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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GABRIEL HERNANDEZ, RODOLFO  
NAVA, IVAN MADRIGAL,  
FRANCISCO CASTILLO, JOEL ROSA  
DE JESUS, JUAN CARLOS  
NAVARRETE, JUAN JOSE ACOSTA  
FLORES, ISMAEL AMPARAN-COBOS,  
EFREN RUANO, JUAN PALOMERA,  
OCTAVIO ANCHONDO, ARNOLDO  
RODRIGUEZ, and JESUS ANCHONDO,

Plaintiffs,

v.

CREATIVE CONCEPTS, INC.; SPEIDEL  
ENTERPRISES, INC.; JOHN SPEIDEL,  
PAUL SCHELLY; NORTHERN  
PIPELINE CONSTRUCTION CO.; and  
NPL CONSTRUCTION CO.,

Defendants.

ORDER

2:10-CV-02132-PMP-VCF

Presently before the Court is Defendant NPL Construction Co.’s Motion for Summary Judgment as to Plaintiff Octavio Anchondo for Failure to Disclose Claims in Bankruptcy and for Submission of False Affidavit (Doc. #136), filed on January 4, 2013. Plaintiffs filed an Opposition (Doc. #180) on February 25, 2013. Defendant filed a Reply (Doc. #191) on March 14, 2013.

**I. BACKGROUND**

The parties are familiar with the underlying facts in this case, and the Court will not repeat them here except where necessary. Defendant NPL Construction Co. (“NPL”) moves for summary judgment on all claims asserted by Plaintiff Octavio Anchondo

1 (“Anchondo”) because Anchondo failed to schedule his claims against NPL in his  
2 bankruptcy proceedings. NPL thus contends Anchondo lacks standing to pursue those  
3 claims because they belong to the trustee of his bankruptcy estate. NPL also argues that  
4 Anchondo should be judicially estopped from pursuing the claims he failed to disclose in  
5 his bankruptcy proceedings. Alternatively, NPL requests the Court dismiss Anchondo’s  
6 claims due to his bad faith filing of a false affidavit in this action. NPL asserts that at  
7 Anchondo’s deposition, he admitted he signed an affidavit that was not factually accurate,  
8 and Plaintiffs have done nothing to correct the matter even though Plaintiffs relied on the  
9 affidavit to oppose NPL’s previous summary judgment motion.

10 Plaintiff Anchondo responds that NPL failed to raise judicial estoppel as an  
11 affirmative defense in its Answer, and he would be prejudiced by the late addition of such a  
12 defense at this stage in the proceedings. Anchondo further contends that even if the Court  
13 considers the defense, the Court should not apply it here because NPL has failed to  
14 demonstrate Anchondo knew he had a claim against NPL before Anchondo’s bankruptcy  
15 proceeding closed, as NPL concealed its wrongdoing, which consists of a complicated  
16 fraudulent scheme against unsophisticated workers. Anchondo further contends he  
17 continued to work for NPL and did not bring this suit until months after his bankruptcy case  
18 closed. Alternatively, Anchondo argues that rather than dismiss, the Court should permit  
19 Anchondo to move to reopen his bankruptcy case and substitute the trustee as the interested  
20 party in this action. As to the affidavit, Anchondo argues it was the result of a mistake  
21 rather than bad faith, as shown by his ready willingness to correct the error at his  
22 deposition.

23 NPL replies that it was not required to plead judicial estoppel as an affirmative  
24 defense, and Anchondo has failed to show prejudice from NPL raising the issue now. NPL  
25 also argues it does not have to show Anchondo knew he had a valid claim against NPL  
26 during his bankruptcy proceedings, it need show only that Anchondo knew enough facts

1 supporting a potential claim. NPL asserts the Court should not permit reopening of the  
2 bankruptcy case because that would reward Anchondo's failure to disclose the claim until  
3 the failure was pointed out by an adversary. NPL repeats its argument that the bankruptcy  
4 trustee has standing, not Anchondo, and the Court therefore should dismiss for lack of  
5 jurisdiction. Finally, as to the false affidavit, NPL contends Anchondo submitted the  
6 affidavit twice, it affected this Court's ruling, and Anchondo corrected it only when  
7 confronted at his deposition.

