

**UNITED STATES BANKRUPTCY COURT**  
**Eastern District of California**

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

**February 21, 2024 at 2:00 p.m.**

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1. [23-24610-E-11](#)      **LAFLEUR WAY, LLC**

**STATUS CONFERENCE RE:**  
**VOLUNTARY PETITION**  
**12-23-23 [\[1\]](#)**

[CAE-1](#)

**1 thru 2**

Debtor's Atty: Peter G. Macaluso

Notes:

[PGM-1] Application to Employ Peter G. Macaluso as Bankruptcy Counsel filed 1/12/24 [Dckt 12]; Order granting filed 2/4/24 [Dckt 20]

[RHS-1] Order Setting Hearing on Order to Show Cause Why Case Should Not Be Dismissed filed 1/18/24 [Dckt 16]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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This Subchapter V case was filed by Lafleur Way, LLC on December 23, 2023. Dckt. 1. The Debtor is serving as the Debtor in Possession in this case. On February 13, 2024, the Debtor/Debtor in Possession filed a Status Conference Report. Dckt. 21. In the Report, the Debtor/Debtor in Possession states that it has conferred with the U.S. Trustee, and has contacted the Chapter 11 Trustee, and the Appointed Chapter 11 Trustee on January 4, 2024. *Id.*, p. 1:25 - 2:2.

In reviewing the file, in this Subchapter V case, on January 4, 2024, U.S. Trustee filed the Notice of Appointment of Lisa Holder as the Subchapter V Trustee in this Case. Dckt. 9. No other "Chapter 11 Trustee" has been appointed in this case. The Debtor is serving as the Debtor/Debtor in Possession, exercising the powers of, and having the fiduciary duties of a Chapter 11 trustee. *See*, 11 U.S.C. § 1184.

On February 14, 2024, 53 days after this case was filed, the Debtor/Debtor in Possession filed a Motion to Use Cash Collateral. Dckt. 23. In the Motion the Debtor/Debtor in Possession states that in December 2023, Shareholder Carl Dexter bought the La Fleur Way Property. *Id.*; p. 1:36 - 2:6. Further, that Carl Dexter, who is said to be a "shareholder" of the Debtor collects the monthly rents, which total \$3,775.00. It does not say that the Debtor purchased the Property or that he is collecting rents as a managing member or employee of the Debtor.

In the Motion, it is stated that the Debtor, not the Debtor/Debtor in Possession who is exercising the rights and has the fiduciary duties to the Bankruptcy Estate, seeks authority to spend the rent monies. The use is stated to be to maintain and preserve the ongoing value of the business (not making it clear whether it is the business of shareholder Carl Dexter, or a business that is property of the bankruptcy estate).

The Motion continues to seek authorization for the “Debtor,” and not the fiduciary Debtor/Debtor in Possession to operate the business.

The Motion references Exhibit A, with is a 60 month budget.

Additionally, the “Debtor” seeks to grant replacement liens for the cash collateral that is used by the Debtor. No assets are identified in which the replacement liens are to be granted by the Debtor (not the fiduciary Debtor/Debtor in Possession).

A Declaration of Carl Dexter is provided in support of the Motion. Dckt. 26. In it, Mr. Dexter states that he is “the president and majority shareholder in La Fleur Way, LLC.” *Id.*, 1:19-20. It is not clear how a limited liability company has a “president” and shareholders.

In his Declaration, Mr. Dexter states testimony that conflicts what is alleged in the Motion. He states that the Debtor, and not Mr. Dexter, purchased the Property. *Id.* ps. 1:25 - 2:1.

In his Declaration, Mr. Dexter states that the “shareholders” of the Debtor collect the rents. *Id.* p. 2:11-14. He does not testify that it is the Debtor, or now the Debtor/Debtor in Possession collects the rents.

Mr. Dexter further testifies that he personally “manage[s] the property and I am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor’s payment. *Id.* p. 2:18-20.

Mr. Dexter does not explain how he personally, and not the fiduciary Debtor/Debtor in Possession, is responsible for managing any property of the Bankruptcy Estate.

