

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

August 4, 2016 at 2:00 p.m.

1. **16-90500-E-11** ELENA DELGADILLO

**NOTICE OF INTENT TO DISMISS
CASE FOR FAILURE TO FILE
DOCUMENTS
6-13-16 [6]**

No Tentative Ruling: The Order for Setting Hearing on Notice of Intent to Dismiss Case for Failure to File Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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).

Local Rule 9014-1(f)(3) 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 July 15, 2016. By the court's calculation, 20 days' notice was provided.

The Order for Setting Hearing on Notice of Intent to Dismiss Case for Failure to File Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----.

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| The Order for Setting Hearing on Notice of Intent to Dismiss Case for Failure to File Documents is -----. |
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August 4, 2016 at 2:00 p.m.

- Page 1 of 41 -

On June 13, 2016, the Clerk of the Court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed. Dckt. 6. After Elena Delgadillo, Debtor ("Debtor") and Debtor in Possession requested an extension to file and the court granting such extension, the court issued an Order for Setting Hearing on Notice of Intent to Dismiss Case for Failure to File Documents. Dckt. 23.

BACKGROUND

On June 9, 2016, Debtor commenced this voluntary Chapter 11 case. Debtor failed to file the following required documents:

- Attorney's Disclosure Statement
- Form 122B Statement of Monthly Income
- List - 20 Largest Unsecured Creditors
- Schedule A/B - Real and Personal Property
- Schedule C - Exempt Property
- Schedule D - Secured Creditors
- Schedule E/F - Unsecured Claims
- Schedule G - Executory Contracts
- Schedule H - Codebtors
- Schedule I - Current Income
- Schedule J - Current Expend.
- Statement of Financial Affairs
- Summary of Assets and Liabilities

Notice of Incomplete Filing and Notice of Intent to Dismiss. Dckt. 2. On the Petition, Debtor states that she has assets of \$1,000,000.00 to \$10,000,000.00. Dckt. 1 at 6.

On June 23, 2016, Debtor filed a motion to extend the deadline for filing the above documents. Dckt. 15. Debtor requested that she be given an additional fourteen days to complete the documents. The grounds stated with particularity in the Motion to Extend include the following:

An additional 14 days will be required in order to prepare and file the remaining documents with the Court because:

(a) The Debtor's financial affairs are complicated. The Debtor formerly owned a number of parcels of real property and an ongoing business.

(b) The Debtor has been involved in protracted litigation (and appeals) in a number of cases in state court for many years.

(c) The Debtor's bankruptcy attorney was not involved in any of the litigation, was unfamiliar with the Debtor and her past financial matters, and needs to review hundreds of pages of court documents.

(d) The Debtor speaks only English [sic], does not speak or understand

English, and it has been very difficult to prepare schedules and other documents. Her companion speaks limited English but it has been impossible to date to clarify confusion. For example: does she particular parcels of real property or has she sold them and carried notes secured by deeds of trust? An interpreter has been arranged for June 30, 2016 and in the meantime, the Debtor's attorney has ordered property profiles for the parcels of real property which have been identified.

(e) The petition was filed on an emergency basis due to the imminent eviction of the Debtor from a home which had just been foreclosed while litigation was pending over the validity of the foreclosure process.

Id.

Debtor does not provide her declaration in support of the motion to extend the time to file the required basic documents for the prosecution of a Chapter 11 case. A declaration of counsel is provided, which testifies to the basic grounds alleged in the ex parte Motion. Declaration, Dckt. 16.

The court granted the ex parte Motion to Extend the Deadline, and Debtor was given until July 7, 2016, to file the required basic documents. Order, Dckt. 19. Debtor has failed to file the documents as of the court's July 11, 2016 review of the Docket for this case.

ORDER FOR HEARING

Therefore, upon review of the pleadings filed in this case, the grounds stated in the Motion to Extend the deadline for filing documents, the failure of Debtor to file Schedules, Statement of Financial Affairs, and other required documents, the possible substantial value of property of the estate, Debtor having engaged in transfers of property as disclosed in the Motion to extend, and good cause appearing;

IT IS ORDERED that a hearing on the Notice of Intent to Dismiss shall be conducted at 2:00 p.m. on August 4, 2016. The hearing will be conducted in conjunction with the Chapter 11 Status Conference in this case, at which time the court will determine whether this case should proceed with a debtor in possession, the appointment of a Chapter 11 trustee, or dismissal of the case.

IT IS FURTHER ORDERED that Elena Delgadillo, the Debtor and current Debtor in Possession, and David Johnston, counsel for Debtor, and each of them, shall appear in person at the August 4, 2016 hearing on the Notice of Intent to Dismiss and the Chapter 11 Status Conference; with no telephonic appearances permitted for Debtor and counsel for Debtor.

Dckt. 23.

DISCUSSION

Though dismissal of a bankruptcy case would routinely occur when a debtor fails to provide the schedules and statement of financial affairs, specific facts disclosed relating to this case mitigate against such prompt dismissal. First, Debtor states under penalty of perjury that there are assets of the estate with a value of \$1,000,000.00 to \$10,000,000.00. Before the court dismisses a case with a possible \$10,000,000.00 in assets, a closer inquiry is required.

Second, it is asserted in the Motion to Extend that Debtor does not speak or understand English. Motion, ¶ 2(d). Further, her "companion" speaks limited English. Id. Complicating the situation, it is further stated that it has been impossible for counsel to "clarify confusion" relating to the documents. Id. Reference is made as to possible transfers of property and issues existing as to whether Debtor now holds notes and deeds of trust, or no such transfers occurred and Debtor owns the properties. Id. Finally, it is disclosed that an interpreter was being obtained to meet with Debtor and counsel on June 30, 2016, twenty-one days after this case was filed. Id.

It appears that this bankruptcy estate may own, or may have the right to avoid transfers of, multiple parcels of real property. It also appears questionable whether the Debtor can fulfill the obligations of a debtor in possession. Debtor having created a bankruptcy estate and created rights for the bankruptcy estate, the court cannot turn a blind eye on what may be up to \$10,000,000.00 in assets.

On June 21, 2016, the Debtor filed:

Attorney's Disclosure Statement
Form 122B Statement of Monthly Income
List - 20 Largest Unsecured Creditors
Schedule A/B - Real and Personal Property
Schedule C - Exempt Property
Schedule D - Secured Creditors
Schedule E/F - Unsecured Claims
Schedule G - Executory Contracts
Schedule H - Codebtors
Schedule I - Current Income
Schedule J - Current Expend.
Statement of Financial Affairs
Summary of Assets and Liabilities

Dckts. 25, 26, 27.

At the hearing, **xxxxx**

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 Order for Setting Hearing on Notice of Intent to Dismiss Case for Failure to File Documents 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 Order is xxxx.

