

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 9, 2019 at 2:00 p.m.

1. [18-25001-E-7](#) **JOSEPH AKINS**
[18-2187](#)

**STATUS CONFERENCE RE:
COMPLAINT
11-13-18 [1]**

BLACK V. AKINS

Plaintiff's Atty: Pro Se

Defendant's Atty: unknown

Adv. Filed: 11/13/18

Answer: none

Nature of Action:

Objection/revocation of discharge

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxx, 2019.

Notes:

SUMMARY OF COMPLAINT

Dominique Black, the Plaintiff, has filed this Adversary Proceeding in pro se seeking both a determination that the obligation of Joseph Akins, Defendant-Debtor, is nondischargeable and that Defendant-Debtor's discharge should be denied in his underlying bankruptcy case. The Complaint states the following grounds and relief sought:

1. Plaintiff is a judgment creditor, with a Superior Court judgment determining that Defendant-Debtor is obligated to her in the amount of \$323,804.85. A copy of the Judgment is filed as Exhibit A to the Complaint.

January 9, 2019 at 2:00 p.m.

- Page 1 of 22 -

A. The State Court Judgment was entered by the State Court based on Defendant-Debtor's default on February 19, 2010.

B. The State Court Judgment is in the amount of \$323,804.85.

2. The State Court Complaint sought relief for alleged fraud. A copy of the State Court Judgment is attached as Exhibit B to the Complaint.

A. Exhibit B is not a copy of the State Court Complaint, but of one page, titled "First Cause of Action Fraud.

B. Reference is made to other attachments to the State Court Complaint, with are not included as part of Exhibit B.

3. It is then alleged that the State Court Judgment was entered based on an Amended State Court Complaint, which is attached as Exhibit C to the Complaint.

A. The Amended Complaint alleges causes of actions identified as:

- (1) Breach of Contract
- (2) Common Counts
- (3) Fraud

B. Attached to the Amended Complaint are detailed identification of the acts alleged to be the basis for a fraud cause of action. It also includes detailed allegations for a breach of contract and common count causes of action.

The State Court Judgment does not include any findings or determinations upon which Cause, or Causes of Action, relief was granted.

4. The Complaint alleges that the State Court Judgment is nondischargeable based on fraud pursuant to 11 U.S.C. § 523(a)(2)(A).

5. The Complaint further alleges that Defendant-Debtor should be denied a discharge pursuant to 11 U.S.C. § 727(a)(4)(A) [Defendant-Debtor making a false oath or account] and (C) [Defendant-Debtor giving/receiving/offering money/property/advantage for acting or forbearing to act].

The Complaint does not allege what acts and grounds state a basis for such claim, but merely direct the court to Exhibits A and C.

SUMMARY OF ANSWER

No Answer has been filed by Defendant-Debtor Joseph Akins.

SERVICE OF SUMMON AND COMPLAINT

No Certificate of Service has been filed by Plaintiff documenting proper service of the Summon and Complaint in this Adversary Proceeding.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that the Adversary Proceeding is a core proceeding matter pursuant to 28 U.S.C. § 157(b)(2). Though not expressly stated in the Complaint, Federal Court jurisdiction exists for determination of the dischargeability of debt and denial of discharge , and that this is a core proceeding pursuant to 28 U.S.C. § 1134 and the referral of these bankruptcy matters to this court by the United States District Court of the Eastern District of California pursuant to 11 U.S.C. § 157. 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.

2. [16-25205](#)-E-7 TIMOTHY TAPURO
18-2066

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
5-11-18 [1](#)

**TAPURO V. COUNTY OF
SACRAMENTO, DEPARTMENT OF**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Robert P. Parrish

Adv. Filed: 5/11/18
Answer: 6/29/18

Nature of Action: Determination of Dischargeability of Debt, Alleged Violation of 11 U.S.C. § 362(a) and § 524 Discharge.

The Status Conference is Concluded and the court shall conduct a Pre-Trial Conference at 2:00 p.m. on xxxxxxxxxxxxxxxx, 2019.

