

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**May 31, 2017, at 2:00 p.m.**

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1.     [15-28108](#)-E-11     **WILLARD BLANKENSHIP**     **CONTINUED STATUS CONFERENCE  
RE: VOLUNTARY PETITION  
10-17-15 [1]**

**Final Ruling:** No appearance at the May 31, 2017 Status Conference is required.

Debtor's Atty: Stephen M. Reynolds

<b>The Status Conference is continued to 2:00 p.m. on July 26, 2017.</b>
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Notes:

Continued from 1/18/17 to allow the Parties to focus on the performance of the Plan.

Operating Reports filed: 5/3/17 [Dec]; 5/3/17 [Mar]

[RLC-9] Order on Motion for Sale of Assets filed 1/23/17 [Dckt 185]

Notice of Noncompliance for Failure to File Post-Confirmation Quarterly Operating Reports filed 2/22/17 [Dckt 186]

Notice of Noncompliance of Payment of United States Trustee's Post-Confirmation Quarterly Fees filed 2/22/17 [Dckt 187]

[RLC-11] Motion to Approve Proposed Distribution Pursuant to Confirmed Plan of Reorganization filed 5/15/17 [Dckt 192], set for hearing 6/15/17 at 10:30 a.m.

**MAY 31, 2017 STATUS CONFERENCE**

There is pending a motion for an order to approve the distribution of monies under the terms of the confirmed Chapter 11 Plan. The Plan Administrator-Debtor seeks such an order due to unforeseen challenges in generating the monies for distribution and afford all parties in interest an opportunity to address any issues they have concerning the Plan Administrator-Debtor's interpretation of the confirmed Plan.

Belated Post-Confirmation Quarterly Reports were filed in May 2017.

**May 31, 2017, at 2:00 p.m.**

**- Page 1 of 34 -**

The court continues the Status Conference in light of the ongoing prosecution of this case by the Plan Administrator-Debtor.

2. [16-22732](#)-E-13      DANNY RUE  
[16-2165](#)  
U.S. TRUSTEE V. RUE

**PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR INJUNCTIVE RELIEF  
8-12-16 [1]**

Plaintiff's Atty: Allen C. Massey  
Defendant's Atty: Pro Se

Adv. Filed: 8/12/16  
Answer: 9/9/16

Nature of Action:  
Injunctive relief - other

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXX</span>.</b>
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Notes:  
Close of discovery 1/31/17  
Dispositive motions heard by 3/10/17

U.S. Trustee's Pretrial Statement filed 5/19/17 [Dckt 17]

### **MAY 31, 2017 PRETRIAL CONFERENCE**

#### **SUMMARY OF COMPLAINT**

The U.S. Trustee (Plaintiff) has filed this Complaint seeking injunctive relief against Danny Rue, the Defendant-Debtor. It is alleged that Defendant-Debtor has filed twelve bankruptcy cases, with eleven since 2008 (with the 2008 case being dismissed in 2010). Of the nine prior Chapter 13 cases all have been dismissed. In some of the cases, Defendant-Debtor made some plan payments, while in others, Defendant-Debtor made no plan payments.

The relief sought is a prefiling review injunction, to be effective for three years. Before being allowed to file another bankruptcy case during that period, Defendant-Debtor would first have to obtain the authorization of the chief bankruptcy judge in the district in which Defendant-Debtor desires to file a bankruptcy case.

## **SUMMARY OF ANSWER**

Defendant-Debtor filed his Answer on September 9, 2016. Dckt. 7. Defendant Debtor denies all of the allegations in the Complaint based on the statement that “Defendant-Debtor lacks information or belief sufficient to enable Defendant[-Debtor] to answer the allegations....” Answer ¶ 1.

The Answer then includes further statements which are summarized as follows:

- A. Defendant asserts that Good Faith has been his intention in filing the multiple bankruptcy cases.
- B. Law is superior to government.
- C. Law must respect and preserve dignity.
- D. Law must guard constitutional structures for a free society.
- E. A Declaration that:
  - 1. Defendant-Debtors intention to hold the highest regard for the law.
  - 2. Defendant-Debtor has tried to perform his legal duties.
  - 3. Defendant-Debtor has been hard working with his mortgage lender to solve the problems.
- F. Defendant-Debtors current mortgage has a 8.975% adjustable interest rate. With a loan modification, Defendant-Debtor believes the fixed rate interest would be lowered to 2% to 3%.
- G. Defendant-Debtor says that during the period the eleven prior bankruptcy cases were filed he had two shoulder surgeries. Though the medical bills were paid by Workers Compensation, there was an issue with Defendant-Debtors Workers Compensation payments.
- H. Defendant-Debtor sent his last loan modification to the creditor on August 24, 2016.
- I. Defendant-Debtor has been notified that the foreclosure sale on his home was set for September 29, 2016.

## **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 2, Dckt. 1. In his Answer, Plaintiff-Debtor does not plead the mandatory statements of jurisdiction and core or non-core proceeding. Fed. R. Bankr. 7012(b). Answer Dckt. 11. This matter arises

under the Bankruptcy Code itself, is a core proceeding, and all orders and final judgment are to be entered by the bankruptcy judge.

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 -----, **2017**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2017**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2017**.
- F. The Trial shall be conducted at ----x.m. on -----, **2017**.