2. [16-90500-E-11](#) **ELENA DELGADILLO** **STATUS CONFERENCE RE:
VOLUNTARY
PETITION
6-9-16 [1](#)**

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Debtor's Application for 14 Additional Days to File schedules and other filing documents filed 6/23/16 [Dckt 15]; Order granting, new deadline to file all documents set to 7/7/16

Order for Hearing on Notice to Dismiss Case for Failure to File Documents filed 7/13/16 [Dckt 23]

outstanding filing documents filed 7/21/16 [Dckts 25 and 26]

U.S. Trustee Report at 341 Meeting docketed 7/25/16

Debtor's Chapter 11 Status Report filed 7/26/16 [Dckt 31]

AUGUST 4, 2016 STATUS CONFERENCE SUMMARY

On July 26, 2016, Debtor in Possession filed a Status Report. Dckt. 31. It is explained that the Debtor is a judgment debtor for a \$620,803.00 judgement (renewed March 3, 2016). The judgment creditor commenced litigation against the Debtor's adult children to set aside alleged fraudulent transfers of assets from Debtor to the children.

The Debtor was also involved in pre-petition lawsuits in connection with a home loan, loan modification efforts, an alleged improper foreclosure, and an unlawful detainer action. Debtor was not represented by her bankruptcy attorney in connection with such pre-petition litigation.

Income

The Debtor in possession reports having \$1,400.00 in monthly wages and an \$800.00 a month payment on a promissory note for property Debtor sold pre-petition.

Prosecution of Chapter 11 Case

The Debtor in Possession states that she intends to: (1) obtain deeds from her adult children for the property transferred to them, and (2) if the children will not execute the deeds, then counsel for Debtor in Possession intends to file adversary proceedings against them.

In the state court action commenced by the creditor, a preliminary injunction has been issued preventing the children from transferring the property, but it is reported that the creditor's counsel will consent to having the injunction lifted to convey the property into the bankruptcy estate.

Debtor in Possession (incorrectly identified as the "Debtor," if the intention is to have counsel for the Debtor in Possession prepare, file, and prosecute any such plan) states that she intends to file a plan on or before October 7, 2016, which is the end of the statutory exclusivity period for the Debtor in Possession.

SUMMARY OF SCHEDULES

| Real Property Schedule A | FMV | LIENS | |
|---------------------------------|------------|--------------|--|
| Orchard Rd and River Road | \$350,000 | | |
| | | | |

| Personal Property Schedule B | FMV | LIENS | |
|---|------------|--------------|--|
| Total | \$187,300 | | |
| Significant Dollar Value Assets | | | |
| 2015 GMC Sierra Truck | \$35,000 | (\$10,525) | |
| Note Receivable | \$140,000 | | |
| Claim Against Alameda County for Civil Rights Violation | Unknown | | |
| Claim to Set Aside Foreclosure Deed Hayward Property | Unknown | | |
| Claim to Recover Real Property Transferred to Children | Unknown | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| Secured Claims Schedule D | TOTAL CLAIM AMOUNT | FMV | UNSECURED CLAIM PORTION |
|----------------------------------|---------------------------|------------|--------------------------------|
| Ally Financial - GMC Sierra | (\$10,525) | \$35,000 | |
| | | | |

| PRIORITY UNSECURED CLAIMS SCHEDULE E | TOTAL CLAIM AMOUNT | PRIORITY | GENERAL UNSECURED |
|---|---------------------------|-----------------|--------------------------|
| None | | | |
| | | | |

| | | | |
|---|--------------------------|--|--|
| GENERAL UNSECURED CLAIMS SCHEDULE F | TOTAL CLAIM AMOUNT | | |
| Total | (\$870,357) | | |
| Significant Dollar Amount General Unsecured Claims | | | |
| Lopez | (\$850,000) | | |
| US Bank, N.A. | (\$10,000) | | |
| | | | |
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|---|---------|--|
| INCOME, SCHEDULE I Total Average Monthly Income | | |
| Wages (Gross) | \$1,400 | |
| Note Receivable | \$800 | |
| (No Withholding) | | |
| | | |

| | | |
|---|-----------|--|
| EXPENSES, SCHEDULE J Total Average Monthly Expenses | | |
| Total | (\$2,137) | |
| Significant Dollar Amount Expenses | | |
| Rent/Mortgage | \$0 | |
| Homeowners/Renters Insurance | \$0 | |
| Home Maintenance | \$0 | |
| Electricity/Gas | (\$170) | |
| Water/Sewer/Garbage | (\$130) | |

| | | |
|--------------------------------|---------|--|
| Food and Housekeeping Supplies | (\$500) | |
| Clothing/Laundry | (\$100) | |
| Personal Care Products | (\$150) | |
| Medical/Dental | \$0 | |
| Transportation | (\$300) | |
| Charitable | (\$50) | |
| Health Ins | \$0 | |
| Vehicle Insurance | \$130 | |
| Car Payment | (\$307) | |
| | | |

STATEMENT OF FINANCIAL AFFAIRS

Part 2 Income

| | | |
|----------|----------|--|
| 2016 YTD | \$7,700 | |
| 2015 | \$16,800 | |
| 2014 | \$16,800 | |
| | | |

Part 2 Non-Business Income

| | | |
|----------|---------|--|
| 2016 YTD | \$4,800 | |
| 2015 | \$9,600 | |
| 2014 | \$9,600 | |
| | | |

Part 3 Payments within 90 days

| | | |
|----------|--------|------|
| Creditor | Amount | Date |
|----------|--------|------|

| | | |
|------|--|--|
| None | | |
| | | |

Payments within one year

| Creditor | Amount | Date |
|----------|--------|------|
| None | | |
| | | |

Part 4 Legal Actions and Foreclosures

| | |
|--|---|
| Wilmington Savings Fund Society vs. Elena Delgadillo HG16808828 | Concluded: Unlawful Detainer Superior Court of California Alameda County Hayward, CA |
| Elena Delgadillo, et al., vs. Sacramento Lopez, et al RG16807958 | Concluded: Complaint dismissed/stricken Complaint for damages, to quash, abuse of process, unfair business practices, etc. Superior Court of California Alameda County Hayward, CA |
| Elena Delgadillo vs. Bank of America, N.A. RG15780993 | On Appeal: Improper foreclosure Superior Court of California Alameda County Hayward, CA |
| Sacramento Lopez vs. Elena Delgadillo, et al. HG13663545 | Pending: Complaint to set aside fraudulent conveyances Superior Court of California Alameda County Hayward, CA |

| | |
|--|---|
| Elena Delgadillo vs. County of Alameda RG14731177 | Pending: Civil rights violations Superior Court of California Alameda County Hayward, CA |
| | |

Foreclosures

| | |
|---------------------------------|--|
| Wilmington Savings Fund Society | Patricia Court, Hayward, California Foreclosure, December 1, 2015 |
| | |

3. [16-90401-E-11](#) **NATIONAL EMERGENCY
MEDICAL SERVICES**

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-10-16 [\[1\]](#)**

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/16/16 at the request of the Parties

Operating Reports filed: 7/11/16

[JBS-2] Second Motion to Dismiss with Prejudice Chapter 11 Bankruptcy Petition by Creditor National Association of Government Employees, Inc. filed 7/1/16 [Dckt 41], set for hearing 8/4/16 at 2:00 p.m.

