

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 27, 2019 at 2:00 p.m.

1.	<u>15-90811-E-7</u> ASSN., GOLD STRIKE <u>16-9002</u> HEIGHTS HOMEOWNERS FARRAR V. MASSELLA ET AL	CONTINUED STATUS CONFERENCE RE: COMPLAINT 1-13-16 [1]
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Final Ruling: No appearance at the June 27, 2019 Status Conference is required.

Plaintiff's Atty: Clifford W. Stevens; Ricardo Z. Aranda
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
 2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

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

Notes:
Continued from 1/10/19

Plaintiff's Status Conference Statement filed 6/17/19 [Dckt 77]

The Status Conference is continued to 2:00 p.m. on January 23, 2020.

JUNE 27, 2019 STATUS CONFERENCE

June 27, 2019 at 2:00 p.m.
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On June 17, 2019, the Plaintiff-Trustee filed his updated Status Report. Dckt. 77. Plaintiff-Trustee reports that the judgment in the related Adversary Proceeding, No. 15-9061, was affirmed on appeal by the District Court. That decision has not been appealed to the Ninth Circuit Court of Appeals.

The briefing schedule for the Ninth Circuit is stated to be completed by the end of September 2019. It is requested that the court continue this Status Conference until after the anticipated completion of the appeal in the related matter which should be in the fourth quarter of 2019.

The court continues the Status Conference to 2:00 p.m. on January 23, 2020. Updated Status Report(s) shall be filed on or before January 16, 2020.

JANUARY 19, 2019 STATUS CONFERENCE

On December 27, 2018, Plaintiff-Trustee filed an updated Status Conference Report. Dckt. 73. The Plaintiff-Trustee reports that the appeal in related Adversary Proceeding No. 19-9061 is pending before the United States District Court, with an amended Appellant Opening Brief having been filed on November 29, 2018, and the Appellee's Opening Brief to be filed by December 28, 2018. The Appellant's Reply Brief is due by January 31, 2019.

Plaintiff-Trustee requests that this Status Conference be further continued to allow the issues on appeal be determined before these parties spend further time, money, and judicial resources in this Adversary Proceeding. This is consistent with the Stipulation filed in this Adversary Proceeding to stay this matter pending final resolution of the appeal. Stipulation, Dckt. 69.

The Status Conference is continued to 2:00 p.m. on June 27, 2019.

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 Status Conference in this Adversary Proceeding having been scheduled, the court having reviewed the Status Conference Statement and the pending appeal in the related (as to subject matter) adversary proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on January 23, 2020. An updated Status Report shall be filed by Plaintiff-Trustee on or before January 16, 2020.

2. [18-90030-E-11](#) **FILBIN LAND & CATTLE**
[19-9009](#) **CO., INC.**

STATUS CONFERENCE RE:
COMPLAINT
4-13-19 [1]

FILBIN LAND & CATTLE CO., INC.
V. ARNAUD ET AL

Final Ruling: No appearance at the June 27, 2019 Status Conference is required.

Plaintiff's Atty: Michael St. James
Defendant's Atty: Jay A. Christofferson; Steven K. Vote

Adv. Filed: 4/13/19
Reissued Summons: 4/15/19
Answer: none

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

Notes:
[WJH-1] Stipulation to Stay Adversary Proceeding to Allow Parties to Mediate filed 5/1/19 [Dckt 9]; Order granting filed 5/15/19 [Dckt 11]

The Status Conference is continued to 2:00 p.m. on August 1, 2019.

JUNE 27, 2019 STATUS CONFERENCE

The court signed an order on May 15, 2019, staying this adversary proceeding while the parties diligently pursued mediation of their disputes.

The court continues the Status Conference to allow the Parties to focus on the mediation.

A Status Report shall be filed by Plaintiff's Counsel on or before July 24, 2019, advising the court of the status of the mediation and anticipated time line for a "go, no-go" determination of whether this Adversary Proceeding will be settled or the court should lift the stay and the Adversary Proceeding be prosecuted.

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

June 27, 2019 at 2:00 p.m.
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Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference in this Adversary Proceeding having been scheduled, the court having reviewed the file and the order staying this Adversary Proceeding pending the mediation being conducted by the Parties, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on August 1, 2019. An updated Status Report shall be filed by Plaintiff on or before July 24, 2019.

Debtor's Atty: David C. Johnston

Notes:
Continued from 3/28/19

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxx, 2019.

JUNE 27, 2019 STATUS CONFERENCE

A review of the file reflects that nothing has been filed in this case by the ΔIP since its March 16, 2018 Status Report. At the March 28, 2019 Status Conference it was stated that the Debtor or the ΔIP would file a Chapter 11 plan and disclosure statement by June 25, 2019. Neither has been filed by that date.

