

1  
2 **POSTED ON WEBSITE**  
3 **NOT FOR PUBLICATION**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 **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.**

20 **MEMORANDUM DECISION**

21 On August 13, 2008, Jesse Adrian Wagner, the plaintiff in  
22 this adversary proceeding, filed an application for an order  
23 directing the California Department of Corrections and  
24 Rehabilitation, Sierra Conservation Center, and Warden Ivan C.  
25 Clay, to make the plaintiff available to appear by telephone at a  
26 status conference in this adversary proceeding on September 3,  
27 2008, at 10:30 a.m. ("the Application"). The plaintiff also  
28 states in the Application that "good cause exists to allow debtor  
[the plaintiff] to appear by telephone."

1 In his declaration attached to the Application, the  
2 plaintiff testifies to his present incarceration, to the  
3 financial burden of transporting him to court for the hearing,  
4 and to his prior appearances by telephone at an earlier status  
5 conference in this adversary proceeding and at the meeting of  
6 creditors in his parent bankruptcy case.

7 The court notes, first, that the status conference in this  
8 adversary proceeding is now scheduled for October 9, 2008, at  
9 11:00 a.m., not for September 3, 2008. (A Notice of Rescheduled  
10 Status Conference was served by the Clerk's Office on August 11,  
11 2008, and in all likelihood, had not been received by the  
12 plaintiff at the time he filed the Application.)

13 However, there is another hearing presently scheduled for  
14 September 3, 2008, at 10:30 a.m. -- the motion of Educational  
15 Credit Management Corporation to be substituted in as a party in  
16 this adversary proceeding ("the Motion" or "the Motion to  
17 Substitute"). The plaintiff has filed opposition to the Motion,  
18 and it appears he intends to make an appearance at the hearing on  
19 the Motion. Thus, the court will construe the Application as a  
20 request to appear by telephone at the hearing on the Motion.

21 The court has issued policies and procedures pursuant to  
22 which attorneys and parties are permitted to appear by telephone  
23 at most non-evidentiary hearings. These policies and procedures  
24 are available from the Clerk's Office and may also be found on  
25 the court's website, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), under Court Calendars  
26 -- Procedural Information. For the convenience of the plaintiff,  
27 who the court understands may have no access to the Internet, a  
28 copy of the policies and procedures is attached hereto as

1 Exhibit A. Pursuant to these policies and procedures, the  
2 plaintiff may appear by telephone at the hearing on the Motion to  
3 Substitute. No order is necessary.

4 The plaintiff's request for an order directing the  
5 California Department of Corrections and Rehabilitation, Sierra  
6 Conservation Center, and Warden Ivan C. Clay "to make Debtor  
7 available by telephone for the hearing" will be denied. The  
8 court finds no basis for jurisdiction over the Department, the  
9 Center, or the Warden that would allow the court to make such an  
10 order.

11 Instead, the plaintiff may provide the appropriate prison  
12 officials with copies of this decision and the attached  
13 information and procedures re telephone appearances, so as to  
14 facilitate his appearance. The plaintiff will need to take the  
15 steps necessary to appear by telephone at the hearing.

16 Dated: August 21, 2008

17 \_\_\_\_\_/s/\_\_\_\_\_  
18 ROBERT S. BARDWIL  
19 United States Bankruptcy Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28