Barry Van Sickle Bar #98645
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Attorney for Respondent in pro per

STATE BAR COURT
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of;	Case No. 13-0-17670
BARRY L. VAN SICKLE, NO. 98645, A Member of the State Bar,	**ANSWER TO NOTICE OF DISCIPLINARY CHARGES**

Barry L. Van Sickle (hereinafter "Respondent") Answers and responds to the Notice of Disciplinary Charges, and the allegations made therein, as follows:

1. In response to paragraph #1 of the Notice, Respondent admits to the jurisdiction of this court, admits that he was admitted to practice law in the State of California on July 10, 1981, and admits to being a member at times pertinent to these charges and being a current member of the State Bar of California.
2. The allegations and conclusions of "Count One" plead in paragraph #2 of the Notice are denied. The true circumstances of the Chapter 11 bankruptcy proceeding in question, the state of the proceeding when Respondent could no longer continue, the lack of foreseeable prejudice to the client at the time and the fact of notice to the client, the trustee and the Court that this Respondent would not be able to continue with the Chapter 11 proceeding are more fully accurately stated as follows:

3. When Respondent was first consulted and retained by this client in or about July, 2012, her facts and options were discussed in detail. Respondent followed the early meetings with an email on July 9, 2012, which addresses the client's problems and options in two pages of analysis and discussion. (This and some of the related emails are attached hereto as Exhibit A.)
4. When Respondent became involved with the client's financial problems, she owned two residential properties and had not made house payments in approximately two years. The house payments due exceeded her income, the arrears were in the $170,000 range, and she owed approximately $700,000 more than the properties were then thought to be worth.
5. The client's main residence in Novato, California was secured by First and Second Trust Deeds with total debt in excess of $1.3 million. The property was then believed to be worth approximately $900,000. The First Trust Deed was substantially secured, which made loan modification of her largest loan improbable. The client had not heard from the second deed holder for a relatively long time and did not think the second trust deed holder expected to be substantially paid, which is a common misconception Respondent has encountered with some frequency.
6. The second residence in Rio Vista was worth approximately $325,000 with only a First Trust Deed recorded against it. At the time of eventually filing the Chapter 11, the lien claim against the Rio Vista property was for $534,525. The client was greatly "upside down" in both properties
7. Loan modification efforts were ongoing, however, loan modification was not a realistic or viable option except for the Second Trust Deed on the Novato residence, which was not presenting an immediate threat of

forclosure. Further, the client could not afford even modified loans unless principle and/or arrears were substantially forgiven, which simply was not occurring in the foreclosure "crisis" of the time.

8. The client had basically three options: 1. Lose both houses, 2.Chose one house to attempt saving, and 3. Attempt to save both houses. This was discussed with the client in a meeting that lasted for more than an hour on or about July8, 2012. Respondent followed up on that meeting with detailed emails to client starting on or about July 9, 2012, which attempted to explain her problems, options and her bankruptcy options. (Some of the explanatory emails are attached hereto as Exhibit A)
9. The client's primary goal was to save the Novato residence, although she adamantly wanted to do whatever could be done to retain both properties. As discussed below, the only viable way to keep both houses, at the time, was a bankruptcy plan. Again, this was addressed with the client in meetings and emails some of which are in Exhibit A.
10. Initially, Respondent thought this was a Chapter 13 consultation. Unfortunately, the initial investigation revealed that the client's debt was much above the Chapter 13 debt limit of approximately $1.1 million. To reduce her debt below the Chapter 13 limit the client would have had to abandon or "short-sell" the more expensive Novato property. The client was not willing to abandon the Novato property at he time and her options were limited accordingly.
11. Assuming no large increase in income in the immediate future, the client's options at the time the Chapter 11 was filed were to: a) allow the lenders to have one or both of the properties to extinguish debt or; b) file a Chapter 11 to stop foreclosures, reduce liens, and attempt to keep the houses by using rental income to make payments pursuant to a bankruptcy payment plan. This was explained to client and Plan b

became the game plan. The client was very persistent that efforts be made to keep both properties. She did not want to abandon or lose either property.

12. Using Chapter 11 to avoid foreclosure required that the client engage in the "business" of renting houses. The client's income had to be substantially increased by rental income to make the plan work. This was explained to the client at meetings and in emails.

