

MOTION TO DISMISS

On May 23, 2019, Defendant-Debtor Joseph Akins filed a Motion to Dismiss First Amended Complaint. Dckt. 37. The Motion states with particularity (Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007) the following grounds upon which the dismissal is requested:

1. "Sheila Gropper Nelson, appearing, shall move the Court to Dismiss the above referenced First Amended Complaint to Determine Nondischargeability of a debt pursuant to 11 U.S.C. Section 523(a)(2)(A), (a)(4) and (a)(6),"

Motion, p. 1:21.5-23.5; Dckt. 37.

2. "The grounds for said Motion, pursuant to Federal Rule of Bankruptcy Procedure, are that each of the identified Causes of Actions(1 to 4) fail to allege the requisite elements with the required specificity to state causes of actions; are each facially implausible, are all contradicted internally as well as by matter either before this Court or as may be judicially noticed by the Court and that amendment can not cure the defects."

Id., p. 1:25.5-26.5, 2:1-3,

3. "The motion is supported by the pleadings and papers filed in support hereon and such other and further grounds and matter as the Court allows."

Id., p. 2:4-6.

Other than the conclusion stated in paragraph 2 above, the court is at a loss to understand the "grounds" and what asserted allegations are missing.

Defendant-Debtor has also filed a ten page Memorandum in support of the Motion to Dismiss. Dckt. 39. This contains extensive recitations of the history of the Adversary Proceeding, citations, and quotations from a number of cases. It reads like an appellate brief, very well written, but a melange of arguments, speculation, citations, and quotations.

The hearing on the Motion to Dismiss has been set by Defendant-Debtor for July 11, 2019.

MAY 9, 2019 STATUS REPORT

On May 9, 2019, Plaintiff filed an Updated Status Report. Dckt. 33. Plaintiff reports that the First Amended Complaint and summons had been served.

SUMMARY OF COMPLAINT

Dominique Black ("Plaintiff") filed her First Amended Complaint on April 4, 2019, in this Adversary Proceeding. Dckt. 21. The Certificate of Service states that it was served on April 18, 2019. Dckt. 26. It states that the "attached Summons and Notice of Status Conference in an Adversary Proceeding and a copy of the complaint" were served. No documents attesting to what was served are "attached."

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Plaintiff's new counsel, who substituted in to represent the previously *pro se* Plaintiff in February 2019, filed a Status report on April 17, 2019. Dckt. 22. Plaintiff explains the investigation undertaken, the preparation of a First Amended Complaint, and that counsel is awaiting a reissued summons from the court.

Defendant-Debtor's counsel, making a special appearance at the hearing on an Order to Show Cause, provided a review of the applicable rules and law governing the initial prosecution of an adversary proceeding and service of process. Dckt. 10.

The allegations in the First Amended Complaint are summarized by the court as follows:

1. Plaintiff was the owner of what is described as a 1977 Classic GMC Motorhome ("Motor").
2. Defendant and associates represented that they operated a licensed business specializing in restoration of vehicles such as the Motorhome.
3. Defendant and associates entered into a contract to restore the Motorhome.
4. Plaintiff advanced \$147,622.75 for the restoration
5. Plaintiff alleges that Defendant and associates created false invoices and "embezzled" the monies that he provided for the restoration.
6. Defendant represented he had a California BAR license and a GMC license, and was under contract to GMC through an east Bay Dealership, Hilltop Buick.
7. Plaintiff asserts that he discovered in this process that Defendant's brother was using the Motorhome as a residence and for other activities not related to restoration of the vehicle.
8. It is asserted that in 2006 Defendant attempted to seize title to the Motorhome by foreclosing on a mechanic's lien.
9. Plaintiff made arrangements with the owner of the property on which Defendant was doing business, and for whom the lease was terminated, to go on the property to recover the Motorhome. It is alleged that Defendant then dismantled and vandalized the Motorhome, removing the valuable parts therefrom.
10. It is further alleged that Defendant then abandoned the Motorhome on a public roadway, further vandalized the Motorhome by pouring paint on it, leaving waste on it, and having used it for other than legal enterprises.
11. Plaintiff obtained a State Court Judgment against Defendant and associates in the amount of \$323,804.85, which Plaintiff computes to have a judgment balance of \$193,612.97 as of August 9, 2018 (Plaintiff having received a partial payment from some of the other judgement debtors on the State Court Judgment.
12. Plaintiff asserts that the obligation on the State Court Judgment is nondischargeable

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pursuant to: 11 U.S.C. § 523(a)(2)(A) [fraud]; § 523(a)(4) [embezzlement, larceny]; and § 523(a)(6) [willful and malicious injury].

SUMMARY OF ANSWER

No answer has been filed to the First Amended Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Dominique Black alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), 11 U.S.C. § 523(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). First Amended Complaint ¶¶ 3,5, 6, Dckt. 21.

2. [17-22515-E-7](#)
[18-2181](#)

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CONTINUED STATUS CONFERENCE
RE: COMPLAINT
11-2-18 [1]

Final Ruling: No appearance at the May 29, 2019 Status Conference is required.

Plaintiff's Atty: Marc A. Levinson
Defendant's Atty: David J. Collins

Adv. Filed: 11/2/18
Answer: 11/16/18
Amd. Answer: 12/14/18

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued by request of Parties; order filed 3/12/19 [Dckt 30]

[OHS-1] Order granting motion for summary judgment filed 4/30/19 [Dckt 38]

[OSH-1] Judgment filed 5/9/19 [Dckt 40]

<p>Judgment having been entered on May 9, 2019 (Dckt. 40), the Status Conference is concluded and removed from the Calendar.</p>

3. [19-21920-E-13](#) SUZANNE FLEMONS

STATUS CONFERENCE RE: MOTION
TO EXTEND DEADLINE TO FILE
DOCUMENTS
4-12-19 [\[10\]](#)

Final Ruling: No appearance at the May 29, 2019 Status Conference is required.

Debtor's Atty: Diana J. Cavanaugh

Notes:

Set by order of the court filed 4/15/19 [Dckt 12]; Debtor to address in court her reference to an attorney assisting her in this bankruptcy case.

Substitution of Attorney filed 4/30/19 [Dckt 16]

Trustee Report at 341 Meeting docketed 5/10/19. Meeting concluded.

Motion to Confirm Debtor's Chapter 13 Plan filed 5/21/19 [Dckt 26], set for hearing 6/25/19 at 3:00 p.m.

