UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 30, 2017, at 2:00 p.m.

1.	**12-92570-E-12** **RHS-1**	**COELHO DAIRY** **Thomas Gillis**	**ORDER TO SHOW CAUSE WHY COURT DOES NOT REMOVE THE PLAN ADMINISTRATOR/DEBTOR AND ADMINISTRATOR** **10-6-17 [673]**

Frank Coelho, Responsible Representative of the Plan Administrator/Debtor, and Thomas Gillis, counsel for the Plan Administrator/Debtor, and each of them, shall appear personally at the hearing on the Order to Show Cause

No Telephonic Appearance permitted.

No 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 Debtor, Debtor's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on October 8, 2017. By the court's calculation, 53 days' notice was provided. The court set the hearing for November 30, 2017. Dckt. 673.

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 12 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 xxxxx.

This Chapter 12 case was commenced on September 28, 2012, and is now more than five years old. The Chapter 12 Plan, confirmed on May 22, 2014 (it taking Coelho Dairy, "Debtor in Possession," twenty-one months to confirm a plan), requires that unsecured claims will be paid within five years and the secured claim of WestAmerica Bank be paid in full in seven years.

As discussed by the court in the Civil Minutes from the August 10, 2017 hearing on the WestAmerica Bank's Motion for Relief From the Automatic Stay (Dckt. 662), the conduct of the Plan Administrator/Debtor causes the court significant concerns. In part these concerns arise from conduct including Frank Coelho, the general partner and responsible representative of the Plan Administrator/Debtor ("Responsible Representative"), making clearly inaccurate statements under penalty of perjury in declarations prepared by the Plan Administrator/Debtor's counsel. Both the Responsible Representative and counsel necessarily knew the statements were false. Further, the Responsible Representative and counsel seek to absolve themselves from the apparent failure to perform the Plan by trying to blame the Chapter 12 Trustee. Such attempted blame appears to show an inability of the Responsible Representative for the Debtor/Plan Administrator and counsel to prosecute the confirmed Chapter 12 Plan.

PLAN ADMINISTRATOR/DEBTOR'S STATUS REPORT

On September 20, 2017, the Plan Administrator/Debtor filed a Status Report. Dckt. 667. In that Report, the Plan Administrator/Debtor asserts that the Plan payments disbursed by the Trustee through the Debtor's Chapter 12 Plan were $100.00 per month "short." This led to late charges being assessed of "more than $100 a month." Plan Administrator/Debtor further states that to address this issue, "the parties have submitted a stipulation and proposed order to increase the monthly payment by about $100." Status Report, p. 1:20–25.5. No stipulation has been filed with the court and no proposed order has been lodged with the court.[1]

The Report identifies a second "problem," that being WestAmerica Bank asserting that there is a $90,000.00 default in the payments required under the confirmed Chapter 12 Plan. The Plan Administrator/Debtor asserts that of this there is around $62,000.00 in legal fees that WestAmerica Bank asserts must be paid under the Plan. There is no resolution to this asserted default identified to the court.

The Report says that the CPA for the Plan Administrator/Debtor "believes" that the late fees are justified and that there might be "only" about a $12,000.00 default in payments under the Plan. However, there is nothing in the form of a simple accounting provided by such CPA to the court.

[1] The court notes that even as late as the October 5, 2017 finalizing of this Order to Show Cause, no such "stipulation," as unequivocally stated to exist by counsel for the Plan Administrator/Debtor, has been filed with the court.

The Plan Administrator/Debtor then requests that the Status Conference be continued for four months – which is now more than five years into the case and more than three years into the confirmed Chapter 12 Plan. Further, this is now more three years after the "dispute" over what WestAmerica Bank was and should be paid first raised its ugly head (see Civil Minutes for Motion to Disgorge Payments, Dckt. 539).

PLAN ADMINISTRATOR/DEBTOR'S AMENDED OPPOSITION

Plan Administrator/Debtor filed an Amended Opposition on November 21, 2017. Dckt. 697. In it, Plan Administrator/Debtor reports that Frank Coelho has performed satisfactorily, including being current on plan payments through forty-two months of the sixty-month plan. Plan Administrator/Debtor also reports that any post-petition disputes with Westamerica Bank have been resolved by stipulation.

Plan Administrator/Debtor blames Bank of the West for the pre-confirmation delay of nearly two years in confirming a plan. That delay was solved when the bank was paid back its loan.

For the post-confirmation dispute with Westamerica Bank, Plan Administrator/Debtor states that it relied on the Chapter 12 Trustee calculating the arrearage and payments correctly. After what is alleged to be months of communication, Plan Administrator/Debtor argues that a settlement with the bank has been produced for the court's review.

CONDUCT OF RESPONSIBLE REPRESENTATIVE AND PLAN ADMINISTRATOR/DEBTOR THAT IS NOT CONSISTENT WITH THAT OF A CHAPTER 12 PLAN ADMINISTRATOR

The court's Ruling on the Motion to Disgorge Payments raises some of the same issues and concerns of the Responsible Representative's ability to prosecute this Plan:

> Exhibit A, the sole exhibit filed in support of this Motion, is titled the "Coelho Dairy Account by Transaction Report" and appears to be an Account Statement showing all payments made to WestAmerica Bank, from the dates of August 31, 2012 through July 2, 2014. Exhibit A, Dckt. No. 525. The Exhibit does not shed any light, however, on the identity of the individual, principals of the Debtor, or the entity allegedly making payments to satisfy the Creditor's claim.
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> The Declaration of Frank Coelho, the managing partner of the Debtor, Dckt. No. 524, merely repeats the factual contentions stated in the Motion to Disgorge, and provides no clarification on who made the payments, whether the "Transaction Report" is authentic and correctly reflects payments that were made to the Creditor, and whether the payments were going toward curing the post-petition arrearages owed to WestAmerica Bank.
>
> Simple evidence, such as cancelled checks and a ledger sheet showing the computation of what was due, the defaulted post-petition payments by the Debtor in Possession, the payments made by the Debtor in Possession, the payment(s) made by the Trustee, and the asserted proper computation of the arrearage to be cured under

the confirmed Chapter 12 Plan have not been provided. The "evidence," Mr. Coelho's testimony is less than credible, and it appears that he merely affixed (or had affixed) his signature to a document put in front of him. Absent from his testimony are the actual, personal knowledge facts from which the court can determine that testimony is credible.

The Motion satisfies the court that if there has been an overpayment, the Chapter 12 Trustee is the proper party to demand and recover such monies, and if WestAmerica Bank fails to voluntarily repay the overpayment, to then "sue the Bank." The Plan Administrator and its counsel can provide the Trustee with documentation of the payments made, what it asserts is the overpayment which the Trustee should recover. FN. 2.

FN.2. Such contested matter or adversary proceeding should be highly unlikely, and the Plan Administrator computing the overpayment, if any, unnecessary. WestAmerica Bank should have already computed the amount which it should have properly been paid under the contract (Note + Confirmed Chapter 12 Plan), determined if there has been an overpayment, and have a "check cut" to pay the Trustee the erroneous over-disbursement, if any. As senior counsel for one of the Nation's largest bank commented to this judge many years ago, "we realize that we (the bank) appear before these bankruptcy judges much more than any debtor, and as such, cannot afford to play fast and loose in bankruptcy proceeding."

The present Motion has also convinced the court that it is not the Plan Administrator who is able to prosecute the recovery of an over disbursement, if any. The court denies the Motion as to the Plan Administrator. The Motion is denied without prejudice to the Chapter 12 Trustee.

Id.

Report of Chapter 12 Trustee

The Chapter 12 Trustee filed his Status Conference Report on September 12, 2017. Dckt. 665. The Chapter 12 Trustee reports that: (1) the Plan Administrator/Debtor has funded the plan with payments totaling $826,889.11 to the date of the report; (2) forty months have passed since the Plan was confirmed; (3) the Trustee has disbursed $276,551.97 to WestAmerica Bank in monthly disbursements of $5,390.23 each; (4) several secured claims have been paid in full (New Holland Tractor and Dodge Ram as collateral); (5) there has been a 61.11% dividend disbursed to creditors holding general unsecured claims; and (6) there has been $87,763.00 disbursed to the attorney for Black Rock Milling, Co, LLC (prevailing party attorney's fee to Black Rock Milling, Co, LLC for objection to claim prosecuted by the Plan Administrator/Debtor).

The Chapter 12 Trustee further reports that he believes that the Plan Administrator/Debtor and WestAmerica Bank have met to discuss their "long-standing dispute regarding post-petition payments and unpaid attorney's fees," but does not believe that such long standing dispute has been resolved.

