

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 21, 2018, at 2:00 p.m.

1.	<u>10-21200-E-7</u> ROBERT CLOSE CLOSE V. BEN'S TRUCK & EQUIPMENT, INC.	STATUS CONFERENCE RE: COMPLAINT 1-12-18 [1]
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Final Ruling: No appearance at the March 21, 2018 status conference is required.

Plaintiff's Atty: Jeffrey Ogilvie
Defendant's Atty: Unknown at filing

Adv. Filed: 1/12/18
Answer: None

Nature of Action:
Dischargeability - other

The Status Conference is continued to 2:00 p.m. on May 30, 2018, to afford Plaintiff the opportunity to file and prosecute a motion for entry of default judgment. The default of Defendant was entered on March 7, 2018.

Notes:
Entry of Default filed 3/7/18 [Dckt. 9]

MARCH 21 2018 STATUS CONFERENCE

On March 7, 2018, the default of Defendant Ben's Truck and Equipment, Inc. was entered. Dckt. 9. The order entering the default requires Plaintiff to file a motion for entry of a default judgment within thirty-days of the order entering the default. *Id.*

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Debtor's Atty: Stephen M. Reynolds

The Status Conference is concluded and removed from the calendar, the court having ordered the case close while the Plan Administrator/Debtor is prosecuting the confirmed Chapter 11 Plan.

Notes:

Continued from 11/16/17. [RLC-12] Order granting Motion to Modify Chapter 11 Plan filed 1/12/18 [Dckt. 231]; [RLC-12] Order confirming modified Chapter 11 Plan filed 1/26/18 [Dckt. 234]; [RLC-13] Motion to Close Chapter 11 Case filed 3/13/18 [Dckt. 238]; [RLC-14] Motion to Conclude or Continue Status Conference filed 3/14/18 [Dckt. 239]

MARCH 21, 2018 STATUS CONFERENCE

The Plan Administrator Debtor and the only active creditors in this case, Michael Kletchko and Patrick Ruedin, have filed their Joint *Ex Parte* Motion to close this case while the Plan Administrator/Debtor prosecutes the confirmed Chapter 11 Plan. The court granting that Motion, the Status Conference is removed from the calendar.

NOVEMBER 16, 2017 STATUS CONFERENCE

As of the court's November 13, 2017 review of the Docket in this bankruptcy case, no further pleadings have been filed by the Plan Administrator/Debtor or any other party in interest.

On November 1, 2017, two and one-half minutes before the prior Status Conference, the Plan Administrator/Debtor filed his Quarterly Post-Confirmation Report. In it the Plan Administrator/Debtor states that \$418,702.00 in payments are required under the Confirmed Chapter 11 Plan, the cash balance held by the Plan Administrator/Debtor at the end of calendar quarter (September 30, 2017) was \$157,154.12; that the Plan Administrator/Debtor made payments of \$325.32 in the calendar quarter ending September 30, 2017; and that \$129,028.22 had been disbursed by the Plan Administrator/Debtor to date. Dckt. 218.

At the November 16, 2017 Status Conference, counsel for the Plan Administrator/Debtor reported that the proposed plan below includes a purposed resurrection (phrased in only one line of the Motion to Confirm discussed below, at the end of an unrelated other modification discussed in all of the other portions of the Motion, as an "extension" of the deadline, however, such deadline has long ago expired) of the deadline to file objections to claims.

Post-Confirmation Modification of Plan Requested

On November 13, 2017, the Plan Administrator/Debtor and creditors Ruedin and Kletchko filed a Joint Motion to Approve a modification of the confirmed Chapter 11 Plan in this case. The Motion states that when the Plan Administrator/Debtor sought the reverse mortgage upon which the plan is based, there was an additional \$63,774.33 of the loan proceeds which were to be held back to pay the Debtor's insurance and property taxes.

This has resulted in the Chapter 11 Plan being underfunded by \$27,761.42. The Parties have agreed to the Debtor providing an additional \$18,000.00 in plan funding, to be paid at the rate of \$500.00 a month for eighteen months. Motion, § 6; Dckt. 223. The monthly payments commenced in September, 2017 and will continue through August, 2020.

