

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

MODESTO DIVISION CALENDAR
March 12, 2020 at 2:00 p.m.

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| 1. | <u>18-90600-E-7</u> CORAZON HERNANDEZ | CONTINUED STATUS CONFERENCE RE: |
| | <u>19-9016</u> | COMPLAINT |
| | MCGRANAHAN V. GARIBA | 9-30-19 [1] |

Plaintiff's Atty: Reno F.R. Fernandez
Defendant's Atty: unknown

Adv. Filed: 9/30/19
Answer: none

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

Notes:
Continued to allow the Parties to work with the Debtor in the related bankruptcy case, having addressed the continuance with the Parties at the 1/9/20 hearing on the Motion for Entry of Default Judgment.

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| The Status Conference is XXXXXXXXXX |
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MARCH 12, 2020 STATUS CONFERENCE

By order of the court filed January 10, 2020 (Dckt. 27), this Adversary Proceeding has been stayed to allow the Plaintiff-Trustee, Defendant, and Debtor to focus their discussions on a possible Chapter 13 plan and conversion of this case rather than the liquidation of the Property that is the subject of this Adversary Proceeding, until such stay is vacated by further order of this court.

At the Status Conference, XXXXXXXXXX

REVIEW OF COMPLAINT

The Complaint contains the allegations that the Orangeburg Avenue Property is property of the bankruptcy estate. The Trustee asserts that the Property may be sold as provided in 11 U.S.C. § 363(h), including the asserted equitable interests of the Debtor's mother.

2. [18-90906-E-7](#) **MELISSA VASQUEZ**
[19-9007](#)
UNITED STATES V. VASQUEZ

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-19-19 [1]

Plaintiff's Atty: Jeffrey J. Lodge
Defendant's Atty: Frank M. Pacheco

Adv. Filed: 3/19/19
Answer: 5/23/19
7/8/19

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - other

Notes:
Continued from 1/9/20. The Parties seeking to resolve this matter utilizing the court's BDRP process. The Parties reported that they are continuing to work on a settlement and that a 45- to 60-day continuance would allow them to focus on getting this matter resolved.

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| The Status Conference is XXXXXXXXXX |
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MARCH 12, 2020 STATUS CONFERENCE

At the Status Conference, XXXXXXXXXX

JANUARY 9, 2020 STATUS CONFERENCE

The Status Conference was continued, the parties seeking to resolve this matter using the Bankruptcy Dispute Resolution Program. No updated pleadings have been filed.

At the Status Conference, the Parties reported that they are continuing to work on a settlement, and that a 45 to 60 day continuance would allow them to focus on getting this matter resolved.

SUMMARY OF COMPLAINT

The United States of America, "Plaintiff" commenced this Adversary Proceeding on March 19, 2019 with the filing of the Complaint (Dckt. 1), which allegations include:

1. Defendant Debtor received payments from the Social Security Administration based on her alleged disability.

2. Defendant Debtor filed her application for disability benefits in April 2006 and began receiving benefits in May 2006. Plaintiff-Debtor is obligated to notify the Social Security Administration in changes concerning her eligibility for benefits as stated in her application.
3. Though receiving disability benefits, Defendant Debtor was actually employed and working during the period July 2007 through January 2008, and January 2009 through February 2011.
4. Defendant Debtor received \$56,882.70 in benefits to which she was not entitled. These were obtained by Debtor not reporting the changes in her condition that she presented
5. It is alleged that the obligation to repay the \$56,882 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).
6. The Complaint also request that the court issue a “mere” Declaratory Judgment that the United States may seek to recouped against future benefits (as opposed to a judgment affirmatively authorizing the recoupment).