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:

Jurisdiction and Venue:  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 2, Dckt. 1. In his Answer, Plaintiff-Debtor does not plead the mandatory statements of jurisdiction and core or non-core proceeding. Fed. R. Bankr. 7012(b). Answer Dckt. 11. This matter arises under the Bankruptcy Code itself, is a core proceeding, and all orders and final judgment are to be entered by the bankruptcy judge.	
<b>U.S. Trustee, Plaintiff</b>	<b>Defendant Danny Rue</b>
Undisputed Facts:  1. None identified based upon Answer.	Undisputed Facts:  1. No Pretrial Statement filed.
Disputed Evidentiary Issues:  1. No disputed issued identified.	Disputed Evidentiary Issues:  1. No Pretrial Statement filed.

<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. Injunction prohibiting Defendant, for a period of three years, from filing or causing to be filed, singly or jointly, any petition for relief under the Bankruptcy Code in any district without first obtaining permission from the bankruptcy court for the district in which the case would be filed or such other relief that the Court deems just and equitable.</li> </ol>	<p>Relief Sought:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> <li>2. Answer seeks to have all relief requested.</li> </ol>
<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. <i>Leavitt v. Soto (In re Leavitt)</i>, 209 B.R. 935, 939 (9th Cir. BAP 1997), <i>aff'd</i>, 171 F.3d 1219 (9th Cir. 1999).</li> <li>2. The All Writs Act, 28 U.S.C. § 1651.</li> <li>3. 11 U.S.C. § 105(a).</li> </ol>	<p>Points of Law:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> </ol>
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. None anticipated.</li> </ol>	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> </ol>
<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Danny William Rue.</li> <li>2. JoAnne David, Paralegal Specialist, Office of the U.S. Trustee.</li> <li>3.</li> <li>4.</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> </ol> <p>The failure to provide witnesses for Defendant-Debtor's case in chief does not preclude presentation of rebuttal witnesses, but only to the extent that they are true rebuttal witnesses and not merely "disguised" defense</p>

	case in chief witnesses.
<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. The bankruptcy court dockets for the following bankruptcy cases: Case no. 08-39044-E-13 10-25066-E-13 11-25228-B-13/7 11-43836-E-13 12-29177-C-13 13-21452-A-13 13-24737-A-13 13-33851-C-13 14-24181-B-13 14-29671-E-13 16-22732-E-13</li> <li>2. The documents marked on the docket copies for the above cases at EXHIBITS A-K (Dckt. 18) filed concurrently with the Pretrial Conference Statement.</li> <li>3. Summary of Initial Petition Information;</li> <li>4. Summary of Initial Schedules;</li> <li>5. Summary of Creditors Listed on Initial Matrix;</li> <li>6. Summary of Trustee Final Reports;</li> <li>7. Summary of Chapter 13 Filing Fees Paid;</li> <li>8. Complaint filed in captioned adversary at ECF No. 1; and</li> <li>9. Answer filed in captioned adversary at ECF No. 7.</li> </ol>	<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> </ol> <p>The failure to provide exhibits for Defendant-Debtor's case in chief does not preclude presentation of rebuttal exhibits, but only to the extent that they are true rebuttal exhibits and not merely "disguised" defense case in chief witnesses.</p>
Discovery Documents:	Discovery Documents:

1. None.	1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.
Further Discovery or Motions: 1. None anticipated.	Further Discovery or Motions: 1. No Pretrial Statement filed.
Stipulations: 1. None anticipated.	Stipulations: 1. No Pretrial Statement filed.
Amendments: 1. None anticipated.	Amendments: 1. No Pretrial Statement filed.
Dismissals: 1. None anticipated.	Dismissals: 1. No Pretrial Statement filed.
Agreed Statement of Facts: 1. None anticipated.	Agreed Statement of Facts: 1. No Pretrial Statement filed.
Attorneys' Fees Basis: 1. None.	Attorneys' Fees Basis: 1. No Pretrial Statement filed.
Additional Items 1. None.	Additional Items 1. No Pretrial Statement filed.
Trial Time Estimation: Four (4) Hours	Trial Time Estimation: No Pretrial Statement filed.

3. [16-20734-E-13](#) EUGENE SPENCER  
[16-2059](#)  
SPENCER V. SPENCER, III

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
3-25-16 [\[1\]](#)

Plaintiff's Atty: Mark A. Serlin  
Defendant's Atty: Pro Se

Adv. Filed: 3/25/16  
Answer: 4/25/16

Counterclaim & Jury Demand Filed: 4/25/16  
Answer: 5/9/16  
Amd. Answer: 5/10/16

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

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXX</span>.</b>
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Notes:  
Continued from 11/16/16

#### **MAY 31, 2017 STATUS CONFERENCE**

No additional pleadings have been filed since the November 2016 Status Conference. At the May 31, 2017 Status Conference Plaintiff reported XXXXXXXXXXXXXXXXXXXXXXX.



