

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**September 23, 2020 at 2:00 p.m.**

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1. [20-20726-E-7](#)      LISA SAHAR      STATUS CONFERENCE RE:  
[20-2123](#)      COMPLAINT  
6-24-20 [1]

**SAHAR V. U.S. DEPARTMENT OF  
EDUCATION, FEDLOAN SERVICING**

Plaintiff's Atty: Lisa Sahar  
Defendant's Atty: Jeffrey J. Lodge

Adv. Filed: 6/24/20  
Answer: 9/3/20

Nature of Action:  
Discharge ability - student loan

Notes:  
Entry of Default [U.S. Department of Education] filed 8/12/20 [Dckt 10]; VACATED by order filed 9/3/20 [Dckt 17]  
Stipulation to Set Aside Default filed 8/28/20 [Dckt 13]

**The Status Conference is XXXXXXXXXX**

**SUMMARY OF COMPLAINT**

This Adversary Proceeding was commenced on June 24, 2020, by the filing of the Complaint to Determine Dischargeability of Debt by Plaintiff-Debtor Lisa Sahar. Dckt. 1. The allegations in the Complaint are summarized by the court as follows:

A. Plaintiff-Debtor filed a voluntary Chapter 7 case on February 9, 2020. The First Meeting of Creditors was concluded on March 18, 2020.

The court notes that the file for Plaintiff-Debtor's Chapter 7 Case, 20-20726, discloses that Plaintiff-

Debtor was granted a discharge on July 13, 2020.

- B. Plaintiff-Debtor has, as of the filing of the bankruptcy petition, \$174,985.11 in student loan debt.
- C. Since she began paying on the student loan debt in 2011, the Plaintiff-Debtor has paid \$49,527.72 in principal and \$22,710.97 in interest on the student loan debt.
- D. Plaintiff-Debtor alleges physical injuries, the amount of her income, and the alimony and child support payments she receives.
- E. Given Plaintiff-Debtor's age, being a single parent of three children, physical limitations, and her demonstrated efforts to pay the student loan debt obligations, Plaintiff-Debtor asserts that the obligation may properly be discharged as placing an undue burden on her.

## **SUMMARY OF ANSWER**

The U.S. Department of Education filed its Answer (Dckt. 15), admitting and denying specific allegations in the Complaint. These admissions and denials include that the Defendant is without sufficient information or belief at this time to admit or deny the factual allegations and thereon denies them.

In the Answer, the Defendant asserts the following Affirmative Defenses:

- A. First Affirmative Defense - Failure to State a Claim.
- B. Second Affirmative Defense - Failure to Exhaust Administratively; asserting that there are various non-judicial options.

In the response to the First Cause of Action, the U.S. Department of Education affirmatively states only that "Education denies that the plaintiff can satisfy the applicable legal standard," but does not deny that the grounds stated do not establish, and thereby, the U.S. Department of Education admits that the student loan debt is dischargeable.

## **REQUIRED PLEADING OF JURISDICTION AND 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 addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional 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 court, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.**

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

Federal Rule of Civil Procedure 8(a) requires that the Plaintiff expressly plead the basis for federal court jurisdiction:

(a) Claim for Relief. **A pleading that states a claim for relief *must* contain:**

(1) **a short and plain statement of the grounds for the court’s jurisdiction,** unless the court already has jurisdiction and the claim needs no new jurisdictional support; . . .

Fed. R. Civ. P. 8(a) (emphasis added).

As discussed below, Federal Rule of Civil Procedure 8(b) requires that a responding party must, in good faith, respond to each claim asserted, and if generally denying, such general denial must also be denying that federal jurisdiction exists. There is not an “except for allegations of jurisdiction” exclusion in Rule 8.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the party consents or does not consent for the bankruptcy judge to issue final orders and judgment for non-core matters:

(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 include a statement that **the party does or does not consent to entry of final orders or judgment by the bankruptcy court.**

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

### **Allegation of Jurisdiction in the Complaint, Consents, and Denials in the Answer**

In the Complaint, Plaintiff-Debtor states in paragraph 1 of the Complaint that this is a core proceeding brought to determine the dischargeability of debt pursuant to 11 U.S.C. § 523(a)(8). Further, in Paragraph 2 of the Complaint Plaintiff-Debtor alleges that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334, that venue is proper, and that all bankruptcy cases and related to matters have been referred to the bankruptcy judges in the Eastern District of California. Complaint, Dckt. 1.

