

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**June 16, 2016 at 2:00 p.m.**

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1.	<a href="#">16-90401</a> -E-11	NATIONAL EMERGENCY MEDICAL SERVICES	STATUS CONFERENCE RE: VOLUNTARY PETITION 5-10-16 [ <a href="#">1</a> ]
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Debtor's Atty: David C. Johnston

Notes:

[JBS-1] Motion to Dismiss with Prejudice Chapter 11 Bankruptcy Petition by Creditor National Association of Government Employees, Inc. Filed 5/27/16 [Dckt 20], set for hearing 6/16/16 at 2:00 p.m.

Debtor's Chapter 11 Status Report filed 6/6/16 [Dckt 28]

U.S. Trustee Report at 341 Meeting docketed 6/8/16

**June 16, 2016 at 2:00 p.m.**

- Page 1 of 21 -

**Tentative Ruling:** The Motion to Dismiss the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 27, 2016. By the court's calculation, 20 days' notice was provided. 21 days' notice is required.

The Motion to Dismiss the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion to Dismiss With Prejudice Chapter 11 Bankruptcy Petition denied without prejudice.</b>
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This Motion to Dismiss the Chapter 11 bankruptcy case of National Emergency Medical Services Association, Inc. ("Debtor-in-Possession") has been filed by National Association of Government Employees Inc. ("Movant"). Movant asserts that the case should be dismissed based on the following grounds.

- a. The Debtor and the Movant entered into an affiliation and servicing relationship that fell apart when the Debtor failed to pay the amounts due under the parties' agreement.
- b. In April 2014, a California arbitrator awarded the Movant a net damages award of \$263,664 against the Debtor.

- c. On February 4, 2015, the District Court of Massachusetts denied Debtor's request to vacate the arbitration and granted the Movant's motion to confirm it.
- d. On February 6, 2015 the Debtor filed a voluntary Chapter 11 petition before this court.
- e. The Debtor failed to prosecute the Chapter 11 petition for over a year. During that year the Debtor never filed a plan of reorganization.
- f. On April 13, 2016 the Court granted the Movant's motion to Dismiss for cause under 11 U.S.C. § 1112(b) because the Debtor still failed to file a plan.
- g. The court found that in the year since filing bankruptcy the Debtor generated roughly \$426,000 in cash receipts, but spent 67% of that amount on salary and wages, however, the Debtor only has two employees on payroll: its Executive Director, Torren Colcord, and its Office Managers, Kim Cuaresma.
- h. The Debtor filed the instant Chapter 11 on May 10, 2016, less than one month after the dismissal of its Chapter 11 bankruptcy case.
- i. The Debtor is seeking the Bankruptcy Court's protections while making no effort to prosecute the case in good faith and is acting in bad faith to once again frustrate the legitimate attempts of its creditors to enforce their rights.

#### **FAILURE TO PROPERLY SERVE THE MOTION**

Unfortunately, the Movant failed to give sufficient notice. Pursuant to Fed. R. Bankr. P. 2002(a)(4), a minimum of 21-days notice is required for a Motion to Dismiss in a Chapter 11 case. Here, the Movant only provided 20 days which is insufficient.

However, even in light of the failure to properly notice the Motion, the court will review the merits.

#### **RULING**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9<sup>th</sup> Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter,

whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Cause does not exist to dismiss this case pursuant to 11 U.S.C. § 1307(b). While the court recognizes that the Debtor took an unreasonable amount of time to file a plan in the previous case, the Movant has not identified cause to dismiss the instant case.

Although the Movant makes some salient points, the Debtor may be taking steps to legitimately prosecute the instant Chapter 11 case, with the jury still being out. The Debtor filed a complete Summary of Assets and Liabilities, Statement of Financial Affairs, Schedules, and Disclosures on May 27, 2016. Dckt. 19. The Debtor also attended the 341 Meeting on June 8, 2016. Lastly, the Debtor filed an Application to Employ Attorney on June 12, 2016. Dckt. 30.

Furthermore, in the Summary of Assets and Liabilities for Non-individuals the Debtor claimed that it owes \$819,127.00 to unsecured creditors. It would be prejudicial to these other creditors to dismiss this case because the Movant believes that the Debtor is acting in bad faith specifically in an effort to avoid paying the Movant's judgment.