NOVEMBER 1, 2017 STATUS CONFERENCE

No further pleadings have been filed by any parties in interest in this bankruptcy case. At the hearing, counsel for the Plan Administrator/Debtor advised the court that though the parties had serious discussions and worked out the terms of a resolution of the disputes in July 2017, it was only now that the attorneys would begin the drafting of such possible settlement documents. Possibly, in the upcoming weeks, documents may be completed and then work on a motion to amend the plan begun. For the Plan Administrator/Debtor, resolution of this dispute was not a priority matter because it would not be for several months when monies would be available to perform any stipulation. Counsel for Creditors and the two Creditors identified below have not taken any action to document any purported settlement or agreement.

This case has been beset with mishandling of issues, misstatements of the law, and failure to prosecute the case. As discussed in prior rulings, part of the problem arises from the Plan Administrator/Debtor obtaining a reverse mortgage for terms other than that as represented to Creditors and the court in the confirmed plan. The "don't worry, we don't need to address these problems now" attitude of the Plan Administrator/Debtor and his counsel bode ill for them and the prospects of the confirmed plan in this case. Rather, they sound in the nature of delay for the sake of doing something different in the future, fomenting further litigation for litigation's sake, and continuing in the "litigation death dance" that was pursued by these parties in state court.

As the court addressed in detail in denying the Plan Administrator/Debtor's Motion to Approve Proposed Distribution to change the distribution to be made to Michael Kletchko and Patrick Ruedin, Civil Minutes, Dckt. 210, the less than stellar conduct of the parties and their attorneys include:

It is often said that a party "earns" the opponent it has in litigation. It appears, based on the conduct of Creditors and the Plan Administrator/Debtor, they are cut from the same bolt of litigation and ethical cloth.

The court has previously addressed the shortcomings of the Plan Administrator/Debtor, Creditors [Michael Kletchko and Patrick Ruedin], and their respective counsel in their 'prosecution' of this bankruptcy case. Examples include:

[1] failure of Plan Administrator/Debtor to file evidence in support of motion to confirm; Civil Minutes, p. 8, Dckt. 149;

[2] Creditors filing an ‘objection’ to administrative fees which stated no specific opposition; Civil Minutes, p. 4, Dckt. 150;

[3] Denial of Creditors’ motion to dismiss the case, Creditors not stating grounds for dismissal; Civil Minutes, p. 4–6, Dckt. 103;

[4] Dismissing Creditors contention that the recording of their judgment lien was not based on an ‘antecedent debt,’ Creditors cannot ignore the statutory presumption of insolvency under 11 U.S.C. § 547, the contention of forbearance was not supported by the evidence, and Creditors asserted “baseless grounds” in requesting relief; Civil Minutes, p. 6–8, Dckt. 62;

[5] Dismissal of Creditor’s complaint against non-debtor third-parties for relief under 11 U.S.C. § 523 for failing to state a claim for which relief could be granted against nondebtors under that provision of the Bankruptcy Code; Adv. Pro. 16-2010, Civil Minutes, p. 13–14; and

[6] Creditors failing to show any legal basis for trying to unilaterally exercise the powers of a debtor in possess/trustee under 11 U.S.C. §§ 547 and 548; *id.*, p. 15–16;

In Adversary Proceeding 16-2010 the court perceived the litigation conduct of Plan Administrator/Debtor and Creditors to be ‘sandbox litigation,’ well below that required in federal court proceedings. 16-2010; Civil Minutes, p. 15–16, Dckt. 38. The court observed that the pleadings disclosed a ‘toxic, less than professional, relationship between [Creditors and Plan Administrator/Debtor] in the State Court [proceedings that set the stage for the bankruptcy case filing].’ *Id.*, p. 17. The Civil Minutes include extensive quotations of the less than professional conduct that one expects from parties engaging in litigation, even in state court...

...

Based on the testimony of Plan Administrator/Debtor’s Counsel, the Plan Administrator/Debtor was fully aware that he was not able to perform the Plan as confirmed through the refinance. Rather than coming back to court and addressing the issue, Plan Administrator/Debtor found it to be to his advantage to elect a path that would give him a \$63,774.33 benefit and divert that amount away from Creditors. Adopting the adage, “It is better to seek forgiveness rather than request permission” is not an effective, productive strategy in bankruptcy proceedings. FN.2.

...

It appears that between the litigation strategy of the Plan Administrator/Debtor, Creditors, and their respective counsel, they have driven this case to one in which it probably will have to be converted or dismissed. It appears that conversion may well be the better option so that an independent fiduciary can figure out how the strategies

and conduct of these Parties and their counsel have damaged the bankruptcy estate and other creditors. At the time, the Motion is denied.”

