorney's fees and costs.

SUMMARY OF ANSWER

Joseph Abinanti, the named defendant ("Defendant") has not filed an answer.

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(K), (L). Complaint, ¶ 3, Dckt. 1.

FINAL RULINGS

14. [17-26125-E-7](#) FIRST CAPITAL RETAIL, LLC CONTINUED STATUS CONFERENCE
[19-2113](#) RE: COMPLAINT
HUSTED V. HAPPY ROCK MERCHANT
SOLUTIONS, LLC 9-11-19 [\[1\]](#)

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Rebecca R. Cusick

Adv. Filed: 9/11/19
Answer: none

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

Notes:
Rescheduled from 11/20/19 by request of the Parties; Order filed 11/4/19 [Dckt 10]

Reissued Summons filed 2/12/20 [Dckt 11], sets status conference on 4/22/20 at 2:00 p.m.

<p>The Status Conference is continued to 2:00 p.m. on April 22, 2020, the date set in the Reissued Summons (Dckt. 11).</p>

15. [17-26125-E-7](#) FIRST CAPITAL RETAIL, LLC CONTINUED STATUS CONFERENCE
[19-2115](#) RE: COMPLAINT
HUSTED V. ESBF CALIFORNIA, LLC 9-11-19 [\[1\]](#)

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Michael W. Davis

Adv. Filed: 9/11/19
Answer: none

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

Notes:
Rescheduled from 11/20/19 by request of the Parties; Order filed 11/4/19 [Dckt 11]

Reissued Summons filed 2/12/20 [Dckt 12], sets status conference on 4/22/20 at 2:00 p.m.

<p>The Status Conference is continued to 2:00 p.m. on April 22, 2020, the date set in the Reissued Summons (Dckt. 11).</p>

16. [17-26125-E-7](#) FIRST CAPITAL RETAIL, LLC CONTINUED STATUS CONFERENCE
[19-2116](#) RE: COMPLAINT
HUSTED V. IAC FUNDING CAPITAL 9-11-19 [\[1\]](#)
SOURCE, LLC ET AL

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: unknown

Adv. Filed: 9/11/19
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

Notes:
Continued from 1/8/20

[RHS-1] Order to Show Cause - Dismissal Without Prejudice of Adversary Proceeding filed 1/12/20 [Dckt 9], set for hearing 3/4/20 at 2:00 p.m.

Request for Entry of Default by Plaintiff [re IAC Funding Capital Source, LLC aka IAC Funding Source, LLC] filed 2/12/20 [Dckt 11]; Entry of Default and Order Re: Default Judgment Procedures filed 2/14/20 [Dckt 14]

Request for Entry of Default by Plaintiff [re ML Factors Funding, LLC] filed 2/12/20 [Dckt 12]; Entry of Default and Order Re: Default Judgment Procedures filed 2/14/20 [Dckt 16]

The Status Conference is continued to 2:00 p.m. on April 22, 2020.

MARCH 4, 2020 STATUS CONFERENCE

The Plaintiff has filed a Motion for Entry of a Default Judgment, which is set for hearing on March 26, 2020.

Final Ruling: No appearance at the March 4, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Plaintiff's Counsel, Defendants, Office of the United States Trustee as stated on the Certificate of Service on January 15, 2020. The court computes that 49 days' notice has been provided.

The Order to Show Cause is discharged, no sanctions ordered.

This Adversary Proceeding was commenced by Kimberly Husted, the Plaintiff-Trustee, on September 11, 2019. A Reissued Summons obtained by Plaintiff-Trustee on October 28, 2019, and the Reissued Summons and Complaint were served on November 1, 2019. Cert. of Serv., Dckt. 7.

No answer or other responsive pleading has been filed by IAC Funding Capital Source, LLC or ML Factors LLC (collectively "Defendants"), the named defendants in the Complaint that have been served. The time to respond to the Summons and Complaint expired on December 1, 2019. Reissued Summons, Dckt. 6.

The Plaintiff-Trustee has not requested the entry of the default of either of these Defendants. The Plaintiff-Trustee reported at the January 8, 2020 Status Conference that though the Plaintiff-Trustee had reached out and initial discussions occurred with the Defendants after the September 11, 2019 filing of the Complaint, the Defendants, and each of them, have ceased communications with the Plaintiff-Trustee and her counsel.

The failure or refusal of a defendant to communicate is not a basis for the Plaintiff-Trustee to not seek entry of the defendant's default and seek the entry of a default judgment. There is no indication that there are ongoing settlement discussions or negotiations which would be impaired if the parties were forced to an active "war footing" by having the Defendants comply with the Summons.

