

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

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

**March 20, 2019 at 2:00 p.m.**

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1. [16-25205-E-7](#)      **TIMOTHY TAPURO**  
[18-2066](#)  
**TAPURO V. COUNTY OF**  
**SACRAMENTO, DEPARTMENT OF**

**PRE-TRIAL CONFERENCE RE:**  
**COMPLAINT FOR DECLARATORY**  
**RELIEF, VIOLATION OF 11 U.S.C.**  
**362 (A)/(K) AND 11 U.S.C. 524**  
**5-11-18 [1]**

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

Adv. Filed: 5/11/18

Answer: 6/29/18

Nature of Action:

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

Notes:

Plaintiff's Pretrial Statement filed 2/25/19 [Dckt 30]

County of Sacramento's Pre-Trial Statement filed 3/12/19 [Dckt 32]

<b>The Pretrial Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span></b>
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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]

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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.

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¶ 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 failed to appear.

## **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.

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§ 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.

The court shall issue a Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2019**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2019**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2019**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2019**.
- F. The Trial shall be conducted at ----**x.m. on** -----, **2019**.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>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.</p>	
<p>Undisputed Facts:</p> <ol style="list-style-type: none"><li>1. Plaintiff found to be a person described within the meaning of 602 WIC.</li><li>2. Plaintiff was ordered to make “Direct Restitution” to Osman &amp; Kadiateu Senneh, Beverly Belcher, and Enterprise Rent-a-Car, and a “Restitution Fine” in the amount of \$25.00 (collectively hereinafter “Debt”).</li></ol>	<p>Undisputed Facts:</p> <ol style="list-style-type: none"><li>1. Plaintiff is a person within the meaning described in Cal. Welfare &amp; Inst. Code § 602.</li><li>2. Plaintiff, as a minor, was ordered to pay restitution to victims in the amount of \$29,095.80 on August 2, 2006 from an offense which occurred on January 15, 2006.</li><li>3. Consistent with that order, Defendant was</li></ol>