Id.

The court continues the Status Conference to allow the parties to get real and prosecute this case in good faith. If not, then the court can consider motions to convert this case and allow an independent fiduciary plan administrator to perform the plan, recover assets, and liquidate the estate.

JULY 26, 2017 STATUS CONFERENCE

In connection with the hearing on a motion to approve proposed distribution under the Chapter 11 Plan (Civil Minutes, Dckt. 210) the court was afforded the opportunity to address the status of this bankruptcy case and prosecution thereof. On July 21, 2017, the Plan Administrator/Debtor filed a Status Report, Dckt. 213. The Plan Administrator/Debtor reports about an agreement to modify the confirmed plan to address the financial issues identified post-confirmation.

The court continues the Status Conference to afford the Parties to continue in their good faith efforts to keep a confirmed plan in this case moving forward.

After a review of the file in this case, the reports by counsel for the Plan Administrator/Debtor and counsel for Creditors Michael Kletchko and Patrick Ruedin, it is demonstrated that these parties are not acting to prosecute their rights in this case. No significant action taken or effort has been made since the July 17, 2017 Status Conference, for which the court ordered both attorneys and their respective clients to appear in person. It was at that forced interface that parties reported the terms of a possible settlement had been discussed. Since then, it appears nothing has been done.

3. [12-41422-E-13](#) **DAVID/ANNA MONTOYA**
[16-2057](#)

**CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
OBJECTING MONTOYA, JR. ET AL V.
OCWEN TO PROOF OF CLAIM AND
RELATED LOAN SERVICING, LLC ET
AL STATE CAUSES OF ACTION
3-25-16 [7]**

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Plaintiff's Atty: Peter L. Cianchetta

Defendant's Atty: Dhruv M. Sharma; Brian A. Paino; Mike Aleali

Adv. Filed: 3/24/16

Answer: none

Amd. Cmplt. Filed: 3/25/16

Answer: 5/25/16

Nature of Action:

Declaratory judgment

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

The Pre-Trial Conference is concluded and removed from the Calendar, the court having ordered the Adversary Proceeding Dismissed pursuant to the Stipulation of the Parties. Order, Dckt. 63.

Notes:

Stipulation to Dismiss Adversary Proceeding filed 3/14/18 [Dckt. 61]

4. [12-26623-E-13](#) NAVRAJ/INDU JASUJA
[17-2210](#)
JASUJA ET AL V. U.S. BANK,
N.A.

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
11-15-17 [\[1\]](#)

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Meagan S. Tom

Adv. Filed: 11/15/17
Answer: 12/13/17

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

The Status Conference is XXXXXXXXXXXXXX.
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Notes:

MARCH 21, 2018 STATUS CONFERENCE

Defendant U.S. Bank, N.A. filed its Status Conference reporting that the Parties are actively engaging in settlement negotiations. Dckt. 13. Defendant also proposed dates and deadlines for a scheduling order in this Adversary Proceeding.

JANUARY 17, 2018 STATUS CONFERENCE

On January 10, 2018, Plaintiff filed a Status Report (Dckt. 10) advising the court that the Deed of Trust asserted to be clouding title has been reconveyed, and the Parties are engaged in settlement discussions to resolve the remaining issues (breach of contract and statutory damages for asserted failure to timely reconvey the deed of trust). Plaintiff requests a sixty-day continuance of the Status Conference.

Though not a joint status report, the Answer filed by Defendant admits and denies specific allegations in the Complaint and clearly addresses the issues presented. This is consistent with a party and counsel who know how to resolve this type of action. Plaintiff's counsel has demonstrated in other adversary proceedings that he understands how to properly resolve this type of adversary proceeding when facing a knowledgeable defendant prosecuting a defense in good faith.

The court continues the Status Conference to allow the Parties to focus on getting the matter concluded and avoid additional cost and expense of an initial status conference to confirm what Plaintiff's counsel has communicated to the court.

SUMMARY OF COMPLAINT

Navarj and Indu Jasuja (“Plaintiff-Debtor”) assert claims based on the alleged failure of Defendant to reconvey a deed of trust after the Chapter 13 Plan that provided for payment of the secured claim in full (for the amount determined pursuant to 11 U.S.C. § 506(a)) was completed. Plaintiff-Debtor also seeks the recovery of statutory damages, attorney’s fees, and costs.

