

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

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

**December 17, 2020 at 2:00 p.m.**

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1. [19-90461](#)-E-7      **LORRAINE ESCOBAR**  
[19-9014](#)  
**REYES V. ESCOBAR**

**CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
9-30-19 [25](#)**

Plaintiff's Atty: *Pro Se*  
Defendant's Atty: *Pro Se*

Adv. Filed: 8/12/19  
Answer: 9/4/19  
Amd. Answer: 9/6/19

Amd. Cmplt Filed: 9/30/19  
Answer: none

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

Notes:  
Continued from 6/18/20 with the Stay in this Adversary Proceeding remaining in full force and effect. Plaintiffs to file an updated status report on or before 12/8/20.

Plaintiff's Status Report filed 12/7/20 [Dckt 64]

Debtor-Defendant's Objection to Plaintiff's Statement Dated December 2, 2020 and Request to Change Report Person to Debtor-Defendant Escobar filed 12/7/20 [Dckt 65]

<b>The Status Conference is continued to 2:00 p.m. on December 2, 2021.</b>
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## **DECEMBER 17, 2020 STATUS CONFERENCE**

The court has stayed this Adversary Proceeding to allow the parties to diligently prosecute their state court action in the Superior Court, Los Angeles County. Order, Dckt. 50.

On December 7, 2020, Plaintiff Emilio Reyes filed his Status Report to update the court regarding the state court proceedings. Dckt. 64. Plaintiff states that he has requested the entry of a default judgment in the state court action in October 2020, but does not tell the court that it has been entered.

On December 7, 2020, Defendant Lorraine Escobar filed her Objection to Plaintiff's Statement dated December 2, 2020 (which is the one stated above filed on December 7, 2020). Dckt. 65. Defendant takes exception to what Plaintiff stated and requests that Defendant be instructed to file the next status report.

Defendant-Debtor states there have been delays in the state court litigation due to events beyond her control. Defendant-Debtor states that there is a hearing pending on her motion to vacate the default in the state court action.

Plaintiff filed on December 14, 2020, a Motion to Continue the Status Conference. Dckt. 66. Plaintiff states that due to serious health issues, he has an appointment at 4:30 p.m. on the same afternoon as the December 17, 2020 Status Conference. He requests that the this matter be heard at the start of the calendar or be continued to another day.

In light of the December 17, 2020 Status Conference being nothing more than setting a follow up date for next year concerning the status of the Los Angeles litigation, the court took this matter up first on the calendar.

At the Status Conference the court addressed with the parties that at this juncture the only issues for this court are the status of the Los Angeles litigation. That does not include who did what to whom, or why the other person is acting badly.

**XXXXXXX**

## **DECEMBER 19, 2019 STATUS CONFERENCE**

On December 19, 2019, the court conducted the continued hearing on the request of the Defendant-Debtor to dismiss her bankruptcy case and Order to Show Cause why this Adversary Proceeding should not be dismissed.

In connection with the Order to Show Cause, Plaintiff stated on the record that he was dismissing his causes of action objecting to discharge pursuant to 11 U.S.C. § 727 and was instead proceeding only for his claims that the state court judgment, once obtained, will be determined nondischargeable pursuant to 11 U.S.C. § 523.

The court, pursuant to the Order to Show Cause has dismissed the § 727 claims and the Clerk of the Court will enter Debtor's discharge. The court will also stay this Adversary Proceeding to allow the Plaintiff and Defendant-Debtor to litigate the State Court Action (in which Defendant-Debtor is represented by counsel) to a final judgment (including all appeals).

Plaintiff confirmed at the hearing on this Motion and the Order to Show Cause that he concurs with these proceedings being stayed and the Plaintiff and Defendant-Debtor put all of their efforts into the State Court litigation. Then, when a final judgment is obtained, if it is in favor of the Plaintiff, he can bring back to this court for the application of the Doctrine of *Res Judicata*/Collateral Estoppel, and prosecute his § 523 nondischargeability claims. If Defendant-Debtor prevails and nothing is owed, she can have this Adversary Proceeding dismissed.

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

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

The Status Conference having been conducted by the court, no judgment having been entered in the Los Angeles County State Court Action, 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 December 2, 2021. This is without prejudice to either party seeking relief as is appropriate after the entry of a final judgment or other adjudication in the Los Angeles County State Court Action.

2. [20-20430-E-13](#)      **RAFAEL DE LA TORRE**  
[20-2147](#)  
**DE LA TORRE V. INDEPENDENCE**  
**BANK**

**EXPEDITED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**8-31-20 [1]**

Plaintiff's Atty: Chad M. Johnson  
Defendant's Atty: Kristofer R. McDonald; Adam Nach

Adv. Filed: 8/31/20  
Answer: none

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

Notes:  
Set by order of the court dated 12/16/20 [Dckt 19]

<b>The Expedited Status Conference is <span style="color: red;">XXXXXXX</span></b>
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Rafael Palos De La Torre, Plaintiff, and Independence Bank, Defendant, have settled this Adversary Proceeding. Order (Dckt. 18), Settlement Agreement (Exhibit A, Dckt. 12). On December 15, 2020, the Parties lodged with the court a proposed judgment. In reviewing the proposed judgment, the court noted what it perceived to be some clarifying edits that should be made.

The court has drafted a form of judgment pursuant to the Settlement. A copy of that court drafted judgment is attached hereto as Addendum A. To ensure that the court correctly understands the settlement and to minimize the work the court may create for the attorney, an expedited status conference is set forth below (after the court has confirmed the availability of counsel).

At the expedited Status Conference, XXXXXXX

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Debtor's Application for 14 Additional Days to File New Case Documents filed 11/12/20 [Dckt 14]; Order granting filed 11/15/20 [Dckt 18]

Trustee Report at 341 Meeting lodged 12/1/20. Debtor appeared. Meeting continued to 12/30/20 at 2:00 p.m.

**The Status Conference in this Adversary Proceeding is continued to 2:00 p.m. on xxxxxxx, 2021.**

This Chapter 12 Case was commenced on October 29, 2020. The Debtor in Possession filed her Amended Status Report on December 14, 2020. Dckt. 34. The Debtor in Possession reports that there is no cash collateral being held by the Debtor in Possession.

It is stated that prior to filing this case, the Debtor, "acting through a family entity L&L Investments, LLC" grew almonds on property in western Stanislaus County. Presumably, the Debtor in Possession is now continuing to grow almonds "acting through the family entity."

Bank of Stockton is identified as a creditor with three different loans made to L&L Investments, LLC, which total more than \$1,600,000.00. Debtor personally guaranteed the three loans. The production line of creditor, for which there is owed \$500,00, is secured by the LLC's accounts, crops, crop proceeds, and "etc." Further, for the almonds sold, the processor pays the Bank of Stockton directly the proceeds from the sale of the almonds.

By Debtor's calculation, she has few assets that were not fully encumbered or exempt.

A review of Debtor's Schedules shows two residential properties owned by Debtor, a law office checking account with a \$25,000 balance, accounts receivable of \$55,000, and Debtor's 50% interest in L&L Investments, LLC with a value of \$50,000 as the Debtor's assets of significant value.

On Schedule D, Debtor lists the Briarwood Point property as having a value of \$425,000 and being encumbered by a claim in the amount of (\$195,420). Dckt. 21 at 13. No exemption is claimed in this property. For the Legend Drive property, Debtor's residence, a value of \$477,000 is given, with there being debt of (\$297,439) encumbering this property. *Id.* at 14. On Schedule C Debtor claims an exemption of \$175,000.

On Schedule I Debtor lists income only from a law practice. *Id.* at 27. The current law practice income is substantially less than reported on the Schedules for 2019 and 2018 gross income. On Form B 6I Debtor states that she has the additional occupation of "almond grow" and is employed by L&L

Investments, LLC, and has been so employed for seven years. *Id.* at 29. On Schedule J Debtor shows having negative cash flow of (\$4,979) per month. *Id.* at 31.

On the Statement of Financial Affairs Debtor shows that her gross income from her business (the law practice) is unknown for 2020 (though this case was filed at the end of October 2020), and no farming income is shown for 2020. For both 2019 and 2018 Debtor lists having mid-six figure gross income from her law practice and mid six figure gross income from farming operations. *Id.*, 33-34.

4. [12-92723-E-7](#)      **JOHN/KRISTINE ROBINSON**      **CONTINUED STATUS CONFERENCE**  
[13-9004](#)      **GRANT BISHOP MOTORS, INC. V.**      **RE: COMPLAINT**  
**ROBINSON, IV ET AL**      **1-17-13 [1]**

Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: William M. Woolman

Adv. Filed: 1/17/13  
Answer: 2/15/13  
Nature of Action:  
Objection /Revocation of Discharge, Dischargeability

Notes:  
Continued from 12/19/19 for case management purposes to allow for the continued performance under the Settlement Agreement.