<p>3. Plaintiff, as a minor, was ordered to make restitution to the crime victims to fully compensate the victims for any loss, and the parent of the minor was held jointly and severally liable with the minor for the full amount of the restitution, pursuant to the \$32,200.00 limitation, as provided in Section 1714.1 of the California Civil Code.</p> <p>4. Plaintiff is no longer a Ward of the Court, and has not been a Ward of the Court for more than five (5) years prior to the Chapter 7 bankruptcy filing.</p> <p>5. Plaintiff filed Chapter 7 Bankruptcy on August 8, 2016.</p> <p>6. Notice of Chapter 7 Bankruptcy Case #16-25205-7 was filed on August 9, 2016.</p> <p>7. The Defendant's claim was imposed as a condition of probation in the Juvenile Proceeding.</p> <p>8. A letter was sent from Defendant to Plaintiff re: acknowledgment of bankruptcy filing and resumption of collection action, dated June 2, 2017.</p> <p>9. Defendant's claim is based on 11 U.S.C. 523(a)(7), which preserves from discharge "any condition a state criminal court imposes as part of a criminal sentence" <i>Kelly v. Robinson</i>, 479 U.S. 36, 50, 107 S.Ct. 353, 93 L.Ed.2d. 216 (1986).</p> <p>10. There exists no Abstract of Judgement.</p> <p>11. The Claim is premised from a claim dating back to May of 2010, and thus occurred more than three years before Plaintiff's Bankruptcy case filed in 2017.</p> <p>12. The Plaintiff-Debtor filed a Chapter 7 case and was granted a discharge therein.</p>	<p>tasked with the administration of the victim's court ordered restitution.</p> <p>4. Plaintiff filed Chapter 7 Bankruptcy on August 8, 2016.</p> <p>5. Notice of Chapter 7 Bankruptcy was filed on August 9, 2016.</p> <p>6. Plaintiff was ultimately granted a discharge in connection with its petition.</p> <p>7. Defendant's claim was imposed as a condition of probation in juvenile court.</p> <p>8. Defendant informed Plaintiff by letter dated June 2, 2017 that Defendant had resumed collection activity despite acknowledging Plaintiff's bankruptcy petition.</p> <p>9. Defendant sent Plaintiff an account summary on or about December 4, 2017.</p> <p>10. Post discharge communications were made between Plaintiff's counsel and Defendant's counsel prior to the filing of this complaint.</p> <p>11. Defendant's claim is not for a "tax penalty."</p>
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<p>13. Plaintiff-Debtor filed the complaint after Defendant has admitted having actual knowledge of the Chapter 7 case having been filed and obtained a discharge.</p> <p>14. The Debt was not assigned to the Defendant.</p> <p>15. On or about December 4, 2017, Defendant sent Plaintiff an account summary asserting a balance of \$33,764.66.</p> <p>16. Post-Discharge communications were made between Plaintiff's counsel and Defendant's counsel concerning possible violation of discharge prior to the filing of this complaint.</p> <p>17. The Defendant admits that Federal Court jurisdiction exists for the proceeding and that this is a Core Matter.</p> <p>18. Defendant's claim is not based on a Criminal Conviction.</p> <p>19. Defendant's claim is not for a "tax penalty."</p>	
<p>Disputed Facts:</p> <p>1. The origin of the Order for Restitution was Juvenile Court, not Criminal Court.</p> <p>2. The Notice of Return to Court, dated September 8, 2017, was sent to Plaintiff by Defendant, or Defendant's Agent.</p> <p>3. An Earnings Withholding Order was issued March 19, 2018, by Defendant, or Defendant's Agent.</p> <p>4. An Intercepted Funds Notice was issued March 27, 2018 by Defendant, or Defendant's Agent.</p> <p>5. A Wage Garnishment, dated March 29,</p>	<p>Disputed Facts:</p> <p>1. That Defendant is in violation of the Discharge pursuant to U.S.C. § 524.</p> <p>2. That Defendant's claim is for a "fine."</p> <p>3. That Defendant's claim is for a "penalty."</p> <p>4. That Defendant's claim is for "a forfeiture payable to and for the benefit of a governmental unit."</p>

<p>2018, was sent to Plaintiff's payroll provider for Plaintiff's employer by Defendant, or Defendant's Agent.</p> <p>6. Defendant's claim is for a "fine."</p> <p>7. Defendant's claim is for a "penalty."</p> <p>8. Defendant's claim is for a "forfeiture payable to and for the benefit of a governmental unit."</p> <p>9. Under California Welfare and Institutions Code §203, "an order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."</p> <p>10. The Defendant is in violation of the Discharge pursuant to 11 U.S.C. 524.</p>	
<p>Disputed Evidentiary Issues:</p> <p>1. None</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None</p>
<p>Relief Sought:</p> <p>1. Plaintiff seeks enforcement of Discharge and sanctions for violation of discharge by Defendant.</p>	<p>Relief Sought:</p> <p>1. Defendant's seek dismissal of Plaintiffs complaint w prejudice.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. 362(a)</p> <p>2. 11 U.S.C. 362(b)(1)</p> <p>3. 11 U.S.C. 523(a)(7)</p> <p>4. 11 U.S.C. 524(a)</p> <p>5. 11 U.S.C. 105(a)</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. 523 (a) (7)</p> <p>2. <i>Kelly v. Robinson</i>, 479 U.S. 36 (1986)</p> <p>3. <i>Smith v Sims (In re Sims)</i> 2012 Bankr LEXIS 549</p> <p>4. <i>In re Findlay</i>, 387 B.R. 260 (9th Cir. BAP 2008)</p>