In its Answer (Dckt. 15) in the first unnumbered paragraph of the Answer, the U.S. Department of Education first makes a general denial, stating:

Education specifically denies each and every allegation not hereinafter specifically admitted.

Answer, p. 1:34-25; Dckt. 15. The specific allegation in the Answer that are admitted are as follows:

4. Education admits that the Plaintiff is indebted for student loans. . . .

Answer ¶ 4; *Id.* This is the only admission with Defendant United States Department of Education denying that Federal Court jurisdiction exists to determine whether a debt is dischargeable as provided in 11 U.S.C. § 523(a) as enacted by Congress as part of the uniform federal bankruptcy laws pursuant to Article I of the United States Constitution.

In Paragraph 1 of the Answer, the United States Department of Education expressly states that it does not need to respond to the allegation that this is a core matter proceeding and to the extent that a response is required that determination of the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(8) is not a core matter proceeding arising under the Bankruptcy Code.

In response to allegations in Paragraph 2 of the Complaint that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334, in Paragraph 2 of the United States Department of Education states that no response is required. Given the general denial, the United States Department of Education denies that federal court jurisdiction exists to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(8).

The United States Department of Education does, while not admitting that federal court jurisdiction exists, consents to the bankruptcy court entering final orders and judgment in this Adversary Proceeding.

The United States Department of Education further Answers in Paragraph 2 that “Plaintiff[-Debtor] has failed to address Fed.R.Bank.P. 7008.” The requirements of Federal Rule of Bankruptcy Procedure 7008 are summarized as follows:

A. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the:

1. name, number, and chapter of the case under the Code to which the adversary proceeding relates and

It appears that this information is in Paragraph 3 of the Complaint.

2. to the district and division where the case under the Code is pending.

It appears that this information is in Paragraph 3, of the Complaint.

3. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.

While affirmatively alleging that this is a core matter proceeding, Plaintiff-Debtor does not state that she does or does not consent to final orders and judgment entered by the bankruptcy court.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff -Debtor Lisa Sahar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding. Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant xxxxxxxxxxxxxx admits the allegations of jurisdiction and core proceedings. 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” 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 Lisa Sahar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding. Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant xxxxxxxxxxxxxx admits the allegations of jurisdiction and core proceedings. 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” 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 -----, 2020.
- c. Expert Witnesses shall be disclosed on or before -----, 2020, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2020.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2021.
- e. Dispositive Motions shall be heard before -----, 2021.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2021.

2. [15-28536-E-13](#) [20-2121](#) MATTHEW MCCANDLESS  
CLEVINGER V. MCCANDLESS

STATUS CONFERENCE RE:  
COMPLAINT  
6-23-20 [1]

Plaintiff's Atty: Charles L. Hastings  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 6/23/20  
Answer: 7/22/20

Nature of Action:  
Declaratory judgment

Notes:  
Bankruptcy case and adversary proceeding reassigned to Judge Sargis 6/30/20

Joint Status Report and Discovery Plan filed 8/19/20 [Dckt 12]

**The Status Conference is ~~XXXXXXXXXX~~**

## SUMMARY OF COMPLAINT

Brittney Clevenger ("Plaintiff") has filed a "Complaint for Declaratory Relief For Confirmation of Plaintiff's Interest in Real Property." The claims asserted in the Complaint are summarized by the court as follows:

- A. Prior to August 20, 2008, Plaintiff and Defendant-Debtor entered into a lease with a third-party for the Loorz Court Property.
- B. During the term of the lease, the Property was foreclosed on and Plaintiff and Defendant-Debtor purchased the Property from the Lender.
- C. Plaintiff asserts to own the Property jointly with Defendant-Debtor.
- D. An actual controversy exists in which Plaintiff asserts an ownership of an undivided one-half interest in the Property, with Defendant-Debtor having the other one-half interest.
- E. Defendant-Debtor asserts that he owns 100% of the interest in the Property.
- F. Plaintiff seeks a determination that she owns a 50% interest in the Property and that her 50% interest is not property of Defendant-Debtor's bankruptcy estate.