SUMMARY OF ANSWER

Melissa Vasquez, the Defendant-Debtor, filed a *pro se* Answer on July 8, 2019 (a prior answer document was filed in *pro se*, the court using the last filed as Defendant-Debtor’s answer). This was filed a week before counsel substituted in to represent the Defendant-Debtor. The *pro se* Answer filed by Defendant-Debtor’ includes:

1. Defendant-Debtor addresses conditions of her disability.
2. Defendant-Debtor alleges communications with the Social Security Administration.
3. The Answer admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff United States alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), (O). Complaint ¶ 1, Dckt. 1. In her *pro se* Answer, Defendant does not expressly admit or deny these allegations. Answer, Dckt. 11.

The determination of the nondischargeability of debt is a core matter proceeding arising under the Bankruptcy Code, 11 U.S.C. § 523(a). 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.

Debtor's Atty: David C. Johnston

Notes:

Operating Report filed: 3/2/20

Debtor in Possession's Chapter 11 Status Report filed 3/4/20 [Dckt 18]

The Status Conference is continued to 2:00 p.m. on [XXXXXXXXXX](#), 2020.

MARCH 12, 2020 STATUS CONFERENCE

This Chapter 11 case was commenced by the Debtor on February 12, 2020. The Debtor in Possession filed a Status Report on March 4, 2020. Dckt. 18. It is reported that due to the failure of the general contractors to pay the Debtor for work and services provided, the filing of bankruptcy was necessary. Additionally, the inability to collect a large account receivable dating back to 2014 has added to the financial stress.

Debtor commenced this as a small business case and the Debtor in Possession intends to diligently prosecute this case, including getting a plan of reorganization on file within 90 days of the Petition date.

At the Status Conference, [XXXXXXXXXX](#)

Review of Schedules

A review of Schedule A/B discloses that the estate has a large account receivables of 90 days or less, \$383,945, which Debtor lists as collectable in the face amount. This is the Bankruptcy Estate's significant asset.

Debtor lists no creditors with secured claims on Schedule D. Debtor does list a significant priority and non-priority tax claim on Schedule E/F, and modest general unsecured claims. On the Statement of Financial Affairs, Debtor lists gross income of \$1.3MM+ for 2019 and 2018.

4. [19-90440-E-7](#) **LESLIE KINSEY**
[19-9015](#)
MORGAN V. KINSEY

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-9-19 [1](#)

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

Adv. Filed: 9/9/19
Answer: 11/25/19

1st Amd Cmplt Filed: 3/5/20
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:
Continued from 2/6/20

[RHS-1] Order to Show Cause filed 2/11/20 [Dckt 19], set for hearing 3/12/20

First Amended Complaint for Nondischargeability of Debt filed 3/5/20 [Dckt 22] [per Order to Show Cause filed 2/11/20; Dckt 19]

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| The Status Conference is XXXXXXXXXX |
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SUMMARY OF COMPLAINT

Tom Morgan ("Plaintiff") filed a First Amended Complaint on March 5, 2020. Dckt. 22. A Certificate of Service states it was served on the named Defendant-Debtor and the Chapter 7 Trustee on March 6, 2020. Dckt. 23.

In the First Amended Complaint ("FAC"), Plaintiff asserts that he obtained a judgement for fraud against the Defendant-Debtor on October 9, 2001. The factual findings of the state court in granting that judgment include that Defendant-Debtor made factual misrepresentations, including:

- A. That he was a licensed contractor.
- B. That he had liability insurance.
- C. That he had workers' compensation insurance; and
- D. That he would pay prevailing wages to employees.

FAC ¶ 6; Dckt. 22. A copy of the State Court Judgment is attached as Exhibit 1 to the First Amended Complaint. The amount of the State Court Judgment for Plaintiff and against Defendant-Debtor is \$30,200.18.

In the original Complaint (Dckt. 1), Plaintiff computes the amount of the State Court Judgment (which is stated to have been renewed in April 2011) is \$107,044.59 as of the filing of this Adversary Proceeding.

SUMMARY OF ANSWER

Leslie Henry Kinsey (“Defendant-Debtor”) filed an Answer in *pro se* to the Original Complaint. Dckt. 9. In the *pro se* Answer to the *pro se* original Complaint, the Defendant-Debtor stated opposition that appears to go to the underlying issues of the State Court litigation.

