

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

March 14, 2019 at 2:00 p.m.

1. [18-90339-E-7](#)
[18-9014](#)

KIMBERLY SOLARIO

**CONTINUED STATUS CONFERENCE
COMPLAINT**

8-17-18 [1]

DE JONG V. SOLARIO

Plaintiff's Atty: Michael R. Tener

Defendant's Atty: Pro Se

Adv. Filed: 8/17/18

Answer: 9/7/18

Nature of Action:

Dischargeability - priority tax claims

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

The Status Conference is XXXXXXXXXXXXXX

Notes:

The court has stayed the proceedings in this Adversary Proceeding pending the diligent prosecution of the appeal.

MARCH 14, 2019 STATUS CONFERENCE

At the Status Conference the Parties reported, XXXXXXXXXXXXXX

NOVEMBER 29, 2018 STATUS CONFERENCE

The Plaintiff seeks to have determined nondischargeable a judgment obtained in state court. That judgment is now on appeal.

The court has stayed the proceedings in this Adversary Proceeding pending the diligent prosecution of the appeal. At the Status Conference, the Parties reported that the appeal is being prosecuted, with the burden on the Debtor to now prosecute her appeal.

March 14, 2019 at 2:00 p.m.

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2. [18-90339-E-7](#)
[18-9014](#)

KIMBERLY SOLARIO
NEU-2

DE JONG V. SOLARIO

CONTINUED MOTION TO STAY
DISCOVERY AND/OR MOTION TO
WAIVE INITIAL DISCLOSURES,
DISCOVERY CONFERENCE, AND
DISCOVERY PLAN
10-2-18 [8]

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

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant (*pro se*) on October 2, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Stay Discovery and/or to Waive Initial Disclosures, Discovery Conference and Discovery Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Stay xxxxxxxxxxxxxxxxxxxxxxxx

Plaintiff in this Adversary Proceeding, Craig De Jong ("Plaintiff") seeks an order staying discovery pending further order of the court and relieving the parties from the requirement to provide initial disclosures, conduct a discovery conference, or prepare a discovery plan.

Plaintiff argues stay of discovery is in the best interest of the parties and judicial economy here because the non-dischargeability Adversary Proceeding is significantly reliant on an underlying state court action. Plaintiff has filed a motion relief from stay (Dckt. 41) set to be heard the same day as the hearing on this Motion for in order to pursue appeal of the underlying state court action. Plaintiff believes the appeal will make *res judicata* and collateral estoppel applicable, which would significantly limited any discovery.

No opposition has been filed to this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 26 applies in a bankruptcy case adversary proceeding. FED. R. BANKR. P. 7026. That rule permits the court discretion to alter the requirements of initial disclosure and conference of the parties. The rule specifically provides:

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. **Except as exempted** by Rule 26(a)(1)(B) or as otherwise stipulated **or ordered by the court**, a party must, without awaiting a discovery request, provide to the other parties: . . .

(f) Conference of the Parties; Planning for Discovery.

(1) Conference Timing. **Except in a proceeding exempted from initial disclosure** under Rule 26(a)(1)(B) **or when the court orders otherwise**, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b) . . .

FED. R. CIV. P. 26(a)(1), (f)(1).

NOVEMBER 8, 2018 HEARING

At the November 8, 2018, hearing, the court granted the Motion and stayed the requirements of initial discovery and conference of the parties, pursuant to Federal Rule of Civil Procedure 26, pending the resolution of the state court litigation in the Superior Court of California, County of San Joaquin, *De Jong v. Beach et al*, case no. 39-2014-00314863-CU-OR-STK /STK-CV-URP-2014-0008188, and on appeal in the California Court of Appeal for the Third Appellate District, case nos. C085462 and C086926 (“State Court Litigation”). Order, Dckt. 17.