4. [16-26043-E-13](#) SUSAN GEDNEY  
[17-2006](#)  
GEDNEY V. WRIGHT ET AL

CONTINUED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
1-30-17 [\[7\]](#)

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

Adv. Filed: 1/24/17  
Answer: none

Amd. Cmplt Filed: 1/30/17  
Answer: none

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

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXX</span>.</b>
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Notes:  
Continued from 3/29/17

[TAG-2] Application for Entry of Default by Plaintiff filed 3/31/17 [Dckt 50]; Order granting filed 5/2/17 [Dckt 64]

Plaintiff's Application for Default Judgment filed 4/17/17 [Dckt 57], set for hearing 5/31/17 at 1:45 p.m.

#### **MAY 31, 2017 STATUS CONFERENCE**

At the May 31, 2017 Status Conference XXXXXXXXXXXXXXXXXXXXXX.

5. [11-27845-E-11](#) IVAN/MARETTA LEE  
[15-2194](#)  
LEE ET AL V. CITY OF  
SACRAMENTO COMMUNITY

PRE-TRIAL CONFERENCE RE:  
AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF; DECLARATORY  
JUDGMENT; VIOLATION OF THE  
CONFIRMED PLAN; AND FRAUDULENT  
TRANSFER OF SURRENDERED  
PROPERTY AND LAWSUIT OF  
SURRENDERED PROPERTY  
3-14-16 [\[92\]](#)

Plaintiff's Atty: Raymond E. Willis

Defendant's Atty:

Tim G. Ceperley [Bank of America, N.A.]

Beau E. Parkhurst [City of Sacramento; City of Sacramento Community  
Development Department]

Gregory K. Jones [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]/*dismissed by  
stipulation on 2/11/16 [Dckt 68]*

B. Ben Mohandesi [New Penn Financial, LLC dba Shellpoint Mortgage  
Servicing]/*dismissed by stipulation 2/24/16 [Dckt 87]*

Nature of Action:

Injunctive relief - other

Declaratory judgment

<b>The Pretrial Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXX.</span></b>
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Notes:

Scheduling Order -

Initial disclosures by 10/28/16

Close of discovery 1/31/17

Dispositive motions heard by 3/10/17

[BMV-3] Defendants City of Sacramento Community Development Department, Housing and Dangerous Building Division and City of Sacramento's Motion for Judgment on the Pleadings filed 12/16/16 [Dckt 138]; Order granting filed 2/2/17 [Dckt 144]

[TGC-5] Memorandum of Points and Authorities in Support of Bank of America N.A.'s Motion for Summary Judgment filed 2/7/17 [Dckt 145]; [order pending in inbox]

Joint Statement of Pretrial Conference filed 4/17/17 [Dckt 154] [states that Plaintiffs' attorney, Raymond Willis, has died; all issues fully resolved; request dismissal or expedited status conference]

## MAY 31, 2017 STATUS CONFERENCE

The court has been notified of the passing of Raymond Willis, counsel for Plaintiff-Debtor in this Adversary Proceeding and Plaintiff-Debtor's bankruptcy case. No substitution of counsel for Plaintiff-Debtor has been issued in this Adversary Proceeding.

The Defendants have filed a Joint Pretrial Conference Statement (Dckt. 154) in which they suggest that in light of Mr. Willis' passing, no attorney being substituted in, and the prior rulings of the court determining specific facts and conclusions of law relating to the confirmed plan in Plaintiff-Debtor's Chapter 11 case, a dismissal without prejudice is appropriate.

At the Pretrial Conference **XXXXXXXXXXXXXXXXXXXXX**.

6. [17-22347](#)-E-11 UNITED CHARTER LLC

STATUS CONFERENCE RE :  
VOLUNTARY PETITION  
4-7-17 [\[1\]](#)

Debtor's Atty: Jeffrey J. Goodrich

**The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXX.**

Notes:

U.S. Trustee Report at 341 Meeting docketed 5/8/17

## MAY 31, 2017 STATUS CONFERENCE

### STATUS CONFERENCE SUMMARY

This Chapter 11 case was commenced with the filing of a voluntary Chapter 11 petition on April 7, 2017. In the Status Report filed on May 5, 2017, Debtor in Possession reports that it believes the estate is solvent based on the ownership of several parcels of real property in Stockton, California. The Chapter 11 case was filed to afford the Debtor in Possession the opportunity to reorganize the estate rather than having foreclosures on the real property of Debtor to be conducted. FN.1.

-----  
FN.1. The Debtor in Possession, fiduciary of the bankruptcy estate, uses the confusing defined term "Debtor" to describe it in its fiduciary position. "Debtor" is a statutory term which is the entity which filed the bankruptcy. The Debtor in this case may also serve as the "Debtor in Possession," accepting all of the fiduciary duties and responsibilities that go with that position, or elect to allow to have a Chapter 11 trustee appointed if the Debtor is unwilling or unable to take on such fiduciary duties. The "debtor" and the "debtor in possession" are not the same legal entity, the same as an individual person and that person serving as the trustee of a trust are not merely the same "person." As a trustee, that person owes fiduciary duties to the trust estate and beneficiaries, well beyond that of the individual.  
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Debtor in Possession reports that all cash collateral is being deposited in bank accounts. Further, Debtor in Possession believes that stipulations for the use of cash collateral will be reached with the respective creditors.