There are five proofs of claims that have been filed. The largest is for unpaid sales taxes to the State of California.

The ΔIP has not filed monthly operating reports for:

March 2019,
April 2019,
May 2019, and
June 2019.

Debtor's prior Chapter 11 case was filed on March 26, 2018, and dismissed on December 6, 2018. During eight months of that case, seven monthly operating reports were to be filed by the ΔIP in that case (which is also serving as the ΔIP in this case). No monthly operating reports were filed in the prior Chapter 11 case.

The ΔIP in this case and in the prior Chapter 11 case have been represented by experienced Chapter 11 counsel. There can be no doubt that the ΔIP is aware of its obligation to file monthly operating reports.

In the prior case, the ΔIP sought to blame the Chapter 11 counsel for the failure to file monthly operating reports,

Debtor in Possession filed a Response in Opposition on November 29, 2018. Dckt.56. Debtor in Possession's counsel states that Debtor in Possession has relied on counsel to convert franchise-dictated monthly operated reports for Debtor in Possession's Dickey's Barbeque Pit businesses to the format of monthly operating reports required by the court. Debtor in Possession's counsel states further that he has

been prevented from producing the monthly operating reports due to several unexpected hardships, including health issues and injuries of numerous family members.

Debtor in Possession argues 11 U.S.C. § 1112(b)(2) applies to this situation because the defect can be cured within a short period of time, the Debtor in Possession was diligent in providing franchise-dictated monthly operated reports to its attorney, and there are reasons the attorney was unable to prepare the monthly operating reports.

18-90196; Civil Minutes, Dckt. 60.

Where an attorney seeks to “fall on his sword” as the excuse for a client failing to fulfill their obligations in a bankruptcy case is a very slippery slope. In substance, such “excuse” can be viewed as admission by the attorney who has a fiduciary duty to the bankruptcy estate.

The court gave the Debtor and counsel for the DIP in the prior case and elected to dismiss the prior case rather than convert it to one under Chapter 7 or appoint a Chapter 11 trustee. *Id.*; at 3.

Unfortunately, though given the benefit of the doubt and a second chance by the court, the DIP is demonstrating that it has no intention of fulfilling its obligations under the Bankruptcy Code.

The failure to file monthly operating reports is a basis for the appointment of a Chapter 11 trustee or conversion of this case to one under Chapter 7. The Court’s prior order in this case scheduling the status conference includes the following:

Sanctions for Failure to Comply. Failure to comply with this order may result in sanctions including dismissal, conversion, or the appointment of a trustee. Filing a status report with perfunctory conclusions and no meaningful factual detail does not comply with this order. The court expects to receive sufficient information to understand the current status of the case, the debtor's anticipated plan of reorganization, and the types of contested matters and adversary proceedings that will likely be filed. With this information the court may set the deadlines described below.

Dckt. 3 at p. 2.

At the Status Conference, **XXXXXXXXXX**

MARCH 28, 2019 STATUS CONFERENCE

This voluntary Chapter 11 bankruptcy case was filed by Barreno Enterprises, LLC on February 25, 2019. Debtor’s prior voluntary Chapter 11 case was filed on March 26, 2018, and dismissed on December 6, 2018. 18-90196.

In this case Barreno Enterprises, LLC, the Debtor, and not the debtor in possession, filed a Status Report. Dckt. 15. Debtor reports operating one Dickey's Barbeque Pit franchise, having closed five other locations.

Debtor states that it, and not the debtor in possession, intends to file a Chapter 11 plan by June 25, 2019. The Debtor notes that as of the March 16, 2019 filing of the Status Report only one proof of claim had been filed, that for \$325.00 by the U.S. Trustee.

On Schedule A/B Debtor lists having significant assets consisting of: (1) \$4,000 in cash and banking deposits; (2) \$4,500 in food and inventory; (3) \$16,000 in machinery and equipment; and (4) a franchise worth \$75,000. Dckt. 14.

On Schedule D Debtor lists creditors having secured claims which total (\$36,000). *Id.* at 11-12. On Schedule E/F Debtor lists \$96,000 in priority claims and \$1,559,000 in general unsecured claims. *Id.* at 13-18.

At the Status Conference counsel for the Debtor in Possession reported that the Schedules have been filed. At the one remaining location the revenues are up approximately twenty percent.

Final Ruling: No appearance at the June 27, 2019 Status Conference is required.

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 11/29/18 to continued to allow for the plan to be completed, the discharge entered, and the case closed.

Status Report of Chapter 12 Trustee filed 6/6/19 [Dckt 718]

Chapter 12 Standing Trustee's Final Report and Account filed 6/18/19 [Dckt 721]

The Status Conference is continued to 2:00 p.m. on August 1, 2019, to allow for the objection period to run and the filing of any post-plan completion motions, if any.