SUMMARY OF ANSWER

U.S. Bank, N.A. (“Defendant”) has filed an Answer admitting and denying specific allegations in the Complaint. Dckt. 8. The Answer also asserts eleven defenses.

FINAL BANKRUPTCY COURT JUDGMENT

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), and (L). Complaint, ¶¶ 2, 3, Dckt. 1. Defendant admits the jurisdiction, that this is a core proceeding, and to the extent any matters are non-core, Defendant consents to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding for the Complaint as filed. Answer, ¶¶ 2, 4, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges 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), and (L). Complaint, ¶¶ 2, 3, Dckt. 1. The Defendant admits the jurisdiction, that this is a core proceeding, and to the extent any matters are non-core, Defendant consents to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding for the Complaint as filed. Answer, ¶¶ 2, 4, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **April 15, 2018.**

- c. Expert Witnesses shall be disclosed on or before **June 15, 2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018**.
- d. Discovery closes, including the hearing of all discovery motions, on **July 31, 2018**.
- e. Dispositive Motions shall be heard before **September 7, 2018**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on November 14, 2018**.

5. [10-46636-E-13](#) **JOSEPH/KIMBERLY OLIVA** **CONTINUED STATUS CONFERENCE**
 [17-2105](#) **RE: COMPLAINT**
 OLIVA ET AL V. CITIMORTGAGE, **6-19-17 [1]**
 INC.

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Plaintiffs' Atty: Rick Morin
Defendant's Atty: Jonathan C. Cahill

Adv. Filed: 6/19/17
Answer: none

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

<p>The Status Conference is removed from calendar, the Adversary Proceeding having been dismissed by prior order.</p>
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Notes:
Order Dismissing Adversary Proceeding filed 2/28/18 [Dckt. 35]

6. [18-21038](#)-E-11 KE SOLUTIONS, INC.

STATUS CONFERENCE VOLUNTARY
PETITION
2-26-18 [\[1\]](#)

Debtor's Atty: Scott Shumaker

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:

Creditor FJM Private Mortgage Fund, LLC's Notice of Perfection of Assignment of Rents and Demand for Sequestration of Cash Collateral filed 3/6/18 [Dckt. 16]

MARCH 21, 2018 STATUS CONFERENCE

Debtor did not file the Schedules or Statement of Financial Affairs in this Case. Notice of Incomplete Filing, Dckt. 8. These documents were required to have been filed by March 12, 2018. *Id.*

As of the court's March 15, 2018 review of the Docket, no Schedules or Statement of Financial Affairs had been filed by Debtor.

At the Status Conference, xxxxxxxxxxxxxxxxx.

7. [13-24069-E-13](#) **DAWN LAWSON**
[17-2119](#)
LAWSON V. JPMORGAN CHASE BANK,
N.A.

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
7-11-17 [[1](#)]

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 7/11/17
Answer: none

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

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:
Continued from 1/17/18

MARCH 21, 2018 STATUS CONFERENCE

The order granting Plaintiff-Debtor's Motion for Default Judgment was entered on November 19, 2017. No judgment has been entered, and no settlement has been filed with the court.

At the Status Conference, XXXXXXXXXXXXXXXXXXXX.

JANUARY 17, 2018 STATUS CONFERENCE

The court granted Plaintiff-Debtor's Motion for Entry of Default Judgment on November 19, 2017. Order, Dckt. 31. The Order directed Counsel for Plaintiff-Debtor to file a proposed judgment consistent with the court's ruling on the Motion. No proposed judgment has been lodged with the court.

At the hearing, Counsel for Plaintiff-Debtor advised the court that the Parties are intending to settle the matter and avoid the actual entry of the judgment.

8. [17-21173](#)-E-13 ODETE CABRAL
[17-2056](#)
CABRAL V. NATIONSTAR MORTGAGE,
LLC

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
9-6-17 [\[33\]](#)

**APPEARANCES OF PETER G. MACALUSO, COUNSEL FOR
PLAINTIFF, AND DANE W. EXNOWSKI, COUNSEL FOR
DEFENDANT
REQUIRED FOR MARCH 21, 2018 STATUS CONFERENCE**

**TELEPHONIC APPEARANCES PERMITTED FOR MARCH 21, 2018
STATUS CONFERENCE**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Dane W. Exnowski

Adv. Filed: 4/11/17
Answer: none

Amd. Cmplt. Filed: 9/6/17
Answer: 11/28/17

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

The Status Conference is [XXXXXXXXXXXXXXXXXX](#).