6. California Welfare and Institutions Code 203  7. California Welfare and Institutions Code 602  8. California Welfare and Institutions Code 730.6  9. California Welfare and Institutions Code 779  10. California Code of Civil Procedure 673  11. California Code of Civil Procedure 680.240	5. <i>In re Ryan</i> , 389 B.R. 710 (2008)
Abandoned Issues:  1. None	Abandoned Issues:  1. None
Witnesses:  1. Timothy Tapuro	Witnesses:  1. Gale Haynes, Department of Revenue Recovery  2. Linda Adams, Department of Revenue Recovery  3. Melina Turpin, Asst. Dir., Department of Revenue Recovery, County of Sacramento
Exhibits:  1. Plaintiff's Bankruptcy Petition #16-25205, Schedules A-J, and Debtor's Statement of Financial Affairs.  2. Plaintiff's Juvenile Court Records	Exhibits:  1. Tapuro Summary Balance Sheet dated 6/19/17 in the amount of \$33,980.66  2. Superior Court of California, County of Sacramento, Case No. 12778, Juvenile Court Disposition dated 8/2/06
Discovery Documents:  1. Response to Requests for Discovery;	Discovery Documents:  1. None



2. Admissions 3. Interrogatories 4. Production of Documents	
Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. None
Stipulations: 1. Non-Disputed Facts	Stipulations: 1. None
Amendments: 1. None	Amendments: 1. None
Dismissals: 1. None	Dismissals: 1. None
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. None
Attorneys' Fees Basis: 1. Defendant requests attorney's fees pursuant to violation of Automatic Stay and Discharge.	Attorneys' Fees Basis: 1. None
Additional Items 1. None	Additional Items 1. None
Trial Time Estimation:	Trial Time Estimation: 1-2 Days

2. [17-26125-E-7](#) **FIRST CAPITAL RETAIL,**  
[18-2030](#) **LLC**

**CONTINUED STATUS CONFERENCE**  
**RE: AMENDED COMPLAINT**  
**5-17-18 [\[39\]](#)**

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

Plaintiff's Atty: Randy 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]

Nature of Action:

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

Notes:

Continued from 2/20/19, the Parties requesting a continuance to allow them to continue with their ongoing settlement discussions. Joint or separate Discovery Plan to be filed on or before 3/15/19.

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span></b>
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### **MARCH 20, 2019 STATUS CONFERENCE**

On February 13, 2019, the Parties filed a Stipulation to Continue the then pending Status Conference. Dckt. 144. The Parties advised the court that they were engaged in settlement discussions

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and requested the continuance to save the parties what might be unnecessary attorney's fees. The Parties further advised the court that their Joint Discovery Plan would be filed by March 15, 2019.

Nothing further has been filed in this case by the Parties.

At he March 20, 2019 Status Conference, **XXXXXXXXXXXXXXXXXXXX**

## **SUMMARY OF FIRST AMENDED COMPLAINT**

First Data Merchant Services, LLC ("Plaintiff") alleges in its First Amended Complaint that it has commenced this interpleader action:

1. Plaintiff is holding \$214,923.33.
2. Defendant First Capital Retail, LLC (Defendant-Debtor) has filed a bankruptcy petition in the Eastern District of California.
3. Plaintiff is a payment card processor for Defendant-Debtor.
4. Plaintiff was served with a Restraining Notice by MCA Recovery, LLC for \$214,932.33 of payments being processed for Defendant0Debtor. Plaintiff has frozen the payments.
5. On November 8, 2017, Defendant-Debtor filed a Motion for an Order Avoiding Preferential Transfer, Directing Turn Over and Mandating Delivery of the Frozen Funds.
6. On April 6, 2018, the court approved the sale of Defendant-Debtor's assets to 13th Floor/Pilot LLC.
7. Defendant-Debtor and Defendant MCA Recovery, LLC each have demanded the \$214,932.33.