## 8 **II. DISCUSSION**

9 "The doctrine of standing is based both on prudential concerns and on  
10 constitutional limitations on the jurisdiction of the federal courts." Doran v. 7-Eleven, Inc.,  
11 524 F.3d 1034, 1039 (9th Cir. 2008). There is no question that Anchondo satisfies  
12 constitutional standing, however, the parties dispute whether Anchondo's pursuit of this  
13 case raises prudential standing concerns in light of his bankruptcy proceeding. Prudential  
14 standing "embodies judicially self-imposed limits on the exercise of federal jurisdiction,"  
15 including "the general prohibition on a litigant's raising another person's legal rights . . . ."  
16 Id. at 1044 (quotations omitted). In other words, a plaintiff must "assert his own legal  
17 interests as the real party in interest." Dunmore v. United States, 358 F.3d 1107, 1112 (9th  
18 Cir. 2004)

19 Anchondo lacks prudential standing because his bankruptcy estate is the real  
20 party in interest. Anchondo's bankruptcy estate owns the causes of action even though  
21 Anchondo failed to schedule those claims, and the claims remained the bankruptcy estate's  
22 property even after the bankruptcy court discharged his debt. See id. (citing 11 U.S.C.  
23 § 554(c), (d)). Anchondo's bankruptcy estate therefore is the real party in interest.

24 However, Anchondo's lack of standing may be remedied pursuant to Federal  
25 Rule of Civil Procedure 17(a)(3), which precludes the Court from dismissing the action for  
26 failing to prosecute it in the name of the real party in interest until after "a reasonable time

1 has been allowed for the real party in interest to ratify, join, or be substituted into the  
2 action.” The Court therefore will allow Anchondo until August 16, 2013, to notify the  
3 trustee of his bankruptcy estate about this action and the bankruptcy estate’s interest in it.  
4 The trustee shall have until September 6, 2013, to ratify, join, or substitute into the action.

5 Given the standing issue, and given new authority on judicial estoppel which the  
6 parties have not had the opportunity to brief in relation to this case,<sup>1</sup> the Court declines to  
7 rule on the parties’ arguments regarding judicial estoppel and the allegedly false affidavit.  
8 The parties may reassert these arguments following the trustee’s decision regarding the  
9 claims in this case, if necessary and appropriate.

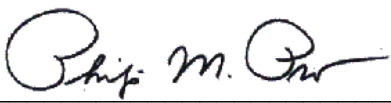
10 **III. CONCLUSION**

11 IT IS THEREFORE ORDERED that Defendant NPL Construction Co.’s Motion  
12 for Summary Judgment as to Plaintiff Octavio Anchondo for Failure to Disclose Claims in  
13 Bankruptcy and for Submission of False Affidavit (Doc. #136) is GRANTED in part and  
14 DENIED in part. The Motion is GRANTED to the extent that Plaintiff Octavio Anchondo  
15 lacks standing. The Motion is DENIED in all other respects.

16 IT IS FURTHER ORDERED that Plaintiff Octavio Anchondo shall, on or before  
17 August 16, 2013, notify the trustee of his bankruptcy estate about this action and the  
18 bankruptcy estate’s interest in it.

19 IT IS FURTHER ORDERED that the trustee shall have until September 6, 2013,  
20 to ratify, join, or substitute into the action.

21 DATED: August 8, 2013

22   
23 PHILIP M. PRO  
24 United States District Judge

25 \_\_\_\_\_  
26 <sup>1</sup> See Ah Quin v. Cnty. of Kauai Dep’t of Transp., --- F.3d ----, 2013 WL 3814916 (9th Cir. 2013).