Notes:

Continued from 1/17/18; [DWE-1] Defendant's Motion to Substitute Attorney filed 1/30/18 [Dckt. 62]; [DWE-1] Order Not Approving Without Prejudice Defendant's Motion to Substitute Attorney filed 2/3/18 [Dckt. 63]; Plaintiff's Status Conference Statement filed 3/14/18 [Dckt. 64]

MARCH 21, 2018 STATUS CONFERENCE

In an updated Status Report, Plaintiff-Debtor reports that the Parties are waiting on a loan modification. Additionally, the Parties are "discussing settlement terms." Dckt. 64. Though reporting efforts at resolution, none has been forthcoming.

This Adversary Proceeding was filed on April 11, 2017—Now Almost ONE YEAR AGO! Though “promising” the court that the Parties are resolving this Adversary Proceeding, no resolution has been forthcoming.

At the Status Conference, **XXXXXXXXXXXXXXXXXX**.

Substitution of Counsel

The court has signed an order denying without prejudice the substitution of Dane Exnowski, Esq., of the McCalla Raymer Leibert Pierce, LLC law firm, as attorney of record for Defendant Nationstar Mortgage, LLC. Order, Dckt. 63. The current attorney of record is Dane Exnowski, Esq. of Buckley Madole, P.C. However, based on the Substitution of Attorney filed by Dane Exnowski, he is no longer an attorney in the Buckley Madole, P.C. law firm. The California State Bar provides the information that Mr. Exnowski is with the McCalla Raymer law firm. FN.1.

FN.1. <http://members.calbar.ca.gov/fal/Member/Detail/281996>

In denying the Motion to Substitute, the court stated:

Though the Local District Court Rules and Local Bankruptcy Rules required that an individual attorney be identified as the counsel of record, as a matter of California law a client is the client of a law firm, not the "personal client" of the individual attorney.

For this substitution, an attorney who is currently a member of Buckley Madole, P.C. needs to sign the substitution of attorney to manifest that law firm’s consent and concurrence to the substitution and document that it has no continuing obligation to assign an attorney with that firm to replace Mr. Exnowski.

Order, Dckt. 63.

Though identifying that defect in the substitution, no corrected substitution has been filed. As of this point in time, the Buckley Madole, P.C. law firm needs to have one of its attorneys appear as counsel of record for Nationstar Mortgage, LLC.

Review of Applicable Law

Under California Code of Civil Procedure, the substitution is not valid because the former associate's signature was inadequate to constitute consent of the attorney of record.

Under California law, the attorney of record may be changed: 1) Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes; or 2) Upon the order of the court, upon the application of either client or attorney, after notice from one to the other. Cal. Civ. Proc. Code § 284.

When in a law firm, the client contracts and employs the law firm, for which an attorney then acts on the law firm's behalf, serving as the attorney of record. To the best of the court's knowledge, no attorney for Buckley Madole, P.C. has terminated the attorney-client contract with Nationstar Mortgage, LLC, and said law firm still owes its duties to Nationstar Mortgage, LLC. Only a third-party, Mr. Exonowski has purported to act for a law firm that he is no longer a member.

At the Status Conference this issue was addressed, the court being advised
XXXXXXXXXXXXXXXXXXXXXXX.

JANUARY 17, 2018 STATUS CONFERENCE

Plaintiff-Debtor and Defendant have filed their respective updated Status Reports. Dckts. 57, 59. In them, they jointly request that the court continue the Status Conference sixty days to allow them to diligently work on a resolution by which this Adversary Proceeding may be dismissed. Based on the information provided, the court continues the Status Conference.

9. [17-25576](#)-E-11 KEVIN KENNEDY CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
8-23-17 [1]

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Debtor's Atty: Mikalah R. Liviakis

The Chapter 11 Status Conference is continued to 2:00 p.m. on May 30, 2018, the Debtor in Possession's Chapter 11 Plan confirmation hearing set in April 2018.

