

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

September 8, 2016, at 2:00 p.m.

1. [16-90500-E-11](#) ELENA DELGADILLO

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-9-16 [1](#)**

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/4/16

[ASW-1] (Unlawful Detainer) Motion for Relief from the Automatic Stay filed 8/19/16 [Dckt 42], set for hearing 9/29/16 at 10:00 a.m.

Notice of Noncompliance with Statutory Duties of Debtor and Requirements of United States Trustee filed 8/30/16 [Dckt 49]

SEPTEMBER 8, 2016 STATUS CONFERENCE

The Debtor in Possession did not file an updated Status Report. Creditor Sacramento Lopez filed a Creditor's Status Report on September 6, 2016. Dckt. 51. Mr. Lopez is the main creditor in this case, being scheduled by the Debtor as having an \$850,000.00 unsecured claim.

In his Status Report, Mr. Lopez recounts his version of how the Debtor transferred assets including a grocery store business and more than ten parcels of property out of her name after Mr. Lopez obtained a jury verdict against Debtor. Mr. Lopez has been prosecuting fraudulent conveyance actions against the various transferees, in which most of the transferees failed to answer the complaints.

Notwithstanding the acrimonious pre-petition environment with Debtor and Debtor's non-bankruptcy counsel, the Status Report indicates that there has been "positive communications" with Debtor in Possession's bankruptcy counsel.

Mr. Lopez indicates in his Status Report reservations as to whether the Debtor can fulfill her fiduciary duties as the debtor in possession. The Report indicates that counsel for the Debtor and her significant other in the Lopez litigation is now representing the transferees of the assets from Debtor. Mr. Lopez indicates that communications with counsel for the Debtor in Possession has been spotty, but recognizes that some non-case related issues may be the cause, as opposed to such counsel not doing his job or addressing matters in good faith.

September 8, 2016, at 2:00 p.m.

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)		

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		

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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

2. [16-90309](#)-E-7 **MARK/JULIANNA RUNYON** **STATUS CONFERENCE RE:**
16-9010 **MARCHANT V. RUNYON** **COMPLAINT**
7-1-16 [\[1\]](#)

Final Ruling: No appearance at the September 8, 2016 Status Conference is required.

Plaintiff's Atty: Wylie P. Cashman
Defendant's Atty: unknown

Adv. Filed: 7/1/16
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

The Status Conference is continued to 2:00 p.m. on December 1, 2016. A request for entry of default has been filed and the court is awaiting the lodging an order granting the entry of default. Thereafter, Plaintiff may timely move for the entry of a default judgment.

Notes:

Request for Entry of Default by Plaintiff filed 8/31/16 [Dckt 8]; Memorandum re: Default Papers [no Entry of Default and Order Re: Default Judgment Procedures submitted] filed 8/31/16 [Dckt 9]

3. [16-90309](#)-E-7 MARK/JULIANNA RUNYON STATUS CONFERENCE RE:
16-9011 HERRA V. RUNYON ET AL COMPLAINT
7-1-16 [1](#)

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

Adv. Filed: 7/1/16
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:

The Status Conference is continued to 2:00 p.m. on December 1, 2016. A request for entry of default has been filed and the court is awaiting the lodging an order granting the entry of defaults. Thereafter, Plaintiff may timely move for the entry of a default judgment.

4. [16-90736](#)-E-11 RONALD/SUSAN SUNDBURG STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-11-16 [1](#)

Debtors' Atty: Edward A. Smith

Notes:

[TBG-1] Application to Employ Attorney filed 8/26/16 [Dckt 10], set for hearing 9/29/16 at 10:30 a.m.

Preliminary Status Report filed 8/31/16 [Dckt 16]

5. [12-90273](#)-E-12 MATTHEW/TRICIA PELLER STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-31-12 [[1](#)]

Debtors' Atty: David C. Johnston

Notes:

Court set status conference by order dated 8/1/16 [Dckt 126]

Order Approving Final Report and Account and Discharging Trustee filed 8/1/16 [Dckt 127]

6. [12-90273](#)-E-12 MATTHEW/TRICIA PELLER MOTION FOR ENTRY OF DISCHARGE
7-14-16 [[123](#)]

**APPEARANCE OF DAVID JOHNSTON, ATTORNEY FOR
MATTHEW PELLER AND TRICIA PELLER, REQUIRED FOR
SEPTEMBER 8, 2016 HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

No Tentative Ruling: The Motion for Entry of Discharge 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 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.

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)(3).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 12 Trustee, and Office of the United States Trustee on August 3, 2016. By the court's calculation, 36 days' notice was provided.

The Motion for Entry of Discharge 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 Motion for Entry of Discharge is xxxxxxx.

The Motion for Entry of Discharge has been filed by Matthew Peller and Tricia Peller ("Debtors"). Dckt. 123. With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 12 Trustee's final report was filed on June 8, 2016, and no objection was filed within the specified thirty (30)-day period. *See* Fed. R. Bankr. P. 5009. The order approving final report and discharging the trustee was entered on August 1, 2016 (Dckt. 127). The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

The Debtors have not filed a declaration asserting that Debtors:

- A. have completed the plan payments,
- B. do not have any delinquent domestic support obligations,
- C. have completed a financial management course and filed the certificate with the court,
- D. have not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case,
- E. are not subject to the provisions of 11 U.S.C. § 522(q)(1), and
- F. are not a party to a pending proceeding that implicates 11 U.S.C. § 522(q)(1).

11 U.S.C. § 1229(f).

In Debtors' Motion for Entry of Discharge, Debtors assert that they assumed that David Johnston ("Debtors' Attorney") had filed a motion for entry of discharge timely. Debtors state that they contacted the court on July 14, 2016, to confirm that the proper motion had been filed but were informed that no such motion was filed by Debtors' Attorney.

On August 1, 2016, the court set a Status Conference and the instant Motion for hearing on September 8, 2016, at 2:00 p.m. Dckt. 126. The court ordered Debtors' Attorney to appear personally.

Debtors' Attorney has not filed the required documents for the court to rule on this Motion. The court does not have Debtors' Declaration, Notice of Hearing, and Proof of Service.

At the hearing, **xxxxxxxxxx**.

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 for Entry of Discharge filed by Matthew Peller and Tricia Peller ("Debtors") 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 is **[granted / denied]** and the court shall enter the discharge for **[name of each debtor given discharge]** in this case.