Discussion at the September 28, 2017 Status Conference

At the hearing, the Plan Administrator/Debtor asserted that it did not agree that there was a dispute, contended that WestAmerica Bank was not communicating with counsel for the Plan Administrator/Debtor, and that the Chapter 12 Trustee would not provide an accounting of the payments made on the WestAmerica Bank claims. Counsel for the Plan Administrator/Debtor did not demonstrate that said counsel, the Responsible Representative of the Plan Administrator/Debtor, or the CPA for the Plan Administrator/Debtor have acted to address any such dispute, or even attempted to compute the amount which they asserted (even if $0.00) was the correct amount to be paid. Though this "dispute" has been brewing for more than a year (see February 4, 2016 motion for relief, Dckt. 600) the Plan Administrator/Debtor and its counsel have failed to address this asserted default which potentially could doom the reorganization under the Chapter 12 Plan.

When the Plan Administrator/Debtor has acted in this case, it often has included the Responsible Representative of the Plan Administrator/Debtor providing testimony under penalty of perjury prepared by counsel for the Plan Administrator/Debtor that both know are false. This is not merely a recent, inadvertent occurrence, but occurred pre-confirmation as discussed by the court in deciding that a "mercy confirmation" was preferential to dismissing the case and the Debtor losing all of its assets to foreclosure. Civil Minutes, Dckt. 487 (confirmation hearing); Civil Minutes, Dckt. 662 (identifying false statements made by Responsible Representative in declaration prepared by counsel).

Counsel for Plan Administrator/Debtor argues in the one breath that he has advised his client to just pay the default asserted by WestAmerica Bank, and in the next states that the CPA for the Plan Administrator tells the Responsible Representative and counsel that there is no default. This CPA is not specifically identified and no explanation is provided how in the more than a year and one-half since the issue of an asserted default has been raised, the CPA has been incapable of generating a simple spreadsheet documenting the correct application of the payments and showing there is no default.

Counsel for the Plan Administrator/Debtor "blames" the Chapter 12 Trustee, asserting that the Trustee paid the wrong amount under THE CHAPTER 13 PLAN WRITTEN BY COUNSEL FOR THE DEBTOR, the same CHAPTER 13 PLAN FOR WHICH THE PLAN ADMINISTRATOR/DEBTOR (as the Debtor in Possession) PROMOTED TO CONFIRMATION, the same CHAPTER 13 PLAN THAT THE RESPONSIBLE REPRESENTATIVE FOR PLAN ADMINISTRATOR/DEBTOR TESTIFIED WAS FEASIBLE, the same CHAPTER 13 PLAN that the CPA FOR THE PLAN ADMINISTRATOR/DEBTOR PROVIDED THE FINANCIAL VALIDATION, and the CHAPTER 13 PLAN WHICH THE PLAN ADMINISTRATOR/DEBTOR IS RESPONSIBLE FOR PROPERLY PERFORMING. These contentions ring hollow.

Continuance of Status Conference and Order to Show Cause

The court continued the Status Conference. Additionally, the court issued this Order to Show Cause why: (1) the court should not remove the Plan Administrator/Debtor from that fiduciary role in light of the repeated false statements under penalty of perjury by its Responsible Representative and inability to address this issue; or (2) convert this case to one under Chapter 7 due to the fraud committed in the declarations under penalty of perjury and allow an independent Chapter 7 Trustee to administer the assets.

At the conclusion of the Status Conference counsel for the Plan Administrator/Debtor demanded that the court issue an order for the Chapter 12 Trustee to provide an accounting of payments. The court declined Plan Administrator/Debtor's counsel's demand to issue such an order "on the fly." Then, the court queried counsel for the Plan Administrator/Debtor as to whether there is a Bankruptcy Rule that the Supreme Court has promulgated to conduct such discovery and required such production of information in a bankruptcy case. Counsel quickly responded, "yes, § 105(a)."

Such Bankruptcy Code section was enacted by Congress and not promulgated by the Supreme Court. Further, as counsel well knows, such Bankruptcy Code section is not a provision by which such discovery would be conducted. The correct response is Federal Rule of Bankruptcy Procedure 2004. When advised of the Rule, counsel for the Plan Administrator/Debtor demanded that the court make such an order. The court's response to counsel was quite simple – counsel had to do his job as the attorney for the Plan Administrator/Debtor and properly seek such relief. The court does not accept such "contract legal services" assignment from counsel for a party before it.

The Plan Administrator/Debtor, the Responsible Representative, and counsel thereof appear to demonstrate that they do not have the ability to resolve the matters necessary for the performance of the Chapter 12 Plan in this case. They are unable to state to the court any explanation of what the asserted default is correctly computed to be or that no such default exists. They have based their contention that such default, if any, is everybody else's fault, but demonstrate that no attempt was made by them - as the plan proponent, drafter of the plan, and plan administrator—to correctly compute the amount of WestAmerica Bank's claim payment and that such correct amount was paid.

Disregard for or Inattention to Providing Accurate, Truthful Testimony

The inadequate conduct of counsel for the Plan Administrator/Debtor and Mr. Coelho as the Responsible Representative continues through the Amended Opposition and the supporting Declarations. Dckts. 697, 698, and 699. The Amended Opposition begins with the assertion that any "problems" have been resolved. While stating such a conclusion, they do not state why or how the Responsible Representative has continued to sign, now for years, declarations containing false information which have been prepared by counsel for the Plan Administrator/Debtor (and formerly for Debtor in Possession).

In continuing the "blame game," the Plan Administrator/Debtor argues that the delay in confirming a plan was caused by Bank of the West, and it was only after Bank of the West succeeded in obtaining relief from the stay that the Responsible Representative arranged to address the secured claim. Order, Dckt. 336; which was entered after an evidentiary hearing. The court is uncertain how Bank of the West obtaining relief from the automatic stay demonstrates that the delay was caused by Bank of the West, or how obtaining such relief was a "victory" for the then Debtor in Possession. Presumably, without incurring all of the cost and expense of such evidentiary hearing, the Responsible Representative could have paid such secured claim a much lower amount (without taking into account the costs to the estate for that lost litigation).

The Responsible Representative and counsel for Plan Administrator/Debtor, while seeking to blame everyone else, undertook objecting to the claim of Black Rock Milling, LLC. That Objection resulted

in an unmitigated disaster for the Debtor in Possession, it losing on all points. In the Supplemental Findings, the court concluded that the testimony provided by the expert witness presented by counsel for Debtor in Possession and by the Responsible Representative was inaccurate on the simple question of whether that expert's spread sheet demonstrated that Black Rock Milling, LLC was compounding interest. It was as if the "expert's" testimony was drafted without any input from the "expert." Supplemental Findings, Dckt. 560.

The efforts of the Responsible Representative and counsel for the Plan Administrator/Debtor "earned" the right to pay Black Rock Milling, LLC an additional $80,207.00 in legal fees and $7,556.00 in expenses for the Objection to Claim. Order, Dckt. 589. In addressing the contention of counsel for the Plan Administrator/Debtor and the Responsible Representative that the almost $90,000 in fees and costs were unreasonable for a "half-day evidentiary hearing," the court stated:

> The Debtor in Possession/Plan Administrator argument that it's unfair to allow $80,207.00 in fees for "only" a half-day objection to claim trial misses the mark. The enforcement of the obligation required two years worth of legal work, spanning two courts and multiple contested matters.
>
> Creditor did not "accumulate" over $100,000.00 in legal fees, but incurred them in enforcing the obligation. **Much of this was in response to the strategy implemented by the Debtor in Possession to try and discount the claim of Creditor. The "discount" extended to the Debtor in Possession reducing the claim amount to zero ($0.00) in the final version of the proposed plan** and asserting that Creditor owed it money. **Instead of having a plan process in which the Debtor in Possession provided for paying Creditor's claim**, however it was determined in a claims objection, the **Debtor in Possession advanced plans which purported to reduce, or do away with, Creditor's claim**.
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> . . .
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> Debtor in Possession also misses the mark in contending that the fees are unreasonable for enforcing a claim determined by the court to be $360,290.80. Proof of Claim No. 24 filed on January 28, 2015, asserted a general unsecured claim of $332,608.51. **The Objection to Claim (Dckt. 398) sought to reduce it to $203,388.83. Subsequently, Debtor in Possession contended in an amended Chapter 12 Plan that it was $0.00.**
>
> The Debtor in Possession/Plan Administrator cannot engage Creditor in an extended, expensive battle and then feign shock at the cost to Creditor. Much of what the Debtor in Possession/Plan Administrator did in engaging Creditor was not supported by the law or evidence presented to the court. **The Debtor in Possession/Plan administrator and its partners purported to enter into a settlement with Creditor, and then defaulted on the settlement terms even before the court could have a hearing on the motion to approve the settlement.** Much of the Debtor in Possession/Plan Administrator's argument on this point sounds like the old story about the kid who was pleading for the mercy of the court because he was an orphan.....while on trial for killing his parents. To deny Creditor reasonable attorneys' fees for battles initiated by the **Debtor in Possession/Plan**

> **Administrator** would turn the judicial process into one of **abuse** for one party over the other.

