

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

MODESTO DIVISION CALENDAR

April 23, 2020 at 2:00 p.m.

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- | | | | |
|----|-------------------------------------|-------------------|--------------------------------------|
| 1. | <u>18-90600-E-7</u> | CORAZON HERNANDEZ | CONTINUED STATUS CONFERENCE RE: |
| | <u>19-9016</u> | | COMPLAINT |
| | MCGRANAHAN V. GARIBA | | 9-30-19 [<u>1</u>] |

Plaintiff's Atty: Reno F.R. Fernandez

Defendant's Atty: unknown

Adv. Filed: 9/30/19

Answer: none

Nature of Action:

Approval of sale of property of estate and of a co-owner

Notes:

Continued from 3/12/20, Plaintiff reporting that the Parties are continuing their discussions and requested one final continuance.

The Status Conference is XXXXXXXXXX

April 23, 2020 at 2:00 p.m.

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APRIL 23, 2020 CONTINUED STATUS CONFERENCE

At the Status Conference **XXXXXXXXXX**

MARCH 12, 2020 STATUS CONFERENCE

By order of the court filed January 10, 2020 (Dckt. 27), this Adversary Proceeding has been stayed to allow the Plaintiff-Trustee, Defendant, and Debtor to focus their discussions on a possible Chapter 13 plan and conversion of this case rather than the liquidation of the Property that is the subject of this Adversary Proceeding, until such stay is vacated by further order of this court.

At the Status Conference, counsel for the Plaintiff reported that the parties are continuing their discussions and requested one final continuance.

Review of Complaint

The Complaint contains the allegations that the Orangeburg Avenue Property is property of the bankruptcy estate. The Trustee asserts that the Property may be sold as provided in 11 U.S.C. § 363(h), including the asserted equitable interests of the Debtor's mother.

2. [18-90339-E-7](#) **KIMBERLY SOLARIO**
[18-9014](#)
DE JONG V. SOLARIO

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
8-17-18 [\[1\]](#)

ADVERSARY PROCEEDING CLOSED:
03/23/20

Plaintiff's Atty: Michael R. Tener
Defendant's Atty: Pro Se

Adv. Filed: 8/17/18

Answer: 9/7/18

Nature of Action:

Dischargeability - priority tax claims

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

Continued from 2/6/20 for case management purposes. The court has granted Plaintiff summary judgment (Order filed 1/22/20), with the lodging of the proposed judgment and post-judgment motions, if any, filing time pending.

<p>Judgment having been entered (Dckt. 53), the Pre-Trial Conference is concluded and removed from the Calendar.</p>

3. [19-90739-E-7](#) **JAMES/JEANNIE ABERNETHY** **STATUS CONFERENCE RE: AMENDED COMPLAINT**
[20-9001](#) **ABERNETHY V. DEPT. OF** **2-24-20 [8]**
EDUCATION ET AL

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

Adv. Filed: 1/27/20
Answer: none

Amd. Cmplt. Filed: 2/24/20
Answer: none
Reissued Summons: 3/25/20

Nature of Action:
Dischargeability - student loan
Notes:
Amended Complaint Summons reissued 3/25/20

The Status Conference is XXXXXXXXXX

APRIL 23, 2020 STATUS CONFERENCE

Plaintiff-Debtor commenced this Adversary Proceeding in pro se on January 27, 2020. An Amended Complaint was filed on February 24, 2020, and a Reissued Summons was issued by the Clerk that same day.

A new reissued summons was issued by the Clerk on March 25, 2020. Dckt. 14.

The Amended Complaint seeks to have the court determine that a student loan obligation is dischargeable as provided in 11 U.S.C. § 523(a)(8). Dckt. 8. The U.S. Department of Education is named as the defendant, but it is stated as "U.S. Dept. of Education c/o Nelnet." The Certificate of Service does not state that service was made on the U.S. Department of Education and the U.S. Attorney.

No certificate of service is filed for the March 25, 2020 reissued summons.