### **Review of the Filings and Public Record of the California Secretary of State**

The California Secretary of State reports that Lafleur Way, LLC filed its initial documents on December 22, 2023, that its Status is Active, and that Carl Dexter is identified as Debtor’s Agent. <https://bizfileonline.sos.ca.gov/search/business>.

On Schedule A/B Carl Dexter, as the “Manager” of the Debtor, states under penalty of perjury that as of the filing of this Case on December 23, 2024, the Debtor had no personal property and had only one piece of real property it owned, 1078 La Fleur Way, Sacramento, California, which is valued at \$950,000. Dckt. 1 at 9 - 12. On Amended Schedule D Carl Dexter states under penalty of perjury as the manger of the Debtor, that Debtor’ only credit with a secured claim is PHH Mortgage, with a (\$550,449.95) claim secured by the La Fleur Way Property that is stated to have a \$950,000 value.

On Schedule E/F Mr. Dexter, as Debtor’s Manager, states under penalty of perjury that Debtor has no creditors with any unsecured claims.

This appears that this Chapter 11 Case was filed for a limited liability company created on December 22, 2023, into which the La Fleur Way Property was transferred into on December 22, 2024, and then the newly created limited liability company, the Debtor, was put into bankruptcy the next day, December 23, 2024. The sole asset of the Debtor that is in the Bankruptcy Estate is the La Fleur Way Property that was transferred to the Debtor the day before this Case was filed.

At the Status Conference, **XXXXXXX**

2.	<a href="#"><u>23-24610-E-11</u></a>	<b>LAFLEUR WAY, LLC</b>	<b>ORDER TO SHOW CAUSE</b>
	<a href="#"><u>RHS-1</u></a>	<b>Peter Macaluso</b>	<b>1-17-24 [16]</b>

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 11 Subchapter V Trustee, and office of the U.S. Trustee as stated on the Certificate of Service on January 18, 2024. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to file the Master Equity Security Holder List in this Chapter 11 Subchapter V case.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
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11 U.S.C. § 1116(4) requires a Debtor under Chapter 11 to "file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court." This district requires Chapter 11 debtors to file a "Master Equity Security Holder Address List which includes the name, address, and zip code of all the equity security holders of the debtor. . . prepared in strict compliance with instructions of the Clerk (Form EDC 2-190. . .)." LOCAL BANKRUPTCY RULE 1007-1(b).

The court's docket reflects that the default in the filing requirement that is the subject of the Order to Show Cause has not been cured. The Master Equity Security Holder List remains unfiled as of the court's review of the docket on February 14, 2024.

On the Amended Statement of Financial Affairs Carl Dexter is listed as the only officer, managing member, person in control of the Debtor. His position is stated to be "Manager," not "managing

member” of the Debtor Limited Liability Company. It further states that he owns 100% of the interests in the Debtor. Dckt. 30 at p. 7; Question 28.

The filing of the Statement of Financial Affairs does not replace the obligation of the Debtor to file Master Equity Security Holder List.

The court shall issue an 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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

3.	<a href="#"><u>23-23620-E-11</u></a> <a href="#"><u>CAE-1</u></a>	<b>ROBERT P. OBREGON DDS</b> <b>INC.</b>	<b>CONTINUED STATUS CONFERENCE RE:</b> <b>VOLUNTARY PETITION</b> <b>10-13-23 [1]</b>
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Debtor's Atty: Gabriel E. Liberman

Notes:

Continued from 11/29/23 with the concurrence of counsel for the Debtor/Debtor in Possession and the Subchapter V Trustee.

Operating Reports filed: 12/21/23 [10/31/23], 12/21/23 [11/30/23], 1/16/24 [12/31/23]

Trustee Report at 341 Meeting lodged: 12/6/23, 12/28/23

[GEL-8] Chapter 11 Small Business Plan filed 1/10/24 [Dckt 84]; Order to set confirmation hearing filed 1/11/24 [Dckt 90]; Notice of hearing filed 1/17/24 [Dckt 96]

[CAE-1] Status Conference Statement filed 2/8/24 [Dckt 100]

**The Status Conference is continued to 11:30 a.m. on February 29, 2024, to be conducted in conjunction the Confirmation of Plan hearing.**

On February 8, 2024, the Debtor/Debtor in Possession filed a Status Conference Statement. Dckt. 100. The information provided by the Debtor/Debtor in Possession includes the following.