# **MONTHLY OPERATING REPORT SUMMARY**

<b>April, 2012 Report</b>	<b>Filed:      None Filed</b>	
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## **SUMMARY OF SCHEDULES**

<b>Real Property Schedule A/B</b>	<b>FMV</b>		
1904 East Weber	\$27,816		
1908 East Weber	\$31,395		
1912 East Weber	\$18,814		
1916 East Weber	\$9,286		
1920 East Weber	\$18,572		
1928 East Weber	\$9,286		
1936 East Weber	\$18,572		
1881 East Weber	\$184,691		
1914 Myrtle	\$18,291		
1916 Myrtle	\$18,291		
1881 East Market Street	\$7,500,000		
1617 East Main	included above		
1555 East Main -10, -11, -12, -13	included above		
1531 East Main	included above		
1523 East Main	included above		

<b>Personal Property Schedule A/B</b>	<b>FMV</b>		
Checking	\$17,555		
Office Equipment, Furniture	None		
Breach of Lease Claim	\$18,000		
No other personal property or business assets are listed.			

<b>Secured Claims Schedule D</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>FMV OF COLLATERAL</b>	<b>COLLATERAL</b>
County of San Joaquin - Property Taxes			
East-West Bank Disputed	(\$4,246,804)	\$17,555	Bank Account  Cause of Action  First Deed of Trust - All Real Property
Wayne Bier Disputed	(\$580,000)	\$17,555	Same as Above Second Deed of Trust

<b>PRIORITY UNSECURED CLAIMS SCHEDULE E</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>PRIORITY</b>
None		

<b>GENERAL UNSECURED CLAIMS SCHEDULE F</b>	<b>TOTAL CLAIM AMOUNT</b>	<b>SPECIFIC CLAIM AMOUNT</b>
Total Unsecured Claims	(\$71,171)	
City of Stockton Fines		(\$27,613)
Raymond Zhang, Inc. Loan		(\$33,657)

<b>CODEBTORS - SCHEDULE F</b>	<b>DEBT</b>	
Cind Zang	East-West Bank	
Raymond Zhang, Inc	East-West Bank	

## **STATEMENT OF FINANCIAL AFFAIRS**

### **PART 1**

#### **Question 1 Income**

2017 YTD	\$45,600	
2016	\$252,000	
2015	\$327,667	

#### **Question 2 Non-Business Income**

2017 YTD	None	

## **PART 2 - TRANSFERS BEFORE FILING**

### **Question 4 Payments within One Year Before Filing**

<b>Creditor</b>	<b>Amount</b>	<b>Reason</b>
Raymond Zang	\$344,409	Repayment of Short-Term Loans and Reimbursement of Expenses

## **PART 13 - BUSINESS INFORMATION**

### **Question 28 - Officers, Directors, Partners, Members, Controlling Shareholders**

<b>Person</b>	<b>Position</b>	
Raymond Zhang	Member	50% Interest
Cindy Zhang	Member	50% Interest

7. [16-28049-E-13](#)      **ARMANDO RODRIGUEZ**  
[17-2018](#)  
**U.S. TRUSTEE V. RODRIGUEZ**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**2-13-17 [1]**

**Final Ruling:** No appearance at the May 31, 2017 hearing is required.  
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Plaintiff's Atty: Jason M. Blumberg  
Defendant's Atty: unknown

Adv. Filed: 2/13/17  
Answer: none

Nature of Action:  
Injunctive relief -other

<b>The Status Conference is continued to 2:00 p.m. on July 26, 2017.</b>
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Notes:

Request for Entry of Default by Plaintiff filed 3/31/17 [Dckt 7]

[UST-1] Plaintiff's Application for Entry of Default Judgment filed 4/25/17 [Dckt 12]; set for hearing 5/31/17 at 1:45 p.m.

### **MAY 31, 2017 STATUS CONFERENCE**

The Plaintiff has filed a motion for entry of a default judgment Defendant having failed to file an answer or other responsive pleading. The court continues the Status Conference to allow for prosecution of the pending motion.

### **SUMMARY OF COMPLAINT**

The U.S. Trustee ("Plaintiff") alleges in the Complaint that Defendant-Debtor, Armando Rodriguez, has pending a Chapter 13 case (Case No. 16-28049, "Current Case") in which he has: (1) failed to make the filing fee installment payments; and (2) failed to attend the First Meeting of Creditors. In the Current Case Defendant-Debtor states that he lives in 2519 Woodgate Way. This is identified as being community property.

Defendant-Debtor's prior 2016 Chapter 13 case was dismissed due to the failure to pay the filing fee installments

It is further alleged that Defendant-Debtor's spouse has filed at least seven bankruptcy cases since 2011, in which she also has listed the Woodgate Property. All of Defendant-Debtor's spouse's seven



bankruptcy cases have been dismissed for her failure to prosecute those cases (including failing to make plan payments).

Plaintiff seeks issuance of a prefiling review injunction, which would required Defendant-Debtor to obtain authorization to file another bankruptcy case for the two year period after entry of the judgment from the chief bankruptcy judge in the district.

### **SUMMARY OF ANSWER**

Defendant-Debtor has not filed an answer or other responsive pleading.