Debtor having counsel who has substituted in to represent Debtor in this case, and a plan and motion to confirm having been filed and set for hearing, **the Status Conference is concluded and removed from the calendar.**

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

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

The Motion to Extend the Time to file Schedules and other documents filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the court deems the Schedules and other documents filed on May 4, 2019 (Dckts. 19, 20, 22) as timely filed in this case.

4. [17-26125-E-7](#) **FIRST CAPITAL RETAIL,**
[18-2030](#) **LLC**

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
5-17-18 [39]

FIRST DATA MERCHANT SERVICES LLC
V. MCA RECOVERY, LLC ET AL

Plaintiff's Atty: Randy B. Soref; Andrew Joseph Nazar

Defendants' Atty:

Robert S. McWhorter [MCA Recovery, LLC]

Gabriel E. Liberman [First Capital Retail, LLC]

Jeffrey D. Ganz; J. Russell Cunningham [13th Floor/Pilot, LLC]

Adv. Filed: 3/22/18

Answer: 4/23/18 [First Capital Retail, LLC]

Amd. Cmpl. Filed: 5/17/18

Answer: 7/20/18 [13th Floor/Pilot, LLC]

7/20/18 [First Capital Retail, LLC]

7/20/18 [MCA Recovery, LLC]

Amd. Answer: 8/3/18 [MCA Recovery, LLC]

Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 7/20/18

Answer: none

Cross-Claim Filed [by MCA Recovery, LLC]: 8/3/18

Answer: 8/22/18 [13th Floor/Pilot, LLC]

Amd. Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 8/22/18

Answer: 10/23/18 [MCA Recovery, LLC]

Nature of Action:

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

Notes:

Continued from 4/24/19

MAY 29, 2019 STATUS CONFERENCE

The Parties have not filed an updated Status Conference Report concerning the status of this Adversary Proceeding. At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXX**

MARCH 20, 2019 STATUS CONFERENCE

On February 13, 2019, the Parties filed a Stipulation to Continue the then pending Status Conference. Dckt. 144. The Parties advised the court that they were engaged in settlement discussions and requested the continuance to save the parties what might be unnecessary attorney's fees. The Parties further advised the court that their Joint Discovery Plan would be filed by March 15, 2019.

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Nothing further has been filed in this case by the Parties.

At the March 20, 2019 Status Conference, the parties reported that they are continuing in their negotiations and are working towards settlement. The Parties filed on March 19, 2019 a request for a further continuance. (Dckt. 150).

**SUMMARY OF FIRST AMENDED COMPLAINT
AND CROSS-COMPLAINTS**

Given the complexity of the pleadings and identification of parties in this multi-cross complaint adversary proceeding, the court has constructed the following chart of the live matters before the court.

<p>FIRST AMENDED COMPLAINT (Dckt. 39) First Data Merchant Services, LLC ("Plaintiff") alleges in its First Amended Complaint that it has commenced this interpleader action:</p> <ol style="list-style-type: none"> 1. Plaintiff is holding \$214,923.33. 2. Defendant First Capital Retail, LLC (Defendant-Debtor) has filed a bankruptcy petition in the Eastern District of California. 3. Plaintiff is a payment card processor for Defendant-Debtor. 4. Plaintiff was served with a Restraining Notice by MCA Recovery, LLC for \$214,932.33 of payments being processed for Defendant-Debtor. Plaintiff has frozen the payments. 5. On November 8, 2017, Defendant-Debtor filed a Motion for an Order Avoiding Preferential Transfer, Directing Turn Over and Mandating Delivery of the Frozen Funds. 6. On April 6, 2018, the court approved the sale of Defendant-Debtor's assets to 13th Floor/Pilot LLC. 7. Defendant-Debtor and Defendant MCA Recovery, LLC each have demanded the \$214,932.33. 	<p>AMENDED CROSS-CLAIM of 13th Floor (Dckt. 108) against MCA Recovery which alleges:</p> <ol style="list-style-type: none"> 1. Cross-Claimant seeks recovery against Defendant-MCA Recovery. 2. It is asserted that asserted obligation of Defendant-Debtor to Defendant-MCA Recovery are avoidable as fraudulent conveyances pursuant to 11 U.S.C. § 548. 3. It is further asserted that Cross-Claimant can recover payments made by Defendant-Debtor to and a purported judgment lien against Defendant-Debtor by Defendant-MCA Recovery as fraudulent conveyances pursuant to 11 U.S.C. §§ 548, 550, and 551. 4. It is asserted that the agreement with Yellowstone by which Defendant-MCA Recovery asserts its interests was entered into by a person who had not authority to act for Defendant-Debtor. 5. No monies for which Defendant-MCA Recovery asserts its rights were delivered to Defendant-Debtor. 6. The unauthorized representative of Defendant-Debtor made unauthorized payments to Yellowstone. These payments were made within the period for avoidable fraudulent conveyances and preferential transfers. 	<p>CROSS-COMPLAINT of MCA Recovery (Dckt. 89) against Defendant-Debtor and 13th Floor, asserting:</p> <ol style="list-style-type: none"> 1. That for the Cross-Complaint jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o). 2. The rights of MCA Recovery, as the assignee of Yellowstone, in the underlying contract and the monies that are the subject of the Interpleader Complaint are to be determined in favor of MCA Recovery.

<p>First Capital Retail, LLC ("Defendant-Debtor") filed its Answer(Dckt. 73) which:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the First Amended Complaint. 2. Asserts four affirmative defenses, including that Defendant MCA Recovery, LLC is barred from receiving the monies because such would be a preferential transfer. 3. Seeks to have the court determine that the \$214,932.33 be awarded to 13th Floor/Pilot, Inc. as Defendant-Debtor's successor. 	<p>Defendant-MCA filed its Answer (Dckt. 127) to the Amended Cross-Claim, that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the Cross-Claim. 2. Asserts ten affirmative defenses. 3. Does not state whether this is a core proceeding and if not, if it consents to the entry of final orders and judgment by the bankruptcy judge. 	<p>13th Floor Answer to Cross-Complaint Filed by MCA Recovery (Dckt 107)</p> <p>13th Floor has filed its Answer (Dckt. 107) to the Cross-Complaint that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the Cross-Complaint. 2. Asserts seven affirmative defenses.
<p>13th Floor/Pilot LLC ("Defendant-13th Floor") has filed an Answer (Dckt. 70) that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the First Amended Complaint. 2. States three affirmative defenses. 	<p>Order (Dckt. 135) Dismissing Claims 1, 2, 3, 4, and 7 (in part) of the Amended Cross-Complaint filed by 13th Floor.</p>	
<p>MCA Recovery, LLC, as the Assignee of Yellowstone Capital West, LLC ("Defendant-MCA Recovery") filed its Answer (Dckt. 75) to the Complaint for Interpleader, stating:</p> <ol style="list-style-type: none"> 1. The Answer admits and denies specific allegations in the Complaint. 2. The Answer states two affirmative defense. 		