The court further continued the hearing on the Motion to November 29, 2018, to be conducted in conjunction with the Status Conference for determination of further continuance based on the reported status of the appeal. *Id.*

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 Stay Discovery and/or to Waive Initial Disclosures, Discovery Conference and Discovery Plan filed by Plaintiff in this Adversary Proceeding, Craig De Jong (“Plaintiff”) 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 **XXXXXXXXXXXXXX**

March 14, 2019 at 2:00 p.m.

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3. [18-90764](#)-E-7 DAWN CHRISTENSEN
19-9002

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

JONES V. CHRISTENSEN

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

Adv. Filed: 1/17/19
Answer: none

Nature of Action:
[none stated on Adversary Proceeding Cover Sheet]

Notes:
Request for Entry of Default by Plaintiff filed 3/8/19 [Dckt 13]

The Status Conference is XXXXXXXXXXXXXX

MARCH 14, 2019 STATUS CONFERENCE

At the Status Conference XXXXXXXXXXXXXX

Summary of Complaint

Cynthia Jones, the Plaintiff in *pro se*, has filed her Complaint in this Adversary Proceeding objecting to Debtor Obtaining a Discharge in her Chapter 7 bankruptcy case (E.D. Bankr. No. 18-90764). The allegations in the Complaint include:

- A. Gary and Frances Christensen were the trustees of the Christensen Family Trust, which owned the real property known as 9747 Treetop Drive.
- B. The Trust transferred an interest in the Treetop Drive Property to Dawn Christensen, the Defendant-Debtor) for which the deed was recorded on September 21, 2017.

- C. Defendant-Debtor resided in the Treetop Drive Property from September 2014 through May 1, 2018.
- D. On December 18, 2017, Defendant-Debtor and the trustees signed a promissory note and granted a deed of trust encumbering the Treetop Drive Property to secure the note.
- E. On March 6, 2018, Defendant-Debtor executed a grant deed conveying her one-half interest in the Treetop Drive Property back to the trustees.
- F. Plaintiff obtained an arbitration award against Defendant-Debtor for \$116,933.99. The San Joaquin County Superior Court confirmed the arbitration award on July 13, 2018.
- G. Defendant-Debtor's transfer of her one-half interest by the 2018 grant deed was done eleven days before the arbitration commenced.
- H. The Treetop Drive Property was sold (as of an unstated time) for \$302,000.00 and the obligation secured by the deed of trust was paid.
- I. As of the 2018 transfer, the arbitration had already been proceeding for more than a year.
- J. On her bankruptcy schedules filed on October 18, 2018, Defendant-Debtor did not list any interest in the Treetop Drive Property, notwithstanding her continuing to reside in the property.
- K. Defendant-Debtor did not disclose the 2018 conveyance of her one-half interest back to the trustees, which occurred within two years (actually months) of her filing of bankruptcy on October 18, 2019.
- L. Plaintiff seeks to have Defendant-Debtor denied her discharge pursuant to:
 - 1. 11 U.S.C. § 727(a)(2)(A) [concealing her interests in and transfers thereof with the intent to hinder, delay, or defraud her creditors and bankruptcy trustee];
 - 2. 11 U.S.C. § 727(a)(2)(B) [continuing concealment of Defendant-Debtor's interest in the Treetop Drive Property];
 - 3. 11 U.S.C. § 727(a)(4)(A) [Schedules and Statement of Financial Affairs signed under penalty of perjury when Defendant-Debtor knowing and fraudulently making the oath that the information there was true]; and
 - 4. 11 U.S.C. § 727(a)(5) [failure to explain the loss of assets and income].

Complaint, Dckt. 1.

Request for Entry of Default

Plaintiff filed her first Request for Entry of Default on February 19, 2019. Dckt. 7. The court issued a Memorandum on such request, identifying that date asserted by which a responsive pleading was due was incorrect. Dckt. 9.