Notes:

Continued from 11/16/17; [MRL-4] Plan & Disclosure Statement filed 11/21/17 [Dckt. 44, 45]; [MRL-4] Order Approving Disclosure Statement filed 1/26/18 [Dckt. 55]; [MRL-4] Internal Revenue Service & Department of Education Objection to Chapter 11 Plan filed 3/12/18 [Dckt. 61]

Operating Reports filed: 12/15/17 [Dckt. 50]; 1/15/18 [Dckt. 52]; 2/14/18 [Dckt. 59]

MARCH 21, 2018 STATUS CONFERENCE

The Status Conference is continued in light of the April 19, 2018 confirmation hearing in this case.

NOVEMBER 16, 2017 STATUS CONFERENCE

On October 25, 2017, Debtor in Possession Kevin Kennedy filed the Monthly Operating Report for September 30, 2017. The information in the September 2017 Monthly Operating Report is summarized as follows:

- A. Income in September 2017.....\$10,737
- B. Expenses in September 2017.....(\$6,567)
 - Including Legal Fees.....(\$1,734)

No Status Report has been filed by Debtor in Possession (“ΔIP”) advising the court and parties in interest as to how the ΔIP intends to prosecute toward a Chapter 11 plan in this case.

At the Status Conference, counsel for the ΔIP advised the court that the Monthly Operating Reports have been filed. The “legal expense” shown on the Monthly Operating Report is an installment filing fee.

For this case, the Debtor in Possession is living in a rented abode. He has two daughters who are in college.

His debt consists of tax debt and student loans. The tax issues appear to have been from the divorce and liquidating some assets.

NOVEMBER 1, 2017 STATUS CONFERENCE

STATUS CONFERENCE SUMMARY

This Chapter 11 case was commenced by Debtor on August 23, 2017. No Chapter 11 Status Report has been filed by Debtor in Possession.

The court has continued this Status Conference pursuant to the ex parte motion of Debtor in Possession. Dckt. 28. The continuance was necessitated due to out of state work commitments that Debtor in Possession’s “employer” would not let him out of.

In reviewing Schedule I, Debtor lists his employer as “Kennedy/Jenks Consultant.” On Schedule B, Debtor lists having “Stocks in Current Employer,” which are valued at \$3,000.00. Dckt .23 at 5. A review of the California Secretary’s of State website discloses there being two “Kennedy/Jenks Consultant” corporations:

- A. Kennedy/Jenks Consultants, Engineers & Scientists P.C.; and
- B. Kennedy/Jenks Consultants, Inc.

MONTHLY OPERATING REPORT SUMMARY

September, 2017 Report		Filed: October 25, 2017		
INCOME	Current		Cumulative	
"Paychecks"	\$ 10,737		\$ 10,737	
Medical Reimb.	\$ 0		\$ 160	
Cking Acct Dep.	\$ 1		\$ 157	
Total	\$ 10,738		\$ 11,054	
EXPENSES	\$ (6,567)		\$ (8,077)	
PROFIT/(LOSS)	\$ 4,171		\$ 2,977	
Specific Expenses				
Rent		(\$1,475)		
Legal Fees		(\$1,717)		
Food, Household, Utilities		(\$1,717)		

SUMMARY OF SCHEDULES

Real Property Schedule A	FMV	LIENS	
None			

Personal Property Schedule B	FMV	LIENS	
Prius	\$8,264		
Accord	\$4,446		
401k	\$155,000		

Secured Claims Schedule D	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
None			

PRIORITY UNSECURED CLAIMS SCHEDULE E	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
Franchise Tax Board	(\$12,000)	(\$5,600)	(\$6,400)
Internal Revenue Service	(\$272,416)	(\$11,000)	(\$261,416)
Stacey Macdonald (marital)	(\$45,517)	(\$45,517)	

GENERAL UNSECURED CLAIMS SCHEDULE F	TOTAL CLAIM AMOUNT		GENERAL UNSECURED
Total	\$129,048		
		Student Loans	(\$113,414)
		Others	(\$15,634)

INCOME, SCHEDULE I		
Total Average Monthly Income		
Wages	\$14,887	
	Voluntary Retirement	(\$710)
	Required Repayment Loans	(\$90)
	Stock Loan	(\$552)

EXPENSES, SCHEDULE J Total Average Monthly Expenses		
	(\$4,910)	
Rent/Mortgage		(\$1,424)
Food/Housekeeping Supplies		(\$640)