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff does not allege in the Complaint how jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), or whether this is a core proceeding in the Complaint. The court notes that if the issue presented was one whether the property at issue was property of the bankruptcy estate, then such claims/issues arising under the Bankruptcy Code, 11 U.S.C. § 541, would, in addition to be subject to the exclusive jurisdiction of the federal courts (28 U.S.C. § 1334(e)), be a claim arising under the Bankruptcy Code.

In its Answer, Defendant-13th Floor does not allege a basis for federal court jurisdiction in this bankruptcy court or whether it is a core matter. For the Cross-Claim, it is alleged that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1334(b), § 157(a) and § 157(b) [core matter], and further that Defendant-13th Floor consents to the entry of final orders and judgment by the bankruptcy judge.

In its Amended Answer, Defendant-MCA Recovery asserts that the Complaint for Interpleader is not a core matter and it does not consent to a bankruptcy judge issuing final orders and judgment in such action

However, in its Cross-Complaint for a determination of the respective rights of the parties in the contract upon which MCA Recovery asserts its interest in the interpleader monies and against the fraudulent conveyance and preference claims, MCA Recovery alleges that jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o).

From review of the Complaint and Cross-Claims, the substance of the claims in this Adversary Proceeding is for the court to determine conflicting claims in the monies at issue of:

The Bankruptcy Estate of First Capital Retail, LLC, the Chapter 7 Debtor in Chapter 7 case 17-26125

13th Floor/Pilot, LLC, which asserts to be the successor to the above Debtor pursuant to a sale of assets from the bankruptcy trustee (17-26125; Order, Dckt. 378).

MCA Recovery, LLC, which is asserted to have received transfers from Debtor

The sale of assets to 13th Floor/Pilot, LLC sold are stated in the Motion to Sell, ¶ 13; 17-26125, Dckt. 304 as:

[a]ll or substantially all of the Debtor's business-related assets . . . included, but were not limited to, the following: inventory, account receivables, executory contracts, cash, deposits, franchise agreements (including the Franchise Agreement with Franchisor), supply agreements, permits, licenses, software systems, fixtures, furniture, equipment, tools, supplies, intellectual property, all leasehold interests and tenant improvements, and all other assets used in connection with operating Debtor's various franchise

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businesses (collectively the “**Acquired Assets**”).

(Emphasis in original).

The Asset Purchase Agreement is filed as Exhibit C in support of the Motion to Sell Assets. Exhibit C is found in the court’s files at Docket 307, beginning on page 38 of the Exhibit Document. The Purchase Agreement with its attachments is seventy-one (71) pages in length. In this detailed agreement, the “Acquired Assets” being sold and purchased are:

The assets of the Seller, which the Agreement defines as “ ‘Seller’ has the meaning set forth in the preamble” to the Agreement. Agreement page 14. The “Seller” is defined in the “Preamble,” which appears to be the introductory paragraph to the Agreement as “First Capital Retail, LLC.” *Id.* at 1. At this time the case was one under Chapter 7 so that “First Capital Retail, LLC” was the debtor and also serving as the debtor in possession. The signature block at the end of the Agreement has it being signed by First Capital Retail, LLC, Debtor and Debtor in Possession.”

At issue in this contested matter are that transfers may be avoided as fraudulent conveyances pursuant to 11 U.S.C. § 548. The assets being purchased are then stated to be the “Acquired Assets,” which are defined as:

“Acquired Assets” means, all of Seller’s right, title and interest, free and clear of all Liens (other than Permitted Liens), in and to all of the properties, rights, interests and other tangible and intangible assets of Seller for use in or relating to the Business (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP) including any assets acquired by Seller after the date hereof but prior to the Closing; provided, however, that the Acquired Assets shall not include any Excluded Assets. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent listed or otherwise included as an Excluded Asset):

...

(w) any avoidance actions under chapter 5 of the Bankruptcy Code relating to (1) any Transferred Contract or trade vendor that Buyer will conduct business with following the Closing (the “Acquired Avoidance Actions”), and (2) any cause of action, lawsuit, judgment, claim, refund, right of recovery, right of set-off, counterclaim, defense, demand, warranty claim, right to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of Seller from and against First Data Merchant Services LLC (the “First Data Claims”); provided, that in the event the Buyer (x) realizes a recovery from the prosecution and/or settlement of any First Data Claims, the proceeds realized therefrom shall be allocated and paid according to the following waterfall: first, to reimburse Buyer all costs of collection incurred by Buyer; second, an amount not to exceed \$100,000 in the aggregate for payment to Debtor’s retained professionals for actual, reasonable and documented unpaid fees and expenses; and third, the remaining balance, if any, to Buyer for its own account; provided, further, that in the event Buyer determines, after due investigation, not to prosecute the First Data Claims, Buyer agrees that it shall provide prompt written notice of such determination to the Seller, and upon delivery of such notice the First Data Claims shall thereupon become Excluded Assets for all purposes of this Agreement; . . .

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In addition to having purchased rights and interests, it appears that 13th Floor/Pilot, LLC is seeking to exercise rights of a trustee under 11 U.S.C. § 548 to avoid transfers. None of the proceeds are to be paid to the bankruptcy estate.

At the Status Conference the Parties reported there are ongoing settlement negotiations.

Joint Status Report

On April 18, 2019, the Parties filed a Second Joint Status Report. Dckt. 154. In it they jointly report to the court:

- A. The Parties have not yet engaged in discovery.
- B. The Parties discovery plan is:
 - 1. Discovery will be needed on the following subjects: all claims and defenses of 13th Floor and Yellowstone.
 - 2. All discovery commenced in time to be completed by November 1, 2019.
 - 3. Maximum of 5 depositions by each party.
 - 4. Each deposition limited to maximum of 7 hours unless extended by agreement of parties.
 - 5. Reports from retained experts under Rule 26(a)(2) due:
 - a. from 13th Floor by August 1, 2019;
 - b. from Yellowstone by August 15, 2019;
 - 6. All potentially dispositive motions should be filed by December 15, 2019.
 - 7. (g) The proceeding should be ready for trial by January 30, 2020. The trial is expected to take approximately 3 days.

