

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California**

September 25, 2019 at 2:00 p.m.

1.	<u>18-25001</u>-E-7 JOSEPH AKINS <u>18-2187</u> BLACK V. AKINS	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 4-4-19 [21]
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Final Ruling: No appearance at the September 25, 2019 Status Conference is required.

Plaintiff's Atty: Nicholas B. Lazzarini
Defendant's Atty: Sheila Gropper Nelson

Adv. Filed: 11/13/18
Answer: none
Amd. Cmplt Filed: 4/4/19
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Amended Order filed 8/20/19 continues status conference to 10/24/19 at 11:00 a.m. - specially set date and time. [Dckt 72] Status Conference Statements to be filed and served on or before 9/20/19.

The Status Conference has been continued to 11:00 a.m. on October 24, 2019, by prior order of the court (Dckt. 72).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on May 22, 2019. By the court's calculation, 69 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Amended Plan is denied.</p>

The debtor, David Jerome Rynda ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for payments of \$1,987.00 for 1 month, \$2,197.19 for 1 month, and \$2,470.52 for 58 months. Amended Plan, Dckt. 216. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on July 9, 2019. Dckt. 225. Trustee argues Debtor is \$1,814.35 delinquent in plan payments under the proposed plan, and notes that the plan contains a summary of state court litigation in the additional provisions.

MACHADO'S OPPOSITION

Elina Machado filed an Opposition on July 16, 2019. Dckt. 228. Machado argues:

1. Debtor is delinquent in plan payments.
2. Debtor includes a statement regarding litigation in the plan.

3. The plan was not proposed in good faith because it does not provide specific courses of action in the event Debtor loses or wins in the dispute of ownership of real property.
4. Debtor is paying the claims of Erika Leyva and John Rynda \$100.00 monthly.

ADDENDUM TO PLAN

Debtor filed an Addendum To 8th Amended Plan on September 16, 2019. Dckt. 245. The Addendum purports to incorporate in to the present Amended Plan that the Debtor will sell his residence to fund the plan in the event his Adversary Proceeding is successful.

If, after the litigation is concluded, Debtor loses to Machado, then he will vacate the Property and turn it over to Machado.

DISCUSSION

The Chapter 13 Trustee asserts that Debtor is \$1,814.35 delinquent in plan payments, which represents less than one month of the \$2,470.52 plan payment. Before the hearing, another plan payment will be due. According to the Chapter 13 Trustee, the Plan in § 2.01 calls for payments to be received by the Chapter 13 Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The court has raised, in the hearings on motions to avoid the lien of David Hicks, that creditors Erika Leyva and John Rynda had liens recorded on the eve of bankruptcy. Such secured claims would appear to be fraudulent conveyances or preferential transfers that the Chapter 13 Debtor has the fiduciary duty of a trustee to avoid for the benefit of the bankruptcy estate and creditors pursuant to 11 U.S.C. §§ 547 and 548.

Where those claims are treated as a Class 1 and receiving monthly payments, this plan potentially discriminates against other unsecured creditors. 11 U.S.C. § 1322(b)(1).

Delayed Sale Terms

One arguments made at some point in time in this case by Machado is that she wants the property sold, the debts paid, and not have these obligations she is personally liable on “hanging on out there.” It appears that Debtor and Machado could substantially reduce the areas of dispute by proceeding to immediately sell the property rather than waiting until after the litigation is completed and see if Debtor wins. 11 U.S.C. § 363(f) allows for the sale of property free and clear of an interest other than the bankruptcy estate when that other interest is the subject of *bona fide* dispute.

At the hearing, the Parties addressed this issue, reporting **XXXXXXXXXXXXXXXXXX**

Status of Debtor Representation by Counsel

On July 30, 2019, Debtor’s Counsel filed a Motion to Withdraw. Dckt. 230. The Motion

was not set for hearing by Debtor's Counsel. Counsel provides his declaration to describe the "challenges" in his current representation. Dckt. 232. Counsel also states that in addition to the Trustee and Machado, he perceives the court in throwing up a never-ending set of obstacles to providing the representation. He also describes specific matters concerning the Debtor.

On September 9, 2019, a Notice setting the hearing for October 1, 2019 was filed. Dckt. 241.