13. Chapter 11 and 13 plans are supposedly available to "rehabilitate" debtors or their businesses. The Chapter plans must be viable and feasible. In this case, that meant that the client had to increase her income and attempt to cover house payments in a business plan that made economic sense. The client could not successfully use a Chapter 11 to stay in a million dollar house on her modest income.

14. For technical reasons, the client had to move out of her residence before the Chapter 11 was filed to take full advantage of Chapter 11. The timing of the bankruptcy filing was dictated by collateral issues such as potential foreclosures, unsuccessful loan modification efforts, the need to move and rent houses, and the burden of resuming house payments in some amount after filing for bankruptcy relief. Contrary to what has been suggested at times, Respondent was not responsible for any delays in filing the bankruptcy.

15. The initial stages of a Chapter 11or 13 bankruptcy involve much work. Much of it is routine busywork but there are tactical decisions that must be made and the paperwork takes much time and effort. In Respondent's experience, who was a trial lawyer for over 30 years before turning to bankruptcy and general practice, one of the difficult areas of bankruptcy practice is dealing with the trustee's office. In this case, the

trustee's office was difficult, demanding and somewhat hostile to deal with in the initial stages and the 341 hearing process.

16. Respondent handled the bankruptcy through the planning, filing and 341 meeting phases. A detailed Status Conference Statement was filed, which is attached hereto as Exhibit B. Respondent spent well over 60 hours meeting with client, investigating house values, compiling documents typically requested by bankruptcy trustees, preparing the numerous bankruptcy forms and schedules, responding to requests from the trustee's office for additional documentation, and taking the client through two difficult 341 hearings with an attorney with the trustee's office.

17. This was an aggressive use of the Chapter 11 process, however, it provided a viable option for attempting to retain one or both of the residential properties. The client's primary goal at the outset was to keep the residence in Marin County as a long-term investment or at least until property values had substantially recovered from the recent recession.

18. Respondent's temporary withdrawal from the practice of law, for reasons stated herein, did not adversely impact or prejudice the client's goal of retaining properties. Written leases were obtained for both properties and furnished to the trustee before conclusion of the 341 hearings. The initial reasons for filing the Chapter 11 and an outline of the contemplated Chapter 11 plan were set forth in a Status Conference Statement attached hereto as Exhibit B. Subsequent counsel only recently filed a proposed Chapter 11 plan over a year after Respondent discontinued work on the case. This is not said in criticism of subsequent counsel but to make the point that the client's Chapter 11 has not been delayed or prejudiced by Respondent's absence from the law practice in Marin County.

19. Respondent handled this case through a relatively intense planning, filing, and 341 hearing process. After the 341 hearings were concluded, there was a bit of a lull in the process. This was not a critical stage in the case where daily "hands-on" or emergency work was needed to be performed by Respondent or subsequent counsel. The work to be done back in late May and June of 2013 was not critical with respect to timeliness such that new counsel could not step into the case and keep it moving at an adequate pace. In fact, new counsel was retained and the necessary work was done. The Chapter 11 case proceeded without harm or prejudice to the debtor.

20. The next phase in the Chapter 11 at issue after the 341 hearings were concluded involved operating the "rental" business, providing operating reports to the court and trustee, and moving the court for permission to hire professionals. Eventually, a Chapter 11 plan had to be proposed, however, that was done over a year after Respondent terminated his work on the case. Further, the lawyers who practice bankruptcy law in the Northern District of California make that fact easily available to persons seeking bankruptcy counsel. It is not hard to find a lawyer in California. Further, Respondent attempted to refer the case to competent counsel, Russell Marne; however, he declined the case reportedly for reasons related to his malpractice coverage. In any event, the debtor simply needed to hire new counsel, which was promptly accomplished, and the required work was done. Respondent was not responsible for any delay in filing a proposed Chapter 11 plan, which was done long there was new counsel of record.

21. In early 2013, Respondent suffered multiple physical injuries and became effectively disabled by pain, immobility, stress and lack of sleep. The injuries included a fractured hip, herniated disc, pinched nerve, numbness

of left foot, inability to bear weight on right leg and lack of feeling in left foot. By late May and June the injuries and resulting disability had worsened to the point that Respondent could not work effectively. The constant pain and lack of sleep made it extremely difficult to focus on mental tasks. At times herein material, Respondent could not walk more than a few steps without severe pain and limp, could not assume a supine position for sleep, and could not think clearly or mentally focus on mental tasks or legal work. The client was advised of the pain and inability to sleep due to pain and offered Respondent a spare back brace.