### **FINAL BANKRUPTCY COURT JUDGMENT**

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

8. [12-39954-E-13](#)      **JOHN/MICHELLE PINEDA**  
[16-2002](#)  
**PINEDA, JR. ET AL V. WELLS**  
**FARGO BANK, N.A.**

**CONTINUED STATUS CONFERENCE**  
**RE: AMENDED COMPLAINT**  
**12-28-16 [28]**

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Adam N. Barasch

Adv. Filed: 1/5/16  
Answer: none  
1st Amd Complaint Filed: 7/5/16  
Answer: 7/29/16  
2nd Amd Complaint Filed: 12/18/16  
Answer: none

Nature of Action:  
Injunctive relief - other

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXXXXXXX</span>.</b>
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Notes:  
Continued from 2/22/17

#### **MAY 31, 2017 STATUS CONFERENCE**

No further pleadings or status reports have been filed since the February 22, 2017 Status Conference. No answer or other responsive pleading has been filed.

It appears that both the Plaintiff-Debtor and Defendant have abandoned any prosecution of this Adversary Proceeding and the determination of the issues raised herein.

#### **FEBRUARY 22, 2017 STATUS CONFERENCE**

Plaintiff Debtor filed a Second Amended Complaint on December 28, 2016. Certificates of Service were filed on December 28 and 29, 2016. Dckts. 30, 32. No answer or other responsive pleading has been filed by the named Defendant.

The parties report that they have exchanged the financial information

9. [16-27854-E-11](#) GARY STEINGROOT

CONTINUED STATUS CONFERENCE  
RE: VOLUNTARY PETITION  
11-29-16 [\[1\]](#)

Debtor's Atty: Edward A. Smith

Notes:

Continued from 1/18/17

Operating Reports filed: 2/14/17; 3/14/17; 4/14/17; 5/17/17

[TBG-1] Order granting motion to employ Stephan M. Brown as attorney filed 2/3/17 [Dckt 36]

[TBG-2] Application of Debtor in Possession for Order Authorizing the Employment of Better Homes & Gardens Real Estate R.P. as Real Estate Broker for Debtor in Possession filed 5/17/17 [Dckt 46], set for hearing 5/31/17 at 9:45 a.m.

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxx, 2017</span></b>
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Status Report filed 5/17/17 [Dckt 50]

#### **MAY 31, 2017 STATUS CONFERENCE**

At the Status Conference xxxxxxxxxxxxxxxxxxxx

#### **Debtor in Possession Status Report**

On May 17, 2017, the Debtor in Possession provided the court with a Status Report. The updated information is that a motion to employ real estate broker is set for hearing on May 31, 2017.

10. [15-29555](#)-E-13      DIANNE AKZAM  
[15-2247](#)  
U.S. TRUSTEE V. AKZAM

PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR INJUNCTIVE  
RELIEF  
12-18-15 [1](#)

Plaintiff's Atty: Allen C. Massey  
Defendant's Atty: Pro Se

Adv. Filed: 12/18/15  
Answer: none

Nature of Action:  
Injunctive relief - other  
Notes:  
Scheduling Order -  
Initial disclosures by 7/8/16  
Close of discovery 1/13/17  
Dispositive motions heard by 3/9/17

U.S. Trustee's Pretrial Statement filed 5/19/17 [Dckt 33]

### **MAY 31, 2017 PRETRIAL CONFERENCE**

At the Pretrial Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

### **SUMMARY OF COMPLAINT**

The U.S. Trustee seeks an injunction against Diane Akzam (Defendant-Debtor) to bar, for a period of three years, her from filing further bankruptcy cases without first obtaining authorization from the court in the district in which she seeks to file a future case. The Complaint alleges that in filing her currently pending Chapter 13 case; E.D. Cal. No. 15-29555; Defendant-Debtor did not disclose five prior cases she had filed (and which were dismissed in the six year preceding the filing of the current case. The U.S. Trustee further alleges that since 2010 the Defendant-Debtor and her brother have filed a series of ten prior, interlocking cases in which no bankruptcy plan has been performed.

In the Complaint, it is alleged:

- A. "14. Defendant filed her Voluntary Petition for the Current Case in bad faith."
- B. "15. In commencing the Current Case, Defendant has unfairly manipulated, and is unfairly manipulating, the Bankruptcy Code."
- C. "16. Defendant filed the Current Case to invoke the automatic stay, to cause delay, and to hinder creditors and other interested parties, with no legitimate intent or attempt to perform her

duty as debtor under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or as required by orders of the Court; to reorganize or otherwise discharge her dischargeable debts; or to effectuate any legitimate purpose under the Bankruptcy Code.”

D. “18. The Current Case presently remains open. However, there is a substantial and strong likelihood that the Defendant will continue to file abusive bankruptcies that are marked by an intentional disregard of the law and failure to perform her legal duties as a debtor.”

E. “19. Defendant's misconduct in filing abusive bankruptcy petitions is capable of repetition. Any such future filing by Defendant, at the instant the filing occurs, will have evaded review by Plaintiff and other interested parties.”

F. “20. Monetary damages and other legal remedies would be insufficient to remedy the abuses described in paragraphs 1 through 19 inclusive, *supra*.”

G. “21. Pursuant to 11 U.S.C. §§ 105 and 349, it is appropriate and warranted, under the circumstances described above, that the Court issue an injunction prohibiting Defendant, for a period of three years, from filing or causing to be filed, singly or jointly, any petition for relief under the Bankruptcy Code in any district without first obtaining permission from the bankruptcy court for the district in which the case would be filed.”