The court has continued the Status Conference to 2:00 p.m. on March 4, 2020, to afford Plaintiff-Trustee the opportunity to prosecute this Adversary Proceeding by obtaining entry of the Defendants' defaults and seeking a default judgment. Alternatively, if Defendants desire to not have a default judgment entered against them, they can respond or seek other prompt and diligently addressed resolution with the Plaintiff-Trustee.

However, the court does not allow an adversary proceeding to sit, the Complaint not responded to, and the parties not actively working to resolve the dispute.

TRUSTEE'S RESPONSE

Trustee filed a response on February 19, 2020. Dckt. 20. Trustee explains that she has made repeated efforts to discuss the case with Defendant and aside from one exchange with Samuel Selmar, CEO of one of the Defendants, the efforts proved unsuccessful.

Trustee asserts that the delay in seeking the entry of default was due to the efforts to communicate with Defendants and the potential need for further discovery in connection with a motion for entry of default judgment.

After the January 8 Status Conference, Trustee determined that there was sufficient information to prosecute the motion for entry of default judgment; and will be filing said motion prior to the hearing on this order to show cause.

DECISION

A review of the docket shows that Plaintiff-Trustee filed a Request for Entry of Default Judgment on February 12, 2020. Dckt. 11. The Entry of Default and Order were entered on February 14, 2020. Dckt. 14. Additionally, Trustee filed a Motion for Entry of Default Judgment on February 27, 2020. Dckt. 22.

Defendants IAC Funding Capital Source LLC and ML Factors Funding LLC failed to provide the court with any written responses.

The Plaintiff-Trustee has addressed the issues pertaining to the prosecution of this Adversary Proceedings. The named defendants have offered no further insight.

The Order to Show Cause is discharged.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause 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 Order to Show Cause is discharged, with no sanctions ordered.

18. [17-26125-E-7](#) FIRST CAPITAL RETAIL, LLC CONTINUED STATUS CONFERENCE
[19-2117](#) RE: COMPLAINT
HUSTED V. ACE FUNDING SOURCE LLC 9-11-19 [\[1\]](#)

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Stephen C. Breuer

Adv. Filed: 9/11/19
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

Notes:
Continued from 11/20/19 by request of the Parties, Order filed 11/8/19 [Dckt 10]

Reissued Summons filed 2/12/20 [Dckt 12], sets status conference on 4/22/20 at 2:00 p.m.

<p>The Status Conference is continued to 2:00 p.m. on April 22, 2020, the date set in the Reissued Summons (Dckt. 11).</p>

Final Ruling: No appearance at the March 4, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Plaintiff (*pro se*), Chapter 13 Trustee, Office of the United States Trustee as stated on the Certificate of Service on January 15, 2020. The court computes that 49 days' notice has been provided.

The hearing on the Order to Show Cause is continued to 11:00 a.m. on April 9, 2020.

MARCH 4, 2020 HEARING

Though ordered to appear at the March 4, 2020 hearing on this Order to Show Cause, Kai'la Redmond sent a Response to the court on February 19, 2020, advising the court that she would not comply with the court's order because she "will be out of the state and previously arranged commitments." Response, p. 1; Dckt. 16. Ms. Redmond also requested that the court postpone the ordered hearing for thirty days.

In reviewing the file in this case the court notes that Ms. Redmond failed to appear at the January 8, 2020 Status Conference, or the November 20, 2019 Status Conference in this Adversary Proceeding that Ms. Redmond commenced.

No information is provided about the "previously arranged commitments" that Kai'la Redmond references in the Response. Also, she offers no testimony as to why there needs to be a further thirty day delay requested in the Response.

The court continues the hearing on the Order to Show Cause and the related Status Conference to 11:00 a.m. on April 9, 2020. The court further orders that on or before March 26, 2020, Kai'la Redmond shall file and serve on the U.S. Trustee for Region 17 testimony and properly authenticated documents to establish the "previously arranged commitments" that prevented her from attending and responding to the Order to Show Cause set for hearing on March 4, 2020. This evidence shall include documentation of how far in advance the "previously arranged" commitments were so "arranged." Kai'la Redmond shall also provide the reasons why she failed to attend the January 8, 2020, and the November 20, 2019 Status Conferences.

Failure to provide the evidence of the "previously arranged commitments" shall result in the court imposing a \$2,500.00 corrective sanction for such non-compliance with the order of this court.