Notes:
Continued from 11/14/18

Order transferring case to Judge Ronald H. Sargis filed 11/14/18 [Dckt 22]

SUMMARY OF COMPLAINT

Timothy Tapuro, the Plaintiff-Debtor commenced this Adversary Proceeding asserting claims to determine that Defendant's claim has been discharged, and for violation of the automatic stay and discharge injunction on May 11, 2018. In the Complaint, Plaintiff-Debtor alleges:

1. Plaintiff-Debtor alleges that he has obtained a discharge in his related Chapter 7 case - 16-25205.
2. It is asserted that Defendant County of Sacramento, Department of Revenue Recovery asserts that its claim is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) [domestic support obligation] or (7) [fine, penalty, forfeiture not as compensation for pecuniary loss relating to a tax obligation].
3. Defendant has attempted to enforce the obligation notwithstanding Plaintiff-Debtor having

obtained a discharge.

4. Plaintiff-Debtor alleges that the claim is based on proceeding in a Juvenile Case in which an order for restitution was entered. Plaintiff-Debtor asserts that all requirements in connection with that case have been completed, including probation. With such completion, Defendant's claim became a civil judgment. It is alleged that all of this was completed in May 2010.

5. As a civil judgment Plaintiff-Debtor asserts that the obligation is dischargeable and was discharged.

6. Plaintiff-Debtor asserts that the post-petition attempts to enforced the alleged discharged claim constitutes violations of the automatic stay and discharge injunction, for which damages may be awarded.

SUMMARY OF ANSWER

On June 29, 2018, Defendant County of Sacramento filed an Answer (Dckt. 8) which admits, denies, and asserts other defenses, including:

1. Defendant lacks knowledge or information to admit or deny that Plaintiff-Debtor filed a Chapter 7 case and was granted a discharge therein. ¶ 1.

2. Defendant lacks knowledge or information to admit or deny that it has asserted that the claim is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) or (7). ¶ 3.

3. Defendant lacks knowledge or information to admit or deny that the Complaint was filed after Defendant admitted having actual knowledge of the Chapter 7 case having been filed and Plaintiff-Debtor having obtained a discharge. ¶ 4.

4. Defendant lacks knowledge or information to admit or deny that this Adversary Proceeding has been filed in connection with Plaintiff-Debtor's Chapter 7 case. ¶ 7.

5. Defendant admits that federal court jurisdiction exists for this Adversary Proceeding and that the Complaint responded to is a core matter proceeding. ¶ 8,

6. Defendant lacks knowledge or information to admit or deny that the claim at issue arose from the Juvenile proceeding and restitution order therein. ¶ 12.

7. Defendant denies that the claim was assigned to it, stating that it "collects from debtors who are under court order to pay restitution and forwards that money to victims for who reparations were ordered." ¶ 14.

8. Defendant lacks knowledge or information to admit or deny that on or about December 4, 2017, Defendant sent Plaintiff-Debtor an account summary asserting a balance of \$33,764.66.

¶ 17.

9. Defendant lacks knowledge or information to admit or deny the communications alleged to have been made to Defendant by Plaintiff-Debtor's counsel. ¶¶ 18-23

10. Defendant lacks knowledge or information to admit or deny that Defendant resumed collection activities and intercepted Plaintiff-Debtor's 2017 tax refund. ¶ 24.

11. Defendant lacks knowledge or information to admit or deny that Plaintiff-Debtor's employer was served with an earnings withholding order relating to the claim at issue. ¶ 25.

12. Defendant seeks a judgment determining that the claim at issue is nondischargeable pursuant to 11 U.S.C. § 523(a)(7) which provides:

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

On its face, this exception is for a "fine, penalty, or forfeiture" that is payable to and for the benefit of a governmental unit, other than:

1. Relating to a tax not specified in § 523(a)(1) or

2. Imposed with respect to an event that occurred more than three years before the filing of the bankruptcy petition.

At the Status Conference, the court addressed with the Defendant County of Sacramento:

The potential standing issue that if the County was not assigned the claim, but was merely "collecting" the claim, the basis for asserting that the claim is both "payable to and for the benefit of a governmental unit;" and

If the claim dates back to May of 2010, how it is not more than based on an event that occurred more than three years before Plaintiff-Debtor's bankruptcy case which was filed in 2017.

