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3 **NOT FOR PUBLICATION**

4 **UNITED STATES BANKRUPTCY COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 In re:) Case No. 08-90753-D-7
8 JESSE ADRIAN WAGNER,)
9 Debtor.)
10 _____)
11 JESSE ADRIAN WAGNER,) Adv. Pro. No. 08-9031-D
12 Plaintiff,)
13 v.)
14 CALIFORNIA STUDENT AID)
15 COMMISSION, et al.,)
16 Defendants.)
17 _____)

17 **This memorandum decision is not approved for publication and may**
18 **not be cited except when relevant under the doctrine of law of**
19 **the case or the rules of claim preclusion or issue preclusion.**

19 **MEMORANDUM DECISION**

20 On January 15, 2009, Jesse Adrian Wagner, the plaintiff in
21 this adversary proceeding, filed an application for an order
22 authorizing him to appear by telephone at an upcoming hearing, or
23 in the alternative, for an order removing the upcoming hearing
24 from calendar and taking the motion as submitted on the pleadings
25 ("the Application"). The basis of the Application is that the
26 plaintiff cannot appear in person at the hearing because he is
27 incarcerated.

28 / / /

1 In his memorandum of points and authorities, filed with the
2 Application, the plaintiff cites several cases for the
3 proposition that this court has jurisdiction to authorize
4 appearances by telephone, and concludes with a request "that this
5 court issue an order allowing plaintiff to appear by telephone."

6 In his supporting declaration, the plaintiff refers to
7 California Judicial Council Form FL-679, a copy of which is
8 attached to the declaration. This reference is apparently
9 intended to suggest that this court make use of the same form.
10 The form, however, is merely a means for requesting that a party
11 to a family law proceeding be permitted to appear at a court
12 hearing by telephone.

13 The plaintiff fails to appreciate that this court already
14 has in place policies and procedures whereby parties may appear
15 by telephone at most non-evidentiary hearings, including hearings
16 such as the February 4, 2009 hearing that is the subject of the
17 Application. The plaintiff needs no further order from this
18 court in order to be allowed to appear by telephone on that date
19 or at any other hearing that falls within the parameters set
20 forth in the policies and procedures. In short, the plaintiff
21 already has the relief he seeks.

22 The court has previously made the plaintiff aware of these
23 policies and procedures, by reference in its Memorandum Decision
24 filed August 21, 2008 in this adversary proceeding. For the
25 plaintiff's convenience, an additional copy of the policies and
26 procedures is attached hereto as Exhibit A. The plaintiff's
27 request for an order authorizing him to appear by telephone will
28 therefore be denied as moot (unnecessary).

1 The plaintiff's request in the alternative for an order
2 removing the hearing from calendar and deeming the motion
3 submitted on the pleadings is similarly denied as moot. Because
4 the plaintiff may appear by telephone, there is no need to take
5 this additional step. As an aside, it bears mention that in some
6 instances, where the court finds that oral argument would not be
7 helpful, particular matters are removed from calendar. The court
8 issues pre-hearing dispositions where parties may ascertain,
9 usually about 24 hours prior to the hearing time, whether their
10 particular hearing has been removed from calendar or will go
11 forward as scheduled. These rulings may be found on the court's
12 website, www.caeb.uscourts.gov, under the Pre-Hearing
13 Dispositions tab. The court advises the parties that the hearing
14 scheduled for February 4, 2009 in this adversary proceeding will
15 not be removed from calendar but will go forward.

16 The plaintiff may provide the appropriate prison officials
17 with copies of this decision and the attached information and
18 procedures re telephone appearances, so as to facilitate his
19 appearance. The plaintiff will need to take the steps necessary
20 to appear by telephone at the hearing.

21 Dated: January 16, 2009

/s/

ROBERT S. BARDWIL
United States Bankruptcy Judge