

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Sacramento, California

**August 14, 2024 at 2:00 p.m.**

---

1. **23-21899-E-12**      **JAKOB/GLADYS WESTSTEYN**      **CONTINUED STATUS CONFERENCE RE:**  
**CAE-1**           **VOLUNTARY PETITION**  
6-9-23 [\[1\]](#)

Debtors' Atty: Daniel L. Egan, Jason Eldred

Notes:

Continued from 1/25/24. Counsel for the Debtor in Possession requesting a continuance to allow for the filing of post-confirmation motions and demonstrating that the Debtor in Possession is performing the Plan.

Operating Reports filed: 2/14/24; 3/13/24; 4/11/24; 5/14/24; 6/13/24; 7/15/24

[WF-7] Order Approving Second Amended Chapter 12 Plan Dated December 4, 2024 filed 2/4/24 [Dckt 175]

[WF-11] Application for First Interim Allowance of Fees and Costs of Wilke Fleury LLP filed 2/16/24 [Dckt 180]; Order granting filed 3/14/24 [Dckt 197]

Trustee's Final Report and Account filed 3/5/24 [Dckt 187]; Order approving filed 4/11/24 [Dckt 201]

[WF-12] Debtors' Application to Employ Janeae Hold of Genske, Mulder & Company, LLP as Accountant filed 3/14/24 [Dckt 193]; Order granting filed 3/18/24 [Dckt 198]

[WF-13] Debtors' Motion for Approval of Settlement with Greg Hawes filed 4/18/24 [Dckt 203]; Order granting filed 5/24/24 [Dckt 225]

[WF-14] Debtors' Motion for Approval of Settlement with GEH Farms dba Farm Supply, Inc. Filed 4/18/24 [Dckt 208]

[WF-15] Application for Second Interim Allowance of Fees and Costs of Wilke Fleury LLP filed 7/10/24 [Dckt 229]; Order granting filed 8/2/24 [Dckt 238]

<b>The Post-Confirmation Status Conference is <span style="color: red;">XXXXXXX</span></b>
--------------------------------------------------------------------------------------------

August 14, 2024 at 2:00 p.m.

Page 1 of 22

## AUGUST 14, 2024 POST-CONFIRMATION STATUS CONFERENCE

At the Status Conference, **XXXXXXX**

2. [24-21710-E-11](#)      **SWANSTON OAK, LLC**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **VOLUNTARY PETITION**  
4-25-24 [1]

Debtor's Atty: Karl Schweikert

Notes:

Continued from 6/20/24. Counsel for Debtor in Possession reporting that they cannot continue to serve as general counsel for the Debtor in Possession, a conflict having been identified relating to the principal of the Debtor. They are seeking replacement counsel.

Operating Reports filed: 8/5/24 [May, June, July]

[NOTE: incorrect use of DCN - confusing language on court order and notice]

[CAE-1] Debtor's Application for Order Authorizing Employment of General Insolvency Counsel filed 7/24/24 [Dckt 44], set for hearing 8/22/24 at 10:30 a.m.

[CAE-1] Debtor's Application for Order Authorizing Employment of Coldwell Banker filed 7/24/24 [Dckt 49], set for hearing 8/22/24 at 10:30 a.m.

[CAE-1] Debtor's Motion for Order Authorizing Sale of Property Located at 2725 Swanston Oak Lane, Sacramento, California filed 7/24/24 [Dckt 53], set for hearing on 8/22/24 at 10:30 a.m.

<b>The Status Conference is <b>XXXXXXX</b></b>
------------------------------------------------

## AUGUST 14, 2024 STATUS CONFERENCE

Swanston Oak, LLC commenced this voluntary Chapter 11 case on April 25, 2024. On July 24, 2024, a Motion for Order authorizing the sale of the real property commonly known as 2725 Swanston Oak Lane. Motion; Dckt. 53. On Schedule A/B the only assets of this Limited Liability Company are eight properties on Swanston Oak Lane, having an aggregate value that totals \$6,525,000. Dckt. 17.

The latest Monthly Operating Report has been filed for July 2024. Dckt. 60. The ending cash balance at the end of July 2024 is only \$318 (which is less than the \$328 balance at the start of July 2024).

On the Statement of Financial Affairs Debtor reports having no gross income in 2024, 2023, or 2022. Dckt. 22 at 1.

No Status Report has been filed.