[DCJ-1] Civil Minute Order continuing Motion to Employ David C. Johnston as Attorney for Debtor filed 7/3/16 [Dckt 44], set for hearing 8/4/16 at 2:00 p.m.

AUGUST 4, 2016 STATUS CONFERENCE

On June 6, 2016, the Debtor in Possession filed an initial Status Report. Dckt. 28. The Debtor in Possession reports that the estate's business is that of a labor union. The Debtor in Possession (incorrectly identified as the "Debtor") state that a Chapter 11 Plan would be filed on or before June 30, 2016.

No Chapter 11 Plan has been filed by the Debtor in Possession and no updated Status Report has been provided by the Debtor in Possession. In reviewing the sole Status Report filed in the prior Chapter 11 Case (15-90109, Dckt. 20), it is all but identical with the Status Report filed in the current Chapter 11 Case, with only several dates changed. In the prior case Status Report, the Debtor in Possession assured the court that a Chapter 11 Plan would be filed by June 6, 2015. No plan was ever filed in that case.

| June, 2016 Report | | Filed: July 11, 2016 | |
|---|----------------|----------------------|----------------|
| INCOME | Current | | Cumulative |
| Dues | \$ 16,657.00 | | \$ 35,469.00 |
| NEMSA Money held in Cashier's Check Deposited | \$ 0.00 | | \$ 53,000.00 |
| Travel Meals Credit | \$ <u>1.00</u> | | \$ <u>1.00</u> |
| Total | \$ 16,658.00 | | \$ 88,470.00 |
| | | | |

| | | | |
|--------------------------------------|----------------|--|----------------|
| EXPENSES | \$ (26,029.00) | | \$ (40,430.00) |
| | | | |
| PROFIT/(LOSS) | \$ (9,371.00) | | \$ 48,040.00 |
| | | Actual Cumulative Profit/Loss After Removing Cashier's Checks From "Income" | \$ (4,960.00) |
| Specific Significant Expenses | | | |
| Rent/Mortgage | | \$ (1,382.00) | |
| Insurance | | \$ (1,965.00) | |
| Payroll Tax | | \$ (4,008.00) | |
| Wages & Salary | | \$ (13,875.00) | |
| Airfare, Hotel, Meals | | \$ (2,287.00) | |
| | | | |
| | | | |

In connection with considering the Motion to Employ Counsel (who was counsel for the Debtor in Possession in its prior, unsuccessful Chapter 11 case in which no plan was proposed during the fourteen months that case was open), the court noted that there was a substantial decrease in the cash held by the Debtor in Possession in the prior case and the commencement of this case a mere four weeks later. Order For Hearing, p. 3:2-9; Dckt. 35. In the February 29, 2016 Monthly Operating Report, the Debtor in Possession in the prior case reported having \$71,754.00 in cash in bank accounts and was generating \$28,000.00 a month in dues income. On the Statement of Financial Affairs in this case Debtor reported that during the first four months of 2016 Debtor \$89,335.00, which averages \$22,333.75 a month.

This financial information caused the court to question why the Debtor reported having only \$5,400.00 in bank accounts and \$53,000.00 in cashier's checks when this case was filed on May 10, 2016. The Debtor's only real significant monthly expense is its payroll, which is only \$18,000 a month, including payroll taxes (based on the current Monthly Operating Report).

Kim Cuaresma, the Office Manager, for the Debtor in Possession provides her declaration in response to the court's concerns. Dckt. 47. She states that she, as an office manager, maintains the bank account records for the Debtor in Possession. She testifies that upon the dismissal of the prior case, the Debtor was fearful that creditors might levy on bank accounts, so \$53,000.00 of the monies were held in

cashier's checks. This is disclosed on Schedule B.

Ms. Cuaresma states that the Debtor in Possession revenues have dropped, with June 2016 being only \$16,657.00.

REVIEW OF SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

| | | |
|------------------------------------|----------|--|
| Real Property Assets (Dckt. 19) | | |
| None | | |
| | | |
| Personal Property Assets | | |
| Total | \$76,217 | |
| Significant Value Assets | | |
| Cash and Cash Equivalents | \$58,401 | |
| Office Equipment and Furniture | \$12,000 | |
| Copier | \$4,500 | |
| | | |

| | | |
|--|-------------|---|
| Debts, Schedules D, E, and F (Dckt. 19) | | |
| Secured Claims | | |
| PMSI Copier | (\$1,660) | |
| Priority Unsecured Claims | | |
| None | | |
| General Unsecured Claims | | |
| Total | (\$818,127) | |
| Significant Amount Unsecured Claims | | Percentage of Scheduled Unsecured Claims |
| Cranbrook Properties - Disputed Rent | (\$102,655) | 12.55% |
| Fetzer Simonsen Booth & Jenkins | (\$135,335) | 16.54% |

| | | |
|---|-------------|--------|
| National Association of Govt. Employees Judgement - Disputed (Stated that Judgment Entered Five Days After Prior Chapter 11 Case was filed) | (\$260,064) | 31.79% |
| Talbot Law Group | (\$94,438) | 11.54% |
| | | |

**APPEARANCES OF DAVID C. JOHNSTON AND TORREN K. COLCORD
REQUIRED**

No Telephonic Appearances Permitted

No Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2016. By the court's calculation, 9 days' notice was provided.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

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| The Motion to Employ is denied. |
|--|

National Emergency Medical Services Association ("Debtor-in-Possession") seeks to employ Counsel David C. Johnson, pursuant Bankruptcy Code Sections 328(a) and 330. The instant Motion was filed as an *ex parte* motion. Debtor-in-Possession seeks the employment of Counsel to assist the Debtor-in-Possession in prosecuting the Chapter 11 case. Mr. Johnston had represented the Debtor-in-Possession in the prior Chapter 11 (Case No. 15-90109) but has never represented any of the officers, directors, or members of Debtor-in-Possession in any matters.

The parties have agreed that an hourly rate to be charged by Counsel is \$300.00. Periodic

applications for interim compensation will be made, and at the conclusion of the case, a final application of allowance will be made.

The Debtor-in-Possession reports to have paid Counsel \$5,000.00 for pre-petition services and \$1,717 for court filing fee in the past year.

ORDER SETTING HEARING

After receiving the instant ex parte Motion, the court issued the following order setting the matter for hearing:

Therefore, a hearing on the Motion is required at which the Δ IP and Counsel explain how this combination will be able to effectively prosecute this case and what is different than in the prior case. Upon review of the Motion, the pleadings in this case, and good cause appearing;

IT IS ORDERED that a hearing on the Motion to Employ Attorney, seeking to employ David C. Johnston as counsel for the Debtor in Possession, shall be conducted at 1:30 p.m. on June 28, 2016, with the hearing to be held in the Sacramento Courthouse for this court, located at 501 I Street, 6th Floor, Courtroom 33, Sacramento, California.