STATEMENT OF FINANCIAL AFFAIRS

Question 1 Income

2017 YTD	\$102,000	
2016	\$182,000	
2015	\$147,000	

Question 2 Non-Business Income

2017 YTD	None	
2016	None	
2015	None	

Question 3 Payments within 90 days

Creditor	Amount	Date
None		

Payments within one year

Creditor	Amount	Date
Stacy McDonald	\$4,500	Monthly payments, Settlement
FTB Garnishment	\$8,394	

10. [17-24489-E-13](#) **JAMES SEIBERT**
[17-2187](#)
SEIBERT, JR. V. SEIBERT

ORDER TO SHOW CAUSE
2-25-18 [12]

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on February 28, 2018. By the court's calculation, 21 days' notice was provided. The court set the hearing for March 21, 2018. Dckt. 13.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Order to Show Cause is sustained, and this Adversary Proceeding is dismissed without prejudice.

This Adversary Proceeding was commenced on October 19, 2017, by Robert Seibert, Jr., Plaintiff. Complaint, Dckt. 1. An answer was filed on November 27, 2017, by Defendant-Debtor James Alex Seibert. The Chapter 13 bankruptcy case of Defendant-Debtor, 17-24489, in which this Adversary Proceeding is filed was dismissed on November 17, 2017.

Defendant-Debtor filed a second Chapter 13 bankruptcy case, 17-27303, in this District on November 2, 2017. The second bankruptcy case was dismissed with prejudice on January 31, 2018.

17-27303; Order, Dckt. 62. In addition, the dismissal order bars (with Defendant-Debtor's consent) Defendant-Debtor from filing another bankruptcy case for a period of one year.

At the Status Conference in this Adversary Proceeding and a related Adversary Proceeding, the court has been notified that Plaintiff now seeks to dismiss the Adversary Proceedings without prejudice, with any non-bankruptcy issues to be litigated in state court. Dismissal of the Adversary Proceedings without prejudice, after dismissal with prejudice of Defendant-Debtor's second bankruptcy case, is consistent with the proper exercise of federal judicial power over related matters as granted by Congress in 28 U.S.C. § 1334.

The court issued an Order to Show Cause why the Complaint should not be dismissed without prejudice and this Adversary Proceeding closed. Dckt. 12. No responses or appearances at the hearing were required if the parties do not oppose dismissal without prejudice.

No parties filed pleadings before the hearing. The court expressly advised the parties in the Order to Show Cause that no response stating concurrence with the dismissal, only opposition. No Opposition was filed.

The Order to Show Cause is sustained, and this Adversary Proceeding is dismissed without prejudice.

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 sustained, no other sanctions are issued pursuant thereto, and Adversary Proceeding 17-02187 is dismissed without prejudice.

11. [17-24489](#)-E-13 JAMES SEIBERT
[17-2187](#)
SEIBERT, JR. V. SEIBERT

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
10-19-17 [\[1\]](#)

Plaintiff's Atty: Ralph E. Laird
Defendant's Atty: Pro Se

Adv. Filed: 10/19/17 [Jury Demand]
Answer: 11/27/17

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

The Status Conference is concluded and removed from calendar, the Adversary Proceeding having been dismissed at the March 21, 2018 Status Conference.

Notes:

Continued from 2/21/18; Order to Show Cause Why This Adversary Proceeding Should Not Be Dismissed filed 2/25/18 [Dckt. 12]

MARCH 21, 2018 STATUS CONFERENCE

No party responded to the court's Order to Show Cause, which stated that silence would be deemed agreement to dismissal of this Adversary Proceeding. With the Adversary Proceeding dismissed, there is no further need for status conferences.

FEBRUARY 21, 2018 STATUS CONFERENCE

No status reports have been filed by any parties to this Adversary Proceeding. Defendant-Debtor's bankruptcy case, 17-24489, was dismissed on November 7, 2017. Defendant-Debtor's second bankruptcy case (discussed below), 17-27303, was dismissed on January 31, 2018. The dismissal of the second bankruptcy case was "with prejudice." 17-27303; Order, Dckt. 62. The court also imposed a one-year bar on Debtor filing another bankruptcy case.

The dismissal "with prejudice" renders the bankruptcy nondischargeability issues in this Complaint moot.