As with the Complaint, Answers, and Cross-Claims, the issue of federal court jurisdiction and core/non-core proceeding issues are not addressed.

5. [10-27435-E-7](#) **THOMAS GASSNER**
[19-2038](#)

STATUS CONFERENCE RE:
COMPLAINT
3-12-19 [1]

GASSNER V. GASSNER ET AL

Plaintiff's Atty: Holly A. Estioko
Defendant's Atty:
 Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]
 Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19
Answer:
 4/11/19 [Laura Strombom]
 4/11/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:
Sanctions for willful violation of automatic stay (against Settlers and Strombom)
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Declaratory judgment
Injunctive relief - other

Notes:
Joint Status Conference Statement and Discovery Plan of Plaintiff Georgene Gassner, Defendants Carol L. Gassner and Alfred M. Gassner, and Defendant Laura Strombom filed 5/16/19 [Dckt 12]

The Status Conference is XXXXXXXXXXXXXXXXXXXX

MAY 29, 2019 STATUS CONFERENCE

At the Status Conference XXXXXXXXXXXXXXXXXXXX

Joint Status Conference Statement

On May 16, 2019, the Parties filed a Joint Status Conference Statement and Discovery Plan. Dckt. 12. The Plaintiff and Strombom Defendant have agreed on the following discovery and motion schedule:

- Non-Medical Expert Witness Disclosure.....July 15, 2019
- Exchange of Non-Medical Expert Witness Reports.....September 16, 2019

- Medical Expert Witness Disclosure and Reports.....60 days Before Close of Discovery

Close of Discovery.....December 20, 2019

Dispositive Motions Hearing Deadline.....February 28, 2020

Pretrial Conference.....TBD March 2020

The Settlor Defendants assert that additional discovery time is required given the heft of the Complaint and claims for actual and punitive damages, as well as injunctive relief.

The Joint Status Reports also states that Settlor Defendant asserts the following (as stated in the Joint Status Report):

The Court should take into account that Plaintiff has filed a fourteen (14) page, one hundred twenty (120) paragraph Complaint alleging five (5) causes of action, in which Plaintiff asks for actual, compensatory and punitive damages, as well as injunctive relief, **all of which could require abstention or remand to state court to resolve.**

Joint Status Report, p. 3:13-16 (emphasis added for relevant text).

The court is unsure of what required abstention or “remand” would be required. This Adversary Proceeding has not been removed from state court, so there is nowhere to “remand” the action.

As far as required abstention, Congress has created exclusive federal court jurisdiction for all property of the bankruptcy estate. 28 U.S.C. § 1334(e). This includes determining what is property of the bankruptcy estate. Congress has also given federal judges in bankruptcy cases the discretionary power to abstain if the court determines that such determination can be “timely adjudicated, in a State forum of appropriate jurisdiction.” 28 U.S.C. § 1334(c)(2).

At the Status Conference the Parties addressed the point raised by Settlor Defendant that resolution of the various claims in the Complaint “require” abstention or remand.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Necessary Parties

As the Supreme Court addressed in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), a federal judge does not grant relief merely because someone asks for it. While the court has to rely on the parties to present the evidence from which findings of fact are to be made, the court is responsible for getting the law right - notwithstanding what is presented by the parties (just as an appellate court conducts *de novo* review of a trial court’s legal conclusions).

The court has been presented with a Complaint in which the successor to the post-discharge Debtor asserts that the automatic stay was violated. Such would be violations of the automatic stay as it applies to the Debtor or rights the Debtor acquired upon the closing of the bankruptcy case which Debtor could assert.

As the Parties have noted, Kimberly Husted, the Chapter 7 Trustee in Debtor's bankruptcy case, has commenced her own adversary proceeding, 19-2006, against the Settlers Defendant and MEPCO (these terms are defined below). The Trustee's Complaint seeks the turnover of the Parents Trust Property (defined term below) and claims for violation of the automatic stay as it relates to such property of the Bankruptcy Estate in the Debtor's case.

To the extent that claims are being asserted in this Adversary Proceeding for alleged violations of the automatic stay as it applies to property of the Bankruptcy Estate in Debtor's Chapter 7 case, the court puts to the Parties whether the Chapter 7 Trustee is a necessary party to any adjudication of such rights in this Adversary Proceeding.

At the Status Conference, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

SUMMARY OF COMPLAINT

Georgene Gassner ("Plaintiff") has filed a Complaint seeking Sanctions for Violation of the Automatic Stay (Counts 1 and 2), Breach of Fiduciary Duty (Count 3), Judgment that Court Action is Void (Count 4), and Injunctive Relief (Count 5), which Complaint is summarized as follows:

- A. Plaintiff is the surviving spouse of Debtor Thomas Gassner and is the Successor Trustee of the Thomas Gassner and Georgene Gasser Family Trust ("Family Trust").
- B. Carol L. Gassner and Alfred Gassner ("Settlers") are the settlors of the Thomas A. Gassner Trust ("Parents Trust").
- C. Laura Strombom ("Strombom:") is the Trustee of the Parents Trust Thomas Gassner Trust.
- D. Plaintiff alleges that Strombom worked for MEPCO Label Systems ("MEPCO).
- E. The Parents Trust was created for the benefit of Debtor. The corpus of the Parents Trust included 2,000 shares of MEPCO common stock.
- F. Debtor worked for MEPCO, including serving as its president. Plaintiff also worked at MEPCO.
- G. Debtor filed bankruptcy on March 25, 2010, and it is alleged that based on advice of counsel Debtor did not disclose his interest in the Parents Trust.
- H. Debtor received his Chapter 7 discharge on July 12, 2010, with his bankruptcy case being closed on May 11, 2011.