IT IS FURTHER ORDERED that David C. Johnston and Torren K. Colcord, Executive Director for the Debtor in Possession, and each of them shall appear at the hearing on June 28, 2016, to address the issues for the court. No telephonic appearance permitted for David C Johnston and Torren K. Colcord. Telephonic appearances are permitted for all other parties in interest in this bankruptcy case.

IT IS FURTHER ORDERED that Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 7041 and 9014 are suspended with respect to this Motion, and the Motion shall not be dismissed except upon order of the court.

Dckt. 35.

BACKGROUND

On May 10, 2016, National Emergency Medical Association, the Debtor (“Debtor”) and current Debtor in Possession (“ Δ IP”), commenced the current voluntary Chapter 11 case. On June 12, 2016, Δ IP filed an ex parte Motion to Employ Attorney, seeking to employ David C. Johnston (“Counsel”) to represent the Δ IP. Upon consideration of the filings in this bankruptcy case and the prior case filed by the Debtor, the court orders that a hearing be conducted on the Motion to Employ Attorney.

Debtor commenced its first bankruptcy case on February 6, 2015. Bankr. E.D. Cal. No. 15-90109 (“First Chapter 11 Case”). The Debtor served as the debtor in possession in the First Chapter 11

Case, and Counsel was employed to represent the debtor in possession in that case. The First Chapter 11 Case was dismissed on April 13, 2016. 15-90109; Order, Dckt. 91. The motion to dismiss the First Chapter 11 Case was filed by National Association of Government Employees, Inc. (“NAGE”), Debtor’s main protagonist and only active creditor in the First Bankruptcy Case. For the unsecured claims filed in the case, NAGE asserted a claim of \$260,064.00, which was approximately 57% of the total unsecured claims filed.

On March 29, 2016, NAGE filed a motion to dismiss the First Chapter 11 Case. Id.; Motion, Dckt. 82. The ground asserted was that the debtor in possession in the First Chapter 11 Case had not filed a proposed plan and disclosure statement by the March 22, 2016 deadline established by the court (which deadline was more than one year after the commencement of the First Chapter 11 Case). The debtor in possession did not assert any opposition to the motion to dismiss. The court’s findings of fact and conclusions of law are stated in the Civil Minutes for the hearing on the motion to dismiss. Id., Dckt. 88. The court’s findings include the following:

“The instant case was filed February 6, 2015. Dckt. 1. Since that time, the Debtor-in-Possession [National Emergency Medical Services Association, represented by Counsel] has failed to propose any type of plan or disclosure statement. The Debtor-in-Possession has been benefitting from the protections of the Bankruptcy Code without prosecuting the case in good faith. The Debtor-in-Possession on multiple occasions represented to the court that the Debtor-in-Possession would be filing a Disclosure Statement and plan in the immediate future.

The Debtor-in-Possession has failed to meet this promise. The Debtor-in-Possession does not appear to be prosecuting this case in good faith. Instead, the Debtor-in-Possession appears to be ‘dragging their feet’ in order to avoid having to fulfill the obligations of a Chapter 11 Debtor-in-Possession fiduciary.

Looking at the February 2016 Monthly Operating Report, untimely filed on March 31, 2016, in the past year this Debtor in Possession has generated \$426,257.00 in cash receipts. Dckt. 85. During that time the Debtor in Possession has disbursed \$359,08.00 as it has continued to operate under bankruptcy protection. The largest expense is for Salary and wages, \$160,211. When the payroll tax and insurance expenses are included, the employee costs are \$241,979. Id. this is 67% of the total disbursements during the year this Debtor has been in bankruptcy.

The court has given Debtor-in-Possession ample opportunity to the Debtor-in-Possession to prosecute this case in good faith and diligently. There is nothing to indicate that there is any reorganization ongoing, but merely the Debtor in Possession continuing to operate the business and pay its employees, without providing for paying any pre-petition creditors.”

Dckt. 88.

While dismissed on April 13, 2016, the Clerk of the Court did not close the file in the First Chapter 11 Case until May 2, 2016. One week later, on May 10, 2016, Debtor commenced the current

bankruptcy case. This case was commenced with a “skeletal filing,” with Debtor filing only a petition, no schedules or statement of financial affairs. Two weeks later the Schedules and Statement of Financial Affairs were filed.

On Schedule A/B, Debtor lists having only \$5,400.00 in bank accounts and an additional \$53,000.00 in a cashier’s check. Dckt. 19 at 3. In response to Questions 3 and 4, Debtor states under penalty of perjury that no payments in excess of \$6,425.00 were made to creditors within 90 days before the filing of the case nor within one year before the filing to insiders. Dckt. 15 at 2. However, in the First Chapter 11 Case, the debtor in possession reported that as of February 29, 2016, there was \$71,754.00 cash in the bank accounts, and the debtor in possession had generated \$28,000.00 in dues revenue in February 2016, and a total of \$426,257.00 of income for the prior 12 months, which averages \$35,521.00 a month. 15-90109, Dckt. 85.

On the Statement of Financial Affairs Question 1 in the current case, Debtor states under penalty of perjury that it had gross dues revenue of \$89,335.00 for the first four months of 2016, which averages \$22,333.75 a month. Notwithstanding having \$71,754.00 in the bank as of February 29, 2016, and two additional months of revenues, the Debtor reports having only \$58,000.00 of monies, and that there were no significant payments to creditors having been made in the ninety days prior to the commencement of this bankruptcy case.

In reviewing the Monthly Operating Report for February 2016, it discloses that the main expense for Debtor is payroll. During the first 12 months of the First Chapter 11 Case, the estate paid \$231,000.00 in wages and payroll taxes, 63.4% of the total expenses. There was an additional \$10,030.00 paid for “part-time contractors” and \$39,508.00 paid for legal and professional services. 15-90109, Dckt. 85. No order authorizing the payment of any fees for attorneys or other professionals has been entered in the First Chapter 11 Case.

NAGE filed a motion to dismiss the current case on May 27, 2016. In addition to asserting that the Debtor has demonstrated that it cannot prosecute a Chapter 11 case, that the Debtor has only two employees who are being paid, citing the court to the February 2016 Monthly Operating Report in the First Chapter 11 Case. NAGE asserts that the current bankruptcy case was filed right after NAGE obtained a writ of execution from the United States District Court to enforce a judgment it has obtained against the Debtor.

JUNE 28, 2016 HEARING

At the hearing, the Motion was continued to 10:30 a.m. on August 4, 2016, to allow the Debtor to show cause why a Chapter 11 Trustee should not be appointed. Dckt. 47

DECLARATION OF KIM CUARESMA

On August 1, 2016, the “Declaration of Kim Cuaresma RE: Accounting During Gap Between Chapter 11 Cases.” Dckt. 47.

Ms. Cuaresma states that she is the office manager for Debtor. Ms. Cuaresma states that the purpose of the declaration is to address the issue of a decrease in cash in the bank from the final monthly

operating report dated February 29, 2016 in case number 15-90109 and the opening balances on May 10, 2016.

