

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 20, 2021 at 2:00 p.m.

1. [20-90710-E-12](#) **LESLIE JENSEN**
[21-9002](#)
OSMERS (MASELLIS) V. JENSEN ET
AL
1 thru 2

ORDER TO SHOW CAUSE
4-12-21 [9]

The Order to Show Cause is XXXXXXX

On February 1, 2021, Krista Osmers (Masellis), the Plaintiff, commenced this Adversary Proceeding seeking a determination that the asserted obligation of Leslie F. Jensen, the Defendant-Debtor, is nondischargeable. Dckt. 1. The Plaintiff did not appear at the April 8, 2021 Status Conference. Civil Minutes, Dckt. 7. As noted in the Civil Minutes from the Status Conference, Plaintiff had not filed a Status Report, and although an answer had not been filed, Plaintiff had not requested a default.

Plaintiff's counsel has filed a Declaration (Dckt. 13) in Response to the Order to Show Cause. In it, counsel's testimony includes informing the court that he is also Plaintiff's state court counsel who obtained a jury verdict for Plaintiff of \$300,000 against Defendant-Debtor on December 14, 2016. He then states that eight days later Defendant-Debtor transferred her interest in the 228 almond orchard into an LLC that she owned with her sister.

Then, after all appeals were exhausted, Defendant-Debtor filed her current Chapter 12 cases. Counsel believes that the claims of Thomas Hogan for (\$65,000), William Lapcevic for (\$227,500), and Mark Powell for \$253,000 are grossly inflated. ^{FN.1.}

FN. 1. The court notes that there is a Thomas Hogan in Modesto, William Lapcevic in Santa Cruz, and Mark Powell in Los Angeles who are listed as attorneys with the State Bar of California. At this point, the court does not know if these attorneys are the persons who have filed claims in Defendant-Debtor's case. <http://members.calbar.ca.gov/fal/LicenseeSearch/QuickSearch?ResultType=0&SearchType=0&SoundsLike=False>.

In reviewing the proofs of claim filed, Thomas Hogan, the Modesto attorney, filed Proof of Claim 8-1 stating a claim for (\$22,404.55) for "money loaned for legal fees." Proof of Claim 8-1, ¶ 8. The

May 20, 2021 at 2:00 p.m.

- Page 1 of 40 -

attachment to Proof of Claim 8-1 is an Attorney-Client Fee Agreement wherein the Moskowitz Appellate Team is identified as the attorney and Law Offices of Thomas P. Hogan is the client, whereby Moskowitz Appellate Team agrees to provide Mr. Hogan legal services for preparing an *amicus* letter and an *amicus* brief for the *Jensen v. Macellis* appeal to the California Supreme Court.

Also attached is a check written by Thomas Hogan to David Johnston for what is stated to be “Retainer for Leslie Jensen - Chapter 12 bankruptcy.” Proof of Claim 8-1 Attachment, p. 18. Included in this page is an email identified as being sent by David Johnston to Thomas Hogan, in which the message from Mr. Johnston to Mr. Hogan is “OEX dropped. Notice of stay filed.” *Id.*

On the Disclosure of Compensation in Defendant-Debtor’s Chapter 12 case, David Johnston, Defendant-Debtor’s Chapter 12 attorney, states under penalty of perjury that he was paid \$20,000.00 prior to the filing the Disclosure and that the source of the payment was Debtor. This is in direct conflict to the information provided by Mr. Hogan that he paid \$10,000.00 to David Johnston for the Chapter 12 retainer.

Proof of Claim 11-1 was filed by Mark Powell, with a Modesto, California address. Mr. Powell states he has a \$253,000 claim for “Money loaned.” Proof of Claim 11-1, §§ 7, 8. There are no attachments to Proof of Claim 11-1 documenting such obligation.

Proof of Claim 14-1 was filed for William Lapcevic who is identified as having a Santa Cruz address. Mr. Lapcevic did not file the Proof of Claim, but it was filed by David Johnston, Defendant-Debtor’s Chapter 12 attorney. Mr. Johnston states that Mr. Lapcevic is owed \$227,500.00 for legal services. Proof of Claim 14-1 §§ 7, 8. No attachments documenting such claim are included with Proof of Claim 14-1 filed for Mr. Lapcevic by counsel for Defendant-Debtor. It is unclear why the Chapter 12 Debtor in Possession had her attorney file a proof of claim for this unsecured claim, making the Chapter 12 debt hole even deeper.

In looking at Schedule E/F, Debtor states under penalty of perjury that the attorney fee obligation of \$227,500 to Mr. Lapcevic is for the period 2017 to 2020, personal loans owed to Richard Braden are for 2018 and 2019, the Mark Powell personal loans of \$253,000 are for 2016 and 2017, and the judgment obligation owed to Krista Osmers, aka Krista Masellis, dates back to 2017. It could appear that Defendant-Debtor’s inability to pay her debts date back to 2017 or 2016.

Then, two weeks after the transfer of the property, counsel testifies that Defendant-Debtor filed for divorce, theorizing that there may be additional assets of the Defendant-Debtor that are the subject of such dissolution proceedings.

For the instant Adversary Proceeding, counsel filed and served the Complaint by mail. It appears that counsel did not obtain a summons to serve with the Complaint and no summons was served. Counsel testifies that it was only at the April 29, 2021 Status Conference in the Chapter 12 case that a summons had been issued and the Order to Show Cause had been issued in the Adversary Proceeding.

Counsel then states he investigated and discovered that the court had been sending notices to his former firm at his prior address. No notices had been forwarded from that stale address to Counsel.

Counsel states that he obtained a reissued summons on May 12, 2021, Dckt. 11, and then served the reissued summons and complaint on May 12, 2021, Dckt. 12.

It appears that Counsel and Plaintiff are “back on track” with the prosecution of this Adversary Proceeding.

At the hearing, the court inquired of counsel for Plaintiff the basis for originally serving just the complaint and not obtaining a summons from the court so as to compel Defendant-Debtor to respond. Plaintiff’s counsel responded **XXXXXXX**

2. [20-90710-E-12](#) **LESLIE JENSEN**
[21-9002](#)
OSMERS (MASELLIS) V. JENSEN ET
AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-1-21 [1]

Plaintiff’s Atty: Michael J. Dyer
Defendant’s Atty: unknown

Adv. Filed: 2/1/21
Answer: none
Reissued Summons: 5/12/21

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

Notes:
Continued from 4/8/21. Court to issue an Order to Show Cause why this Adversary Proceeding should not be dismissed without prejudice due to a failure to prosecute by Plaintiff.

Order to Show Cause filed 4/12/21 [Dckt 9]; set for hearing 5/20/21 at 2:00 p.m.

Reissued Summons and Notice of Status Conference in an Adversary Proceeding filed 5/12/21 [Dckt 11]; requested by Michael J. Dyer; status conference set for 5/20/21 at 2:00 p.m.