22. Medical care was sought. Respondent was advised to reduce certain types of physical activities and reduce stress. Basically, Respondent was advised by health care professionals to take some time off from work and let time heal the injuries. Respondent decided to follow his doctor's advice. Respondent discontinued almost all work during May of 2013 to deal with health issues and was unemployable for months thereafter.

23. Further, this was not done in secret. In May 2013, Respondent advised the trustee and client at, or soon after, the final 341 hearing of his disability and the need for the client to find new counsel. This was confirmed in an email to the trustee and expressly stated in the final paragraph of the Status Conference Statement filed with the bankruptcy court.

24. As a practical matter, Respondent would probably not have been approved by the court to continue in the case after the 341 hearings, which would have been required for Respondent to stay in the case. In consideration of conflicts with the trustee's office and its attorney working the case during a relatively confrontational 341 hearing process, and Respondent's admitted disabilities, it was Respondent's opinion that he would almost certainly have had to bring in associate counsel to be

approved by the court as counsel for the debtor-in-possession while the rental business was being operated by the bankruptcy estate. That would have added legal fees to the case and was not a viable option at the time.

25. Technically, Respondent could not have moved to withdraw as counsel in the subject case due to the protocols of Chapter 11 practice. If Respondent had attempted to stay in the subject case, that would have required a motion to have Respondent approved as counsel of the bankruptcy estate or client as debtor-in-possession. Any such motion would have included a request for additional retainers or fees, and additional fees would have been requested at the conclusion of case. The $5,000 retainer was charged to do the initial work, not a flat fee for an entire Chapter 11. (Typical Chapter 11 retainers are in the $20,000 and up range as is demonstrated by the fee requests in the subject case where $40,000+ in fees have been requested.)

26. Respondent has been advised by counsel to file a motion for approval of the $5000 retainer in the bankruptcy court. In hindsight, it appears that Respondent should have filed a counter-motion for fees as part of his Opposition to the Order to Show Cause. The person damaged by the lack of such a motion is Respondent, not the past client. Respondent performed work of substantial value and has a contractual and equitable claim for the reasonable value of services rendered. Such a motion is under consideration, however, as a practical matter that would be difficult under the present circumstances. Respondent was unemployed for many months and is no longer practicing law in California; however, Respondent has taken on work as a legal assistant. This work is mostly contingent in nature and no cases or transactions have been concluded to date. The current plan is to pay the pending judgment when a case is

settled and the funds are available to do so rather than file motions for hearings in San Francisco.

27. With respect to Count Two, paragraph 3(A), the allegations are denied. Respondent filed a written response and appeared telephonically as an interested person in response to the Court's Order to Show Cause why he should not be held in contempt of court. The Court did not find Respondent to be in contempt of court and the Order to Show Cause was discharged by the court's subsequent order of August 8, 2013, a copy of which is attached hereto as Exhibit B. Further, Respondent called the clerk of the court in question on the morning of the May 30, 2013 status conference to advise the court that he could not appear on that particular due to physical incapacity. The clerk did not object and the matter seemed resolved. Respondent has rarely missed hearings for health or personal reasons in many years of practice. It has been Respondent's experience by observation that such a call from counsel usually suffices to have a matter rescheduled and does not result in an OSC re Contempt. Further, a comprehensive status conference statement had been timely filed with the bankruptcy court. The hearing was not ignored.

28. With respect to Count Two, paragraph 3(B), Respondent denies said allegations except that he admits that any such Order of the Court was reduced to a judgment on August 8, 2013, which was appealable but not appealed, and the OSC re Contempt was Ordered "discharged" by the Court's Order of August 8, 2013.what is alleged in the following paragraphs. The end result of the OSC re Contempt was the court's order of August 8, 2013, which entered judgment against Respondent in the amount of $5100. Respondent lacks the funds to pay the judgment.

29. Further, the judgment is a result of an apparent misunderstanding concerning the scope of the OSC re Contempt. Respondent did not oppose the motion by filing a counter-motion for approval of fees, which in hindsight would have been the prudent move. Respondent had rendered considerable legal services in the Chapter 11 including pre-filing consultation, stopping foreclosures, advising client in preparing the client's affairs for a bankruptcy, preparing and filing all of the forms and schedules needed to commence a Chapter 11 bankruptcy, taking the Chapter 11 case through the 341 hearing process, compiling and delivering additional materials as requested by the trustee, and filing a detailed Status Conference Statement setting forth the basic goals, problems and business plan of the eventual Chapter 11 plan. The value of services rendered by Respondent to the former client in the Chapter 11 case was in excess of $5100.