At the Status Conference XXXXXXXXXX

Plaintiff's Atty: Pro Se
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18
Answer: 7/26/18

Nature of Action:
Dischargeability - student loan
Dischargeability - other

Notes:
Continued from 3/12/20. Updated Pretrial Conference Statements to be filed and served on or before 4/9/20.

Motion for Summary Judgment in favor of the Plaintiff/Debtor filed 3/20/20 [Dckt 108]; Order staying motion for summary judgment filed 3/30/20 [Dckt 110]

Withdraw Motion for Summary Judgment in favor of the Plaintiff/Debtor filed 4/7/20 without Proof of Service [Dckt 113]

Pretrial Conference Statement [Plaintiff] without Proof of Service filed 4/8/20 [Dckt 114]

Pretrial Conference Statement [Plaintiff] with Proof of Service filed 4/8/20 [Dckt 115]

Withdraw Motion for Summary Judgment in favor of the Plaintiff/Debtor filed 4/7/20 with Proof of Service [Dckt 116]

Defendant's Amended Pre-Trial Conference Statement filed 4/9/20 [Dckt 117]

The Pre-Trial Conference Status Conference is XXXXXXXXXX
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SUMMARY OF COMPLAINT

Daryl Fitzgerald, the Plaintiff-Debtor, has filed a Complaint to have his student loan obligation determined dischargeable. The named defendants are Navient Solutions, Inc., Wilkes-Barre, and Trellis Company. The court has dismissed Navient Solutions, Inc. from this Adversary Proceeding.

SUMMARY OF ANSWER

Trellis Company, fka Texas Guaranteed Student Loan filed an Answer (Dckt. 18) that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court.

REVIEW OF PRETRIAL CONFERENCE STATEMENTS

Plaintiff-Debtor filed his amended Pretrial Conference statement (Dckt. 115) and Defendant has filed its Amended Pretrial Conference Statement (Dckt. 117).

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 -----, **2020**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2020**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2020**.
- F. The Trial shall be conducted at ----x.m. on -----, **2020**.

The Parties in their respective Pretrial Conference Statements, Dckts. 115, 117, 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	Defendant
<p>Jurisdiction and Venue:</p> <p>1. Plaintiff does not address in the Pretrial Statement. Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. §</p>	<p>Jurisdiction and Venue:</p> <p>1. Defendant concurs that this is a core matter proceeding for which the Bankruptcy Court has jurisdiction and enters the final judgment, and that venue is proper.</p>

<p>523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court. Venue is proper.</p>	
<p>Undisputed Facts:</p> <p>1. None Stated</p>	<p>Undisputed Facts:</p> <p>1. Plaintiff became obligated on a separate student loan debt incurred for the purpose of attending Butte College. Plaintiff's former spouse, Vanessa Fitzgerald, became obligated on a separate student loan debt incurred for the purpose of attending California State University Chico.</p> <p>2. Sometime thereafter, Plaintiff and Ms. Fitzgerald legally married.</p> <p>3. On or about March 31, 1997 Plaintiff and Ms. Fitzgerald jointly applied for a consolidation of their student loans and a reduction of the amount of those combined loans based on Ms. Fitzgerald's representation that she was permanently disabled. Ms. Fitzgerald was the primary borrower and Plaintiff was the purported co-borrower for the consolidated and reduced loan.</p> <p>4. The combined total of both of the loans prior to consolidation was approximately \$90,952.71 in principal, with interest of \$9,744.24. Based upon Ms. Fitzgerald's representation that she was permanently disabled, the debts were consolidated and reduced by a factor of 44.73% to 35,997.91.</p> <p>5. A promissory note for the consolidation was executed and signed by Ms. Fitzgerald as the primary borrower and Plaintiff as the purported co-borrower.</p> <p>6. The total amount of the debt after</p>