The court recognizes that the Debtor has indeed "dragged their feet" in the past. However, it is too early to dismiss this case because it is not yet clear whether the Debtor is indeed prosecuting the instant case in bad faith. The only evidence of bad faith presented by the Movant relates to the timing of the filing of the first Chapter 11 case and the Debtor's failure to propose any type of plan or disclosure statement in the prior case.

While the court may take notice of the actions of Debtor's in previous cases, as admitted by the Movant, this is the Debtor's second bankruptcy in the past year. The court agrees that cause existed in the previous case to dismiss because the Debtor was not prosecuting the case in good faith. However, the Debtor-in-Possession's past actions do not appear to be repeated here. The Debtor-in-Possession has taken affirmative steps to file schedules and petition and has worked to employ knowledgeable bankruptcy counsel. In the instant case, the instant Motion seems premature.

Therefore, due to the failure to provide sufficient notice and failure to provide cause pursuant to 11 U.S.C. § 1112, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 11 case filed by the Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

3. [15-90502-E-7](#) ANNA STARR  
[16-9006](#)  
EDMONDS V. STARR ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-10-16 [[1](#)]

Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty:  
Pro Se [William K. Starr; Marlene Starr]  
Peter G. Macaluso [Anna E. Starr]

Adv. Filed: 2/10/16  
Answer: 3/14/16  
Amd Answer: 3/28/16 [Anna E. Starr]

Nature of Action:  
Declaratory judgment  
Approval of sale of property of estate and of a co-owner

The Status Conference is <del>XXXXXXXXXXXXXXXX</del>
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Notes:

Continued from 5/12/16. Defendant requested continuance for Parties to work on settling all, or a portion of, disputes, including the estate's interest in the Corvette.

Defendant's Status Statement filed 6/8/16 [Dckt 18]

**SUMMARY OF COMPLAINT**

Irma C. Edmonds, the Chapter 7 Trustee ("Plaintiff"), seeks to recover a 1959 Corvette from the Defendants, in which the Estate asserts a 1/3 interest. Plaintiff also seeks to obtain an judgment allowing the sale of the Corvette, with the sales proceeds divided among the bankruptcy estate and other owner.

**SUMMARY OF ANSWER**

William K. Starr and Anna Starr ("Defendant-Debtor Parties") have filed a general denial, admitting that this is a core proceeding, but generally denying all other allegations.

Anna Starr ("Defendant-Anna") has filed an Amended Answer denying and admitting specific allegations. Defendant-Starr also asserts two affirmative defenses.

**FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (N). Complaint, ¶¶ 2, 3, Dckt. 1. In their Answers, Defendant-Debtor Parties and Defendant-Anna each admit the allegations of jurisdiction and core proceedings. Answer, Dckt. 11; Amended Answer, ¶ 3, Dckt. 14. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

#### **STATUS REPORT**

Defendant Anna Starr filed a Status Report on June 8, 2016. Dckt. 18. She reports that the Plaintiff-Trustee is awaiting a written valuation of the Corvette, and it is anticipated that the matter will be quickly settled thereafter.

#### **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (N). Complaint, ¶¶ 2, 3, Dckt. 1. In their Answers, Defendant-Debtor Parties and Defendant-Anna each admit the allegations of jurisdiction and core proceedings. Answer, Dckt. 11; Amended Answer, ¶ 3, Dckt. 14. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before -----, 2016.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.

**June 16, 2016 at 2:00 p.m.**

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

4. [15-90811](#)-E-7 ASSN., GOLD STRIKE CONTINUED STATUS CONFERENCE RE:  
[15-9062](#) HEIGHTS HOMEOWNERS NOTICE OF REMOVAL  
LEE V. GOLD STRIKE HEIGHTS 11-18-15 [[1](#)]  
ASSOCIATION ET AL

**Final Ruling: No appearance at the June 18, 2016 Status Conference is required.**

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Plaintiff's Atty: Pro Se  
Defendant's Atty: Peter G. Macaluso; Karen Pine  
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15  
Answer: 1/14/16

Nature of Action:  
Determination of removed claim or cause

<b>Judgment having been entered for Defendant, the Status Conference is removed from the calendar.</b>
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Notes:

Continued from 4/7/16 to allow the Parties to either dismiss the Adversary Proceeding, file a motion to file amended complaint, or judgment entered.