## **SUMMARY OF ANSWER**

Dianne Akzam, Defendant-Debtor, has filed an Answer which admits and denies specific allegations in the Complaint. Dckt. 21. Defendant-Debtor also asserts ten Affirmative Defenses.

## **FINAL BANKRUPTCY COURT JUDGMENT**

The Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (D). Complaint ¶ 2, Dckt. 1. At the Status Conference, Defendant-Debtor stated on the record at the hearing that she agrees that federal jurisdiction exists for this Adversary Proceeding, that matters in the Complaint are core matters, and to the extent could be contended to be non-core, Defendant-Debtor consents to the bankruptcy judge entering all 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 Plaintiff-Trustee also consented on the record to this bankruptcy court entering the final orders and judgment 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.

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 -----, **2017**.

C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2017**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2017**.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2017**.

F. The Trial shall be conducted at ----**x.m. on** -----, **2017**.

The Parties in their respective Pretrial Conference Statements, Dckts. 33, (none filed by Defendant-Debtor), 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:

<p>Jurisdiction and Venue:</p> <p>The Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (0). Complaint ¶ 2, Dckt. 1. At the Status Conference, Defendant-Debtor stated on the record at the hearing that she agrees that federal jurisdiction exists for this Adversary Proceeding, that matters in the Complaint are core matters, and to the extent could be contended to be non-core, Defendant-Debtor consents to the bankruptcy judge entering all 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 Plaintiff-Trustee also consented on the record to this bankruptcy court entering the final orders and judgment 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.</p>	
<b>U.S. Trustee, Plaintiff</b>	<b>Dianne Akzam, Defendant-Debtor</b>
<p>Undisputed Facts:</p> <p>1. The bankruptcy cases filed by Defendant-Debtor identified in the Complaint.</p>	<p>Undisputed Facts:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p> <p>2. Defendant-Debtor expressly disputes that any of the bankruptcy cases were filed for any improper purpose.</p>

<p>Disputed Evidentiary Issues:</p> <p>1. None anticipated.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Relief Sought:</p> <p>1. Complaint requests that the Court issue an injunction prohibiting Defendant, for a period of three years, from filing or causing to be filed, singly or jointly, any petition for relief under the Bankruptcy Code in any district without first obtaining permission from the bankruptcy court for the district in which the case would be filed.</p>	<p>Relief Sought:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p> <p>2. Answer requests that the relief sought by Plaintiff be denied.</p>
<p>Points of Law:</p> <p>1. <i>Leavitt v. Soto (In re Leavitt)</i>, 209 B.R. 935, 939 (9th Cir. BAP 1997), <i>aff'd</i>, 171 F.3d 1219 (9th Cir. 1999).</p> <p>2. All Writs Act, 28 U.S.C. § 1651.</p> <p>3. <i>Molski v. Evergreen Dynasty Corp.</i>, 500 F.3d 1047, 1057 (9th Cir. 2007).</p> <p>4. 11 U.S.C. § 105(a).</p>	<p>Points of Law:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Abandoned Issues:</p> <p>1. None anticipated.</p>	<p>Abandoned Issues:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law</p>

<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. Dianne L. Akzam</li> <li>2. JoAnne David, Paralegal Specialist, Office of the U.S. Trustee</li> </ol>	<p>Witnesses:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> <li>2. The failure to provide witnesses for Defendant-Debtor's case in chief does not preclude presentation of rebuttal witnesses, but only to the extent that they are true rebuttal witnesses and not merely "disguised" defense case in chief witnesses.</li> </ol>
<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. The bankruptcy court dockets for the following bankruptcy cases: Case no. Case Name 02-25725 Akzam, Dianne Loretta 10-45216 Akzam, Dianne Loretta 11-20282 Akzam, Dianne Loretta 11-25844 Akzam, Jeffrey 11-43187 Akzam, Dianne Loretta 12-37369 Akzam, Dianne 13-20155 Akzam, Jeffrey 14-23825 Akzam, Dianne 14-28272 Akzam, Dianne 14-30332 Akzam, Jeffrey 15-29555 Akzam, Dianne L</li> <li>2. The documents marked on the docket copies for the above cases at EXHIBITS A-K filed concurrently with Plaintiff's Pretrial Conference Statement, Dckt. 34.</li> <li>3. Summary of Initial Petition Information.</li> <li>4. Summary of Initial Schedules.</li> </ol>	<p>Exhibits:</p> <ol style="list-style-type: none"> <li>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</li> <li>2. The failure to provide exhibits for Defendant-Debtor's case in chief does not preclude presentation of rebuttal exhibits, but only to the extent that they are true rebuttal exhibits and not merely "disguised" defense case in chief witnesses.</li> </ol>