On February 28, 2019, Plaintiff filed her Second Request for Entry of Default. Dckt. 10. The court again issued a Memorandum stating that the date stated as the time for Defendant-Debtor was incorrect. Dckt. 12. The date stated in the Second Request for Entry of Default for the filing of an answer or other response to the Complaint was February 25, 2019.

The Certificate of Service for the Summons and Complaint states that it was mailed to Defendant-Debtor on January 18, 2019. Dckt. 6. The Summons was issued on January 17, 2019, and states that an answer or response to the Complaint must be within 30 days of the date of the summons. Thirty days from January 17, 2019, is February 16, 2019.

A Third Request for Entry of Default was filed on March 8, 2019. Dckt. 13. This Third Request states that the answer or other response to the Complaint was to be filed by February 16, 2019.

As of the court's review of the file in preparation for the Status Conference, the Clerk's Office had not yet issued its order on the Third Request.

At the Status Conference the court addressed with Plaintiff the procedures as ordered for a motion for entry of a default judgment. Plaintiff reported **XXXXXXXXXXXXXXXXXX**

Debtor's Atty: David C. Johnston

Notes:

Continued from 11/29/18. Debtor in Possession reported that it is working on the plan, including a new lease from the buyer of the Fresno facility.

Operating Reports filed: 12/8/18 1/15/19, 2/13/19

MARCH 14, 2019 STATUS CONFERENCE

This Chapter 11 case was filed on December 1, 2017. No proposed Chapter 11 plan or proposed disclosure statement has been filed. A review of the most Recent Monthly Operating Report filed, for the month of January 2019, the Debtor in Possession ("ΔIP") reports that in the fifteen months this Chapter 11 case has been pending:

- A. The estate has received \$590,273.57 in Cash Received;
- B. Has spent \$148,073.16 for Administrative Disbursements;
- C. Has spent \$220,409 for Salaries/Commissions; and
- D. Has a Cash Balance of \$58,440 (increased from \$3,661 in December 2018).

Monthly Operating Report, p. 4; Dckt. 101.

In the Updated Status Report filed on November 26, 2018, the ΔIP reported that in August 2018, the principals of the ΔIP meet with counsel and formulated a plan to pay creditors holding the remaining claims in this case following the foreclosure sale of the Debtor's Fresno property. However, due to family illness involving ΔIP's counsel's family, counsel had been diverted from prosecuting such plan.

No Updated Status Report was filed as of the court's March 11, 2019 review of the Docket in this case.

At the Status Conference, counsel for ΔIP reported XXXXXXXXXXXXXXXXXXXX

AUGUST 23, 2018 STATUS CONFERENCE

At the Status Conference the Debtor in Possession reported that it is continuing to operate in both facilities, notwithstanding the foreclose in Fresno. The Debtor in Possession is working on a lease for the property, having found a buyer for the property from the Loeb Trustee (generating the sales proceeds for the Loeb Trust), for the long-term operation of that facility.

The Debtor in Possession is anticipating a 100% plan. There are no other creditors now active in the case (the Loeb Trust having been granted relief from the stay.

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference, the Debtor in Possession reported that it is working on the plan, including a new lease from the buyer of the Fresno facility.

APRIL 26, 2018 STATUS CONFERENCE

On April 15, 2018, Debtor in Possession filed three monthly operating reports. These reports are summarized as follows:

Mar 2018 Report, Dckt. 56

Cash Receipts From Sales.....	\$15,917	\$24,844
Insurance Payments.....	\$38,221	\$196,676

Amended Feb 2018 Report, Dckt. 60

Cash Receipts From Sales.....	\$8,927	\$8,927
Insurance Payments.....	\$35,393	\$158,455

Amended January 2018 Report, Dckt. 58

Cash Receipts From Sales.....	\$ -0-	\$ -0-
Insurance Payments.....	\$79,991	\$123,062

At the Status Conference, the parties agreed to continue the Status Conference to 2:00 p.m. on August 23, 2018.