- I. The undisclosed interest in the Parents Trust continued to be an asset of the bankruptcy estate notwithstanding the closing of Debtor's bankruptcy case.
- J. Debtor and Plaintiff left employment at MEPCO in 2010, and the relationship with Settlers had turned acrimonious.
- K. On July 2, 2016, Debtor turned 50 years old, at which point he was entitled to receive the assets from the Parents Trust.
- L. On June 7, 2016, Settlers commenced a State Court Action to modify the Parents Trust and suspend distributions.
- M. It is alleged that Strombom participated in Settlers' attempt to change the Trust as part of an attempt to deprive Debtor of the assets from the Parents Trust.
- N. It is asserted that the State Court Action was an attempt to obtain possession and control of property of the bankruptcy estate, which was protected by the automatic stay.
- O. Settlers and Strombom were aware of the Debtor's bankruptcy case and the automatic stay when they prosecuted the State Court Action. It is alleged that in the State Court Action Settlers and Strombom expressly asserted that Debtor "failed to properly disclose assets, including his income rights and beneficial interest in the Trust, to creditors when he later filed for person Bankruptcy protection in 2010."
- P. Strombom did not distribute the Parents Trust assets to Debtor when he turned 50 years old.
- Q. In October 2016, the State Court issued an order suspending distribution of the Parents Trust assets pending resolution of the State Court Action.
- R. It is alleged that thereafter Strombom did not fulfill her fiduciary duties as the trustee of the Parents Trust.
- S. Neither Strombom or the Settlers have turned over the Parents Trust assets to the Chapter 7 Trustee in Debtor's bankruptcy case.
- T. Debtor passed away on October 5, 2017.
- U. Prior to passing away, Plaintiff and Debtor created the Family Trust, which includes Debtor's interests in the Parents Trust.
- V. Notwithstanding notice of the reopened bankruptcy case, Settlers have attempted to conduct discovery in the State Court Action.
- W. It is asserted that Settlers have violated the automatic stay by filing and prosecuting the State Court Action, as well as withholding the distribution of the Parents Trust assets to Debtor.

- X. It is asserted that Strombom violated the automatic stay by filing and prosecuting the State Court Action, as well as withholding the distribution of the Parents Trust assets to Debtor.
- Y. It is asserted that Strombom violated her state law fiduciary duties by failing to distribute the Parents Trust assets to Debtor when he turned 50 years old, whether to the Debtor directly or to the Bankruptcy Estate in his Chapter 7 case.
- Z. Plaintiff seeks a determination that the State Court Action was void because it was in violation of the automatic stay.
- AA. Plaintiff seeks a mandatory injunction requiring Settlor to dismiss the State Court Action.
- BB. The Complaint seeks actual and punitive damages, as well as attorney's fees and costs.

SUMMARY OF STROMBOM'S ANSWER

Laura Strombom ("Strombom Defendant") has filed an Answer admitting and denying specific allegations in the Complaint. Strombom Answer, Dckt. 8.

SUMMARY OF ANSWER

Carol Gassner and Alfred Gassner ("Settlor Defendant") have filed their Answer admitting and denying specific allegations in the Complaint. Settlor Answer, Dckt. 10. The Answer includes seven affirmative defenses.

The Answer also asserts that need not respond to allegations of federal court jurisdiction and that this is a core proceeding. Settlor Answer ¶¶ 1-3, *Id.* As addressed below, the Settlor Defendant must address jurisdiction and core proceeding allegations in a complaint, having an affirmative duty to so do.

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint "[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction..." apply to complaints in Adversary Proceedings. In add to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the addition pleading requirement concerning whether the matters in the complaint are core or non-core:

"Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending.

In an adversary proceeding before a bankruptcy judge, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.**”

Fed. R. Bankr. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) [every defense must be asserted in the responsive pleading] applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(b) Applicability of Rule 12(b)-(i) F.R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall admit or deny an allegation that the proceeding is core or non-core**. If the response is that the proceeding is **non-core, it shall include a statement that the party does or does not consent** to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.”

Fed. R. Bank. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Georgene Gassner alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 1367, and 157(b)(2), and that Counts 1, 2, 4 and 5 are core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), and that Count 3 for breach of fiduciary duty is non core for which jurisdiction exists pursuant to the same statutes.. Complaint ¶¶ 1, 3, Dckt. 1.

In her Answer, Defendant Laura Strombom admits the allegations of jurisdiction, that Counts 1, 2, 4, and 5 are core proceedings, and that federal court jurisdiction exists for the claim in Count 3. Answer ¶¶ 1, 3, Dckt. 8. **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.**

In their Answer, Defendants Carol Gassner and Alfred Gassner assert that they do not need to respond to the allegations of federal court jurisdiction, core and non-core proceedings, and whether they consent to the bankruptcy judge issuing the final orders and judgment on non-core matters. Answer ¶¶ 1, 3, Dckt. 10. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). **First Amended Complaint, ¶¶ X, X, Dckt. X.** The Defendant admits the jurisdiction and that this is a core proceeding. **Answer, ¶¶ X, X, Dckt. X.** **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.**
- b. Initial Disclosures shall be made on or before **May 16, 2019.**
- c. Expert Witnesses shall be disclosed on or before -----, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2019.**
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2019.**
- e. Dispositive Motions shall be heard before -----, **2019.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2019.**

6. [10-27435-E-7](#) THOMAS GASSNER
[19-2006](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
1-7-19 [1]

HUSTED V. MEPCO LABEL SYSTEMS
ET AL

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Charles L. Hastings [Laura Strombom]

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner; Mepco Label Systems]

Adv. Filed: 1/7/19

Answer:

2/5/19 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

2/5/19 [Laura Strombom]

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Continued from 3/20/19 to be heard in conjunction with the Status Conference in Adversary Proceeding
Gassner v. gassner, et al., Adv. No. 19-2038.

Defendants Carol L. Gassner and Alfred M. Gassner's and Mepco Label System's Initial Disclosures
Under Bankruptcy Rules of Procedure 7026 filed 4/30/19 [Dckt 19]

The Interim Status Conference is XXXXXXXXXXXXXXXXXXXX

MAY 29, 2019 INTERIM STATUS CONFERENCE

This Interim Status Conference was set to coordinate this Adversary Proceeding with the
Gassner v. Gassner et al., Adv. Pro. No. 19-2038, adversary proceeding being prosecuted in this court.
At the Interim Status Conference, XXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUMMARY OF COMPLAINT

Kimberly Husted, Trustee (“Plaintiff-Trustee”) alleges in the Complaint (Dckt. 1) that:

1. The Bankruptcy Estate in the Chapter 7 case filed by Thomas Gassner is the owner of assets currently held in trust, which includes 2,000 shares of the MEPCO stock.
2. Debtor’s interest in the Trust was not disclosed on the Schedules, and in 2017 reopened Debtor’s case to amend Schedule B to list the trust interest as an asset.
3. The Complaint seeks the turnover of the property as property of the bankruptcy estate.
4. The Complaint seeks recovery for violation of the automatic stay.
5. The Third Count in the Complaint seeks to dissolve MEPCO.