Civil Minutes, Dckt. 587 (emphasis added). As the court has reviewed the file, this is consistent with the general litigation strategy implemented by counsel for the Plan Administrator/Debtor and while serving as counsel for the Debtor in Possession, and the Responsible Representative—delay; meritless pleadings; failure to follow through; failure to honor commitments; and failure to provide honest, credible evidence and testimony to the court.

Even confirmation of the Chapter 12 Plan in this case was not a "success" for counsel for the then Debtor in Possession and the Responsible Representative. At best, that "victory" was a mercy confirmation by the court, notwithstanding the repeated deficiencies of counsel and the Responsible Representative:

> On the whole, the court has grave reservations that the Debtor in Possession can actually perform the plan and fulfill its obligations thereunder. **The Debtor in Possession, its general partners, and Counsel have demonstrated a lack of understanding of bankruptcy law and the fiduciary duties** of the Debtor in Possession and its general partners, or **a willful, intentional scheme to violate those rights**. Further, the general partners appear to have been paralyzed in this case, **unable to take any action for a year in addressing the claims in this case**. Only after Bank of the West was given relief from the automatic stay eighteen months into this case did the general partners, Counsel, and the Debtor in Possession act to address the claim and prevent a foreclosure.
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> **Counsel for the Debtor in Possession has misstated in this court and state court proceedings** who is the Debtor in this case (asserting it included the general partners) **and misrepresenting** that property of the general partners was included as property of the estate and protected by the automatic stay. **Counsel for the Debtor in Possession has also taken on representing the general partners** with respect to their obligations relating to this case and the Debtor. Counsel went so far as to file a Chapter 12 bankruptcy case for one of the general partners (Mary Coelho) **and then hide from the court his participation in that case.**
>
> Whatever the case may be, the court is convinced that the Debtor in Possession and its general partners will not get a Chapter 12 Plan before the court in any better form or with better evidence than is now before the court. This is not because the court concludes that such better evidence does not exist, but that this **Debtor in Possession, its general partners, and Counsel are incapable of producing such plan and evidence to support such plan**.
>
> The Debtor in Possession and Counsel have stumbled through this case. Even for the present Motion, the court could easily find that the evidence presented is insufficient. **Possibly that is what the Debtor in Possession and Counsel want,**

deferring confirmation indefinitely and let the general partners operate in a perpetual state of not having to pay the partnership debts.

...

FN.1. For the court, the best description of this decision is that it is a **"mercy confirmation."** As stated above, the **Debtor in Possession and Counsel for the Debtor in Possession have repeatedly** demonstrated an inability to **comply with the Bankruptcy Code. Counsel** has filed several motions which have failed to comply with the basic pleading requirements of Federal Rule of Bankruptcy Procedure 9013. Counsel has **prepared declarations which have been signed under penalty of perjury by Frank Coelho and Mary Coelho, general partners** of the Debtor and Debtor in Possession, **which have contained inaccurate (false) information**. Counsel and Frank Coelho have repeatedly ignored the fact that the Debtor in Possession partnership is a separate legal entity from the general partners. They have continued to ignore the distinction between property of the estate and property of the general partners.

But as stated in this ruling, denying confirmation is not in the best interests of the estate, Debtor (though it may not understand it), and creditors. The Plan requires the Debtor in Possession, Debtor, and its general partners to get the main secured loan refinanced within two years, Westamerica Bank's claim refinanced or paid within 7 years, and payment in full, with 5% interest, all unsecured claims within 7 years. This Plan has been prepared with the assistance of Counsel for the Debtor in Possession (who is also simultaneously representing the general partners of the Debtor and Debtor in Possession).

To deny confirmation would just leave the Debtor and Debtor in Possession paralyzed. Interest would continue to accrue and creditors' attorneys' fees skyrocketing. This takes money from the estate, creditors, Debtor in Possession, and ultimately the general partners. In good conscious the court cannot and will not let the Debtor and Debtor in Possession continue to flounder when there is a Plan which could be performed. **If the Debtor in Possession, its general partners, and Counsel elect not to perform the Plan, then the court can address the consequences of such defaults and failure to fulfill the representations made to this court and creditors to obtain confirmation**.

Civil Minutes, Dckt. 478 (emphasis added).

The most recent Declaration of Frank Coelho, the Responsible Representative, continues the pattern of merely signing whatever counsel for the Plan Administrator/Debtor prepares, without regard to whether the Responsible Representative has any personal knowledge or that whether what he is willing to purport to testify to is true. *See* Declaration, Dckt. 698. The "Declaration" is merely a cut and paste of the Amended Opposition, without any attempt to make the "Testimony" personal, with the Responsible Representative referring to himself in the third person. The third person statements in the "Declaration" that

"Responsible Representative for Plan Administrator/Debtor does apologize to the Court for any erroneous statements made to the Court. The statements were not meant to mislead the Court" ring hollow and are not credible. The Responsible Representative continues to do it in the current "Declaration." The court is convinced that the Responsible Representative has intentionally and willingly signed whatever has been put in front of him, regardless of the truth, so long as he is told "sign this and you will win."

It is unfortunate, and an unpleasant task for the court, to acknowledge that counsel for the Plan Administrator/Debtor and previously for the Debtor in Possession, and the Responsible Representative have intentionally and willfully provided false testimony, have filed meritless motions, have abused the federal judicial process, and regard the federal court as little more than a "tool" for them to abuse. Unfortunately, the "mercy confirmation" was merely one of the abuses by counsel and the Responsible Representative.

In considering what to do, the court does reflect on the great cost to counsel and the Responsible Representative for their abuses—which they have visited upon themselves. For his misdealings, the Responsible Representative has ensured that Debtor has paid hundreds of thousands of dollars more in interest, fees, and costs to creditor. For his part, counsel has had his fees for representing Debtor in Possession substantially reduced for his deficient work. The court reduced the requested fees 50%, from $88,120 to $44,742. Civil Minutes, Dckt. 481. The court concluded that the misstatements by counsel to this court and other courts concerning who was the debtor in this Bankruptcy Case (incorrectly stating that the general partners where co-debtor with the actual Debtor) and what was property of the Bankruptcy Estate (inaccurately stating that property of the general partners was property of the Bankruptcy Estate) were intentional misrepresentations by counsel. *Id.*, p. 4, FN.2.

The court's further detailed findings concerning counsel's conduct in connection with the fee application include the following:

> Both orally and in the written civil minutes the court has made it clear to Counsel that his prosecution strategy or the legal abilities of his office to prosecute the case demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.
> . . .
> Again, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.
> . . .
> The attorney for Frank and Bernadette Coelho (in their individual legal capacities) listed on the Settlement Agreement is Thomas Gillis, the attorney for the Debtor in Possession in this case (who also was the "secret attorney" for Mary Coelho, another of the general partners).
> . . .
> On its face, the Motion to Incur Debt continued to perpetuate the myth created by Counsel and the principals of the Debtor that somehow the principals and the general partners were included in the bankruptcy case. The Bankruptcy Code, 11 U.S.C. § 364, does not provide the court with a basis for authorizing loans to be

entered into by someone other than a trustee, debtors in possession, or Chapter 13 debtor.

. . .

Again, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.

. . .

At the August 22, 2013 Status Conference, the court addressed with Counsel the false statements in the Schedules and Petition in listing non-debtors as joint debtors in this case with the Debtor Partnership, listing that the Debtor Partnership does business as the individual general partners, and listing assets not owned by the partnership (but owned by the individual partners) as partnership assets which is property of the estate.

. . .

However, under Counsel's representation, the fiduciaries of the Debtor in Possession merely continued operating with "business as usual," not respecting their multiple layers of fiduciary duties. There clearly has been no postpetition understanding of the fiduciary duties of the Debtor in Possession and the fiduciary duties of the principals serving as general partners.

Looking at the conduct of the Debtor in Possession during Counsel's watch in this case, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.

. . .

