

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**April 25, 2024 at 2:00 p.m.**

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1. [23-90111-E-11](#)      MICHAEL HOFMANN      CONTINUED STATUS CONFERENCE RE:  
[23-9006](#)              CAE-1                              NOTICE OF REMOVAL  
HOFMANN V. HOFMANN ET AL      5-14-23 [1]

**Item 1 thru 2**

Plaintiff's Atty: Brian S. Haddix  
Defendant's Atty: unknown

Adv. Filed: 5/14/23  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 1/25/24. Counsel for the Debtor in Possession reported that an amended plan is being circulated and it is anticipated that this should have the sign-off of all parties shortly.

Final amended plan not docketed. By order filed in parent case dated 1/26/24, Debtor/Debtor in Possession was to prepare and file plan.

**The Status Conference is XXXXXXX**

**APRIL 25, 2024 STATUS CONFERENCE**

The court's review on April 24, 2024, disclosed that no Updated Status Reports have been filed. Though it was reported at the last Status Conference that an amended plan had been worked out and it was

out for signatures, a review of the Bankruptcy Case Docket (23-90111) discloses that no amended plan has been filed in the three months since the prior January 25, 2024 Status Conference.

At the April 25, 2024 Status Conference, **XXXXXXX**

### **JANUARY 25, 2024 STATUS CONFERENCE**

The court has authorized the sale of the Debtor's interest in the two farmland properties. At the Status Conference, the counsel for the Debtor in Possession reported that an amended plan is being circulated and it is anticipated that this should have the sign-off of all parties shortly.

The Status Conference is continued to 2:00 p.m. on April 25, 2024 .

### **SEPTEMBER 28, 2023 STATUS CONFERENCE**

In the Michael Hoffman Chapter 11 Case, the court is addressing the Debtor in Possession Motion to Confirm the proposed Plan and address the opposition to confirmation.

At the Status Conference, reported that this is still in a "holding pattern" while the Subchapter V Trustee is pursuing a sale of the Property.

The Status Conference is continued to 2:00 p.m. on January 25, 2024.

### **JULY 13, 2023 STATUS CONFERENCE**

On May 14, 2023, the Debtor/Debtor in Possession removed a State Court Action involving substantial interests in real estate, litigated offsets, and the dissolution of common interests of family members. While the State Court litigation has been a long, expensive slog, it appears that in the related Bankruptcy Case, 23-90111, the Debtor/Debtor in Possession, the family member and non-family member opponents, and the Subchapter V Trustee appear to have found a process, using the Bankruptcy Code, to afford all parties in interest their fair "day in court," compliance with orders of the State Court, and preservation of their respective values in the real properties at the center of their dispute and extensive litigation.

The court continues the Status Conference to September 28, 2023, in light of the efforts of the parties to address and resolve these issues without future litigation (or at least greatly reduce the issues to be litigated).

SUBCHAPTER V

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 1/25/24. The court having granted confirmation of the Final Amended Plan at the 1/25/24 hearing, the Parties agreed to a continuance of the Status Conference.

Status Report by Subchapter V Trustee filed 4/2/24 [Dckt 266] [Trustee potential unavailability]

**The Status Conference is xxxxxxx**

**APRIL 25, 2024 STATUS CONFERENCE**

On April 23, 2024, Debtor/Debtor in Possession filed a First Amended Status Report. Dckt. 271. In it Debtor/Debtor in Possession states that though he was the successful highest bidder for the residential property included in the Bankruptcy Estate, his hard money lender, Advanced Capital Funding, Inc, "backed out" of its financing commitment on April 1, 2024. Given Debtor/Debtor in Possession did not have the funding, then the second highest bidder (for whom the price was increase by Debtor/Debtor in Possession's winning over bid), will be purchasing the Property.

Debtor/Debtor in Possession also states that he will vacate the Property sold by April 30, 2024.

Debtor/Debtor in Possession anticipates that a court order setting how the proceeds from the sale of the Property will be necessary, and recommends that the court initiate the process by setting a hearing date and briefing schedule for matters for which no motion has been filed by any party in interest.