REVIEW OF COLLATERAL ESTOPPEL AND THE DOCTRINE OF RES JUDICATA

At the Status Conference, the Parties addressed with the court the application of Collateral Estoppel in nondischargeability proceedings in federal court when there is a state court judgment on the underlying claim.

With respect to the First Amended Complaint, Plaintiff explained **XXXXXXXXXX**

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Tom Morgan alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I)-(J). Complaint ¶¶ 4, 5, Dckt. 22. The determination of whether a debt is nondischargeable is a core matter proceeding arising under the Bankruptcy Code itself, for which the bankruptcy judge issues all orders and the final judgment.

5. [16-90157-E-7](#) **DARYL FITZGERALD**
[18-9011](#)
FITZGERALD V. TRELLIS COMPANY

**PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF STUDENT
LOAN
6-25-18 [1]**

Plaintiff's Atty: Pro Se
Defendant's Atty: Robert Scott Kennard

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

Nature of Action:
Dischargeability - student loan
Dischargeability - other

Notes:
Scheduling order-
Initial disclosures by 4/5/19
Disclose experts by 5/10/19
Exchange expert reports by 5/24/19
Close of discovery ~~7/19/19~~ 2/1/20
Dispositive motions heard by ~~9/20/19~~ 2/1/20

Pretrial conference set for 11/7/19 continued to 3/12/20 by order of the court filed 10/27/19 [Dckt 89]

Status Report filed 1/22/20 [Dckt 99]

Pretrial Conference Statement filed 2/18/20 [Dckt 100]

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| The Pre-Trial Conference is XXXXXXXXXX |
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SUMMARY OF COMPLAINT

Daryl Fitzgerald, the Plaintiff-Debtor, has filed a Complaint to have his student loan obligation determined dischargeable. The named defendants are Navient Solutions, Inc., Wilkes-Barre, and Trellis Company. The court has dismissed Navient Solutions, Inc. from this Adversary Proceeding.

SUMMARY OF ANSWER

Trellis Company, fka Texas Guarateed [sic] Student Loan filed an Answer (Dckt. 18) that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court.

CORE MATTER PROCEEDING

Plaintiff seeks in the Complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court. 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 proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

PRETRIAL CONFERENCE ORDER

The Court issued its Pretrial Scheduling Order on April 29, 2019. Dckt. 62. Pursuant thereto, the Parties were ordered to provide specific information as part of their diligent prosecution of this Adversary Proceeding so the court could set the matter for trial. As stated in the Pretrial Scheduling Order:

SANCTIONS FOR FAILURE TO COMPLY

ORDERED, that if any party fails to comply with any provision of this order, the court may issue sanctions as appropriate and commemorated under FRCP, Local Rules of Practice, or other applicable statute, or orders, or rules.

Pretrial Order, p. 6:19-22; Dckt. 62.

As shown below, neither party has complied with the court's Pretrial Conference Order. For the Plaintiff, he has provided some explanations of his assertion that he is not obligated on the note and that his purported signature is a forgery.

In the file for Plaintiff's bankruptcy case and this Adversary Proceeding, the court has found several examples of Plaintiff's signature and the signature on the student loan note that is identified by Defendant as Plaintiff's.

A. Bankruptcy Petition. 16-90157; Petition Dckt. 1 at 6.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 1562, 1341, 1519, and 3571.

/s/ Daryl Darnell Fitzgerald

Daryl Darnell Fitzgerald
Signature of Debtor 1


Signature of Debtor 2

Executed on February 28, 2016
MM/DD/YYYY

Executed on _____
MM/DD/YYYY

March 12, 2020 at 2:00 p.m.

B. Declaration About Schedules. *Id.* at 40.

Under penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct.