At the Status Conference, Counsel for Defendant County of Sacramento responded,

XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

SETTING OF DISCOVERY

On July 18, 2018, the judge to whom this Adversary Proceeding was previously assigned conducted the Status Conference. The court directed that all discovery was to be completed within 90 days of the filing of the Joint Discovery Plan (Dckt. 15), which was filed on July 19, 2018. That 90 days expired on October 19, 2018. The Discovery Plan also set the deadlines for hearing dispositive motions, which December 10, 2018 deadline has expired.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff 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). Complaint ¶ 8, Dckt. 1. In its Answer, the County of Sacramento admits the allegations of jurisdiction and core proceedings. Answer ¶ 8, 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 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). Complaint ¶ 8, Dckt. 1. In its Answer, the County of Sacramento admits the allegations of jurisdiction and core proceedings. Answer ¶ 8, 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. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on ----
-----, 2019.**

3. [17-22515-E-7](#) **LANG HER**
[18-2181](#)

STATUS CONFERENCE RE:
COMPLAINT
11-2-18 [[1](#)]

XIONG V. HER

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

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXX
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Notes:
Plaintiff's Status Conference Statement filed 1/2/19 [Dckt 12]

SUMMARY OF COMPLAINT

Plaintiff Yee Xiong filed the Complaint seeking a determination that Plaintiff's claim was nondischargeable as arising from a willful and malicious injury caused by Defendant-Debtor, 11 U.S.C. § 523(a)(6). The Complaint alleges conduct causing injury to Plaintiff, for which a judgment was obtained in the California Superior Court, County of Yolo.

A copy of the State Court Judgment is attached to the Complaint. It does not state the specific claims on which the judgment was granted. A copy of the State Court Complaint is not an exhibit to the Complaint.

SUMMARY OF ANSWER

Defendant Lang Her has filed an Amended Answer admitting and deny specific allegations in the Complaint. Dckt. 10.

STATUS CONFERENCE REPORTS

In the Status Conference Reports filed, both parties argue the various grounds and defenses they assert. Dckts. 12 and 14. Neither report provides any information about discovery or how the parties intend to prosecute the Adversary Proceeding - other than Plaintiff stating that she intends to file a motion for summary judgment by January 31, 2019.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff 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. Complaint ¶ 3, Dckt. 1. In his Answer, Defendant Lang Her admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, 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. Plaintiff 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. Complaint ¶ 3, Dckt. 1. In his Answer, Defendant Lang Her admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, 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.
- 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.

4. [17-22347](#)-E-11 UNITED CHARTER LLC

**CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
4-7-17 [\[1\]](#)**

Debtor's Atty: Jeffrey Goodrich

Notes:

Continued from 8/30/18

Operating Reports filed: 11/21/18 [Jul 2018; Aug 2018; Sep 2018; Oct 2018]

[JJG-10] Ex Parte Application of Debtor in Possession for Order Authorizing Employment of Accountant filed 8/30/18 [Dckt 270]; Order granting filed 8/31/18 [Dckt 272]

[JJG-11] Objection of Debtor in Possession to Proof of Claim of Wayne Bier filed 9/11/18 [Dckt 275]; Order setting pre-evidentiary hearing conference [1/15/19 at 1:30 p.m.] filed 10/28/18 [Dckt 308]

Application of Debtor in Possession for Order Authorizing Employment and Payment of Valbridge Property Advisors as Appraisers filed 9/13/18 [Dckt 278]; Order granting filed 9/16/18 [Dckt 282]

[JJG-12] Motion of Debtor in Possession to Value Security Under 11 U.S.C. § 506 filed 9/27/18 [Dckt 283]

JANUARY 9, 2019 STATUS CONFERENCE

On November 21, 2018, the Debtor in Possession filed the Monthly Operating Reports for October 2018 (one week untimely), September 2018 (one month and one week untimely), August 2018 (two months and one week untimely), and July 2018 (three months and one week untimely). Dckts. 315, 314, 313, 312. L.B.R. 2015-1(c), monthly operating reports to be filed by the fourteenth day of the month following the month of the report.

There are pending the following matters:

1. Objection to Claim of Wayne Bier

The court issued a Pre-Evidentiary Hearing Conference Order for this Contested Matter. Dckt. 308. Discovery closed on December 28, 2018, and the Pre-Evidentiary Hearing Conference is scheduled for January 15, 2019. Pre-Evidentiary Hearing Statements have been filed by both parties (Dckts. 316, 317), with the parties estimating one to two days for the evidentiary hearing.

2. Motion to Value Secured Claim of Wayne Bier

This contested matter has been continued so that it may trail the evidentiary hearing on the Objection to Claim.