<b>The Status Conference is <span style="color: red;">XXXXX</span>.</b>
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#### **DECEMBER 17, 2020 STATUS CONFERENCE**

No updated status reports have been filed by the Parties. At the Status Conference XXXXXXX

The court notes that on the Docket the BNC has placed entries that there have been undeliverable mail to William Woolman, Esq., counsel for Defendant-Debtors and for Gregory Goodwin, attorney for Plaintiff. May 31, 2020 and June 8, 2020 Docket Entry Reports. At the Status Conference, XXXXXXX

#### **DECEMBER 19, 2019 STATUS CONFERENCE**

On October 30, 2019, the Parties filed a Status Report. Dckt. 136. The Parties report that the Defendant is performing the settlement in this Adversary Proceeding by making the payments required

thereunder. It is requested that the court continue the Status Conference for case management purposes to December 2020 to allow for the continued performance under the Settlement Agreement.

5. [18-90029-E-11](#)      **JEFFERY ARAMBEL**  
[20-9008](#)  
**ARAMBEL V. LBA RV-COMPANY**  
**XX.VII, LP**

**CONTINUED STATUS CONFERENCE**  
**RE: AMENDED COMPLAINT**  
**11-6-20 [45]**

Plaintiff's Atty: Michael St. James

Defendant's Atty:

Michael R. Pinkston [LBA RV-Company XXVII, LP]

Unknown [Commonwealth Land Title Company] - ***Dismissed 11/2/20 [Dckt 42]***

Adv. Filed: 7/16/20

Answer: 8/20/20 [LBA RV-Company XXVII, LP]

Counterclaim: 8/20/20 [LBA RV-Company XXVII, LP]

Answer: 9/14/20

Amd. Cmplt. Filed: 10/1/20

Answer: none

1<sup>st</sup> Amd. Cmplt. Filed: 11/6/20

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 9/10/20

Amended Complaint filed 10/1/20 [Dckt 34]

[MRP-1] Order denying motion to dismiss filed 11/2/20 [Dckt 41]; Plaintiff to file and serve a first amended complaint on or before 11/9/20

Order Dismissing Commonwealth Land Title Company filed 11/2/20 [Dckt 42]

First Amended Complaint for Relief Relating to Holdback Agreement filed 11/6/20 [Dckt 45]

[MRP-2] LBA RV-Company XXVII, LP's Partial Motion to Dismiss First Amended Complaint for Relief Relating to Holdback Agreement filed 11/20/20 [Dckt 47], set for hearing 1/14/21 at 10:30 a.m.

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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## **DECEMBER 17, 2020 STATUS CONFERENCE**

At the Status Conference, the court first addressed how the Plan Administrator and Plaintiff-Debtor seek to document/authorize Plaintiff-Debtor as the real party in interest to bind not only the Plaintiff-Debtor but the Plan Administrator/Plan Estate with respect to the adjudication of these rights. **XXXXXXX**

**XXXXXXX**

### **SUMMARY OF COMPLAINT**

The First Amended Complaint filed by Jeffery Arambel (“Plaintiff-Debtor”), the Debtor in the related Chapter 11 Case in which there is a confirmed plan and Focus Management Group USA, Inc. is the Plan Administrator. On November 23, 2020, the Plan Administrator terminated Plaintiff-Debtor as the “Reorganizing Debtor” working with the Plan Administrator to perform the Chapter 11 Plan. In Plaintiff-Debtor’s Status Report, Plaintiff-Debtor and the Plan Administrator indicate that they intend to have Plaintiff-Debtor continue in the prosecution of the rights and interests arising under the confirmed Chapter 11 Plan rather than the Plan Administrator substituting in. Dckt. 52.

#### **First Amended Complaint**

On November 6, 2020, prior to the termination as the Reorganizing Debtor under the confirmed Chapter 11 Plan, Plaintiff-Debtor filed the First Amended Complaint in this Adversary Proceeding. Dckt. 45. The grounds and claims asserted in the First Amended Complaint are summarized as follows:

- A. LBA RV-Company, XXVII, LP, (“Defendant-LBA”) is the successor to a prior entity with which the Plaintiff-Debtor had entered into a real estate purchase and sale agreement.
- B. Following the sale occurring, \$750,000 was held in escrow pursuant to a Holdback Agreement.
- C. The disbursement of the \$750,000 was conditioned on certain incentive programs by Stanislaus County being extended.
- D. Basic terms of the condition were:
  - 1. If prior to December 31, 2017, the Incentive Program was not extended in substantially its current form for an additional five years, the sales proceeds would be distributed to the buyer (Defendant-LBA’s predecessor in interest).
  - 2. If the Incentive Program was extended:
    - a. \$37,500 would be distributed to Cushman and Wakefield, as Plaintiff-Debtor’s broker; and
    - b. \$712,500 to MetLife.



E. Plaintiff-Debtor alleges that the Incentive Program was extended to satisfy the condition under the Holdback Agreement.

F. It is asserted that Defendant-LBA was resistant to the disbursement of the Holdback Monies. Though a series of emails Plaintiff-Debtor and Defendant-LBA a further agreement was reached, \$637,500 was to be released for Plaintiff-Debtor's disbursements, and Defendant-LBA would retain the balance. Additionally, a Right of First Refusal was to be extended six months.

G. A First Amendment to the Escrow Holdback Agreement, dated January 29, 2018, was executed that memorialized the "email agreement" above.

H. Defendant-LBA has filed to perform as provided in the First Amendment to the Escrow Holdback Agreement and has blocked the release of the Holdback Monies.

I. Claims for Relief

1. First Claim for Relief – It is alleged that Defendant-LBA has breached the terms of the First Amendment to the Escrow Holdback Agreement, and that Defendant LBA is clouding title to property of the confirmed Plan Estate.
2. Second Claim for Relief – It is alleged that the doctrine of Promissory Estoppel applies, Plaintiff-Debtor reasonably applied on the representations and promises of Defendant-LBA, and that Defendant-LBA can be compelled to perform those promises.
3. Third Claim for Relief – It is alleged that the doctrine of Unjust Enrichment applies, and that Defendant-LBA is being unjustly enriched by the extension of the ROFR while failing to perform its obligations.
4. Fourth Claim for Relief – It is alleged that Defendant-LBA has breached its covenant of good faith and fair dealings under its agreements with Plaintiff-Debtor.
5. Fifth Claim for Relief – The Fifth Claim is titled as one for a "Declaratory Judgment" and requests that the court declare the terms of agreements between the parties. Such does not appear to request declaratory relief, but all of the alleged breaches have occurred and that the matter is ripe for the enforcement of the parties rights for injunctive relief and damages.
6. Sixth Claim for Relief – The Sixth claim is titled as a "Declaratory Judgment" for attorney's fees. Again, this does not appear to be a request for declaratory relief, but a claim seeking contractual attorney's fees now, in this Adversary Proceeding.
7. Prayer - In the prayer for relief, for the Third and Fourth Causes of Action, Plaintiff-Debtor requests exemplary damages in addition to actual damages.

## **SUMMARY OF ANSWER**

On November 20, 2020, Defendant-LBA filed a Partial Motion to Dismiss First Amended Complaint. Dckt. 47. The hearing on the Motion is set for January 14, 2021. In the Motion, Defendant-LBA seeks to dismiss the First, Second, Third, and Fourth Claims for Relief in the First Amended Complaint. Basically, this seeks to dismiss the entire First Amended Complaint.

For the First and Fourth Claims, Defendant-LBA asserts that neither of the agreements upon which the claims are based on are enforceable. It is asserted that Plaintiff-Debtor executed the First Amendment to the Escrow Holdback Agreement after he filed his Chapter 11 case, in which Plaintiff-Debtor was then serving as the Debtor in Possession. It is asserted that such conduct by the Plaintiff-Debtor, who did not sign the First Amendment to the Escrow Holdback Agreement designating himself as the Debtor in Possession, violates the automatic stay and is void.

Additionally, the email communications which Plaintiff-Debtor asserts to be an agreement that was memorialized in the First Amendment to the Escrow Holdback Agreement occurred one day after Plaintiff-Debtor filed bankruptcy and fails to satisfy the statute of frauds for an agreement involving a transfer of an interest in real estate.

It is alleged that the Second Claim for promissory estoppel fails first because it applies only in the absence of consideration. It is asserted that Plaintiff-Debtor having performed his part of the alleged promised agreement constitutes consideration which dooms the claim. It is further asserted that Plaintiff-Debtor has failed to allege that his reliance was reasonable and that he was injured by such reliance.