SUMMARY OF ANSWER

Defendants Alfred Gassner, Carol Gassner, and MEPCO Label System filed their Answer (Dckt. 8) that:

1. Admits and denies specific allegations in the Complaint.
2. Asserts ten affirmative defenses.

SUMMARY OF ANSWER

Defendant Laura Stombom, trustee of the Thomas Gassner Trust, filed an Answer (Dckt. 10) that:

1. Admits and denies specific allegation in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that the First and Second Counts are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 2, 4, Dckt. 1. For the Third Count, it is not alleged that it is a core proceeding, but a related to proceeding involving property of the bankruptcy estate.

In the Answer, Defendants Alfred Gassner, Carol Gassner, and MEPCO Label Systems state that federal court jurisdiction exists and that Count 2 is a core matter proceeding. Answer ¶¶ 4, Dckt. 8. Defendants further state that they do not consent to the bankruptcy judge issuing final orders and judgment for non-core matters.

In the Answer, Defendant Laura Stombom, trustee, admits federal court jurisdiction pursuant to

28 U.S.C. § 1334, § 1367, and § 157, and that Count 2 is a core proceeding matter. Answer ¶ 3, Dckt. 10. The Answer does not address whether Counts 1 and 3 are core proceedings, or whether Defendant Strombom consents to the bankruptcy judge issuing final orders and judgment for non-core matters.

With respect to the First Claim, the determination whether the asserted interests of the trust estate arising under 11 U.S.C. § 541, the court addressed with the parties whether such determination is a core matter (determination of rights and interests of the estate created in 1978 by Congress in the Bankruptcy Code). The Second Claim is for alleged violations of the automatic stay. Again, core matter proceedings are for claims arising under the Bankruptcy Code created by Congress.

For the Third Claim, Dissolution of the non-debtor corporation of which stock therein is asserted by the Plaintiff-Trustee to be property of the bankruptcy estate, Defendants assert that such is a non-core, related to matter for which they assert the right to have it determined by an Article III judge of the District Court. At this juncture it appears to be such a related to matter, involving property of the bankruptcy estate in a non-debtor corporation for which federal court jurisdiction would not otherwise exist. It does not involve determination of rights and interests are created under the Bankruptcy Code or arising in the bankruptcy case. The Parties have not yet had the opportunity to brief the issue for it to be finally determined by this court or the District Court.

PRE-TRIAL SCHEDULING ORDER

The court has issued a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Initial Disclosures shall be made on or before **April 30, 2019**.
- b. Expert Witnesses shall be disclosed on or before **June 4, 2019**, and Expert Witness Reports, if any, shall be exchanged on or before **August 9, 2019**.
- c. Discovery closes, including the hearing of all discovery motions, on **December 20, 2019**.
- d. Dispositive Motions shall be heard before **-TBD for a date in February 2020**.
- e. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **-TBD for a date in March 2020**.

7. [11-44540-E-13](#) **MERCEDES PEREZ**
[18-2041](#)

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
3-15-19 [29]

**PEREZ V. STOCKTON MORTGAGE ET
AL**

Plaintiff's Atty: Peter L. Cianchetta
Defendants' Atty: unknown

Adv. Filed: 4/5/18

Answer: none

Amd. Cmplt. Filed: 3/15/19

Answer: none

Nature of Action:

Declaratory judgment

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

Notes:

Continued from 3/20/19

MAY 29, 2019 STATUS CONFERENCE

No updated status report has been filed. At the Status Conference, **XXXXXXXXXXXXXXXX**

Review of First Amended Complaint

The First Amended Complaint seeks a determination that the Defendant's deed of trust lien on Plaintiff Debtor's property is void, the secured claim as determined by the court pursuant to 11 U.S.C. § 506(a) having been paid under Plaintiff Debtor's Chapter 13 Plan and said plan having been completed. The First Amended Complaint seeks statutory damages and attorney's fees and costs for Defendant failing to reconvey the deed of trust as otherwise required under the loan documents and applicable California law.

MARCH 20, 2019 STATUS CONFERENCE

An Amended Complaint was filed in March 15, 2019. Dckt. 29. The order denying the Motion for Entry of Default Judgment on the original Complaint was filed on January 14, 2019. Civil Minutes, Dckt. 24;
Order, Dckt. 26.

At the Status Conference Counsel for Plaintiff reported that he is conducting discovery to identify the correct trustees for the defendants and the amended complaint and summons will be served.

8. [11-44540-E-13](#) **MERCEDES PEREZ**
[18-2042](#)

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
3-11-19 [31]

PEREZ V. FREY ET AL

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 4/5/18
Answer: none
Amd. Cmplt. Filed: 3/11/19
Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 4/24/19

MAY 29, 2019 STATUS CONFERENCE

No updated status report has been filed. At the Status Conference, **XXXXXXXXXXXXXXXXXX**

Review of First Amended Complaint

The First Amended Complaint seeks a determination that the Defendant's deed of trust lien on Plaintiff Debtor's property is void, the secured claim as determined by the court pursuant to 11 U.S.C. § 506(a) having been paid under Plaintiff Debtor's Chapter 13 Plan and said plan having been completed. The First Amended Complaint seeks statutory damages and attorney's fees and costs for Defendant failing to reconvey the deed of trust as otherwise required under the loan documents and applicable California law.

APRIL 26, 2019 STATUS CONFERENCE

No updated Status Conference Statement has been filed by Plaintiff. No certificate of service has been filed attesting to a summons and complaint having been served on any defendant. The Status Conference has been continued to 2:00 p.m. on May 20, 2019, an amended complaint having been filed.

MARCH 20, 2019 STATUS CONFERENCE

An Amended Complaint was filed in March 11, 2019. Dckt. 29. The order vacating the dismissal of the Complaint was filed on January 14, 2019. Civil Minutes, Dckt. 23; Order, Dckt. 27.

In a Status Report filed on March 15, 2019, Counsel for Plaintiff reports that the Defendant is now deceased. Dckt. 33. Plaintiff is now prosecuting two new motions to value secured claims in the bankruptcy cases that was filed in 2011. Further, that Plaintiff is pursuing discovery to identify the successor in interest to the deceased defendant.