30. In further response to Count Two, Respondent alleges that he was disabled in May and June of 2013 and so advised the client, trustee and court. This disability continued for months thereafter, and Respondent only recently was able to find employment. In addition to injuries causing great pain and lack of mobility in May and June of 2013, Respondent was in the process of moving his residence, place of work, computer, and files. Respondent lacked immediate access to his computer and had a very limited ability to prepare and file adequate papers in response to the Court's Order to Show Cause.

31. In June 2013, Respondent was of the opinion that the Order to Show Cause hearing was to deal with the contempt issue, which involved ability to pay not value of services rendered. Respondent was of the

opinion that the value of services rendered was an issue for a subsequent motion or hearing. Essentially by default, and unable to justify any contempt finding, and on a record devoid of evidence on the value of services rendered to the client or lack thereof, the court opined that the value of services rendered on the record before it was zero. The court did not find Respondent in contempt for willful violation of courts orders, including the Order of June 24, 2014, which das been superseded and discharged by the Court's Order dated August 8, 2013, attached hereto as Exhibit B, which terminated the Order to Show Cause proceedings by reducing the matter to a judgment in the amount of $5,100 against Respondent. This is now a collection matter. Respondent lacks the funds or income to pay this judgment, however, Respondent is engaged in good faith efforts to earn income and pay the judgment.

WHEREFORE, Respondent requests that the charges in question be dismissed as a matter of public record.

Barry Van Sickle
Attorney for Respondent pro se

Exhibit A

XFINITY Connect barryvansickle@comcast.ne

± Font Size -

Possible bankruptcy

From : barryvansickle@comcast.net Mon, Jul 09, 2012 07:42 PM

Subject : Possible bankruptcy

To : sc9631@yahoo.com

Dear Sandy,

It was a pleasure meeting you and I have been giving your financial situation some thought.

SYNOPSIS

For reasons dicussed below, the aggresive play is to rent out both properties, move to the cheapest rental unit you can tolerate, and then file a Chapter 11 to prevent foreclosures. It will require considerable work, but a Chapter 11 may also be used to move the court for a reduction in secured property liens to present value. Whether a property is your residence for bankruptcy purposes depends on the status on the day of filing. Therefore, if you take this option you will need to move out before filing.

The excess secured debt over property values can be converted to unsecured debt and discharged in a Chapter 11 for pennies on the dollar or less. (The initial plan will propose 0% payment to unsecured creditors, however, it might be necessary to psy something on unsecured debt to get a Chapter 11 plan approved by the court.)

As I understand it, the main goal is to keep the Marin property. The Marin property does have long range profit potential. As a practical matter, you cannot keep the Marin property unless you substantially increase your income, and that will probably require renting the property.

The Rio Vista property has a relatively low monthly payment , however, the rental value is also relatively low. More importantly, the arrears will be a problem, and you cannot do anything to reduce the secured liens if you are living in the Rio Vista property. Realistically, you could be $150,000 to $200,000 upside down in the Rio Vista property.

If short-selling the Rio Vista property would get you under the Chapter 13 secured debt limit, and the $25,000 short sale offer was still available, that would be an attractive option. However, the Marin property would still put you over the Chapter 13 debt limit. Also, if you are going to be in a Chapter 11 you might as well try to reduce secured liens and keep both properties.

A detailed discussion concerning the procedural differences between a Chapter 13 and a Chapter 11 are beyond the scope of this letter. A Chapter 11 can be triple the work of a Chapter 13, or more, and the cost reflects the extra work and difficulty involved.

DISCUSSION

Let's start with the basics to give the discussion context, although this may seem to be somewhat obvious or "old news". (Also, this is a "big picture" message and I use rough numbers herein.)

You currently have monthly income of $3,334 and house payments totaling $4,750. You have not been making payments and have been devoting much effort to chasing loan modifications. That has delayed foreclosure but also has you approximately $170,000 in arrears. At some point, the arrears will reach the point where you cannot afford to pay them even in a 5 year plan. You may be close to reaching that point.

There is also approximately $100,000 in old credit card debt for which you may have a statute of limitation defense. I would list these debts as unsecured and "disputed", if the facts justify it. I will need supporting facts from you to evaluate this issue.