JANUARY 11, 2017 STATUS CONFERENCE

STATUS CONFERENCE SUMMARY

This Chapter 11 case was filed on December 1, 2017. The Schedules and Statement of Financial Affairs were filed on December 19, 2017. The Status Report states that Debtor in Possession is operating as property of the estate two related businesses. The primary business is a 16-bed in-patient drug and alcohol abuse behavior modification program in Fresno, California. This is not a “medical treatment facility.” The Estate is also operating an out-patient program in Modesto, California.

Debtor was incorporated in 2014 and purchased the Fresno, California property. The purchase obligation has matured, with Debtor and seller creditor entering into a forbearance agreement for a period, with the seller creditor ultimately setting a foreclosure sale for the Fresno property.

The Status Conference Report discusses problems with Debtor refinancing relating to tax liens asserted against the former president of Debtor. Debtor in Possession intends to file an adversary proceeding to obtain a judicial determination of the extent, validity, and priority of any such tax liens for obligations of the former president of Debtor.

SUMMARY OF SCHEDULES

Real Property Schedule A/B	FMV		
Unidentified 16 Bed Facility	\$500,000		

Personal Property Schedule A/B	FMV		
Bank Accounts	\$1,768		
Accounts Receivable	\$168,002		
Office Equipment	\$10,000		
Furniture, Equipment	\$30,000		

Secured Claims Schedule D	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Fresno County Tax Collector	(\$28,153)	\$500,000	
Loeb/Griffin/Radford	(\$380,000)	Above Property	

PRIORITY UNSECURED CLAIMS SCHEDULE E	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
California EDD	(\$31,000)	(\$20,000)	(\$11,000)
Internal Revenue Service	(\$40,000)	(\$30,000)	(\$10,000)

GENERAL UNSECURED CLAIMS SCHEDULE F			GENERAL UNSECURED
Total			(\$15,352)

STATEMENT OF FINANCIAL AFFAIRS

Question 1 Income

2017 YTD	\$667,219	
2016	\$313,364	
2015	\$45,635	

Question 2 Non-Business Income

None

Question 3 Payments within 90 days

None

Question 4 Payments within one year to insider

Creditor	Amount	
Wages and repayment of loan for state taxes	\$35,500	

5. [08-92594-E-7](#) ROBERT/STEPHANIE
[15-9054](#) ACHTERBERG MDG-4

ACHTERBERG, JR. ET AL V.
CREDITORS TRADE ASSOCIATION,

POST-JUDGMENT STATUS
CONFERENCE
FOR STIPULATION RE: MOTION FOR
ASSIGNMENT ORDER AND/OR MOTION
FOR ORDER RESTRAINING JUDGMENT
DEBTOR
2-4-19 [[130](#)]

ADVERSARY PROCEEDING CLOSED:
02/21/2017

Final Ruling: No appearance at the March 14, 2019 Status Conference is required.

Plaintiff's Atty: Malcolm D. Gross; Steven S. Altman
Defendant's Atty: Douglas B. Provencher

Adv. Filed: 7/23/15
Answer: 10/1/15

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

The Court having entered an order dismissing without prejudice the Motion For Assignment Order based on the Revised Stipulation of the Parties (Dckt. 139), **the Post-Judgment Status Conference is concluded and removed from the Calendar.**

Notes:

Continued from 2/14/19, the Parties reporting that they are finalizing a revised settlement agreement.

[MDG-4] Revised Stipulation for Settlement filed 2/28/19 [Dckt 138]

[MDG-4] Amended Order Dismissing Without Prejudice Motion for Assignment Order And Revised Stipulation of Robert and Stephanie Achterberg, Creditors Trade Association, Inc. And Gary E. Looney filed 3/1/19 [Dckt 139]

**BILLINGTON WELDING & MFG., 10-22-18 [1]
INC. V. BROOME**

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: Pro Se

Adv. Filed: 10/22/18
Answer: 1/18/19

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

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Notes:

Continued from 2/14/19. Anthony D. Johnston, Esq., counsel for Plaintiff, and Melinda Broome, *pro se* Defendant, and each of them, shall appear in person - No Telephonic Appearances Permitted - at the 3/14/19 continued status conference.