The Debtor/Debtor in Possession has used cash collateral pursuant to the prior order of this court and has made the adequate protection payments required by the Order. *Id.*, p. 1:23-28.

One creditor has filed an opposition to confirmation of the Subchapter V Plan, with that creditor having timely made its 11 U.S.C. § 1111(b) election. The court notes that a second creditor has filed an opposition to confirmation, the Small Business Administration. Dckt. 104.

Debtor/Debtor in Possession requests that this Status Conference be continued one week to be conducted in conjunction with the Confirmation hearing.

The court concludes that continuance to February 29, 2024 is in the best interest of the parties in interest and allow them an additional week to focus on the oppositions filed and possible resolutions thereto.

The court shall issue an 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 Status Conference for this Subchapter V Case filed by Robert P. Obregon DDS, Inc. set for February 21, 2024, the Confirmation Hearing for Debtor/Debtor in Possession's proposed Subchapter V Plan being set for February 29, 2024, and upon review of the pleadings and concluding that continuing the Status Conference to be conducted in conjunction with the Confirmation hearing will reduce legal expenses and allow the Parties to focus on the oppositions and possible resolutions, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **11:30 a.m. on February 29, 2024**, to be conducted in conjunction the Confirmation of Plan hearing.

4. [22-22625-E-7](#)      **JASON/CHRISTINE EATMON**      **STATUS CONFERENCE RE: AMENDED**  
[23-2086](#)      **COMPLAINT**  
**CAE-1**      **12-26-23 [27]**

**LOCKWOOD ET AL V. EATMON ET AL**

Plaintiff's Atty: Jamie P. Dreher, Sandra L. Sava  
Defendant's Atty: Patricia Wilson

Adv. Filed: 10/30/23  
Answer: none  
Amd. Cmplt. Filed: 12/26/23  
Answer: 1/8/24

Notes:  
Amended Complaint filed 12/26/23 [Dckt 27]  
[CAE-1] Summons Reissued 12/27/23 [Dckt 29]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**SUMMARY OF COMPLAINT**

The First Amended Complaint filed by Daniel Lockwood and Roseanne Lockwood ("Plaintiff"), Dckt. 27, asserts claims for Denial of Defendant-Debtor's discharge in their Chapter 7 Case (22-22625). The First Cause of Action asserts that Defendant-Debtor has failed to disclose pre-petition monies that are property of the Bankruptcy Estate. 11 U.S.C. § 727(a)(2), (a)(3), (a)(4), and (a)(5).

Additionally, it is asserted that Defendant-Debtor has failed to respond to the discovery requests, contending that this is part of Defendant-Debtor's scheme to hide assets that are property of the Bankruptcy Estate.

Plaintiff asserts that it has identified seven bank accounts that the Defendant-Debtor failed to disclose on its schedules or to the Trustee. Additionally, the balances for the accounts disclosed were 1/3 of the actual monies in the accounts as of the filing of Defendant-Debtor's Bankruptcy Case.

The Second Claim seeks the denial of Discharge as provided in 11 U.S.C. § 727(a)(2)(B). The Third Claim asserts the denial of Discharge as provided in 11 U.S.C. § 727(a)(3). The Fourth Claim asserts the denial of Discharge as provided in 11 U.S.C. § 727(a)(4). The Fifth Claim asserts the denial of Discharge as provided in 11 U.S.C. § 727(a)(5).

The Plaintiff also has made demand for a jury trial for the Objection to Discharge claims that arise under 11 U.S.C. § 727, which rights arose with the enactment of the Bankruptcy Code.