3. [23-23242-E-7](#)  
[24-2038](#)  
RHS-1

**BRYAN GALLINGER**  
**Peter Macaluso**

**ORDER TO SHOW CAUSE**  
**7-15-24 [13]**

**GALLINGER V. LEVICK FAMILY**  
**TRUST ET AL**

**3 thru 4**

**Tentative Ruling:** 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)(C).**

-----  
Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor, Debtor's Attorney, Defendant, Chapter 13 Trustee, and Office of the United States Trustee on July 16, 2024. By the court's calculation, 29 days' notice was provided.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the Chapter 7 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 offer 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. At the hearing -----

**The Order to Show Cause is **XXXXXXX**.**

**August 14, 2024 Hearing**

On July 31, 2024, in response to this Order to Show Cause, Plaintiff-Debtor's counsel Mr. Brady submitted a response. Mr. Brady states:

1. Mr. Brady used the names of the Sellers as depicted on the California Residential Purchase Agreement when naming defendants in the original complaint. Resp. 1:28-2:10, Docket 16.
2. His legal services ended with the conversion of the case from Chapter 13 to Chapter 7 and he has been waiting to find out if the property is being sold which might eliminate the need to have the adversary. Resp. 2:11-13, Docket 16.
3. Counsel intends to file an amendment to the complaint, simultaneously with the filing of this responsive pleading. *Id.* at 2:18-19.
4. As it relates to the process of service, the original adversary was achieved using service on Mr. Kilpatrick as the court file only had Mr. Kilpatrick's address for each of the named defendants, Douglas, Melba, and Ron. *Id.* at 2:20-23.
5. When he learned that the process he was following was wrong, he had the court reissue the summons. Mr. Brady then re-served everyone interested in his case. *Id.* at 2:23-24.

Mr. Brady also filed an Amended Complaint (Docket 20), Reissued Summons (Docket 21), and Certificate of Service for the Reissued Summons and Complaint (Docket 23) on July 31, 2024.

The only change in the Amended Complaint appears to be in the header of the Amended Complaint where Mr. Brady properly names the Defendants. Docket 20. The court notes that Fed. R. Civ. P. 15 states:

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

This Amended Complaint is outside the 21-day window prescribed in this Rule.

At the hearing, **XXXXXXX**

The Certificate of Service for the Amended Complaint shows that service was effectuated on the necessary parties at their address. Docket 18.

**Plaintiff-Debtor Not the  
Real Party in Interest**

The court notes that Mr. Brady as Special Counsel for Brian Gallinger as the Plaintiff-Debtor, no longer represents is a party in interest who may bring an Amended Complaint in this Adversary Proceeding.

11 U.S.C. § 541(a)(1) states:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Collier's Treatise on Bankruptcy explains, "[p]aragraph (1) is broad. It includes all kinds of property, tangible and intangible, causes of action, and all other forms of property." 5 COLLIER ON BANKRUPTCY ¶ 541.03. Therefore, the cause of action in this case is now property of the bankruptcy estate, of which is property only a trustee may exercise control over.

11 U.S.C. § 704(a)(1) states:

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest. . .

Collier's Treatise on Bankruptcy again explains:

Trustees should bear in mind at all times that they are representatives of the estate, charged with doing whatever is necessary to advance its interests. Rights of action arising upon the contracts or property of the debtor, not yet resolved into suit, pass to the trustee, and should be asserted in the proper tribunal whenever necessary for the collection or preservation of the estate.

In reading 11 U.S.C. § 704 in conjunction with 11 U.S.C. § 541, it is clear only the Chapter 7 Trustee has rights to prosecute this lawsuit. In the event the Chapter 7 Trustee in this case decides the lawsuit is of inconsequential value to the Estate, a Motion to Abandon would put the lawsuit back in debtor's control, if granted by the court. There is no Motion to Abandon on the Docket as of August 9, 2024, and there is no indication that the Chapter 7 Trustee intends to prosecute this lawsuit.

At the hearing, **XXXXXXX**

## **REVIEW OF ORDER**

This Adversary Proceeding was commenced on April 19, 2024 by the filing of a Complaint by Plaintiff-Debtor Bryan Gallinger. Plaintiff-Debtor has engaged Matthew Brady, Esq. as his "Special

Counsel” in this Adversary Proceeding. Dckt. 1. Plaintiff-Debtor’s bankruptcy counsel in Chapter 13 Case 23-23242 is Peter Macaluso, Esq.