JANUARY 17, 2018 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Robert Seibert, Jr. (“Plaintiff”) alleges claims in his Complaint for determination of nondischargeability of debt based on: (1) First Cause of Action—fraud, 11 U.S.C. § 523(a)(2)(A); (2) Second Cause of Action—fraud or defalcation in a fiduciary capacity, 11 U.S.C. § 523(a)(4); and (3) financial abuse on a dependent adult, 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).

The Complaint requests entry of a monetary judgment (there being no existing non-bankruptcy court judgment) and a determination that the monetary judgment of this court is nondischargeable.

SUMMARY OF ANSWER

James Alex Seibert (“Defendant-Debtor”) has filed a *pro se* Answer (Dckt. 7) using the court’s on-line form, in which he: (1) alleges that this is a core proceeding, and (2) denies each and every allegation of the Complaint other than the procedural facts regarding the filing of the bankruptcy petition.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b) and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 3, Dckt. 1. In his *pro se* Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7.

Request for Jury Trial

In the Complaint, p. 9:1–2, Plaintiff makes a demand for trial by jury. The only causes of action asserted in the Complaint are for the claims (damages) asserted by Plaintiff to be determined nondischargeable under the Bankruptcy Code. These are core matters arising under the Bankruptcy Code, for which the bankruptcy judge determines facts, as well as making the legal conclusions, and issuing the judgment.

DISMISSAL OF DEFENDANT-DEBTOR’S BANKRUPTCY CASE

This Adversary Proceeding is associated with the Chapter 13 Bankruptcy Case filed by Defendant-Debtor. Bankr. E.D. Cal. No. 17-24489. That bankruptcy case was dismissed on November 7, 2017.

This Adversary Proceeding was filed on October 19, 2017, prior to the dismissal of the Chapter 13 Bankruptcy Case.

On November 2, 2017, Defendant-Debtor, with the assistance of the same counsel as in the first bankruptcy case, filed a second Chapter 13 case. Case No. 17-24489 (“Second Bankruptcy Case”). That

bankruptcy case is now before the Hon. Christopher D. Jaime (a different judge than the first case or this Adversary Proceeding).

In the Second Bankruptcy Case, Defendant-Debtor and his counsel are trying to dismiss that case. 17-24489; Motion, Dckt. 35. The Motion states that Defendant-Debtor's two creditors support dismissal of the Second Bankruptcy Case. That court has not yet ruled on the Defendant-Debtor's request to dismiss.

However, in ruling on objections to confirmation of the Chapter 13 Plan in the Second Bankruptcy Case, that court noted:

“First, the Debtor does not appear to have the ability to fund the plan. Debtor's schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor's prior case no. 17-24489 before the Honorable Ronald Sargis. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (see adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor's case no. 17-24489 that was dismissed on November 7, 2017.”

17-24489; Civil Minutes, Dckt. 44. That court also notes that Defendant-Debtor: (1) failed to attend the First Meeting of Creditors; (2) failed to provide copies of tax returns to the Chapter 13 Trustee; and (3) failed to provide copies of payroll advices or other documentation of income.

STATUS CONFERENCE STATEMENT

Plaintiff has filed a “Discovery Plan” in which it is requested that the court not set a discovery schedule because it is likely that this Adversary Proceeding will be dismissed. Dckt. 8. Plaintiff anticipates Defendant-Debtor's Second Bankruptcy Case being dismissed. In the Report, Plaintiff states that there is a 2014 State Court Action pending in which various claims for damages are asserted against Defendant-Debtor. Plaintiff asserts that the first bankruptcy case (with this Department) was filed on the eve of the State Court issuing a writ of attachment in the State Court action.

The Motion to Dismiss the Second bankruptcy Case is set for hearing on January 23, 2018.

12. [12-40398-E-7](#) **HECTOR CHACON**
[17-2098](#)
CHACON V. EMC MORTGAGE
CORPORATION ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
6-7-17 [\[1\]](#)

Final Ruling: No appearance at the March 21, 2018 status conference is required.

Plaintiff's Atty: Thomas O. Gillis
Defendants' Atty: John M. Sorich, Matthew S. Henderson

Adv. Filed: 6/7/17
Answer: 7/10/17

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment
Recovery of money/property - other
Injunctive relief - other

<p>The Status Conference is concluded and removed from calendar, the Adversary Proceeding having been dismissed by prior order.</p>
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Notes:
Order Dismissing Adversary Proceeding filed 2/28/18 [Dckt. 55]