

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

June 29, 2017, at 2:00 p.m.

1.	<u>16-90002-E-11</u>	1263 INVESTORS LLC Stephen Reynolds	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 1-5-16 [1]
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Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 2/23/17

[RLC-9] Order Confirming Plan of Reorganization filed 2/24/17 [Dckt 124]

[RLC-12] Motion for Final Allowance of Fees and Costs as Counsel for Debtor-In-Possession filed 3/5/17 [Dckt 130]; Order denying filed 3/24/17 [Dckt 143]

[RLC-13] Motion for Final Allowance of Fees and Costs as Counsel for Debtor-In-Possession filed 3/23/17 [Dckt 137]; Order granting filed 4/13/17 [Dckt 146]

Notice of Noncompliance for Failure to File Post-Confirmation Quarterly Operating Reports filed 5/26/17 [Dckt 147]

The Post-Confirmation Status Conference is XXXXXXXXXXXXXXXXXX.
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JUNE 29, 2017 STATUS CONFERENCE

The Chapter 11 Plan in this case was confirmed on February 24, 2017. No post-confirmation motions are pending. The U.S. Trustee has given notice that while the Plan Administrator is current on post-confirmation Quarterly Payments, no post-confirmation Quarterly Operating Reports have been filed.

Counsel for the Debtor/Plan Administrator reported at the Status Conference, XXXXXXXXXXXXXXXXXX.

June 29, 2017, at 2:00 p.m.

2. [13-91315](#)-E-7 APPLGATE JOHNSTON, INC. PRE-TRIAL CONFERENCE RE:
[15-9048](#) MCGRANAHAN V. WPCS COMPLAINT FOR (1) AVOIDANCE OF
INTERNATIONAL RECOVERY OF AVOIDED TRANSFERS
7-13-15 [\[1\]](#)

ADVERSARY PROCEEDING
DISMISSED: 05/27/2017

Final Ruling: No appearance at the June 29, 2017 Status Conference is required.

Notes:

Stipulation for Dismissal of Adversary Proceeding filed 5/24/17 [Dckt 54]; Order approving stipulation filed 5/27/17 [Dckt 55]

3. [13-90323](#)-E-12 FRANCISCO/ORIANA SILVA CONTINUED STATUS CONFERENCE
Peter Fear RE: VOLUNTARY PETITION
2-25-13 [\[1\]](#)

Debtors' Atty: Peter L. Fear

Notes:

Continued from 1/26/17

The Post-Confirmation Status Conference is XXXXXXXXXXXXXXXXXXXX.
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JUNE 29, 2017 POST-CONFIRMATION STATUS CONFERENCE

At the Status Conference, counsel for the Plan Administrator/Debtor reported XXXXXXXXXXXX.

JANUARY 26, 2017 STATUS CONFERENCE

The Chapter 12 Plan in this case was confirmed on July 24, 2016. No post-confirmation motions have been filed, and no post-confirmation reports have been filed by the Chapter 12 Trustee or the Plan Administrator/Debtor. It appearing that the case is proceeding, the court continues the Status Conference to avoid the parties incurring unnecessary costs and expenses.

4. [17-90432](#)-E-12 **CARLOS/BERNADETTE ESTACIO PRELIMINARY STATUS CONFERENCE**
Peter Fear **RE: VOLUNTARY PETITION**
5-23-17 [1]

Debtors' Atty: Peter L. Fear

Notes:

[FW-1] Debtors' Application for Order Authorizing Employment of General Insolvency Counsel filed 6/5/17 [Dckt 13]; Order granting filed 6/5/17 [Dckt 17]

Debtors' First Status Report filed 6/14/17 [Dckt 20]

The Status Conference is XXXXXXXXXXXXXXXXXX.
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JUNE 29, 2017 STATUS CONFERENCE

Debtor in Possession reports that Debtor in Possession (not "Debtor") is attempting to lease out the dairy facilities that are property of the bankruptcy estate, as well as attempting to conduct the farming operation that is property of the bankruptcy estate. No Motion to Use Cash Collateral has been filed, Debtor in Possession reporting that no cash collateral is being used. Debtor in Possession identifies the potential future use of cash collateral and will seek the required authorization.