The court also notes that the five-year financial projection, Exhibit C, Dckt. 428, is not a five-year financial projection, but merely a one-year budget which has been copied four times, with the dates changed on the four copies to make it appear that it is a "five year financial projection." Each monthly income and expenses item for each month, for that month during the five years of the "projection" are identical. Again, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.

. . .

Debtor in Possession provided the court with yearly financial statements 2009-2012, which were illegible. The Debtor in Possession also provided the court with a Typical Annual Profit and Loss Projection intended to show that the plan is feasible. Exhibit C, Dckt. 149. The court was unable to determine even if the one month "projection" was at all plausible. The court noted that Mr. Coelho did not provide any information on how he determined these projections. Declaration, Dckt. 148. The court also stated that the lack of providing even minimal competent evidence was an indication that the plan has been proposed and prosecuted in bad faith. August 22, 2013 Civil Minutes, Dckt. 247.

Again, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.

. . .

It is clear that Debtor-in-Possession's second plan failed to address the concerns raised by the Trustee and various creditors during the confirmation hearing of the first proposed plan. Debtor's in Possession repeated filings and alleged reporting of inaccurate information, violation of cash collateral orders, and failure to comply with a settlement agreement with Creditor Black Rock Milling suggests a pattern of evasive, dishonest behavior in which Debtor in Possession has manipulated the Bankruptcy Code to improper ends.

. . .

The only benefit that the court can discern in Counsel's prosecution of the case is Debtor in Possession continuing to use cash collateral in supporting its business as usual operations. Even the operation of the business by the Debtor in Possession has been questioned, as Debtor in Possession is accused of crafting overly optimistic budget projections, and incurring significant financial liabilities that have effected its use of cash collateral. Counsel's work seems to have generated very little benefit to the estate, and instead has been directed to retaining possession and control of the estate's business without any restructuring or prosecution of the case by the Debtor in Possession and its principals.

. . .

The court cannot fathom how Counsel believes that the acts of providing postage, supplies, and the costs of preparing evidentiary binders should be folded into the request for fees. The courts in this circuit have held courts have held postage expenses to be reimbursable or potentially reimbursable under 11 U.S.C. § 330.

. . .

Counsel's time records are confusing, to say the least. For instance, many of the entries regarding filing, discussing and attending plan confirmation hearings appear in several other categories rather than "Plan," such as "Meetings with Clients" and "Written Correspondence." This makes it exceedingly difficult for the court to determine the amount of time spent on each task. If Counsel intended to create a confusing record to "slip something by the court and creditors," such would be difficult to surpass what has been presented in support of this Motion.

. . .

The court does not find Counsel's hourly rate of $375.00 reasonable or that Counsel effectively used appropriate rates for the services provided. Much of the work performed in this case was not necessary and reasonable, and Counsel did not exercise good billing judgment with respect to the services that he and his paralegal undertook as part of the court's authorization to employ him to represent the Debtor in this case.

. . .

Instead of advancing Debtor's interests, Counsel's services can be seen as having set the estate back. Debtor's estate has declined in value, while this case has stayed stagnant for 18 months. Creditors with oversecured claims have not only had

substantial interest accruing, but hundreds of thousand of dollars of legal fees have been incurred which the Debtor in Possession has (through the refinance) or will pay creditors. Counsel has not zealously represented the Debtor by pursuing reorganization in this case, and has not performed at the level of skill, and performed the type of necessary and reasonable legal services as required and demanded by 11U.S.C. § 330, that would warrant the granting of attorneys' fees.

. . .

Though the court is confirming the Chapter 12 Plane in this case, it is with serious reservations. See Civil Minutes for April 10, 2014confirmation hearing. The declaration in support of confirmation prepared by Counsel and signed by Frank Coelho under penalty of perjury makes inaccurate and incorrect statements. Counsel has continued in this declaration, and then in oral argument at the confirmation hearing, to ignore the legal significance of a bankruptcy estate, property of the bankruptcy estate, the fiduciary duties of the Debtor in Possession, the fiduciary duties of the general partner for the Debtor in Possession, and the fiduciary duties of the general partner of the Debtor. Counsel makes no distinction, treating each legally separate person and entity as just "one big client."

. . .

But for Counsel there is no difference, which has raised troubling conflict issues in that he has chosen to represent the Debtor post-petition, the Debtor in Possession, Frank Coelho personally concerning issues relating to the Debtor in Possession and Estate, Bernadette Coelho (Frank Coelho's wife) personally concerning issues relating to the Debtor in Possession and Estate, and Mary Coelho, who is the trustee of a trust, general partner as the trustee of the trust, and as a Debtor in Possession in a Chapter 11 case filed for Mary Coelho by Counsel, all on matters relating to the Debtor in Possession and Estate. The court has left these issues in the good hands of the Chapter 12 Trustee and U.S. Trustee to determine if Counsel has created a disqualifying conflict and any fees allowed by this court should be vacated and disgorged by Counsel. (Discussed below in greater detail.)

Again, this demonstrates legal practice either intentionally being done to cause the parties and court to waste time and money, or a level of legal practice by Counsel's office below that of experienced reorganization attorneys.

Id. at 6, 7, 8, 9, 12, 13, 15, 16, 21, 22, 24, 32, 33.

One might believe that for counsel it is of little matter, having been paid almost $50,000.00 for this work during the case and now being paid undisclosed amounts post-confirmation. However, according to the Honorable Loren S. Dahl, then-chief bankruptcy judge of this court in the 1980's, an attorney's stock in trade is his reputation for honesty, integrity, and quality of work. While this court may have given counsel the benefit of the doubt in the past, counsel has clearly established a documented record for questioning all three in this case.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxx**.

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.
>
> Therefore, upon review of the files in this case, the continuing asserted default in payments due under the confirmed Chapter 12 Plan, the conduct of the Responsible Representative and counsel for the Plan Administrator/Debtor in presenting inaccurate testimony under penalty of perjury, the inability of the Plan Administrator/Debtor and counsel therefore to compute and address the proper payment to be made on the WestAmerica Bank claim, and good cause appearing;
>
> **IT IS ORDERED** that the Order to Show Cause is xxxxx.

2.	**12-92570-E-12** **TOG-46**	**COELHO DAIRY** **Thomas Gillis**	**MOTION TO APPROVE SETTLEMENT AGREEMENT WITH WEST AMERICA BANK** **11-8-17 [677]**

Appearance of Thomas Gillis, attorney for the Plan Administrator/Debtor, and Frank R. Coelho, partner of the Plan Administrator/Debtor, required at the November 30, 2017 hearing

No Telephonic Appearance permitted for either of them

No 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 Debtor, Debtor's Attorney, Chapter 12 Trustee, Westamerica Bank, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 14 days' notice was provided. The court set the hearing for November 30, 2017. Dckt. 687.

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 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 Motion for Approval of Compromise is xxxxx.

On November 8, 2017, Plan Administrator/Debtor Coelho Dairy filed an *Ex Parte* Motion for Court Approval of Settlement with Westamerica Bank. Dckt. 677. The Motion was amended on November 21, 2017. Dckt. 701. The Amended Motion states with particularity (FED. R. BANKR. P. 9013) the following (incomplete) grounds upon which the relief is based and the requested relief:

A. Plan Administrator/Debtor and Westamerica Bank had a financial dispute. The dispute related to alleged unpaid amounts of $37,961.69 in deficient payments and $60,014.73 in legal fees and costs.

B. A "four-way" settlement conference was held (with two other unidentified parties) and a settlement was negotiated.

C. The Settlement provides for a payment of $42,655.61 for the balance owing until the end of the loan (which is one of Westamerica Bank's unidentified claims in this case), May 23, 2021.

D. It is asserted that Plan Administrator/Debtor can afford to pay (from no identified source) the lump sum payment in 2021.

E. Therefore, the court should sign an order approving the Settlement Agreement, which is filed as Exhibit A.

Motion, Dckt. 701.

The *Ex Parte* Motion is supported by the purported declaration of Frank Coelho, the principal of the Plan Administrator/Debtor. Declaration, Dckt. 678. As previously noted by the court, Mr. Coelho has in the past signed declarations for which he did not appear to have personal knowledge or were clearly inaccurate, but signed the declarations merely because the attorney for Plan Administrator/Debtor and Mr. Coelho was told to sign them. *See* Order to Show Cause, Dckt. 673. That appears to continue, notwithstanding the court expressly addressing this directly with counsel for the Plan Administrator/Debtor and Mr. Coelho. *See* Dckt. 702, Supplemental Declaration of Frank Coelho.