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| The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2021. |
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SUMMARY OF COMPLAINT

The Complaint filed by Krista Osmers (Masellis) (“Plaintiff”), Dckt. 1, filed on February 1, 2021, begins with the statement that Leslie Jensen (“Defendant-Debtor”) and L&L Investments, LLC filed a

Petition for Relief under the Bankruptcy Code on October 29, 2020, Case No. 20-90710. That is the Chapter 12 bankruptcy case for Defendant-Debtor, but is not a bankruptcy case for L&L Investments, LLC (“Defendant LLC”).

Plaintiff asserts having a claim arising from a marriage dissolution, with Plaintiff having been represented by Defendant-Debtor. It is asserted that when the representation was undertaken, Defendant-Debtor represented that she has sufficient errors and omissions insurance for the legal services to be provided.

The Complaint identifies specific conduct of Defendant-Debtor which is asserted to be improper and not providing Plaintiff with proper representation. Plaintiff identifies an action Plaintiff commenced against Defendant-Debtor. Plaintiff states that she obtained a substantial judgment against Defendant-Debtor. After obtaining the judgment, it is alleged that Defendant LLC was created five days after the jury verdict came down in favor of Plaintiff and that Defendant-Debtor began transferring her assets into Defendant LLC.

Plaintiff alleges that her judgment against Defendant-Debtor has been affirmed on appeal and said judgment is now final, the California Supreme Court denying Defendant-Debtor’s request to have the Supreme Court review the judgment.

Plaintiff alleges that Defendant-Debtor failed to properly tender Plaintiff’s claim to her E&O carrier, and as such, has caused Plaintiff to be unable to seek payment for the judgment from such insurance. It is alleged that Defendant LLC was fraudulently formed as a shield for Defendant-Debtor to protect her assets from creditors.

Plaintiff seeks to have the obligations owed by Defendant-Debtor be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B) and 11 U.S.C. § 523(a)(4). Compensatory and punitive damages are sought.

SUMMARY OF ANSWER

No Answers have been filed. The reissued summons was served on May 12, 2021, with answer or other responsive pleading not due until June 12, 2021.

SERVICE OF SUMMONS AND COMPLAINT

The Certificate of Service filed on May 12, 2021, Dckt.12, states that the Complaint, Reissued Summons, Adversary Cover Sheet, BDRP Notice, and Order to Confer were served on Defendant-Debtor, her Chapter 12 bankruptcy counsel, and the Chapter 12 Trustee on May 12, 2021, by U.S. Mail.

MAY 20, 2021 STATUS CONFERENCE

XXXXXXX

Debtor's Atty: Pro Se

Notes:
Continued from 2/11/21

Operating Report Filed: 4/26/21

Plan Administrator's Post-Confirmation Monthly Compensation Report filed: 3/11/21; 5/14/21

[FWP-11] Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation with SBN V AG I LLC filed 2/24/21 [Dckt 1380]; Order granting filed 3/12/21 [Dckt 1391]

Transfer of Claim Other Than for Security filed 3/23/21 [Dckt 1393]

[FWP-12] Plan Administrator's Motion to Approve Settlement With LBA RV-Company XXVII, LP filed 3/25/21 [Dckt 1396]; Order granting filed 5/3/21 [Dckt 1433]

[FWP-13] Application to Specially Set Plan Administrator's Motion to Abandon Real Property to the Debtor filed 4/8/21 [Dckt 1409]; Order granting filed 4/9/21 [Dckt 1418]

[FWP-13] Plan Administrator's Motion to Abandon Real Property to the Debtor filed 4/8/21 [Dckt 1410]; Motion granted in part; continued to 8/12/21 at 10:30 a.m. [Minutes filed Dckt 1440; Order, Dckt. **XXXXXXX**]

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| The Status Conference is XXXXXXX. |
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MAY 20, 2021 POST-CONFIRMATION STATUS CONFERENCE

Focus Management Group, USA, Inc., the Chapter 11 Plan Administrator, filed an updated Status Report on May 17, 2021. Dckt. 1446. The Plan Administrator has abandoned or is in the process of abandoning all of the real property other than that identified as the Filbin-Stadtler Ranch. Even though a substantial amount of the real property, the Plan Administrator reports the following assets being administered through the Chapter 11 Plan:

- A. tax reserve funds and potential tax refunds,
- B. the Filbin Ranch,
- C. the Estate's membership interest in JEA2, LLC,

- D. the Westly Lot,
- E. the 1/3 interest in the Oakdale Development Property,
- F. the Estate's potential interest in the remaining property held by Filbin Land & Cattle Company,
- G. the Estate's farm equipment, and
- H. certain other (unidentified) assets.

At the Status Conference, **XXXXXXX**

4. [18-90029-E-11](#) **JEFFERY ARAMBEL**
[20-9008](#)
ARAMBEL V. LBA RV-COMPANY
XX.VII, LP

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
11-6-20 [45]

**The Court Entering the Corrected Order Providing
Instruction to the Clerk of the Court for the Disbursement
of the \$750,000 Deposited With the Court, No Appearances
of the Parties or Counsel are Required for this Continued
Status Conference**

Plaintiff's Atty: Michael St. James

Defendant's Atty:

Michael R. Pinkston [LBA RV-Company XXVII, LP]

Unknown [Commonwealth Land Title Company] - *Dismissed 11/2/20 [Dckt 42]*

Adv. Filed: 7/16/20

Answer: 8/20/20 [LBA RV-Company XXVII, LP]

Counterclaim: 8/20/20 [LBA RV-Company XXVII, LP]

Answer: 9/14/20

Amd. Cmplt. Filed: 10/1/20

Answer: none

1st Amd. Cmplt. Filed: 11/6/20

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

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

Notes:

Continued from 3/25/21 to allow the Parties to focus their attention, and resources, on the settlement.

The Status Conference is continued to 2:00 p.m. on June 24, 2021, to allow the Parties time for the monies to be disbursed by the Clerk of the Court and this Adversary Proceeding Dismissed Pursuant to the Stipulation of the Parties.

This Adversary Proceeding has been settled and the court is entering an amended Order approving the Settlement which provides the necessary instruction to the Clerk of the Court for disbursement of the \$750,000, plus interest thereon, to the Parties pursuant to the terms of the Settlement. The court's clerical error omitted that necessary instruction from the original order approving the Settlement and an amended (Fed. R. Civ. P. 60(a) clerical correction) order is being entered by the court.

5. [18-90029-E-11](#) **JEFFERY ARAMBEL**
[20-9008](#) **MRP-2**
ARAMBEL V. LBA RV-COMPANY
XX.VII, LP

CONTINUED STATUS CONFERENCE RE:
MOTION TO DISMISS CAUSE(S) OF
ACTION FROM AMENDED COMPLAINT
11-20-20 [47]

**The Court Entering the Corrected Order Providing
Instruction to the Clerk of the Court for the Disbursement
of the \$750,000 Deposited With the Court, No Appearances
of the Parties or Counsel are Required for this Continued
Status Conference**

Plaintiff's Atty: Michael St. James

Defendant's Atty:

Michael R. Pinkston [LBA RV-Company XXVII, LP]

Unknown [Commonwealth Land Title Company] - *Dismissed 11/2/20 [Dckt 42]*

Adv. Filed: 7/16/20

Answer: 8/20/20 [LBA RV-Company XXVII, LP]

Counterclaim: 8/20/20 [LBA RV-Company XXVII, LP]

Answer: 9/14/20

Amd. Cmplt. Filed: 10/1/20

Answer: none

1st Amd. Cmplt. Filed: 11/6/20

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

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

Notes:

Continued from 3/25/21 to allow the Parties to focus their attention, and resources, on the settlement.