At the Status Conference XXXXXXXXXXXXXXXXXX.

5. [16-90634-E-7](#) **LESTER/ANA RODRIGUEZ**
[16-9018](#)
CHAIREZ V. RODRIGUEZ ET AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
4-7-17 [34]

Plaintiff's Atty: Wilber Manuel Salgado
Defendant's Atty: Mario Blanco

Adv. Filed: 11/14/16
Answer: none
Amd. Cmplt. Filed: 4/7/17
Answer: 6/1/17

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

Notes:
Continued from 5/18/17. Defendants to file and serve an answer, if any, to the First Amended Complaint on or before 6/1/17. Status Conference Statements to be filed on or before 6/20/17.

[MB-3] Order denying motion to dismiss filed 5/20/17 [Dckt 49]

Answer to First Amended Complaint filed 6/1/17 [Dckt 52]

Defendants' Status Report filed 6/20/17 [Dckt 54]

SUMMARY OF COMPLAINT

The First Amended Complaint alleges that Margarita Chairez, Plaintiff, is a former employee of Defendant-Debtor and obtained an award from the California Labor Commissioner in November 2013. The Labor Commission Award for Plaintiff is in the amount of \$10,711.97. The Labor Commission findings include a willful and intentional failure to pay Plaintiff wages that were due.

SUMMARY OF ANSWER

Lester I. Rodriguez and Ana Marcela Rodriguez, "Defendant-Debtor" have filed an Answer that admits and denies specific allegations in the First Amended Complaint. The Answer also asserts four affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (O). First Amended Complaint ¶¶ 1, 2, Dckt. 34. In their Answer, Lester I. Rodriguez

and Ana Marcela Rodriguez, Defendant-Debtor, admit the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt.52. 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 judgment 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.

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, Plaintiff alleges that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). First Amended Complaint, ¶¶ X, X, Dckt. X. Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. 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 proceedings, the parties 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.

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 -----, 2018.

F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2018.

6. [17-90347](#)-E-7 **MARJORIE SHAMGOCHIAN** **STATUS CONFERENCE RE:**
Pro Se **VOLUNTARY PETITION**
4-27-17 [\[1\]](#)

Debtor's Atty: Pro Se

The Status Conference is XXXXXXXXXXXXXXXXXXXX.

Notes:

Motion for An Extension of Time to File Missing Documents filed 5/11/17 [Dckt 12]; Order granting filed 5/12/17 [Dckt 14]

Order Setting Status Conference and Order to Appear filed 5/17/17 [Dckt 17]

Trustee Report at 341 Meeting docketed 6/22/17

JUNE 29, 2017 STATUS CONFERENCE

Marjorie Eleanor Shamgochian ("Debtor") filed the instant Chapter 7 bankruptcy case on April 27, 2017. The Petition and subsequent documents filed in this case are signed by Steve Shamgochian, Power of Attorney for Marjorie Shamgochian. A prior Chapter 7 bankruptcy for Debtor was filed March 14, 2017, and dismissed on April 3, 2017, for failure to timely file documents. Case No. 17-90198. The filing documents in this bankruptcy case were also signed by "Steve Shamgochian, Power of Attorney for Marjorie Shamgochian."

This is Debtor's second Chapter 7 bankruptcy case filed in 2017. The first case, 17-90198, was filed on March 14, 2017, and dismissed on April 3, 2017. The first case was dismissed due to the failure of Debtor to file the minimum required documents (including schedules and statement of financial affairs). The petition in the first bankruptcy case is signed "Steve Shamgochian - Power of Attorney for Marjorie Shamgochian." 17-90198, Dckt. 1. The Verification of Master Address List states there being only one party in interest to receive notice:

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Id., Dckt. 4.

In this current, second Chapter 7 bankruptcy case, the Verification of Master Address List states only two parties in interest to receive notice:

Nationstar Mortgage LLC
8950 Cypress Waters Blvd.
Coppell, TX 75019

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Dckt. 4.