For the Third Claim for unjust enrichment, Defendant-LBA asserts that since Plaintiff-Debtor alleges that an enforceable contract exists, which Defendant-LBA asserts is not enforceable, then the alternative claim for relief of unjust enrichment cannot be asserted.

It is further asserted that the First Amended Complaint fails to allege that Defendant-LBA has obtained any benefit which it was not entitled to retain. It is asserted that since Defendant-LBA had an original right of first refusal, then amending it to extend that right for six months was not obtaining a benefit. Further, it is asserted that Plaintiff-Debtor did not allege that Defendant-LBA obtaining an additional six months for a right of first refusal pleads facts that such extension was a benefit received by Defendant-LBA.

Plaintiff's Atty: Richard Kwun  
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18  
Answer: 7/26/18

Nature of Action:  
Dischargeability - student loan  
Dischargeability - other

Notes:  
Set by order of the court filed 8/17/20 [Dckt 147]

<b>The Trial Rescheduling Conference is <span style="color: red;">XXXXX</span>.</b>
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#### DECEMBER 3, 2020 EXHIBITS

On December 3, 2020 Debtor filed a letter Debtor refers to as "Letter Compromise to Resolve Student Loan Account" ("Letter") with a statement regarding the letter. Dckt. 154. The Letter dated November 16, 2020 was sent by attorney Kristen Sleezer from Nelson & Kennard, counsel for Texas Guaranteed Student Loans. *Id.*, at 3. Defendant, though counsel, offers to settle the account by "forgiv[ing] \$10,000 of the current balance owed, and accept payments of \$350 per month for 25 years," and "[i]n exchange, [Plaintiff-Debtor] will agree to waive any claims against [Defendant] arising out of the student loan transaction and adversary proceeding, and immediately dismissed the pending adversary proceeding with prejudice." *Id.*, ¶ 1.

In his statement, Debtor informs the court that he is declining the offer and considers it a "death sentence" according to CDC statistical life expectancy on the average expectation of African American males. *Id.*, at 2:15-16. Debtor continues to argue that the loan was fraudulently entered into by third party, Vanessa, who signed his name without his approval. *Id.*, at 2:7-9. Plaintiff-Debtor asserts that the fraud has resulted in undue hardship and that he has been made a "mockery" by Defendant, who is now offering what Debtor calculates as payments for 25 years totaling \$105,000 after the \$10,000 reduction. *Id.*, at 2:9-14.

Plaintiff-Debtor requests for this trial to proceed.

At the Trial Rescheduling Conference, XXXXXXXX

## **OCTOBER 1, 2020 RESCHEDULING CONFERENCE**

The Hearing on Vacating the Trial Date for this Adversary Proceeding was conducted on August 13, 2020. With the Federal Courthouse remaining closed to the public due to the COVID-19 Pandemic, conducting the trial in person at the Courthouse on September 2, 2020, was not practical. Though it would be possible to conduct the trial by Zoom, such would not be optimal, especially in light of there being a *pro se* party who does not regularly interact with the federal judicial process.

Fortunately, due to this court's light trial schedule (with most matters being determined on the law and motion calendar), once the Federal Courthouse is reopened, the court can immediately reset the trial, which in theory could be set as soon as a week (or whatever prompt reasonable time is required of the parties for their "trial eve" preparation and arranging for the appearance of witnesses) from the trial rescheduling conference. All of the parties have prepared and lodged with the court their direct testimony statements, exhibits, trial briefs, objections, and responses consistent with the trial Scheduling Order (Dckt. 129).

At the October 1, 2020 Rescheduling Conference, the parties agreed to continue it further for trial setting in light of the restricted courthouse access.

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Chapter 7 Trustee, Trustee's Counsel, and Office of the United States Trustee on November 19, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding 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.

<p><b>The Motion to Dismiss Adversary Proceeding is granted.</b></p>
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Plaintiff Cynthia Jones and Defendant-Debtor Dawn Christensen reached an agreement to settle this Adversary Proceeding, with Defendant-Debtor agreeing to Plaintiff being granted a judgment for a nondischargeable debt. No settlement agreement was filed in this Adversary Proceeding, but the Parties lodged with the court a proposed judgment to be entered. A copy of the settlement agreement was attached to the proposed judgment lodged with the court. A copy of the settlement agreement is attached to the court's order for a Status Conference on Stipulation and Proposed Judgment. Dckt. 92.

The issue the court had in entering judgment as stipulated was that the Complaint in this Adversary Proceeding asserted claims objecting to the Defendant-Debtor's discharge in her Chapter 7 bankruptcy case. In the settlement, Plaintiff agreed to dismiss those claims and accept a judgment determining that the agreed debt to her was nondischargeable.

As the court noted in the Status Conference order, for Plaintiff to dismiss her claims seeking to deny Defendant-Debtor her discharge, prior authorization from the court, after a noticed hearing, was required. Plaintiff and Defendant-Debtor have now addressed that issue with this Motion.

## REVIEW OF MOTION

Plaintiff Cynthia Jones and Defendant Dawn Christensen request the court an order authorizing Plaintiff to dismiss the first, second, third, and fourth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(4)(A), and 727(a)(5)(A) against Dawn Christensen (“Defendant-Debtor”).

On November 18, 2020, Plaintiff and Defendant-Debtor entered into the Amended Settlement Agreement with Mutual Releases. Exhibit 1, Dckt. 97. The settlement provides for a total payment of \$116,339.99 to Plaintiff Jones at amounts and dates as specified in the agreement. Additionally, Plaintiff has agreed to dismiss her Complaint on the condition that the money judgment is ordered nondischargeable.

## DISCUSSION

Federal Rule of Bankruptcy Procedure 7041 provides for the dismissal of an adversary proceeding, and states:

Federal Rule of Civil Procedure Rule 41 applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

Fed. R. Bankr. P. 7041.

Objections to discharge under 11 U.S.C. § 727 generally involve allegations of conduct by debtor that are contrary to public policy and offensive to creditor body as a whole and it is with respect to such complaints that trustee must be notified of dismissal under Bankruptcy Rule 7041 and that receipt of consideration is proscribed. *In re Corban*, 71 B.R. 327 (Bankr. M.D. La. 1987).

Here, Plaintiff has provided notice to both Chapter 7 Trustee, Irma Edmonds, and the Office of the U.S. Trustee on November 19, 2020. Dckt. 98. The Motion to Dismiss the Adversary Proceeding was filed and was set for hearing. A total of 28 days was provided for filing of written opposition and/or responses.

These dismissals are part of a comprehensive resolution and complete payment of the obligation due Plaintiff. While not an “easy” path, the Parties have stayed focused on their respective better financial interests.

The parties having settled the claims with stipulating to Defendant-Debtor paying \$116,339.99 to Plaintiff as a nondischargeable judgment, the Motion is granted, and Plaintiff is authorized to dismiss the first, second, third, and fourth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(4)(A), and 727(a)(5)(A).

## Entry of Judgment

The Parties have executed their Settlement upon which judgment is to be entered for the nondischargeability of the obligation of Defendant-Debtor to Plaintiff in the amount of \$116,399.99 pursuant to 11 U.S.C. § 523(a)(2)(A).

In the Settlement, it provides that judgment shall be entered as follows:

3. ENTRY OF JUDGMENT. In the event that DEFENDANT fails to timely make any payments as provided in paragraph 2 above, PLAINTIFF shall provide DEFENDANT with written notice of breach by e-mail to DEFENDANTS' attorney, Richard Kwun, Esq., 717 K St. Suite 213, Sacramento, CA 95814, email: rkca818@gmail.com of DEFENDANT'S breach and failure to pay, and DEFENDANT shall then have five (5) days from the date of said notice to cure the nonpayment. In the event that DEFENDANT fails to cure the non-payment as set forth in this paragraph, DEFENDANT'S claim is accelerated to the full balance owing on the date of the breach and is due in full. Plaintiff may commence enforcement of the Judgment without further order of the Court.

Settlement Agreement, ¶ 3, Dckt. 92 at 9. The court reads this provision to state that if the Defendant-Debtor defaults in the payments required under the Settlement Agreement and fails to timely cure, the payment terms of the judgment are accelerated and the entire balance due under the judgment may then be immediately enforced. Thus, while titled "Entry of Judgment," the actual provision relates to the enforcement of the judgment.