You have been declaring both houses as residences and have been devoting your efforts to obtaining loan modifications. I have not seen what you have submitted and suspect that you have used income and value numbers in the loan modification papers that may raise "issues" in your bankruptcy. We will just have do the best we can with what you have submitted. I mention this as a "heads-up" and to avoid "surprise".

I am 99% certain that you will NOT obtain a loan modification on the first trust deed for the Marin residence. The first lender is fully secured. ASlso, you do not have the income to qualify for a loan modification under any program I have seen in operation. It would be a bad business decision for Wells Fargo to modify the first and waive present foreclose rights. Wells Fargo does not usually make decsions against its financial interests.

The Rio Vista residence presents a different scenario. However, a loan modification you can live with is improbable.

You are over $100,000 upside down in the property. You could be $200,000 upside down and you are $80,000 in arrears. Ignoring arrears, the
$1, 600 monthly payment would consume over 50% of your present income. Chase has offered $25,000 for a short sale. Chase is almost certainly NOT going to "voluntarily" reduce your monthly payments, or offer a viable loan modification that you can afford.

As discussed herein, you may be able to reduce the secured debt on the Rio Vista property to the value of the property in a Chapter 11 if the property is NOT your residence on the date of filing. The excess debt and arrearages could be converted to unsecured debt in a Chapter 11.

Back to basic context--your options are:
1. Lose both houses.
2. Lose one house.
3. Try to keep both.

As practical matter, you will need to substantially increase your income to keep the Marin property. That will probably require moving elsewhere and renting that out for $4,000 to $ 5,000/mo.

You might be able to keep the Rio Vista property by simply short-selling the Marin property and reducing debt, however, it will be difficult to sell your reorganization five year plan as viable unless you have more "regular income" in the futue to devote to a plan. Basically, you are probaly going to need more regular income to save even just the Rio Vista property. Obviously, it will require less future income to save only the Rio Vista house.

To keep both houses, at minimum, you will need to move out of the Marin house and rent it for more than the payment. If you move out and file a Chapter 11, you can file motions to determine the secured value and convert unsecured debt to unsecured debt. That is a relatively complicated and expensive motion but it could save you considerable sums in the long run.

If you move into the Rio Vista house, you will not be able to convert some of the secured debt for that property to unsecured debt. You will have to pay full fare to keep the Rio Vista property. You cannot strip liens in your residence unless 100% unsecured. You can reduce partially unsecured liens in rental property. Hence , the suggestion that you avoid living in the Rio Vista house.

The aggressive play for keeping both properties would be to rent them both and find a cheap place to live for the next few years. You may not be willing to do that, however, that would be the most direct route to reducing secured liens.

A more conservative approach would be to rent out Marin property, move to Rio Vista, and use the rental income to justify the proposed Chapter 11 plan.
That might work but I cannot guarantee that it would work. The trustee or court might object and block that move. The rent income would be substantially consumed by the plan payments on the Marin property, and there would be little or nothing left for payments on the Rio Vista property. If you live there, you will remain liable for the entire debt on the Rio Vista property, including arrears. Unless you sold or abadoned the property, you would have to pay the full Rio Vista debt in a 5 year plan.

Turning to fees and costs, the guideline fee for these facts would be $ 5,450 for a Chapter 13. A Chapter 11 is much complicated and labor intensive than Chapter 13. Chapter 11's are hard work and expensive. Typical fees in Chapter 11's frequently exceed $20,000.

In addition to increased legal fees in a Chapter 11, the filing fee is $1,000 in a Chapter 11. There could also be appraisal fees incurred in motions to reduce liens..

To summaize: you will eventually lose both properties if you sit tight. Your phone calls and loan modification efforts are almost certainly NOT GOING TO RESULT IN LOAN MODS THAT YOU CAN AFFORD. There are several reasons for this ... (1) the mandatory escrow for the past due property taxes (2) the large amount of the arrearages (3) your current income is too low to support a loan mod under most known models, and (4) the first is currently fully secured on the Marin property if your estimate of value is correct.

I propose a $10,000 fee for a Chapter 11. Part of this can be paid over time in the plan. I would accept $5,000 now and $5,000 over time in the plan. Fees in Chapter 11's are closely monitored by the court and subject to court approval.

Please let me know. I appreciate this may be one of the most difficult decisions you have ever made. You, like many of my clients before you, will feel better once you decide which direction works best for you.

Barry Van Sickle

To : Sandy Concetti <sc9631@yahoo.com>

Sandy,

It is a matter of balance. If your income is too low, a chapter 11 or 13 payment plan will be rejected as not being "feasible.