The Status Conference re Motion to Dismiss is continued to 2:00 p.m. on June 24, 2021, to allow the Parties time for the monies to be disbursed by the Clerk of the Court and this Adversary Proceeding Dismissed Pursuant to the Stipulation of the Parties.

This Adversary Proceeding has been settled and the court is entering an amended Order approving the Settlement which provides the necessary instruction to the Clerk of the Court for disbursement of the \$750,000, plus interest thereon, to the Parties pursuant to the terms of the Settlement. The court's clerical error omitted that necessary instruction from the original order approving the Settlement and an amended (Fed. R. Civ. P. 60(a) clerical correction) order is being entered by the court.

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/28/21. Debtor in Possession counsel reporting that they are working with the major creditor to address how to proceed in the case. Counsel for Bikram Saha concurred with Debtor in Possession counsel and that the Parties are working to finalize a settlement.

[SSA-4] Motion to Convert Chapter 11 Case to Chapter 7 Case filed 4/9/21 [Dckt 62]; set for hearing 5/20/21 at 10:30 a.m.

Debtor in Possession's Chapter 11 Status Report filed 5/13/21 [Dckt 71]

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| The Status Conference is XXXXXXXX |
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MAY 20, 2021 STATUS CONFERENCE

On May 13, 2021, Debtor in Possession Mohit Randhawa filed an updated Status Report. Dckt. 71. There is pending a motion to convert this case to one under Chapter 7, with that hearing set for 10:30 a.m. on May 20, 2021. The Debtor in Possession reports that he does not oppose the Motion.

At the hearing on the Motion to convert or dismiss, the court ordered XXXXXXXX

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 12/17/20

Application for Order Appointing Judicial Mediator filed 1/14/21 [Dckt 160]; Order Appointing Judicial Mediator filed 2/4/21 [Dckt 162]

Settlement Conference Order filed 2/24/21 [Dckt 163]

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| The Scheduling Conference is XXXXXXX |
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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., WilkesBarre, 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.

The court shall issue an 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. Daryl Fitzgerald shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before **July 22, 2020**.
- C. Defendant Trellis Company fka Texas Guaranteed Student Loans shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before **August 5, 2020**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before **August 12, 2020**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before **August 19, 2020**.
- F. The Trial shall be conducted at **9:30 a.m. on September 2, 2020**, at the United States Bankruptcy Court, 1201 I Street, Modesto, California.

The Parties in their respective Pretrial Conference Statements, Dckts. 119, 123, 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) |
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| <p>Jurisdiction and Venue:</p> <p>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.</p> | |
| <p>Undisputed Facts:</p> <ol style="list-style-type: none"> Long narrative provided, without specifically identified, enumerated asserted undisputed facts. | <p>Undisputed Facts:</p> <ol style="list-style-type: none"> Plaintiff became obligated on three separate Perkins and Stafford student loan debts incurred for the purpose of attending California State University, Chico. Plaintiff's former spouse, Vanessa Fitzgerald, became obligated on a separate Stafford student loan debt incurred for the purpose of attending Butte College. On or about March 31, 1997, Plaintiff and Ms. Fitzgerald jointly applied to SallieMae for consolidation of their student loans. Ms. Fitzgerald was the primary borrower and Plaintiff was the co-borrower for the consolidated loan. Plaintiff and Ms. Fitzgerald were legally married at the |

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| | <p>time of the application for consolidation of their student loans.</p> <ol style="list-style-type: none"> 5. The loan consolidation request was granted. The total of the consolidated loan was \$35,997.91. Approximately \$16,102.48 of the consolidated loan amount was attributed to Ms. Fitzgerald's loan, and approximately \$19,895.43 was attributed to Plaintiff's individual loans. An interest rate of 8.00% per annum was assigned to the consolidation loan. 6. A promissory note for the consolidation loan was executed and signed by Ms. Fitzgerald as the primary borrower and Plaintiff as the co-borrower. 7. The originator and creditor for the consolidated student loan debt was SallieMae. 8. Thereafter, ownership of and servicing of the loan was transferred to Navient Federal Loan Trust. 9. Ownership of and servicing of the loan has since been transferred to the current creditor Trellis Company fka Texas Guaranteed Student Loans. 10. Payments were made on the consolidated loan from 1997 through March 2, 2015. As of the date of the last payment, the balance on the consolidated loan, including accrued interest, was \$81,949.19. 11. In 2017, an application was made for partial discharge of the debt based on Ms. Fitzgerald's representation that she became permanently disabled on or about July 21, 2017. Based on the application and representations contained therein, the debt was reduced by a factor of 44.73%, which represents the percentage of the original consolidated amount that belonged to Ms. Fitzgerald at the time of consolidation. The principal was reduced from \$90,952.71 to \$50,269.56, and the interest was reduced from \$9,744.24 to \$5,385.64. 12. On January 1, 2018, Plaintiff submitted to Defendant Trellis Company fka Texas Guaranteed Student Loans an application to discharge the debt on the basis that the promissory note for the consolidation loan was forged and that he did not sign the note. |
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| | <p>13. On February 22, 2018, Defendant responded to Plaintiff with a letter indicating that the request for discharge was denied as Plaintiff had received the benefit of the loaned funds, and is therefore responsible for repaying the loan obligation. By the same letter, Plaintiff was advised that if he wished to appeal the decision, he would need to send his written appeal to Defendant and it would be forwarded to the U.S. Department of Education (ED) for determination.</p> <p>14. Plaintiff made a written appeal to ED. After a review of the matter, ED denied the appeal and determined that Plaintiff remained obligated on the loan.</p> <p>15. Plaintiff filed for Chapter 7 Bankruptcy on February 29, 2016. The adversary proceeding was filed on June 25, 2018.</p> <p>16. 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>17. 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> <p>1. Fraud Application by the Defendants with known relatives of the Plaintiff, handwriting does not match the Plaintiff's lifetime of messy large writing style.</p> <p>2. This jumbo student loan was of no educational benefit to the Plaintiff/Debtor.</p> <p>3. The Plaintiff/Debtor ask the Court to consider</p> | <p>Disputed Facts:</p> <p>1. Plaintiff disputes whether he remains obligated for;</p> <p>(a) the entire balance remaining on the loan;</p> <p>(b) the entire outstanding balance of his individual student loan prior to the reduction based on Ms. Fitzgerald's representations that she became permanently disabled, totaling approximately \$40,683.15 plus interest, or;</p> <p>(c) the outstanding balance on his individual student loan after reduction due to Ms. Fitzgerald's representations, totaling \$19,895.43 plus interest.</p> <p>2. The parties also dispute whether it would be an undue hardship for Plaintiff to deny discharge of the student</p> |