In reviewing the Complaint, there are several deviations from Federal court adversary proceeding litigation. Only the Plaintiff-Debtor is listed in the caption as the “Debtor” and there is no second caption listing the plaintiff and the defendants. *Id.*; p. 1. The Adversary Complaint states the following Causes of Action being asserted as part of the Objection to Claim:

- A. First Cause of Action.....Breach of Written Contract
- B. Second Cause of Action.....Fraud

*Id.*

The claims are being asserted against the “Levick Family Trust.” *Id.*, ¶ 1. The Adversary Complaint does not list the trustee of the Levick Family Trust as a defendant. The court has addressed in an unrelated adversary proceeding that a “trust” is not a separate legal entity that has standing or can hold property, but it is the trustee of the trust who has such rights, powers and duties. This includes the trustee, and not the trust, being either a plaintiff or defendant in a legal proceeding.

As addressed in *Presta v. Tepper*, 179 Cal.App. 4th 909, 914 (2009), it is the trustee of the trust that is the real party in interest and must be named as the plaintiff or defendant in any legal proceeding (emphasis added):

Most importantly for our purposes, “an ordinary express trust is not an entity separate from its trustees....” (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rptr. 729, italics added.) “In contrast to a corporation which is a ‘... distinct legal entity separate from its stockholder and from its officers’ [citation]’ (*Merco Constr. Engineers, Inc. v. Municipal Court* [ (1978) ] 21 Cal.3d [724,] 729 ) and deemed a person within many legal constructs (Code Civ. Proc., § 17), **a ‘... trust is not a person but rather “a fiduciary relationship with respect to property.”** [Citations.] Indeed, “ ‘ “an ordinary express trust is not an entity separate from its trustees” ’ [citation].’ (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3, italics added; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753; see also Evid.Code, § 951.)” (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, 75 Cal.Rptr.2d 312.)

It is for this reason that a trust itself can neither sue nor be sued in its own name. Instead, **the real party in interest in litigation involving a trust is always the trustee.** (*Powers v. Ashton*, supra, 45 Cal.App.3d at p. 787, 119 Cal.Rptr. 729; Code Civ. Proc., § 369.)

See also, *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.*, 92 Cal.App. 5th 142, 156-157 (2023), holding that a complaint filed in the name of the trust may be amended to state the trustee of the trust as plaintiff, it concurs with *Presta*, stating:

MAM correctly points out that a trust is simply a collection of assets held for the benefit of designated beneficiaries (*Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391), and as such, has no ability to sue or otherwise act independently from

a trustee. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521–522 [“because “[a] trust is not a legal entity,” it “cannot sue or be sued, but rather legal proceedings are properly directed at the trustee””]; Code Civ. Proc., § 680.280 [definition of “Person” does not include trust].) According to MAM, the problem here runs deeper than lack of capacity to sue. A trust lacks capacity to sue because it has no independent legal existence. As a Fourth District, Division Three panel explained in *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913–914, while a corporation is considered a jural person (Code Civ. Proc., § 17, subd. (b)(6)), a trust is not. A trust is merely “““a fiduciary relationship with respect to property.””” (*Presta*, at p. 914; accord, *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3.) Under no circumstances can a trust be legally vivified and given capacity to sue or be sued.

It appears that in addition to correcting the Caption, the complaint needs to be amended to name the trustee of the Levick Family Trust as the defendant in this Adversary Proceeding. A copy of the Sales Agreement is provided as an exhibit to the Complaint (Dckt. 6). On page 4 of 4 of the Sales Agreement it appears to be signed by Douglas Levick and Mel[illegible] Levick for the Levick Family Trust, and Ronald G Levick individually. Dckt. 6.

The Real Estate Transfer Disclosure Statement is signed by Douglas Levick for the Levick Family Trust (again indicating that he is a trustee of the Levick Family Trust) and Ronald Levick individually. Dckt. 6 at p. 21.

The Exhibits also include a Request to Initiate Mediation, on which Douglas F. Levick and Melba Levick, are identified as the Trustee of the Levick Family Trust. Ronald G Levick is identified as an additional party to the dispute.

On June 10, 2024, the Clerk of the Court Reissued the Summons in this Adversary Proceeding, which lists the Status Conference to be held on August 14, 2024. Dckt. 9. No certificate of service has been filed documenting the service of the reissued summons and Complaint.