At the Status Conference, counsel for Plaintiff addressed this Demand for Jury Trial, stating

XXXXXXX

## SUMMARY OF ANSWER

Jason Eatmon and Christine Eatmon (“Defendant-Debtor”) has filed an Answer to the First Amended Complaint, Dckt. 33, admitting and denying specific allegations. They also have asserted two Affirmative Defenses.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Daniel Lockwood and Roseanne Lockwood allege in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), that the claims arise under Title 11, § 727, and that this is a core matter proceeding as provided in 157(b)(2)(J). First Amended Complaint ¶ 5, Dckt. 27. In the Answer, Defendant Jason Eatmon and Christine Eatmon admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 5; Dckt. 33. 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 XXXXXXXX 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). Complaint ¶¶ xx, 2, Dckt. xx. In the Answer, Defendant xx admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ xx, xx, xx; Dckt. Xx. 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 XXXXXXXX, 2024.
- c. Expert Witnesses shall be disclosed on or before XXXXXXXX, 2024, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before XXXXXXXX, 2024.
- d. Discovery closes, including the hearing of all discovery motions, on XXXXXXXX, 2024.
- e. Dispositive Motions shall be heard before XXXXXXXX, 2024.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:00 p.m. on XXXXXXXX, 2024.

5 thru 6

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on February 7, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Substitute Attorney was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion to Substitute Attorney is XXXXXXX.**

On January 6, 2024, Donald DuPont, Jr., the Debtor, voluntarily commenced this Chapter 13 case. Steve Gimblin, Esq., ("Counsel") is his attorney of record in this case and was Debtor's attorney filing the Petition. Petition, p. 7; Dckt. 1. Debtor has filed his Petition, Certificate of Credit Counseling, and a list of creditors attached to the Petition, and Counsel has filed his Disclosure of Compensation. Dckt. 1. The Disclosure of Compensation states that Counsel has agreed to accept \$12,500.00 in fees and expenses, with Debtor having paid \$2,000.00 prior to filing this Case. *Id.* This is consistent with the "no look" fees allowed counsel in a Chapter 13 business case without a motion for allowance of fees. L.B.R. 2016-1(c). The Verification of Master Address List, listing approximately 30 creditors, was filed on January 16, 2024. Dckt. 7.

On January 23, 2024, Debtor and Counsel filed a Motion to Substitute the Debtor in *pro se* and authorized the withdrawal of Counsel from representation of Debtor in this Bankruptcy Case. Dckt. 12.

#### **APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and



efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 1.16. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 1.16. The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 1.16(d).

## **ADDITIONAL PLEADINGS FILED**

On February 7, 2024, counsel for the Debtor provided the Notice of the Hearing on this Motion. Dckt. 28. Counsel also filed the Declaration of Justin Kuney, Esq., an attorney with the law firm that is representing the Debtor. Dckt. 29. He confirms that the Debtor is aware of the February 21, 2024 hearing and will attend the hearing.

Mr. Kuney also states under penalty of perjury that "Withdrawal was mandatory pursuant to California Rules of Professional Conduct Rule 1.16(a). *Id.*, ¶ 6. No points and authorities or a Rule 1.16(a) analysis are part of Debtor's Counsel's Response.

### **Rule 1.16 Declining or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the lawyer knows\* or reasonably should know\* that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;\*

(2) the lawyer knows\* or reasonably should know\* that the representation will result in violation of these rules or of the State Bar Act;

(3) the lawyer's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or

(4) the client discharges the lawyer.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(2) the client either seeks to pursue a criminal or fraudulent\* course of conduct or has used the lawyer's services to advance a course of conduct that the lawyer reasonably believes\* was a crime or fraud;\*

(3) the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent;\*

(4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively;

(5) the client breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client a reasonable\* warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation;

(6) the client knowingly\* and freely assents to termination of the representation;

(7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(8) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;

(9) a continuation of the representation is likely to result in a violation of these rules or the State Bar Act; or

(10) the lawyer believes\* in good faith, in a proceeding pending before a tribunal,\* that the tribunal\* will find the existence of other good cause for withdrawal.

(c) If permission for termination of a representation is required by the rules of a tribunal,\* a lawyer shall not terminate a representation before that tribunal\* without its permission.

(d) A lawyer shall not terminate a representation until the lawyer has taken reasonable\* steps to avoid reasonably\* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e).

(e) Upon the termination of a representation for any reason:

(1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. “Client materials and property” includes correspondence, pleadings, deposition transcripts, experts’ reports and other writings,\* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably\* necessary to the client’s representation, whether the client has paid for them or not; and

(2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

CAL. RULES OF PROF’L CONDUCT 1.16. Debtor’s Counsel does not identify the applicable provision that requires Terminating Representation of Debtor.

