

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**March 26, 2015 at 2:30 p.m.**

1. [14-91128-E-7](#) JOSE RODRIGUEZ  
[14-9029](#)  
RODRIGUEZ V. LOBEL FINANCIAL  
CORPORATION

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
12-5-14 [[1](#)]

Plaintiff's Atty: Shane Reich  
Defendant's Atty: Ronald J. Green

Adv. Filed: 12/5/14  
Summons Reissued: 1/20/15

Answer: 3/9/15

Nature of Action:  
Recovery of money/property - preference

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:

Continued from 2/12/15. Plaintiff in process of serving the Reissued Summons.

Answer filed 3/9/15 [Dckt 9]  
Answer with proof of service attached filed 3/10/15 [Dckt 11]

**SUMMARY OF COMPLAINT**

The Complaint alleges that within 90-days of the commencement of the bankruptcy case Lobdel Financial Corporation ("Defendant") collected \$933.85 from Jose Rodriguez ("Plaintiff-Debtor") on account of an antecedent debt through a wage garnishment. Plaintiff-Debtor has exempted those monies and a portion of the monies have been returned to Plaintiff-Debtor, with \$351.19 unpaid. Plaintiff-Debtor asserts the right to avoid the transfer of the monies (11 U.S.C. § 547) and exempt those amounts (11 U.S.C. § 522(f), (g), (h)).

**SUMMARY OF ANSWER**

Defendant's answer has been filed twice, in what appears to be a duplicate docket entry. Answer, Dckts. 9 and 11. The Answer states,

"This answering defendant denies generally and specifically each and every allegation contained in the complaint, and the

**March 26, 2015 at 2:30 p.m.**

**- Page 1 of 18 -**

whole thereof, and each and every alleged cause of action thereof, and denies that plaintiff sustained damages in the sum or sums alleged, or in any sum, or at all, by reason of any act, breach or omission on the part of this answering defendant or any agent, servant or employee of this answering defendant."

Answer, p. 1:22-27.

Federal Rule of Civil Procedure ("Rule") 8 and 12, as incorporated by Federal Rule of Bankruptcy Procedure ("Bkcy. Rule") 7008 and 7012, require a defendant to file an answer which must "(1) state in short and plain terms its defenses to each claim asserted against it" and "(2) admit or deny the allegations asserted against it by an opposing party." Rule 8(b)(1). A denial must fairly respond to the substance of the allegation. Rule 8(b)(2).

A general denial may be made only when "A party intends in good faith to delay all the allegations of a pleading - including the jurisdictional grounds . . . ." Rule 8(b)(3). A party that does not intend to deny all the allegations must either specially deny designated allegations or generally deny all except those specifically admitted. Rule 8(b)(4). Denials constitute a certification under Bkcy. Rule 9011(b).

The use of general denials is substantially dissimilar to that under the California Code of Civil Procedure which allows the use of a general denial, without regard to specific allegations, whenever an unverified complaint is filed. Cal. C.C.P. § 431.30(d). As stated in the California Practice Guide (The Rutter Group), Federal Civil Procedure Before Trial ¶ 8:937:

"Use of general denials in federal actions does not depend on whether the complaint is verified. But general denials are rarely proper because there is always *something* in the complaint that, in good faith, should be admitted: e.g., status of parties, federal jurisdiction, etc.!"

Additionally, Bkcy. Rule 7012(b) requires that an answer also affirmatively state (emphasis added):

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

The allegations in the Complaint include: (1) basic federal court bankruptcy jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157, (2) that the action arises in and relates to the bankruptcy case of Plaintiff-Debtor, (3) Plaintiff-Debtor filed bankruptcy on August 7, 2014, (4) venue is proper in this court, and (5) Plaintiff-Debtor is the debtor in the underlying bankruptcy case. With the general denial, Defendant has certified pursuant to Bkcy. Rule

9011 that each of these denials are warranted on the fact and law, are not made for purposes of delay or to cause needless increase in the cost of the litigation, and have evidentiary support.