5.	Summary of Creditors Listed on Initial Matrix.	
6.	Summary of Trustee Final Reports.	
7.	Summary of Chapter 13 Filing Fees Paid.	
8.	Complaint filed in captioned adversary at ECF No. 1.	
9.	Answer filed in captioned adversary at ECF No. 21.	
10.	Deed Absolute, Solano County document number 201300024201.	
11.	Deed to Trustee, Solano County document number 201200104541.	
12.	Deed of Trust, Solano County document number 200600004104.	
13.	Short Form Deed of Trust, Solano County document number 200600087097.	
14.	Notice of Default and Election to Sell Under Deed of Trust, Solano County document number 201000055766.	
15.	Mortgage Assumption Agreement, and Line of Credit.	
16.	Account Assumption Agreement	
17.	The docket for case no. 2:16-cv-02274-TLN, U.S. District Court, Eastern District of California.	
Discovery Documents:		Discovery Documents:
1.	None identified.	1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file

	a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.
<p>Further Discovery or Motions:</p> <p>1. None anticipated.</p>	<p>Further Discovery or Motions:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Stipulations:</p> <p>1. None anticipated.</p>	<p>Stipulations:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Amendments:</p> <p>1. None anticipated.</p>	<p>Amendments:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Dismissals:</p> <p>1. None anticipated.</p>	<p>Dismissals:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Agreed Statement of Facts:</p> <p>1. None anticipated.</p>	<p>Agreed Statement of Facts:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff,</p>

	both as to the facts and the law.
<p>Attorneys' Fees Basis:</p> <p>1. None requested.</p>	<p>Attorneys' Fees Basis:</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
<p>Additional Items</p> <p>1. None anticipated.</p>	<p>Additional Items</p> <p>1. No Pretrial Conference Statement filed by Defendant-Debtor. The failure to file a Pretrial Conference Statement does not alter the burden of proof for Plaintiff, both as to the facts and the law.</p>
Trial Time Estimation: Four (4) hours	Trial Time Estimation:

11. [10-32657-E-13](#) DANIEL/MARIA PEREZ  
[16-2239](#)  
PEREZ ET AL V. CENTRAL  
MORTGAGE COMPANY

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
11-9-16 [\[1\]](#)

**ADVERSARY PROCEEDING CLOSED:**  
**05/16/2017**

**Final Ruling:** No appearance at the May 31, 2017 Status Conference is required.  
-----

Plaintiff's Atty: Gary Ray Fraley  
Defendant's Atty: Renee M. Parker

Adv. Filed: 11/9/16  
Answer: 12/12/16

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

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

Notes:  
Continued from 1/18/17

Notice of Stipulated Dismissal of Adversary Proceeding filed 4/28/17 [Dckt 9]  
Adversary dismissed 4/28/17

12. [13-24657](#)-E-13      MICHAEL FARRACE  
[17-2040](#)  
FARRACE V. NEW PENN FINANCIAL, LLC

STATUS CONFERENCE RE:  
COMPLAINT  
3-20-17 [\[1\]](#)

Plaintiff's Atty: Gary Ray Fraley  
Defendant's Atty: Erin M. McCartney

Adv. Filed: 3/20/17  
Answer: 5/10/17

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

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXXXXXXX</span>.</b>
--

Notes:  
Joint Status Conference Report–Discovery Plan filed 5/16/17 [Dckt 9]

### **MAY 31, 2017 STATUS CONFERENCE**

At the Status Conference XXXXXXXXXXXXXXXXXXXXXXXXXXXX

#### **SUMMARY OF COMPLAINT**

Michael Farrace (“Plaintiff-Debtor”) alleges that in his Chapter 13 bankruptcy case his Chapter 13 Plan was confirmed. A dispute has arisen concerning the amount of Defendant’s claim in the bankruptcy case, it now being stated higher than that computed by Plaintiff-Debtor based on the proof of claim filed in the bankruptcy case. It is asserted that Defendant violated the automatic stay by misapplying the Chapter 13 Plan payments. The second claim for relief is an “objection to proof of claim.” The Third Claim for Relief seeks a declaration of whether Plaintiff-Debtor is current on all payments due Defendant under the Chapter 13 Plan. (It does not appear that this is actually a request for “declaratory relief” to guide future conduct, but for a determination of the obligations existing for the past conduct of the Parties). The Fourth Claim for Relief is for “conversion,” the misapplication of the plan payments by Defendant. The Fifth Claim for Relief is stated to be for violation of California Business and Professions Code §§ 17200 et seq. Contractual and statutory attorneys fees are requested by Plaintiff-Debtor.

#### **SUMMARY OF ANSWER**

New Penn Financial, dba Shellpoint Mortgage Servicing (“Defendant”) has filed an answer admitting and denying specific allegations in the Complaint.

## 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)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Plaintiff-Debtor also expressly consents to the bankruptcy judge issuing all orders and final judgment for the Complaint. Complaint ¶¶ 2, 3, 4; Dckt. 1. In its answer, New Pen Financial Service, LLC, Defendant, admits the allegations of jurisdiction and core proceedings. Defendant also consents to the bankruptcy judge issuing all orders and the final judgment on this Complaint. Answer ¶¶ 2, 3, Dckt. 7.

## ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b). Plaintiff-Debtor also expressly consents to the bankruptcy judge issuing all orders and final judgment for the Complaint. Complaint ¶¶ 2, 3, 4; Dckt. 1. In its answer, New Pen Financial Service, LLC, Defendant, admits the allegations of jurisdiction and core proceedings. Defendant also consents to the bankruptcy judge issuing all orders and the final judgment on this Complaint. Answer ¶¶ 2, 3, Dckt. 7.
- B. Initial Disclosures shall be made on or before -----, **2017**.
- C. Expert Witnesses shall be disclosed on or before -----, **2017**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2017**.
- D. Discovery closes, including the hearing of all discovery motions, on -----, **2017**.
- E. Dispositive Motions shall be heard before -----, **2017**.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----**  
-----, **2017**.