The court addressed with the Parties the entry of a judgment for \$116,399.99 that was nondischargeable, with the payment of the amounts due thereunder being subject to the agreed terms of the Settlement Agreement that would be attached to the Judgment and made a part thereof. The parties stated  
**XXXXXXX**

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 Causes of Action from the Complaint filed by Cynthia Jones ("Plaintiff") 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 the Adversary Proceeding is granted, and Plaintiff is authorized to dismiss the first, second, third, and fourth causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(4)(A), and 727(a)(5)(A).

**IT IS FURTHER ORDERED** that judgment shall be entered pursuant to the Stipulation between Plaintiff Cynthia Jones and Defendant-Debtor Dawn

Christensen, a copy of which is attached as Addendum A to this court's Order for Status Conference on Stipulation and Proposed Judgment.

8. [18-90764-E-7](#)            DAWN CHRISTENSEN  
[19-9002](#)  
JONES V. CHRISTENSEN

STATUS CONFERENCE RE:  
COMPLAINT OBJECTING TO  
DISCHARGE OF DEBTOR  
1-17-19 [[1](#)]

Plaintiff's Atty: *Pro Se*  
Defendant's Atty: Richard Kwun

Adv. Filed: 1/17/19  
Answer: 9/11/19

Notes:

Set by order of the court filed 11/17/20 [Dckt 92]. Cynthia Jones, the Plaintiff, Dawn Christensen, the Defendant-Debtor, and Richard Kwun, Esq., attorney for Defendant-Debtor, and each of them, to appear telephonically. Defendant-Debtor to file any settlement asserted to have been reached in this Adversary Proceeding.

[RK-3] Motion to Dismiss With Settlement filed 11/19/20 [Dckt 94], set for hearing 12/17/20 at 2:00 p.m.

[RK-2] Order continuing Motion *In Limine* to 12/17/20 at 2:00 p.m. [Dckt 102]

Order for Settlement Status Conference [Dckt. 92]

The court having granted the Motion to Dismiss the causes of action objecting to Defendant-Debtor's discharge and the Parties having settled this Adversary Proceeding, ~~the Status Conference is concluded and removed from the calendar.~~



Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff (*pro se*) on October 14, 2020. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion *In Limine* 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**~~The Motion *In Limine* is dismissed without prejudice~~**, the Parties having settled this matter and agreeing to the entry of judgment resolving all remaining issues in this Adversary Proceeding.

10. [20-90478-E-7](#)      **TRICIA DODSON**  
[20-9011](#)  
**ANDERSON LITFIN, INC. V.**  
**DODSON ET AL**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**9-11-20 [\[1\]](#)**

Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: *Pro Se*

Adv. Filed: 9/11/20  
Answer: 12/3/20

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

Notes:  
Continued from 11/19/20. Plaintiff reporting that Defendants have selected an attorney [Charles Hastings] and settlement discussions are ongoing. Continued to allow the Parties to document a settlement.

Answer filed *pro se* 12/3/20 [Dckt 13]

<b>The Status Conference is <span style="color: red;">XXXXXX</span>.</b>
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## **DECEMBER 17, 2020 STATUS CONFERENCE**

At the Status Conference, XXXXXXXXXX

### **SUMMARY OF COMPLAINT**

The Complaint filed by Anderson Litfin, Inc. ("Plaintiff"), asserts claims for nondischargeability of obligations owed by Tricia Dodson and William Dodson, the "Defendant-Debtor" and William Dodson, the non-debtor "Defendant-Spouse." In the First Claim for Relief, it is asserted that Defendant-Debtor was Plaintiff's bookkeeper and in that position engaged in fraudulent conducting cause damages of at least \$360,547.17 to Plaintiff. It is alleged that such damages are nondischargeable as provided in 11 U.S.C. § 523(a)(2)(A) and (B)(i)-(iv).

In the Second Claim for Relief it is asserted that the damages cause by Debtor's conduct are nondischargeable pursuant to 11 U.S.C. § 523(a)(4) and in the Third Claim for Relief that the damages are nondischargeable as provided in 11 U.S.C. § 523(a)(6).

In the Fourth Claim of Action Plaintiff seeks to recover attorney's fees and costs. No specific basis for a right to attorney's fees is stated. However, as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, a request for attorney's fees is made pursuant to a post-judgment motion.

In the Fifth Claim for Relief Plaintiff seeks to assert an equitable lien or constructive trust against certain real property in Stanislaus County.

Further, in the Sixth Claim for Relief, asserts that the obligations at issue are community claims and are nondischargeable as to the non-debtor Defendant-Spouse. 11 U.S.C. § 524(a)(3).

## **SUMMARY OF ANSWER**

Tricia Dodson ("Defendant-Debtor") and William Dodson ("Defendant-Spouse") have filed an EDC Form Answer (Dckt. 13), denying each and every allegation of the Complaint, other than the procedural facts regarding the filing of the bankruptcy petition by Defendant-Debtor.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 (by reference in citing to 28 U.S.C. § 157) and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (I), and (J). Complaint ¶ 4, Dckt. 1. In the Answer, Defendant-Debtor and Defendant-Spouse do not admit the allegations of jurisdiction and that this is a core proceeding.

The First Claim for Relief pursuant to 11 U.S.C. § 523(a)(2)(A) and (B), the Second Claim for Relief pursuant to 11 U.S.C. § 523(a)(4), the Third Claim for Relief pursuant to 11 U.S.C. § 523(a)(6), the Sixth Claim for Relief pursuant to 11 U.S.C. § 523(A)(3), and the related requests for attorneys' fees in the Fourth Claim for relief are core matter proceedings arising under the Bankruptcy Code for which the bankruptcy judge issues the final orders and judgment.

The Fifth Claim for Relief is for an equitable lien or construct trust against property of the Debtor. Currently, that property is property of the bankruptcy estate in Defendant-Debtor's Chapter 7 case, 20-90478. No exemption is claimed in this property by Defendant-Debtor on amended Schedule C. 20-90478; Dckt. 24. On Schedule D Defendant-Debtor lists the property having a value of \$312,400 and being encumber by an obligation in the amount of (\$240,583.82). *Id.*; Dckt. 1 at 19.

With respect to the property in which the equitable lien or constructive trust is asserted and whether the Chapter 7 Trustee is a necessary party, **XXXXXXX**

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. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 (by reference in citing to 28 U.S.C. § 157) and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (I), and (J). Complaint ¶ 4, Dckt. 1. In the Answer, Defendant-Debtor and Defendant-Spouse do not admit the allegations of jurisdiction and that this is a core proceeding.

The First Claim for Relief pursuant to 11 U.S.C. § 523(a)(2)(A) and (B), the Second Claim for Relief pursuant to 11 U.S.C. § 523(a)(4), the Third Claim for Relief pursuant to 11 U.S.C. § 523(a)(6), the Sixth Claim for Relief pursuant to 11 U.S.C. § 523(A)(3), and the related requests for attorneys' fees in the Fourth Claim for relief are core matter proceedings arising under the Bankruptcy Code for which the bankruptcy judge issues the final orders and judgment.

The Fifth Claim for Relief is for an equitable lien or construct trust against property of the Debtor. Currently, that property is property of the bankruptcy estate in Defendant-Debtor's Chapter 7 case, 20-90478. No exemption is claimed in this property by Defendant-Debtor on amended Schedule C. 20-90478; Dckt. 24. On Schedule D Defendant-Debtor lists the property having a value of \$312,400 and being encumber by an obligation in the amount of (\$240,583.82). *Id.*; Dckt. 1 at 19.

With respect to the property in which the equitable lien or constructive trust is asserted and whether the Chapter 7 Trustee is a necessary party, **XXXXXXX**

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.

- b. Initial Disclosures shall be made on or before **XXXXXXX, 2020**.
- c. Expert Witnesses shall be disclosed on or before **XXXXXXX, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXXX, 2021**.
- d. Discovery closes, including the hearing of all discovery motions, on **XXXXXXX, 2021**.
- e. Dispositive Motions shall be heard before **XXXXXXX, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on XXXXXX, 2021**.

Debtor's Atty: *Pro Se*

Notes:

Continued from 11/19/20 by request of the Parties to allow them to focus on their settlement agreement.

**The Status Conference is XXXXXXX**

### DECEMBER 17, 2020 STATUS CONFERENCE

On December 9, 2020, Ajay Sood, the petitioning creditor, filed a motion to set a trial date for the involuntary petition. Dckt. 18. In it, petitioning creditor notes that the court, while continuing the Status Conference for the Parties to continue their settlement discussions, also issued an order requiring a motion to set a trial date be filed by December 10, 2020.

The Order issued by the court to file a motion to set a trial date was generated by the left hand at the court, while the right hand was continuing the Status Conference for the Parties to continue in the good faith discussions.