Plaintiff-Debtor filed a Certificate of Service on May 15, 2024, relating to the service of the Complaint and original Summons that was issued on April 22, 2024, Dckt. 8, which identifies the following persons (other than the U.S. Trustee, Chapter 13 Trustee, and three counsel having been served electronically) having been served:

Melba Levick  
c/o Terence Kilpatrick  
3550 Watt Avenue, Suite 140  
Sacramento, CA 95821

Ron Levick  
c/o Terence Kilpatrick  
3550 Watt Avenue, Suite 140  
Sacramento, CA 95821

Douglas Levick  
c/o Terence Kilpatrick

3550 Watt Avenue, Suite 140  
Sacramento, CA 95821

Levick Family Trust  
5426 Ydra Ct  
Fair Oaks, CA 95628

Federal Rule of Bankruptcy Procedure 7004 specifies the service requirements for a Complaint and Summons. The real party in interest or its agent for service of process must be served. It may be that Terence Kilpatrick, Esq. has been designated by the three individuals and two trustees (though not expressly identified as being served as the trustee of the Levick Family Trust) as their respective agent for service of process. However, such attorney having “merely” appeared in the bankruptcy case does not make that attorney the agent for service of process for adversary proceedings or other motions filed in the bankruptcy case.<sup>1</sup>

At the Status Conference, no appearance was made by the Plaintiff-Debtor. No Certificate of Service for the Reissued Summons (reissued on June 10, 2024) or Complaint to be served with the Reissued Summons has been filed.

**Dismissal Without Prejudice Pursuant  
to Federal Rule of Civil Procedure 4(m)**

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004 (a)(1), provides:

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

As stated above, the summons and complaint must be served within seven days of the issuance of the summons for service to be effective. In this Adversary Proceeding the Original Summons, issued on April 22, 2024, is stated to have been served by mail on May 10, 2024. Cert. of Serv., ¶ 4; Dckt. 8. That is eighteen (18) days after it was issued.

For the Reissued Summons that was issued by the Clerk on June 10, 2024, as of the court’s July 12, 2024 review of the Docket, no Certificate of Service has been filed.

---

<sup>1</sup> The Certificate of Service states that service was made pursuant to Federal Rule of Civil Procedure 5 and Federal Rule of Bankruptcy Procedure 9014. However, in commencing an adversary proceeding the complaint and summons must be served as required by Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004. Federal Rule of Bankruptcy Procedure 7004(3) requires that service of the summons and complaint must be made within 7 days of the issuance of the summons (which includes depositing it in the U.S. Mail when service may be made by mail).



This Adversary Proceeding was commenced on April 19, 2024. As of the July 12, 2024 review of the Docket, there is no Certificate of Service documenting timely service on any legally recognizable legal defendant. July 12, 2024 is eighty-one (81) days after the filing of the Complaint. That is nine days short of the 90-day period after which the court must dismiss the adversary proceeding (or for good cause shown, set a deadline for service).

The court shall issue an Order,

THEREFORE, upon review of the Complaint filed in this Adversary Proceeding, the file in this Adversary Proceeding, the apparent failure of service and failure to name a legally recognizable entity as a defendant, and good cause appearing;

**IT IS ORDERED** that the Order to Show Cause is **XXXXXXX**

4. <a href="#">23-23242-E-7</a> <a href="#">24-2038</a> CAE-1	<b>BRYANGALLINGER</b>	<b>CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 7-31-24 [20]</b>
---------------------------------------------------------------------	-----------------------	-------------------------------------------------------------------------------

**GALLINGER V. LEVICK FAMILY  
TRUST ET AL**

Plaintiff's Atty: Matthew V. Brady; Peter G. Macaluso  
Defendant's Atty: unknown

Adv. Filed: 4/19/24  
Reissued Summons: 6/10/24  
Answer: none

Amd Complaint Filed: 7/31/24  
Reissued Summons: 7/31/24

Nature of Action:  
Recovery of money/property - other

Notes:  
Continued from 7/10/24

[RHS-1] Order to Show Cause Why Adversary Proceeding Should Not be Dismissed Without Prejudice filed 7/15/24 [Dckt 13], set for hearing 8/14/24 at 2:00 p.m.; Debtor's Reply filed 7/31/24 [Dckt 25]

First Amended Complaint filed 7/31/24 [Dckt 20]; Reissued Summons 7/31/24

<b>The Status Conference is XXXXXXXX</b>
------------------------------------------

**Tentative Ruling:** 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)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 31, 2024. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, -----.