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| <p>scholarships and non-payback grants as an educational benefit only.</p> <p>4. Loan Numbers on the fraud application showing higher amounts pointing toward the Plaintiff. The numbers do not match the jumbo student loan which means someone was guessing or making numbers up.</p> <p>5. Per the Federal Student Aid - Perkins Loans carried a rate of 3% and 6%. Therefore, combining loans per Primary Borrower's fraud application with Sallie Mae into a Jumbo Student Loan of 8% or higher makes no financial sense.</p> <p>6. The application was fraud.</p> | <p>loan obligation.</p> |
| <p>Disputed Evidentiary Issues:</p> <p>1. None identified</p> | <p>Disputed Evidentiary Issues:</p> <p>1. None identified</p> |
| <p>Relief Sought:</p> <p>1.</p> <p>2.</p> | <p>Relief Sought:</p> <p>1. Defendant seeks a judgment granting Plaintiff no relief requested in the Complaint.</p> <p>2. Reasonable costs and attorney's fees</p> |
| <p>Points of Law:</p> <p>1. 20 WASH. & LEE J. CIVIL RTS & SOC. JUST. 215,272-276</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.</p> |

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| <p>(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. 0833318, Adv. No.09-1406,2010 WL 1523996, at *1 (Bankr. D.N.J. Apr. 15, 2010).</p> | <p>2001).</p> <p>3. Ratification of the obligation</p> <p><i>In re Feagins</i>, 439 B.R. 165, 174 (Bankr. D. Haw. 2010)</p> <p><i>In re Hedlund</i>, 573 B.R. 777, 783 (Bankr. N.D. Cal. 2017).</p> <p><i>In re Feagins</i>, 439 B.R. 165, 175 (Bankr. D. Haw. 2010).</p> <p>4. A marital community may be liable for debts incurred for the benefit of the community.</p> <p>Cal. Fam. Code § 760</p> |
| <p>Abandoned Issues:</p> <p>1. None identified</p> | <p>Abandoned Issues:</p> <p>1. None identified</p> |
| <p>Witnesses:</p> <p>1. Daryl Darnell Fitzgerald</p> | <p>Witnesses:</p> <p>1. Paul Miller, Bankruptcy Supervisor for Trellis Company fka Texas Guaranteed Student Loans</p> <p>2. Dale Kern, former Bankruptcy Supervisor for Trellis Company fka Texas Guaranteed Student Loans</p> <p>3. Custodian of Records for Trellis Company fka Texas Guaranteed Student Loan;</p> <p>4. Daryl Fitzgerald, the Plaintiff herein</p> <p>5. Vanessa Fitzgerald</p> |
| <p>Exhibits:</p> <p>1. Supplemental Loan Listing Sheet for SMART LOAN, dated March 31, 1997. (Exhibit A to</p> | <p>Exhibits:</p> <p>1. The promissory note(s) executed by Vanessa Fitzgerald in connection with her obligation(s) on student loan(s) for the purpose of attending Butte College;</p> |

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| <p>Pretrial Statement)</p> <p>2. Information Sheet on Trellis Company (Exhibit B to Pretrial Statement)</p> <p>3. Primary Borrower Estate Address Inheritance (Exhibit C to Pretrial Statement)</p> <p>4. Navient Payment Notice (Exhibit C2 to Pretrial Statement)</p> <p>5. Plaintiff's Health (Exhibit C3 to Pretrial Statement - illegible)</p> <p>6. Plaintiff's FTC Case Information (Exhibit D to Pretrial Statement)</p> <p>7. Motion to Reopen Case, Complaint for Dischargeability (Exhibit E to Pretrial Statement)</p> <p>8. Answer to Complaint filed by The Trellis Company (Exhibit F to Pretrial Statement)</p> <p>9. Copy of cashed checks written to Vanessa Fitzgerald.</p> | <p>2. The promissory notes executed by Plaintiff in connection with his obligations on student loans for the purpose of attending California State University, Chico;</p> <p>3. The promissory note for the consolidation entered into between Defendant's predecessor-in-interest, Vanessa Fitzgerald, and Plaintiff, dated March 31, 1997;</p> <p>4. The Lender Verification Certificate signed by the parties, dated March 31, 1997;</p> <p>5. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated October 30, 1997;</p> <p>6. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated June 19, 1998;</p> <p>7. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated February 18, 1999;</p> <p>8. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated November 10, 1999;</p> <p>9. The Economic Hardship Deferment Request submitted by Plaintiff, dated and April 1, 2001;</p> <p>10. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated January 24, 2003;</p> <p>11. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated December 15, 2003;</p> <p>12. The Application for an Income-Sensitive Repayment Account submitted by Vanessa Fitzgerald and Plaintiff, dated May 20, 2006;</p> <p>13. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated June 20, 2006;</p> <p>14. The Economic Hardship Deferment Request submitted by Plaintiff, dated May 31, 2011;</p> <p>15. The application for Partial Spousal Disability Discharge;</p> <p>16. The Partial Spousal Disability Discharge Worksheet completed by a representative of Defendant Trellis Company fka Texas Guaranteed Student Loans, dated</p> |
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| | <p>October 20, 2017;</p> <p>17. Correspondence to Plaintiff and Vanessa Fitzgerald regarding partial discharge of the student loan debt, dated October 20, 2017;</p> <p>18. The Loan Discharge Application: False Certification submitted by Plaintiff, dated January 1, 2018;</p> <p>19. Correspondence sent to Plaintiff in response to the Loan Discharge Application: False Certification, dated February 22, 2018;</p> <p>20. The written appeal made to Defendant's determination that Plaintiff remained obligated on the consolidated loan, made by Plaintiff and sent to Defendant Trellis Company fka Texas Guaranteed Student Loans;</p> <p>21. The U.S. Department of Education's determination of Plaintiff's continuing obligation on the consolidated loan, dated April 11, 2018;</p> <p>22. Correspondence to Plaintiff from the Ombudsman for Defendant Trellis Company fka Texas Guaranteed Student Loans dated November 21, 2019 in response to his request dated October 27, 2019 that the account be closed due to fraud;</p> <p>23. The transaction history for the consolidated student loan debts;</p> <p>24. The chain of title documents setting forth the chain of title from the original creditor to Defendant, and;</p> <p>25. Plaintiff's bankruptcy petition and schedules</p> |
| <p>Discovery Documents:</p> <p>1. None identified</p> | <p>Discovery Documents:</p> <p>1. None identified</p> |
| <p>Further Discovery or Motions:</p> <p>1. None identified</p> | <p>Further Discovery or Motions:</p> <p>1. None identified</p> |