While framed as a "declaratory relief" action, it appears that this is not merely an action to

declare possible future rights and interests in the event acts are taken, but in the nature of quiet title or other affirmative determination of the respective ownership interests in the property, not a mere “declaration.” <sup>FN. 1.</sup>

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FN. 1. Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. “In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future.” *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

28 U.S.C. §2201 provides:

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

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**SUMMARY OF ANSWER**

Matthew McCandless, the Defendant-Debtor, files an Answer (Dckt. 6) specifically admitting and denying allegations in the Complaint. The Defendant-Debtor does not request that the court determine and enter judgment determining that he owns 100% of the interests in the Property, but merely that the court “Deny” the relief requested by Plaintiff.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Brittney Clevenger alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding. Complaint ¶¶ 1, 3, Dckt. 1. In the Answer, Defendant-Debtor Matthew McCandless admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 3, Dckt. 6. **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 Brittney Clevenger alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding. Complaint ¶¶ 1, 3, Dckt. 1. In the Answer, Defendant-Debtor Matthew McCandless admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 3, Dckt. 6. **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 **August 19, 2020**.
- c. Expert Witnesses shall be disclosed, and Expert Witness Reports, if any, shall be exchanged as provided in **Federal Rule of Civil Procedure 26(a)(2)** and Federal Rule of Bankruptcy Procedure 7026.
- d. Discovery closes, including the hearing of all discovery motions, on **December 2020, 2020**.
- e. Dispositive Motions shall be heard before **February 28, 2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at -----  
**p.m. on -----, 2020.**

3. [18-27755-E-7](#)      **MARK/RENEE EVANS**  
[19-2042](#)  
**SCHREIBER V. EVANS ET AL**

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

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  
Discharge ability - willful and malicious injury

Notes:  
Order Vacating Trial and Order Setting Status Conference filed 8/7/20 [Dckt 35]

**The Status Conference is XXXXXXXXXX**

#### **ORDER SETTING STATUS CONFERENCE**

On August 7, 2020, the court entered an order vacating the trial date in this Adversary Proceeding due to the Courthouse being closed due to the COVID-19 pandemic and scheduling a Status Conference. The court did not believe that this appears to be an adversary proceeding in which the use of a virtual trial would be beneficial. Additionally, the Parties reported to the court that settlement discussions were ongoing and vacating the trial date would benefit that process.

At the Status Conference, XXXXXXXXXX

Plaintiff's Atty: Robert J. Enos  
Defendant's Atty: Len ReidReynoso

Adv. Filed: 4/6/20  
Answer: 5/1/20

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

Notes:  
Continued from 7/1/20 for the Parties to continue ongoing discussions which may result in the conclusion of this matter.

**The Status Conference is XXXXXXXXXX**

### SEPTEMBER 23, 2020 CONTINUED STATUS CONFERENCE

At the Continued Status Conference the Parties reported XXXXXXXXXX

#### SUMMARY OF COMPLAINT

Robert Krzewicki ("Plaintiff") has filed a Complaint to determine the nondischargeability of an obligation asserted to be owed to him by Defendant-Debtor. Nondischargeability is sought pursuant to 11 U.S.C. § 523(a)(2)(A) and (B).

#### SUMMARY OF ANSWER

Shawn Meyers ("Defendant-Debtor") has filed an Answer, Dckt. 7, that admits and denies specific allegations in the Complaint.

#### FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Robert Krzewicki 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)(i) and (j). Complaint ¶ 2.1, Dckt. 1. In the Answer, Defendant Shawn Myers admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 2.1, 2.2, Dckt. 7. 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.

## **JOINT STATUS CONFERENCE STATEMENT AND DISCOVERY PLAN**

The Parties filed their Joint Status Statement and Discovery Plan on June 24, 2020. Dckt. 10. Plaintiff projects having discovery completed in 120 days.