X As/ Daryl Darnell Fitzgerald
Daryl Darnell Fitzgerald
Signature of Debtor 1

Date February 28, 2018

X

Daryl Fitzgerald
Signature of Debtor 2

Date _____

C. Spousal Waiver of Exemptions. *Id.*, Dckt. 7

Dated: 2/29/16 Daryl Fitzgerald
Debtor - Sign Name

Dated: 2/29/16 Daryl Fitzgerald
[Non-Filing Spouse - Sign Name]

D. Motion to Reopen Case. *Id.*, Dckt. 21.

The debtor(s) respectfully ask(s) the Court to reopen the case for the reason(s) stated above.

DATED: 6-25-18

IOF
Debtor's Signature

E. Student Loan Promissory Note, filed by Navient Solutions, LLC. 18-9011; Dckt. 29 at 2.

THIS IS A LOAN THAT MUST BE REPAYED.

30a. Christina Fitzgerald 3/31/97 30b. Daryl Fitzgerald 3-31-97

31a. Christina Fitzgerald 3/31/97 31b. Daryl Fitzgerald 3-31-97

SALLIE MAE COPY (Return to Sallie Mae)

DEBORAH'S SIGNATURE
X Deborah Fitzgerald DATE 3/31/97
DEBORAH'S SIGNATURE if applicable
X Wayne Fitzgerald DATE 3-31-97
DATE OF ENTRY OF ORDER OR OTHER ORDER TO BE CONSIDERED IN CALCULATING

At the Pretrial Conference, the Parties addressed the “diligent prosecution of this Adversary Proceeding,” **XXXXXXXXXX**

The court shall issue an Trial Setting Order in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.
- C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2020**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2020**.
- F. The Trial shall be conducted at ----x.m. on -----, **2020**.

The Parties in their respective Pretrial Conference Statements, Dckts. 100, 101, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff Daryl Fitzgerald

Defendant Texas Guarantee Student Loans

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| <p>Jurisdiction and Venue:</p> <p>Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.</p> | |
| <p>Undisputed Facts:</p> <p>1. None Identified</p> | <p>Undisputed Facts:</p> <p>1. None Stated</p> |
| <p>Disputed Facts:</p> <p>1. In 2018, the Plaintiff/Debtor saw a copy of the original jumbo student loan application/promissory note for the first time, this evidence showed fraudulent signatures with the Plaintiff/Debtor name in three different locations on the application.</p> <p>2. Plaintiff/Debtor was never informed verbally, nor in writing, nor through a notary service, nor over the phone requesting his approval to sign or agree to a jumbo student loan application with Sallie Mae.</p> <p>3. Plaintiff/Debtor contacted the unknown Student Loan Lender to request forbearance because of undue hardship at the time with two kids, Primary Borrower miscarriage, and on the verge of being a single father.</p> <p>4. The Plaintiff/Debtor and Primary Borrower eventually went their separate</p> | <p>Disputed Facts:</p> <p>1. None Stated</p> |

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| <p>ways.</p> <p>5. When the Plaintiff/Debtor got married, the Primary Borrower of the student loan canceled her Bankruptcy and provided the Plaintiff's contact information to Navient, the new student loan lender/vendor of the Primary Borrower.</p> <p>6. Around 2014/2015, Navient collections contacted the Plaintiff/Debtor, started garnishing payments while threatening to damage credit for non-payment.</p> <p>7. The Plaintiff/Debtor contacted a student loan refinance lender.</p> <p>8. The Student Loan refinance lender was unable to finalize the loan because every time they called Navient and provided my SSN, Navient stated, "he has no student loans with us, so please put the Primary Borrower on the phone." No one was able to get a hold of the Primary Borrower, so the student loan refinances company canceled the pre-approval.</p> <p>9. From 2016 Bankruptcy finalization to 2018, I thought the student loans were discharged. Despite the Chapter 7 discharge, I still had an undue hardship of -1,807.72 per month and career troubles, which had me looking into other jobs.</p> <p>10. The Plaintiff/Debtor never seen this application before, nor approved to sign his name in three places. To be clear, the signatures are forged/fraud in three areas.</p> | |
| <p>Disputed Evidentiary Issues:</p> <p>1. None Stated</p> | <p>Disputed Evidentiary Issues:</p> <p>1. None Stated</p> |