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|---|--|
| <p>Stipulations:</p> <p>1. None</p> | <p>Stipulations:</p> <p>1. Proposed</p> |
| <p>Amendments:</p> <p>1. None identified</p> | <p>Amendments:</p> <p>1. None identified</p> <p>2. Correct the record to show Defendant's name as: "Trellis Company fka Texas Guaranteed Student Loans."</p> |
| <p>Dismissals:</p> <p>1. None identified</p> | <p>Dismissals:</p> <p>1. None identified</p> |
| <p>Agreed Statement of Facts:</p> <p>1. None</p> | <p>Agreed Statement of Facts:</p> <p>1. Intends to propose one to Plaintiff</p> |
| <p>Attorneys' Fees Basis:</p> <p>1. None sought</p> | <p>Attorneys' Fees Basis:</p> <p>1. Basis not stated</p> |
| <p>Additional Items</p> <p>1. None identified</p> | <p>Additional Items</p> <p>1. Defendant may request that the court vacate the expiration of the deadline for filing dispositive motions.</p> |
| <p>Trial Time Estimation: 1 to 2 Hours</p> | <p>Trial Time Estimation: 4 hours</p> |

8. [19-90464-E-7](#) **RICHARD RICKS**
[20-9013](#) **MAS-1**
EDMONDS V. HUGHES

SETTLEMENT STATUS CONFERENCE
RE: MOTION FOR SUMMARY
JUDGMENT
2-11-21 [\[15\]](#)

Plaintiff's Atty: Mark A. Serlin
Defendant's Atty: Michael E. Dietrick

Adv. Filed: 11/19/20
Answer: 12/15/20

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Set by order of the court filed 4/9/21 [Dckt 36]

The Settlement Status Conference is XXXXXXX

On March 25, 2021, the court conducted oral argument on the Motion for Summary Judgment filed by the Plaintiff-Trustee. The court took the matter under submission, and as stated in the order, would delay for a short period of time issuing a ruling thereon to allow the Parties to address some areas of common ground that were discussed at the hearing.

Subsequent to the hearing, the respective counsel for the Parties notified the Courtroom Deputy for Department E that they were engaging in constructive settlement discussions and requested that the court delay issuing the ruling while their discussions continued.

On April 9, 2021, the court issued an order (Dckt. 36) setting this May 20, 2021 Settlement Status Conference to have a clear marker of whether the ruling on the Summary Judgment Motion would be necessary or if the Parties have the matter resolved. Additionally, if the parties have a "sticking point," the Settlement Status Conference would allow for discussion thereof.

As provided in the Settlement Conference Order, no status reports or attendance at the hearing is required if the Parties have not resolved this matter. If no appearances are made or there is not otherwise documentation of a settlement, the court will proceed with issuing a ruling on the Motion for Summary Judgment.

At the Settlement Status Conference, XXXXXXX

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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|--|
| <p>The Motion to Confirm the Plan is granted.</p> |
|--|

Upon review of the proposed Chapter 12 Plan, as amended, the evidence in the form of the declaration of Joe Anthony Machado, Debtor in Possession, and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1225:

- A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- B. Any fee, charge, or amount required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
- C. The Plan has been proposed in good faith and not by any means forbidden by law;
- D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than

the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;

- E. With respect to each allowed secured claim provided for by the Plan—
1. The holder of such claim has accepted the Plan;
 2. The
 - a. Plan provides that the holder of such claim retain the lien securing such claim; and
 - b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or
 3. Debtor surrenders the property securing such claim to such holder;

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

DISCUSSION

The Second Amended Plan does not call for monthly payments to Michael H. Meyer, Chapter 12 Trustee. The Chapter 12 Plan depends on Debtor successfully selling his farm, real property commonly known as 620 and 622 Denton Road, Hickman, California (consisting of approximately 73 acres with two homes and outbuildings) (“Property / Farm”) and non-exempt assets such as excess funds from the sale, and then turning over the net proceeds to Trustee. According to Debtor, these net proceeds are the same amount creditors would receive in a liquidation.

The Plan provides for the following treatment:

| Class | Treatment |
|--|--|
| Class 1: Administrative claims and expenses - Debtor’s attorney’s fees, not expected to exceed \$25,000, subject to Court approval, and - Trustee’s statutory compensation | Excluding the Trustee’s statutory compensation, the holder of an allowed claim and expense in this class will receive cash equal to the allowed amount of the claim upon entry of the Court’s order allowing compensation. The Trustee’s compensation shall be allowed and paid as set by statute. |
| Class 2. Priority claims - Internal Revenue Service, whose allowed claim is \$2,735, based on its recent amended proof of claim | The holder of an allowed claim in this class will receive from funds paid to the Trustee, cash equal to the allowed amount of the claim, with interest from the Petition Date at the rate of 5% per annum, on or before December 31, 2021. |
| Class 3: Secured claim of Ford Motor Credit Company LLC -Purchase-money security interest in a 2017 Ford Explorer | The holder of the claim in this class will receive regular monthly payments from the Debtor at the contract rate with no impairment and will retain all of its rights under its note and security agreement until its claim is paid. |
| Class 4: General unsecured claims - Claims totaling approximately \$137,850 | The distribution will be on a pro rata basis (after payment of the allowed Class 1 and Class 2 claims) 60 days after the determination of the tax arising from the sale of the Farm becomes final. |

Debtor asserts that with the sale proceeds he will be able to pay off the creditor holding the claim secured by the Farm, Creditor American Farm Mortgage Company, Inc. (“AFMC”). Creditor holds a secured claim in the amount of \$933,190.01. Creditor AFMC and Debtor filed a Stipulation as part of this proposed Amended Plan on May 6, 2021. Dckt. 112. According to the parties, AFMC voluntarily agreed to postpone the scheduled foreclosure sale to allow Debtor to pursue the sale. The terms of the Stipulation as summarized by the court are as follows:

1. AFMC Plan Treatment:

- a. Subject to the granting of the sale, the Plan provides for Creditor to be paid in full with all the loan terms to remain in full force and effect, without modification, except for providing for the early payment of the claim. The claim will continue to be secured by the Property based on the same lien and lien priority that existed immediately prior to Debtor in Possession's filing of this case. Confirmation of the Second Amended Plan does not cure defaults under the loan documents but shall be cured only upon Debtor in Possession's payment in full of the claim.
- b. The claim will be paid through escrow at close of escrow for the sale of the Property but no later than the 15th day following the entry of the court's order approving the sale.
- c. The Second Amended Plan does not modify the order granting relief from the automatic in favor of AFMC entered on March 17, 2021. In the event the claim is not paid in full, Creditor can exercise its right in the Property, including completing the foreclosure sale, without further order of this court.

2. Liquidation of Property: Debtor in Possession agrees to dispose of his non-exempt non real property assets in a timely manner after the sale of the Farm. Any excess funds after costs of sale and deductions for exempt amounts, will be sent to the Trustee for payment of claims as stated in the proposed plan. Debtor in Possession will provide a monthly accounting to the Trustee of assets sold and funds received from such sale no later than the 14th day of the following month.
3. Based on this Stipulation, Trustee and AFMC will not file objections to confirmation of the proposed Second Amended Plan.

Stipulation, at p. 3-5.

Debtor filed the Motion to Sell Real Property on April 15, 2021 and has been set for hearing on May 20, 2021, the same day as the hearing for this plan. Debtor's Motion to Sell was granted.

Debtor's motion to sell the Farm having been granted, and the Farm selling at the purchase price listed, the court believes that Debtor's Second Amended Plan is feasible. Based on the foregoing, the Motion is granted and Debtor's Second Amended Plan is confirmed.