Failure of Kai'la Redmond to appear at the April 9, 2020 hearing as ordered will result in the court further continuing the hearing and issuing an order for the U.S. Marshals to take Kai'la Redmond into custody and present Kai'la Redmond in court at the continued hearing.

ORDER TO SHOW CAUSE

This Adversary Proceeding was filed on September 11, 2019, with the Plaintiff identified in the caption as "Kai'la Cynthia Redmond: Family of Redmond as Heir apparent for Howard James Redmond Sr, Plaintiff/Debtor." Dckt. 1 at 1. The Complaint states that it is an action to avoid a preferential transfer as provided in 11 U.S.C. § 547(a)(b). *Id.*

The bankruptcy case to which this Adversary Proceeding relates is Case No. 19-24755, for which Howard James Redmond, Sr. is the named Debtor, with the bankruptcy case filed in *pro se*. The Bankruptcy Petition is not signed by Mr. Redmond, but by "Kai'la Cynthia Redmond, Heir-Apparent." 19-24755; Petition, Dckt. 1 at 6.

The Chapter 13 bankruptcy case filed in the name of Howard James Redmond, Sr. was dismissed on September 27, 2019. *Id.* at 30.

In the court's Civil Minutes for the hearing on the dismissal, the court addresses the estate of a decedent not being a proper bankruptcy estate debtor, there being no plan advanced, reviews the Complaint in this Adversary Proceeding, and a related District Court action that has been dismissed. *Id.*; Dckt. 29. A copy of the Docket in the District Court Action is attached as an exhibit to the Complaint.

The related District Court Action is titled *Hakeim El By v. Accredited Home Lenders, Inc. and Wells Fargo Bank*. E.D. Cal. 17-02237. Judgment was entered for the defendants in the District Court Action. Orders and Findings, E.D. Cal. 17-02237; Dckts. 44, 43, 42. The findings include:

- A. Plaintiff Hakeim El Bey was dead. The family members who appeared at the Status Conference were Kalia El Bey and Brian El Bey. *Id.*; Dckt. 21 Minutes.
- B. The family members were given thirty days to obtain counsel and seek an order substituting in as a personal representative as permitted under L.R. 230 and the Federal Rules of Civil Procedure. The court addressed that an executor or representative of an estate of a decedent cannot appear in *pro se*.
- C. The thirty days expired and no substitution was sought.
- D. The judgment was to dismiss the District Court Action without prejudice.

A review of the Docket indicates that the Plaintiff is not taking any action to prosecute this Adversary Proceeding. The Bankruptcy Case to which it relates was dismissed on September 27, 2019. Chapter 13 Case No. 19-24755; Order, Dckt. 30. The court's findings and conclusions concerning the dismissal of the Chapter 13 case are stated in the Civil Minutes from the hearing on the Motion to Dismiss. *Id.*; Dckt. 29.

The Bankruptcy Case having been dismissed, the basis for this court exercising federal court

jurisdiction pursuant to 28 U.S.C. § 1334 is not warranted. Further, the Bankruptcy Case was improperly filed for a “probate estate,” which cannot be a debtor under the Bankruptcy Code.

The named plaintiff, purporting to have standing to file the Complaint and prosecute the Adversary Proceeding has failed to appear in this Adversary Proceeding.

PLAINTIFF’S RESPONSE

Plaintiff filed a response on February 19, 2020. Dckt. 16. Plaintiff requests the hearing on this Order be postponed for thirty (30) days from March 4, 2020 as Plaintiff will be out of state and previously arranged commitments. Plaintiff also requests that Defendants be order to respond to the Affidavit of Facts submitted on September 11, 2019.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Order to Show Cause and the related Status Conference to 11:00 a.m. on April 9, 2020.

IT IS FURTHER ORDERED that on or before March 26, 2020, Kai’la Redmond shall file and serve on the U.S. Trustee for Region 17 testimony and properly authenticated documents to establish the “previously arranged commitments” that prevented her from attending and responding to the Order to Show Cause set for hearing on March 4, 2020. This evidence shall include documentation of how far in advance the “previously arranged” commitments were so “arranged.” Kai’la Redmond shall also provide the reasons why she failed to attend the January 8, 2020, and the November 20, 2019 Status Conferences.

IT IS FURTHER ORDERED that failure of Kai’la Redmond to file the responses as ordered above to provide the evidence of the “previously arranged commitments” shall result in the court imposing a \$2,500.00 corrective sanction for such non-compliance with the order of this court.