AUGUST 30, 2018 STATUS CONFERENCE

This voluntary Chapter 11 case was filed on April 8, 2017. A Chapter 11 Plan and proposed disclosure statement were filed on February 22, 2018. Dckts. 166, 167. An amended plan and proposed amended disclosure statement were filed on May 3, 2018, with the court issuing an order approving the May 3, 2018, Amended Disclosure Statement. Order, Dckt. 237.

The Monthly Operating Report for June 2018 (none has been filed for August, 2018, the filing of which is past due), provides the following information:

Revenues

Gross Sales.....	\$296,822
Costs of Goods Sold.....	\$ 0
Deposit.....	\$ 24,974
Reimbursement for ISF.....	\$ 16
Prepaid Rent.....	\$ 8,600

Total Revenue.....\$330,412

Expenses

Commissions.....	(\$ 9,556)
Contract Labor.....	(\$ 19,617)
Insurance.....	(\$ 16,477)
Real Property Taxes.....	(\$136,485)
Other Taxes.....	(\$ 2,173)
Administrative.....	(\$ 146)
Interest.....	(\$ 83,297)
Water.....	(\$ 2,066)
Maintenance.....	(\$ 1,959)
Fencing.....	(\$ 8,700)
Sheriff's Eviction Fee.....	(\$ 145)
Water Testing.....	(\$ 50)
Stockton Fines.....	(\$ 1,234)
Accountant.....	(\$ 3,250)
Appraisal.....	(\$ 3,700)
Security.....	(\$ 297)
PGE.....	(\$ 7,721)

January 9, 2019 at 2:00 p.m.

Total Expenses.....(\$296,810)

Profit/(Loss) From Operations.....\$33,602

Professional Fees.....(\$39,594)

Us Trustee Quarterly Fees.....(\$ 1,575)

Debtor in Possession was not prepared to proceed with confirmation of the proposed Chapter 11 Plan at the August 30, 2018 hearing set on that matter. Confirmation was denied.

Debtor in Possession will continue to work on confirmation of a plan.

5. [13-24657-E-13](#) **MICHAEL FARRACE**
[17-2040](#)

**FINAL CONTINUED PRE-TRIAL
CONFERENCE RE: COMPLAINT
3-20-17 [1]**

**FARRACE V. NEW PENN FINANCIAL,
LLC**

Final Ruling: No appearance at the January 9, 2019 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Erin M. McCartney

Adv. Filed: 3/20/17
Answer: 5/10/17

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

The Final Pre-Trial Conference is continued to 2:00 p.m. on February 20, 2019, to afford the Parties the opportunity to consummate the settlement and avoid incurring otherwise unnecessary costs and expenses of attending the Conference scheduled in January 2019.

Notes:

Continued from 10/10/18

Stipulation to Dismiss and Settle Adversary Complaint filed 12/17/18 [Dckt 53]; Order on Stipulation filed 12/24/18 [Dckt 56]

JANUARY 9, 2019 PRE-TRIAL CONFERENCE

On December 17, 2018, the Parties filed a pleading titled “Stipulation to Dismiss and Settle Adversary Complaint.” Dckt. 53. The Stipulation states that the parties stipulate pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) to dismiss this Adversary Proceeding. Such a stipulation does not require an order of the court.

The Stipulation further states that such dismissal will occur only after an order of the court is entered “approving” the Stipulation and there be a payment of \$6,000 to Plaintiff. No motion has been filed seeking an order granting such “approval” of a stipulation (Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007) or the basis for the court so “approving” a stipulation. In the Stipulation, the Parties agree to specified amounts of the obligation that was in dispute.

On December 24, 2018, the court issued an order in an attempt to assist the parties in their efforts to resolve this matter. Order, Dckt. 56. The court interpreted the Stipulation to be a joint ex parte motion for an order stating the agreed claim amounts and the obligation of Plaintiff to dismiss the Adversary Proceeding upon timely payment of the \$6,000. The Order requires the dismissal to be filed within ten days of the timely payment.

Based on the Order being filed on December 24, 2018, the \$6,000 was to be paid by January 7, 2019.