In the Answer Defendant fails to affirmatively plead the core or non-core nature of this Adversary Proceeding.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding. Complaint ¶ 1, Dckt. 1. The Complaint seeking to avoid a transfer pursuant to 11 U.S.C. § 547 as a preference and assert the exemptions rights provided by 11 U.S.C. § 522(g) and (h), this is a matter arising under the Bankruptcy Code and a core proceeding. In its answer, Defendant provides only a general denial and fails to plead any dispute as to the allegation that this is a core proceeding. Answer, Dckt. 9, 11.

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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding. Complaint ¶ 1, Dckt. 1. The Complaint seeking to avoid a transfer pursuant to 11 U.S.C. § 547 as a preference and assert the exemptions rights provided by 11 U.S.C. § 522(g) and (h), this is a matter arising under the Bankruptcy Code and a core proceeding. In its answer, Defendant provides only a general denial and fails to plead any dispute as to the allegation that this is a core proceeding. Answer, Dckt. 9, 11.
- b. Initial Disclosures shall be made on or before -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- e. Dispositive Motions shall be heard before -----, 2015.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

2. [14-91334-E-7](#) CATHERINE BENDER  
[15-9003](#)  
BENDER V. UNITED STATES OF  
AMERICA ET AL

STATUS CONFERENCE RE: COMPLAINT  
1-19-15 [[1](#)]

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

Adv. Filed: 1/19/15  
Answer: none

Nature of Action:  
Dischargeability - priority tax claims

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:

#### SUMMARY OF COMPLAINT

The Complaint alleges that Plaintiff-Debtor has income tax obligations (taxes, interest, and penalties) to the United States for tax years 2009, 2010, 2011, and 2012. It is alleged that the tax obligations for 2009 are dischargeable, the tax returns having been due and filed at least three years prior to the commencement of the bankruptcy case.

For the 2010, 2011, and 2012 tax years, the returns were not due and were not filed more than three years prior to the commencement of Plaintiff-Debtor's bankruptcy case. However, it is asserted that the penalties associated with the tax obligations for these three years are dischargeable.

#### SUMMARY OF ANSWER

No answer has been filed.

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that Adversary Proceeding is a core proceeding and jurisdiction exists pursuant to 28 U.S.C. § 157(b). Congress has provided in 28 U.S.C. § 1334(a) and (b) that federal court jurisdiction exists for the bankruptcy case and all matters arising under the Bankruptcy Code, arising in the bankruptcy case, and related to the bankruptcy case. Determination of the dischargeability of a debt pursuant to 11 U.S.C. §§ 523 and 724 are matter arising under the Bankruptcy Code and core proceedings under 28 U.S.C. § 157(b).

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

and deadlines:

a. The Plaintiff alleges that this Adversary Proceeding is a core proceeding and jurisdiction exists pursuant to 28 U.S.C. § 157(b). Congress has provided in 28 U.S.C. § 1334(a) and (b) that federal court jurisdiction exists for the bankruptcy case and all matters arising under the Bankruptcy Code, arising in the bankruptcy case, and related to the bankruptcy case. Determination of the dischargeability of a debt pursuant to 11 U.S.C. §§ 523 and 724 are matter arising under the Bankruptcy Code and core proceedings under 28 U.S.C. § 157(b).

b. Initial Disclosures shall be made on or before -----, 2015.

c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.

e. Dispositive Motions shall be heard before -----, 2015.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

3. 13-91938-E-7 OSCAR CARDENAS  
14-9001  
TURLOCK IRRIGATION DISTRICT V.  
CARDENAS, JR.