	<p>consolidation and reduction was \$35,997.91. Ms. Fitzgerald's share was \$16,102.48, approximately 44.73% of the total amount. Plaintiff's share was \$19,895.43, approximately 55.27% of the total amount.</p> <p>7. The consolidation reduced the debts by approximately 44.73% of the original principal amounts.</p> <p>8. The original creditor for the consolidated student loan debt was SallieMae.</p> <p>9. The current creditor is Trellis Company fka Texas Guaranteed Student Loans.</p> <p>10. By consolidating his student loan, Plaintiff received the benefit from the promissory note in that his portion of the debt was reduced by approximately 44.73%.</p> <p>11. Sometime after the debts were consolidated, Plaintiff and Ms. Fitzgerald legally divorced.</p> <p>12. Plaintiff remains obligated for the entire balance remaining on the loan as he became liable jointly and severally with Ms. Fitzgerald as a debt incurred during the course of their marriage, and by ratifying the promissory note.</p> <p>Alternatively, Plaintiff remains liable for the entire outstanding balance of his individual student loan prior to the reduction due to the consolidation, totaling approximately \$40,683.15 plus interest.</p> <p>Alternatively, Plaintiff remains liable for the outstanding balance on his individual student loan after reduction due to the consolidation, totaling \$19,895.43 plus interest.</p>
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	<p>13. Plaintiff filed for Chapter 7 Bankruptcy on February 29, 2016. The adversary proceeding was filed on June 25, 2018.</p> <p>14. By his Complaint, Plaintiff is seeking discharge of the underlying student loan debt alleging that the promissory note executed in connection with the consolidation was forged, and that preventing discharge of the student loan debt would pose an undue financial hardship.</p> <p>15. In his Complaint, Plaintiff claims that his earning potential has “maxed out,” as he is nearing 50 years old and is approaching 2 years since his bankruptcy case was discharged.</p>
<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. The jumbo student loan - undue hardship from its inception. 2. This jumbo student loan was of no educational benefit to the Plaintiff. 3. The Plaintiff has made many attempts to resolve the debt. 4. At the core of the case, the promissory jumbo student loan application has forged/fraud signatures and didn't surface until 2018. 5. The signatures on the promissory note student loan application do not match the Plaintiff’s handwriting, which is large, messy, and not neat. 6. There are two alphabets, both "a" and "r" that is very visible to the human eye that matches the Primary Borrower's signature. 7. The relatives listed as references are the 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. The parties dispute whether Plaintiff remains obligated for: <ul style="list-style-type: none"> (1) the entire balance remaining on the loan; (2) the entire outstanding balance of his individual student loan prior to the reduction due to the consolidation, totaling approximately \$40,683.15 plus interest, or; (3) the outstanding balance on his individual student loan after reduction due to the consolidation, totaling \$19,895.43 plus interest. 2. The parties also dispute whether it would be an undue hardship for Plaintiff to deny discharge of the student loan obligation.

friends and relatives of the Primary Borrower only.	
<p>Disputed Evidentiary Issues:</p> <p>1. None Stated.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Stated</p>
<p>Relief Sought:</p> <p>1. Relief from the jumbo student loan debt that was established by a Primary Borrower who forged the Plaintiff's signature on three different areas of the promissory student loan application.</p>	<p>Relief Sought:</p> <p>1. Defendant seeks a judgment denying the requested relief and recovery of its costs and attorney's fees.</p>
<p>Points of Law:</p> <p>1. 20 WASH. & LEE J. CIVIL RTS & SOC. JUST. 215,272-276 (2014); 4 COLLIER ON BANKRUPTCY 1[523.14121 (16th ed. 2017)</p> <p>2. <i>Carow v. Chase Student Loan Serv. (In re Carow)</i>, Bankr. No. 10-30264, Adv. No. 10-7011, 2011 WL 802847, at 1..5 (Bankr. D.N.D. Mar. 2, 2011)</p> <p>3. <i>Roy v. Sallie Mae</i>, Bankr. No. 08-33318, Adv. No.09-1406,2010 WL 1523996, at *1 (Bankr. D.N.J. Apr. 15, 2010).</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(8)</p> <p>2. <i>In re Yapuncich</i>, 266 B.R. 882, 888 (Bankr. D. Mont. 2001).</p> <p>3. Ratification: <i>In re Feagins</i>, 439 B.R. 165, 174 (Bankr. D. Haw. 2010) <i>In re Hedlund</i>, 573 B.R. 777, 783 (Bankr. N.D. Cal. 2017) Cal. Fam. Code § 760</p>
<p>Abandoned Issues:</p> <p>1. None stated.</p>	<p>Abandoned Issues:</p> <p>1. None Stated</p>
<p>Witnesses:</p> <p>1. None</p>	<p>Witnesses:</p> <p>1. Paul Miller</p> <p>2. Dale Kern</p> <p>3. Custodian of Records for Trellis</p>