<p><b>The Motion to Abandon is granted.</b></p>
-------------------------------------------------

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Geoffrey Richards (“the Chapter 7 Trustee”) requests that the court authorize him to abandon the real property commonly known as 2840-2970 Delmar Avenue, Penryn, California, APN 032-070-062-000 (“Real Property”). The Chapter 7 Trustee also seeks to abandon the following items of personal property:

1. “Older computer, desk, tables, glasses, hand tools,” which the Debtor valued at \$2,000.00. Am. Schedule A/B 11, Docket 179.

2. “Winery equipment, barrels, bottling equipment, tractor, attachments, trailers,” which the Debtor valued at \$23,500.00. *Id.*
3. “Wine in barrels whole sale value 100 barrels x 58 gal= 5,800 gal x \$ 12.00 gal,” which the Debtor valued at \$69,600.00. *Id.*
4. “Construction tools and supplies,” which the Debtor valued at \$4,500.00. *Id.* at 12.

(“Personal Property”) (collectively, “Property”).

The Real Property is encumbered by the liens of the following creditors:

1. Provident Trust Group/Evan and Morris Dailey, first position deed of trust in the amount of \$739,698.04 (POC 8-1);
2. Arik Levy, Confidant Board LLC, second position deed of trust in the amount of \$1,254,147.50 (POC 14-1);

The Personal Property is encumbered by the liens of the following creditors:

1. Cheetah Capital, secured by a UCC-1 filed September 6, 2022, for an unknown amount (debtor’s most recently filed Schedule E/F scheduled this creditor as unsecured in the amount of “\$01,700.” *see* Schedule E/F 27, Docket 23) (Ex. B 14, Docket 185); and
2. Masada Funding LLC, secured by a UCC-1 filed June 9, 2022, in the amount of \$158,595 (Ex. C 16, Docket 185; *see* Schedule E/F 29, Docket 23);

(collectively, “Creditors”). The Declarations of Reed Block (Docket 183), Loris Bakken (Docket 184), and Geoffrey Richards (“Docket 186”) have been filed in support of the Motion. Mr. Block provides testimony that the value of the Real Property is \$2,200,000. Decl. 2:8, Docket 183; Comparative Market Analysis, Ex. A 2-13, Docket 185.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

The court shall issue an 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 Abandon Property filed by Geoffrey Richards (“the Chapter 7 Trustee”) 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 Compel Abandonment is granted, and the follow items of real and personal property:

1. 2840-2970 Delmar Avenue, Penryn, California, APN 032-070-062-000;
2. “Older computer, desk, tables, glasses, hand tools,” which the Debtor valued at \$2,000.00. Am. Schedule A/B 11, Docket 179;
3. “Winery equipment, barrels, bottling equipment, tractor, attachments, trailers,” which the Debtor valued at \$23,500.00. *Id.*;
4. “Wine in barrels whole sale value 100 barrels x 58 gal= 5,800 gal x \$ 12.00 gal,” which the Debtor valued at \$69,600.00. *Id.*;
5. “Construction tools and supplies,” which the Debtor valued at \$4,500.00. *Id.* at 12;

are abandoned to Donald Fred DuPont, Jr. by this order, with no further act of the Chapter 7 Trustee required.

6. [24-22846-E-11](#) ISMOIL KASIMOV  
[CAE-1](#)

**STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-28-24 [1]**

Debtor’s Atty: David Foyil

Notes:

Operating Report filed: 8/5/24

[DEF-1] Application for Extension of Time filed 7/12/24 [Dckt 21]; Order granting filed 7/12/24 [Dckt 25]

Status Report filed 7/29/24 [Dckt 28]

Order to Show Cause re Dismissal of Case or Imposition of Sanctions, or Appointment of Trustee Combined with Notice Thereof [failure to pay fees] filed 8/2/24 [Dckt 32, set for hearing 8/22/24 at 10:30 a.m.