## **SUMMARY OF ANSWER**

**First Capital Retail, LLC ("Defendant-Debtor") filed its Answer, Dckt. 73:**

1. Admits and denies specific allegations in the First Amended Complaint.
2. Asserts four affirmative defenses, including that Defendant MCA Recovery, LLC is barred from receiving the monies because such would be a preferential transfer.
3. Seeks to have the court determine that the \$214,932.33 be awarded to 13<sup>th</sup> Floor/Pilot, Inc. as Defendant-Debtor's successor.

## **SUMMARY OF ANSWER**

13th Floor/Pilot LLC ("Defendant-13th Floor") has filed an Answer, Dckt. 70, that:

1. Admits and denies specific allegations in the First Amended Complaint.
2. States three affirmative defenses.

### **Amended Cross-Claim**

Defendant-13th Floor (“Cross-Claimant”) filed an Amended Cross-Claim (Dckt. 108) which alleges:

1. Cross-Claimant seeks recovery against Defendant-MCA Recovery.
2. It is asserted that asserted obligation of Defendant-Debtor to Defendant-MCA Recovery are avoidable as fraudulent conveyances pursuant to 11 U.S.C. § 548.
3. It is further asserted that Cross-Claimant can recover payments made by Defendant-Debtor to and a purported judgment lien against Defendant-Debtor by Defendant-MCA Recovery as fraudulent conveyances pursuant to 11 U.S.C. §§ 548, 550, and 551.
4. It is asserted that the agreement with Yellowstone by which Defendant-MCA Recovery asserts its interests was entered into by a person who had not authority to act for Defendant-Debtor.
5. No monies for which Defendant-MCA Recovery asserts its rights were delivered to Defendant-Debtor.
6. The unauthorized representative of Defendant-Debtor made unauthorized payments to Yellowstone. These payments were made within the period for avoidable fraudulent conveyances and preferential transfers.

### **Answer to Amended Cross-Claim**

Defendant-MCA filed its Answer (Dckt. 127) to the Amended Cross-Claim, that:

1. Admits and denies specific allegations in the Cross-Claim.
2. Asserts ten affirmative defenses.
3. Does not state whether this is a core proceeding and if not, if it consents to the entry of final orders and judgment by the bankruptcy judge.

### **Order Dismissing Claims in Amended Cross-Complaint**

On November 13, 2018, the court issued an order dismissing the Claims 1, 2, 3, 4, and 7 (in part) of the Amended Cross-Complaint filed by 13th Floor.

### **SUMMARY OF AMENDED ANSWER**

MCA Recovery, LLC, as the Assignee of Yellowstone Capital West, LLC (“Defendant-MCA Recovery”) filed its Answer (Dckt. 75) to the Complaint for Interpleader, stating:

1. The Answer admits and denies specific allegations in the Complaint.
2. The Answer states two affirmative defense.

### **Cross-Complaint**

MCA Recovery filed a Cross-Complaint against Defendant-Debtor and Defendant-13th Floor, asserting:

1. That for the Cross-Complaint jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o).
2. The rights of MCA Recovery, as the assignee of Yellowstone, in the underlying contract and the monies that are the subject of the Interpleader Complaint are to be determined in favor of MCA Recovery.

### **13th Floor Answer to Cross-Complaint**

13th Floor has filed its Answer (Dckt. 107) to the Cross-Complaint that:

1. Admits and denies specific allegations in the Cross-Complaint.
2. Asserts seven affirmative defenses.

### **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff does not allege in the Complaint how jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), or whether this is a core proceeding in the Complaint. The court notes that if the issue presented was one whether the property at issue was property of the bankruptcy estate, then such claims/issues arising under the Bankruptcy Code, 11 U.S.C. § 541, would, in addition to be subject to the exclusive jurisdiction of the federal courts (28 U.S.C. § 1334(e)), be a claim arising under the Bankruptcy Code.

