

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

October 10, 2024 at 2:00 p.m.

1. [19-90003](#)-E-7 **NATHAN DAMIGO** **CONTINUED STATUS CONFERENCE RE:**
[19-9006](#) **CAE-1** **COMPLAINT**
SINES ET AL V. DAMIGO **1-30-19 [1]**

Plaintiff's Atty: Robert L. Eisenbach, III

Defendant's Atty: *Pro Se*

Adv. Filed: 1/30/19

Answer: none

Nature of Action:

Dischargeability - willful and malicious injury

Notes:

Continued from 5/16/24 by order of the court filed 5/9/24 [Dckt 61] at the request of the Parties.

Status Report filed by Defendant 9/25/24 [Dckt 64]

Status Report filed by Plaintiffs 9/26/24 [Dckt 65]

The Status Conference is continued to 2:00 p.m. on XXXXXXX

OCTOBER 10, 2024 STATUS CONFERENCE

On September 26, 2024, Plaintiffs filed their undated Status Report. Dckt. 65. They report that on July 1, 2024, the Court of Appeals affirmed in part and vacated in part the Judgment of the District Court in Virginia. That matter has now been remanded to the District Court Judge. The parties are awaiting entry of the final judgment.

Plaintiffs request that the Status Conference be continued until January 2025 to allow for the District Court in Virginia to act on the matter remanded to it.

The Defendant-Debtor filed his Updated Status Report on September 25, 2024. Dckt. 64. In it he reports that no further appeals have been or will be made. He requests a 90-day continuance of the Status Conference, during which time he is seeking the assistance of counsel for this Adversary Proceeding.

October 10, 2024 at 2:00 p.m.

- Page 1 of 17 -

At the Status Conference, **XXXXXXX**

May 9, 2024 Order Continuing Status Conference
(Order; Dekt. 61)

The court has stayed the proceedings in this Adversary Proceeding. Elizabeth Sines, et al., the Plaintiffs, and Nathan Damigo, the Defendant-Debtor, have prosecuted the litigation in the underlying Charlottesville Action.

On May 1, 2024, Defendant-Debtor Nathan Damigo filed a Status Report and Request that the Status Conference be continued to November 15, 2024, advising the court that the Court of Appeals still has the related matter under submission and has not yet issued a ruling. On May 2, 2024, Plaintiffs filed their updated Status Report in which they concur with the request for a continuance, but request that the Status Conference be continued to late September 2024

To avoid unnecessary cost and expense for the Parties, and the court having been given the updated information on the appeal, continuance of the Status Conference is proper. Neither Party identified any scheduling conflicts that related to their continuation date requests.

In consideration of the matter, review of the court's calendars, and available dates for the Modesto Division Calendars, the court sets October 10, 2024 at 2:00 p.m. for the continued Status Conference.

2. [24-90207](#)-E-11 **PRIORITY MEDICAL SUPPLY, CONTINUED STATUS CONFERENCE RE:
[CAE-1](#) INC. VOLUNTARY PETITION
4-19-24 [1]**

Debtor's Atty: David C. Johnston

The Status Conference is **XXXXXXX**

OCTOBER 10, 2024 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor/Debtor in Possession. No motions (such as a motion to dismiss), objections, or other contested matter pleadings have been filed in this Bankruptcy Case (other than a motion for authorization for the Debtor/Debtor in Possession to employ counsel).

Unless the court extends the period for filing a Subchapter V Plan, the Debtor/Debtor in Possession may file one not later than 90-days after the commencement of the Bankruptcy Case. 11 U.S.C. § 1189(b). This Bankruptcy Case having been filed on April 19, 2024, the 90-day period passed on July 18, 2024. The deadline has not been extended by the court.

This Court's Order Setting the Status Conference and other Dates and Deadlines also includes the requirement for the filing of the Plan and lodging with the court a proposed order setting a confirmation hearing within 90-days of the commencement of the bankruptcy case Order, ¶ 4; Dckt. 4. This Order also includes the provision that failure to comply with the order may result in sanctions, including the dismissal or conversion of the bankruptcy case. *Id.*; ¶ 8.