STATUS CONFERENCE RE: COMPLAINT  
1-22-14 [1]

Plaintiff's Atty: Ken R. Whittall-Scherfee  
Defendant's Atty: Thomas O. Gillis

Adv. Filed: 1/22/14  
Answer: 2/14/14

Nature of Action:  
Dischargeability - fraud as fiduciary, embezzlement, larceny

The Trial Status Conference is <del>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</del> .
--

Notes:

[TOG-3] Order Vacating Trial and Scheduling Status Conference filed 3/9/15  
[Dckt 59]

#### **MARCH 26, 2015 TRIAL SETTING CONFERENCE**

This Adversary Proceeding was filed on January 22, 2014. Pursuant to the court's Discovery and Pre-Trial Conference Scheduling Order: (1) discovery closed on July 9, 2014; (2) the deadline for hearing dispositive motions was August 21, 2014; and (3) the pre-trial conference was scheduled for September 4, 2014. Order, Dckt. 11. At the September pre-trial conference, at which Defendant-Debtor's counsel of record, John Brewer, appeared, trial was set for December 17, 2014. Trial Setting Order, Dckt. 24.

On December 9, 2014, Defendant-Debtor filed a handwritten letter stating that since the pre-trial conference his attorney had suffered from "personal issues" and was not communicating with Defendant-Debtor and had not prepared the required direct testimony statements and exhibits. See Letter, Dckt. 28 and Trial Setting Order. The court vacated the trial date and set the matter for a Trial Scheduling Conference on December 18, 2014. Dckt. 29. The court continued the Trial Setting Conference to January 15, 2015, and ordered Defendant-Debtor's counsel of record to appear at the continued Trial Setting Conference. Dckt. 33. The conference was further continued due to the court's service error for the order on Defendant-Debtor's conference.

In addition to ordering counsel of record to appear, the continuances were made to allow Defendant-Debtor to obtain replacement counsel for trial. Subsequently, the court has determined from the California State Bar website that Mr. Brewer is not currently authorized to practice law in California.

On February 18, 2015, the court issued an order substituting Thomas Gillis as counsel for the Defendant-Debtor. The parties agreed to have the a further scheduling conference, rather than proceeding with the scheduled trial date.

4. 11-94146-E-11 DOMINIC/MARIA DEPALMA

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-2-11 [[1](#)]

Debtors' Atty: Naresh Channaveerappa

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:

Continued from 1/15/15. IRS counsel reported that he believes this matter will be resolved shortly.

Operating Report filed: 2/25/15

[WFH-26] Trustee's Motion for Final Decree filed 3/12/15 [Dckt 533], set for hearing 3/26/15 at 10:30 a.m.

5. [14-90473-E-7](#) ROBERT WOJTOWICZ AND  
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ  
HERTZIC-WOJTOWICZ V. IRM  
CORPORATION

CONTINUED REQUEST FOR ENTRY OF  
DEFAULT  
11-6-14 [[11](#)]

**No Tentative Ruling:**  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Entry of Default Judgment is -----</b>
--

Sherri Hertzic-Wojtowicz ("Plaintiff-Debtor") requests entry of default of IRM Corporation ("Defendant") in this adversary proceeding on November 6, 2014. Dckt. 11. Plaintiff-Debtor alleges that a summons for this case was issued on July 14, 2014. Plaintiff-Debtor then served the summons and complaint properly and timely on Defendant on July 28, 2014. Defendant was required to file an answer or other response to the complaint on or before August 13, 2014, but Defendant failed to do so. The court has not granted Defendant an extension of time to file a response to the complaint in this proceeding.

Plaintiff-Debtor requests that the default of the Defendant be entered.

**NOVEMBER 20, 2014 HEARING**

The court continued the hearing to January 29, 2015 at 3:00 p.m. Dckt. 23.

**APPLICABLE LAW**

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default



judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint,
- (4) the sum of money at stake in the action,
- (5) the possibility of a dispute concerning material facts,
- (6) whether the default was due to excusable neglect, and
- (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*Id.* at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. See *id.* at 775.