At he Status Conference Counsel for Plaintiff reported that discovery is pending to identify the defendants, and once identified, the bankruptcy case valuation motions will be filed. Plaintiff anticipates that this Adversary Proceeding will be dismissed while the valuation motions are being prosecuted, but is delaying doing so because the discovery to identify the real parties in interest has been issued in this Adversary Proceeding.

not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
or

(10) a proceeding to determine a claim or cause of action removed under 28
U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney's fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney's fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

11. [18-22747-E-13](#) **DAVID/CHRISTINA CASTILLO** **CONTINUED STATUS CONFERENCE**
[19-2011](#) **RE: COMPLAINT**
1-17-19 [1]

**CASTILLO ET AL V. LVNV
FUNDING, LLC**

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 1/17/19
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Declaratory judgment

Notes:
Continued from 3/20/19, Plaintiff reported that the matter has been settled and the Parties are working on the documentation thereof.

MAY 29, 2019 STATUS CONFERENCE

At the Status Conference, counsel for Plaintiff reported **XXXXXXXXXXXXXXXXXXXX**

MARCH 20, 2019 STATUS CONFERENCE

Plaintiff reported that the matter has been settled and the parties are working on the documentation thereof.

SUMMARY OF COMPLAINT

David and Christina Castillo ("Plaintiff-Debtor") filed a Complaint objecting to the claim of LVNV Funding, LLC. Dckt. 1. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 18 is based has expired.

Plaintiff-Debtor also filed a Declaration "In Support of Complaint for Objection to Claim." Dckt. 6.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the

Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

(3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;

(4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);

(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
or

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney's fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

12. [18-22747-E-13](#) **DAVID/CHRISTINA CASTILLO** **CONTINUED STATUS CONFERENCE**
[19-2012](#) **RE: AMENDED COMPLAINT**
1-23-19 [10]

**CASTILLO ET AL V. LVNV
FUNDING, LLC**

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 1/17/19
Answer: none
Amd. Cmpl. Filed: 1/23/19
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Declaratory judgment

Notes:
Continued from 3/20/19, Plaintiff reported that the matter has been settled and the Parties are working on the documentation thereof.

MAY 29, 2019 STATUS CONFERENCE

At the Status Conference, counsel for Plaintiff reported **XXXXXXXXXXXXXXXXXXXX**

MARCH 20, 2019 STATUS CONFERENCE

Plaintiff reported that the matter has been settled and the parties are working on the documentation thereof.

SUMMARY OF COMPLAINT

David and Christina Castillo ("Plaintiff-Debtor") filed a First Complaint objecting to the claim of LVNV Funding, LLC. Dckt. 10. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 17 is based has expired.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an

objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;

May 29, 2019 at 2:00 p.m.

- Page 38 of 53 -

or

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney's fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

13. [18-27755-E-13](#) MARK/RENEE EVANS
[19-2042](#)

STATUS CONFERENCE RE:
COMPLAINT
3-22-19 [1]

SCHREIBER V. EVANS ET AL

**No Appearance of Counsel Required if They Confirm
With Each Other That They Agree to the Continuance
as Stated Below by the Court.**

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 3/22/19
Answer: 4/17/19

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

Notes:
Defendants' Status Statement filed 5/20/19 [Dckt 9]

The Status Conference is continued to 11:00 a.m. on July 11, 2019 (specially set day and time due to scheduling conflicts).

MAY 29, 2019 STATUS CONFERENCE

On May 20, 2019, Defendant's Counsel filed a Status Report requesting that the court continue the Status Conference to allow the Parties the opportunity to conclude their settlement negotiations. Dckt. 9.

In light of the nature of the Complaint and the Parties being represented by knowledgeable bankruptcy counsel, the Status Conference is continued. Due to scheduling conflicts, the court specially sets the date and time of the Status Conference.

SUMMARY OF COMPLAINT

Gazelle Schreiber ("Plaintiff") has filed a Complaint to have the obligation owed to her determined nondischargeable pursuant to 11 U.S.C. § 523(a)(1), (4), and/or (6). Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff purchase property from Defendant-Debtor's company.
2. Plaintiff alleges that Defendant-Debtor's and their company failed to disclose known defects in the property sold to Plaintiff.
3. It is alleged that this was a "flip the property sale," in which Defendant-Debtor had been provided information by the engineers of extension foundation damage to the property.

SUMMARY OF ANSWER

Mark Evans and Renee Evans ("Defendant-Debtor") have filed an Answer that admits and denies specific allegations in the Complaint. Dckt. 6.

14. [19-22566-E-11](#) **JUANITO COPERO STATUS CONFERENCE RE:
VOLUNTARY PETITION**
4-25-19 [\[1\]](#)

Debtor's Atty: Arasto Farsad

Notes:

[AF-1] Motion for Order Extending Automatic Stay As To All Creditors filed 4/26/19 [Dckt 6]; Order granting filed 5/10/19 [Dckt 28]

[AF-3] Application of Debtor to Employ General Bankruptcy Counsel filed 5/10/19 [Dckt 22] no order on the docket as of 5/24/19

Status Report filed 5/16/19 [Dckt 31]

MAY 29, 2019 STATUS CONFERENCE

STATUS CONFERENCE SUMMARY

This Chapter 11 case was filed by the Debtor, Juanito Copero, on April 25, 2019. Debtor had a prior Chapter 13 case that was filed on June 11, 2018, and February 11, 2019. 18-23639. The court extended the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) by order filed on May 10, 2019.

On May 16, 2019, counsel for the Debtor in Possession filed a Status Report. Dckt. 31. Income for the Debtor comes from operating "care homes for the elderly in Vallejo, California, and have average income of \$16,349.78 a month.

Debtor suffered financially from a 2013 divorce. It is explained that the Debtor's Chapter 13 case was dismissed due to his loss of income to fund the plan when he had to travel overseas to assist family and he had to hire extra staff to run the business.

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

MONTHLY OPERATING REPORT SUMMARY

The bankruptcy case being filed on April 25, 2019 and this status conference being conducted on May 29, 2019, there has not been a monthly operating report filed for the several days in April.