At the Status Conference, **XXXXXXX**

AUGUST 8, 2024 STATUS CONFERENCE

The U.S. Trustee's 341 Meeting June 16, 2024 Docket Entry Report states that the Meeting of Creditors was conducted and concluded on June 13, 2024. No updated Status Report has been filed.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that efforts at a plan have not been successful. The debt and expenses are too large. Additionally, the principal of the company has been battling some serious medical issues.

The U.S. Trustee's counsel reported that it does not oppose the dismissal of this case.

The Status Conference is continued to 2:00 p.m. on October 10, 2024.

JUNE 6, 2024 STATUS CONFERENCE

Priority Medical Supply, Inc., the Debtor/Debtor in Possession, commenced this voluntary Subchapter V Case on April 19, 2024. On May 6, 2024 Debtor filed its Schedules and Statement of Financial Affairs. Dckts. 20, 19.

Debtor states having no real property assets, a small inventory, and modest cash in the bank. Schedule A/B; Dckt. 20 at 3-7. Debtor states on Schedule D that it has no creditors with secured claims. *Id.* at 8. The Debtor lists only general unsecured claims on Schedule E/F, with one claim comprising 73% of the total claims.

On May 26, 2024, the Debtor/Debtor in Possession filed a Status Report. Dckt. 26. In it the Debtor/Debtor in Possession provides a summary of the impacts of the COVID-19 pandemic on its business, as well as injuries to key staff.

The Debtor/Debtor in Possession focus for the ongoing business is in the area of power scooters, power chairs, and similar products which are covered by Medicare. No significant inventory is required, with the Debtor/Debtor in Possession being able to order products when they are prescribed by a physician. The Debtor/Debtor in Possession does not anticipate any significant litigation or disputes in the prosecution of this Subchapter V Case.

At the Status Conference, counsel for the Debtor/Debtor in Possession provided updated information of how the Debtor/Debtor in Possession was working to recover and have in place

The Status Conference is continued to August 8, 2024 at 2:00 p.m

3. [24-90209-E-11](#) **JEFFREY MCPHEE** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
4-21-24 [1]**
[CAE-1](#)

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/8/24. The court ordered the Debtor/Debtor in Possession to personally attend - No Telephonic Appearance Permitted for the Debtor/Debtor in Possession - all future status conferences, hearings, or other proceedings. Order, Dckt 42

The Status Conference is XXXXXXXX

OCTOBER 10, 2024 STATUS CONFERENCE

This Subchapter V Case was filed on April 21, 2024. The Court entered an order extending the deadline for filing a Subchapter V Plan to and including August 21, 2024. Order; Dckt. 40. No Subchapter V Plan was filed by the Debtor/Debtor in Possession as of the court's October 8, 2024 review of the Docket.

This Court's Order Setting the Status Conference and other Dates and Deadlines also includes the requirement for the filing of the Plan and lodging with the court a proposed order setting a confirmation hearing within 90-days of the commencement of the bankruptcy case Order, ¶ 4; Dckt. 4. This Order also includes the provision that failure to comply with the order may result in sanctions, including the dismissal or conversion of the bankruptcy case. *Id.*; ¶ 8.

On October 7, 2024, the Debtor/Debtor in Possession filed the Monthly Operating Report for July 2024. Dckt. 49.

At the Status Conference, **XXXXXXXX**

AUGUST 8, 2024 STATUS CONFERENCE

The Debtor/Debtor in Possession has filed a Motion requesting the court extending the filing deadline for the Subchapter V Plan to August 21, 2024. The Subchapter V Trustee filed a statement of non-opposition.

The Trustee's July 5, 2024 Docket Entry Report states that the 341 Meeting was continued to July 31, 2024.

Counsel for Creditor noted that at the Meeting of Creditors that the Debtor in Possession was taking loans from his wholly owned corporations to fund the ongoing Chapter 11 Estate without court authorization.

Also, an attorney with a prepetition claim has been paid, without authorization, by the fiduciary Debtor in Possession. Additionally a hauler with a pre-petition has also been paid.