It may be that the such information may need to be provided in camera.

#### Motion to Convert to Chapter 11 filed by Debtor

The Debtor, in *pro se*, has filed a Motion to Convert his case to one under Chapter 11. Dckt. 27. In the Motion the Debtor makes several statements (subject to the certifications made pursuant to Fed. R. Bank. P. 9011) relating to this representation. He states that he never met with Robert Gimblin, who is his attorney of record in this Case. He further states that the plan was to file a skeletal Chapter 13 petition because he was told by another attorney in Mr. Gimblin’s firm that the firm did not perform Chapter 11’s. *Id.*, p. 1.

#### **DISCUSSION**

In this case, counsel who was working on Debtor’s case, Justin K. Kuney, filed a Declaration on February 7, 2024, providing the address of Debtor and stating he anticipates debtor will appear at the

hearing. Decl., Docket 29 ¶¶ 3-5. Mr. Kuney further testifies that “[w]ithdrawal was mandatory pursuant to the California Rules of Professional Conduct Rule 1.16(a).” *Id.* at ¶ 6.

Mr. Kuney does not provide any other grounds for the Motion to Substitute, which, in essence, operates as a Motion to Withdraw. He does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. At the hearing, **XXXXXXX**

The court shall issue an 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 Substitute Attorney filed by Steve Gimblin, Esq. and Donald DuPont, 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 to Substitute Attorney is **XXXXXXX**.

6. <a href="#">24-20145-E-13</a> <a href="#">RHS-2</a>	<b>DONALD DUPONT</b> <b>Robert Gimblin</b>	<b>NOTICE OF INTENT TO DISMISS CASE IF DOCUMENTS ARE NOT TIMELY FILED 1-16-24 [9]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Notice of Intent to Dismiss the Case if Documents are not Timely Filed was served by the Clerk of the Court on Debtor, creditors, and Chapter 13 Trustee as stated on the Certificate of Service on January 18, 2024. The court computes that 34 days’ notice has been provided.

The court issued a Notice of Intent to Dismiss the Case if Documents are not Timely Filed (“Notice”) based on Debtor’s failure to file the following documents: Chapter 13 Plan, Form 122C-1 Statement of Monthly Income, Schedule A/B - Real and Personal Property, Schedule C - Exempt Property, Schedule D - Secured Creditors, Schedule E/F - Unsecured Claims, Schedule G - Executory Contracts, Schedule H - Codebtors, Schedule I - Current Income, Schedule J - Current Expend., Statement of Financial Affairs, and Summary of Assets and Liabilities.

<b>The Notice of Intent to Dismiss the Case is <b>XXXXXXX</b> .</b>
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The court's docket reflects that the default in filing required documents that is the subject of the Notice has been partially cured. The following documents were filed by Debtor: Schedule A/B - Real and Personal Property, Schedule C - Exempt Property, Schedule D - Secured Creditors, Schedule E/F - Unsecured Claims, Schedule G - Executory Contracts, Schedule H - Codebtors, Schedule I - Current Income, Schedule J - Current Expend., Statement of Financial Affairs, and Summary of Assets and Liabilities. Docket 23. However, Debtor has not filed a Chapter 13 Plan or Form 122C-1 as of the court's review of the docket on February 14, 2024.

At the hearing, **XXXXXXX**

The court shall issue an 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 Order to Show Cause 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 Notice of Intent to Dismiss the Case is **XXXXXXX** .

# FINAL RULINGS

7. [17-27077-E-13](#)      MICHAEL SCALLIN  
[23-2022](#)  
CAE-1

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
2-16-23 [[1](#)]

**SCALLIN V. U.S. DEPARTMENT OF  
EDUCATION**

**Final Ruling: No appearance at the February 21, 2024 Status Conference is required.**

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

Adv. Filed: 2/16/23  
Summons Reissued: 3/7/23  
Summons Reissued: 12/1/23  
Answer: none

Nature of Action:  
Dischargeability - student loan

Notes:  
Continued from 11/30/23 to allow time for Plaintiff-Debtor to obtain a Reissued Summons, and then serve the Reissued Summons and Complaint.

Reissued Summons set status conference to 1/17/24.