At the hearing, **XXXXXXXXXXXXXX**

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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 Confirm the Amended Chapter 13 Plan filed by the debtor, David Jerome Rynda ("Debtor") 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 Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

3. [18-27720-E-13](#) **DAVID RYNDA**
[19-2023](#)
RYNDA V. MACHADO ET AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
3-3-19 [21](#)

Plaintiff's Atty: Tracy L. Wood
Defendant's Atty:
Armando S. Mendez [Elina M. Machado]
unknown [Gabriel Machado]

Adv. Filed: 2/11/19
Answer: none
Amd. Cmplt. Filed: 3/3/19
Answer: none
2nd Amd. Cmplt. Filed: 9/17/19
Answer: none

Nature of Action:
[Adversary Cover Sheet not filed]

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

Notes:
Continued from 6/19/19. Plaintiff-Debtor to obtain a Reissued Summons and serve Defendant Mr. Machado.

Reissued Summons filed 6/19/19 [Dckt 48]; Certification of Service [by mail] filed 6/21/19 [Dckt 50]; Certification of Service [personal service] filed 6/23/19 [Dckt 51]

[ASM-2] Defendant Elina Machado's Joint Motions Pursuant to Rule 12 (g): Motion to Dismiss filed 7/13/19 [Dckt 54]

[TLW-1] Motion for Entry of Default by Clerk [Gabriel Machado] filed 7/14/19 [Dckt 56]

Second Amended Complaint filed 9/17/19 [Dckt 65]

SEPTEMBER 25, 2019 STATUS CONFERENCE

On September 17, 2019, the Plaintiff-Debtor filed his Second Amended Complaint For Quiet Title. Dckt. 65. The claims stated therein are summarized as follows:

- A. Plaintiff-Debtor asserts that he is the owner of property commonly known as 9436 Windrunner Ln, Elk Grove California, directing the court to review Exhibit A to the Complaint. Complaint ¶ 2, Dckt. 65.

- B. Exhibit A is the legal description for property in Elk Grove, California.
- C. There is an Exhibit B attached to the Second Amended Complaint, though it is not referenced in the Second Amended Complaint. Exhibit B is a document that has surfaced previously in connection with Plaintiff-Debtor's bankruptcy case - an unrecorded Quit Claim Deed. The information observed from the fact of this document includes:
1. Elina Machado and Garbriel Machado are the grantors.
 2. The Consideration is stated to be \$10.00, and "Other good and valuable consideration" is stated to have been received.
 3. David Rynda, the Plaintiff-Debtor, is identified as the grantee.
 4. The Property that is the subject of the Quit Claim Deed is stated to be 9436 Windrunner Lane, Elk Grove, California.
 5. The Grantor signature page is notarized, with the notarization date being November 22, 2014. The Notary is Lucerito Meza-Baez of Alameda County. The California Secretary of State does not list Lucerito Meza-Baez as being currently licensed.
<https://www.sos.ca.gov/notary/notary-public-listing/>
- D. There is an Exhibit C attached to the Second Amended Complaint, which is not referenced in the Second Amended Complaint. This is a Declaration for Lucerito Meza-Baez, which is dated February 15, 2019. The statements in the Declaration include:
1. On November 22, 2014, Elina Machado, Gabriel Machado, and David Rynda appeared before Lucerito Meza-Baez and signed the Quit Claim Deed for the 9436 Windrunner Property.
 2. The Parties presented valid ID's, signed the Quit Claim in front of Lucerito Meza -Baez, and signed the notary book and provided thumb prints.
 3. The Quit Claim Deed was delivered to Plaintiff-Debtor (presumably in the presence of Lucerito Meza-Baez, though not expressly stated, as was for signing the Quit Claim Deed).

The court notes that Gabriel Machado is not a defendant named in the Second Amended Complaint.

At the September 25, 2019 Status Conference the Parties reported **XXXXXXXXXXXXXXXXXXXX**

4. [18-27720-E-13](#) DAVID RYNDA
[19-2023](#) ASM-2
RYNDA V. MACHADO ET AL

CONTINUED MOTION TO DISMISS
CAUSE(S) OF ACTION FROM
COMPLAINT AND/OR MOTION TO
DISMISS CAUSE(S) OF ACTION FROM
COMPLAINT
7-13-19 [\[54\]](#)

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor on July 19, 2019. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Status Conference for the Motion to Dismiss Adversary Proceeding was conducted and XXXXXXXXXXXXXX.

On September 17, 2019, David Jerome Rynda filed a Second Amended Complaint. The court does not identify a stipulation on the Docket or relief granted for filing a Second Amended Complaint in lieu of prosecution of the present motion.

Federal Rule of Civil Procedure 15, as incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7015, permits amending a pleadings once without leave of the court, which must be done within 21 days after serving it or within 21 after service of a responsive pleading (such as a Rule 12(b) motion). Fed. R. Civ. P. 15(a)(1). This is not Plaintiff-Debtor's "once" amendment, the Complaint having already been amended once before (Dckt. 21) and this being a second amended complaint, not the original "once" amendment as a matter of right. See Moore's Federal Practice, Civil § 15.10[3], [4]; *United States ex rel. D'Agostino v. EV3, Inc.*, 802 F.3d 188, 192-193 (1st Cir. 2015).