The "declaration" by Mr. Coelho is clearly just copy of the text from paragraphs in the *Ex Parte* Motion, changed slightly to make it appear that Mr. Coelho was testifying personally. In the *Ex Parte*

Motion, reference is made to the "Plan Administrator" being responsible to pay, being in dispute over the alleged defaults, and reaching the Settlement with Westamerica Bank. But in his Declaration, Mr. Coelho testifies that "bank alleged that **I** still had unpaid amounts..," that "**My** CPA and **I** disagreed with the amount claimed...," and "I can afford the lump sum payment...." Declaration ¶¶ 2, 4; Dckt. 678. Additionally, Mr. Coelho states under penalty of perjury that "I am the Plan Administrator," apparently ignoring Coelho Dairy, the partnership which is the Debtor, which was the Debtor in Possession, and which is the actual Plan Administrator/Debtor. *Id.*, ¶ 1.

Moving to the Stipulation, the court notes that its provisions are much broader than merely there being a deferred payment to be made in 2021. The terms of the Stipulation include:

A. The Settlement Agreement is between Coelho Dairy Limited Partnership (the Chapter 12 Debtor) and Westamerica Bank. Settlement Agreement Introductory Paragraph, p. 1; Settlement Agreement, Dckt. 679.

B. The loans were made to the Debtor. Settlement Agreement Recital A, *Id.*

C. Debtor has been in default under the terms of the loans. Settlement Agreement Recital F., *Id.*

D. Debtor is to pay $59,810.35 to Westamerica Bank within sixteen days of the execution of the Settlement Agreement. Settlement Agreement ¶ 1, *Id.* No reference is made in the *Ex Parte* Motion to a $59,810.35 payment as part of the Stipulation.

E. A balloon payment of $42,655.61 will be made by Debtor on or before May 23, 2021. ¶ 2, *Id.* This appears to be the payment referenced in the *Ex Parte* Motion.

F. The Debtor grants Westamerica Bank a general release:

> "[f]rom any and all claims, demands, actions, causes of action, rights (including, without limitation, rights of indemnification or contribution), damages, costs, attorney fees, interest, losses of service, liens, expenses, compensation, liabilities, charges, debts, and other obligations of any nature whatsoever, whether contingent or non-contingent, matured or un-matured, liquidated or otherwise, known or unknown, that Debtor has or may have against [Westamerica Bank] that arise out of or in any way relate to the Loans or the Bankruptcy Case."

The granting of the release is not disclosed in the *Ex Parte* Motion or the Amended Motion. The only "settlement" being made as stated is to make the 2021 payment. Settlement Agreement ¶ 6, *Id.*

G. No release is given by Westamerica Bank to Plan Administrator/Debtor or Debtor.

H. The Settlement Agreement is signed by Frank Coelho, "Partner Coelho Dairy," not as Frank Coelho personally. Settlement Agreement, p. 5 of 6; *Id.*

The pleadings cause the court concern. It appears that Frank Coelho is merely a passive pawn, signing declarations without any attempt to provide personal knowledge testimony. Rather, he appears to sign whatever the attorney for the Plan Administrator/Debtor puts in front of him. The *Ex Parte* Motion fails to disclose the actual terms of the proposed Settlement. It is little more than an instruction to the court to sign an order because that is what is demanded of the court.

This Motion heightens the court's concerns that the Plan Administrator/Debtor, and Mr. Coelho as its principal, are not up to the task of being the plan administrator. In requesting that the court discharge the Order to Show Cause, without any response from the Plan Administrator/Debtor, counsel for the Plan Administrator/Debtor asserts (without providing any evidence) that Frank Coelho is having to work for three or four days at a time, with no sleep, to try and run the dairy operation. *Ex Parte* Motion to Discharge Order to Show Cause, ¶ 1; Dckt. 681. It appears that counsel for the Plan Administrator/Debtor is unable to run the dairy and serve as a knowledgeable, active plan administrator.

At the hearing, xxxxxxxxx.

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 Approve Compromise filed by Coelho Dairy, the Plan Administrator/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 for Approval of Compromise is xxxxx.

3. **12-92570-E-12** **COELHO DAIRY**
Thomas Gillis

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-28-12 [1]

Debtor's Atty: Thomas O. Gillis

Notes:
Continued from 9/28/17. On or before 11/16/17, the Plan Administrator/Debtor is to filed documents demonstrating a settlement with WestAmerica Bank or documenting the correct computation of the WestAmerica Bank claim(s) to be paid in this case for which there is dispute.

[RHS-1] Order to Show Cause Why Court Does Not Remove The Plan Administrator/Debtor and Appoint Independent Plan Administrator filed 10/6/17 [Dckt 673], set for hearing 11/30/17 at 2:00 p.m.

[BMJ-2] Stipulation Regarding Monthly Plan Payment to Creditor WestAmerica Bank filed 10/9/17 [Dckt 675]; Order approving filed 10/26/17 [Dckt 676]

[TOG-46] *Ex Parte* Motion for Court Approval of the Settlement Agreement of the Debtor and WestAmerica Bank filed 11/8/17 [Dckt 677]; Order setting hearing for 11/30/17 at 2:00 p.m. filed 11/14/17 [Dckt 687]
[TOG-46] Amended Motion for Court Approval of the Settlement Agreement of the Debtor and WestAmerica Bank filed 11/21/17 [Dckt 701]; set for hearing 11/30/17 at 2:00 p.m.

[TOG-47] *Ex Parte* Motion of Plan Administrator, Frank Coelho, for the Court to Discharge the Order to Show Cause filed 11/8/17 [Dckt 681]; Order denying motion filed 11/14/17 [Dckt 688]

Status Report of Chapter 12 Trustee filed 11/14/17 [Dckt 690]

Status Report of the Plan Administrator/Debtor filed 11/20/17 [Dckt 694]; Declaration re status report filed 11/20/17 [Dckt 695]

4.	**15-90811-E-7** **16-9002** **FARRAR V. MASSELLA ET AL**	**ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS**	**CONTINUED STATUS CONFERENCE RE: COMPLAINT** **1-13-16 [1]**

IF DEFENDANTS FILE A CONCURRENCE IN THE REQUEST FOR CONTINUANCE AS STATED IN THIS TENTATIVE RULING BEFORE NOON ON NOVEMBER 30, 2017, NO APPEARANCE AT THE STATUS CONFERENCE IS REQUIRED

Plaintiff's Atty: Clifford W. Stevens
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

Nature of Action:
Validity, priority or extent of lien or other interest in property

The Status Conference is continued to 2:00 p.m. on xxxxxxxxx, 2018.

Notes:
Continued from 4/27/17

Plaintiff's Status Conference Statement filed 11/14/17 [Dckt 57]

NOVEMBER 30, 2017 STATUS CONFERENCE

The Plaintiff-Trustee filed an updated Status Report on November 14, 2017. Dckt. 57. The Plaintiff-Trustee believes that the need for the litigation of the Complaint in this Adversary Proceeding is impacted by the completion of the trial in *Indian Village Estate, LLC v. Gold Strike Homeowners*

Association, Adv. 15-9061. The Parties to this Adversary Proceeding requested at the April 26, 2017 Status Conference to continue the Status Conference to this November 30, 2017 date, anticipating that the scheduled trial in Adv. 15-9061 would be completed by that time. Due to circumstances outside of that Adversary Proceeding, the trial was continued to February 6, 2018.

It is requested that this Status Conference be continued to early March 2018. The court's closest available hearing date is at 2:00 p.m. on March 8, 2018. That will give the Parties a month to consider the rulings of the court from the trial in Adv. 15-9061.

At the hearing, Defendants xxxxxxxxxxxxxxxxxxxxxxx.

APRIL 25, 2017 STATUS CONFERENCE

The parties agreed to continue the Status Conference to allow the Trustee to litigate the Indian Village Estates Adversary Proceeding, the resolution of which should significantly reduce the issues in this Adversary Proceeding.

SUMMARY OF COMPLAINT

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, ("Plaintiff-Trustee") filed a complaint to avoid various liens filed by the Defendants. The Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not have been properly recorded.

SUMMARY OF ANSWERS

Johnny Massella and Mary Massella, Trustees, and Robinson Enterprises, Inc., Employee Profit sharing Plan ("Defendants") have filed an answer that admits and denies specific allegations in the Complaint. Dckts. 9, 11.

The Answers assert nine affirmative defenses, including:

(1) The interests of the estate were obtained through wrongful foreclosures,

(2) The Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust,

(3) Defendants may seek to have defects in the deeds of trust corrected, and

(4) The nonjudicial foreclosure sales were void because Debtor's corporate powers were suspended at the time of the sales.