	<p>Company fka Texas Guaranteed Student Loan</p> <p>4. Daryl Fitzgerald</p> <p>5. Vanessa Fitzgerald</p>
<p>Exhibits:</p> <p>1. "Plaintiff's Pleadings"</p>	<p>Exhibits:</p> <p>1. A copy of the promissory note(s) executed by Vanessa Fitzgerald in connection with her obligation(s) on student loan(s) for the purpose of attending California State University Chico</p> <p>2. A copy of the promissory notes(s) executed by Plaintiff in connection with his obligation(s) on a student loan(s) for the purpose of attending Butte College</p> <p>3. A copy of the application for consolidation of the student loan debts executed by Plaintiff and Ms. Fitzgerald</p> <p>4. A copy of the promissory note entered into between Defendant's predecessor-in-interest and Vanessa Fitzgerald and Plaintiff, dated March 31, 1997</p> <p>5. A copy of the Lender Verification Certificate signed by the parties, dated March 31, 1997</p> <p>6. Copy of Partial Spousal Disability Discharge Worksheet dated October 20, 1997</p> <p>7. Copies of correspondence to Plaintiff and Vanessa Fitzgerald regarding discharge of the student loan debt dated October 20, 2017</p> <p>8. A copy of the Loan Discharge Application: False Certification submitted by Plaintiff, dated January 1,</p>

	<p>2018</p> <p>9. A copy of correspondence sent to Plaintiff in response to the Loan Discharge Application: False Certification, dated February 22, 2018</p> <p>10. Copies of the Economic Hardship Deferment Requests submitted by Plaintiff, dated May 31, 2011 and April 1, 2001</p> <p>11. Copies of the Requests for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated June 20, 2006, December 15, 2003, January 24, 2003, November 10, 1999, February 18, 1999, June 19, 1998, and October 30, 1997</p> <p>12. A copy of the Application for an Income-Sensitive Repayment Account submitted by Vanessa Fitzgerald and Plaintiff, dated May 20, 2006</p> <p>13. A copy of the transaction history for the consolidated student loan debts</p> <p>14. Copies of chain of title documents setting forth the chain of title from the original creditor to Defendant</p> <p>15. Copies of Plaintiff's bankruptcy petition and schedules.</p>
Discovery Documents:	Discovery Documents:
1. None identified.	1. None Identified
Further Discovery or Motions:	Further Discovery or Motions:
1. None Stated	1. None Stated
Stipulations:	Stipulations:

1. None Stated	1. None Stated
Amendments: 1. None Stated	Amendments: 1. Defendant does seek to clarify that its true and correct name is Trellis Company fka Texas Guaranteed Student Loans.
Dismissals: 1. None Stated	Dismissals: 1. None Stated
Agreed Statement of Facts: 1. None Stated	Agreed Statement of Facts: 1. None Stated
Attorneys' Fees Basis: 1. Not Stated	Attorneys' Fees Basis: 1. Attorney's fees sought, basis not stated.
Additional Items 1. None Stated	Additional Items 1. None Stated
Trial Time Estimation:	Trial Time Estimation: Four (4) Hours

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 4/3/20 [Dckt 90]. Richard Ricks, Debtor; Brian Soriano, Non-Bankruptcy Counsel for Debtor; and Irma Edmonds, Chapter 7 Trustee required to appear telephonically. The Chapter 7 Trustee to provide an oral status report at the Status Conference.