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| Relief Sought: 1. Discharge of student loan obligation. | Relief Sought: 1. Denial of Request to have student loan obligation determined dischargeable. |
| Points of Law: 1. None Identified | Points of Law: 1. None Identified |
| Abandoned Issues: 1. None Identified | Abandoned Issues: 1. None Identified |
| Witnesses: 1. None | Witnesses: 1. None |
| Exhibits: 1. None | Exhibits: 1. None |
| Discovery Documents: 1. None | Discovery Documents: 1. None |
| Further Discovery or Motions: 1. None | Further Discovery or Motions: 1. Defendant is “considering” filing a dispositive motion and requests additional time for such consideration. As provided in the Pretrial Scheduling Order, the deadline for hearing of dispositive motions expired on September 20, 2019. Order, p. 2:11; Dckt. 62. |
| Stipulations: 1. None Identified | Stipulations: 1. None Identified |
| Amendments: | Amendments: |

| | |
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| 1. None Identified | 1. None Identified |
| Dismissals: 1. None Identified | Dismissals: 1. None Identified |
| Agreed Statement of Facts: 1. None Identified | Agreed Statement of Facts: 1. None Identified |
| Attorneys' Fees Basis: 1. None Identified | Attorneys' Fees Basis: 1. None Identified |
| Additional Items 1. None Identified | Additional Items 1. None Identified |
| Trial Time Estimation: None Provided | Trial Time Estimation: None Provided |

Debtor's Atty: Jessica A. Dorn
Creditor's Atty: Cort V. Wiegand

Notes:

Continued from 1/9/20 in light of new counsel substituting in for Creditor, Scarlett Severson-Fiorini. Both Parties are to file pre-evidentiary hearing conference statements to ensure that the information provided was clear and in one document for each party.

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| The Pre-Evidentiary Hearing Conference is XXXXXXXXXX |
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MARCH 12, 2020 PRE-EVIDENTIARY HEARING CONFERENCE

On January 10, 2020, the court issued its order continuing the Pre-Evidentiary Hearing Conference and ordering each party to file their respective Pre-Evidentiary Hearing Conference Statements at least seven days before the March 12, 2020 continued Pre-Evidentiary Hearing Conference. Order, Dckt. 79. As discussed in the Civil Minutes from the January 9, 2020, Pre-Evidentiary Hearing Conference, this was necessary because what the Parties had filed as their joint statement (Dckt. 77) did not clearly and sufficiently identify the witnesses, exhibits, and discovery documents that they were presenting for their respective cases in chief. Civil Minutes, Dckt. 78.

No Pre-Evidentiary Hearing Statements have been filed. It appears that the Parties have resolved this matter, but the stipulation or dismissal has not yet been filed.

At the Pre-Evidentiary Hearing Conference, the Parties reported to the court, XXXXXXXXXX

FINAL RULINGS

7. [20-90109](#)-E-11 IGB GROUP INC

STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-10-20 [\[1\]](#)

DEBTOR DISMISSED: 2/26/20

Debtor's Atty: Pro Se

Notes:

Order dismissing case for failure to timely file documents filed 2/27/20 [Dckt 13]

The Bankruptcy Case having been dismissed (Order, Dckt. 13) for failure to file documents, **the Status Conference is concluded and removed from the Calendar.**

Final Ruling: No appearance at the March 12, 2020 Hearing is required.

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

Adv. Filed: 9/9/19
Answer: 11/25/19

Nature of Action:
Objection/revocation of discharge

Notes:
Plaintiff, Tom Morgan, to appear to show cause why this court should not dismiss this adversary proceeding. Telephonic appearance permitted for this order to show cause.