The court shall issue a minute 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 Confirm the Chapter 12 Plan filed by Joe Anthony Machado (“Debtor”) 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 is granted, Debtor’s Chapter 12 Plan filed on April 15, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, transmit the proposed order to Michael Meyer (“the Chapter 12 Trustee”) for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.

Debtors' Atty: Martha Lynn Passalacqua

Notes:

Continued from 3/11/21. Debtor stating she was diligently seeking to obtain counsel.

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| The Status Conference is XXXXXXX. |
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MAY 20, 2021 STATUS CONFERENCE

A review of the file for this case on May 18, 2021, disclosed that nothing further had been filed by any party in interest.

At the hearing, XXXXXXX

MARCH 11, 2021 STATUS CONFERENCE

On February 2, 2021, the court entered an order for the reappointment of a trustee in this case as requested by the U.S. Trustee. Order, Motion; Dckts. 251, 248.

No responses to the Order to Show Cause or updated Status Report have been filed by any party in interest. No Chapter 7 Trustee has been reappointed in this case.

At the hearing, Debtor stated that she was diligently seeking to obtain counsel.

JANUARY 28, 2021 CONFERENCE

This bankruptcy case was commenced as a Chapter 13 case by Lorraine Erwin and Gary Erwin (the "Debtors"), but converted to one under Chapter 7 on August 31, 2010. Order, Dckt. 89. On January 4, 2021, Lorraine Erwin, one of the two debtors in this case, filed an Application for Unclaimed Funds. Dckt. 240.

The amount of unclaimed funds requested to be paid to Lorraine Erwin is \$47,805.58. Application, § 1. The basis asserted in the Application for the payment of the \$47,805.58 is stated to be:

Claimant [Lorraine Erwin] is the Owner of Record entitled to the unclaimed funds appearing on the records of the court.

Application, § 2.

The supporting documents stated to be filed with the Application are:

Proof of Identity of Owner of Record;
Notarized signature of Owner of Record; and
Completed Form AO 213P (Payee tax information).

Application, § 3. The Application is signed by Lorraine Erwin.

Attached to the Application is a Turnover of Unclaimed Dividend(s) that was filed by the Chapter 7 Trustee in this case on August 17, 2020. Application, Dckt. 240 at 6. This pleading filed by the Trustee states that he is turning over three checks, representing unclaimed creditor dividends in the case. One of the checks relates to Proof of Claim No. 21-1 ("Claim No. 21-1"), for which the Creditor is identified as U.S. Bank National Assn. ("Creditor"), for which the unclaimed dividend amount is \$47,805.58. This appears to be the unclaimed funds that are the subject of this Application filed by Debtor Lorraine Erwin.

Also attached to the Application is a copy of a Motion for Approval of Settlement Agreement and the Order granting the Motion. The Motion and Order are Docket Entries 165 and 184 in this bankruptcy case. The Settlement that is the subject of the Motion and Order relates to a medical treatment claim that was property of the bankruptcy estate. The Settlement provides for the bankruptcy estate in this case to receive the gross sum of \$200,000.00, which after payment of fees and expenses, would net \$116,388.26 for the bankruptcy estate.

Objection to Unsecured Claim of U.S. Bank National Association

Attached to the Application is the copy of an objection filed by Debtor Lorraine Erwin to the Claim No. 21-1 that was filed by Creditor. The Objection to Claim is filed as Docket Entry 226 in this case. The Objection was that Claim No. 21-1 was a duplicate of Claim No. 3-1 previously filed by Creditor. As addressed in the Civil Minutes from the hearing on the Objection to Claim (Dckt. 235), Claim No. 21-1 was an unsecured claim allowed pursuant to a stipulation between the Debtors and Creditor in connection with the confirmation of the Chapter 13 Plan in this case. For purposes of the Chapter 13 Plan and the valuation of Creditor's claim, the unsecured claim replaced the secured claim (Claim No. 3-1). However, such unsecured claim was allowed only for the Chapter 13 case, and Creditor would retain its lien, and its secured claim, if the bankruptcy case was converted or dismissed. The bankruptcy case being converted, Claim No. 21-1 was disallowed, and Creditor now holds only the secured claim asserted in Claim No. 3-1.

Entitlement to the \$47,805.58 Relating to Disallowed Claim No. 21-1

The court's order sustaining the Objection and not allowing the Creditor's unsecured claim for which the Trustee had previously attempted to disburse the \$47,805.58 to Creditor, was entered on November 23, 2020. Order, Dckt. 237. The Chapter 7 Trustee turned over to the Clerk of the Court the \$47,805.58 on August 6, 2020 – three months before the court disallowed Claim No. 21-1. Disallowing the

claim resulted in Creditor having no right to the distribution of \$47,805.58. Thus, it appears that rather than being “unclaimed funds,” the \$47,805.58 appears to be monies that have not been administered by the Chapter 7 Trustee.

The Trustee’s Account and Distribution Report states that \$74,375.68 was distributed to claimants with unsecured claims and that \$163,558.45 in claims were discharged without payment. Dckt. 223 at 1. The Trustee’s Report identifies there being a total of \$188,677.85 in general unsecured claims allowed, which includes Creditor’s (now disallowed) unsecured claim for \$121,274.24. *Id.* at 6-9. Backing out the \$121,274.24 disallowed unsecured claim, there is only \$67,403.61 of allowed unsecured claims based on the Trustee’s Report.

\$74,375.68 was discussed for the general unsecured claims (including the \$47,805.58 for Creditor’s now disallowed claim) appears to be approximately a 61.13% dividend paid to creditors with general unsecured claims. It appears that having disallowed Claim No. 21-1, this may be a surplus case.

Basis For Debtor Lorraine Erwin’s Claim of Ownership of the \$47,805.58

Debtor Lorraine Erwin does not state in the Application the basis for asserting ownership of the \$47,805.58 that the Chapter 7 Trustee formerly attempted to disburse to Creditor prior to the court disallowing Creditor’s Claim No. 21-1. Given that Creditor was not entitled to the \$47,805.58 once the court disallowed Claim No. 21-1, Debtor Lorraine Erwin cannot be heard to say that she stands in the shoes of, and can assert the rights of, Creditor.

The Bankruptcy Code addresses unclaimed property in 11 U.S.C. § 347. It provides that in a Chapter 7 case, ninety (90) days after the final distribution, the Trustee shall stop payment on any check remaining unpaid and any remaining property of the bankruptcy estate shall be deposited with the Trustee as provided under Chapter 129 of Title 28. It appears that the \$47,805.58 is not property of the estate the Trustee attempted to distribute to a creditor entitled to payment. Rather, Claim No. 21-1 having been disallowed, the Trustee has not yet distributed it.

In Debtors’ Objection to Claim No. 21-1 filed on October 1, 2020 (approximately two months after the Trustee filed his Turnover of Unclaimed Funds), Debtors not only objected to Creditor’s unsecured claim, asserting that Creditor held a secured claim because the case had been converted to one under Chapter 7, but Debtors went further, stating in the Objection:

12. Because there is still a lien on the house [Creditor’s collateral], those funds could have been applied to the outstanding balance as a secured claim but instead those funds have been dispersed as part of the unsecured claims but for whatever reason are now sitting in the unclaimed funds pool doing no good for Debtors or the creditors.