Order Denying Oral Motion to Extend Time for Defendant Don Lee to Comply with Order for Entry of Judgment filed 5/16/16 [Dckt 45]

Judgment against Plaintiff filed 5/26/16 [Dckt 47]

Notice of Appeal to Ninth Circuit Bankruptcy Appellate Panel filed 6/8/16 [Dckt 50]

5. [15-90811](#)-E-7 ASSN., GOLD STRIKE CONTINUED STATUS CONFERENCE RE:  
[15-9063](#) HEIGHTS HOMEOWNERS NOTICE OF REMOVAL  
INDIAN VILLAGE ESTATES, LLC ET 11-18-15 [[1](#)]  
AL V. GOLD STRIKE HEIGHTS  
ADV. CASE DISMISSED:  
05/16/2016

ADV. CASE DISMISSED 5/16/16

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

6. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA CONTINUED MOTION TO MODIFY  
FLG-15 CHAPTER 12 PLAN  
1-12-16 [[158](#)]

**No Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 65 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).



**The Motion to Confirm the Modified Plan is xxxxxx.**

Francisco and Oriana Silva ("Debtor") filed a Motion to Modify Chapter 12 Plan on January 12, 2016. Dckt. 158.

The Debtor states that the original plan was confirmed November 25, 2013. In June, 2015, almost two years after the claims filing deadline, the property taxing authority on Debtor's real property filed three secured claims in the bankruptcy. Debtor was previously unaware of two of these three claims, and the third, which was provided for in the Plan, was significantly higher than anticipated.

Additionally, the Debtor states that a number of creditors filed claims which stated that they were entitled to priority in an "unascertained" amount. Debtor believes that these claims are not entitled to priority and are allowable only as non-priority general unsecured claims. Debtor has filed an objection to each of these claims.

The Debtor proposes the following amendments:

1. For Class 2, the claim of County of Stanislaus for property taxes on debtor's real property located at 300 E. Barnhart Road, Ceres, California, the creditor filed a proof of claim in the amount of \$29,392.02, and the Plan proposes to pay 18% interest. Amortized over the remaining term of the Plan, the payment sufficient to pay this claim in full is \$1,139.69. The Debtor proposes to pay this claim at \$1,139.69 per month beginning in January, 2016.
2. For Classes 5, the claim of Systems & Services Technologies, Inc., secured by debtor's 2008 Wilson 24 Ranch Hand Trailer, the creditor filed a proof of claim in the amount of \$8,060.92. Prior to the filing of this motion, the trustee has disbursed \$6,257.52 towards the principal balance of this claim. The remaining balance of \$1,803.40, amortized over the remaining 33 months of the Plan at 5% interest, the payment sufficient to pay this claim in full is \$58.59. The Debtor proposed to pay this claim at \$58.59 per month beginning in January, 2016.
3. The claim of Stanislaus County, filed as proof of claim number 25 in this bankruptcy matter and denoting secured property taxes on the property located at 213 Barnhart Road, Ceres, CA, is \$2,463.92. Amortized over the remaining term of the Plan at 18% interest, the payment sufficient to pay this claim in full is \$95.21. The Debtor proposes to create a new Class 7, on which payments will be made in the amount of \$95.21 per month beginning January, 2016 and continuing until the completion of the Plan.
4. The claim of Stanislaus County, filed as proof of claim number 26 in this bankruptcy matter and denoting secured property taxes on the property located at 6400 Crows Landing Road,

Ceres, CA, is \$4,410.43. Amortized over the remaining term of the Plan at 18% interest, the payment sufficient to pay this claim in full is \$170.45. The Debtor proposes to create a new Class 8, on which payments will be made in the amount of \$170.45 per month beginning January, 2016 and continuing until the completion of the Plan.

#### **TRUSTEE'S OPPOSITION**

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 191. The Trustee states that the secured claim of Stanislaus County is understated at \$29,492.02 as the proof of claim was amended on February 22, 2016 to \$42,563.27. The secured claim of Stanislaus County is understated at \$2,463.92 as the proof of claim was amended on February 22, 2016 to \$2,744.74. The secured claim of Stanislaus County is understated at \$4,410.43 as the proof of claim was amended on February 22, 2016 to \$5,630.88. The Trustee calculates that the plan will take approximately 86 months to complete which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1222(c).