Additionally, Federal Rule of Civil Procedure 15(a)(2) allows for other amendments with the written consent of the other party or order of the court.

At the Status Conference on this Motion, the Parties reported to the court that ~~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 to Dismiss Adversary Proceeding filed by Elina Machado (“Defendant”) 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 ~~hearing on the Motion to Dismiss is~~
~~XXXXXXXXXX.~~

5. [11-44540-E-13](#) **MERCEDES PEREZ**
18-2041
PEREZ V. STOCKTON MORTGAGE ET
AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
3-15-19 [29]

Plaintiff's Atty: Peter L. Cianchetta
Defendants' Atty: unknown

Adv. Filed: 4/5/18
Answer: none
Amd. Cmplt. Filed: 3/15/19
Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 8/21/19. Plaintiff failed to appear.

[RHS-1] Order to Show Cause Re Dismissal of Adversary Proceeding filed 8/22/19 [Dckt 34], set for hearing 9/26/19 at 11:00 a.m.; Reply filed 9/12/19 [Dckt 37]

SEPTEMBER 25, 2019 STATUS CONFERENCE

Plaintiff-Debtor filed a Response to the Order to Show Cause concerning the prosecution of this Adversary Proceeding. Dckt. 37. In it, Plaintiff-Debtor reports:

- A. Plaintiff-Debtor propounded discovery on Stockton Mortgage concerning the note and deed of trust, to which Stockton Mortgage states that there are no records in its possession.
- B. Plaintiff-Debtor's investigator is searching for the trustees of the three trust defendants, and has been able to locate only one. It appears that all trustees of the remaining trusts are deceased.
- C. Plaintiff-Debtor's investigator is searching for possible beneficiaries of the trusts to possibly locate a trustee. This search is to be done by the end of September 2019.

The Response does not discuss what alternative exists for someone to clear title when the adverse interest holder cannot be located or identified. As discussed in Moore's Federal Practice, Civil § 4.90, Federal Rule of Civil Procedure 4(e), incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7004, allows for service by publication when such is permitted under applicable state law. ^{FN. 1.}

FN. 1.

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

(1) **following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;** or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

California law provides for the adjudication of rights between parties, known and unknown, for real property. California Civil Code § 762.020 provides for naming “all persons unknown,” cross-referencing to California Civil Code § 762.060. California Civil Code §§ 763.010 et. seq provide for the service by publication procedure for such “persons unknown.”

At the Status Conference Plaintiff-Debtor reported **XXXXXXXXXXXXXXXXXX**

AUGUST 21, 2019 STATUS CONFERENCE

At the Status Conference, counsel for Plaintiff-Debtor failed to appear.

The court shall issue an order to show cause why the case should not be dismissed for lack of prosecution.

MAY 29, 2019 STATUS CONFERENCE

No updated status report has been filed. At the Status Conference, counsel for Plaintiff reported that he was still trying to identify the current holder of the note to be named as the defendant.

Review of First Amended Complaint

The First Amended Complaint seeks a determination that the Defendant's deed of trust lien on Plaintiff Debtor's property is void, the secured claim as determined by the court pursuant to 11 U.S.C. § 506(a) having been paid under Plaintiff Debtor's Chapter 13 Plan and said plan having been completed. The First Amended Complaint seeks statutory damages and attorney's fees and costs for Defendant failing to reconvey the deed of trust as otherwise required under the loan documents and applicable California law.

MARCH 20, 2019 STATUS CONFERENCE

An Amended Complaint was filed in March 15, 2019. Dckt. 29. The order denying the Motion for Entry of Default Judgment on the original Complaint was filed on January 14, 2019. Civil Minutes, Dckt. 24; Order, Dckt. 26.

At the Status Conference Counsel for Plaintiff reported that he is conducting discovery to identify the correct trustees for the defendants and the amended complaint and summons will be served.