At the Status Conference, XXXXXXX

~~————— For the Motion to Set Trial Date, the court will conduct a Status Conference on said Motion at that time, rather than setting a date, so the Parties may concentrate on resolving this matter rather than being distracted by the illusion of a looming trial date.~~

### NOVEMBER 19, 2020 STATUS CONFERENCE

On October 21, 2020, Ajay Sood filed this Involuntary Petition against Navdeep Bali. The Involuntary Petition has been filed by a single creditor.

#### **Answer of Involuntary Debtor Navdeep Bali**

On November 12, 2020, Navdeep Bali filed an Answer (Dckt. 9) to the Involuntary Petition. While admitting a number of the allegations, Navdeep Bali asserts that he has more than twelve (12) creditors and that Ajay Sood, as the single petitioning creditor, cannot commence an involuntary bankruptcy case. See 11 U.S.C. § 303(b)(1), (2), requiring there be three petitioning creditors when the debtor has twelve or more creditors holding noncontingent, undisputed claims that aggregate at least \$16,750.

Filed as Exhibit A (Dckt. 10) is a chart of the creditors that Navdeep Bali asserts exist for purposes of the 11 U.S.C. § 303(b) calculation. In reviewing the list, there are fourteen different persons listed as having claims against Navdeep Bali. One is the Stanislaus County Treasurer-Tax Collector, for

whom there are eleven small balance obligations identified as “Post-Sale Escape Property Taxes” for property taxes. <sup>FN.1.</sup>

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FN. 1. The term “Escape Tax Bill” is stated to be the following on the Stanislaus County Tax Collector’s webpage:

This notice informs you that value has escaped the assessment roll. You can expect a bill within ninety (90) days from the date of your Notice of Proposed Escape Assessment.

<http://www.stancounty.com/assessor/FAQ.shtm>  
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Navdeep Bali states that the payments on all of the obligations to the fourteen creditors are “current.”

### **Petitioning Creditor Status Report**

On November 14, 2020, Petitioning Creditor Ajay Sood filed his Status Report. Dckt. 12. With respect to the allegation that the Involuntary Debtor is generally not paying his debts as they come due, Petitioning Creditor references the court to at least three foreclosures on properties owned by the Involuntary Debtor in 2020. He also directs the court to a 2019 Superior Court Action that is alleged to have been for the failure to pay a debt.

Petitioning Creditor also cites to a pending foreclosure sale of the Debtor’s residence that has been stayed by the filing of the involuntary bankruptcy case.

As to the number of creditors, the Petitioning Creditor notes that one creditor was listed ten times, and that another appears to be a creditor with a secured claim (auto finance).

Petitioning Creditor states that he is ready to proceed with discovery now that the Involuntary Debtor has filed an answer.

### **Status Conference**

At the Status Conference, the Parties reported that they were actively working on a settlement to resolve this involuntary and requested that the Status Conference be continued.

**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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2020. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Certificate of Service uses a relatively current mailing matrix generated July 24, 2020. Seventeen parties in interest are stated to have been served. Dckt. 64. However, when the court checked the mailing matrix on December 5, 2020, seventy-six parties in interest are listed on the current mailing matrix. <sup>Fn.1.</sup>

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FN. 1. [https://ecf.caeb.uscourts.gov/cgi-bin/MailLabelsCase.pl?717110894575583-L\\_1\\_0-1](https://ecf.caeb.uscourts.gov/cgi-bin/MailLabelsCase.pl?717110894575583-L_1_0-1).

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

The hearing is continued to allow for Movant to complete service.

<p><b>The Motion to Confirm the Plan is granted.</b></p>
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The debtors, Francisco Segura and Denise E. Segura ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides for payment of \$501.00 for the first four months, followed by payments of \$1,800.00 for 56 months starting August 25, 2020, and a three (3) percent dividend to unsecured claims totaling \$237,996.00. Plan, Dckt. 63. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on November 24, 2020. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that Debtor has failed to clarify whether the Class 1 claim for the mortgage on Debtor's primary residence has been paid.

### **DISCUSSION**

#### **Class 1- Wells Fargo**

Debtors must clarify if they have been making mortgage payments since the case was filed on March 12, 2020. If Wells Fargo's claim has not been paid, then Trustee and creditor must be informed as to whether these payments are to be paid first or paid over time. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

A review of the Mailing Matrix (Dckt. 64) does not include Wells Fargo Bank as having been served with the Motion to Confirm or the proposed plan.

At the hearing, the Trustee and Debtor agreed to continue the hearing to allow for Debtor to complete service.

#### **Supplemental Documents, Notice and Certificate of Service**

On December 10, 2020 Debtor filed a Notice of Continued Hearing and a Certificate of Service providing a Supplemental Mailing List for those receiving the notice of the continued hearing for this matter. Dckt. 70, 72. The mailing list includes an additional 14 parties in interest missing from the original certificate of service, and specifically, Wells Fargo Bank, a Class 1 claim under the proposed plan.

Debtor also filed as a Support Document the pleadings served with the notice. Dckt. 71.

#### **Declaration of Neil Enmark**

On December 15, 2020, Neil Enmark, Trustee's counsel, filed his declaration first noting a certificate of service has been filed as requested at the prior hearing and that Trustee's records show that Debtor paid the mortgage payments. Dckt. 74.

The Plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a). The Motion is granted, and the Plan is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the debtors, Francisco Segura and Denise E. Segura ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



**IT IS ORDERED** that the Motion to Confirm the Plan is granted and the Amended Chapter 13 Plan filed on October 24, 2020, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [20-23783-E-13](#)      **BRAD HAMILTON AND CHERISE WILLIAMS**      **CONTINUED MOTION TO CONFIRM PLAN**  
[JGD-3](#)           **10-18-20 [48]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2020. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

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

<p><b>The Motion to Confirm the Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Brad Alan Hamilton and Cherise Cathleen Williams ("Debtor") seek confirmation of the Chapter 13 Plan. The Plan provides:

1.        payments of \$900.00 per month for 1 month,
2.        followed by payments of \$1,050.00 per month for 59 months,

3. sale of real property 6013 Semaphore Road, Portola, CA on or before June 2020, and
4. a five (5) percent dividend to unsecured claims totaling \$87,978.07.

Plan, Dckt. 50. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

### **CREDITOR'S OPPOSITION**

Reno Real Estate Solutions ("Creditor") holding a secured claim filed an Opposition on November 21, 2020. Dckt. 65. Creditor opposes confirmation of the Plan on the basis that:

- A. Creditor is not adequately protected.
- B. The Plan was filed in bad faith.

### **TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee, David P. Cusick ("Trustee"), filed an Opposition on November 24, 2020. Dckt. 72. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan depends on a sale that may overextend the life of the plan if the sale does not occur.
- B. Debtor is delinquent in plan payments.

### **DISCUSSION**

#### **Treatment**

Creditor argues that Debtor is in violation of 11 U.S.C. § 1325(a)(5)(B)(iii)(I) which requires equal monthly installments unless creditor agrees otherwise. Debtor's Plan proposes a regular monthly payment of \$850 and then a lump sum payment in June 2022. Moreover, Creditor asserts it is entitled to a \$2,100.00 monthly payment after amortizing Creditor's claim over a 60 month plan. The Plan provides only for a \$850.00 monthly payment.

#### **Bad Faith**

Creditor alleges that the plan was filed in bad faith on the basis that Debtor has not explained the changes in expenses, namely the rental/home ownership expense, utilities, food costs, child care and educational costs, entertainment, and medical expenses.

Creditor would not oppose the plan if Debtor explained the expense discrepancies and if the sale was made earlier, such as by April 2021.

## **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the proposed sixty months. According to the Chapter 13 Trustee, the Plan will complete in 102 months if the sale of real property the plan depends on does not occur. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

## **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$150.00 delinquent in plan payments, which represents a fraction of the \$1,050.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

## **Debtor's Reply**

On December 3, 2020, Debtor filed a Reply addressing both Trustee's and Creditor's concerns. Dckt. 74. Debtor states that the correct date for the sale of the real property is June 2022, and that after then there will be 38 months to pay \$18,013.14 in priority taxes and \$3,729.52 for a 5% dividend to general unsecured creditors, which should be feasible. *Id.*, at 1. Additionally, Debtor made the \$150 to Trustee along with the November payment and should now be current. *Id.*, at 2.

Debtor argues that there is nothing wrong with the Plan since it is a Plan "which provides for full mortgage payments and an arrearage payment pending the sale of the Residence." Reply, p. 2:7-9; Dckt. 74. In the Opposition, Creditor states in the Opposition that:

The loan [Creditor's Claim] was to be paid by monthly payments for 5 years, and then a balloon in October 2022.