Additionally, the Trustee asserts that the feasibility of the plan depends on the Debtor's objections to claims of Joel Celasco, Jose Velasco, Luis Jimenez, Jose Palomare, and Juan Ibarra being sustained. These objections are set to be heard March 17, 2016.

#### **MODIFIED PLAN**

On March 2, 2016, the Debtors filed a new document titled "MODIFIED CHAPTER 12 PLAN DATED JUNE 26, 2013." Dckt. 209. The "Plan" is signed by the Debtors on March 1, 2016.

The Plan states that it is submitted to the court pursuant to 11 U.S.C. § 1221. That Code Section requires that the Chapter 12 Plan filed be submitted not later than 90 days after the commencement of the filing of the bankruptcy case. This case having been filed on February 25, 2013, that 90 days expired on April 26, 2013 - almost three years ago.

This Motion is given Docket Control Number, FLG-15. The Notice of Hearing states that it is a Supplemental Notice of the Motion to Modify the Debtors' Chapter 12 Plan dated June 26, 2013. Dckt. 210. The Notice states that accompanying it is a copy of the Chapter 12 Plan "which embodies the changes described in the Motion and Notice previously served on you on January 12, 2016." *Id.*

A Motion to Modify, DCN: FLG-15, was filed on January 12, 2016. Dckt. 158. However, no proposed modified plan was filed. Federal Rule of Bankruptcy Procedure 3015(g) provides that the motion to modify a Chapter 12 plan and the proposed modification shall be filed.

#### **MARCH 17, 2016 HEARING**

At the hearing, the court sustained the objections to claim of Joel Celasco, Jose Velasco, Luis Jimenez, Jose Palomare, and Juan Ibarra.

Counsel for Debtor reports that the Debtor is going to object to the

amended tax claims. The Chapter 12 Trustee requested that the court authorize the Trustee to continue to make the disbursements on the tax claims as originally filed, pending determination of the claims objections.

The hearing on confirmation was continued to June 16, 2016 at 2:00 p.m. Dckt. 215.

#### **STANISLAUS COUNTY TREASURER TAX COLLECTOR OPPOSITION**

Stanislaus County Treasurer Tax Collector ("Tax Collector") filed an opposition to the instant Motion on June 2, 2016. Dckt. 238.

The Tax Collector provides a background as to the individual Proofs of Claim filed as to each property. Proofs of Claim No. 25, 26, 27.

The Tax Collector states that the objections is based on the Debtor being liable to pay the claims in their entirety including all redemption penalties.

The Tax Collector is seeking 18% per annum on the property tax claims under state law. The Tax collector states that the Debtor does not dispute the property tax payments are in default and that the pre-petition redemption penalties that were applied in Claim 27.

Additionally, the Tax Collector states that the redemption penalty is added to the lien on real property pursuant to state law.

The Debtor-in-Possession's plan proposes to pay the redemption penalties only during the Plan period for Claim 27 and for 33 months for Claim 25 and 26. The Tax Collector argues that this is improper because there is sufficient value in the properties to cover the principal amount dues plus all redemption penalties or interest. As such, the claims are fully secured and payable in their entirety.

The Tax Collector seeks that the court:

1. Deny the Motion to Modify the Chapter 12 Plan dated June 26, 2013 as to Claims 25, 26, and 27.
2. Enter an order requiring Debtor-in-Possession to pay all the redemption penalties and interest under applicable state law on the Tax Collector's secured real property tax claims; and
3. Allow the Tax Collector's additional taxes penalties and interest as an administrative expense claim under 11 U.S.C. § 503(b)(1).

#### **STIPULATION**

On June 14, 2016, the Debtor-in-Possession, Tax Collector, and Chapter 12 Trustee entered into a Stipulation resolving Objection of Tax Collector. The Stipulation provides that the order confirming the plan shall include the following amendments:

1. Section 2.03 shall be amended to read as follows:

a. "Class 2 Claim: The claim of County of Stanislaus for property taxes on real property identified as 55 acres with 3 small single family residences in poor repair, a dairy farm, and three mobile homes, only two of which can be used to house farm laborers, located at 300 E. Barnhart Road, Ceres, California 95307 (for the purposes of this paragraph, the "Property") shall be the Class 2 claim. The principal amount of this claim, consisting of taxes and assessments owed at the time of the filing, shall be \$26,132.39. This amount shall be fully amortized at 18% annual interest over the final 33 months of the plan, beginning January, 2016. In addition, prior to the proposal of this modified plan, this claim accrued \$17,337.31 in interest and penalties. Prior to January, 2016, the trustee paid \$2,719.29 on this claim, which shall be allocated towards the interest and penalties. Debtor shall pay the remaining accrued interest and penalties over the final 33 months of the plan beginning in January, 2016. Thus, the payments on the Class 2 Claim shall be as made by the trustee up through and including December, 2015, and thereafter \$1,452.76, consisting of \$1,009.79 as the amortized payment of principal and \$442.97 as the payment to cure the post-petition accrued interest. The payment of \$1,452.76 shall begin in January, 2016 and continue for the final 33 months of the Plan.

2. Section 2.08 shall be amended to read as follows:

a. "Class 7 Claim: The claim of County of Stanislaus for property taxes on real property identified as 213 Barnhart Road, Ceres, CA 95307 (for the purposes of this paragraph, the "Property") shall be the Class 7 claim. The principal amount of this claim, consisting of taxes and assessments owed at the time of the filing, shall be \$2,207.85. This amount shall be fully amortized at 18% annual interest over the final 33 months of the plan, beginning January, 2016. In addition, prior to the proposal of this modified plan, this claim accrued \$1,443.42 in interest and penalties. Debtor shall pay the accrued interest and penalties over the final 33 months of the plan beginning in January, 2016. Thus, the payments on the Class 7 Claim shall be \$129.05, consisting of \$85.31 as the amortized payment of principal and \$43.74 as the payment to cure the accrued interest and penalties. The payment of \$129.05 shall begin in January, 2016 and continue for the final 33 months of the Plan.

3. Section 2.09 shall be amended to read as follows:

a. "Class 8 Claim: The claim of County of Stanislaus for property taxes on real property identified as 6400 Crows Landing Road (for the purposes of this paragraph, the

"Property") shall be the Class 8 claim. The principal amount of this claim, consisting of taxes and assessments owed at the time of the filing, shall be \$3,970.04. This amount shall be fully amortized at 18% annual interest over the final 33 months of the plan, beginning January, 2016. In addition, prior to the proposal of this modified plan, this claim accrued \$2,567.27 in interest and penalties. Debtor shall pay the accrued interest and penalties over the final 33 months of the plan beginning in January, 2016. Thus, the payments on the Class 8 Claim shall be \$231.20, consisting of \$153.41 as the amortized payment of principal and \$77.80 as the payment to cure the accrued interest and penalties. The payment of \$231.20 shall begin in January, 2016 and continue for the final 33 months of the Plan.

4. In order to properly fund these amended claims as well as the required additional trustee's fees, Debtor's Chapter 12 Plan payment shall be \$8,835.00 beginning January, 2016.

#### **DISCUSSION**

Upon review of the proposed Chapter 12 Plan, as amended, the evidence in the form of the declaration of Francisco Mendes Silva, the Debtor, and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1229 and 1225.

(1) the plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B) (I) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such

holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

Notwithstanding the objection of the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

- (b)(1)
  - (A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;
  - (B) the plan provides that all of the debtor's projected disposable income to be received in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or
  - (C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.
- (b)(2) For purposes of this subsection "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--
  - (A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or
  - (B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

At the hearing, xxxx

7.     [14-91325](#)-E-7     JORGE SANCHEZ AND CORINA     CONTINUED TRIAL RE: COMPLAINT  
          [15-9001](#)             ZAMORA-SORIANO     OBJECTING TO DISCHARGEABILITY  
          TURLOCK IRRIGATION DISTRICT V.     OF DEBT  
          SANCHEZ ET AL     1-8-15 [[1](#)]

**Final Ruling:   No appearance at the June 18, 2016 Status Conference is required.**

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Plaintiff's Atty:   Walter R. Dahl  
Defendant's Atty:   Pro Se

Adv. Filed:     1/8/15  
Answer:     3/5/15

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

<p><b>Judgment having been entered pursuant to the Stipulation of the Parties, the Trial Scheduling Conference is removed from the Calendar.</b></p>
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Notes:

Continued from 4/7/16 as Trial Scheduling Conference. Walter Dahl substituting in as counsel for TID and is obtaining the file for review. Previous settlement was not acceptable to the District.