COUNTERCLAIMS OF DEFENDANTS

In the Counterclaims, Defendants seek reformation of the Deeds of Trust. On May 2, 2016, the court issued its order dismissing without prejudice the counterclaim. Dckt. 44

5. 17-90320-E-7 JESUS ALVARADO RODRIGUEZ — STATUS CONFERENCE RE: COMPLAINT
17-9014
EDMONDS V. SALINAS ET AL — 9-21-17 [1]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty:
Unknown [Joanna Salinas]
Randall K. Walton [Alejandra A. Alvarado]

Adv. Filed: 9/21/17
Answer: Alejandra A. Alvarado 10/31/17 [same document filed twice]
Joanna Salinas 11/27/17

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

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:
Joint Initial Rule 26 F Statement by Plaintiff Trustee Irma Edwards and Defendant Alejandra A. Alvarado filed 11/8/17 [Dckt 16]

SUMMARY OF COMPLAINT

Irma Edmonds, the Chapter 7 Trustee in the Jesus Rodriguez bankruptcy case ("Plaintiff-Trustee") alleges that the Rodriguez Bankruptcy Estate has an interest in 2416 Snapdragon Court, Modesto, California ("Property"), as an equal joint tenant with the two Defendants. The Plaintiff-Trustee asserts that physical partition of the Property is not practical, nor will the sale of the Bankruptcy Estate's one-third joint tenant interest allow the Bankruptcy Estate to recover one-third of the Property's value.

The Complaint seeks the issuance of a judgment for the sale of the Property pursuant to 11 U.S.C. § 363(f)(h). The Plaintiff-Trustee further requests that the sale be free and clear of the liens encumbering it pursuant to 11 U.S.C. § 363(f)(3), with the proceeds of the sale of the Property being used to pay such secured claims in full, with the proceeds then divided between the three owners of the Property.

NON-OBJECTION BY WELLS FARGO BANK, N.A.

Wells Fargo Bank, N.A. ("WFB") has filed a conditional non-opposition to the sale pursuant to 11 U.S.C. § 363(f) and (h). Dckt. 11. The "condition" is that any such judgment provide for the payment in full of WFB's secured claim as requested by the Plaintiff-Trustee.

SUMMARY OF ANSWERS

Answer Filed by Alejandra Alvarado

Alejandra Alvarado, one of the alleged co-owners, ("Defendant-Alejandra") filed an Answer ("Alejandra-Answer"), but fails to admit or deny the specific allegations in the Complaint. Answer, Dckt. 14. Other than admitting that the Adversary Proceeding is a core matter, the Answer contains a general denial of everything else in the Complaint. Federal Rule of Civil Procedure 10(b), incorporated into Federal Rule of Bankruptcy Procedure 7010, (emphasis added) requires that:

> (b) Paragraphs; Separate Statements. **A party must state** its claims or **defenses in numbered paragraphs**, **each limited** as far as practicable **to a single set of circumstances**. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

Federal Rule of Civil Procedure 8(b), as incorporated into Federal Rule of Bankruptcy Procedure 7008, (emphasis added) further requires:

> (b) Defenses; Admissions and Denials.
>
> (1) In General. In responding to a pleading, a party must:
>
> > (A) state in short and plain terms its defenses to each claim asserted against it; and
> >
> > (B) **admit or deny the allegations asserted against it by an opposing party**.
>
> (2) Denials--Responding to the Substance. **A denial must fairly respond to the substance of the allegation**.
>
> (3) General and Specific Denials. **A party that intends in good faith to deny all the allegations** of a pleading–including the jurisdictional grounds–**may do so by a general denial**. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) **Effect of Failing to Deny.** An allegation–other than one relating to the amount of damages–**is admitted if a responsive pleading is required and the allegation is not denied**. If a responsive pleading is not required, an allegation is considered denied or avoided.

Here, other than admitting that this is a core proceeding, Defendant-Alejandra stated denials, made in good faith and subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, include the following:

A. Denies that Plaintiff-Trustee is the trustee in the Rodriguez Bankruptcy Case.

B. Denies that Defendant-Alejandra has any interest in the Property.

C. Denies that Defendant Joanna Salinas ("Defendant-Salinas") has any interest in the Property.

D. Denies that Defendant-Alejandra and Defendant-Salinas are on title to the Property.

E. Denies that Defendant-Alejandra and Defendant-Salinas are entitled to any portion of the proceeds if the court authorizes the sale of the property that Defendant-Alejandra denies having any interest in.

Taken on its face, it appears that Defendant-Alejandra affirmatively pleads that the judgment should be issued so the Plaintiff-Trustee can sell the Property and take all of the net proceeds for the Rodriguez Bankruptcy Estate.

Defendant-Alejandra then states additional pleadings, identified as a First, Second, and Third Affirmative Defense. In the First Affirmative Defense, Defendant-Alejandra the Property is held in a constructive trust by Debtor Rodriguez, Defendant-Alejandra, and Defendant-Salinas for persons identified as "Aline Alvarado and Jose Juarez." However, these third-parties or their legal representatives (Federal Rule of Civil Procedure 17, Federal Rule of Bankruptcy Procedure 7017) if there are minors or incompetent do not appear to assert any interests. It is Defendant-Alejandra who is purporting to assert rights of a third-party as a personal affirmative defense.

The First Affirmative Defense goes further to admit (contrary to the general denial) that Debtor Rodriguez was on title to the Property when the Rodriguez Bankruptcy Case was filed, but alleges that such was merely done for purposes of obtaining credit to purchase the Property, with Aline Alvarado and Jose Juarez have made all of the payments on the Property. It is further alleged that Aline Alvarado and Jose Juarez filed a homestead declaration with Stanislaus County.

For a Second Affirmative Defense, Defendant-Alejandra asserts that the alleged homestead rights of Aline Alvarado and Jose Juarez take "precedent" over the interests of the Bankruptcy Estate. Again, Defendant-Alejandra purports to be litigating the rights of a third-party not before the court.

The federal courts are not a forum for the theoretical or one in which parties who do not have rights attempt to litigate on behalf of others who are not before the court (with limited exceptions to this rule, such as class action and other special representative proceedings authorized by Congress). Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9th Cir. 2006). Even if a party does not raise the issue, the court may raise it *sua sponte*. FED. R. CIV. P. 12(h)(3); FED. R. BANKR. P. 7012.

One of the first things that a law student learns about American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

> Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent.' (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.'

Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997) (citations omitted).

A person must have a legally protected interest, for which there is a direct stake in the outcome. *Id.* The Supreme Court provided a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party seeking to invoke federal court jurisdiction must demonstrate (1) injury in fact, not merely conjectural or hypothetical injury, (2) a causal relationship between the injury and the challenged conduct, and (3) the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Id*. In determining whether the plaintiff has the requisite standing and the court has jurisdiction, the court may consider extrinsic evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 (9th Cir. 1987).

The standing requirement is not merely a "procedural issue," but a fundamental requirement arising under the Constitution.

For the Third Affirmative Defense, Defendant-Alejandra asserts that Aline Alvarado and Jose Juarez have the "equity" in the Property, and the Rodriguez Bankruptcy Estate's interest is "de-minimus." Again, Defendant-Alejandra wants to litigate rights of third-parties.

Based on the "admissions" of Defendant-Alejandra, she does not appear to have standing to litigate to judgment the First, Second, and Third Affirmative Defenses stated in the Alejandra-Answer.

Answer Filed by Joanna Salinas

Joanna Salinas ("Defendant-Salinas") filed an Answer on November 27, 2017 ("Salinas-Answer"). Dckt. 17. Defendant-Salinas is represented by the same attorney as Defendant-Alejandra, and the Salinas-Answer appears to be a verbatim copy of the Alejandra-Answer, with only the name of the responding Defendant being changed. The Salinas-Answer suffers from the same admissions, denials, and attempts to assert and litigate rights of third-parties as does the Alejandra-Answer.

STATUS REPORTS

A Joint Status Report was filed by the Plaintiff-Trustee and Defendant-Alejandra on November 8, 2017. Dckt. 16. In it these two Parties request that the court stay further proceedings and continue the Status Conference into January or February 2018, to allow the Plaintiff-Trustee to review the timely claims filed in the Rodriguez Bankruptcy Case (claims bar date of December 4, 2017) and the Parties determine the potential dollar issue which may exist with the Rodriguez Bankruptcy Estate. As of the court's November 28, 2017 review of the Claims Register in the Rodriguez Bankruptcy Case, the unsecured claims filed in that Case totaled slightly less than $7,300.00.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. § 363(f)(and (h), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (H), and (N). Complaint ¶¶ 1, 2, Dckt. 1. In their Answers, Defendant-Alejandra and Defendant-Salinas both admit the allegations of jurisdiction and core proceedings. Answers ¶ 1, Dckts. 14, 17. The Complaint seeks relief arising under the Bankruptcy Code 11 U.S.C. § 363(f) and (h) and arises in the bankruptcy case for the administration of property of the Rodriguez Bankruptcy Estate. These are core matters. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). First Amended Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28

U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **-----, 2017**.

c. Expert Witnesses shall be disclosed on or before **----------, 2018**, and Expert Witness Reports, if any, shall be exchanged on or before **----------, 2018**.

d. Discovery closes, including the hearing of all discovery motions, on **----------, 2018**.

e. Dispositive Motions shall be heard before **----------, 2018**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **------- p.m. on ----------, 2018**.