In its Answer, Defendant-13th Floor does not allege a basis for federal court jurisdiction in this bankruptcy court or whether it is a core matter. For the Cross-Claim, it is alleged that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1334(b), § 157(a) and § 157(b) [core matter], and further that Defendant-13th Floor consents to the entry of final orders and judgment by the bankruptcy judge.

In its Amended Answer, Defendant-MCA Recovery asserts that the Complaint for Interpleader is not a core matter and it does not consent to a bankruptcy judge issuing final orders and judgment in such action

However, in its Cross-Complaint for a determination of the respective rights of the parties in the

contract upon which MCA Recovery asserts its interest in the interpleader monies and against the fraudulent conveyance and preference claims, MCA Recovery alleges that jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o).

## 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.**

3. [10-27435-E-7](#)      **THOMAS GASSNER**  
[19-2006](#)

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**1-7-19 [1]**

**HUSTED V. MEPCO LABEL SYSTEMS**  
**ET AL**

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Charles L. Hastings [Laura Strombom]

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner; Mepco Label Systems]

Adv. Filed: 1/7/19

Answer:

2/5/19 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

2/5/19 [Laura Strombom]

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Joint Status Report and Discovery Plan filed 2/28/19 [Dckt 12]

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## **SUMMARY OF COMPLAINT**

Kimberly Husted, Trustee ("Plaintiff-Trustee") alleges in the Complaint (Dckt. 1) that:

1. The Bankruptcy Estate in the Chapter 7 case filed by Thomas Gassner is the owner of assets currently held in trust, which includes 2,000 shares of the MEPCO stock.
2. Debtor's interest in the Trust was not disclosed on the Schedules, and in 2017 reopened Debtor's case to amend Schedule B to list the trust interest as an asset.
3. The Complaint seeks the turnover of the property as property of the bankruptcy estate.
4. The Complaint seeks recovery for violation of the automatic stay.
5. The Third Count in the Complaint seeks to dissolve MEPCO.

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## SUMMARY OF ANSWER

Defendants Alfred Gassner, Carol Gassner, and MEPCO Label System filed their Answer (Dckt. 8) that:

1. Admits and denies specific allegations in the Complaint.
2. Asserts ten affirmative defenses.

## SUMMARY OF ANSWER

Defendant Laura Stombom, trustee of the Thomas Gassner Trust, filed an Answer (Dckt. 10) that:

1. Admits and denies specific allegation in the Complaint.

## FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that the First and Second Counts are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 2, 4, Dckt. 1. For the Third Count, it is not alleged that it is a core proceeding, but a related to proceeding involving property of the bankruptcy estate.

In the Answer, Defendants Alfred Gassner, Carol Gassner, and MEPCO Label Systems state that federal court jurisdiction exists and that Count 2 is a core matter proceeding. Answer ¶¶ 4, Dckt. 8. Defendants further state that they do not consent to the bankruptcy judge issuing final orders and judgment for non-core matters.

In the Answer, Defendant Laura Strombom, trustee, admits federal court jurisdiction pursuant to 28 U.S.C. § 1334, § 1367, and § 157, and that Count 2 is a core proceeding matter. Answer ¶ 3, Dckt. 10. The Answer does not address whether Counts 1 and 3 are core proceedings, or whether Defendant Strombom consents to the bankruptcy judge issuing final orders and judgment for non-core matters.

With respect to the First Claim, the determination whether the asserted interests of the trust estate arising under 11 U.S.C. § 541, the court addressed with the parties whether such determination is a core matter (determination of rights and interests of the estate created in 1978 by Congress in the Bankruptcy Code). At the Status Conference, **XXXXXXXXXX**

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 judgment 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.**

4. [11-44540-E-13](#) **MERCEDES PEREZ**  
[18-2041](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
4-5-18 [\[1\]](#)

**PEREZ V. STOCKTON MORTGAGE**

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

Adv. Filed: 4/5/18  
Answer: none

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

Notes:  
Continued from 1/9/19

[PLC-1] Order denying without prejudice Motion for Entry of Default Judgment filed 1/14/19 [Dckt 26]

[PLC-1] Order granting leave to file an amended complaint filed 1/14/19 [Dckt 26]

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span></b>
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**MARCH 20, 2019 STATUS CONFERENCE**

An Amended Complaint was filed in March 15, 2019. Dckt. 29. The order denying the Motion for Entry of Default Judgment was filed on January 14, 2019. Civil Minutes, Dckt. 24; Order, Dckt. 26.