Opposition, p. 1:20-21; Dckt. 65.

The Declaration of David Lysne, a managing member of Creditor, states that the pre-petition arrearage is \$14,311.69. Declaration, ¶ 4; Dckt. 66. Creditor has not yet filed a proof of claim in this case. If Debtor was to cure this arrearage over 60 months of a plan, that would require \$238.53 in monthly cure payments. However, with the balloon payment due in October 2022, that would be approximately twenty-three (23) months, which would require cure payments of \$622.25.

The Note upon which Creditor bases its claim (Exhibit A, Dckt. 39) states that the regular monthly payments are \$694.58.

While there is an "arrearage payment," it does not provide for a cure of the arrearage during the plan term.

Lastly, Debtor argues that the June 2022 is unlikely to negatively affect the value of the property and Creditor remains protected because Creditor will receive a \$850.00 payment which addresses both the principal and the purported arrearage. *Id.* Regarding Creditor's concerns with Debtor's expenses, Debtor asserts that their expenses have increased due to their supporting two households (Debtor testifying that they are currently separated), a medical issue and the problem of two teenager doing distance learning. *Id.* *See*

*also* Declaration, Dckt. 75. Debtor continues to make the insurance payment, which was never cancelled, by making this payment an automatic deduction from their bank account. *Id.*

Debtor testifies that the June 2022 sale date is so that his son can maintain the same residence through high school. Declaration, Dckt. 75, ¶ 5. In addition, Debtor testifies that it is difficult to locate an affordable rental place and that he would like to improve the property before selling so that he can recover the full amount of his investment. *Id.*

### **December 8, 2020 Hearing**

Debtor presents a Plan to pay the secured claim in approximately the first two years of the Plan. While making some arrearage payment, the arrearage would be cured only through the sale of the property more than two years after the case was filed.

Creditor appears to recognize that Debtor can be afforded a reasonable time to market and sell real property. While there are a number of family events by which Debtor would prefer to delay marketing and setting the Property, they are not a basis for further stretching the Bankruptcy Code.

At the hearing, Debtor's counsel stated that the Plan payments are current, and the changes in the expenses have been obtained.

The proposed adequate protection are \$850 a month, with Creditor suggesting a sale deadline date of June 2021. The parties agreed to a continuance to allow Debtor's counsel to meet with his client and confer with Creditor's counsel to try and reach an agreed sale deadline.

### **Declaration of Neil Enmark**

On December 15, 2020, Neil Enmark, counsel to Trustee, filed a Declaration testifying that Trustee received and posted a \$150 TFS payments from Debtor on December 11, 2020. Dckt. 78.

### **December 17, 2020 Hearing**

At the hearing, xxxxxxx

Debtors' Atty: Mark J. Hannon

Notes:

Set by order of the court dated 12/15/20 [Dckt 1139]

**The Emergency Status Conference is XXXXXXX**

On December 3, 2020, the court conducted a post-confirmation status conference in this case. In the Plan Administrator's Amended Status Conference Report, he stated that the Plan Administrator and the Debtor had agreed to the release of \$25,000.00 being held by the Clerk of the Court. Civil Minutes, Dckt. 1136. The court addressed with counsel for the Debtor and counsel for the Plan Administrator that a combined Stipulation and Order for the release of the monies had been lodged with the court. The court addressed that such a combined document was not issued by the court and that if parties desired an order from the court, the Supreme Court requires in Federal Rule of Bankruptcy Procedure 9013 that a request for an order must be made by a motion or, if provided for by the Federal Rules of Bankruptcy Procedure, application. *Id.*

To accommodate the parties, after counsel for the Plan Administrator stated that she clearly understood the need for a motion (which she demonstrates on a regular basis in the pleadings she filed), the court "construed" the Stipulation and Order filed by Debtor's counsel as a joint *ex parte* motion and stipulation, and would have it filed as such, and would then issue an order thereon. *Id.*

At that point, counsel for the Debtor requested that the court issue an order authorizing sale of property by the Debtor. No motion had been filed and no basis was given for the court to allow an oral, *ex parte* motion to be presented at the Status Conference. The court reenforced the need for a motion when seeking an order from the court, which both counsel for the Debtor and Counsel for the Plan Administrator appeared to acknowledge.

On December 10, 2020, counsel for the Debtor lodged with the court a proposed order authorizing the Debtor to sell real property, pay proceeds of the sale to a creditor, and for the Debtor and Plan Administrator to execute documents. When the court reviewed the file for this case, no motion seeking such relief could be identified. However, the court found a pleading titled:

**STIPULATION AND REGARDING PROPOSED EX PARTE ORDER  
BETWEEN THE ATTORNEY FOR THE DEBTORS AND THE PLAN ADMINISTRATOR  
GARY FARRAR**

Dckt. 1135. This Stipulation is signed by Mark J. Hannon, attorney for the Debtors, and Gary Farrar, the Plan Administrator. The terms of the Stipulation consist of

1) A joint proposed ex parte order will be submitted by Mark J Hannon, attorney for the debtors, and Gary Farrar, plan administrator, authorizing the debtor to sell estate property in Inyo California, which is a small mobile home located on about one acre, in escrow, no broker, and the title company, which is First American Title, will remit the net sale proceeds, approximately \$80,000.00, to Commercial Surety & President of Bail USA, successor to Fairmont Spec, successor to USFI.

The debtor's confirmed plan of reorganization provides on pages five to seven (Dkt. No. 781), that the debtors are to pay USFI or its successors directly.

*Id.*, p. 1:16.5-24.5. It appears that the Stipulation says little more than that the Debtors and the Plan Administrator agree to submit an order to the court.

The court rejected the proposed order, noting that the Plan Administrator is represented by counsel, and that there was nothing to indicate that such represented party's counsel was involved in these dealing with Debtors' counsel. Second, the court noted that there was no motion seeking relief, which such motion being required by Federal Rule of Bankruptcy Procedure 9013.

On December 14, 2020, Mark J. Hannon lodged with the court a new proposed order granting relief pursuant to the Stipulation to sell property. A review of the Docket for this case shows that no motion has been filed seeking such relief. The difference from the prior order is that the "/s/ signature" for Loris Bakken, the Plan Administrator's counsel, has been added to the proposed order form.

Though both counsel for the Debtors and counsel for the Plan Administrator are both well aware of the need for a simple motion stating grounds upon which requested relief is based is required by the Federal Rules of Bankruptcy Procedure as enacted by the Supreme Court, they chose to lodge with the court a second time a proposed order for which no motion was filed. Rather, they elected to file their Stipulation with an instruction for the court to issue an order as they directed to be entered.

In the Stipulation, Debtor's Counsel and the Plan Administrator stated that the confirmed plan provides on pages five to seven "that the debtors are to pay USFI or its successors directly." Stipulation, p. 1:22.5-23.5; Dckt. 1135. In looking at the Plan, the treatment for the USFI claim is provided on pages 6 and 7 of the Plan. Dckt. 781, Plan attached to Order Confirming Plan.

In the confirmed Chapter 11 plan, the term "plan administrator" is defined to be the Debtors. Plan, p. 2:3-4, 10-11; *Id.* In Part IV of the Plan titled Execution of the Plan, it states:

The Debtor will be the Plan Administrators to carry out the terms of the Plan.

For the USFI claim, it states that the Debtors (who are stated above to be the Plan Administrators) will pay a \$400,000.00 nondischargeable claim to USFI, amortized over 30 years, with a balloon due in four

years. Plan, p. 6:3-5; *Id.* After the sale of the USFI collateral (Debtors' residence) and payment of the proceeds to USFI, for any remaining balance due, Debtors are to pay that with monthly payments of \$3,000.00 over a period not to exceed four years, with a balloon on any remaining amount due at that time. *Id.*, pp. 6:26-28, 7:1-4. When the term Debtors is used in this second part of this sentence, it is not clear if it is the Debtors *qua* debtors, or as the Plan Administrators.

The Debtors were removed as plan administrators for cause. Civil Minutes, Dckt. 933.

Here, counsel for the Debtors and Counsel for the Plan Administrator have lodged an order for the court to sign as instructed by counsel for the Debtors and the Plan Administrator in the Stipulation. The court has no idea whether the issuance of such order is proper. The court has no idea what property is being ordered to be sold. The court has no idea what the terms of the sale are to be. It may be that the Plan Administrator and his counsel have determined that the property to be sold is not property of the plan estate, and thereby can be sold by the Debtors and not the Plan Administrator. It may be that the Plan Administrator has agreed that the Debtors may pay the claim of USFI directly from escrow rather than through the fiduciary Plan Administrator. It may be that the Plan Administrator, the Debtors, and their respective counsel have other good grounds for requesting relief. However, none of those are disclosed to the court and there is no motion seeking an order.