JUNE 27, 2019 STATUS CONFERENCE

The Chapter 12 Trustee filed his Final Report and Account on June 18, 2019. Dckt. 721. The Trustee reports that the case was completed on May 29, 2019. The Chapter 12 Plan has been funded with \$1,187,528.04 in payments by Debtor. The Administrative Expenses in this case are reported to total (\$186,240.00), which are comprised of:

Attorney's Fees Paid Through the Plan.....	(\$ 44,742.75)
Trustee Expenses & Compensation.....	(\$ 53,734.25)
Other.....	(\$ 87,763.00)

The Trustee reports that all unsecured claims allowed in the case have been paid in full, including interest.

The thirty (30) day period for filing objections to the Trustee's Final Report (Fed. R. Bankr. P. 5009(a)) has not yet expired.

5. [10-90080-E-7](#)
[JAD-2](#)

FRED EICHEL

CONTINUED PRE-EVIDENTIARY
HEARING RE: MOTION FOR
SANCTIONS FOR VIOLATION OF THE
DISCHARGE INJUNCTION
9-7-18 [\[31\]](#)

Debtor's Atty: Jessica A. Dorn
Creditor's Atty: Michael F. Babitzke

Notes:

Continued from 4/24/19. On or before 6/1/19 Michael Babitzke to file and serve statement advising the court and parties regarding representation. On or before 6/13/19 Parties to file Pre-Evidentiary Hearing Conference Statements.

The Pre-Evidentiary Hearing Conference is continued to 2:00 p.m. on xxxxxx, 2019.

JUNE 27, 2019 PRE-EVIDENTIARY HEARING CONFERENCE

The court has been advised that, and in connection with other cases new attorney's have substituted in the place of because, Michael Babitzke, counsel for the Respondent, has passed away. Order, Dckt. 61.

Respondent Scarlett Severson-Fiorini has not substituted in counsel to replace the late Mr. Babitzke. As of the court's June 26, 2019 review of the file in this case, Respondent was proceeding in *pro se*.

At the Pre-Evidentiary hearing Conference, Respondent **xxxxxxxxxxxxx**

Debtor's Atty: David C. Johnston

Notes:

Continued from 3/14/19. Counsel for Debtor-in-Possession reported talks have broken down with the landlord for the Fresno facilities. Debtor-in-Possession will be moving to dismiss this case.

Operating Report filed: 4/16/19; 5/17/19; 6/7/19

The Status Conference is XXXXXXXXXXXXXX

JUNE 27, 2019 STATUS CONFERENCE

At the March 2019 Status Conference the Δ IP reported to the court that it would be requesting to have this case dismissed. No motion to dismiss has been filed.

At the Status Conference the Δ IP stated XXXXXXXXXX

MARCH 14, 2019 STATUS CONFERENCE

This Chapter 11 case was filed on December 1, 2017. No proposed Chapter 11 plan or proposed disclosure statement has been filed. A review of the most Recent Monthly Operating Report filed, for the month of January 2019, the Debtor in Possession (" Δ IP") reports that in the fifteen months this Chapter 11 case has been pending:

- A. The estate has received \$590,273.57 in Cash Received;
- B. Has spent \$148,073.16 for Administrative Disbursements;
- C. Has spent \$220,409.00 for Salaries/Commissions; and
- D. Has a Cash Balance of \$58,440.00 (increased from \$3,661 in December 2018).

Monthly Operating Report, p. 4; Dckt. 101.

In the Updated Status Report filed on November 26, 2018, the Δ IP reported that in August 2018, the principals of the Δ IP meet with counsel and formulated a plan to pay creditors holding the remaining claims in this case following the foreclosure sale of the Debtor's Fresno property. However, due to family illness involving Δ IP's counsel's family, counsel had been diverted from prosecuting such plan.

No Updated Status Report was filed as of the court's March 11, 2019 review of the Docket in this case.

At the Status Conference, counsel for ΔIP reported talks have broken down with the landlord (the former lender) for the Fresno facilities.

With that occurring, Debtor in Possession will be moving to dismiss this case.

AUGUST 23, 2018 STATUS CONFERENCE

At the Status Conference the Debtor in Possession reported that it is continuing to operate in both facilities, notwithstanding the foreclosure in Fresno. The Debtor in Possession is working on a lease for the property, having found a buyer for the property from the Loeb Trustee (generating the sales proceeds for the Loeb Trust), for the long-term operation of that facility.

The Debtor in Possession is anticipating a 100% plan. There are no other creditors now active in the case (the Loeb Trust having been granted relief from the stay).

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference, the Debtor in Possession reported that it is working on the plan, including a new lease from the buyer of the Fresno facility.