## DISCUSSION

The Certificate of Service filed by Plaintiff attests to the Summons and Complaint having been served on Paul Echols, as the managing or general agent of IRM Corporation. Dckt. 6. The California Secretary of State reports that the corporate powers of IRM Corporation have been suspended. <http://kepler.sos.ca.gov>. It also discloses that the agent for service of process for IRM Corporation is an individual named John Connolly, whose address is listed as 2151 Salvio St, Ste 325, Concord, California 94520. FN.1.

-----  
FN.1. The Secretary of State's information is consistent with that reported on the LEXIS-NEXIS research data base. The information reported thereunder indicates that the corporate powers were suspended March 1, 2014.  
-----

The California State Bar website reports that a Paul Echols is an attorney licensed to practice law in the State of California. The address at which Plaintiff states to have served Mr. Echols as the managing or general agent of IRM Corporation is the same address as listed by the California State Bar for Paul Echols.

On Schedule F Debtors list IRM Corporation as having a general unsecured claim for which a judgment was entered in 1993. Paul Echols, at the

Modesto address, is listed as an additional notice person for the IRM Corporation judgment. If entered in 1993, such judgment would now be more than 20 years old.

6. [14-90473-E-7](#)      ROBERT WOJTOWICZ AND      CONTINUED STATUS CONFERENCE RE:  
[14-9023](#)      SHERRI HERTZIC-WOJTOWICZ      COMPLAINT  
HERTZIC-WOJTOWICZ V. IRM      7-11-14 [[1](#)]  
CORPORATION

Plaintiff's Atty:    Shane Reich  
Defendant's Atty:    unknown

Adv. Filed:    7/11/14  
Answer:    none

Nature of Action:  
Recovery of money/property

Notes:

Continued from 1/29/15 to be heard in conjunction with the continued Motion for Entry of Default.

7. [14-91074-E-7](#)      CESAR PIMENTEL AND  
[14-9027](#)              VERONICA CASTRO  
MCGRANAHAN V. PIMENTEL ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
10-28-14 [[1](#)]

**Final Ruling: No appearance at the March 26, 2015 Status Conference is required.**

-----  
Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty: unknown

Adv. Filed: 10/29/14  
Answer: none

Nature of Action:  
Objection/revocation of discharge

<b>The Status Conference is continued to 10:30 a.m. on April 30, 2015</b> (specially set time), to be conducted in conjunction with the motions for entry of default judgment in this Adversary Proceeding.
--

Notes:

Continued from 1/15/15, the court having entered the defaults of the Defendant-Debtors.

[ADJ-1] Motion for Entry of Default Final Judgment Against Cesar C. Pimentel filed 2/6/15 [Dckt 23], set for hearing 4/30/15 at 10:30 a.m.

[ADJ-2] Motion for Entry of Default Final Judgment Against Veronica Castro filed 2/6/15 [Dckt 28], set for hearing 4/30/15 at 10:30 a.m.

8. [14-91197-E-7](#)      NICOLAS PEREZ AND MARIA      CONTINUED STATUS CONFERENCE RE:  
[14-9030](#)      MOSQUEDA DEPEREZ      COMPLAINT  
MCGRANAHAN V. MOCTEZUMA      12-10-14 [[1](#)]  
ADV. CASE DISMISSED 3/11/15

**Final Ruling: No appearance at the March 26, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: unknown

Adv. Filed: 12/10/14  
Summons Reissued: 1/13/15

**The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

Answer: none

Nature of Action:  
Recovery of money/property - fraudulent transfer  
Notes:  
Continued from 2/12/15

9. [14-91197-E-7](#)      NICOLAS PEREZ AND MARIA      CONTINUED STATUS CONFERENCE RE:  
[14-9031](#)      MOSQUEDA DEPEREZ      COMPLAINT  
MCGRANAHAN V. BRAVO      12-10-14 [[1](#)]  
ADV. CASE DISMISSED 3/11/15

Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: unknown

Adv. Filed: 12/10/14  
Summons Reissued: 1/13/15

**The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

Answer: none

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

Notes:

Continued from 2/12/15

10. [13-91999-E-7](#)      JESSE/WENDY WYLIE  
[14-9009](#)  
FALTON CUSTOM CABINETS, INC V.  
WYLIE

CONTINUED PRE-TRIAL CONFERENCE  
RE: COMPLAINT TO DETERMINE  
DISCHARGEABILITY  
2-10-14 [[1](#)]

Plaintiff's Atty:    James A. Fonda  
Defendant's Atty:   Cort V. Wiegand

Adv. Filed:        2/10/14  
Summons Reissued: 2/11/14

Answer:        3/10/14

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

--

Notes:

Continued from 2/12/15. On or before 2/27/15, Plaintiff to file and serve pretrial conference statement.

Pretrial Statement of Plaintiff Falton Custom Cabinet filed 2/27/15 [Dckt 24]

#### **SUMMARY OF COMPLAINT**

The Complaint alleges a claim that a debt in the amount of \$50,634.62 is nondischargeable based on fraud (11 U.S.C. § 523(a)(2)). The short and plain statement of the claim, Fed. R. Civ. P. 8 and Fed. R. Bank. P. 7008, stated in the Complaint is,

A. Defendant is a debtor in a Chapter 7 case.

B. Between June 2011 and October 2011, Plaintiff provided labor and materials at Defendant's request.

C. The labor and materials were obtained by "false representations" by Defendant to Plaintiff which "were materially false respecting Defendant's financial condition." It is alleged that Plaintiff "reasonably" relied on the misrepresentations which were made by Defendant with the intent to deceive Plaintiff.

D. Plaintiff obtained a civil judgment against Defendant in the amount of \$50,634.62.

#### **SUMMARY OF ANSWER**

The Defendant filed an answer denying each and every allegation of the Complaint, except for (unidentified by paragraph number or allegation) "the procedural facts regarding the filing of the bankruptcy petition herein." It

is also alleged that Plaintiff did not have a valid California State Contractor's license and is barred from collecting any money for the underlying agreements.

#### FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 157(b), and does not contain an allegation that this is a core proceeding. Complaint ¶ 1, Dckt. 1. In the Answer, Defendant denies the allegations relating to jurisdiction, but alleges that this is a "core proceeding." Answer ¶ 1, Dckt. 7. To the extent that any issues 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.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.
- C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.
- F. The Trial shall be conducted at ----x.m. on -----, 201x.

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

#### Plaintiff(s)

#### Defendant(s)

<p>Jurisdiction and Venue:</p> <p>1. 28 U.S.C. § 1334(a)</p> <p>2. Core Proceeding, 28 U.S.C. § 157(b)(1), arising under 11 U.S.C. § 523(a)(2) [nondischarge fraud determination sought]</p> <p>3. Venue, Bankruptcy Case filed in Eastern District of California by Defendant-Debtor.</p>	<p>Jurisdiction and Venue:</p> <p>1. No Pre-Trial Statement Filed.</p>
--	--

<p>Undisputed Facts:</p> <p>1) Debtor's Bankruptcy Petition at Schedule F lists a \$40,000 liability to Falton Custom Cabinets Inc.;</p> <p>2) Debtor's Bankruptcy Petition at the Statement of Financial Affairs at Page 3 under Suits and Administrative Proceedings then lists a lawsuit in Stanislaus County Superior Court entitled Falton Custom Cabinets, Inc. v. Wylie Construction, Inc., Jesse Wylie Case No: 675320.</p> <p>3) Wylie Construction, Inc. was a licensed contractor pursuant to the Laws of the State of California at all times at issue herein.</p> <p>4) Wylie Construction, Inc. entered into a number of contracts for construction an installation of cabinets with Falton Custom Cabinets, Inc.</p> <p>5) Falton Custom Cabinets, Inc., did not possess a valid State Contractors License at any time during the transactions that are at issue in this matter.</p>	<p>Undisputed Facts:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Disputed Facts:</p> <p>A) The Plaintiff disputes all of the substantive allegations of the Answer to the Complaint.</p> <p>B) Whether Defendant made false representations amounting to actual fraud to Plaintiff representing payment to Plaintiff.</p> <p>C) Whether Defendant made statements in writing that was materially false respecting his financial condition.</p> <p>D) Plaintiffs contention that Defendant Jesse Wylie made individual false representations to Plaintiff regarding payment of invoices owed to Plaintiff.</p>	<p>Disputed Facts:</p> <p>1. No Pre-Trial Statement Filed.</p>