Wherefore, Debtors are requesting an order that sustains the objections to the Amended Claim and would therefore identify the Original Claim (a secured claim) as the only claim for Servicer on behalf of Claimant. If the Court does sustain the objection the Debtors are requesting that the unclaimed funds be deemed property of the estate and that the Trustee be required to disperse those funds according to the dispersal schedule.

Objection, p. 3:3-12; Dckt. 226. It appears that Debtor could be seeking to have the \$47,805.58 of unencumbered monies that related to disallowed unsecured Claim No. 21-1 be diverted to pay the secured claim (Claim No. 3-1) of Creditor. The court's order sustaining the Objection just disallows Claim No. 21-1 and does not purport to allocate the \$47,805.58 to the secured claim of Creditor or any other person.

Joint Status Conferences

The Application For Unclaimed Funds filed by Debtor is not accompanied by a Certificate of Service. However, presumably the Chapter 7 Trustee has been electronically served by the Clerk of the Court as provided in Federal Rule of Bankruptcy Procedure 9036.

Debtor Lorraine Erwin does not provide with the Application any basis for showing that she is the owner of the \$47,805.58 that formerly was to be distributed to Creditor on its general unsecured claim (disallowed Claim No. 21-1). This claiming of unclaimed distributions in a Chapter 7 case pursuant to 28 U.S.C. § 2042 is discussed in Collier on Bankruptcy, ¶ 347.02[4], which includes (emphasis added):

The claimant must file a petition for an order directing payment to the claimant. Notice must be given to the United States Attorney and a full proof of the right to the funds must be furnished by the claimant. Assuming that the claimant is entitled to the funds, the court does not have the discretion to deny the petition. The statute does, however, require that the **claimant must show “full proof of the right thereto,” so an application that does not clearly show that the claimant is the creditor entitled to payment and that the debt remains unpaid cannot be granted.**

Debtor Lorraine Erwin has not presented the court with a basis for asserting ownership of monies of the bankruptcy estate that is part of the disbursement to creditors holding general unsecured claims. This court noted a possible problem with trying to divert monies through the Debtors to Creditor on its secured claim, stating in the Civil Minutes for the hearing on the Objection to Claim:

What is interesting at this point is why the Debtor and Debtor's counsel could not contact the Creditor, tell Creditor that there is \$47,805.58 in monies that were paid on the claim (whether secured or unsecured, it is the same debt) and that Debtor has that amount in a cashier's check for Creditor, and ask to whom should it be paid so the check is cashed and Creditor gets almost \$50,000 in one lump sum.

Civil Minutes, p. 3; Dckt. 235. Possibly the ethics of Creditor, Debtor, and counsel precluded such a behind the scenes distribution of the monies though the unsecured claim (Debtor not objecting to it) and to pay down the secured claim.

At this juncture, the court does not see any proof that Debtor Lorraine Erwin has a right to the \$47,805.58. The court does not know whether the Chapter 7 Trustee is aware that Claim No. 21-1 has been disallowed and the \$47,805.58 of unencumbered monies he was attempting to disburse to Creditor does not relate to any allowed unsecured claim of Creditor.

Discussion at January 28, 2021 Conference

Counsel for the Debtors reported at the Status Conference that she has retired and was appearing to assist her former clients. It was reported that the Debtors are facing a quiet title action because U.S. Bank, which is refusing the funds, has not reconveyed the deed of trust that is clouding title to their Property.

Debtor's counsel and Debtors reported that U.S. Bank was nonresponsive about the obligation and the deed of trust, for which it is a named beneficiary, that is encumbering Debtors' property. Debtor reported that the title company "advised" them that they needed to engage a title attorney, who would prosecute an expensive state court quiet title litigation if Debtors ever wanted to refinance or sell the Property.

The court discussed with Debtors' former counsel and Debtors the scope of federal court jurisdiction, the original secured claim and the amended unsecured claim filed by U.S. Bank, the scope of federal court jurisdiction arising under 28 U.S.C. § 1334, and the efficient, focused bankruptcy and bankruptcy related proceedings in the bankruptcy courts.

The court continues the hearing to allow Debtor's former counsel to assist her clients in obtaining bankruptcy knowledgeable counsel and investigating how to best proceed to identify if there is a creditor to whom the payment is to be made and to quiet title to Debtor's Property.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on February 14, 2021. The court computes that 25 days' notice has been provided.

The Order to Show Cause is XXXXXXX.

ORDER TO SHOW CAUSE

This bankruptcy case was commenced as a Chapter 13 case by Lorraine Erwin and Gary Erwin (the "Debtors"), but converted to one under Chapter 7 on August 31, 2010. Order, Dckt. 92. On January 4, 2021, Lorraine Erwin, one of the two debtors in this case, filed an Application for Unclaimed Funds. Dckt. 240.

The amount of unclaimed funds requested to be paid to Lorraine Erwin is \$47,805.58. Application, § 1. The basis asserted in the Application for the payment of the \$47,805.58 is stated to be:

Claimant [Lorraine Erwin] is the Owner of Record entitled to the unclaimed funds appearing on the records of the court.

Application, § 2.

Though the Chapter 7 Trustee diligently attempted to disburse the \$47,805.58 to U.S. Bank, National Association, as trustee for the MSM 2006-14SL pass-through certificates ("Creditor"), this creditor filing allowed Proof of Claim 21-1 refused/failed to negotiate the Trustee's disbursement check. The court has conducted a detailed review of the check, the failure to negotiate, and the claim of Creditor. Dckt. 249.

Subsequent to Creditor's failure to negotiate the check, the Debtors filed an Objection to Proof of Claim No. 21-1. The court sustained the Objection, to which Creditor had not filed an opposition. Civil Minutes, Order; Dckts. 235, 237. As discussed in the Civil Minutes, the Objection arises out of a stipulation for the treatment of Creditor's claim when this case was being prosecuted under Chapter 13. In the Objection, Debtors objected to Proof of Claim 21-1, for which Creditor refused to cash the check for an unsecured claim so that the money could be paid for the same claim, but it being denominated a secured claim.

While Debtor asserted the right to the \$47,805.58 personally as the "Owner of Record," superior to Creditor, the court did not find such "Owner" status being established. Civil Minutes, Dckt. 249.

January 28, 2021 Application Status Conference

The court conducted a Status Conference on January 28, 2021, for Debtor's Application for Unclaimed Funds. Counsel for the Debtors reported at the Status Conference that she has retired and was appearing to assist her former clients. It was reported that the Debtors are facing a quiet title action because Creditor, which is refusing the funds, has not reconveyed the deed of trust that is clouding title to their Property.

Debtors' former counsel and Debtors reported that Creditor was non-responsive about the obligation and the deed of trust, for which it is a named beneficiary, that is encumbering Debtors' property. Debtors reported that the title company "advised" them that they needed to engage a title attorney, who would prosecute an expensive state court quiet title litigation if Debtors ever wanted to refinance or sell the Property.