Plaintiff's Status Report filed 6/2/16 [Dckt 35]

Stipulation for Entry of Judgment filed 6/7/16 [Dckt 37]

8. [12-92143](#)-E-7 WILLIAM/SHEILA KILLIAN  
[15-9024](#)  
KILLIAN ET AL V. NATIONAL  
COLLEGIATE STUDENT LOAN TRUST

PRE-TRIAL CONFERENCE RE:  
COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
7-8-15 [[1](#)]

Plaintiff's Atty: Charles L. Hastings  
Defendant's Atty: Raymond F. Moats

Adv. Filed: 7/8/15  
Answer: 8/7/15

Nature of Action:  
Dischargeability - student loan

<b>The Pretrial Conference is <del>XXXXXXXXXXXXXXXXXX</del>.</b>
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Notes:  
Scheduling order -  
Initial disclosures by 9/8/15  
Close of discovery 12/2/15  
Dispositive motions heard by 3/15/16

Pretrial Statement as to National Collegiate Student Loan Trust 2007-1 and 2007-4 filed 6/8/16 [Dckt 17]

Stipulation for Entry of Judgment as to National Collegiate Student Loan Trust 2007-1 and 2007-4 filed 6/8/16 [Dckt 19]

#### **JUNE 16, 2016 PRETRIAL CONFERENCE**

On June 8, 2016, a pleading titled Stipulation for Entry of Judgment was filed. Dckt. 19. The Stipulation provides for settlement of the dispute which provides for the payment of an obligation on stated terms. It is not clear from the Stipulation what judgment, if any, is to be entered at this time, or in the future.



9. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
MJH-13

CONTINUED OBJECTION TO CLAIM OF  
UNITED STATES FIRE INSURANCE  
COMPANY, CLAIM NUMBER 19  
2-9-15 [[509](#)]

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

10. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[13-9029](#)  
UNITED STATES FIRE INSURANCE  
COMPANY V. GARCIA ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
4-30-15 [[64](#)]

Plaintiff's Atty: Gregory M. Salvato  
Defendant's Atty:  
Mark J. Hannon [Mark Garcia; Angela Garcia]  
Estela O. Pino [John Bell]

Adv. Filed: 8/23/13  
Answer: 10/4/13

Amd. Cmplt. Filed: 4/30/15  
Answer: 5/20/15

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

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

Notes:  
Continued from 4/7/16 to allow the stipulation to be implemented and judgment entered.

11. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[15-9013](#)  
GARCIA ET AL V. G STREET  
INVESTMENTS, LLC. ET AL  
ADV. CASE DISMISSED:  
06/01/2016

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
5-30-15 [[14](#)]

ADV. CASE DISMISSED 6/1/16

Final Ruling: No appearance at the June 18, 2016 Status Conference is required.

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

12. [14-91565](#)-E-7 RICHARD SINCLAIR  
[16-9008](#)  
CALIFORNIA EQUITY MANAGEMENT  
GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
3-23-16 [[1](#)]

Plaintiff's Atty: Hilton A. Ryder  
Defendant's Atty: Pro Se

Adv. Filed: 3/23/16  
Answer: 5/9/16

Nature of Action:  
Objection/revocation of discharge

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXX~~.

Notes:  
Continued from 6/2/16

#### JUNE 2, 2016 STATUS CONFERENCE

At the Status Conference no parties appeared.

#### SUMMARY OF COMPLAINT

California Equity Management Group, Inc.; Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Plaintiff") assert claims to have Richard Sinclair ("Defendant-Debtor") denied his discharge in his Chapter 7 bankruptcy case (14-91565). The grounds for denial of discharge alleged are summarized (and are not a complete listing of the extensive allegations) as follows:

- a. 11 U.S.C. § 727(a)(2) - with intent to hinder, delay or defraud a creditor or officer of the estate, Defendant-Debtor has, or permitted, transferred, removed, destroyed, mutilated, or concealed:
  - i. Within one year before the commencement of the case property of the Defendant-Debtor; or
  - ii. After the case, property of the bankruptcy estate.
- b. 11 U.S.C. § 727(a)(4)(A)- that Defendant-Debtor knowingly and fraudulently made a false oath
  - i. Failing to disclose:
    - (1) Transfers made to family members;
    - (2) Debtor's interest in the Oak View Drive Property and Black Hawk Drive Property;
    - (3) Unrecorded deed for 50% interest in the Oak View Drive Property;
  - ii. Falsely stating:
    - (1) He has a multi-year lease of the Oak View Drive Property;
    - (2) That he had recorded a homestead exemption in the Oak View Drive Property;
    - (3) That he suffers, or suffered, from a medical impairment in connection with fulfilling his duties and obligations in this bankruptcy case;
    - (4) The grounds surrounding the Defendant-Debtor's post-petition automobile accident;
- c. 11 U.S.C. § 727(a)(4)(D) and (a)(6) - that Defendant-Debtor has refused to obey the orders of the court in this bankruptcy case, including:
  - i. Failure to produce documents on February 24, 2016;
  - ii. Failure to appear at the First Meeting of Creditors following conversion of this case;
  - iii. Failure to search for or produce documents for a May 22, 2015 Rule 2004 examination;
- d. 11 U.S.C. § 727(a)(3) - Defendant-Debtor has failed to keep, preserve, or produce records of the various, multi-million dollar business transactions, including:

- i. \$1,200,000 of accounts receivable allegedly transferred;
- ii. Transactions involving Sinclair Ranch;

#### SUMMARY OF ANSWER

Richard Sinclair ("Defendant-Debtor") filed his Answer on May 9, 2016. Dckt. 7. The Answer admits and denies the specific paragraphs of the Complaint. Defendant-Debtor asserts twenty-four Affirmative Defenses.

#### FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint, ¶¶ 2, 3, Dckt. 1. The Defendant-Debtor admits that is Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Answer, ¶ 2, Dckt. 7.

13. [15-90087-E-7](#) DIOLINDA MACHADO  
[15-9016](#)  
MACHADO V. MACHADO

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
5-15-15 [[1](#)]

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

Adv. Filed: 5/15/15  
Answer: 6/22/15

Nature of Action:  
Dischargeability - other  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury  
Dischargeability - fraud as fiduciary, embezzlement, larceny

The Status Conference is <del>XXXXXXXXXXXXXX</del> .
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Notes:  
Continued from 2/4/16

#### JUNE 16, 2016 STATUS CONFERENCE

At the Status Conference ~~XXXXXXXXXXXXXX~~

#### FEBRUARY 4, 2016 STATUS CONFERENCE

The Status Conference was continued to 2:00 p.m. on February 4, 2016, to allow the state court judgment to be issued and conclusion of this Adversary Proceeding summarily prosecuted.

At the February 4, 2016 Status Conference, the Parties reported that the criminal judgment is on appeal, estimating that a ruling on that is expected in the next three months.

#### **SUMMARY OF COMPLAINT**

Mary Machado, individually and as Trustee, ("Plaintiff") seeks to have debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(7). Defendant-Debtor is a family member of Plaintiff with whom there is alleged to have been a confidential relationship. It is alleged that Plaintiff qualifies for protection pursuant to California Welfare and Institutions Code § 15610.27 (elder protection).

It is alleged that Defendant-Debtor forged Plaintiff's signature on a deed to transfer real property from a trust to Plaintiff's name individually so as to fraudulently obtain secured loans in Plaintiff's name. It is further alleged that Defendant-Debtor forged Plaintiff's signature to: (1) obtain surrender value payments on three life insurance policies, and (2) obtain financing to purchase a vehicle.

It is further alleged that Defendant-Debtor forged Plaintiff's signature to purportedly refinance Plaintiff's property and diverted the loan proceeds. Additionally, that Defendant-Debtor fraudulently used Plaintiff's bank accounts to withdraw money therefrom.

#### **SUMMARY OF ANSWER**

The Defendant-Debtor has filed a *pro se* answer, checking the box that Defendant-Debtor denies the allegations of the Complaint, other than procedural facts relating to the filing of the bankruptcy petition.

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

The Complaint alleges 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)(I), seeking a determination of nondischargeability of debt arising under the Bankruptcy Code. Complaint 1,2, Dckt. 1. In her Answer, Diolinda Machado ("Defendant-Debtor") does not specifically deny the allegations of jurisdiction and core proceedings. Answer, Dckt. 8. The determination of the dischargeability of debt arises under the Bankruptcy Code and is a core proceeding for which the bankruptcy judgment issues the orders and final judgment. 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.