Ms Cuaresma states the following in her declaration:

3. In the reconciliation section in the February 29, 2016 monthly operating report, the ending balance in the main debtor in possession account was \$64,250.99 and the ending balance in the travel account was \$3,474.52, for a total of \$67,825.51.

4. In Schedule B in this case, a cashier's check being held for \$54,000.00 was scheduled, as were balances of \$5,290.00 in the main account and \$111.00 in the travel account, for a total of \$58,401.00. After the dismissal of the first case, the Debtor was fearful of bank levies and withdrew funds in the form of cashier's checks made payable to the Debtor which could then be deposited to cover essential expenses. This was the reason the Debtor was holding a cashier's check for \$53,000.00 on the petition date in this case. After the petition was filed, the cashier's check was immediately deposited on May 12, 2016 to the main debtor in possession account.

5. Filed with this declaration are true copies of all deposits and disbursements made between February 29, 2016 and May 10, 2016. There were no unusual transactions. No funds were taken by Torren Colcord, the executive director of the Debtor, except for payroll and proper travel expenses as disclosed throughout the Chapter 11 first case.

6. The Debtor's revenue from membership dues, its only source of income, has dropped since the final monthly operating report dated February 229, 2016 was filed in the prior case. In February, 2016, membership dues were \$28,082. In May, 2016, membership dues were \$18,812. In June, 2016, membership dues were \$16,657.

Dckt. 47.

APPLICABLE LAW

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

While a debtor in possession generally may employ whomever it wants as counsel, the employment is permissible only as provided in 11 U.S.C. § 327. Employment is limited to those professionals who: (1) do not hold or represent an adverse interest, and (2) are disinterested. Discretion is given to the court in approving the employment of such professional that the request is consistent with the facts of the specific case and overall objectives of the bankruptcy system. See *In re Harold & Williams Development Co.*, 977 F.2d 906 (4th Cir. 1992); *Official Committee of Creditors v. Harris (In re Southwest Food Distributors, LLC)*, 561 F.3d 1106, 1112 (10th Cir. 2009); and *Elias v. Lisowski Law Firm, CHTD. (In re Elias)*, 215 B.R. 600, 604 (B.A.P. 9th Cir. 1997), *affrm.* 188 F.3d 1160 (9th Cir. 1999).

DISCUSSION

The inability of the Debtor, serving as the debtor in possession in the First Chapter 11 Case, and Counsel to prosecute the First Chapter 11 Case, inability to file a proposed plan and disclosure statement, and not having any opposition to the dismissal of the First Chapter 11 Case raises grave concerns over the ability of the Debtor to serve as the Δ IP represented by Counsel in this case. The Debtor and Counsel had time to prosecute that case, and did not. There is nothing to indicate that this is a complex business or requires extensive modification to production lines, reduction of hundreds of employees, or other dramatic restructuring of the business operations. It may be that the Debtor and Counsel are the wrong mix of business and legal attributes to successfully prosecute a Chapter 11 case.

The supplemental declaration does not discuss why a Chapter 11 Trustee should be appointed or that the relationship between Debtor and Counsel is viable for an effective Chapter 11.

Now, entering month four of this case and month twenty of this Debtor's and Δ IP's bankruptcy odyssey, there is no Chapter 11 Plan. There is no indication how this Δ IP and this counsel can move this case forward. In reviewing the Schedules, this Debtor and Counsel assert that a judgment obtained by National Emergency Medical Services Association was void, it having been entered five days after the prior Chapter 11 case was filed. Schedule E, Dckt. 19. However, no action appears to have been taken to address such asserted wrong. Rather, Debtor, Δ IP, and counsel have let that issue lie, not bringing it before this bankruptcy court. To the extent that the automatic stay was violated, the rights of the estate have been left to languish and the Chapter 11 cases not prosecuted.

While the proposed counsel for the Δ IP is a well known, experienced bankruptcy attorney, in this case he has not been able to advance a plan. One might be quick to blame the Debtor and the Δ IP alone. The court will take a more charitable view, not blaming the Debtor and tarring it with a conclusion that the principals are seeking bankruptcy only for the sake of delay while they continue to draw assets from the estate, but conclude that this Debtor, this Δ IP, and this counsel are the wrong mix for any good faith prosecution of this case. It has been clearly demonstrated over the last twenty months, over two bankruptcy cases, that this mix cannot, and will not, produce a possible Chapter 11 plan and reorganize the finances of the estate.

At the hearing, xxxx

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 Employ filed by the Debtor-in-Possession 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 Employ is denied.

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).

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.

| |
|--|
| The Motion is granted and the court orders the appointment of a Chapter 11 Trustee. |
|--|

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.

JUNE 16, 2016 HEARING

At the hearing, the court continued the hearing to 2:00 p.m. on August 4, 2016 to ensure that all parties were given sufficient notice. Dckt. 38.

MOVANT'S SECOND MOTION TO DISMISS

In response to the court continuing the matter to ensure proper notice, the Movant filed and set a second Motion to Dismiss with Prejudice. Dckt. 41. The court will treat this additional Motion as a supplemental pleading. In comparing the original Motion with the supplemental pleading, the court notes

the additional information pled:

7. The late-filed bankruptcy schedules show that, by May 27, 2016, NEMSA had only \$58,401 of cash assets, Form 206A/B (Dckt. No. 19) at 3, even though it had a \$71,754 cash balance only a few months earlier, as of February 29, 2016, NEMSA's Geb. 2016 Operating Report (Dckt. No. 85, Case No. 15-90109) at 1, and continued to receive income in the subsequent months. The schedules also list NEMSA's Executive Director Torren Colcord as having an unsecured claim in the amount of \$35,693 for '[d]eferred salary,' Schedule E/F (Dckt. No. 19) at 5, which is \$25,000 more than the claim that was listed in the schedules in the first bankruptcy case. Summary of Schedules (Dckt. No. 23, Case No. 15-90109) at 13.

8. On May 27, 2016, NAGE moved to dismiss NEMSA's bankruptcy petition pursuant to 11 U.S.C. § 1112(b)(1) for having been filed in bad faith. At a hearing on June 16, 2016, the Court held that, pursuant to Fed. R. Bankr. P. 2002(a)(4), NAGE provided an insufficient period of notice in connection with the Motion, and it ordered that hearing on the Motion to be continued to August 4, 2016 at 2:00 pm. 6/16/16 Civil Minutes (Dckt. No. 38). NAGE is filing this second, updated motion to dismiss pursuant to that Order.

...

16. Finally, NAGE notes that since NEMSA is a non-profit organization, its Chapter 11 petition appears ineligible for involuntary conversion to Chapter 7. 11 U.S.C. § 1112(c). However, in the event that the Court does not dismiss NEMSA's Chapter 11 petition, NAGE respectfully requests that, in light of the circumstances described in the foregoing paragraphs, that a trustee be appointed pursuant to 11 U.S.C. § 1112(b)(1) to protect the interest of the creditors and the estate due to NEMSA's failure to prosecute its bankruptcy in good faith.