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| <p>The Order to Show Cause is discharged, with no sanctions ordered pursuant thereto.</p> |
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MARCH 12, 2020 HEARING ON ORDER TO SHOW CAUSE

On February 11, 2020, the court continued the hearing on the Order to Show Cause to March 12, 2020 at 2:00 p.m., stating that if Plaintiff fails to file an amended complaint that complies with the minimum pleading requirements under Federal Law; see *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); by March 10, 2020, the court shall issue an order dismissing this Adversary Proceeding without prejudice, without further notice or hearing.

On March 5, 2020, Plaintiff filed a First Amended Complaint. Dckt. 22. Plaintiff is now represented by Counsel. A review of the First Amended Complaint reflects it is sufficient to discharge this Order to Show Cause and allow Plaintiff to proceed with his counsel in the prosecution of an adversary proceeding.

The Order to Show Cause is discharged.

ORDER TO SHOW CAUSE

On September 9, 2019, Tom Morgan, Creditor ("Morgan"), filed with the court a document titled "Adversary Complaint." Dckt. 1. The first two pages of this document state that Leslie Henry Kinsey, the Debtor in Chapter 7 Bankruptcy Case No. 19-90440 ("Kinsey"), made misrepresentations that he was a contractor, abandoned the work that Morgan had hired him to perform, and that Morgan

sued Kinsey in state court and Kinsey was found guilty of fraud. The next twenty-six pages are a series of exhibits and documents, including state court judgment dating back to 2001, which was renewed in 2011.

This document bears the case number for Bankruptcy Case No. 19-90440. The Clerk of the Court perceiving that this could be a complaint for nondischargeability opened an adversary proceeding file and filed it therein (consistent with established court procedure).

A document titled "Answer" was filed by Kinsey on November 25, 2019. Dckt. 9. This answer contains a general denial and some counter allegations. While filed in *pro se*, the answer appears to have been prepared by someone with legal training, possibly an attorney.

At the December 19, 2019, Status Conference, the court discussed with the Parties shortcomings in both the Complaint and Answer. Plaintiff stated that he would seek the assistance of counsel. The court and Parties discussed the economic utility of nondischargeability litigation in light of the state court judgment now being 19 years old and not one dime has been recovered on it by Plaintiff.

On February 3, 2020, in response to the Order to Show Cause, Plaintiff Tom Morgan filed a document titled "Addendum #1, Adversary Complaint." This appears to be a copy of the proposed amended complaint that Mr. Morgan seeks to file in this case. The sum total of the claim for relief stated by Mr. Morgan consists of:

This objection to the DISCHARGE of this indebtedness is substantiated by various bills passed by Congress and 11 U. S. CODE 523 (2) (A) (B). Which states in part "Use of false pretenses, false representation, use of a false statement".

One might ask himself why after eighteen years are you, Tom Morgan pursuing this indebtedness. One of the many answers might be, because he, Mr. Kinsey, created this incident thru lying, deception and fraud, of which the documentation to substantiate these statements are on file with the Bankruptcy Court. The indebtedness is substantiated by a California Court where Mr. Kinsey was also found guilty of Fraud.

Dckt. 16. This clearly falls short of the pleading standards enunciated by the U.S. Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

9. [19-90464](#)-E-7 RICHARD RICKS

[19-9020](#)

HIRST LAW GROUP, P.C. V. RICKS

CONTINUED STATUS CONFERENCE

RE:

COMPLAINT

12-6-19 [\[1\]](#)

Plaintiff's Atty: Mark A. Serlin

Defendant's Atty:

Adv. Filed: 12/6/19

Reissued Summons: 12/17/19

Answer: 1/6/20

Nature of Action:

Dischargeability - other

Notes:

Continued from 2/6/20 by request of counsel for Plaintiff. See Status Conference Statement of Plaintiff Hirst Law Group, P.C. filed 1/24/20 [Dckt 11]

[MAS-1] Motion for Summary Judgment and Alternatively for Summary Adjudication filed 1/24/20 [Dckt 12], set for hearing 3/12/20 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on May 14, 2020, to allow Plaintiff to conclude the hearings on its Motion for Summary Judgment.