Conversely, if your disposable income is too high the court will require some percentage payment of unsecured debt.

Low income and "feasibility" is the more common issue preventing plans from being approved. If income is too high, unsecured creditors get a monthly pot of "disposable income to split. This is usually for pennies on the dollar but is painful because a chapter 7 can eliminate unsecured debts.

In some cases, a Chapter 7 can be filed first to discharge unsecured debt followed by Chapter 11 or 13. The law was changed a few years ago to make this a less attractive play but it still has advantages in some situations.

I have considered starting with a Chapter 7 for you but do not recommend it. Among other things, your income is borderline low and your unsecured debts are relatively low. Also, contract debt (credit card) may be disputed if barred by a 4 year statute of limitations.

It will take several days work to prepare your initial Chapter 11 papers. I do not want to rush you into decisions but it is never too early to start work on a project that will eventually need to be done.

What is status of this?

Thanks,
Barry VS

From: "Sandy Concetti" <sc9631@yahoo.com>
To: barryvansickle@comcast.net
Sent: Tuesday, July 10, 2012 8:32:10 AM
Subject: Re: Listings

I completely understand! I wish I had sales! But maybe good not to if filing????

Thank you,
Sandy Concetti

On Jul 10, 2012, at 6:27 AM, barryvansickle@comcast.net wrote:

> Sandy,
>
> The "presented by Sandra Concettti" at the botom of the listings fooled me---ooops.
>
> Barry
>
> ---
>
> **From:** "Sandy Concetti" <sc9631@yahoo.com>
> **To:** barryvansickle@comcast.net
> **Sent:** Monday, July 9, 2012 6:37:54 PM
> **Subject:** Re: Listings
>
> These were NOT my listing nor sales! Just comp the area for what things sold in area !
> I
> Thank you,
> Sandy Concetti
>
> On Jul 9, 2012, at 3:34 PM, barryvansickle@comcast.net wrote:
>
> > Sandra,

Exhibit B

BARRY VAN SICKLE - BAR NO. 98645
1079 Sunrise Avenue
Suite B-315
Roseville, CA 95661
Telephone: (916) 549-8784
Email: bvansicklelaw@gmail.com

Attorney for Debtor Sandra Lynn Concetti

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re: **Sandra Lynn Concetti**	**CASE NO.13-30705** **Chapter 11**
Debtor	**Date: May 30, 2013** **Time: 10:00 a.m.** **Place: Courtroom 23**

CHAPTER 11 STATUS CONFERENCE STATEMENT

(1) The financial, business and personal problems that lead to the filing of this case;

This case was filed to prevent pending foreclosure sales and preserve options. The case continues as a means for Debtor to complete the purchase of subject properties in the range of current value. The Debtor has taken this action to avoid losing everything and reorganize assets for eventual retirement.

Van Sickle Answer Exhibit B

Debtor has invested approximately $750,000 in down-payments, and substantial sums for improvements, in the subject properties. This would be lost in foreclosures or short sales. This Chapter 11 offers Debtor an opportunity to reorganize and recover from a financial downfall.

The basic problems leading to this filing are as follows:
(a) Debtor's lack of sales commission income in a depressed real estate market;
(b) Declining values of Debtor's real property;
(c) Debtor's inability to obtain refinancing or a viable loan modification;
(d) The illness and death of Debtor's late husband;
(e) The financial and emotional drain of litigation relating to her late husband's trust;
(f) The loan modification game. (Debtor lost over three years thinking that she could get a viable loan mod. This was doomed to fail. In the process, the debt increased as payments were not accepted and no rental income was generated due to the typical "owner occupied" requirement of the loan modification process.)
(g) Debtor inertia and unfounded optimism based somewhat on internet publicity, blogs and persistent rumors suggesting that the so-called 'mortgage crisis" would soon end to the benefit of homeowners.

The core of this Chapter 11 proceeding involves two rental properties that have become $645,982 "underwater". This is essentially unsecured debt that may be stripped or reduced in this proceeding.