17. NAGE also respectfully requests, in the event that the Court does not dismiss NEMSA's Chapter 11 petition, that the Court set a date certain in the near future by which NEMSA must file a plan or reorganization.

DECLARATION OF KIM CUARESMA

On August 1, 2016, the "Declaration of Kim Cuaresma RE: Accounting During Gap Between Chapter 11 Cases." Dckt. 47. While this was filed in connection with the Motion to Employ, the court wanted to consider the testimony in the instant Motion.

Ms. Cuaresma states that she is the office manager for Debtor. Ms. Cuaresma states that the purpose of the declaration is to address the issue of a decrease in cash in the bank from the final monthly operating report dated February 29, 2016 in case number 15-90109 and the opening balances on May 10, 2016.

Ms Cuaresma states the following in her declaration:

3. In the reconciliation section in the February 29, 2016 monthly operating report, the ending balance in the main debtor in possession account was \$64,250.99 and the ending balance in the travel account was \$3,474.52, for a total of \$67,825.51.

4. In Schedule B in this case, a cashier's check being held for \$54,000.00 was scheduled, as were balances of \$5,290.00 in the main account and \$111.00 in the travel account, for a total of \$58,401.00. After the dismissal of the first case, the Debtor was fearful of bank levies and withdrew funds in the form of cashier's checks made payable to the Debtor which could then be deposited to cover essential expenses. This was the reason the Debtor was holding a cashier's check for \$53,000.00 on the petition date in this case. After the petition was filed, the cashier's check was immediately deposited on May 12, 2016 to the main debtor in possession account.

5. Filed with this declaration are true copies of all deposits and disbursements made between February 29, 2016 and May 10, 2016. There were no unusual transactions. No funds were taken by Torren Colcord, the executive director of the Debtor, except for payroll and proper travel expenses as disclosed throughout the Chapter 11 first case.

6. The Debtor's revenue from membership dues, its only source of income, has dropped since the final monthly operating report dated February 29, 2016 was filed in the prior case. In February, 2016, membership dues were \$28,082. In May, 2016, membership dues were \$18,812. In June, 2016, membership dues were \$16,657.

Dckt. 47.

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. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th 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).

The court begins with the point raised by NAGE that the Debtor might be ineligible for conversion to Chapter 7 based on 11 U.S.C. § 1112(c), which provides, “(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.” Thus, the first question is whether the Debtor is a “a corporation that is not a moneyed, business, or commercial corporation.” NAGE concludes that since this Debtor is a non-profit entity for tax purposes, then it cannot be a moneyed, business, or commercial corporation.

On its Petition, Debtor states that it is an “Association.” Dckt. 1. Debtor has checked the box that it is a “corporation” (which includes LLCs and LLPs) on the Petition in identifying the “Type of Debtor.” The terms “moneyed, business, or commercial corporation” are not defined in the Bankruptcy Code. However, in the Legislative History for the Bankruptcy Code the House Report states that this exception relates to farmers and “eleemosynary” institutions.

This “moneyed, business, or commercial corporation” language was also used by Congress in creating an exclusion to the types of entities which could be the subject of an involuntary bankruptcy petition. Again, in the legislative history this stated to be an exemption for farmers and “eleemosynary” institutions. House Report No. 95-595, 95th Cong., 1st Sess. 321 (977; Senate Report No. 95-989, 95th Cong., 2d Sess 33 (1978). The report goes on to identify “eleemosynary” institutions as “churches, schools and charitable organizations and foundations.”

Resorting to dictionaries, the term “eleemosynary” is defined as “or, relating to, or supported by charity, Merriam-Webster Dictionary (<http://www.merriam-webster.com/dictionary/eleemosynary>); “Relating to or dependent on charity; charitable, Oxford Dictionaries (<http://www.merriam-webster.com/dictionary/eleemosynary>) ; and “A nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code, Black’s Law Dictionary, Seventh Edition, definition of charitable and eleemosynary corporation.

In this case, there is no contention that the Debtor, a labor union, is a “charitable” organization. It is not asserted that the union is related to or supported by charity. To the contrary, it is reported that this union generates substantial revenues it uses to pay its employees and advocate for its members. Based on the Statement of Financial Affairs in the prior Chapter 11 case and this case, the Debtor generates revenues that it spends on its business operations which total for the calendar years set forth below:

| | | |
|----|---------------|-------------------------|
| A. | 2013..... | \$911,923 |
| B. | 2014..... | \$745,116 |
| C. | 2015..... | \$405,028 |
| D. | 2016 YTD..... | \$ 89,335 (four months) |

Statement of Financial Affairs, 15-90109, Dckt. 23 at 18; and Statement of Financial Affairs, Dckt. 15 at 1.

Debtor does qualify for conversion to a case under Chapter 7.

Though qualifying for a conversion to Chapter 7, the Schedules do not indicate there are significant assets to liquidate. Rather, the potential for paying creditors exists from continued operations,

advocacy of its rights (including alleged violations of the automatic stay) and the good faith, effective prosecution of a Chapter 11 case.

Here, cause exists for conversion, dismissal, or the appointment of a Chapter 11 trustee. After twenty months of opportunity the Debtor in Possession and counsel have been unable to float any possible Chapter 11 plan. The revenues of the estate continue to diminish. Though asserting that a violation of the automatic stay existed in the prior case, Debtor in Possession failed to act.

The court is convinced that only through the appointment of a Chapter 11 trustee will the estate get the clear-eyed look of a fiduciary to evaluate the rights and assets of the estate, the possible business, and bring to a conclusion the death spiral litigation with NAGE.

At the hearing, xxxxx

The court orders the appointment of a Chapter 11 Trustee in this case, it being in the best interests of creditors and the estate under the facts and circumstances of this case.

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 granted, with the court ordering the appointment of a Chapter 11 Trustee in this case.

6. [16-90401-E-11](#) NATIONAL EMERGENCY MOTION TO DISMISS CASE
JBS-2 MEDICAL SERVICES 7-1-16 [[41](#)]

The National Association of Government Employees, Inc. filed the instant Second Motion to Dismiss with Prejudice on July 1, 2016. Dckt. 41. The court construing this Second Motion as a supplemental pleading to the continued Motion to Dismiss (Dckt. 20), the court considers the pleadings in the Continued Motion to Dismiss (Dckt. 20).

7. [15-90502-E-7](#) ANNA STARR CONTINUED STATUS CONFERENCE RE:
[16-9006](#) EDMONDS V. STARR ET AL 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

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| The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. |
|--|

Notes:
Continued from 6/16/16 at the request of the Parties

Plaintiff's Status Report filed 7/26/16 [Dckt 23]

Defendant's Third Status Report filed 7/28/16 [Dckt 25]

AUGUST 4, 2016 STATUS CONFERENCE

On July 26, 2016, the Plaintiff-Trustee filed an updated Status Report. Dckt. 23. In it, she reports that her counsel and Debtor's counsel has agreed to a value for all of the non-exempt assets which would be liquidated in the case for creditors. The Plaintiff-Trustee does not know if the Debtor can advance a Chapter 13 Plan to provide for payment of such value to creditors.