6. [12-23669-E-7](#) CYNTHIA MARAL
19-2079
FUKUSHIMA V. BOHANNAN

STATUS CONFERENCE RE:
COMPLAINT
7-2-19 [1](#)

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Mark A. Wolff

Adv. Filed: 7/2/19
Answer: 7/29/19

Nature of Action:
Approval of sale of property of estate and of a co-owner

Notes:
[DNL-1] Stipulation for Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 8/23/19 [Dckt 20]; Order Appointing Resolution Advocate and Assignment to the BDRP filed 8/29/19 [Dckt 21]

SEPTEMBER 25, 2019 STATUS CONFERENCE

On July 2, 2019, Plaintiff-Trustee Alan Fukushima commenced this Adversary Proceeding to sell property of the Chapter 7 bankruptcy estate of Cynthia and the non-debtor co-owner interests in such property. The Complaint alleges:

- A. The Debtor's Chapter 7 case was reopened when unscheduled assets were discovered so that they could be administered by the Plaintiff-Trustee.
- B. Defendant and Debtor were married in 2013 and divorced in 2017.
- C. Debtor obtained a judgment in the dissolution action to share in all of Defendant's assets.
- D. These assets include sixteen properties expressly identified in the Complaint.
- E. The Plaintiff-Trustee seeks to obtain sales of the Estate's interests and Defendant's interests in the properties pursuant to 11 U.S.C. § 363(h) because a sale of the Estate's fractional interest is monetarily less than that percentage interest in the proceeds from a sale of 100% of the property.

Defendant Cheryl Bohannon filed her Answer on July 29, 2019. Dckt. 18. The Answer admits and denies specific allegations in the Complaint. While admitting federal court jurisdiction, Defendant states that she does not consent to the entry of final orders and judgment by the bankruptcy judge. Answer ¶ 1, Dckt. 18.

Federal Court jurisdiction exists for core and related mater proceedings pursuant to 28 U.S.C. § 1334. Congress grants exclusive federal court jurisdiction over property of the bankruptcy estate. 28

U.S.C. § 1334(e). Congress provides for the reference of all bankruptcy matters, core and related to non-core, to the bankruptcy judges in the district. 28 U.S.C. § 157(a). The bankruptcy judge shall hear such matters, unless the reference is withdrawn, and issue the final orders and judgement on the core matters and, if consent is given, the non-core related to matters. 28 U.S.C. § 157(b), *Wellness International Network, Ltd. v. Sharif*, ___ U.S. ___, 135 S. Ct. 1932 (2015); *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014); *Stern v. Stern v. Marshall*, 562 U.S. 462 (2013); , 86 S. Ct. 467, 15 L. Ed. 2d 391, and *Langenkamp v. Culp*, 498 U.S. 42 (1990); and *Katchen v. Landy*, 382 U.S. 323 (1966). (b).

As a matter of federal law enacted in the Bankruptcy Code by Congress, property of the bankruptcy estate is determined pursuant to 11 U.S.C. § 541 and is a core matter proceeding.

On August 23, 2019, the court issued an order appointing a Resolution Advocate for the Parties to this Adversary Proceeding. Dckt. 20.

No Status Conference Report has been provided by the Plaintiff-Trustee.

At the Status Conference the Plaintiff-Trustee reported, **XXXXXXXXXXXXXXXXXXXX**

7. <u>19-21976-E-7</u> CONQUIP, INC.	CONTINUED STATUS CONFERENCE RE: COMPLAINT 4-3-19 <u>1</u>
 <u>19-2048</u> ZIELENSKI V. CONQUIP, INC. ET AL ADVERSARY PROCEEDING DISMISSED: 08/29/2019	

Final Ruling: No appearance at the September 25, 2019 Status Conference is required.

**The Adversary Proceeding having been dismissed (Order, Dckt. 21), the
Status Conference is concluded and removed from the Calendar.**

8. [18-26585](#)-E-13 JULIAN PEREZ
[19-2087](#)
U.S. TRUSTEE V. DAVIS

STATUS CONFERENCE RE:
COMPLAINT
7-12-19 [1]

**While Issued as a Final Ruling, If Plaintiff Believes That
There Are Status Conference Matters to Address,
Plaintiff May Appear At The Scheduled Time
and Request the Court Conduct the Status Conference**

Final Ruling: No appearance at the September 25, 2019 Status Conference is required.

Plaintiff's Atty: Jason M. Blumberg
Defendant's Atty: unknown

Adv. Filed: 7/12/19
Answer: none

Nature of Action:
Recovery of money/property - other
Injunctive relief - other

Notes:
Status Report of the United States Trustee filed 9/18/19 [Dckt 7]

The Status Conference is continued to 2:00 p.m. on November 20, 2019.

SEPTEMBER 25, 2019 STATUS CONFERENCE

The Plaintiff US Trustee reports that she has been attempting to served the named Defendant Alan Davis at his business addresses, but the mail is being returned as not deliverable as addressed. The US Trustee is continuing to investigate Mr. Davis conduct and is interviewing other individuals.

The Plaintiff US Trustee requests that the Status Conference be continued to a date in November 2019, to allow for further investigation and service.