Creditor also argues Debtor's corporation has an SBA loan, which is generally required to be personally guaranteed by the principal, which in this case in the Debtor. However, no such claim for the guaranty is listed.

The Status Conference is continued to 2:00 p.m. on October 10, 2024. By separate order the court is order the Debtor/Debtor in Possession to personally attend – No Telephonic Appearance Permitted for the Debtor/Debtor in Possession – all future status conferences, hearing, and other proceedings.

JUNE 6, 2024 STATUS CONFERENCE

Jeffrey McPhee, the Debtor/Debtor in Possession, commenced this voluntary Subchapter V Case on April 21, 2024. The Schedules and Statement of Financial Affairs were filed on May 9, 2024. Dckts. 15, 16. On Schedule A/B Debtor lists a real estate asset of significant value and modest personal property assets. Dckt. 15 at 3-9. These include an account receivable for Debtor's 2023 almond crop that has not been received. With the secured claims listed on Schedule D for which the real property is collateral, there is approximately a 15% equity cushion. The Debtor has claimed an exemption in the unencumbered portion of the value of the real property.

Debtor lists no priority unsecured claims on Schedule E/F, and modest general unsecured claims, except for one (\$6,042,728) judgment claim, which Debtor lists as Contingent, Unliquidated, and Disputed. Schedule E/F; Id. at 18. It is not clear to the court how a final judgment is contingent, unliquidated, or disputed. Debtor does assert that he is entitled to credits that were not taken into account when the judgment was entered. Additionally, there are two other co-judgment debtors.

On Schedule I, Debtor lists employment at his business, McPhee Masonry, Inc. Id. at 23. While a significant income is shown on Schedule I, on Schedule J, Id. at 25-26, Debtor shows a substantial negative monetary cash flow after expenses.

On May 26, 2024, the Debtor/Debtor in Possession filed a Status Report. Dckt. 22. In it the weedy events leading up to the financial situation and Debtor being conned with respect to an investment

are outlined. The Debtor/Debtor in Possession does not identify any significant legal issues or disputes to be addressed in the case, and is working with the Subchapter V Trustee to develop a consensual plan.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the judgment arises from the Debtor's personal guaranty, in which there were other guarantors who have made payments on the debt.

Counsel for judgment creditor projected that the full amount of the judgment is still owing, and they are working on confirming that amount for the filing of a proof of claim.

The Subchapter V Trustee reported that the continued June 27, 2024 Meeting of Creditors.

The Status Conference is continued to August 8, 2024 at 2:00 p.m.

4. [23-90111-E-11](#) MICHAEL HOFMANN STATUS CONFERENCE RE
[BSH-4](#) CONFIRMATION OF AMENDED PLAN
4-25-24 [[276](#)]

Debtors' Atty: Brian S. Haddix

Notes:

Specially set by court order issued on August 15, 2024, Docket 307.

All operating reports filed on September 27, 2024.

Second Amended Chapter 12 Plan of Reorganization Dated June 19, 2023 filed on October 3, 2024 [Docket 354]

Status Report, Docket 293; Status Report, Docket 348.

The Status Conference is xxxxxxx

OCTOBER 10, 2024 HEARING

The court issued an order setting a hearing for confirmation of a Subchapter V Plan in this case, the court having confirmed a Plan in the past, but Debtor/Debtor in Possession failing to circulate and lodge with the court a proposed Order confirming the subchapter V Plan in this Case. Docket 307. The court also set the deadline for October 3, 2024, for the Debtor in Possession or other parties in interest to file a Status Report updating the court on how Debtor in Possession plans to confirm a Plan. *Id.*

October 10, 2024 at 2:00 p.m.