On July 28, 2016, the Defendant-Debtor filed an updated Status Report. Dckt. 25. Counsel for the Defendant-Debtor states that he recently participated in a mediation concerning legal malpractice and believes that neither attorneys' fees nor emotional distress are recoverable as part of any malpractice claim the estate or Defendant-Debtor may have against prior counsel. (Counsel may want to consider the possible claims of the estate and the property that may be lost and research this issue further.)

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 ANSWERS

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.

Marlene Starr filed a general denial on March 14, 2016. Dckt. 12.

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.

8. [16-90002-E-11](#) 1263 INVESTORS LLC

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-5-16 [\[1\]](#)

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 2/4/16

Operating Reports filed: 3/2/16 [Jan], 3/15/16 [Feb], 4/18/16, 5/13/16, 6/14/16, 7/12/16

[RLC-3] Motion to Sell Free and Clear of Liens filed 6/8/16 [Dckt 34]; Order denying filed 7/12/16 [Dckt 55]

[RLC-4] Motion to Value Secured Portion of Claim of Bank of New York Mellon filed 6/9/16 [Dckt 38]; Order granting filed 7/12/16 [Dckt 56]

| |
|--|
| The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. |
|--|

AUGUST 4, 2016 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession. IN the Monthly Operating Report for June 2016 (Dckt. 57), the Debtor in Possession reports: (1) the estate has generated no income, (2) has generated \$2,275.00 in money from advances on notes, and (3) has made a property tax payment and the annual FTB fee payment.

FEBRUARY 4, 2015 STATUS CONFERENCE

The Debtor in Possession filed a Chapter 11 Status Report on January 22, 2016. Dckt. 17. Debtor in Possession anticipates filing a Chapter 11 Plan which provides for the sale of the estates two properties. It is asserted that creditor agreement will be necessary to confirm a plan.

SUMMARY OF SCHEDULES

| Real Property Schedule A | FMV | LIENS | |
|---------------------------------|------------|--------------|---------------------|
| 7348 Crane Road | \$291,500 | (\$2,964) | Property Taxes |
| | | (\$250,000) | DOT |
| 7318 Crane Road | \$486,500 | (\$597,221) | 1 st DOT |
| | | (\$120,000) | 2 nd DOT |

| Personal Property Schedule B | FMV | LIENS | |
|-------------------------------------|------------|--------------|--|
| Total Listed Values | \$1,250 | | |

| Secured Claims Schedule D | TOTAL CLAIM AMOUNT | FMV | UNSECURED CLAIM PORTION |
|---|---------------------------|------------|--------------------------------|
| Stanislaus County - 7318 Crane Road | (\$2,963) | \$486,500 | |
| Nationstar Mortgage | (\$597,221) | | (\$186,000) |
| Bank of New York Mellon - 2 nd DOT | (\$120,000) | | (\$120,000) |
| | | | |
| Bella Vista Capital - 7348 Crane Road | (\$250,000) | \$291,500 | |

| PRIORITY UNSECURED CLAIMS SCHEDULE E | TOTAL CLAIM AMOUNT | PRIORITY | GENERAL UNSECURED |
|---|---------------------------|-----------------|--------------------------|
| None | | | |

| GENERAL UNSECURED CLAIMS SCHEDULE F | TOTAL CLAIM AMOUNT | | GENERAL UNSECURED |
|--|---------------------------|------------|--------------------------|
| | (\$96,164) | | |
| FB Investors | | (\$24,000) | |

STATEMENT OF FINANCIAL AFFAIRS

Question 1 Income

| | | |
|----------|------|--|
| 2016 YTD | None | |
| 2015 | None | |
| 2014 | None | |
| 2013 | None | |

Question 2 Non-Business Income

| | | |
|----------|------|--|
| 2016 YTD | None | |
| 2015 | None | |
| 2014 | None | |
| 2013 | None | |

Question 3 Payments within 90 days

| | | |
|----------|--------|------|
| Creditor | Amount | Date |
| None | | |

Payments within one year

| | | |
|----------|--------|------|
| Creditor | Amount | Date |
| None | | |

9. [13-91315-E-7](#) **APPLEGATE JOHNSTON, INC.** **CONTINUED STATUS CONFERENCE RE:**
[15-9052](#) **MCGRANAHAN V. LAGUNA GOLD** **COMPLAINT AND THIRD-PARTY**
MORTGAGE, INC. **COMPLAINT**
7-15-15 [\[1\]](#)

Final Ruling: No appearance at the August 4, 2016 Status Conference is required.

Third-party Plaintiff's Atty: Daniel L. Egan
Third-party Plaintiff: Laguna Gold Mortgage, Inc.

Third-party Defendant's Atty: Patrick M. Keene
Third-party Defendant: Ahern Rentals, Inc.

Adv. Filed: 1/14/16 [Dckt 44]
Answer: none

| |
|---|
| The Status Conference is continued to 2:00 p.m. on September 29, 2016. |
|---|

Notes:

Continued from 6/2/16 at the request of the Parties. Plaintiff-Trustee reported that the matter had been settled, with a motion for approval of compromise being prepared.

AUGUST 4, 2016 STATUS CONFERENCE

On August 3, 2016, the Plaintiff-Trustee filed in the Applegate Johnston, Inc. bankruptcy case a motion to approve a settlement of this Adversary Proceeding. The hearing on the Plaintiff-Trustee's Motion is set for August 25, 2016.

The court continues the Status Conference to allow for the hearing on the motion to approve the compromise and the parties then concluding this Adversary Proceeding pursuant to said compromise if approved.

10. [14-91231](#)-E-7 MALUK/RANJIT DHAMI
[15-9065](#)
FARRAR V. DHAMI
ADV. CASE DISMISSED:
07/17/2016

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-3-15 [[1](#)]

Final Ruling: No appearance at the August 4, 2016 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Armando S. Mendez; Brandy L. Brown

Adv. Filed: 12/3/15
Answer: 1/19/16

Nature of Action:
Recovery of money/property - preference

| |
|---|
| <p>The Status Conference is removed from the calendar, the Adversary Proceeding having been dismissed.</p> |
|---|

Notes:
Continued from 6/6/16

Stipulation for Dismissal, With Prejudice, of Adversary Proceeding filed 7/15/16 [Dckt 24]; Order dismissing filed 7/17/16 [Dckt 26]

11. [15-90740-E-7](#) GRETA JEREB

STATUS CONFERENCE RE:
COMPLAINT
6-7-16 [\[1\]](#)

[16-9009](#)

JEREB V. CAPITAL ONE BANK
(USA), N.A. ET AL

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

Adv. Filed: 6/7/16
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - other

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| The Status Conference is continued to 2:00 p.m. on September 29, 2016. |
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Notes:

AUGUST 4, 2016 STATUS CONFERENCE

The Plaintiff-Debtor filed a Status Report on August 2, 2016. Dckt. 7. Plaintiff-Debtor reports that a global settlement was reached on August 2, 2016, with the settlement to be consummated by the end of August 2016.