[MAS-1] Order Granting Motion for Partial Summary Judgment for Relief filed 4/13/20 [Dckt 94]

[MAS-1] Memorandum Opinion and Decision filed 4/13/20 [Dckt 96]

The Status Conference is XXXXXXXXXX

APRIL 23, 2020 STATUS CONFERENCE

On May 21, 2019, Richard Arland Ricks commenced this voluntary Chapter 7 bankruptcy case. Irma Edmonds is the Chapter 7 Trustee appointed in this Bankruptcy Case. In connection with Adversary Proceeding 19-9020; *Hirst Law Group, P.C. v. Ricks*; it has been represented to the court that the bankruptcy estate may include a whistleblower claim that has been stated by non-bankruptcy counsel for the Debtor to be in the value range of \$6 Million to \$15 Million. See in Adversary Proceeding 19-9020, the court's Civil Minutes for the March 2, 2020 hearing on the Motion for Summary Judgment (DCN: MAS-1). The Civil Minutes discuss the evidence presented, including a communication from Brian Soriano, the non-bankruptcy counsel for Debtor on the asserted claim, to Michael Hirst, an attorney (whose firm is a creditor in this case) who previously represented the Debtor in a prior whistleblower claim in which \$1,287,000.00 was recovered in 2016.

As of the March 2, 2020 hearing on the Motion for Summary Judgment, the Debtor had not amended the Schedules to list such a claim as an asset. However, Debtor represented to the court that he had communicated with the Chapter 7 Trustee in this case and requested the court "authorize" his amending the Schedules. The court noted for the Debtor that such was not something for the court to "authorize," but something for the Debtor to do.

Adversary Proceeding 19-9020 is one for denying Debtor his discharge based on a false oath (failure to disclose a known claim on the Schedules). At the hearing on the Motion for Summary Judgment, the court noted that in such situations, it would not be unusual for the Debtor and Mr. Soriano to be communicating extensively with the Trustee about the whistleblower claim to ensure that it would be fully prosecuted.

In light of the limited communications with the Trustee to date by Debtor and Mr. Soriano concerning such claim, creditor Hirst Law Group, P.C. (whose attorneys prosecute such whistleblower

claims) not having communicated with the Trustee, the special challenges in communicating created by the current restrictions on travel and meeting due to the coronavirus pandemic, the court set this Status Conference.

The court ordered Richard Ricks, the Debtor, Brian Soriano, Esq., and Irma Edmunds, the Chapter 7 Trustee, and each of them to appear telephonically at said Chapter 7 Status Conference. Order, Dckt. 90.

At the Status Conference, the Trustee reported **XXXXXXXXXX**

FINAL RULINGS

6. [19-90382](#)-E-7 TRACY SMITH
[19-9017](#)
KAUFMAN ET AL V. SMITH

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-24-19 [\[1\]](#)

Final Ruling: No appearance at the April 23, 2020 Status Conference is required.

Plaintiff's Atty: Hagop T. Bedoyan
Defendant's Atty: unknown

Adv. Filed: 10/24/19

Answer: none

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

Continued from 2/27/20

[MB-2] Plaintiffs' Motion for Default Judgment filed 3/26/20 [Dckt 27], Amended Notice of Hearing sets hearing on 5/14/20 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on June 18, 2020.
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APRIL 23, 2020 CONTINUED STATUS CONFERENCE

The default of Defendant-Debtor Tracy Smith was entered on December 6, 2020. The time for the filing of a Motion for Entry of Default Judgment was extended, and a hearing on Plaintiff's Motion is set for May 14, 2020.

The court continues the Status Conference to allow for the adjudication of the Motion for Entry of Default Judgment.

DEBTOR DISMISSED 3/13/20
CASE CLOSED 3/31/20

Final Ruling: No appearance at the April 23, 2020 Status Conference is required.

Debtor's Atty: Anh V. Nguyen

Notes:

[RHS-1] Order dismissing case filed 3/13/20 [Dckt 41]

The Status Conference is continued to 2:00 p.m. on May 14, 2020, to allow counsel for Debtor to document compliance with the Order of the Court (Dckt. 43).