At he Status Conference Counsel for Plaintiff reported XXXXXXXXXXXXXXXXXXXX

5. [11-44540-E-13](#)      **MERCEDES PEREZ**  
[18-2042](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
4-5-18 [\[1\]](#)

**PEREZ V. CAMP**

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

Adv. Filed: 4/5/18  
Answer: none

Amd. Cmplt. Filed: 3/11/19  
Answer: none

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

Notes:  
Continued from 1/9/19

Amended Complaint filed 3/11/19 [Dckt 31]

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span></b>
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**MARCH 20, 2019 STATUS CONFERENCE**

An Amended Complaint was filed in March 11, 2019. Dckt. 29. The order vacating the dismissal of the Complaint was filed on January 14, 2019. Civil Minutes, Dckt. 23; Order, Dckt. 27.

In a Status Report filed on March 15, 2019, Counsel for Plaintiff reports that the Defendant is now deceased. Dckt. 33. Plaintiff is now prosecuting two new motions to value secured claims in the bankruptcy cases that was filed in 2011. Further, that Plaintiff is pursuing discovery to identify the successor in interest to the deceased defendant.

At he Status Conference Counsel for Plaintiff reported XXXXXXXXXXXXXXXXXXXX



6. [18-22747-E-13](#)      **DAVID/CHRISTINA CASTILLO**      **STATUS CONFERENCE RE:**  
[19-2009](#)      **COMPLAINT**  
1-17-19 [\[1\]](#)

**CASTILLO ET AL V. LVNV  
FUNDING, LLC ET AL**

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

Adv. Filed: 1/17/19  
Answer: none

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

Notes:

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

David and Christina Castillo ("Plaintiff-Debtor") filed a Complaint objecting to the claim of LVNV Funding, LLC and Resurgent Capital Services, LP. Dckt. 1. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 9 is based has expired.

Plaintiff-Debtor also filed a Declaration "In Support of Complaint for Objection to Claim." Dckt. 6.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the

allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

#### Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney’s fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the

debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

At the Status Conference counsel for objecting Debtor explained xxxxxxxxxxxxxxxxxxxxxx

7. [18-22747-E-13](#)      **DAVID/CHRISTINA CASTILLO**      **STATUS CONFERENCE RE:**  
[19-2010](#)      **COMPLAINT**  
1-17-19 [1]

**CASTILLO ET AL V. LVNV  
FUNDING, LLC ET AL**

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

Adv. Filed: 1/17/19  
Answer: none

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

Notes:

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

David and Christina Castillo ("Plaintiff-Debtor") filed a Complaint objecting to the claim of LVNV Funding, LLC. Dckt. 1. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 10 is based has expired.

Plaintiff-Debtor also filed a Declaration "In Support of Complaint for Objection to Claim." Dckt. 6.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the



allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

#### Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney’s fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the

debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

At the Status Conference counsel for objecting Debtor explained xxxxxxxxxxxxxxxxxxxxxx

8. [18-22747-E-13](#)      **DAVID/CHRISTINA CASTILLO**      **STATUS CONFERENCE RE:**  
[19-2011](#)      **COMPLAINT**  
1-17-19 [\[1\]](#)

**CASTILLO ET AL V. LVNV  
FUNDING, LLC**

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

Adv. Filed: 1/17/19  
Answer: none

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

Notes:

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

David and Christina Castillo ("Plaintiff-Debtor") filed a Complaint objecting to the claim of LVNV Funding, LLC. Dckt. 1. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 18 is based has expired.