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Overview of Subchapter V Case

This Subchapter V Case was commenced by Debtor Michael Hofmann on March 20, 2023. The case was filed after there was extensive state court litigation between the Debtor and family members concerning their respective fractional interests in various properties, and the state court ordering a sale of such properties. The Courts Civil Minutes for the September 28, 2024 Status Conference provides a survey of the proceedings in this Case and how the Parties appeared to have put aside the “litigation battle axes” and instead embraced the more financially delicate “scalpel of bankruptcy” and work to achieve the best net financial outcome for each of them. Civ. Min.; Dckt. 167. This included utilizing the Subchapter V Trustee to take control of the properties and market them for sale. This afforded the Debtor to be a competitive bidder on the residential property, rather than being the seller “burdened” by the fiduciary duties of a trustee in selling the property of the Bankruptcy Estate.

On January 25, 2024, the court entered an order for the confirmation of the Final Amended Plan of the Debtor/Debtor in Possession. Order; Dckt. 243. The Order states the various amendments to be made to the Amended Plan that was proposed; the Debtor/Debtor in Possession was to prepare a Final Amended Plan that included the amendments; when the Final Amended Plan was approved by counsel for the Hofmann and the Bricchetto Creditors, the Debtor/Debtor in Possession was to file the Final Amended Plan, and then lodge with the court a proposed order confirming the Final Amended Plan. *Id.*

The Final Amended Plan was filed on April 25, 2024. Dckt. 276. No proposed order confirming the Final Amended Plan was lodged with the court. As shown in the Civil Minutes from the April 25, 2024 Status Conference, counsel for the Debtor/Debtor in Possession reported that with the Final Amended Plan now filed, the order confirming the Final Amended Plan was being drafted, which includes a correction to the Final Amended Plan, and will have that lodged with the court. Civil Minutes, p. 3; Dckt. 277.

No proposed order was lodged with the court. As set forth in the Civil Minutes from the August 7, 2024 Status Conference, the Subchapter V Trustee stated his frustration with the conduct of the Debtor/Debtor in Possession, believing they presented impediments to the sale of the residential property. Dckt. 305. This included the Debtor/Debtor in Possession, without authorization from the court, purchased grain bins that were located on the residential property. In making reference for anyone listening to the audio recording of the Status Conferences, the court stated in the Civil Minutes:

As is evident from a review of the audio for this Status Conference, the Chapter 11 case has continued to “circle the drain” of delay and obfuscation.

Id. With respect to the Debtor/Debtor in Possession purchasing the grain bins, the court further notes in the Civil Minutes:

Additionally, a question arose as to how the Debtor/Debtor in Possession had not estate funds to “invest in” the Grain Tanks. If monies of the Estate were spent for such out of the ordinary course of business for such “investments,” the issue of the Debtor/Debtor in Possession’s ability to continue as the debtor in possession arises.

Id.

Debtor/Debtor in Possession Status Report

On October 3, 2024, Debtor/Debtor in Possession filed a Status Report. Debtor/Debtor in Possession states:

1. Debtor/Debtor in Possession is not intentionally withholding the proposed order as part of a delay strategy to impair the value of the Residential Property, chill offers from potential buyers, and operate outside the Bankruptcy Code laws. The delay in filing the proposed order was due to counsel's failure not Debtor/Debtor in Possession.
2. Debtor/Debtor in Possession desires to confirm a plan. As such, Debtor/Debtor in Possession has filed a Second Amended Plan concurrent with this status conference report.
3. To effectuate confirmation, Debtor/Debtor in Possession has filed amended Monthly Operating Reports (MORs). Also, he has filed amended Schedules I & J which reflect Debtor/Debtor in Possession's current income and expenses as reported in the amended MORs. To expedite the conclusion of the case, the Second Amended Plan offers to make a lump sum payment.
4. The grain tanks left on the property, which Debtor/Debtor in Possession purchase at auction, enhance the value of the property.
5. Counsel requested the trustee provide regular updates of the sale status, but he has not. He has not provided any evidence as to why he abruptly and arbitrarily stopped marketing the property with the grain tanks after the August 8, 2024, status conference when he had marketed it with the grain tanks for a year.