Plaintiff-Debtor requests that the court continue the Status Conference to allow the parties to concentrate on consummating their settlement and dismiss this Adversary Proceeding.

The court concurs, based on the representations of Plaintiff-Debtor and continues the Status Conference to allow the parties to avoid what appear to be otherwise avoidable costs and expenses in connection with conducting a Status Conference at this time.

Final Ruling: No appearance at the August 4, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Mark Anthony Garcia and Angela Marie Garcia (“Debtor”), Debtor’s Attorney, Trustee, and other such other parties in interest as stated on the Certificate of Service on June 20, 2016. The court computes that 45 day’s notice has been provided.

The court’s decision is to dismiss without prejudice the Objection to Claim of United States Fire Insurance Company.

The Order to Show Cause was issued due to Mark Anthony Garcia and Angela Marie Garcia (“Debtors”) failed to prosecute the Objection to Claim of United States Fire Insurance Company (“Creditor”), Claim Number 19 (dckt. 509). Dckt. 800.

CREDITOR’S RESPONSE

The Creditor filed a response on July 15, 2016. Dckt. 821. The Creditor states that the Debtor and Creditor entered into a stipulation for the allowance and payment of Claim No. 19-3 filed by Creditor. The stipulation was incorporated into the Plan of Reorganization and the signed Stipulation was attached to the Amended Disclosure Statement for the Amended Plan. The Amended Disclosure Statement was approved on January 22, 2016. Dckt. 745.

The Amended Plan was approved by the order confirming entered on May 6, 2016. Dckt. 781.

The Creditor states that it consents to the dismissal of the Objection, requests the Objection be dismissed and that the Order to Show Cause Discharged.

DISCUSSION

In light of the Creditor’s response, the approval of the Disclosure Statement (Dckt. 745), the confirmation of the Plan (Dckt. 781), and the Plan incorporating the Creditor’s claim, the Objection to Claim is dismissed without prejudice and the instant Order to Show Cause is discharged.

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 Order to Show Cause 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 Objection to Claim (Dckt. 509) is dismissed without prejudice, based on the stipulation of the parties and confirmation of Plan.

IT IS FURTHER ORDERED that the Order to Show Cause is discharged, no sanctions ordered.

13. [12-93049-E-11](#) **MARK/ANGELA GARCIA** **CONTINUED STATUS CONFERENCE RE:**
 [13-9029](#) **UNITED STATES FIRE INSURANCE** **AMENDED COMPLAINT**
 COMPANY V. GARCIA ET AL **4-30-15 [64]**

Final Ruling: No appearance at the August 4, 2016 Status Conference is required.

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

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| <p>Judgment having been entered, this Status Conference is removed from the Calendar.</p> |
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Notes:

Continued from 6/16/16 with the court to issue an order to show cause as to why this Objection should not be dismissed.

Order to Show Cause Why Adversary Proceeding Should Not be Dismissed filed 6/17/16 [Dckt 84], set for hearing 8/4/16 at 10:30 a.m.

Judgment for Non-Dischargeability of Debt filed 7/18/16 [Dckt 90]

14. [15-90555](#)-E-11 SUSAN ALLEN

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-4-15 [\[1\]](#)**

DEBTOR DISMISSED: 07/12/2016

Final Ruling: No appearance at the August 4, 2016 Status Conference is required.

Debtor's Atty: Brian S. Haddix

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| <p>The bankruptcy case having been dismissed, the Status Conference is removed from the Calendar.</p> |
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Notes:

Continued from 3/17/16

[UST-1] Order granting Motion to Dismissed filed 7/12/16 [Dckt 142]

15. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9007](#)
KATAKIS ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-20-15 [1]

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

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| The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. |
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Notes:
Continued from 4/28/16

Plaintiffs' Unilateral Status Report filed 7/26/16 [Dckt 44]

AUGUST 4, 2016 STATUS CONFERENCE

Plaintiff's filed a unilateral Status Report on July 26, 2016. Dckt. 44. No new developments are reported, with the court being advised that the Trustee is still reviewing the possible claims in the state court action. September 12, 2016 is the continued status conference in the state court action, at which the Trustee is to address the matters in the state court.

APRIL 28, 2016 STATUS CONFERENCE

Plaintiffs' Unilateral Status Report

On April 14, 2016, Plaintiffs filed their Unilateral Status Report. Dckt. 38. Plaintiffs report that the Chapter 7 Trustee is reviewing the pending State Court Action. Plaintiffs believe that this Adversary Proceeding should be continued to afford more time to address these issues with the Chapter 7 Trustee and determine how the Trustee's decision to prosecute or not prosecute the State Court Action impacts the

litigation in this Adversary Proceeding.

JANUARY 14, 2016 STATUS CONFERENCE

The Plaintiff appeared and requested that the Status Conference be continued while the Trustee investigated the case. Richard Sinclair did not appear at the Status Conference.

Plaintiffs filed a Unilateral Status Report on January 6, 2016. Dckt. 36. The court has stayed further proceedings in this Adversary Proceeding, having modified the automatic stay to allow the Parties to litigate the pending State Court Action. Plaintiffs report the following updated information:

- A. On July 22, 2015, filed a notice of conditional settlement with one of the non-debtor defendants, Stanley Flake and dismissed Mr. Flake from the State Court Action on September 10, 2015.
- B. Richard Sinclair filed a Third Amended Cross-Complaint in June 2015 against Plaintiffs.
- C. In July 2015, Plaintiffs filed a demurrer to the Third-Amended Complaint and a motion to strike.
- D. In August 2015, Mr. Sinclair filed a notice of disability, which asserted substantially the same disability as presented to this court in August 2015.
- E. The State Court granted an extension to Mr. Sinclair to September 29, 2015, to file an opposition to the demurrer.
- F. Mr. Sinclair filed an opposition to the demurrer and the hearing on the demurrer was set for November 10, 2015.
- G. Prior to the November 10, 2015 hearing, the U.S. Trustee filed a motion to covert Mr. Sinclair's bankruptcy case to one under Chapter 7.
- H. Upon being provided notice of the pending motion to convert the bankruptcy case, the State Court dropped the demurrer and other pending motions, believing that if the case was converted and a trustee was appointed, it would not have "jurisdiction" over the cross-claim.
- I. Mr. Sinclair's bankruptcy case was converted to one under Chapter 7 in December 2015. The State Court Action has been "put on hold" to allow the Chapter 7 Trustee to investigate the cross-claim.

The Chapter 7 Trustee having been recently appointed, Plaintiffs request that this Status Conference be continued until after mid-March, 2016, to allow the newly appointed Trustee to investigate the issues relating to the State Court Action, this Adversary Proceeding, and the Bankruptcy Case.