Plaintiff reports that due to other trial commitments, Plaintiff's counsel cannot be ready for trial until February 2021.

Defendant proposes that the parties use written testimony and exhibits in lieu of a trial.

## **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

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

- a. Plaintiff Robert Krzewicki 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)(i) and (j). Complaint ¶¶ 2.1, Dckt. 1. In the Answer, Defendant Shawn Myers admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 2.1, 2.2, Dckt. 7. 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 -----, **2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**.
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2020**.

5. [20-20175-E-11](#)      **HERBERT MILLER**  
[20-2115](#)

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**6-15-20 [1]**

**MILLER V. JPMORGAN CHASE BANK,  
N.A. ET AL**

Plaintiff's Atty: Judson H. Henry

Defendant's Atty:

Unknown [JPMorgan Chase Bank, N.A.]

John C. Steele [MTC Financial, Inc.;Trustee Corps]

Ofunne Edoziem [Caliber Home Loans, Inc.; U.S. Bank Trust, N.A.]

Adv. Filed: 6/15/20

Answer:

Nature of Action:

Recovery of money/property - turnover of property

Validity, priority or extent of lien or other interest in property

Declaratory judgment

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

Notes:

Defendant Caliber Home Loans, Inc.'s Notice of Motion and Motion to Dismiss Complaint filed 7/16/20 [Dckt 12]; heard 9/3/20 at 11:00 a.m. and continued to 10/15/20 at 10:30 a.m.

Stipulation to Extend Time to Respond to Initial Complaint by Not More Than 28 Days [between Plaintiff, Herbert Miller, and Defendants, Caliber Home Loans, Inc.; U.S. Bank Trust, N.A.] filed 7/21/20 [Dckt 14]; Order approving filed 7/27/20 [Dckt 15]

Notice of Joinder and Joinder by Defendant U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust to Caliber's Motion to Dismiss Plaintiff's Complaint and Motion to Dismiss filed 7/31/20 [Dckt 18]

Request for Entry of Default by Plaintiff [re JPMorgan Chase Bank, N.A.] filed 8/22/20 [Dckt 23]; Entry of Default and Order Re: Default Judgment Procedures filed 8/26/20 [Dckt 25]

Joint Discovery Plan [between Plaintiff, Herbert Miller, and Defendants, Caliber Home Loans, Inc.; U.S. Bank Trust, N.A.] filed 9/16/20 [Dckt 33]

**The Status Conference is continued to 10:30 a.m. on October 15, 2020, to be conducted in conjunction with the Motion to Dismiss the Complaint in this Adversary Proceeding.**

**STATUS CONFERENCE**

**September 23, 2020 at 2:00 p.m.**  
**Page 12 of 29**

Defendants U.S. Bank Trust, N.A., as Trustee, and Caliber Home Loans, Inc. having a Motion to Dismiss the Complaint in this Adversary Proceeding which is set for hearing on October 15, 2020. Scheduling Order, Dckt. 32.

6. [20-21275-E-7](#)      **GARRETT BOSSIO**      **STATUS CONFERENCE RE:**  
[20-2127](#)      **LAVOIE V. BOSSIO**      **COMPLAINT**  
7-2-20 [1]

Plaintiff's Atty: Pro Se  
Defendant's Atty: Matthew J. DeCaminada

Adv. Filed: 7/2/20  
Answer: 7/22/20

Nature of Action:  
Recovery of money/property - other  
Objection/revocation of discharge  
Dischargeability - false pretenses, false representation, actual fraud  
Discharge ability - willful and malicious injury

Notes:  
Joint Discovery Plan filed 9/11/20 [Dckt 11]

**The Status Conference is XXXXXXXXXX**

**SUMMARY OF COMPLAINT**

Kara Lavoie, dba Stride55, "Plaintiff," in *pro se* has filed a Complaint (Dckt. 1) setting forth the claims summarized as follows:

- A. Plaintiff, as a sole proprietorship, operates the business Stride55.
- B. It is asserted that during an Arbitration on December 12, 2019, Defendant-Debtor committed perjury concerning ownership of an HVAC contract.
- C. Defendant-Debtor was found liable for \$28,935.80 in damages to Plaintiff, without taking into account the HVAC damages.
- D. Including the HVAC damages, Plaintiff asserts that the liability to Plaintiff is \$36,195.68.
- E. Because Defendant-Debtor failed to pay these damages, his contractor's license

was suspended.