MARCH 14, 2019 STATUS CONFERENCE

On February 14, 2019, Plaintiff Billington Welding & MFG., Inc. filed a Motion for Entry of Default Judgment. Dckt. 35. The hearing on that Motion was set for the court's 10:30 a.m. calendar on March 14, 2019. At the hearing on the Motion for Entry of Default, the court **XXXXXXXXXXXXXXXXXX**

Defendant-Debtor has not set for hearing or prosecuted a motion to vacate her default in this Adversary Proceeding. Defendant-Debtor did file a fill in the blank pleading titled "DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT." Dckt. 28. The "Points and Authorities" can be read as also including grounds upon which the *pro se* Defendant-Debtor could base requesting an order vacating the default. The "Points and Authorities" states that there is a declaration filed with it. No declaration is attached to the Points and Authorities no filed by Defendant-Debtor with the Points and Authorities.

The court, erring on the side of caution, ordered Defendant-Debtor to set her Motion for hearing and serve the opposing Party, not merely file it *ex parte*, without notice, with the court. Order, Dckt. 30. Defendant-Debtor has not taken any action to set her Motion for hearing or serve it on Plaintiff.

At the Status Conference **XXXXXXXXXXXX**

FEBRUARY 14, 2019 STATUS CONFERENCE

The court denied without prejudice Plaintiff's Motion for Entry of Default Judgment. Order, Dckt. 25. On January 18, 2019, Defendant-Debtor, after her default was entered, filed a form document titled "Answer." The "Answer" is a general denial, denying everything in the Complaint other than the filing of the bankruptcy petition. Answer, Dckt. 20.

Defendant-Debtor has not vacated her default in this Adversary Proceeding. On February 7, 2019, Defendant-Debtor filed a pleadings titled "Memorandum of Points and Authorities in Support of a Motion to Set Aside Clerk's Entry of Default." The Points and Authorities includes a multi-page statement of various facts.

The Court issued an order that Defendant-Debtor set her motion to set aside the default for a noticed hearing, and file and serve all supporting documents. Order, Dckt. 30. That Order was issued on February 11, 2019.

7. <u>18-90030</u> -E-11 <u>STJ</u> -20	FILBIN LAND & CATTLE CO., INC.	HEARING ON APPROVAL OF DISCLOSURE STATEMENT & CONFIRMATION OF AMENDED CHAPTER 11 PLAN 1-10-19 <u>[392]</u>
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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).

Sufficient Notice Provided. The Proof of Service states that the Plan and supporting pleadings were served on creditors, parties in interest, and Office of the United States Trustee on January 30, 2019. Dckt. 405. The court issued an Order setting the hearing date for March 14, 2019. Order, Dckt. 404.

The Hearing for Approval of the Disclosure Statement and Confirmation of the Chapter 11 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor in Possession, 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 Hearing for Approval of the Disclosure Statement and Confirmation of the Chapter 11 Plan is XXXXXXXXXXXX.

Filbin Land & Cattle Co., Inc. (“ΔIP”) filed a Motion To Set Reorganization Schedule And/Or Motion To Approve Solicitation Of Ballots on January 10, 2019. Dckt. 392. The court granted that Motion and issued an Order setting a combined Hearing for Approval of the Disclosure Statement and Confirmation of the Chapter 11 Plan. Order, Dckt. 404.

DISCUSSION

At the hearing, XXXXXXXXXXXXXXXXXXXX.

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 Disclosure Statement & Amended Chapter 11 Plan filed by Filbin Land & Cattle Co., Inc. (“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 XXXXXXXXXXXX.