Docket 348. Debtor/Debtor in Possession provides his Declaration at Docket 355 where he details the facts surrounding his attempt to receive financing to purchase the property located at 13330 Valley Home Rd. This testimony includes the following:

- A. With respect to the financing that the Debtor/Debtor in Possession reported he had to purchase the residential property at the court conducted auction:
 1. Debtor/Debtor in Possession through he had financing from Trace Chalmers, who is the husband of Debtor's fiancée's longtime friend. Debtor/Debtor in Possession testifies that Mr. Chalmers owns CEG Construction, Inc. Dec., ¶ 3; Dckt. 355.
 2. Prior to bankruptcy, Mr. Chalmers had provided loans of hundreds of thousands of dollars to the Debtor. Mr. Chalmers affirmatively told the Debtor/Debtor in Possession that he would provide the financing for the purchase of the residence property from the Bankruptcy Estate. *Id.*; ¶ 4.
 3. After the Debtor/Debtor in Possession was the successful high bidder at the court conducted auction, his bids substantially increasing the purchase price for the second highest bidder (who was the stalking horse buyer), the

Debtor/Debtor in Possession says that Mr. Chalmers “asked if [Debtor/Debtor in Possession] if it was possible for me to obtain a more conventional loan. . . .” *Id.*; ¶ 5.

While such a request may have been made, the court notes that it was Mr. Chalmers committed financing that was represented to the court in allowing the Debtor/Debtor in Possession to bid and be the authorized purchaser of the residence property.

4. The stated reason for why Mr. Chalmers was asking the Debtor/Debtor if he would consider going to another lender was because, “[Mr. Chalmers] was receiving ‘push back’ from his company finance department.” *Id.*

No testimony is provided as to why or how a “finance department” in a company that Mr. Chalmers owns would dictate Mr. Chalmers backing out of a loan commitment that he made and knew that the Debtor/Debtor in Possession had represented to the court existed in allowing the Debtor/Debtor in Possession to be the high successful bidder at the court conducted auction.

5. The Debtor/Debtor in Possession testifies that rather than having Mr. Chalmers follow through on the loan commitment and make the purchase, “I [the Debtor/Debtor in Possession] indicated I would try and find other financing.” *Id.*

The Declaration does not address why the Debtor/Debtor in Possession did not proceed with the loan commitment from Mr. Chalmers and then refinance the loan after the court authorized sale was concluded.

6. The Debtor/Debtor in Possession then testifies that he spoke with a Anthony Avila of Advanced Capital Funding, Inc., (“ACF”) who/what the Debtor/Debtor in Possession identifies as a “hard money lender.” *Id.*; ¶ 6.

The court notes that it is the Debtor/Debtor in Possession himself who identifies Mr. Avila and ACF as a “hard money lender.” Such are not in the nature of the “conventional” lenders that Mr. Chalmers requested the Debtor/Debtor in Possession to seek out so that Mr. Chalmers would not have to fund the loan that he had committed to.

7. The Debtor/Debtor in Possession states that he has known Mr. Avila for more than forty years and had previously discussed financing of the farmland property. *Id.*; ¶ 7.
8. The Debtor/Debtor in Possession then testifies that he chose to use Mr. Avila rather than the loan commitment he had from Mr. Chalmers. *Id.*
9. Mr. Avila and ACF then approved a loan in the amount of \$560,000 on March 18, 2024, which would allow the Debtor in Possession to complete the court authorized sale of the residential property. *Id.*; ¶ 8.
10. Apparently, when approving the loan to the Debtor/Debtor in Possession, Mr. Avila and ACF had not disclosed to their investor funding sources that the Debtor/Debtor in Possession was in bankruptcy. The Debtor/Debtor in

Possession testifies that when the investors became aware of the Bankruptcy Case Mr. Avila and ACF “rescinded the original loan,” and instead offered a loan in the amount of only 65% of the value of the residence property. *Id.*; ¶ 9.

The Declaration does not provide testimony as to why, if the Debtor/Debtor in Possession had loan commitments, he did not assert those rights and complete the sale. There is a letter dated October 3, 2024, attached as and unnumbered Exhibit to the Declaration. *Id.* at p. 6. It states that the prior loan commitments were rescinded and that only a 65% loan to value amount was authorized. That letter includes the following:

With Mr. Hoffman's credits at close of the purchase escrow from the court and the land value were qualifying factors. In the underwriting process with the review of the bankruptcy and court control of his credits. The March 18th 2024 loan approval was rescinded.

