

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: **WEDNESDAY**
DATE: **JANUARY 4, 2016**
CALENDAR: **10:30 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS**

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. 16-11513-A-7 BARBRA HART
16-1051
HART V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION
BARBRA HART/Atty. for pl.

PRETRIAL CONFERENCE RE:
COMPLAINT
4-29-16 [[1](#)]

No tentative ruling.

2. 12-11008-A-7 RAFAEL ALONSO
15-1049
VETTER V. ANGULO
PHILLIP GILLET/Atty. for pl.
ORDER, ECF NO. 103

PRE-TRIAL CONFERENCE RE:
AMENDED COMPLAINT
12-10-15 [[44](#)]

No tentative ruling.

3. 16-12375-A-7 ULISES/ALEJANDRA CAMACHO
16-1102
VETTER V. CAMACHO ET AL
PHILLIP GILLET/Atty. for pl.
ORDER, ECF NO. 27

RESCHEDULED STATUS CONFERENCE
RE: COMPLAINT
10-31-16 [[1](#)]

No tentative ruling.

4. 16-12375-A-7 ULISES/ALEJANDRA CAMACHO
16-1102 DMG-1
VETTER V. CAMACHO ET AL
D. GARDNER/Atty. for mv.

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
11-23-16 [[9](#)]

Tentative Ruling

Motion: Dismiss Under Rule 12(b) (6)

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part with 14 days leave to amend, denied in part

Order: Civil minute order

Defendant Alejandra Camacho ("Camacho") moves to dismiss with prejudice plaintiff Jeffrey Vetter's ("Vetter") complaint. Vetter opposes the motion.

AS PLED

Vetter is the trustee in a Chapter 7 case filed by Rafael Alonso ("Alonso"). *In re Rafael Alonso*, No. 12-11008 (Bankr. E.D. Cal. 2012). Camacho is Alonso's daughter.

This is not the first adversary proceeding involving Vetter and Camacho. Following Alonso's bankruptcy petition in February 2012,

Vincent Gorski was appointed the Chapter 7 trustee. Gorski later resigned and Vetter was appointed the trustee. Vetter brought an adversary proceeding against Camacho. *Vetter v. Camacho*, No. 15-1044 (Bankr. E.D. Cal. 2015) ("Avoidance Action"). There Vetter sought to avoid transfers to Camacho under 11 U.S.C. § 547, 548, 549, 550 and California Civil Code § 3439 et seq. The facts giving rise to those causes of action are three-fold: (1) 16 checks totaling \$923,973.25 written from Alonso (or his sole proprietorship, Sun Fresh International) to Camacho (or her sole proprietorship Summer Fresh Company) between August 8, 2011, and November 11, 2011; (2) 2 checks totaling \$41,480.50 diverted from Alonso (or his company, Golden Star Citrus, Inc.) to Camacho; and (3) 1 check for \$25,750.00 diverted from Alonso (or his company, Golden Star Citrus, Inc.) to Camacho. Complaint ¶¶ 18-23, Avoidance action.

Prior to trial of the avoidance action, in June 2016, Camacho filed a Chapter 7 bankruptcy. *In re Camacho*, No. 16-12375 (Bankr. E.D. Cal. 2016). Randell Parker was appointed the trustee of that case.

This adversary proceeding followed. *Vetter v. Camacho*, No. 16-1102 (Bankr. E.D. Cal. 2016) ("Discharge Action"). Based on the same facts alleged in the avoidance action, Vetter asserts nine causes of action under 11 U.S.C. §§ 727 and 523. And it is to the complaint in the discharge action that the motion is directed.

RULE 12(b) (6) STANDARDS

Under Federal Rule of Civil Procedure 12(b) (6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), incorporated by Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); accord *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); accord *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curium) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004))). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

DISCUSSION

Count I: 11 U.S.C. § 727(a)(2)

The court shall grant the debtor a discharge, unless . . . (2) **the debtor**, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, **has transferred**, removed, destroyed, mutilated, **or concealed**, **or has permitted** to be transferred, removed, destroyed, mutilated, **or concealed**--(A) **property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate**, after the date of the filing of the petition. . . ."