Attached to the First Amended Status Report is the loan commitment letter from Advance Capital Funding. Dckt. 271 at 3. That Loan Approval Letter expressly states:

1. The letter is the "loan approval for a real estate loan in the amount of Five hundred Sixty thousand dollars (\$560,000) secured by a first trust deed against the property known as 13330 Valley Home rd, Valley Home ca 95361 .. APN# 002-005-049"
2. Advanced Capital Funding Inc. has "based this approval off our current review and underwriting of Mr. Hofmann's financial, credit, and current assets."
3. The Loan Approval Letter is dated March 18, 2024.
4. It further states, "This approval expires in 30 days."
5. The Loan Approval Letter is signed by Tony D. Avila, CEO.

The Loan Approval Letter does not state any further conditions or limitations on the Approval. The First Amended Status Report does not state why or how this apparent unconditional Loan Approval was “backed out” of by Advanced Capital Funding, Inc.

However, the court notes that in the very, very small font at the bottom of the Loan Approval Letter, is the following:

© 2020 All rights reserved. This is not a commitment to lend. Restrictions may apply. LTV limit is based on current, accurate appraised value. Advanced Capital Funding Inc reserves the right to amend rates and guidelines. All loans are made in compliance with Federal, State, and Local laws.

Thus, it appears that Debtor/Debtor in Possession may not have had a loan commitment. At the hearing on the Motion for Authorization to sell the Property, Debtor/Debtor in Possession represented to the court that the funding for the purchase had been obtained and would be provided by a friend in Los Angeles (the identity of such person can be made from a review of the audio recording from the hearing, it not being stated in the Civil Minutes).

At the Status Conference, **XXXXXXX**

#### **SEPTEMBER 28, 2023 STATUS CONFERENCE**

At the Status Conference, counsel for the Debtor in Possession reported that they will need to pursue a new plan. That amended plan has been filed and the Debtor in Possession believes that it can move forward, though not likely to be consensual. There may be a feasibility dispute.

Several bids have come in on the sale of the Property and a carve out for the Estate is being worked out.

Subchapter V Trustee Walter Dahl reported that he is proceeding with the Residence and the Farmland Properties. Has an offer from the Brichetto Group to purchase the 8.33% interest, with an \$80,000 offer. There is a carve out the Bankruptcy Estate negotiated form \$12,000.00. This is for a sale of the Farmland Property.

Counsel for the Debtor in Possession confirmed that the Debtor in Possession would not be contesting the distribution of the proceeds based on the respective interests in the Farmland Property.

For the Residence Property, it is listed for sale for \$660,000, with substantial interest in it. There has been an offer and a counteroffer, but none has been accepted. A \$12,500.00 carve out is anticipated being received by the Estate.

Counsel for Creditor Hofmann questions whether a plan should be confirmed before the sale occurs. Creditor Hofmann’s consent is conditioned on them being paid from the sale proceeds.

Counsel for the Brichetto Group reported that he believed that the Farmland Property sale should proceed smoothly.

The Status Conference is continued to 2:00 p.m. on January 25, 2024.

### **JANUARY 25, 2024 STATUS CONFERENCE**

The court having granted confirmation of the Final Amended Plan at the January 25, 2024 hearing thereon, the Parties agreed to continue the Status Conference to 2:00 p.m. on April 25, 2024

3. [24-90120](#)-E-11 HUACANA ENTERTAINMENT,  
[CAE-1](#) INC.

**STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-1-24 [1]**

#### **SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 4/4/24 [Dckt 22]; Order granting filed 4/8/24 [Dckt 25]

Trustee Report at 341 Meeting lodged 4/9/24

Status Report by Subchapter V Trustee filed 4/2/24 [Dckt 20]

Debtor's Chapter 11 Status Report filed 4/12/24 [Dckt 26]

**The Status Conference is XXXXXXX**

### **APRIL 25, 2024 STATUS CONFERENCE**

This voluntary Subchapter V Case as filed on March 1, 2024. In the Status Report filed by the Subchapter V Debtor/Debtor in Possession, it is projected that the Debtor/Debtor in Possession will get a plan filed on or before May 30, 2024. Dckt. 26. The Debtor/Debtor in Possession does not anticipate any serious litigation in this case or any cash collateral issues.