Trustee Report at 341 Meeting lodged 8/7/24

**The Chapter 11 Status Conference has been continued to 2:00 p.m. on September 18, 2024 (the next available regularly scheduled Status Conference Calendar).**

**AUGUST 14, 2024 STATUS CONFERENCE**

Ismoil Kasimov, now the Debtor in Possession, commenced this voluntary Chapter 11 Case on June 28, 2024. The Debtor in Possession filed a Status Report on July 29, 2024. Dckt. 28. The Debtor in Possession describes the trucking business started by the Debtor and the financial obligations arising therefrom.

On August 8, 2024, counsel for the Debtor in Possession filed an *Ex Parte* Motion requesting that the Status Conference be continued. *Ex Parte* Motion; Dckt. 36. The basis for the requested continuance is a conflicting trial date in a family law matter.

The Status Conference has been continued to 2:00 p.m. on September 18, 2024.

Debtor's Atty: Noel Knight

Notes:  
Continued from 6/20/24

[NCK-1] Motion to Confirm Chapter 12 Plan filed 7/2/24 [Dckt 52]

Trustee Report at 341 Meeting lodged 7/22/24

[KMT-1] Joint Stipulation to Continue the Hearing Scheduled for August 1, 2024 at 10:00 a.m. to August 22, 2024 at 10:00 a.m. [Motion for Relief from Automatic Stay]; Order granting filed 7/26/24 [Dckt 74]

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

#### **AUGUST 14, 2024 STATUS CONFERENCE**

No updates Status Report has been filed by the Debtor in Possession. The Chapter 12 Trustee's July 22, 2024 Docket Entry Report states that the 341 Meeting has been continued to August 16, 2024.

A Motion to Confirm a Chapter 12 Plan was filed on July 2, 2024. Mtn.; Dckt. 52. A Declaration of the Debtor in Possession is filed in support of the Motion. Declaration; Dckt. 54. In the Declaration, Debtor in Possession provides no factual testimony as to the Plan and how the Plan can be performed (is feasible). Debtor is only able to provide the following testimony:

- A. At least some of the Statements in the Declaration are made on mere "information and belief" rather than the actual personal knowledge required by Federal Rule of Evidence 602. Dec., ¶ 1; Dckt. 54.
- B. Debtor in Possession is asking "for your court's help, and protection, so that I can have a chance to complete the Chapter 12 reorganization which we have provided herein." *Id.*; ¶ 2.
- C. Debtor has "[w]orked at farming, Custom, farming, and cattle husbandry for a combined total of 9 years." *Id.*; ¶ 3.

On this point, Debtor in Possession provides no testimony as to the scope of his work in these areas.

- D. It is Debtor's problems with the IRS that has caused him to default on the obligations owed to Commercial Credit Group. *Id.*; ¶ 4.

- E. Debtor was making payments on the Commercial Credit Group equipment “for 2016 years. . . .” *Id.*; ¶ 5. Further, he has been requesting an accounting for almost as long as he has owed that obligation. *Id.*
- F. Debtor in Possession concludes that he can produce more than enough money to support Chapter 12 Plan payments. *Id.*; ¶ 6.

As one sees, the Debtor in Possession does not provide any testimony for the court to make findings in support of confirmation, unless the court just adopts and parrots Debtor in Possession’s conclusion that he can fund the Plan.

Unauthenticated Exhibit A (Dckt. 37) and an unauthenticated unnumbered Exhibit (Dckt. 38) were filed in support of the Motion to Confirm.

The Chapter 12 Trustee has filed her Opposition to the Motion to Confirm. Dckt. 76. The Chapter 12 Trustee identified specific shortcomings in the Plan and inconsistencies. These include the Plan attempting to divert Plan payments from the Chapter 12 Trustee and have the Debtor “run the distributions to creditors” (the court’s phraseology).

Creditor Commercial Credit Group, Inc. (“CCG, Inc.”) has filed its Opposition to the Motion to Confirm. On August 8, 2024, CCG, Inc. filed a Motion to Dismiss this Chapter 12 Case. Dckt. 80.

At the Status Conference, **XXXXXXX**

## **JUNE 20, 2024 STATUS CONFERENCE**

As of the court’s June 18, 2024 review of the Docket, no updated Status Report had been filed. There is a Motion for Relief From the Automatic Stay, which is set for hearing at the same time and date as this Status Conference.