Id., p. 6. This could be read to say that Mr. Avila and ACF did not have full information about the ongoing litigation between the Debtor and his family members, and how those disputes, which included the sales proceeds from the residence property, would be litigated following the closing of the sale of the residence property. Additionally, each of the letters include in the small print at the bottom that “This is not a commitment to lend.”

There are also letters stating that there was a \$560,00 “loan approval,” one dated March 18, 2024 (*Id.* at p. 4) and one dated March 27, 2024, that the “ACF has declined the loan request as of March 27, 2024 (*Id.* at p. 5).

Advance Capital Funding Corp.



The court checked the California Secretary of State website for registered entities who do business in California. Advanced Capital Funding Inc., an entity for which Anthony David Avila is shown as the agent is listed by the Secretary of State.^{Fn.1.} The information provided by the Secretary of State includes:

Login

ADVANCED CAPITAL FUNDING INC. (4075500)

Request Certificate

<i>Initial Filing Date</i>	10/17/2017
<i>Status</i>	Suspended - FTB
<i>Standing - SOS</i>	Good
<i>Standing - FTB</i>	Not Good
<i>Standing - Agent</i>	Good
<i>Standing - VCFCF</i>	Good
<i>Inactive Date</i>	06/01/2021
<i>Formed In</i>	CALIFORNIA
<i>Entity Type</i>	Stock Corporation - CA - General
<i>Principal Address</i>	12118 LYON ROAD HUGHSON, CA 95326
<i>Mailing Address</i>	12118 LYON ROAD HUGHSON, CA 95326
<i>Statement of Info Due Date</i>	10/31/2023
<i>Agent</i>	Individual ANTHONY DAVID AVILA 12118 LYON ROAD HUGHSON, CA 95326

 View History  Request Access

Thus, it appears Advanced Capital Funding, Inc. has been suspended from doing business in California since June 1, 2021. (The court does not present this as evidence of such a fact, but it is informative to the parties in interest who can assemble such evidence if a dispute exists.)

FN. 1. <https://bizfileonline.sos.ca.gov/search/business>. The California lists the following other entities with the words “Advance Capital Funding” in their names, and reports that they are all suspended from doing business in California:

- Advanced Capital Funding Corp., Agent Jeffery Lurkis;
- Advanced Capital Funding Corporation, Agent Nihcolas Weaver
- Advanced Capital Funding, LLC, Agent Deborah Feldman
- Capital Advance Funding, Agent Noreen Ituah
- Capital Advanced Funding Group, Agent [none listed, states agent resigned]

Id.

Monthly Operating Reports

Debtor/Debtor in Possession filed on October 3, 2024 the following Monthly Operating Reports:

Month	Dckt. No.	Month	Dckt. No.
March 2023 Amended	332	January 2024 Amended	330
April 2023 Amended	334	February 2024 Amended	331
May 2023 Amended	336	February 2024 Amended	351
June 2023 Amended	338	March 2024 Amended	333
July 2023 Amended	340	April 2024 Amended	335
August 2023 Amended	342	May 2024 Amended	337
September 2023 Amended	344	May 2024 Amended	353
October 2023 Amended	345	June 2024 Amended	339
November 2023 Amended	346	June 2024 Amended	352
December 2023 Amended	347	July 2024 Amended	341
		August 2024 Amended	343

Not all of the above Monthly Operating Reports are amended, the Debtor having previously filed reports through February 2024. Dckt. 275. It appears that the others marked amended, except for May and June 2024, are simple clerical errors.