The Schedules in this Case list modest assets and significant debts.

At the Status Conference, XXXXXXX

4. [13-90435-E-7](#) SEAN AMIN  
[23-9010](#) CAE-1  
NEVAREZ V. ELLIOTT ET AL

CONTINUED STATUS CONFERENCE RE:  
NOTICE OF REMOVAL  
6-13-23 [1]

Plaintiff's Atty: unknown

Defendant's Atty:

David C. Johnston [Sean Afshin Amin]

Unknown [Kevin Amin; California Shade, Inc.; David Elliott]

Adv. Filed: 6/13/23

Answer: none

Nature of Action:

Determination of removed claim or cause

Declaratory judgment

Notes:

Continued from 1/25/24. Counsel for Debtor reported that a settlement is getting closer but has not been finalized.

**The Status Conference is XXXXXXX**

#### APRIL 25, 2024 STATUS CONFERENCE

As of the court's April 24, 2024 review of the Docket, no updates status reports have been filed. The review of the Docket discloses that nothing further has been filed by any of the Parties Other than the Notice of Removal by the Debtor on June 13, 2023. This matter was removed to this court three hundred and seventeen (317) days prior to the April 24, 2024.

While there have been representation of a settlement being near, almost a years worth of federal court history show little good faith prosecution of this Adversary Proceeding. It may be that both Parties are nesting comfortably in federal court, the judge having allowed them too much leeway.

It appears that this is a situation in which the court should remand this Adversary Proceeding to State Court and allow the Parties to experience the leeway of the State Court Judge. Additionally, the Debtor could have simply filed a Motion for Violation of the Automatic Stay which would have been set for an evidentiary hearing (if there are any actual disputed factual issued) and had this matter resolved about six months ago.

At the Status Conference, **XXXXXXX**

#### JANUARY 25, 2024 STATUS CONFERENCE

April 25, 2024 at 2:00 p.m.

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No updated Status Conference Reports have been concerning any settlement of this Adversary Proceeding or whether it will proceed to litigation.

At the Status Conference, Counsel for the Debtor reported that a settlement is getting closer but has not been finalized. The present settlement has been agreed by all of the multiple parties, and they are waiting for the concurrence of only one person.

The Status Conference is continued to 2:00 p.m. on April 25, 2024.

### **OCTOBER 19, 2023 STATUS CONFERENCE**

The court's review of the Docket reflects that no updated Status Report has been filed and no appearances made by any other party to this Adversary Proceeding.

At the Status Conference, counsel for the Debtor reported that a settlement is anticipated in the near future, and requests a further continuance.

### **AUGUST 10, 2023 STATUS CONFERENCE**

On June 13, 2023, Debtor-Defendant Sean Afshin Amin filed a Notice of Removal of this State Court Action. Dckt. 1. In the State Court Action Defendant-Debtor has been sued for an obligation that is asserted to have been discharged in his 2013 Chapter 7 Bankruptcy Case. Defendant-Debtor seeks now to not only defend the State Court Action based on his having obtained a discharge, but to also assert that the naming of Defendant-Debtor in the State Court Action violates the Discharge Injunction, and he will seek damages relating thereto.

The Ninth Circuit has addressed the enforcement of the Discharge Injunction, treating it as a statutory injunction for which the violation may be sought and the injunction enforced by "simple" motion for contempt rather than an adversary proceeding. *Barriento v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189-1191 (9th Cir. 2011); *ZiLOG, Inc. V. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). See also, *Bayati v. Musharbash (In re Bayati)*, 2015 Bankr. LEXIS 3624 (B.A.P. 9th Cir. 2015), discussing when additional relief to the "mere" violation of the automatic stay would require an adversary proceeding.

At the Status Conference, counsel for Defendant-Debtor reported that there are ongoing discussions to resolve this dispute, which is related to the Adversary Proceeding in *Elliott v. Nevarez*, 22-9002. He indicated that the issues concerning the bankruptcy case and the automatic stay have been highlighted for the person filing the cross-complaint that is the subject of this removed action.