Reviewing the Debtor’s Schedules and Statement of Financial Affairs, the court notes the following information provided by Debtor under penalty of perjury:

### **I. Schedules**

#### **A. Schedule A/B - Assets; Dckt. 16.**

1. Debtor owns one piece of land in Lincoln California.
2. Debtor owns one truck.
3. Debtor has no household goods or furnishings.
4. Debtor does have televisions, a computer, and a cell phone.
5. Debtor has some clothing, a watch, and two dogs and two cats.
6. Debtor has no other personal items.

7. Debtor has no cash or monies in checking or savings accounts.
8. Debtor has no interests in publically traded stocks, mutual funds, or bonds.
9. Debtor has no interests in any non-publically traded entities.
10. Debtor has a contractor's license.
11. Debtor has \$400,000 in cattle and equipment, which he lists as "Machinery, fixtures, equipment, supplies you use in business, and tools of your trade."
12. Debtor lists under Farm Related property, cattle with a value of \$50,000 and "Creep feeder, trailers, truck, corrals" with a value of \$20,000.

B. Schedule C - Exempt Assets; Dckt. 17.

1. Debtor claims no exemptions.

C. Schedule I - Income; Dckt. 22.

1. Debtor has \$10,000 in "wages" a month being a self-employed rancher.
2. Debtor has a monthly "payroll deduction" of (\$1,600) for Domestic Support Obligations.
3. After subtracting the (\$1,600) "payroll deduction" from the \$10,000 of self-employment wages, the Debtor has only \$6,500 a month in take-home pay.

D. Schedule J - Expenses; Dckt. 23.

1. Debtor has two children (one late teens and one adult) who are dependents.
2. Debtor has no monthly expenses for:
  - a. Home maintenance or repair;
  - b. Food or housekeeping supplies;
  - c. Insurance; or
  - d. Taxes (State, Federal, Self-Employment)
3. Debtor computes having (\$9,887) for expenses and then subtracts that from his gross \$10,000 of self employment wages, not deducting the (\$1,600) in "payroll deduction" for Domestic Support Obligation, and computes having only \$13 in monthly net income.



II. Statement of Financial Affairs; Dckt. 25.

- A. Debtor states that he is married.
- B. Debtor states having less than \$100,000 in gross income from operating a business in 2024, and having no income in 2023 or 2022. Part 2, ¶¶ 4, 5.
- C. Debtor is a sole proprietor, providing several business names. Part 11, ¶ 27.

At the Status Conference, the Trustee expressed her concerns about this case and where it was heading. The court addressed with the Parties some of the issues, as identified above, presenting themselves in this Case.

The Status Conference is continued to 2:00 p.m. on August 14, 2024.

### **MAY 23, 2024 CHAPTER 12 STATUS CONFERENCE**

On May 21, 2024, the Debtor in Possession filed a Status Report. Dckt. 27. The business that is property of the Bankruptcy Estate is that of a cattle farmer and rancher, operating primarily out of Dunnigan and Sheridan, California.

At the Status Conference, counsel for the Debtor in Possession reported that corrects need to be made to the Schedules and such would be forthcoming.

Counsel for Creditor Commercial Credit Group added to the court that at the First Meeting of Creditors the Debtor testified that he had two business – custom farming for others (which has not ceased) and his cattle operation. Creditor asserts a lien on the assets of the Bankruptcy Estate and the cash collateral proceeds thereof. Additionally, that no use of cash collateral has been authorized by the court or Creditor for the two months that this case has been pending. Creditor also states that there is a heretofore undisclosed \$400,000+ tax lien, which is junior to Creditor's lien.

The Chapter 13 Trustee confirmed that from her view substantial issues exist. These include completion and correction of the Schedules.

The Chapter 13 Trustee requests that the Debtor in Possession be ordered to file monthly operating reports in this Chapter 12 Case.

After discussion from the Parties in Interest, the court orders that the Debtor in Possession shall file Monthly Operating Reports.