Contrary to the arguments of the trustee, the case that defines the conduct to which § 727(a)(2) will be applied is the debtor's case, i.e. Camacho's Chapter 7 bankruptcy, not Alonso's bankruptcy. 11 U.S.C. § 727(a)(2) (referring to "the date of the filing of the petition.")

First, Vetter has not pled that Camacho transferred property in which Camacho had a legal or equitable interest, 11 U.S.C. § 541(a), within one year of the date of the filing of her petition. Much to the contrary, he contends that Alonso transferred property to her. Complaint ¶¶ 12-18, in *Vetter v. Camacho*, No. 16-1102 (Bankr. E.D. Cal. 2016) (Discharge Action). Nor does the complaint suggest that she transferred property of her bankruptcy estate. *Id.* As a result, the transfer language does not assist the trustee in stating a claim.

Second, Vetter has not plead a concealment cause of action. Section 727(a)(2) requires that the debtor, e.g. Camacho, conceal property in which the debtor or the estate had an interest. 11 U.S.C. § 727(a)(2) ("the debtor . . . concealed, or has permitted to be . . . concealed-(A) property of the debtor . . . (B) property of the estate."). *Rosen v. Bezner*, 996 F.2d 1527, 1532 (3rd Cir. 1993); see also, March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Discharge and Nondischargeability* § 22:881 (Rutter Group 2016) ("Concealment" within the purview of § 727(a)(2) means a concealment of the debtor's property—not a concealment of the debtor's transfer of property. [*Rosen v. Bezner* (3rd Cir. 1993) 996 F2d 1527, 1532]). Here, Vetter's complaint wrongly focuses on the transfers as the object of the concealment. See Discharge Action ¶ 17. "The transfers were concealed by the Debtor [Alonso] and Defendant [Camacho], and all creditors until the trustee . . . was notified of the transfers by a creditor sometime in mid- to late-2014. . . "). Complaint ¶¶ 12-24 in Discharge Action.

More importantly, Vetter does not plead that Camacho still had any of the funds that form the basis of his Discharge Action on the date she filed her petition in June 2016, some four and one-half years after the last date pled by Vetter. Complaint ¶ 18 in Discharge Action. Nor will the court infer that Camacho retained some or all of those assets. As a result, the motion will be granted with respect to Count I of the complaint.

Count II: 11 U.S.C. § 727(a)(3)

"The court shall grant the debtor a discharge, unless . . . (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to

keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case." 11 U.S.C. § 727(a)(3).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing *Twombly*, 550 U.S. at 556).

Here, the trustee has pleaded conclusion, but no facts. Complaint ¶ 26 in Discharge Action. As one source noted, "Whether a debtor's books and records are "adequate" is a fact specific inquiry—i.e., what is reasonably required under the circumstances: "It is a question in each instance of reasonableness in the particular circumstances. Complete disclosure is in every case a condition precedent to the granting of discharge, and if such a disclosure is not possible without the keeping of books or records, then the absence of such amounts to that failure to which (§ 727(a)(3)) applies." [*In re Schifano* (1st Cir. 2004) 378 F3d 60, 68 (parentheses added); *Meridian Bank v. Alten* (3rd Cir. 1992) 958 F2d 1226, 1230]. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Discharge and Nondischargeability* § 22:960 (Rutter Group 2016).

Vetter argues that it is the business records in paragraphs 11-22 of the adversary complaint in the Discharge Action that form the basis of his claim. Opposition at 5:23-28. Unfortunately, Count II does not so plead. Beyond that, the court does not yet appreciate how a debtor's failure to maintain business records for transactions more than four and one-half years before the petition falls within records exception to discharge. 11 U.S.C. § 727(a)(3).