IT IS FURTHER ORDERED that if Kai’la Redmond fails to appear at the April 9, 2020 hearing as ordered above, the court may, in addition to other action, issue an order for the U.S. Marshal to take Ms. Redmond into custody and present her in court at the continued hearing, or impose \$5,000.00 in corrective sanctions for such non-compliance with the order of this court..

20. [19-25461](#)-E-7 CYNTHIA SANDERS
[19-2143](#)

STATUS CONFERENCE RE:
COMPLAINT
11-26-19 [\[1\]](#)

SANDERS V. DEPT. OF
EDUCATION/NAVIENT

ADVERSARY PROCEEDING
DISMISSED: 2/2/20

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: Pro Se

Defendant's Atty: Dennis Winters [Navient Solutions, LLC dismissed 2/2/20]

Adv. Filed: 11/26/19

Answer: none

Nature of Action:

Dischargeability - student loan

Notes:

[DW-1] Motion to Request Dismissal of Adversary Proceeding filed 1/27/20 by Plaintiff, Cynthia M. Sanders [Dckt 10]; Order granting filed 2/2/20 [Dckt 12]

**The Adversary Proceeding having been dismissed, the Status Conference is
Removed From the Calendar.**

21. [19-20284-E-7](#) **DUANE/CAROL ZANON**
[19-2045](#)
ZANON ET AL V. U.S. DEPARTMENT
OF EDUCATION

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
4-1-19 [\[1\]](#)

Final Ruling: No appearance at the March 4, 2020 Status Conference is required.

Plaintiff's Atty: David N. Chandler
Defendant's Atty: unknown

Adv. Filed: 4/1/19
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 11/20/19. Counsel for Plaintiff-Debtor reported that a new summons needed to be served to comply with service pursuant to the Roster of Governmental Agencies. Additionally, Counsel believed that this may be administratively resolved, obviating the need for adjudication through this Adversary Proceeding.

<p>The Status Conference is concluded and the Matter is removed from the Calendar.</p>

MARCH 4 2020 STATUS CONFERENCE

Nothing further has been filed in the more than three months that have passed since the last status conference. This Adversary Proceeding was commenced on April 1, 2019, and is coming up on the one year anniversary without the Summons and Complaint having been served.

On March 3, 2020, at 2:20 p.m., less than twenty-four hours before this Status Conference and after the court had prepared its tentative ruling, Plaintiff filed a Dismissal Without Prejudice of this Adversary Proceeding. Dckt. 16.

NOVEMBER 20, 2019 STATUS CONFERENCE

Nothing further has been filed since the August 21, 2019 Status Conference. Though eight months has passed since this Adversary Proceeding has been filed, it does not appear that Plaintiff-Debtor is prosecuting the action.

At the Status Conference, Counsel for Plaintiff-Debtor reported that a new summons needs to be served to comply with service pursuant to the Roster of Governmental Agencies. Additionally,

Counsel believes that this may be administratively resolved, obviating the need for adjudication through this Adversary Proceeding.

AUGUST 21, 2019 STATUS CONFERENCE

The Reissued Summons was issued by the Clerk of the Court on June 4, 2019. Dckt. 10. A Certificate of Service for the Reissued Summons, Complaint, and Notice of Status Conference was filed on June 10, 2019. Dckt. 12.

No answer or other responsive pleading has been filed. No request for entry of default has been made by Plaintiff.

At the Status Conference Plaintiff-Debtor states that a dispute exists with the U.S. Attorney over service.

JUNE 19, 2019 STATUS CONFERENCE

On June 3, 2019, Plaintiff filed a request for an “Alias Summons,” the stated reason being “additional service addresses.” Dckt. 10.

On June 4, 2019, the Clerk issued a Reissued Summons, for which the Status Conference in this Adversary Proceeding was reset to 2:00 p.m. on August 21, 2019.

MAY 29, 2019 STATUS CONFERENCE

The Status Conference is continued to 2:00 p.m. on June 19, 2019, as stated in the Reissued Summons. Dckt. 7.

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.

5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SERVICE OF COMPLAINT

On May 1, 2019, Plaintiff-Debtor filed a Certificate of Service attesting to the service of the Complaint and Reissued Summons on May 1, 2019. Dckt. 8. The Reissued Summons reset the Status Conference date for 2:00 p.m. on June 19, 2019. Dckt. 7.

SUMMARY OF ANSWER

No Answer has been filed.