13. [11-22562-E-13](#)      **JOSEPH/SABRINA MADDOCKS**      **STATUS CONFERENCE RE: AMENDED COMPLAINT**  
[17-2038](#)  
**MADDOCKS ET AL V. CAL COASTAL**      **4-20-17 [17]**  
**RURAL DEVELOPMENT CORPORATION**

**Final Ruling:** No appearance at the May 31, 2017 Status Conference is required.  
-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Effie Florene Anastassiou

Adv. Filed: 3/14/17  
Answer: none

1st Amd. Cmplt. Filed: 4/20/17  
Answer: 5/9/17  
Counterclaim Filed: 5/9/17  
Answer: none  
Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Declaratory judgment

The Parties having agreed to engage in the Bankruptcy Dispute Resolution Program and the court issuing its order thereon, **the Status Conference is continued to 2:00 p.m. on July, 26 2017.**

Notes:

[EFA-1] Motion to Dismiss Adversary Complaint and for an Award of Attorney's Fees filed 4/13/17 [Dckt 7]; Notice of Withdrawal filed 4/20/17 [Dckt 15]

[EFA-2 parent case] Order re complaint filed 4/20/17 [Dckt 14]  
Joint Status Statement filed 5/23/17 [Dckt 25]

### **MAY 31, 2017 STATUS CONFERENCE**

The Parties to this Adversary Proceeding having begun the process of communication and agreeing to engage in the court's BDRP, the court continues the Status Conference to facilitate this process. The court continues the Status Conference two months to allow for sufficient time for the scheduling and conducting of BDRP conference(s) and further discussion as required.

14. [08-30669-E-13](#) CRECYNTHIA MCLUCAS  
[17-2034](#)  
MCLUCAS V. T.D. SERVICE  
COMPANY ET AL

STATUS CONFERENCE RE:  
COMPLAINT  
3-9-17 [\[1\]](#)

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Patrick Reider

Adv. Filed: 3/9/17  
Answer: 4/26/17

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 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.**

Notes:

### **MAY 31 STATUS CONFERENCE**

At the Status Conference XXXXXXXXXXXXXXXXXXXXXXX

### **SUMMARY OF COMPLAINT**

Crecynthia McLucas ("Plaintiff-Debtor") has filed a Complaint quiet title to Plaintiff-Debtor's real property upon completion of the Chapter 13 Plan in Plaintiff-Debtor's Chapter 13 Case. It is alleged that Defendant's secured claim, having been valued at \$0.00 in the bankruptcy case has been fully provided for, no claim remains, that the deed of trust now clouds Plaintiff-Debtor's title. Plaintiff-Debtor also seeks statutory damages pursuant to California Civil Code § 2941(d) and statutory and contractual attorney's fees.

The first cause of action seeks "declaratory relief," seeking a declaration that the court's order valuing the claim is actually a court order valuing the secured claim and that upon completion of the plan the deed of trust is "void." Taken on its face, the Plaintiff-Debtor merely wants a statement to that "fact" and no affirmative relief granted in the judgment. Under the facts alleged, mere "declaratory relief" is not proper.

The second cause of action requests that the court "extinguish" Defendant's second deed of trust. However, the Complaint does not allege grounds for the court to "extinguish" an other wise valid, enforceable interest in real property. The relief requested is for the court to "void" a deed of trust – such statement appears to admit that Defendant holds a valid, enforceable deed of trust for which the court allows this court to terminate such valid, enforceable rights.



This is not the first (or second or third) time counsel has requested such improper relief. The court has previously address with counsel that this is simply a claim to quiet title, the deed of trust having been rendered void by operation of federal and state law (the 11 U.S.C. § 105(a) valuation, completion of the plan, and California law providing that when there remains no obligation to be secured, the deed of trust is void). Alternatively, it could be asserted that the deed of trust has been rendered void pursuant to 11 U.S.C. § 506(d) based on: (1) the § 506(a) valuation and completion of the Chapter 13 Plan.

The court notes that some of the allegations in the Complaint now reference the intersection between federal and state law, and the cornerstone of the basis for relief the valuation of the secured claim and completion of the Chapter 13 Plan. However, the evolution of this complaint “form” has not been completed.

The court once again interprets the improper request for “declaratory relief” coupled with the incomplete request to “void” a valid, enforceable interest in real property as the simple request for quiet title.

## **SUMMARY OF ANSWER**

T.D. Service Company (“Defendant-TD”) has filed an Answer to the Complaint. Dckt. 7. Defendant-TD asserts six affirmative defenses.

No answer has been filed by E-Trade Bank.

## **REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER**

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In add to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the addition pleading requirement concerning whether the matters in the complaint are core or non-core:

“Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.**”

Fed. R. Bankr. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading

requirement concerning whether the matter are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(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.”

Fed. R. Bank. P. 7012(b) (emphasis added).

### **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶¶ 3, Dckt. 1. To the extent non-core, Plaintiff-Debtor consents to the entry of all orders and final judgment by the bankruptcy judge.

In its Answer, Defendant-TD alleges that it “lacks sufficient information and belief” to respond to the issue of federal court jurisdiction and core proceeding status. Defendant-TD cannot merely avoid affirmatively responding with specifics.