Plaintiff-Debtor also filed a Declaration "In Support of Complaint for Objection to Claim." Dckt. 6.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the

allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

#### Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney’s fees and costs down. Even though such costs and expenses may ultimately be recoverable, neither the

debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

At the Status Conference counsel for objecting Debtor explained xxxxxxxxxxxxxxxxxxxxxx

9. [18-22747-E-13](#)      **DAVID/CHRISTINA CASTILLO**      **STATUS CONFERENCE RE: AMENDED**  
[19-2012](#)      **COMPLAINT**  
**CASTILLO ET AL V. LVNV**      **1-23-19 [10]**  
**FUNDING, LLC**

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

Adv. Filed: 1/17/19  
Answer: none

Amd. Cmplt. Filed: 1/23/19  
Answer: none

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

Notes:

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

David and Christina Castillo ("Plaintiff-Debtor") filed a First Complaint objecting to the claim of LVNV Funding, LLC. Dckt. 10. The Objection is based on the statute of limitations for the enforcement of the obligation upon which Proof of Claim No. 17 is based has expired.

It is not clear from the Complaint why an objection to claim has not been filed. There does not appear to be a claim for relief which must be sought through an adversary proceeding to which an objection to claim may be appended. Fed. R. Bankr. P. 3007(a), (b); 7001; 11 U.S.C. § 502. While the Complaint references *Moi v. Asset Acceptance LLC (In re Moi)*, 381 B.R. 770 (Bankr. S.D. Cal. 2008), such decision of that bankruptcy court appears to ignore the clear language of the Federal Rules of Bankruptcy Procedure as enacted by the United States Supreme Court.

Federal Rule of Bankruptcy Procedure 3007(b) provides as follows where a debtor or other objecting party may have an objection to claim that arises out of the same grounds, facts, and circumstances for which there may also be claims for which an adversary proceeding may be required:

(b) Demand for Relief Requiring an Adversary Proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

The Supreme Court continues in Federal Rule of Bankruptcy Procedure 7001 specifying what are “adversary proceedings” (those for which a complaint is filed rather than a motion, objection, or application as permitted under the Federal Rules of Bankruptcy Procedure):

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
- (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- (6) a proceeding to determine the dischargeability of a debt;
- (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

No provision is made for prosecuting an objection to claim by adversary proceeding.

While not jurisdictional, the Supreme Court has established an Objection to Claim process to create and effect process for trustees, debtors, debtors in possession, and other objecting parties that avoids many of the unnecessary costs and expenses incumbent with adversary proceedings (which generally address complex matters). It also allows the debtor or other objecting party to keep attorney’s fees and costs down. Even though such costs and expenses may ultimately recoverable, neither the debtor nor the attorney are required to advance such costs (out of pocket or delayed unbilled time).

At the Status Conference counsel for objecting Debtor explained xxxxxxxxxxxxxxxxxxxxxx



10. [16-22482-E-7](#)      TIMOTHY MUNSON  
[17-2206](#)  
FARRAR V. MUNSON

PRE-TRIAL CONFERENCE RE:  
COMPLAINT  
11-14-17 [\[1\]](#)

**Final Ruling: No appearance at the March 20, 2019 Status Conference is required.**  
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Plaintiff's Atty: Dana A. Suntag; Benjamin J. Codog  
Defendant's Atty: Jenny D. Dennis

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 has been continued to May 29, 2019 at 2:00 p.m. by prior order of the court (Dckt. 49).**

Notes:  
[GMW-3] Joint Stipulation to Modify Scheduling Order for Good Cause filed 3/8/19 [Dckt 45]; Order granting filed 3/12/19 [Dckt 49]

Plaintiff's Pretrial Statement filed 3/11/19 [Dckt 48]