- F. Plaintiff alleges that Defendant-Debtor “purposefully” did acts with the intent to harm Plaintiff, or with the knowledge that the acts would necessarily harm Plaintiff.

## SUMMARY OF ANSWER

Garrett Bossio (“Defendant-Debtor”) has filed an Answer (Dckt. 9) that specifically admits and denies allegations in the Complaint. The Answer also asserts several affirmative defenses, which include:

1. Under the Doctrine of Collateral Estoppel Plaintiff cannot re-litigate the issues determined and findings made in the arbitration.

## FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff Kara Lavoie’s Complaint seeks to have an obligation determined nondischargeable pursuant to 11 U.S.C. § 523, for which jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Determination of nondischargeability of a debt is a core proceeding arising under the Bankruptcy Code to for which the bankruptcy judge issues final orders and judgment pursuant to 28 U.S.C. § 157(b)(2)(I). Defendant-Debtor Garrett Bossio concurred at the Status Conference to federal jurisdiction and that this is a core proceeding for the Complaint as it then exists. **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.**

## ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff Kara Lavoie’s Complaint seeks to have an obligation determined nondischargeable pursuant to 11 U.S.C. § 523, for which jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Determination of nondischargeability of a debt is a core proceeding arising under the Bankruptcy Code to for which the bankruptcy judge issues final orders and judgment pursuant to 28 U.S.C. § 157(b)(2)(I). Defendant-Debtor Garrett Bossio concurred at the Status Conference to federal jurisdiction and that this is a core proceeding for the Complaint as it then exists. **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 -----, **2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2021**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2021**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2010**.
- e. Dispositive Motions shall be heard before -----, **2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2021**.

**HOPPER V. ALLIED MACHINING AND  
ENGINEERING, INC.**

Plaintiff's Atty: J. Russell Cunningham  
Defendant's Atty: Stephen D. Finestone; Jennifer C. Hayes

Adv. Filed: 6/30/20  
Answer: 8/14/20

Nature of Action:  
Recovery of money/property - preference  
Recovery of money/property - fraudulent transfer

Notes:  
Joint Status Report and Discovery Plan filed 8/27/20 [Dckt 13]

**The Status Conference is ~~XXXXXXXXXX~~**

**SUMMARY OF COMPLAINT**

Plaintiff-Trustee J. Michael Hopper asserts claims against Defendant Allied Machining and Engineering, Inc., which are summarized as follows:

- A.            The Complaint seeks to avoid transfers as preferential or fraudulent, and disallows claims.
- B.            It is alleged that the Debtor paid \$1,115,462.23 to Defendant during the period April 11, 2018 and January 17, 2019.
- C.            During the period from February 15, 2019 through March 29, 2019, Debtor assigned to Defendant an \$1,190,190 account receivable from an affiliate and \$1,183,2018.30 in accounts receivable from eight other customers.
- D.            Debtor filed its bankruptcy case on March 29, 2019.

**SUMMARY OF ANSWER**

Defendant Allied Machining and Engineering, Inc. filed its Answer (Dckt. 11) admits and denies specific allegations in the Complaint. The Answer also states eight Affirmative Defenses, which include statute of limitations, new value given, and payments being made in the ordinary course of business.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee J. Michael Hopper 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)(B), (C), and (F), and that Plaintiff-Trustee consents to the Bankruptcy Judge issue all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 2, 4, 5, 6, Dckt. 1. In the Answer, Defendant Allied Machining and Engineering, Inc. admits the allegations of jurisdiction and core proceedings; and consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Answer ¶¶ 2, 4, 5, 6, Dckt. 11. **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-Trustee J Michael Hopper 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)(B), (C), and (F), and that Plaintiff-Trustee consents to the Bankruptcy Judge issue all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 2, 4, 5, 6, Dckt. 1. In the Answer, Defendant Allied Machining and Engineering, Inc. admits the allegations of jurisdiction and core proceedings; and consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Answer ¶¶ 2, 4, 5, 6, Dckt. 11. **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 **-----, 2020.**
- c. Expert Witnesses shall be disclosed on or before **-----, 2021**, and Expert Witness Reports, if any, shall be exchanged on or before **-----, 2021.**
- d. Discovery closes, including the hearing of all discovery motions, on **March 30, 2021.**
- e. Dispositive Motions shall be heard before **June 24, 2021.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **----- p.m. on -----, 2021.**