The basic financial information the most recently filed Monthly Operating Report, August 2024, includes the following. Debtor/Debtor in Possession generated cash receipts of \$5,209.75 and had expenditures of (\$5,314.64), for a small monthly negative cash flow of (\$104.89). Dckt. 343 at 2. The ending cash on hand balance is \$16,759.27. *Id.*

Going to the Amended January 2024 Monthly Operating Report, the basic financial information includes the following. Debtor/Debtor in Possession had cash receipts of \$32,684.47 and disbursements of (\$16,932.71), showing a monthly decrease in cash of (\$8,871.29). The January 1, 2024 starting cash balance was \$32,684.47, and the January 31, 2024 ending cash balance was \$23,813.18. Dckt. 330.

Looking at the Amended May 2024 Monthly Operating Report, Dckt. 353, the basic financial information includes the following. The starting cash balance for May 2024 was \$40,645. During May 2024, Debtor/Debtor in Possession had cash receipts of \$6,895.43 and cash disbursements of (\$18,988.76), resulting in a (\$12,093.33) decrease in cash held by the Debtor/Debtor in Possession to \$28,552.14 by May 31, 2024. In May 2024 Debtor/Debtor in Possession shows an \$11,630.75 expense paid to "UCD Vet." Dckt. 353 at 7 (Checks dated May 1, 2024).

Looking back to the Amended August 2023 Monthly Operating Report, Dckt. 342, the starting cash balance was \$48,105.41. For the month of August 2023, the Debtor/Debtor in Possession reports having \$9,826.40 in cash receipts and (\$12,658.50) in cash disbursements, for a (\$2,932.10) reduction to the cash. The end of month August 2023 cash balance is reported to have been \$45,273.31. Dckt. 342 at 2.

Comparing Amended August 2023 Monthly Operating Report (Dckt. 342) to August 2024 (343), the cash balance is (\$28,514.04) less after a year of operation by the Debtor/Debtor in Possession.

Amended Plan Filed

Debtor/Debtor in Possession filed his Second Amended Plan at Docket 354. The Second Amended Plan provides for the secured claim of Mercedes Benz in Class 2, and general unsecured claims are projected to receive a 1.39% dividend. The class of unsecured claims are to receive their entire dividend in one lump sum payment to commence 30 days after the effective date of the plan.

Section B of the proposed Second Amended Plan provides the following statement with respect to the ability of the Debtor/Debtor in Possession to fund the Plan:

C. Ability to make future plan payments and operate without further reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business.

The Plan Proponent is self-employed and receives SS and has provided an amended estimated monthly budget in the form of an income and expense declaration attached as Exhibit B. Debtor believes that he will continue to be able to earn a similar amount of income as projected at the outset of the case. The amended income and expense declaration has the projected disposal income (as defined by § 1191(d) of the Bankruptcy code) for the period described in §1191(c)(2). Also, as of the August 2024 monthly operating report, the estate has approximately \$16,759 in liquid cash.

To complete this plan, Debtor shall submit to the supervision and control of the trustee, as is necessary for the execution of the plan, a lump sum payment in the amount of \$13,000.

Second Amd Plan, ¶ C; Dckt. 354 at 1.

In Article 2 of the Plan, the following Classes of Claims are listed:

2.01. Class 1 All allowed claims entitled to priority under §507(a) of the Code (except administrative expense claims under §507(a)(2), and priority tax claims under §507(a)(8)).

None

2.02. Class 2 The claim of Mercedes Benz, to the extent allowed as a secured claim under §506 of the Code.

2.03. Class 3 All non-insider non-priority unsecured claims allowed under §502 of the Code.

Id. at p. 2.

For Administrative Expenses to be paid through the Plan, the following is stated in Article 3, ¶ 3.02 of the Second Amended Plan:

The two administrative expense claims are Brian S. Haddix, attorney for the Debtor, whose fee beyond the retainer are estimated to be between \$75,000 to \$100,000, and Walter Dahl, the Subchapter V Trustee, whose fees are estimated at \$10,000 to \$15,000.

Id.

In Article 4 of the Second Amended Plan the Debtor/Debtor in Possession provided for Class 2 Secured Claims, the collateral securing the claim of Mercedes Benz will be provided for by surrender of the collateral. It states that the monthly payments on this secured claim are current. *Id.*; ¶ 4.01, Class 2.