In particular, Debtor owes $1,870,982 on three trust deed claims against the two properties. The properties are listed on Amended Schedule D to have a combined value of $1,225,000. The first trust deed on the more valuable Novato property is

substantially secured ($902,565 claim against $900,000 value). The second trust deed claim of $433,892 against the Novato property is not secured. There is only a first trust on the less valuable Rio Vista property, and it is substantially unsecured. ($543,525 claim - $325,000 value = $209,525 unsecured)

A primary purpose of this action is to reduce the trust deed claims to secured value. The first priority is to salvage the more valuable Novato property as investment property. The second priority is to save the Rio Vista property, which has less potential for rental income and appreciation over the next 5-10 years, as a potential low cost "retirement home' option for Debtor's eventual complete retirement.

(2)Meeting of creditors;

There have been two lengthy 341 meeting sessions. The 341 meeting has been completed.

(3) Estate's need for professionals;

The estate will need legal counsel and appraisers for the contemplated motions to set value of secured property.

(4) Unique issues that may arise or otherwise need to be addressed;

There is an existing dispute with the Trustee's office regarding bank accounts. The Debtor has been rejected by banks on the DIP list with respect to attempts to open a Debtor-in-Possession Account. Debtor has encountered two recurring problems. First, she has been "black-listed" due to a previous dispute with US Bank. Second, banks have also rejected Debtor for a DIP account because she was not an existing customer. This essentially limits Debtor to Bank of America where she has an account. But,

Bank of America has refused to open a DIP account stating that it "is getting out of the bankruptcy business".

Therefore, the Debtor has opened a business account at Bank of America, and obtained an EIN, for purposes of business income and expenses. The trustee is arguing that a DIP account is essential; however, the banks will not give Debtor such an account.

Further, the Debtor needs to maintain her banking relationship with Bank of America or risk losing the ability to have a bank account in present time. Social Security payments require direct bank deposits, and pension payments could be held up for weeks or months if accounts are disrupted. The debtor needs her personal Bank of America account for undisrupted receipt of needed Social Security and pension payments. Further, these are exempt personal assets and not assets of her "business". This has led to a major dispute with the trustee over what seems to be a minor issue---the "title" of the account.

Another issue that may be problematic concerns the purchase money loan for the Rio Vista property. Although Debtor made the substantial down payment, is listed as a purchaser on the TD, and is the current owner as the surviving joint tenant, the initial loan and note was made in the deceased husband's name only. The Debtor now owns title as the surviving joint tenant; however, JPMorgan Chase, which has purchased her Note, has bundled assumption of loan papers with an unacceptable loan modification offer. This will need to be worked out with court approval.

(5) Post-petition operations and revenue;

Debtor has spent modest amounts maintaining the properties and utilities. Rental income is expected to start June 1.

(6) Status of any related litigation;

None.

(7) Compliance with requests for information from the United States Trustee;

Debtor believes that all information has been furnished. There is an ongoing dispute regarding the bank accounts that is referenced in detail above.

(8) Type and adequacy of insurance coverage;

The properties are insured and coverage declarations have been furnished to the trustee.

(9) An outline of the proposed plan;

The contemplated proposed plan will feature the following;

(a) The Redwood Trust managed second trust deed against the Novato property will be classified in the plan as unsecured. The proposed plan will be based upon the values in the Schedules including Amended Schedule D. The Redwood managed second trust deed claim of $433.891 is unsecured by the Novato property given Wells Fargo's present claim of $902,565 and a value of $900,000.

The proposed plan will make no proposed payment to unsecured creditors including this unsecured second TD managed by Redwood trust against the Novato property.

(b) The proposed plan will value the secured interest represented by the first trust in favor of JP Morgan Chase Bank on the Rio Vista property at the value of the property on

Van Sickle Answer Exhibit B

Schedule D, which is $325,000. The proposed plan will use the existing interest rate of 3.5% and propose to pay off the reduced debt of $325,000 over the present time period. The proposed plan will contemplate that the rental payments collected for the property will be the primary source of payments on this secured claim. There is no second TD on the Rio Vista property.

The difference between the amount of the first TD claim on the Rio Vista property and property value is $209,525. ($534,525 claim- $325,000 value) That amount will be treated as unsecured in the proposed plan and no payments proposed.

(c) Regarding the first TD claim on the Novato property in the amount of $902,565, that claim is substantially secured and will be so treated in the proposed plan. The proposed plan will adopt the monthly payment described in recent correspondence received from Wells Fargo, which is $4,680. The proposed plan will propose that monthly payments be paid out of rental income.

(d) The proposed plan will propose paying secured creditors in full over time to the extent that they are in fact secured. The proposed plan will propose no payments for unsecured creditors.