8. [20-20992-E-7](#)      SARA/CHARLES GRESHAM  
[20-2108](#)  
LARKINS V. GRESHAM ET AL    5-29-20 [1]

CONTINUED STATUS CONFERENCE  
RE COMPLAINT

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

Adv. Filed: 5/29/20  
Answer: 6/25/20

Notes:  
Continued from 8/25/20 by order filed 8/31/20 [Dckt 24]

Order to Show Cause Re Dismissal of Contested Matter or Imposition of Sanctions filed 9/15/20 [Dckt 26] - 9/10/20 installment payment not made; set for hearing 10/15/20 at 11:00 a.m.

**The Status Conference is XXXXXXXXXX**

#### SEPTEMBER 23, 2020 STATUS CONFERENCE

On August 31, 2020, the court issued an Order that if the Parties have not settled this matter, that Plaintiff be current on filing fee installments and have an amended complaint filed. Further, if not settled, Plaintiff is not current in installment payments, or has not filed an amended complaint, for Plaintiff to show cause why this Complaint should not be dismissed for failure of Plaintiff to prosecute this matter.

At the Status Conference XXXXXXXXXX

#### AUGUST 25, 2020 CONTINUED STATUS CONFERENCE

Nothing further has been filed by the Parties as of the Court's August 22, 2020 review of the Docket. At the Status Conference, Sara Gresham reported that there has been no communication between the Parties. Ms. Gresham explained that she has a family matter that has kept her from communicating with Ms. Larkins.

The court continues the hearing and shall issue an order to show cause why the adversary Proceeding should not be dismissed for lack of prosecution.

After the hearing, Ms. Larkins contracted the courtroom deputy for Department E, advising her that Ms. Larkins had attempted to appear telephonically at the hearing, but could not get connected.

## **AUGUST 5, 2020 STATUS CONFERENCE**

On May 29, 2020, Amanda Larkins, Plaintiff, sent a letter to the Bankruptcy Court, in which she stated that she objected to having her debt included in the Sara Gresham and Charles Gresham bankruptcy case. Plaintiff stated that the Greshams rented a room in her home, defaulted on the rent, and Plaintiff prosecuted an unlawful detainer action to have them evicted from her home. There is \$3,500.00 owed from the unlawful detainer proceeding.

Sara Gresham (“Defendant-Sara”) and Charles Gresham (“Defendant-Charles”) have filed a pro se form Answer (Dckt. 11), which admits the debt and denies the rest of the allegations of the complaint other than the filing of the bankruptcy petition.

At the Status Conference, the court had an extended, productive discussion with the respective parties. Clearly, each party “knows” that they are correct and the other party is incorrect. Each party “knows” that the other party has acted unethically.

A state court judgment has been obtained by Plaintiff, and while Defendants seek to argue the merits of that state court judgment, the judgment exists and is given full faith and credit as required by statute.

Plaintiff has the hurdles of prosecuting this action and not merely presenting her beliefs as to what is “right” to the court. At issue is a modest amount in dispute, less than \$4,000. Neither party is able to justify (in their minds) hiring counsel for this amount in dispute. The court discussed with the parties the economics of settlement and the value of their time, as well as the impact of this battle continuing in this court. The court continues the Status Conference to allow the parties to exchange written settlement proposals.

## FINAL RULINGS

9. [20-20715-E-13](#)      FOUAD MIZYED  
[20-2016](#)  
MIZYED V. FAY SERVICING, LLC

CONTINUED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
6-8-20 [\[25\]](#)

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**

-----

Plaintiff's Atty: Arasto Farsad; Nancy Weng

Defendant's Atty:

Jana Logan [Fay Servicing, LLC]

Unknown [U.S. Bank, N.A.]