6. **16-90736-E-11** **RONALD/SUSAN SUNDBURG** **APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTORS IN POSSESSION**
TBG-8 **Stephan Brown** **9-28-17 [123]**

No 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 Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2017. By the court's calculation, 63 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Motion to Approve Disclosure Statement is xxxxx.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: August 11, 2016

Background: Ronald Sundburg and Susan Sundburg ("Debtor in Possession") acquired loans to support a veterinary practice. Additionally, they incurred tax debts, trade debts, and credit card debts. They were not able to pay all of their obligations and filed this case.

Administrative Expenses

Type	**Estimated Amount Owed**	**Treatment Under the Plan**
Expenses arising in the ordinary course of business after petition	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Accountant's professional fees, as approved by the court	Estimated to be $3,841.00	Paid in full on the effective da te of the plan, and subject to court approval. Creditors may object to motion to approve interim or final fees.
Debtor in Possession's attorneys' fees, as approved by the court	Estimated to be $60,000.00	Debtor in Possession's attorneys consent to payment after the effective date of the Plan, subject to court approval. Creditors may object to motion to approve interim or final fees.
Other administrative expenses	Estimated current at confirmation	Paid in full on the effective date of the Plan
Clerk's office fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Total	$63,841.00	
Payment of administrative expenses on the effective date of the Plan	$3,841.00	

Priority Tax Claims

Description of Tax Claim	Priority Under 11 U.S.C. § 507	Impairment	Treatment
Internal revenue Service (income taxes for 2011–15; forms 940 and 941 for 2014 and 2015)	Eighth	Impaired	Estimated to be $141,951.77. Debtor in Possession will pay the balance with pre-petition penalties and accrued interest, and post-petition interest of 4.00%. Debtor in Possession proposes to pay $1,437.19 per month, due on the fifth day of each month after the effective date of the Plan over ten years.
Franchise Tax Board (income taxes for 2013–15)	Eighth	Unimpaired	Estimated to be $6,633.15 as a priority unsecured claim, and $664.32 as a general unsecured claim. Amended Proof of Claim 4. Debtor in Possession will pay the entire balance of the priority claim, as reflected by the proof of claim on the effective date of the Plan. The Franchise Tax Board will be entitled to vote for the value of its Class 9 unsecured claim of $664.32.
Employment Development Department (2016)	Eighth	Unimpaired	Estimated to be $2,443.67 as a priority unsecured claim and $366.09 as a general unsecured claim. Proof of Claim 11. Debtor in Possession will pay the entire balance of the priority claim, as reflected by the proof of claim, on the effective date of the Plan. The Employment Development Department will be entitled to vote for the value of its Class 9 unsecured claim of $366.09.

Plan Classes

Creditor/Class	**Treatment**	
Class 1: Arthur D. and Catherine M. Jennison (secured claim paid outside of Plan)	**Claim Amount**	Not Stated
	Impairment	Unimpaired
	Claim 15 filed by Jennisons secured by a first deed of trust against real property at Yosemite Blvd. Debtor is current on payments to Class 1, which will be maintained by the current contractual installment payments, with any changes required by the applicable contract and noticed in conformity with any applicable rules. Debtor will maintain payments outside of the Plan.	
Class 2: Arthur D. and Catherine M. Jennison (secured claim paid outside of Plan)	**Claim Amount**	Not Stated
	Impairment	Not Stated
	Claim 16 filed by Jennisons secured by a first deed of trust against real property at S. Abbie. Debtor is current on payments to Class 2, which will be maintained by the current contractual installment payments, with any changes required by the applicable contract and noticed in conformity with any applicable rules. Debtor will maintain payments outside of the Plan.	
Class 3: Lendmark Financial Services (secured claim paid outside of Plan)	**Claim Amount**	Not Stated
	Impairment	Not Stated
	The claim of Lendmark Financial Services secured by a lien against a 2007 Chevrolet Silverado. Debtor is current on payments to Class 3, which will be maintained by the current contractual installment payments, with any changes required by the applicable contract and noticed in conformity with any applicable rules. Debtor will maintain payments outside of the Plan.	

Class 4: Wells Fargo Dealer Services (secured claim paid outside of Plan)	**Claim Amount**	Not Stated
	Impairment	Not Stated
	The claim of Wells Fargo Dealer Services secured by a lien against a 2015 Dodge Ram. Debtor is current on payments to Class 4, which will be maintained by the current contractual installment payments, with any changes required by the applicable contract and noticed in conformity with any applicable rules. Debtor will maintain payments outside of the Plan.	
Class 5: Wells Fargo Home Mtg (secured claim paid outside of Plan)	**Claim Amount**	Not Stated
	Impairment	Not Stated
	The claim of Wells Fargo Home Mtg secured by a first deed of trust against real property at 7634 Adams Road. Debtor is current on payments to Class 5, which will be maintained by the current contractual installment payments, with any changes required by the applicable contract and noticed in conformity with any applicable rules. Debtor will maintain payments outside of the Plan.	
Class 6: Stanislaus County Tax Collector	**Claim Amount**	$4,114.25
	Impairment	Unimpaired
	The claim of Stanislaus County Tax Collector. The claim is represented by Claim No. 21 filed on June 22, 2017. The claim was filed in the amount of $4,114.25 and is secured by a lien against real property commonly known as 5132 Yosemite Blvd., Empire, California. Debtor will pay the entire balance of this claim on the effective date of the Plan.	
Class 7: Secured Claim (Bank of America, N.A.)	**Claim Amount**	$392.970.43
	Impairment	Impaired

	The claim of Bank of America, N.A. This claim was scheduled as claim 2.3 in Debtor's petition and is represented by Claim No. 18 filed on December 8, 2016. The claim was filed in the amount of $392.970.43 and is secured by deeds of trust against real property at Yosemite Blvd. and S Abbie, as well as business collateral. Debtor will pay the balance with pre-petition penalties and accrued interest, and post-petition interest of 6.50%. Debtor proposes to pay $1,536.08 per month, due on the fifth of each month, over ten years. Plan payments will start in the first month following the effective date of the Plan. Class 7's claim is bifurcated into an allowed secured claim with a value of $135,280.33 and is entitled to vote on confirmation of the Plan. The remainder of Bank of America's claim will be treated as a Class 9 general unsecured claim. Bank of America, N.A., is also entitled to vote on confirmation of the Plan as a Class 9 general unsecured claimholder.	
Class 8: Secured Claim (Wells Fargo Bank NV, N.A.)	**Claim Amount**	$42,789.90
	Impairment	Impaired
	The claim of Wells Fargo Bank NV, N.A. This claim was scheduled as claim 2.5 in Debtor's petition and is represented by Claim No. 10 filed on October 3, 2016. The claim was originally filed in the amount of $42,789.90 and is secured by a second deed of trust against real property commonly known as 7634 Adams Road, Valley Springs, California. Debtor will pay the balance of the Class 8 claim with pre-petition penalties and accrued interest, and post-petition interest of 5.00%, the original contract rate. Debtor proposes to pay $453.85 per month, due on the fifth day of each month, over ten years. Plan payments will start in the first month following the effective date of the Plan.	
Class 9: General Unsecured Claims	**Claim Amount**	Not Stated
	Impairment	Impaired
	Proofs of Claim 1, 2, 6–9, 12–14, 17 parts 1–4, 19, and 20. All general unsecured claims are scheduled as claims 4.1–4.33 in Debtor's petition. Holders of general unsecured claims will not receive a distribution under the Plan.	