As a result the motion will be granted as to Count II.

Count III: 11 U.S.C. § 727(a)(4)(A)

(a) The court shall grant the debtor a discharge, unless-- the debtor knowingly and fraudulently, in or in connection with the case--(A) made a false oath or account." 11 U.S.C. § 727(a)(4)(A).

Vetter argues that five species of false oaths apply: (1) representations in the schedules that the debtor had no cash or money in her bank account on the petition date, complaint ¶ 30; (2) failure to list the Chapter 7 trustee or his counsel as creditors, complaint ¶ 31; (3) indicating Camacho has no co-debtors on Schedule H "in a community property state," complaint ¶ 32; (4) misidentifying the Gorski [the former trustee] litigation as pending in Sacramento, not Fresno, complaint ¶ 33; and (5) indicating that debtor did not own a business within 4 years of the petition, complaint ¶ 34.

False oaths must be material. 11 U.S.C. s 727(a)(4)(A); *In re Retz*, 606 F.3d 1189, 1197 (9th Cir. 2010). ". . . A statement is material if it bears on the debtor's business transactions, the debtor's estate, the discovery of assets, or the existence and disposition of

the debtor's property." March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:905(Rutter Group 2016) (internal citation omitted). The second, third and fourth omissions are not material.

As to first and fifth omissions, Vetter has not pled that these are false or fraudulent intent. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Vetter must plead facts from which the court can independently find falsity and fraudulent intent.

As a result, the motion will be granted as to Count III.

County IV: 11 U.S.C. § 727(a)(4)(D)

"The court shall grant the debtor a discharge, unless-- the debtor knowingly and fraudulently, in or in connection with the case--(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records and papers, relating to the debtor's property or financial affairs." 11 U.S.C. § 727(a)(4)(D).

Vetter's sole allegation is that "The Defendants withheld from an officer of this estate, Randell Parker, and the officer of the Bankruptcy Estate of Rafael Alonso, case no. 12-11008-A-7, Vincent Gorski [the former trustee], the recorded information, including but not limited to books, documents or records related to the business activities of the Defendants." Complaint ¶ 37.

There are at least three problems here. First, Vetter has no right to assert trustee Randell Parker's rights under § 727(a)(4)(D). Parker is the trustee and sole representative of the Camacho estate. 11 U.S.C. § 323(a).

Second, as to the Camacho estate, there is no indication that Vetter is "entitled" to any records from Camacho, over whom Vetter holds no rights.

Third, even if Vetter could articulate a right to records from Camacho, for the purposes of § 727(a)(4)(D) he must describe with specificity those records. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Vetter must plead facts from which the court can independently find falsity and fraudulent intent.

As a result, the motion will be granted as to Count IV.

Count V: 11 U.S.C. § 727(a)(5)

"The court shall grant the debtor a discharge, unless the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities..." 11 U.S.C. § 727(a)(5).

As one commentator noted, "Under § 727(a)(5), once it is shown that the debtor had a cognizable ownership interest in a specific identifiable property at a time not too far removed from the date of filing his petition, the burden is on the debtor to satisfactorily explain the loss of that particular asset, if at the time the petition is filed, the debtor claims he no longer has the particular property." [In re Beausoleil (BC D RI 1992) 142 BR 31, 37; In re Lane (BC D ID 2003) 302 BR 75, 81]." March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:992(Rutter Group 2016)

Vetter argues Camacho's discharge should be denied for failure to explain the loss of assets, which he describes as "\$2 million dollars," between 2011-2012 (the date of the alleged transfers in the Dischargeability Action) and June 2016 (the date of Camacho's bankruptcy). First, the funds received by Camacho, as described in both the Avoidance Action and the Dischargeability Action total \$991,203.77, not \$2 million. Second, the existence of these funds four years and five months before Camacho's own petition does not meet the time proximity requirement described in *Beausoleil*.

As a result, the motion will be granted as to Count V.