Adv. Filed: 2/14/20; Demand for Jury Trial

2<sup>nd</sup> Amd Cmplt Filed: 9/14/20; Demand for Jury Trial

Answer: None

Nature of Action:

Injunctive relief - other

Declaratory judgment

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

Notes:

Continued from 8/5/20

Joint Updated Status Conference Statement filed 9/8/20 [Dckt 48]

Plaintiff's Second Amended Complaint for Damages and Equitable Relief filed 9/14/20 [Dckt 49];

Reissued Summons 9/15/20, status conference set for 11/18/20 at 2:00 pm.

**The Status Conference has been rescheduled for 2:00 p.m. on November 18, 2020, the Plaintiff having filed an Amended Complaint (Dckt. 49) and the Summons Reissued (Dckt. 52).**

10. [20-20715-E-13](#)      FOUAD MIZYED  
[20-2016](#)                      JL-2

MIZYED V. FAY SERVICING, LLC

WITHDRAWN BY M.P.

CONTINUED MOTION TO DISMISS  
ADVERSARY PROCEEDING/NOTICE  
OF REMOVAL  
7-9-20 [34]

**Final Ruling: No appearance at the September 23, 2020 Hearing is required.**  
-----

The Motion to Dismiss itself having been Dismissed by Defendant as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, **the hearing is removed from the Calendar.**

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Debtor's Atty: Thomas A. Willoughby

Notes:

**The Status Conference is continued to 10:30 a.m. on October 1, 2020** (Specially set day and time to the court's Modesto hearing calendar), to be conducted in conjunction with the final hearing on the Motion to Use Cash Collateral.

This Chapter 11 case was filed on August 27, 2020. The Debtor in Possession and creditors have worked addressing issues concerning the use of cash collateral and preserving the value of the 2020 walnut crop. Constructive communication has been ongoing between the active parties in this case.

In the rush of first day/month motions, the active parties have been before the court on several occasions, addressing the status of the case, the Schedules, and the Debtor in Possession fulfilling his duties. Functionally, an initial Status Conference has occurred.

The Parties having sufficient other tasks to accomplish and the court observing them diligently working on this case, the Status Conference is continued to save the parties from what would appear to be an unnecessary use of time to just "touch bases" with the court.

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

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**

-----

Plaintiff's Atty: Randye 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 [13<sup>th</sup> Floor/Pilot, LLC]

Adv. Filed: 3/22/18

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

Amd. Cmplt. Filed: 5/17/18

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

Answer: none

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

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

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

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

Notes:

Continued from 8/5/20 to allow the Parties to consummate the settlement and for the Clerk of the Court to release funds.

The Court having issued the Corrected (F.R.C.P. 60(a)) Amended Order for the distribution of Interpleader Monies (the Clerk having identified an additional \$176.55 in excess of the dollar amount used by the Court and Parties in the Amended Order), **the Status Conference is continued to 2:00 p.m. on November 18, 2020**, to allow the Parties to consummate the Settlement and dismiss the Adversary Proceeding.

13. [19-26730](#)-E-11 HAESHING HWANG

CONTINUED STATUS CONFERENCE  
RE: VOLUNTARY PETITION  
10-29-19 [1]

CASE DISMISSED: 08/17/20

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Debtor's Atty: Stephan M. Brown

Notes:

**The Bankruptcy Case having been dismissed (Order, Dckt. 83), the Status Conference is concluded and removed from the Calendar.**

14. [15-20936-E-13](#)      **KENT TEIXEIRA**  
[20-2117](#)

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**6-16-20 [1]**

**TEIXEIRA V. TOWD POINT MASTER  
FUNDING TRUST C/O SPECIALIZED**

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: unknown

Adv. Filed: 6/16/20  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

**The Status Conference is continued to 2:00 p.m. on November 18, 2020.**

**SEPTEMBER 23, 2020 STATUS CONFERENCE**

Plaintiff-Debtor filed a Status Conference Report advising the court that this matter has been resolved and the parties are documenting the settlement to have the deed of trust removed from Plaintiff-Debtor's title. The court continues the Status Conference as requested to allow the parties to consummate their settlement.