A. C. WILLIAMS FACTORS PRESENT

__Y__ Incidents that led to filing Chapter 11

__N__ Description of available assets and their value

__N__ Anticipated future of Debtor

__N__ Source of information for D/S

__Y__ Disclaimer

__Y__ Present condition of Debtor in Chapter 11

__Y__ Listing of the scheduled claims

__Y__ Liquidation analysis

__N__ Identity of the accountant and process used

__N__ Future management of Debtor

__Y__ The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS

The United States Trustee filed an Objection on November 9, 2017. Dckt. 138. The U.S. Trustee argues that the disclosure statement does not provide adequate information because it does not provide detailed income and expense projections, which are relevant to determining the Plan's feasibility. *Id.* at 5. The U.S. Trustee notes that there is no analysis of whether the secured claims being paid outside of the Plan will complete before the Plan, thus reducing expenses.

Second, the U.S. Trustee notes that periodic reports for Empire Veterinary, Inc. have not been filed. Without that information, the U.S. Trustee argues that calculating income is difficult.

Finally, the U.S. Trustee points out that the Plan and disclosure statement do not address the filing of post-confirmation quarterly reports that are necessary to calculate quarterly fees and determine ongoing plan compliance.

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert.*

denied 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

Debtor in Possession has not addressed the concerns raised by the U.S. Trustee, grounds that are meritorious and that stand in the way of approving the disclosure statement. At the hearing, Debtor in Possession stated that it would address the objection by xxxxxxxxxxxx.

The court notes that the Disclosure Statement advises that for some of the creditors their claims will be paid "outside the plan." The court is unsure of the legal basis by which Debtor in Possession elects to make the Bankruptcy Code applicable to some creditors and not others. In reviewing the mandatory provisions for a Chapter 11 Plan in 11 U.S.C. § 1123(a), the court does not see a provision stating that the plan proponent may "designate classes of claims *only for such claims as proponent chooses to include in the plan*." Rather 11 U.S.C. § 1123(a)(1) requires the plan proponent to designate the classes of claims. A claim is defined in 11 U.S.C. § 101(5), and it does not include a provision stating that such is "a claim *only if the Debtor or plan proponent elect it to be a claim*."

It may well be that the Plan treatment is that the creditors rights are unimpaired, the Chapter 11 Plan makes no alternation in the rights of such creditors, and such claims will be paid pursuant to the terms of the documents upon which the claims are based and applicable non-bankruptcy law. However, such claims are provided for in the Plan and are being paid pursuant to such plan terms.

At the hearing, counsel for the plan proponent Debtor in Possession explained **xxxxxxxxxxxxxx**.

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 Approval of the Disclosure Statement filed by Ronald Sundburg and Susan Sundburg ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxx.

7. **17-90347-E-7** **MARJORIE SHAMGOCHIAN** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
4-27-17 [1]

Debtor's Atty: Pro Se

The Status Conference is xxxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 9/28/17. Ordered that Steve Shamgochian shall appear at the continued Status Conference in person. No telephonic appearance permitted for Mr. Shamgochian.

[UST-1] *Ex Parte* Motion of the United States Trustee to Continue Hearing [motion to dismiss from 10/19/17 at 10:30 a.m. to 11/30/17 at 2:00 p.m.] filed 10/3/17 [Dckt 55]; Order granting filed 10/3/17 [Dckt 57]

Order for Initial Hearing for Determination of Legal Competency filed 10/5/17 [Dckt 58], set for hearing 11/30/17 at 10:30 a.m.

[MEL-1] Order Continuing Motion for Relief from Automatic Stay and Order for Adequate Protection Payments filed 10/25/17 [Dckt 62], set for 11/30/17 at 10:30 a.m. [Dckt 62]

Status Report from Steve Shamgochian, Power of Attorney Holder for Debtor Marjorie Shamgochian filed 11/16/17 [Dckt 65]; Exhibits filed 11/16/17 [Dckt 66]

Status Report re MTGLQ Investors, L.P.'s Motion for Relief from Automatic Stay filed 11/21/17 [Dckt 68]

8. **17-90347-E-7** **MARJORIE SHAMGOCHIAN** **CONTINUED MOTION TO DISMISS CASE**
UST-1 **8-30-17 [33]**

No 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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Steve Shamgochian on August 30, 2017. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is xxxxx.

The United States Trustee ("U.S. Trustee") moves for dismissal of this case pursuant to 11 U.S.C. §§ 521(i)(1), (2), and 707(a). The U.S. Trustee lists three grounds for dismissal.

First, the U.S. Trustee argues that Marjorie Shamgochian ("Debtor") has not filed any schedules and statements in violation of 11 U.S.C. §§ 521(a)(1)(B) and 707(a)(3). Second, Debtor has not attended multiple meetings of creditors. *See* 11 U.S.C. § 707(a)(1).

Third, the U.S. Trustee argues that a "general power of attorney" asserted by Steve Shamgochian does not authorize him to file a bankruptcy case for Debtor. The language of the document does not appear to envelop power to commence litigation.

ORDER CONTINUING HEARING

The U.S. Trustee moved for the hearing to be continued, and the court granted the *ex parte* request and continued the hearing to 2:00 p.m. on November 30, 2017. Dckt. 57.

STEVE SHAMGOCHIAN'S STATUS REPORT

Steve Shamgochian filed a Status Report on November 16, 2017. Dckt. 65. Mr. Shamgochian states that the family is considering a short sale for real property in Turlock, California, but given how this case has proceeded (namely, the court granting a motion for relief), Mr. Shamgochian supports the U.S. Trustee's Motion to dismiss this case.

RULING

Cause exists to dismiss this case, and the parties appear to be in agreement.

The Motion is xxxxx.

The court shall issue a minute order substantially in the following form holding that:

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

The Motion to Dismiss the Chapter 7 case filed by the United States 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 Dismiss is xxxxxx.

IT IS FURTHER ORDERED that notwithstanding dismissal of this bankruptcy case, the court (Bankruptcy Court as part of the District Court) retains jurisdiction over this case, including, without limitation, addressing issues concerning the conduct of the parties, the filing of statements and information under penalty of perjury that were not truthful, violations of Federal Rule of Bankruptcy Procedure 9011, and the unlicensed practice of law.

9. **14-91565-E-7 RICHARD SINCLAIR**
15-9008
CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-23-15 [1]

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15
Answer: 3/30/15; 4/8/16

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

The Status Conference is continued to 2:00 p.m. on February 15, 2017.

Notes:
Continued from 9/7/17, the court having under submission a motion for summary judgment

Returned Mail Notice: order sent to Richard Sinclair at P.O. Box 1628, Oakdale, CA, on 9/13/17 was returned as undeliverable

Status Report by Plaintiffs filed 11/20/17 [Dckt 103]

NOVEMBER 30, 2017 STATUS CONFERENCE

The court has granted the Motion for Summary Judgment filed by California Equity Management Group, Inc. ("CEMG"). That resolves all claims asserted in the Complaint by CEMG.

However, there is a second Plaintiff, Fox Hollow of Turlock Owners' Association ("FHTOA"). The prayer in the Complaint requests that this court determine that the damages awarded in the judgment entered in *Fox Hollow of Turlock Owner's Association et al. v. Mauctrust, LLC et al.*, E,D. Cal. 1:03-CV-5439, be nondischargeable. From the RICO Decision and RICO Judgment, it appears that the only monetary judgment for damages awarded Fox Hollow of Turlock Owners' Association is against Capstone, Lairtrust, and Mauctrst, not against Defendant-Sinclair.

Because there is an unaccounted-for Plaintiff in this Adversary Proceeding, the court has not entered judgment. It may be that Plaintiff Fox Hollow of Turlock Owners' Association elects to dismiss whatever claims it may be asserting in this Adversary Proceeding. It may be that Plaintiff Fox Hollow of Turlock Owner's Association believes it has a monetary award under the RICO Judgment that it seeks to have determined nondischargeable.

The court continues the Status Conference to allow Plaintiff Fox Hollow of Turlock Owners' Association to have its claims dismissed from the Adversary Proceeding or to prosecute any such claims.

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 Status Conference having been conducted by the court, Summary Judgment having been granted California Equity Management Group, Inc. for all of its claims against Defendant Richard Sinclair, Plaintiff Fox Hollow of Turlock Owners' Association's claims not having been adjudicated by the summary judgment motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on February 15, 2017.
>
> **IT IS FURTHER ORDERED** that on or before December 15, 2017, Plaintiff Fox Hollow Home Owners' Association to file the pleadings necessary to have its claims dismissed from this Adversary Proceeding or a Status Report confirming that it is prosecuting claims in this Adversary Proceeding and specifically identifying what claims in the Complaint it is prosecuting.
>
> In addition to filing the pleading(s) by the December 15, 2017 deadline, counsel for Fox Hollow Home Owners' Association shall deliver a chambers copy of such filed pleadings to Janet Larson, the courtroom deputy for Department E at the United States Courthouse in Sacramento, California.