Count VI: 11 U.S.C. § 727(a)(7)

"The court shall grant the debtor a discharge, unless . . . the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider." 11 U.S.C. § 727(a)(7).

"Section 727(a)(7) is limited to acts occurring within one year before the filing of (or during) the bankruptcy case of the debtor whose discharge is at issue (**not one year from the filing of the other debtor's case**). [In re Goodman (BC ED PA 1998) 227 BR 626, 629]."
March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:1047(Rutter Group 2016).

Vetter's allegations date back to late 2011 and early 2012. Camacho's petition was filed June 2016, and, therefore, Vetter's complaint is untimely as to Count VI.

The motion will be granted as Count VI.

Count VII: 11 U.S.C. § 523(a)(2)(A)

"To except a debt from discharge under § 523(a)(2)(A), the creditor must show: the debtor made representations that at the time the debtor knew to be false; the debtor made those representations with the intention and purpose of deceiving the creditor (scienter); the creditor justifiably relied on those representations; and the creditor sustained losses as a proximate result of the debtor's representations. [In re Shannon (9th Cir. BAP 2016) 553 BR 380, 388; In re Sabban (9th Cir. 2010) 600 F3d 1219, 1222; In re Eashai (9th Cir. 1996) 87 F3d 1082, 1086]."
March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:452(Rutter Group 2016).

Vetter pleads that the three species of transfer give rise to an allegation of fraud under 11 U.S.C. § 523(a)(A). But he has pled none of the elements of fraud.

The motion will be granted as to Count VII.

Count VIII: 11 U.S.C. § 524(a)(4)

Vetter pleads that the three factual transactions described form the basis to except the debt as embezzlement or larceny. Complaint ¶ 50.

"Embezzlement" is the fraudulent appropriation of property by one to whom it is entrusted or into whose hands it has lawfully come. [Moore v. United States (1895) 160 US 268, 269-270, 16 S.Ct. 294, 295; In re Littleton (9th Cir. 1991) 942 F2d 551, 555]. **Embezzlement under § 523(a)(4) requires a showing of:** property rightfully in the possession of a nonowner; **nonowner's appropriation of the property to a use other than which it was entrusted;** and circumstances indicating fraud. [In re Littleton, *supra*, 942 F2d at 555; In re Wada (9th Cir. BAP 1997) 210 BR 572, 576]. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Discharge and Nondischargeability* § 22:640 (Rutter Group 2016).

Vetter has not pled that Camacho used the funds for a purpose other than that intended. Much to the contrary. As pled, Camacho transferred the money to Camacho to avoid creditors and there is no suggestion that Camacho did otherwise. Nondischargeability Action ¶¶ 11-12.

Larceny is different. "For purposes of § 523(a)(4), the bankruptcy court is not bound by the concept of larceny as defined by state law; it may follow the federal common law, which defines larceny as a "felonious taking of another's personal property with the intent to convert it or deprive the owner of same." [Matter of Ormsby (9th Cir. 2010) 591 F3d 1199, 1205 (internal quotes omitted)]1) [22:650.1] "Felonious" defined: "Felonious" means "proceeding from an evil heart or purpose; malicious; villainous ... Wrongful; (of an act) done without excuse of color of right." [Matter of Ormsby, *supra*, 591 F3d 1205, fn. 4 (internal quotes omitted)]. March, Ahart & Shapiro, *California Practice Guide: Bankruptcy, Discharge and Nondischargeability* § 22:650 (Rutter Group 2016).

Vetter's allegation that Alonso voluntarily transferred the money to Camacho to avoid creditors defeats any argument that Camacho has committed larceny. Nondischargeability Action ¶¶ 11-12.

The motion will be granted as to Count VIII.

Count IX: 11 U.S.C. 523(a)(6)

Vetter contends that Camacho's actions support excepting the debt under the willful and malicious exception. 11 U.S.C. § 523(a)(6).

"A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6).