Because it appears that the sale is pending, the court sets this emergency status conference for 2:00 p.m. on December 17, 2020, in this Court, Modesto Division Status Conference Calendar. If counsel for the Trustee and counsel for the Debtors file an *ex parte* joint motion for relief relating to this matter at any time before noon on December 17, 2020, the court will consider it and the relief requested therein.

In considering an appropriate order to be entered, some issues identified by the court are:

- (1) Is this property of the Plan estate and the court is authorizing the Debtors to exercise powers of the Plan Administrator;
- (2) Does the order need to incorporate the terms of the sale;
- (3) Do the costs and expenses to be paid from the gross sales proceeds need to be specified in the Order;
- (4) Must the order expressly state that the \$80,000.00 will be disbursed directly from escrow to pay Commercial Surety & President of Bail USA,<sup>FN.1.</sup> as the successor to Fairmont Spec., which is the successor to United States Fire Insurance Company;

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FN. 1. In doing a quick internet search the court could not identify an entity with the name "Commercial Security & President of Bail USA." The court found a website for "Bail USA, Inc." <https://www.bailusa.net/>. It states that it "operates under Crum & Forster." A search of the California Secretary of State website discloses that an entity named "Bail USA California, Inc." was dissolved in 2019. <https://businesssearch.sos.ca.gov/CBS/Detail>. There is no assignment of the USFI claim in the court's file for this case.

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(5) Should the order document how Commercial Surety & President of Bail, USA is the ultimate successor of USFI; and

(6) While saying the \$80,000.00 should be paid to the forgoing, the proposed order then states that it is to make the Debtors current on their payments due to USFI.

At the Emergency Status Conference, **XXXXXXX**



## FINAL RULINGS

15. [19-90003-E-7](#)      NATHAN DAMIGO  
[19-9006](#)  
SINES ET AL V. DAMIGO

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-30-19 [1]

**Final Ruling:** No appearance at the December 17, 2020 Status Conference is required.  
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Plaintiff's Atty: Robert L. Eisenbach  
Defendant's Atty: *Pro Se*

Adv. Filed: 1/30/19  
Answer: none

Nature of Action:  
Dischargeability - willful and malicious injury

Notes:  
Continued from 6/18/20. This Adversary Proceeding being stayed to allow the Western District of Virginia District Court Action to be concluded prior to the prosecution of this Adversary Proceeding.

Request by Defendant to continue status conference filed 11/30/20 [Dckt 21]; Order requesting responsive pleading of Plaintiffs on or before 12/8/20 [Dckt 22]

Status Report [Plaintiffs] filed 12/7/20 [Dckt 24]

<b>The Status Conference is continued to 2:00 p.m. on August 19, 2021.</b>
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On November 30, 2020, Defendant Nathan Damigo filed a request to continue the Status Conference scheduled for December 17, 2020, to August 2021. The Defendant stated that the trial date for the Charlottesville Action has been continued to April 26, 2021. Status Conference Reports are due to be filed by the parties on or before December 8, 2020.

On December 7, 2020, Plaintiffs Elizabeth Sines, et al., filed their Status Report. Dckt. 24. They concurred with the request to continue the Status Conference to allow them to continue in their efforts to prosecute the Charlottesville Action.

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

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

The Status Conference having been scheduled for December 17, 2020, the parties advising the court in their respective Status Reports that the trial in the Charlottesville Action has been continued to April 2021 due to the COVID-19 pandemic, each requesting the court to continue the December 2020 Status Conference, and upon review of the pleadings, and good cause appearing,

**IT IS ORDERED** that the Status Conference in this Adversary Proceeding is continued to 2:00 p.m. on August 19, 2021. On or before August 4, 2021, the Parties shall file their updated status reports for this Adversary Proceeding.

16. <a href="#">16-90513-E-7</a> <a href="#">16-9012</a> EDMONDS V. HAYES ET AL	TIRZAH HAMILTON	CONTINUED STATUS CONFERENCE RE: COMPLAINT 8-24-16 <a href="#">[1]</a>
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**Final Ruling:** No appearance at the December 17, 2020 Status Conference is required.

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Plaintiff's Atty: Steven S. Altman  
Defendants' Atty: *Pro Se*

Adv. Filed: 8/24/16  
Answer: 9/22/16

Nature of Action: Recovery of Money/Property

Notes:  
Continued from 12/19/19 for case management purposes to allow for the continued performance under the Settlement Agreement.

Release of Notice of Pendency of Action [Lis Pendens] filed 7/20/20 [Dckt 102]

**The Status Conference is continued to 2:00 p.m. on January 14, 2021, to afford Plaintiff-Trustee the opportunity to dismiss this Adversary Proceeding pursuant to the terms of the Stipulation.**

#### DECEMBER 17, 2020 STATUS CONFERENCE

The Plaintiff-Trustee filed a Release of Notice of Pendency of Action on July 20, 2020. In her Status Report filed on December 14, 2020, the Plaintiff-Trustee reports that the settlement has been

performed and the file may be closed for this Adversary Proceeding. The Plaintiff-Trustee reports that all matters have been concluded and the file may be closed for this Adversary Proceeding. Dckt. 103.

In the Settlement approved by the court, upon payment of the \$25,000.00 settlement amount to the Plaintiff-Trustee:

Trustee Edmonds will dismiss her adversary proceeding referenced as *Edmonds v. Hayes, et al*, Adv. No. 16-09012 with prejudice.

Stipulation, ¶ G(g); Dckt. 74. Until the Plaintiff-Trustee dismisses this Adversary Proceeding, the court cannot close the file.

17. [20-23904-E-13](#)      **LUIGI CHRISTENSEN**  
[DPC-1](#)

**CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
DAVID P. CUSICK  
9-23-20 [16]**

**Final Ruling:** No appearance at the December 17, 2020 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on September 23, 2020. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 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 offers opposition to the Objection, 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 Objection.

**The Objection to Confirmation of Plan is overruled, and the Chapter 13 Plan, as amended, is confirmed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

A.      The Plan fails the liquidation analysis.

- B. Debtor failed to list payment to Debtor's Attorney.
- C. Debtor completed an unauthorized sale of estate property.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Debtor Fails Liquidation Analysis**

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that Debtor's non-exempt equity totals \$118,481.71 which is primarily for \$1,702, household goods, \$420.00 monies in bank accounts, and \$116,359.71 in retirement. The Plan proposes to pay a 0% dividend to unsecured claims. Thus, Debtor fails the Chapter 7 Liquidation Analysis.

### **Debtor Failed to List Payment of Debtor's Attorney**

Trustee reports that Debtor failed to disclose a prior payment made to Debtor's Attorney. 11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor did not list that his attorney was paid \$2,500.00 prior to the filing of the Voluntary Petition. Therefore, Trustee must oppose a "No Look" fee unless (1) the Debtor amends the Statement of Financial Affairs to list the attorney and the \$2,500.00 amount paid, or (2) the Attorney disclosure statement is corrected if the \$2,500.00 fee was not paid.

### **Debtor Completed an Unauthorized Sale of Estate Property**

Trustee also opposes confirmation of the plan on the basis that a possible unauthorized transfer of estate property took place that is subject to avoidance under 11 U.S.C. § 549(a). Debtor admitted at the Meeting of Creditors that he sold a 1970 Chevrolet for \$20,000.00 on September 15, 2020. The petition was filed on August 11, 2020. Therefore, Trustee asserts that Debtor is not seeking confirmation of the plan in good faith nor is Debtor complying with the plan. 11 U.S.C. §§ 1325(a)(3) and 1325(a)(6). <sup>FN.1.</sup>

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FN. 1. This is Debtor's third recent bankruptcy case with the following two prior cases: Chapter 13 case 19-25521 filed on September 1, 2019, and dismissed on January 17, 2020; and Chapter 13 case 20-20825, filed on February 13, 2020, and dismissed on July 1, 2020.

If there is an avoidable post-petition transfer, the fiduciary obligations of the Debtor to avoid that transfer and preserve such avoided transfer for the benefit of the bankruptcy estate (and not the Debtor) raise significant fiduciary duty issues for Debtor and action to be taken. 11 U.S.C. §§ 549, 551  
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At the hearing, Debtor reported that an amended Schedule C to exempt the retirement account. The Trustee agreed to continue this hearing to afford the Debtor time to prosecute this plan.