<p>E) Whether Plaintiff relied on false statements of Defendant made in writing to Plaintiff.</p> <p>F) Whether Plaintiff was required to have an active valid State Contractors License 11 during the time frame in question.</p> <p>G) Whether the Plaintiff was required to have a State Contractors License.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. No evidentiary disputes identified.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Relief Sought:</p> <p>1. Plaintiff seeks to have the original alleged debt of \$41,141.92 confirmed by the court to find which Plaintiff alleges resulted in a Civil Judgment in sum of \$50,634.62.</p>	<p>Relief Sought:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Points of Law:</p> <p>1. Plaintiff's complaint is based on 11 U.S.C. section 523(A)(2). Plaintiff contends based on individual unpaid invoices totaling \$50,634.62 are non-dischargable because the false written representations regarding financial condition.</p>	<p>Points of Law:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Abandoned Issues:</p> <p>1. None</p>	<p>Abandoned Issues:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Witnesses:</p> <p>1. Debtor, Jesse Wylie;</p> <p>2. Jose Ismerio;</p>	<p>Witnesses:</p> <p>1. No Pre-Trial Statement Filed.</p>



<p>3. Alex Hammer;</p> <p>4. Karen Hammer;</p> <p>5. Freda Chin;</p> <p>6. Troy Brown;</p> <p>7. Collen Freeman;</p> <p>8. Jeff Freeman.</p>	
<p>Exhibits:</p> <p>1. All invoices for jobs upon which Plaintiff claims invoices were not paid related to this action.</p> <p>2. E-Mails between Jesse Wylie and Fernando Anaya concerning jobs upon which Plaintiff claims invoices were not paid related to this action in which Defendant falsely promises to pay Plaintiff.</p> <p>3. Copies of records reflecting monies actually received by Plaintiff on underlying contracts.</p> <p>4. Check for \$14,000.00 written by Jesse Wylie to Plaintiff on a closed account.</p> <p>5. Summons, complaint, Declaration of Attorney James A. Fonda for Amount of Judgment, and Judgment for Stanislaus County Superior Court Case No. 675320.</p>	<p>Exhibits:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Discovery Documents:</p> <p>1. No discovery conducted.</p>	<p>Discovery Documents:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Further Discovery or Motions:</p> <p>1. None expected.</p>	<p>Further Discovery or Motions:</p> <p>1. No Pre-Trial Statement Filed.</p>
<p>Stipulations:</p>	<p>Stipulations:</p>

1. None identified.	1. No Pre-Trial Statement Filed.
Amendments: 1. None anticipated.	Amendments: 1. No Pre-Trial Statement Filed.
Dismissals: 1. None identified.	Dismissals: 1. No Pre-Trial Statement Filed.
Agreed Statement of Facts: 1. None presented.	Agreed Statement of Facts: 1. No Pre-Trial Statement Filed.
Attorneys' Fees Basis: 1. No attorneys' fees requested by either party.	Attorneys' Fees Basis: 1. No Pre-Trial Statement Filed.
Additional Items 1. None identified.	Additional Items 1. No Pre-Trial Statement Filed.
Trial Time Estimation: One to two Days.	Trial Time Estimation: No Pre-Trial Statement Filed.