On May 11, 2017, a Motion for Extension of Time to File Missing Documents was filed in this second Chapter 7 case. Dckt. 12. The motion is “made by” Marjorie Shamgochian, in *pro se*, with the motion executed by “Steve Shamgochian, Power of Attorney for Marjorie Eleanor Shamgochian.” It states that “the Debtor” is elderly and currently having a difficult time locating and compiling the information for the missing documents. *Id.* at 2:5.5–6.5. Further, it states that Debtor has not been able to retain counsel to “assist” with the preparation of documents. *Id.* at 2:3.5–4.5.

It is not clear to the court why Debtor, herself, has not filed these bankruptcy cases and why Debtor, herself, is not signing the pleadings.

It also appears that Steve Shamgochian is not merely acting as the agent of Debtor as authorized by a power of attorney, but is using the power of attorney to “practice law” and represent Debtor in this case. A power of attorney does not allow a person to appear in court as the legal representative of another.

As stated in Federal Rule of Bankruptcy Procedure 9010(a), a nonlawyer may act on a debtor’s behalf as his or her attorney-in-fact, but only to the extent that his or her actions do not constitute the practice of law. To this end, an attorney-in-fact may commence a bankruptcy case pursuant to a clearly stated power of attorney. *In re Curtis*, 262 B.R. 619, 622 (Bankr. D. Vt. 2001). Power of attorney cannot be used to authorize a nonlawyer to litigate a matter on behalf of a *pro se* debtor, however. *In re O’Connor*, No. 08-16434, 2009 Bankr. LEXIS 1376, at *8 (Bankr. N.D. Ohio Feb. 27, 2009) (citing *Cavanaugh v. Cardinal Local Sch. Dist.*, 409 F.3d 753, 756 (6th Cir. 2005) (abrogated on other grounds by *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007))).

States may prohibit unauthorized law practice, pursuant to their police power, to ensure that those performing legal services do so competently. *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 126 (Cal. 1998). Pursuant to this power, California prohibits all persons from practicing law who are not active members of the State Bar. Cal. Bus. & Prof. Code § 6125. The practice of law is defined in California as “doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure.” *Birbrower*, 17 Cal. 4th at 128 (citing *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (Cal. 1922)). That includes preparing legal instruments. *Id.*

A power of attorney does not permit an agent to act as an attorney at law.
If the rule were otherwise, the State Bar Act could be relegated to contempt by any

layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.

An attorney at law is different from an attorney in fact [agent under power of attorney] by definition and by general customary treatment; [attorney in fact] had no right whatsoever to act as attorney for his [principal]. This fact alone requires us to say that we cannot uphold the judgment as to [principal]. The short sentence appearing in *Campbell v. Jewish Committee for Personal Service*, 125 Cal.App.2d 771, at page 772 is appropriate: “Not being a lawyer, Campbell cannot appear as attorney for his brother.”

People ex rel. Department of Public Works v. Malone, 232 Cal. App. 2d 531, 536–37 (1995). To the extent that the Power of Attorney includes executing a bankruptcy petition or being the basis of appointment as a personal representative pursuant to Federal Rule of Civil Procedure 25 for Marjorie Shamgochian, it does not empower Steve Shamgochian to appear as Marjorie Shamgochian, file motions in the name of Marjorie Shamgochian, or litigate for Marjorie Shamgochian. If he may exercise rights pursuant to a power of attorney, then Mark Shamgochian must be represented by an attorney at law when Mr. Shamgochian is acting in his fiduciary capacity for another under the power of attorney.

The court ordered Marjorie Shamgochian, Debtor, and Steve Shamgochian, and each of them to appear in person at the June 29, 2017 Status Conference, No Telephonic Appearances Permitted.

Marjorie Shamgochian and Steve Shamgochian are also ordered to address for the court the basis for Steve Shamgochian not only executing the petition, but filing motions and appearing for Marjorie Shamgochian in federal court when Mr. Shamgochian is not a licensed attorney at law.

Marjorie Shamgochian, Steve Shamgochian, the U.S. Trustee, and other parties in interest are also to address for the court whether the appointment of a personal representative pursuant to Federal Rule of Civil Procedure 25 or referral of this to the county agency responsible for the appointment of representatives for persons not legally competent is appropriate.