15. [20-20168-E-7](#)      SHAWN MYERS  
[20-2023](#)

ADRIAN, JR. V. MYERS

**PRE-TRIAL CONFERENCE RE:  
AMENDED COMPLAINT TO  
DETERMINE DISCHARGEABILITY  
OF DEBT ARISING FROM FRAUD AND  
DECEIT  
3-12-20 [7]**

**Final Ruling: No appearance at the September 23, 2020 Pretrial Conference is required.**  
-----

Plaintiff's Atty: Pamela Nelson  
Defendant's Atty: Len ReidReynoso

Adv. Filed: 3/5/20  
Answer: none  
Amd. Cmpl. Filed: 3/12/20  
Answer: 4/1/20  
Amd. Answer: 4/20/20

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

Notes:  
Scheduling order -  
Initial disclosures by 6/5/20  
Close of discovery 7/16/20  
Dispositive motions heard by 9/3/20

Motion to Dismiss the Adversary Complaint for Failure to State a Claim filed 8/14/20 [Dckt 23];  
Withdrawal of Testimony and Documentary Evidence on Motion to Dismiss filed 9/2/20 [Dckt 30], set  
for hearing 9/24/20 at 11:00 a.m.

**The Pre-Trial Conference is continued to 11:00 a.m. on September 24, 2020, to be conducted in conjunction with the hearing on a Motion to Dismiss.**

**CASE CLOSED: 9/2/20**

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Debtors' Atty: Stephen M. Reynolds

Notes:

**The Bankruptcy Case having been closed (Dckt. 106), the Status Conference is concluded and removed from the Calendar.**

17. [20-21481-E-7](#)      **CAROL PAYNE**  
[20-2119](#)

**STATUS CONFERENCE RE:  
COMPLAINT  
6-17-20 [1]**

**CHERI ROBINSON AS TRUSTEE FOR  
ARTHUR AND AMRITA RO V. PAYNE**

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Plaintiff's Atty: Stephen M. Reynolds  
Defendant's Atty: unknown

Adv. Filed: 6/17/20  
Answer: none

Nature of Action:  
Discharge ability - fraud as fiduciary, embezzlement, larceny

Notes:  
Request for Entry of Default by Plaintiff filed 7/21/20 [Dckt 7]; Entry of Default and Order Re: Default Judgment Procedures filed 7/21/20 [Dckt 8]

Motion for Default Judgment filed 8/21/20 [Dckt 11], set for hearing 10/15/20 at 11:00 a.m.

**The Status Conference is continued to 2:00 p.m. on November 18, 2020, to afford Plaintiff time to prosecute the pending Motion For Entry of Default Judgment (Dckt. 11).**

18. [17-22481-E-7](#)      WILLIAM LANDES  
[20-2130](#)  
REGER V. ESSEX BANK

STATUS CONFERENCE RE:  
COMPLAINT  
7-20-20 [1]

**Final Ruling: No appearance at the September 23, 2020 Status Conference is required.**  
-----

Plaintiff's Atty: Michael P. Dacquisto  
Defendant's Atty: Stephen G. Opperwall

Adv. Filed: 7/20/20  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Declaratory judgment

Notes:  
Application by Trustee to Defer Payment of Fee for Filing Complaint filed 7/29/20 [Dckt 10]; Order granting filed 7/30/20 [Dckt 11]

[MPD-1] Motion for Summary Judgment Against Defendant Essex Bank filed 8/11/20 [Dckt 12], set for hearing 9/24/20 at 11:00 a.m.

[SGO-1] Essex Bank's Motion to Dismiss the Complaint filed 8/17/20 [Dckt 31], set for hearing 9/24/20 at 11:00 a.m.

**The Status Conference is continued to 11:00 a.m. on September 24, 2020, to be conducted in conjunction with a Summary Judgment Motion and Motion to Dismiss filed in this Adversary Proceeding.**