"The type of debts excluded from discharge under § 523(a)(6) "triggers in the lawyer's mind the category intentional torts, as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend the consequences of an act, not simply the act itself." [Kawaauhau v. Geiger (1998) 523 US 57, 61-62, 118 S.Ct. 974, 977 (internal quotes and emphasis omitted); In re Steger (8th Cir. BAP 2012) 472 BR 533, 537]. March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:662 (Rutter Group 2016).

"The "willful injury" requirement is met when the creditor shows that: the debtor had a subjective motive to inflict the injury; or the debtor believed the injury was substantially certain to occur as a result of his or her conduct. [In re Jercich (9th Cir. 2001) 238 F3d 1202, 1208; In re Su, supra, 290 F3d at 1144; Matter of Ormsby, supra, 591 F3d at 1206]. March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:670 (Rutter Group 2016).

"A "malicious injury" under § 523(a)(6) involves: a wrongful act; done intentionally; that necessarily causes injury; and that is committed without just cause or excuse. [In re Jercich, supra, 238 F3d at 1209; In re Thiara (9th Cir. BAP 2002) 285 BR 420, 427; In re Qari (BC ND CA 2006) 357 BR 793, 798]. March, Ahart & Shapiro, California Practice Guide: Bankruptcy, Discharge and Nondischargeability § 22:680 (Rutter Group 2016).

Vetter argues that Camacho's embezzlement and larceny constitute a "willful and malicious injury" as to another entity, e.g. the Rafael Alonso estate. While these are the type of intentional torts that are of the general kind addressed by 11 U.S.C. § 523(a)(6), Vetter has not pled facts that support either larceny or embezzlement.

The motion will be granted as to Count IX.

DISMISSAL WITHOUT OR WITHOUT PREJUDICE, THAT THE IS THE QUESTION

Defendant Alejandra Camacho prays that the court grant her dismissal with prejudice.

When deciding whether to dismiss a complaint with or without prejudice, the court is granted broad discretion. *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1058 (9th Cir. 2011). Federal Rule of Civil Procedure 15(a) requires that leave to amend be "freely given when justice so requires." *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). When a viable claim might be stated, the court should err in favor of the complainant and grant leave at least once. "Where a more carefully drafted complaint might state a claim, a plaintiff must be given at least one more chance to amend the complaint before the district court dismisses the action with prejudice. [National Council of La Raza v. Chegavsk, (9th Cir. 2015) 800 F.3d 1032, 1041-'black letter law' that district court must give at least one chance to amend absent clear showing amendment would be futile; Davoodi v. Austin Independent School Dist., (5th Cir. 2014) 755 F.3d 307, 310-dismissal after giving plaintiff only one chance to state case 'is ordinarily unjustified.' Schwarzer, Tashima & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, Attacking the Pleadings § 9:287 (Rutter

Group 2016)].

Camacho's request for dismissal with prejudice will be denied. The complaint was particularly inartful, but there has not been a clear showing that the amendment would be futile.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Alejandra Camacho's motion to dismiss has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion to dismiss is granted without prejudice;

IT IS FURTHER ORDERED that plaintiff Jeffrey Vetter may file an amended complaint not later than 14 days from the date of this order and, if he does so, he will also file a redlined copy of the amended complaint;

IT IS FURTHER ORDERED that defendant Alejandra Camacho shall file a responsive motion or pleading not later than 14 days after service of the amended complaint;

IT IS FURTHER ORDERED that the parties shall not enlarge time for filing a responsive motion or answer without leave of court;

IT IS FURTHER ORDERED that if defendant Alejandra Camacho does not file a timely answer or responsive motion, plaintiff Jeffrey Vetter shall forthwith and without delay seek the default of defendant Alejandra Camacho.

5. 12-11008-A-7 RAFAEL ALONSO
 15-1044
 VETTER V. CAMACHO
 PHILLIP GILLET/Atty. for pl.
 RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
12-10-15 [[44](#)]

No tentative ruling.