(e) The proposed plan will use rental income as the source of payments to secured creditors. To the extent necessary, rental income may be supplemented by Debtor's personal income.

(f) The proposed plan will contemplate that Debtor will support herself with Social Security, pensions and an increased income from a return to work in a rebounding real estate market. Also, Debtor's living expenses have been reduced by turning her former residence into rental property and moving in with a friend.

(g) The proposed plan will contemplate that Debtor will be able to cover occasional shortfalls in rental income, administrative costs and legal fees out of her other income sources of necessary.

(10) Proposed schedule for filing and confirming a proposed plan;

Debtor plans to file a proposed plan within 30 days. Confirmation will require motion practice that could several additional months to the process. This will include a motion to value the Rio Vista property and, potentially, motions to address any unresolved disputes with Redwood Trust over the value of their secured claims, if any.

(11) Other matters that might materially affect the administration of this case;

Debtor's counsel has a fractured hip and other injuries arising out of an accident that has hindered his ability to work on this and other cases. Therefore, for this and related considerations counsel has decided to take time off work to deal with injuries and discontinue working on this case. Efforts are underway to find new counsel for Debtor.

s/ Barry Van Sickle
Counsel for Debtor

Exhibit C

Entered on Docket
August 09, 2013
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: August 8, 2013

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	Case No: 13-30705 HLB
SANDRA LYNN CONCETTI,	Chapter 11
Debtor.	

ORDER FOLLOWING HEARING ON ORDER DIRECTING BARRY VAN SICKLE TO APPEAR AND SHOW CAUSE WHY HE SHOULD NOT BE HELD IN CONTEMPT

On August 8, 2013, the Court held a hearing on its order directing attorney Barry Van Sickle to appear and show cause why he should not be held in contempt (the "Order to Show Cause"). Barry Van Sickle appeared in response to the Order to Show Cause. K. Keith McAllister appeared for Debtor.

Upon due consideration, and for the reasons stated on the record at the hearing, the Court hereby orders as follows:

(1) The Court will enter a separate judgment in favor of Sandra L. Concetti against Mr. Van Sickle in the amount of $5,100. Mr. McAllister shall promptly record this judgment, as appropriate, on behalf of Debtor.

(2) The Court will not employ Mr. Van Sickle in any future bankruptcy case unless and until he can demonstrate that the $5,100 judgment has been satisfied in full.

(3) The Order to Show Cause is discharged in its entirety.

****END OF ORDER****

Entered on Docket
August 09, 2013
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: August 8, 2013

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re SANDRA LYNN CONCETTI, Debtor.	Case No: 13-30705 HLB Chapter 11

JUDGMENT

Upon due consideration, and for the reasons stated in the accompanying Order Following Hearing on Order Directing Barry Van Sickle to Appear and Show Cause Why He Should Not Be Held In Contempt, the Court hereby enters judgment as follows:

(1) Barry Van Sickle is liable to Debtor Sandra Lynn Concetti in the sum of $5,100.00.

(2) Interest shall accrue on any unpaid balance of the judgment at the federal judgment rate of .11% until paid in full. 28 U.S.C. § 1961.

****END OF JUDGMENT****

Court Service List

Law Office of Barry Van Sickle
Attn: Barry Van Sickle, Esq.
1079 Sunrise Avenue # 315-B
Roseville, CA 95661

Barry Van Sickle, Esq.
PO Box 61
Belvedere, CA 94920

Sandra Lynn Concetti
448 Ignacio Blvd #307
Novato, CA 94949

State Bar of California
180 Howard Street
San Francisco, CA 94105

DECLARATION OF SERVICE
BY U.S MAIL & ELECTRONIC TRANSMISSION

CASE NO. 13-0-17670

I, the undersigned , am over the age of 18 years, am not a party to action, and have a business address of 126 E. Pleasant Street, Mankato, MN 56001, and declare that on the date shown below , I caused to be served a true copy of the within document described as follows:

Answer to Notice of Disciplinary Charges

by U.S. First-Class mail by depositing said document in an envelope with postage pre-paid at a U.S. Post Office in Mankato, Minnesota, and by request a copy by Email, addressed to:

Erica L.M. Dennings, Senior Trial Counsel, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639.

I declare under penalty, under the laws of California and Minnesota, that the foregoing is true and correct. Executed in the City of Mankato, County of Blue Earth and State of Minnesota on the date shown below.

DATED: OCTOBER 3, 2014

Signed: _____
Kevin O'C Green
Declarant