8. [24-22192-E-13](#)      **CHRISTOPHER TULLY**  
[24-2153](#)  
**CAE-1**  
**TULLY V. TULLY**

**STATUS CONFERENCE COMPLAINT**  
**5-28-24 [1]**

Plaintiff's Atty: Pro Se  
Defendant's Atty: Eric John Schwab

Adv. Filed: 5/28/24  
Answer: 8/7/24

Nature of Action:  
Recovery of money/property - preference  
Objection/revocation of discharge  
Dischargeability - domestic support  
Dischargeability - divorce or separation obligation (other than domestic support)  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Motion for Default filed 7/23/24 [Dckt 8]; Memorandum Re: Default Papers filed 7/24/24 [Dckt 9]

Request for Entry of Default by Plaintiff filed 8/6/24 [Dckt 10]; Memorandum Re: Default Papers filed 8/7/24 [Dckt 12]

Answer to Complaint filed 8/7/24 [Dckt 14]

### **SUMMARY OF COMPLAINT**

The Complaint filed by Heather Tully, the Plaintiff, in pro se, seeks to have debts arising out of a divorce determined nondischargeable. Dckt. 1

### **SUMMARY OF ANSWER**

Christopher Tully, the Defendant-Debtor, has filed an Answer, Dckt. 14. In it he denies that the Plaintiff is bringing a preference action under 11 U.S.C. § 547. He further denies that the complaint is properly brought to deny discharge pursuant to 11 U.S.C. § 727. Defendant-Debtors then asserts that the allegations does not support relief pursuant to 11 U.S.C. § 523(a)(5) and 11 U.S.C. § 523(a)(15).

### **STATUS REPORT**

A Joint Status Report was filed on August 8, 2024. Dckt. 16. In it the Parties state that they have agreed to a close of discovery that is four months after the Status Conference.

## FINAL BANKRUPTCY COURT JUDGMENT

To the extent that Plaintiff alleges in the Complaint relief pursuant to 11 U.S.C. §§ 523 or 727, jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

### ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Federal court jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J) for relief requested pursuant to 11 U.S.C. § 523 or 11 U.S.C. § 727.
- b.
- c. Initial Disclosures shall be made on or before **xxxxxxx, 2024**.
- d. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2024**.
- e. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2024**.
- f. Dispositive Motions shall be heard before **xxxxxxx, 2024**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2024**.

# FINAL RULINGS

9. [23-24610-E-11](#) LAFLEURWAY, LLC  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-23-23 [\[1\]](#)

**DEBTOR DISMISSED: 06/24/24**

**Final Ruling: No appearance at the August 14, 2024 Status Conference is required.**  
-----

Debtor's Atty: Peter G. Macaluso

Notes:  
Continued from 6/20/24

[UST-1] Order granting Trustee's Motion to Dismiss filed 6/24/24 [Dckt 126]

**The Bankruptcy Case having been dismissed (Order; Dckt. 126), the Status Conference is concluded and removed from the Calendar.**

## AUGUST 14, 2024 STATUS CONFERENCE

In reviewing the Docket in this dismissed case, the court notes that counsel for the Debtor/Debtor in Possession has not obtained the allowance of any fees and costs for the post-petition representation of the Debtor/Debtor in Possession .

No having received the allowance of any fees, counsel for the Debtor/Debtor in Possession is not allowed to receive or retain any payments for any fees or expenses for any post-petition services provided to the Debtor/Debtor in Possession.

FARRIS V. HOWELL

**Final Ruling: No appearance at the August 14, 2024 Status Conference is required.**  
-----

Plaintiff's Atty: J. Russell Cunningham; Benjamin C. Tagert  
Defendant's Atty: Stacie L. Power

Adv. Filed: 7/26/22  
Answer: 8/4/22

Nature of Action:  
Recovery of money/property

Notes:  
Continued from 7/10/24

[DNL-2] Stipulation for Entry of Judgment filed 7/29/24 [Dckt 30]

[DNL-2] Judgment filed 7/31/24 [Dckt 31]; Notice of Entry of Order filed 8/6/24 [Dckt 34]

<p><b>The Status Conference is continued to 11:30 a.m. on October 3, 2023 (Specially set day and time due to the court's status conference schedule).</b></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------

### **AUGUST 14, 2024 STATUS CONFERENCE**

Pursuant to the Stipulation of the Parties (Dckt. 30), the court entered Judgment for the turnover of property on July 31, 2024 (Judgment; Dckt. 31). The Judgment affords Debtor forty-five (45) days from notice of entry of the Judgment to vacate the Property.

The court continues the Status Conference to allow for the Debtor to focus on vacating the Property.

The Status Conference is continued to 11:30 a.m. on October 3, 2024.

**The court shall issue an order in substantially the following form:**

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

The Adversary Proceeding Status Conference having been set, Judgment having been entered, Debtor having forty-five (45) post-judgment days to vacate the Property, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **11:30 a.m. on October 3, 2023** (Specially set day and time due to the court's status conference schedule).