6. [11-29166-E-13](#) **MICHAEL/JENNIFER PETERS** **STATUS CONFERENCE RE:**
[18-2185](#) **COMPLAINT**
11-7-18 [\[1\]](#)

**PETERS ET AL V. HSBC FINANCE
CORPORATION ET AL**

Plaintiff's Atty: Mark A. Wolf
Defendants' Atty: Austin T. Beardsley

Adv. Filed: 11/7/18
Answer: none
Amd. Complaint Filed: 11/12/18
Answer: 12/13/18

Nature of Action:
Declaratory judgment
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other
Injunctive relief - other

Notes:
Joint Discovery Plan filed 12/27/18 [Dckt 11]

SUMMARY OF COMPLAINT

Plaintiff-Debtor Michael and Jennifer Peters filed a Complaint seeking a determination that the deed of trust held by Defendants was void and for damages. The allegations in the Complaint include:

1. Plaintiff-Debtor has completed the Chapter 13 Plan in bankruptcy case 11-29166.
2. The Court determined pursuant to 11 U.S.C. § 506(a) that the secured claim of Defendant had a value of \$0.00, for which the real property commonly known as 9528 Conda Way was the collateral.
3. The Plan being completed, there is no obligation remaining to be secured by the deed of trust recorded against the Conda Way Property. Defendants have failed to reconvey the deed of trust. The First Cause of Action seeks to quiet title to the property, obtain a determination from the court that the deed of trust is void, and an award of attorney's fees and costs.
4. In the Second Cause of Action Plaintiff seek recover of actual and statutory damages pursuant to California Civil Code § 2941.

5. In the Third Cause of Action Plaintiff seeks recovery for breach of contract.
6. In the Fourth and Fifth Causes of Action Plaintiff asserts claims under the Federal Fair Credit Reporting Act.
7. Plaintiff seeks recovery of actual damages of \$150,000 and statutory damages of \$500, and attorney's fees and costs.

SUMMARY OF ANSWER

Defendant Beneficial Financial I, Inc. has filed an Answer (Dckt. 10) admitting and denying specific allegations in the Complaint. Additionally, five affirmative defenses are asserted.

IDENTIFICATION OF ALL NECESSARY PARTIES

~~At the hearing, the Parties confirmed that Defendant Beneficial Financial I, Inc. holds all of the rights and interests to be adjudicated in this Adversary Proceeding. Defendant Beneficial Financial I, Inc. certified on the record at the January 9, 2019 Status Conference that no other persons hold any rights or interests which are the subject of this Adversary Proceedings.~~

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff, Michael and Jennifer Peters, 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). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant Beneficial Financial I, Inc. admits the allegations of jurisdiction for this Adversary Proceeding. Answer ¶ 3, Dckt. 10.

However, Defendant asserts that the allegation of this being a core proceeding matter is a legal conclusion, "to which no response is required," and if a response is required, denies such allegation.

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 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).

At the hearing xxxxxxxxxxxxxxxxxxxx

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**.

7. [17-25576-E-7](#) KEVIN KENNEDY
[18-2156](#)

STATUS CONFERENCE RE:
COMPLAINT
9-24-18 [\[1\]](#)

MACDONALD V. KENNEDY
ADVERSARY PROCEEDING CLOSED:
12/26/2018

Final Ruling: No appearance at the January 9, 2019 Status Conference is required.

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

Adv. Filed: 9/24/18
Answer: none

<p>The Complaint having been dismissed (Order, Dckt. 12) and Adversary Proceeding Closed, the Status Conference is removed from the Calendar.</p>
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8. [16-22482-E-7](#) **TIMOTHY MUNSON**
[17-2206](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
11-14-17 [1]

FARRAR V. MUNSON

Plaintiff's Atty: Dana A. Suntag
Defendant's Atty: G. Michael Williams

Adv. Filed: 11/14/17
Answer: 12/21/17

Nature of Action:
Recovery of money/property - fraudulent transfer
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Recovery of money/property - turnover of property
Recovery of money/property - preference

The Status Conference is XXXXXXXXXXXXXX

Notes:
Continued from 12/19/18

Order transferring case to Judge Ronald H. Sargis filed 12/20/18 [Dckt 31]

SUMMARY OF COMPLAINT

Plaintiff-Trustee Gary Farrar filed a Complaint seeking to avoid transfers to Defendant as fraudulent conveyances under applicable bankruptcy and California law on November 14, 2018. The claims asserted are:

1. Two weeks before the commencement of the Chapter 7 bankruptcy case by Timothy Munson, it is alleged that he transferred the Poppy Drive Property to Defendant. It is asserted that Defendant paid less than reasonably equivalent value for the Property.
2. In the First Cause of Action, Plaintiff-Trustee alleges that the transfer is avoidable under 11 U.S.C. § 548 based on Debtor having made the transfer with the intent to hinder, delay, or defraud creditors.
3. In the Second Cause of Action, Plaintiff-Trustee alleges that the transfer is avoidable under 11

U.S.C. § 548 because Debtor received less than reasonable equivalent value for the Property and was unable to pay his debts.