APRIL 26, 2018 STATUS CONFERENCE

On April 15, 2018, Debtor in Possession filed three monthly operating reports. These reports are summarized as follows:

Mar 2018 Report, Dckt. 56

Cash Receipts From Sales.....	\$15,917	\$24,844
Insurance Payments.....	\$38,221	\$196,676

Amended Feb 2018 Report, Dckt. 60

Cash Receipts From Sales.....	\$8,927	\$8,927
Insurance Payments.....	\$35,393	\$158,455

Amended January 2018 Report, Dckt. 58

Cash Receipts From Sales.....	\$ -0-	\$ -0-
Insurance Payments.....	\$79,991	\$123,062

At the Status Conference, the parties agreed to continue the Status Conference to 2:00 p.m. on August 23, 2018.

JANUARY 11, 2017 STATUS CONFERENCE

Status Conference Summary

This Chapter 11 case was filed on December 1, 2017. The Schedules and Statement of Financial Affairs were filed on December 19, 2017. The Status Report states that Debtor in Possession is operating as property of the Estate two related businesses. The primary business is a 16-bed in-patient drug and alcohol abuse behavior modification program in Fresno, California. This is not a “medical treatment facility.” The Estate is also operating an out-patient program in Modesto, California.

Debtor was incorporated in 2014 and purchased the Fresno, California property. The purchase obligation has matured, with Debtor and seller creditor entering into a forbearance agreement for a period, with the seller creditor ultimately setting a foreclosure sale for the Fresno property.

The Status Conference Report discusses problems with Debtor refinancing relating to tax liens asserted against the former president of Debtor. Debtor in Possession intends to file an adversary proceeding to obtain a judicial determination of the extent, validity, and priority of any such tax liens for obligations of the former president of Debtor.

SUMMARY OF SCHEDULES

Real Property Schedule A/B	FMV		
Unidentified 16 Bed Facility	\$500,000		

Personal Property Schedule A/B	FMV		
Bank Accounts	\$1,768		
Accounts Receivable	\$168,002		
Office Equipment	\$10,000		
Furniture, Equipment	\$30,000		

Secured Claims Schedule D	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Fresno County Tax Collector	(\$28,153)	\$500,000	
Loeb/Griffin/Radford	(\$380,000)	Above Property	

PRIORITY UNSECURED CLAIMS SCHEDULE E	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
California EDD	(\$31,000)	(\$20,000)	(\$11,000)
Internal Revenue Service	(\$40,000)	(\$30,000)	(\$10,000)

GENERAL UNSECURED CLAIMS SCHEDULE F			GENERAL UNSECURED
Total			(\$15,352)

STATEMENT OF FINANCIAL AFFAIRS

Question 1 Income

2017 YTD	\$667,219	
2016	\$313,364	
2015	\$45,635	

Question 2 Non-Business Income

None

Question 3 Payments within 90 days

None

Question 4 Payments within one year to insider

Creditor	Amount	
Wages and repayment of loan for state taxes	\$35,500	

7. [19-90489](#)-E-11 CCI INVESTMENTS LLC STATUS CONFERENCE RE :
VOLUNTARY PETITION
5-28-19 [1]

Debtor's Atty: Pro Se

Notes:

[UST-1] United States Trustee's Motion to Dismiss Case filed 6/18/19 [Dckt 17], set for hearing 7/18/19 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on xxxxx, 2019.

JUNE 27, 2019 STATUS CONFERENCE

The Debtor, a limited liability company, filed a voluntary Chapter 11 Petition on May 28, 2019. The Debtor purports to be filing this case and now serving as the Debtor in Possession ("ΔIP") in *pro se*.

Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in *pro se* or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), *affrm.* 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

Review of Schedules

On Schedule A/B Debtor lists having \$981.89 in the bank, a \$5,000 deposit with city, and 20 mobile homes, with no other personal property relating to the mobile homes or real property also listed on Schedule A/B. Dckt. 14 at 2-6.

Debtor lists real property identified as a Mobile Home Park in Ocean Springs, Mississippi, with a value stated to be \$900,000. *Id.* at 7.

On Schedule D Community Bank is listed as having a claim for \$556,345.18 that is secured by the real property. *Id.* at 10.

On Schedule E/F Debtor states that it has no creditors with any unsecured claims. *Id.* at 12-13.

The California Secretary of State lists CCI Investments, LLC as being an active entity registered to do business in California. <https://businesssearch.sos.ca.gov/CBS/Detail>.

Motion to Dismiss

The U.S. Trustee has filed and set for hearing on July 18, 2019, a motion to dismiss this case. The grounds for dismissal include that the Debtor and Δ IP are not represented by counsel, which is required of a non-individual entity.