For General Unsecured Claims, there will be a \$13,000 lump sum payment made 30 days after the effective date of the Plan. *Id.*; ¶ 4.01, Class 3.

In Paragraph 10.03 of the Second Amended Plan, it provides for the Distribution of Asset Sale Proceeds, stating:

The Subchapter V Trustee shall continue to remain in control and possession of the Residence Property, and the Subchapter V Trustee will proceed with the marketing and sale of the Residence Property.

Additionally, that the proceeds from the sale of the Residence shall be distributed from escrow in the amounts determined by the bankruptcy court pursuant to the Second Interlocutory Judgment dated January 21, 2022, in Stanislaus County Superior Court case no. 2200623 attached hereto as Exhibit C.

Id. at p. 6.

At the hearing, **XXXXXXX**

5. [24-90329-E-7](#) YVONNE FLEMING
[24-9009](#) CAE-1
FLEMING V. UNITED STATES OF
AMERICA ET AL

STATUS CONFERENCE RE:
COMPLAINT
7-31-24 [1]

Final Ruling: No appearance at the October 10, 2024 Status Conference is required.

Plaintiff's Atty: Jason Borg
Defendant's Atty: Jeffrey J. Lodge

Adv. Filed: 7/31/24
Answer: none

Nature of Action:
Dischargeability - priority tax claims

Notes:
Stipulation for Entry of Judgment Re: Complaint to Determine Dischargeability of Tax Debt filed 9/19/24
[Dckt 7]

The Status Conference is concluded and removed from the Calendar.

OCTOBER 10, 2024 STATUS CONFERENCE

Pursuant to the Stipulation of the Parties (Dckt. 7), the court has entered judgment in this Adversary Proceeding. Judgment; Dckt. 8. The Judgment resolves all issues in this Adversary Proceeding and provides that each of the parties will bear their own attorney's fees and costs.

Judgment having been entered and there being no post-judgment proceedings, the Status Conference is concluded and removed from the Calendar.

The Clerk of the Court may close the file for this Adversary Proceeding on or after October 31, 2024.

6. [13-90435-E-7](#) SEAN AMIN
[23-9010](#) CAE-1
NEVAREZ V. ELLIOTT ET AL

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
6-13-23 [1]

Plaintiff's Atty: Bryan Carney

Defendant's Atty:

David C. Johnston [Sean Afshin Amin; Kevin Amin]
unknown [California Shade, Inc.; David Elliott]

Adv. Filed: 6/13/23

Answer: none

Nature of Action:

Determination of removed claim or cause

Declaratory judgment

Notes:

Continued from 8/8/24. The court continued the Status Conference one last time. If the Parties are not prosecuting this case, the court will issue an order to show cause why this dormant adversary proceeding should not be remanded to State Court and the Debtor enforce his rights for violation of the discharge injunction using the law and motion contempt process.

The Status Conference is XXXXXXX

OCTOBER 10, 2024 STATUS CONFERENCE

On October 7, 2024, a Stipulation for Entry of Judgment on Cross-Complaint and Remand was filed with the court. Dckt. 38. The Stipulation between Kevin Amin and Sean Amin, individually and as owners of California Shade Inc., dba A-TEK Window and Door (the "Amin Defendant) and Ellen Nevarez ("Defendant Nevarez)" provides:

- A. Defendant Nevarez filed a Cross Complaint in the State Court Action against the Amin Defendants. Stipulation, ¶ 3; Dckt. 38.
- B. The claims of Defendant Nevarez have been discharged in the Chapter 7 cases filed by Defendant Kevin Amin and Defendant Sean Amin.
- C. The obligations owed to Defendant Nevarez by Defendant Kevin Amin and Defendant Sean Amin have been discharged.

October 10, 2024 at 2:00 p.m.

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D. Defendant Nevarez may continue to pursue claims against the Amin Defendants to the extent of insurance coverage, but cannot recover on such claims against the Amin Defendants and each of them or their respective bankruptcy estates.

On October 7, 2024, a proposed order for remand of the removed Cross-Complaint was lodged with the court.

At the Status Conference, **XXXXXXX**