1/17/24 Status conference: continued status conference to 5/1/24 at the request of the Parties.

<p><b>The Status Conference has been continued to 2:00 p.m. on May 1, 2024, pursuant to prior Order of the court (Dckt. 60).</b></p>
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**TRUSTED BRIDGE, LLC V. LONG**

**Final Ruling: No appearance at the February 21, 2024 Status Conference is required.**

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Plaintiff's Atty: Barry H. Spitzer  
Defendant's Atty: Patricia Wilson

Adv. Filed: 12/18/23  
Answer: 1/22/24

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

Notes:

<p><b>The Status Conference has been continued to March 20, 2024 at 2:00 p.m.</b></p>
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**STIPULATION FOR POSTPONEMENT OF HEARING AND EXTENSION OF DEADLINES**

On February 20, 2024, Trusted Bridge, LLC ("Plaintiff") and Ian Long ("Defendant-Debtor") submitted to the court a Stipulation (Docket 9) which the court construes to be an Ex Parte Motion to extend deadlines and to postpone the status conference. The Ex Parte Motion is granted, and the following deadlines are set in the proceeding:

1. Initial disclosures shall be made by March 19, 2024.
2. The Discovery Plan shall be submitted by March 19, 2024.
3. The Status Conference is continued to March 20, 2024 at 2:00 p.m.

**SUMMARY OF COMPLAINT**

The Complaint filed by Trusted Bridge, LLC ("Plaintiff"), Dckt. 1 , asserts claims for determining the Nondischargeability of Debt pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6). Plaintiff cites the court to exhibits to the Complaint upon which it is asserted that Plaintiff has a judgment for fraud.

The Limited Judgement from the State Court, Exhibit E, and General Judgment, Exhibit F, are filed in support of the Complaint. Dckt. 6.

The Limited Judgement states that Plaintiff shall have a judgment for fraud in the principal amount of \$600,000, together with post-judgment interest of 9%. Exhibit E; Dckt. 6.

The General Judgment, which states that Plaintiff has been granted judgment under the Limited Judgment for fraud, awards Plaintiff the following:

A. The “Plaintiffs” in the State Court Action are awarded jointly \$1,884.01 for costs.

B. Plaintiff is awarded \$64,807.90 in costs and attorney’s fees.

Exhibit F.

## **SUMMARY OF ANSWER**

Ian Long (“Defendant-Debtor”) has filed an Answer, Dckt. 8 , admitting and denying specific allegations. Defendant-Debtor addresses the issues and denies allegations of committing fraud; fraud or defalcation in a fiduciary capacity, embezzlement or larceny; and willful and malicious injury.

## **STATE COURT JUDGEMENT**

As attorneys who practice in Federal Court know, the federal judges are to comply with applicable law (not affirmative defenses and the like with a party fails to claim) and not merely misstated or unstated law by the parties.

In the Complaint (¶ 24; Dckt 1), the Plaintiff asserts that the state court judgment is for fraud and issue preclusion prevents this court retrying the underlying issues. In Defendant-Debtor’s Answer he does not address the Doctrine of Issue Preclusion.

*Grogan v. Garner*, 498 U.S. 279, 284-85, n.11 (1991) states that with respect to a state court judgment, the federal court will give it force and effect with respect to the state court judgment under the Doctrine of Issue Preclusion (a sub-doctrine of *Res Judicata*) for the facts and the legal rulings thereon by the state court as is applicable under that court’s state law.

Here, the Oregon State Court has issued a judgment which it states is for fraud. This court does not know what findings necessarily had to be made for such a fraud judgment. The parties “educate” the court as to the applicable state law on Issue Preclusion and how it applies to the state court judgment.

The court address this legal issue with the respective counsel, who **XXXXXXX**

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Trusted Bridges LLC. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and 523(a)(2), (4), and (6), 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-Debtor Ian Long admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3, 4; 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 Trusted Bridges LLC. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and 523(a)(2), (4), and (6), 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-Debtor Ian Long admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3, 4; 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 **March 19, 2024**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx**, 2024, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx**, 2024.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx**, 2024.
- e. Dispositive Motions shall be heard before **xxxxxxx**, 2024.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx**, 2024.