4. In the Third Cause of Action, Plaintiff-Trustee asserts that the transfer is avoidable under applicable California Fraudulent Transfer law (Cal. Civ. § 3239.04 et seq.).

5. In the Fourth Cause of Action the Plaintiff-Trustee asserts that the Poppy Drive Property continues to be property of the bankruptcy estate and demands turnover of such property pursuant to 11 U.S.C. § 542(a).

6. For the Fifth Cause of Action, the Plaintiff-Trustee asserts that the transfer of the property is an avoidable preference (11 U.S.C. § 547), may be avoided, and the Property recovered as provided in 11 U.S.C. § 550.

7. In the Sixth Cause of Action, Plaintiff-Trustee asserts a constructive trust under California law.

SUMMARY OF ANSWER

Defendant Christie Munson filed an Answer on December 21, 2018, (Dckt. 11) which admits and denies specific allegations in the Complaint. Defendant also asserts seven affirmative defenses, including a contention that Defendant is entitled to a \$100,000 homestead exemption if the transfer is avoided as a fraudulent conveyance, preference, or a constructive trust is imposed. In addition, Defendant asserts that the transfer was part of a marital property division, with the Poppy Drive Property awarded to Defendant as her sole and separate property.

BANKRUPTCY DISPUTE RESOLUTION PROCEEDINGS

On August 16, 2018, the court issued an order appointing a Bankruptcy Dispute Resolution Program (“BDRP”) Advocate for this Adversary Proceeding. Order, Dckt. 24. No Status Reports or BDRP updates have been filed.

At the Status Conference, the Parties reported **XXXXXXXXXXXXXXXXXXXXXXX**

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Gary Farrar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (F), (H), and (O). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Christie Munson admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, 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 Gary Farrar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (F), (H), and (O). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Christie Munson admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, 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 -----, 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.

9. [16-22687-E-13](#) **DAVID/SHARON NEIHART**
[18-2162](#)

**STATUS CONFERENCE RE:
COMPLAINT
10-5-18 [1]**

**NEIHART ET AL V. DISCOVER BANK
ET AL**

Final Ruling: No appearance at the January 9, 2019 Status Conference is required.

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

Adv. Filed: 10/5/18
Answer: none
Reissued Summons: 10/5/18

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

This Adversary Proceeding having been dismissed by the Plaintiff on January 4, 2019 (Notice of Dismissal, Dckt. 17), the Status Conference is removed from the Calendar.

Notes:

Request for Entry of Default by Plaintiff(s) [Discovery Bank] filed 11/16/18 [Dckt 11]; Memorandum re: Default Papers filed 11/20/18 [Dckt 15]

Request for Entry of Default by Plaintiff(s) [Discovery Produces, Inc.] filed 11/16/18 [Dckt 13]; Memorandum re: Default Papers filed 11/20/18 [Dckt 16]

10. [16-22687-E-13](#) **DAVID/SHARON NEIHART**
[18-2164](#)

STATUS CONFERENCE RE:
COMPLAINT
10-5-18 [[1](#)]

NEIHART ET AL V. DISCOVER BANK
ET AL

Final Ruling: No appearance at the January 9, 2019 Status Conference is required.

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

Adv. Filed: 10/5/18
Answer: none

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

<p>This Adversary Proceeding having been dismissed by the Plaintiff on January 4, 2019 (Notice of Dismissal, Dckt. 27), the Status Conference is removed from the Calendar.</p>
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Notes:

Request for Entry of Default by Plaintiff(s) [Discover Bank] filed 11/16/18 [Dckt 9]; Entry of Default and Order Re: Default Judgment Procedures filed 11/20/18 [Dckt 17]

Request for Entry of Default by Plaintiff(s) [Discover Products, Inc.] filed 11/16/18 [Dckt 11]; Entry of Default and Order Re: Default Judgment Procedures filed 11/20/18 [Dckt. 19]