## Debtor's Opposition

On November 11, 2020 Debtor filed a Opposition to Trustee's Objection on the basis that Debtor has filed an Amended Schedule C providing for exemption of Debtor's retirement account and thus resolving the liquidation issue. Dckt. 37. Moreover, Debtor argues that the \$2,500 "no look" fee was not required to be listed because the funds were received outside the one-year period referenced on question #16 on the Statement of Financial Affairs. *Id.*, ¶ 2.

Lastly, Debtor asserts there was no bad faith regarding the sale of estate property and has filed a Motion to Approve Sale *Nunc Pro Tunc* of the 1970 Chevrolet Malibu. <sup>FN.2.</sup>

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FN. 2. As recently explained by the Supreme Court, consistent with prior rulings of the Ninth Circuit Court of Appeals, the relief requested concerning the vehicle is for retroactive authorization, not *nunc pro tunc* (which is a legal principal that allows the court to correct the error in an order that was issued or not documented in writing so that it is consistent with what was actually ordered by the court in the past. *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).  
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## December 8, 2020 Hearing

Amended Schedule C claims an exemption of \$47,629.69 in the Vanguard 401k and \$68,730.02 in the Upoint asset, each pursuant to California Code of Civil Procedure § 703.140(b)(10)(E). <sup>FN.2.</sup>

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FN. 2. California Code of Civil Procedure § 703.140(b)(10)(E) provides:

(b) The following exemptions may be elected as provided in subdivision (a):

...

(10) The debtor's right to receive any of the following:

...

(E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:

(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

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The Motion for Retroactive Authorization to Sell the vehicle was filed on November 11, 2020. Dckt. 34. The Trustee's response notes that the vehicle was sold for \$20,000.00, with the Debtor claiming

an exemption of \$12,912.90, which leaves \$7,087.10 of non-exempt proceeds that should be paid into Debtor's plan for creditors. The Trustee does not oppose approval of the sale so long as it is conditioned on the Debtor being required to fund the plan with the non-exempt portion of the sale proceeds.

At the hearing, the Debtor agreed to payment of the non-exempt portion to the Trustee, the repayments terms of which are stated in the Order granting the Motion to Sell.

The Parties agreed to continue the hearing to resolve the final issues for confirmation.

### **December 17, 2020 Hearing**

On December 15, 2020, a Stipulation between the Debtor and the Chapter 13 Trustee concerning this Plan and the related Motion to Sell Property was filed. Dckt. 46. The Debtor and Trustee agree that the Plan is amended to provide that the Debtor shall pay into the plan the \$7,087.10 of non-exempt proceeds from the sale of the vehicle will be paid into the Plan as follows:

- A. \$2,000.00 within ten days fo the order "approving the Stipulation" (which the court interprets to mean the court granting the Motion to Confirm, with the Plan as amended to incorporate these payment terms); and
- B. \$424.00 a month, beginning in January 2021 and continuing monthly thereafter for a total of 12 monthly payments of \$424.00 each.

The proposed Amended Chapter 13 Plan complies with 11 U.S.C. § 1322 and § 1325. The Objection is overruled, and the Plan is confirmed.

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

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

The Objection to Confirmation filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, the Plan having been amended by the Debtor, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor's Chapter 13 Plan filed on August 11, 2020, as amended to provide for the additional payments by the Debtor into the Plan of: \$2,000.00 on or before ten days after the date this order is signed, and then twelve monthly payments of \$424.00 each, commencing with the first payment in January 2021 and continuing monthly thereafter, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, which states the above amendment, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the December 17, 2020 hearing is required.

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

Sufficient Notice Provided. No proof of service was filed with this Motion.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Service of process was made on November 12, 2020. Dckt. 40. Twenty-seven days notice was provided, with twenty-eight days required. The court shorten time to the twenty-seven days given.

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 is granted, with the court ordering Debtor to pay the amount equal to the non-exempt portion of the proceeds into the Chapter 13 Plan.**

The Bankruptcy Code permits Luigi Leandro Christensen, the Chapter 13 Debtor ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant seeks retroactive approval of the sale of the personal property commonly known as 1970 Chevrolet Malibu ("Property") pursuant to 11 U.S.C. § 105(a). Movant provides the Declaration of Luigi Leandro Christensen to provide evidence regarding the sale.

On September 15, 2020, Debtor sold the Property to an unidentified co-worker for \$20,000. Declaration, Dckt. 36, ¶ 2. Debtor disclosed the sale of the Property at the September 17, 2020 Meeting of Creditors. *Id.*, ¶ 7. Debtor testifies that he was unaware that he was required to obtain court approval of the sale. *Id.*, ¶ 9.

According to Debtor's Schedule C, the car is exempted in the amount of \$12,912.90 pursuant to C.C.P. § 703.140(b)(2) and C.C.P. § 704.140(b), respectively. Dckt. 1.

## DISCUSSION

### Nunc Pro Tunc

As a preliminary matter, Luigi Leandro Christensen, the Chapter 13 Debtor (“Debtor”), is seeking a “retroactive authorization” rather than *nunc pro tunc* authorization. The Ninth Circuit has long held that *nunc pro tunc* approval is not the proper legal basis for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations “retroactive approvals,” it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and “retroactive approval” when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court). This long standing Ninth Circuit law was restated by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 2020 U.S. LEXIS 1356 (2020).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate to carry out the Bankruptcy Code and when the approval benefits the debtor’s estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in “exceptional circumstances.” *Atkins*, 69 F.3d at 974.

Debtor correctly states the law by seeking such relief pursuant to section 105(a) of the Bankruptcy Code which allows the court to “issue any order, process, or judgement that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a).

Here, Debtor argues that the failure to seek approval of the sale was based on negligence and not a bad faith attempt to manipulate the code or prejudice the creditors. Motion, at 3:15-17. Debtor argues that there is no evidence of bad faith and that indeed Debtor disclosed the sale two days after the sale at the meeting of creditors. *Id.*, 13-15.

Additionally, Debtor argues that the property having been sold at an amount greater than the valuation provided in the Schedules is to the benefit of the creditors since Debtor plans to increase plan payments to pay the non-exempt proceeds from the sale into the plan. *Id.*, 20-22.

Trustee filed a Response noting that the motion does not request the court grant the motion on the condition that Debtor pay the proceeds into the plan nor does it mention whether Debtor still has the funds. Dckt. 38. Trustee does not oppose the motion provided Debtor has to the pay the non-exempt funds to the Trustee immediately. *Id.*, at 2:4-5.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate, with the non-exempt proceeds paid into the Chapter 13 Plan.

However, there is \$7,087.10 in non-exempt proceeds from the sale that the Trustee asserts must be paid into the Plan. The Parties requested a short continuance for the Debtor to propose the specific terms for payment of those amounts.



## DECEMBER 17, 2020 HEARING

On December 15, 2020, a Stipulation between the Debtor and the Chapter 13 Trustee concerning this Plan and the related Motion to Sell Property was filed. Dckt. 46. The Debtor and Trustee agree that the Plan is amended to provide that the Debtor shall pay into the plan the \$7,087.10 of non-exempt proceeds from the sale of the vehicle will be paid into the Plan as follows:

- A. \$2,000.00 within ten days of the order “approving the Stipulation” (which the court interprets to mean the court granting the Motion to Confirm, with the Plan as amended to incorporate these payment terms); and
- B. \$424.00 a month, beginning in January 2021 and continuing monthly thereafter for a total of 12 monthly payments of \$424.00 each.

This Stipulation and amendment to the proposed chapter 13 Plan to pay these amounts resolves the issue concerning the non-exempt proceeds.

The Motion is granted and the sale is retroactively approved.

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

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

The Motion for Retroactive Approval of Sale filed by Luigi Christensen, the 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 is granted, and the Debtor is authorized, retroactive to the date of the sale, to sell the 1970 Chevrolet Malibu for \$20,000.00. Debtor is authorized, whether retroactively or in the future, to execute all documents necessary to transfer title to the Vehicle.

**IT IS FURTHER ORDERED** that pursuant to the Stipulation of the Debtor, he shall pay to the bankruptcy estate \$7,087.10 which is the non-exempt portion of the \$20,000.00 sales proceeds. The Debtor has amended his proposed Chapter 13 Plan and has stipulated with the Chapter 13 Trustee to pay this amount into his Chapter 13 plan as follows: (1) a \$2,000.00 payment within ten days of the court issuing the order overruling the Trustee’s objection to the Chapter 13 Plan proposed by the Debtor (DCN: DPC-1) and then monthly payments of \$424.00 each, commencing with the month of January 2021 and continuing monthly thereafter for a total of twelve (12) consecutive months. The ordering of the payment of the non-exempt portion through the Chapter 13 Plan is without prejudice to the rights of the bankruptcy estate to recover such non-exempt amounts in the event this case is converted to one under Chapter 7.