SUMMARY OF SCHEDULES

Real Property Schedule A/B	FMV	LIENS	IRS LIEN - All Property
103 Michael Ct (SFR)	\$415,000	(\$420,000)	(\$117,861)
		(\$94,965)	
115 Michael Ct. (SFR)	\$400,000	(\$220,491)	

Personal Property Schedule B	FMV	LIENS	
2014 Vehicle 1	\$32,650	(\$52,978)	
2014 Vehicle 2	\$15,000	(\$26,568)	
Business Personal Property	\$15,000		

PRIORITY UNSECURED CLAIMS SCHEDULE E	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
EDD		(\$4,057)	
IRS		(\$59,827)	

GENERAL UNSECURED CLAIMS SCHEDULE F	TOTAL CLAIM AMOUNT		
Total	(\$55,654)		
Including			
Navy FCU		(\$12,958)	
IRS		(\$4,907)	
Discover Financial		(\$16,745)	
Capital One		(\$7,484)	

INCOME, SCHEDULE I		
Total Average Monthly Income	Debtor	Non-Debtor Spouse
Wages	\$0	\$6,000
Tax/SS Withholding		(\$1,124)
Net Business Income	\$9,777	
Other	\$132	
Total	\$15,909	

EXPENSES, SCHEDULE J		
Total Average Monthly Expenses		
Total	(\$7,233)	
Residence Rent/Mortgage/Property Taxes/Insurance	\$0	
Other Property Mortgage	(\$2,000)	
Car Payment #1	(\$1,279)	

Car Payment #2	(\$552)	
Income Tax Payments	\$0	
Self-Employment Tax Payments	\$0	

Attached to Schedule J is a Monthly Profit and Loss Statement for Debtor's business. Dckt. 1 at 47-49. No provision is made for payment of income taxes and self-employment taxes for Debtor.

15. [19-21976-E-7](#) CONQUIP, INC.
19-2048

STATUS CONFERENCE RE: NOTICE
OF REMOVAL
4-3-19 [1]

ZIELENSKI V. CONQUIP, INC. ET AL

Final Ruling: No appearance at the May 29, 2019 Status Conference is required.

CONTINUED to 6/19/19 at 2:00 P.M. by order of the court filed 5/3/19 [Dckt 10]

Trustee's Atty: J. Russell Cunningham
Plaintiff's Atty: Port J. Parker
Defendant's Atty:
 Jennifer E. Duggan [Conquip, Inc.]
 unknown [Yuquing Cao; Matthew Lind]

Adv. Filed: 4/3/19
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Application for Order Continuing Status Conference filed 5/2/19 [Dckt 8]; Order continuing filed 5/3/19 [Dckt 10]

<p>The Status Conference has been continued to 2:00 p.m. on June 19, 2019.</p>

16. [19-20284-E-7](#) DUANE/CAROL ZANON
[19-2045](#)

STATUS CONFERENCE RE:
COMPLAINT
4-1-19 [1]

ZANON ET AL V. U.S. DEPARTMENT
OF EDUCATION

Final Ruling: No appearance at the May 29, 2019 Status Conference is required.

Plaintiff's Atty: David N. Chandler
Defendant's Atty: unknown

Adv. Filed: 4/1/19
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:
Reissued Summons filed 4/25/19; status conference set for 6/19/19 at 2:00 p.m.

<p>The Status Conference is 2:00 p.m. on June 19, 2019 - the date stated on the Reissued Summons issued in this Adversary Proceeding by the Clerk of the Court.</p>
--

MAY 29, 2019 STATUS CONFERENCE

The Status Conference is continued to 2:00 p.m. on June 19, 2019, as stated in the Reissued Summons (Dckt. 7).

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.

3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.
5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SERVICE OF COMPLAINT

On May 1, 2019, Plaintiff-Debtor filed a Certificate of Service attesting to the service of the Complaint and Reissued Summons on May 1, 2019. Dckt. 8. The Reissued Summons reset the Status Conference date for 2:00 p.m. on June 19, 2019. Dckt. 7.

SUMMARY OF ANSWER

No Answer has been filed.

17. [19-20284-E-7](#) **DUANE/CAROL ZANON**
[19-2046](#)

STATUS CONFERENCE RE:
COMPLAINT
4-1-19 [1]

ZANON V. NELNET

Plaintiff's Atty: David N. Chandler

Defendant's Atty:

Barry H. Spitzer [Educational Credit Management Corporation]
unknown [Nelnet]

Adv. Filed: 4/1/19

Answer:

5/1/19 [Educational Credit Management Corporation]

Nature of Action:

Dischargeability - student loan

Notes:

The Status Conference is xxxxxxxxxxxxxxxxxxxxxx

MAY 29, 2019 STATUS CONFERENCE

The Status Conference is continued to 2:00 p.m. on June 19, 2019, as stated in the Reissued Summons (Dckt. 7).

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.

May 29, 2019 at 2:00 p.m.

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5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SUMMARY OF ANSWER

On May 1, 2019, Educational Credit Management Corporation, (“ECMC Defendant”) filed an Answer (Dckt. 8) asserting that it is the real party in interest in this Adversary Proceeding in the place of the NELNET named defendant. The Answer admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant ECMC admits the allegations of jurisdiction and core proceedings, clarifying that the federal court jurisdiction arises under 28 U.S.C. § 1328, and expressly consents to the bankruptcy judge issuing the final orders and judgment in this Adversary Proceeding. Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant ECMC admits the allegations of jurisdiction and core proceedings, clarifying that the federal court jurisdiction arises under 28 U.S.C. § 1328, and expressly consents to the bankruptcy judge issuing the final orders and judgment in this Adversary Proceeding. Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before -----, **2019**.
- c. Expert Witnesses shall be disclosed on or before -----, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2019**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2019**.

May 29, 2019 at 2:00 p.m.

- e. Dispositive Motions shall be heard before -----, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at -----
p.m. on -----, 2019.

18. [19-20284-E-7](#) **DUANE/CAROL ZANON**
[19-2047](#)

STATUS CONFERENCE RE:
COMPLAINT
4-1-19 [1]

ZANON ET AL V. NAVIENT

Plaintiff's Atty: David N. Chandler
Defendant's Atty: Dennis Winters

Adv. Filed: 4/1/19
Answer: 4/25/19

Nature of Action:
Dischargeability - student loan

Notes:

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.
5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SUMMARY OF ANSWER

Navient Solutions, LLC ("Navient Defendant") has filed its Answer admitting and denying specific allegations in the Complaint. Answer, Dckt. 8. Navient also states that the student loan which is the subject of the Complaint is being transferred to the Educational Credit Management Corporation.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and

that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Navient admits the allegations of jurisdiction and core proceedings, clarifying that the federal court jurisdiction arises under 28 U.S.C. § 1328. Answer ¶ 1, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). **First Amended Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. 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.**
- b. Initial Disclosures shall be made on or before **-----, 2019.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2019**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2019.**
- d. Discovery closes, including the hearing of all discovery motions, on **-----, 2019.**
- e. Dispositive Motions shall be heard before **-----, 2019.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2019.**