The court discussed with Debtors' former counsel and Debtors the scope of federal court jurisdiction, the original secured claim and the amended unsecured claim filed by U.S. Bank, the scope of federal court jurisdiction arising under 28 U.S.C. § 1334, and the efficient, focused bankruptcy and bankruptcy related proceedings in the bankruptcy courts.

The court continued the hearing to allow Debtors' former counsel to assist her clients in obtaining bankruptcy knowledgeable counsel and investigating how to best proceed to identify if there is a creditor to whom the payment is to be made and to quiet title to Debtors' Property.

Order to Show Cause

It appears that a case could be made that Creditor is the person entitled to the moneys, that Debtor's Objection to claim was not truly an "objection" but should have been part of an action to quiet title and force Creditor to accept money, and that Debtor should be the real party in interest to obtain a judgment/order determining if payment is to be accepted by Creditor and the cloud on title removed. Debtor having the "skin in the game" in this Debtor-Creditor dispute, it appears to be Debtor's ultimate money/property at issue. Therefore, rather than the Trustee prosecuting the adjudication of this Debtor-Creditor dispute, such should be the Debtor.

To the extent Debtor prosecutes such action in lieu of a trustee, the \$47,805.58 provides funds to compensate the necessary professional to be hired and the fees the court would allow pursuant to 11 U.S.C. § 330 (the Debtor operating in the place of a trustee). Assuming that the underlying note and loan documents are standard bank documents, if Debtor is the prevailing party, such attorney's fees and costs may be recoverable from Creditor.

March 11, 2021 Hearing

On February 2, 2021, the court entered an order for the reappointment of a trustee in this case as requested by the U.S. Trustee. Order, Motion; Dckts. 251, 248.

No response to the Order to Show Cause has been filed by any party in interest. No Chapter 7 Trustee has been reappointed in this case.

At the hearing, Debtor stated that she was diligently seeking to obtain counsel. However, while saying that she had found some attorney to prosecute the case, none appear, the Debtor reporting that he had a conflict. Debtor's bankruptcy counsel stated that obtaining counsel was difficult because some wanted a retainer, and Debtor could not provide such. Debtor and Bankruptcy Counsel appear to ignore the almost \$50,000 that exists in the Estate for paying expenses relating to figuring out who the creditor who is to be paid the money.

Also, Debtor and Debtor's counsel reported that U.S. Bank, N.A., the creditor who filed the claim in this case, was refusing to respond. However, Debtor and Debtor's Counsel appeared not to appreciate that Federal Rule of Bankruptcy Procedure 2004 gave them the power to require such responses from the Bank who filed the claim, and that the power to do so did not require the cost, expense, and time of commencing a state court or federal court law suit.

Continuance of Hearing to May 20, 2021

The court continued the hearing to allow Debtor and Debtor's Counsel (whether bankruptcy or special counsel) to use Federal Rule of Bankruptcy Procedure 2004 to conduct discovery with U.S. Bank, N.A., the creditor filing the claim in this case to which the monies at issue relate, and any other person who discovery indicates may be the assignee of the U.S. Bank, N.A. claim. Additionally, given that this Order to Show Cause is a Contested Matter (Fed. R. Bankr. P. 9014), the discovery powers applicable to adversary proceedings are applicable. *See* Federal Rule of Bankruptcy Procedure 9014(c), 7026, 7028-7037.

MAY 20, 2021 HEARING

A review of the file for this case on May 18, 2021, disclosed that nothing further had been filed by any party in interest.

At the hearing, **XXXXXXX**

FINAL RULINGS

12. [20-20715](#)-E-13 FOUAD MIZYED
[20-2016](#)
MIZYED V. FAY SERVICING, LLC
ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-14-20 [[49](#)]

Final Ruling: No appearance at the May 20, 2021 Status Conference is required.

Plaintiff's Atty: Arasto Farsad; Nancy W. Weng
Defendant's Atty: Jana Logan

Adv. Filed: 2/14/20
Answer: none
First Amd. Cmplt Filed: 6/8/20
Answer: none
First Amd. Cmplt Filed: 9/14/20
Answer: none

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

Notes:
Continued from 2/11/21

[JL-3] U.S. Bank, National Association, as Legal Title Trustee for Truman 2016 SC6 Title Trust and Fay Servicing, LLC's Motion to Dismiss Second Amended Complaint filed 3/30/21 [Dckt 73]; set for hearing 5/27/21 at 11:00 a.m.

Joint Status Report filed 5/7/21 [Dckt 81]

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| <p>The Status Conference is continued to 11:00 a.m. on May 27, 2021, to be conducted in conjunction with Defendant's Motion to Dismiss this Adversary Proceeding.</p> |
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13. [12-91442](#)-E-11
[TMO-3](#)

ALEXANDRINO/DURVALINA
VASCONCELOS

CONTINUED MOTION FOR SANCTIONS
FOR VIOLATION OF THE AUTOMATIC
STAY AND/OR MOTION FOR
SANCTIONS FOR VIOLATION OF THE
DISCHARGE INJUNCTION
11-26-20 [\[248\]](#)

Final Ruling: No appearance at the May 20, 2021 hearing is required.

The Parties having resolved this Contested Matter and the Motion having been dismissed (Order, Dckt. 288), **the Matter is Removed From the Calendar.**

14. [12-93049](#)-E-11

MARK/ANGELA GARCIA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-30-12 [\[1\]](#)

CASE CLOSED: 4/27/2021

Final Ruling: No appearance at the May 20, 2021 Status Conference is required.

Debtors' Atty: Mark J. Hannon

Notes:

[mjh-23] Ex Parte Motion by Debtors to Close Case and for an Order Entering Discharge filed 4/21/21 [Dckt 1183]; Order for Entry of Discharge and Closing of Case filed 4/27/21 [Dckt 1186]

Order of Discharge filed 4/27/21 [Dckt 1187]

Final Decree filed 4/27/21 [Dckt 1188]

Status Report #14-Final filed 5/5/21 [Dckt 1192]

The Chapter 11 Plan having been completed and case closed, **the Status Conference is concluded and removed from the Calendar.**

15. [12-91671](#)-E-7 BOB/CANDI CRAWFORD
[20-9014](#)
CRAWFORD ET AL V. MARK
GUTIERREZ HAY CO. LLC

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-11-20 [[1](#)]

ADVERSARY DISMISSED: 5/13/21

Final Ruling: No appearance at the May 20, 2021 Status Conference is required.

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

Adv. Filed: 12/11/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:
Continued from 2/11/21

Plaintiffs' Notice of Dismissal of Complaint filed 5/13/21 [Dckt 13]

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| <p>The Complaint having been dismissed (Notice of Dismissal, Dckt. 13), this Status Conference is concluded and removed from the Calendar.</p> |
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Final Ruling: No appearance at the May 20, 2021 Status Conference is required.

Debtor's Atty: Pro Se

Notes:

Continued from 4/8/21, the Parties reporting that they are scheduled for BDRP mediation on 4/20/21.

Petitioning Creditor's Updated Status Report filed 5/13/21 [Dckt 38]

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| The Status Conference is continued to 10:30 a.m. on June 24, 2021. |
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Petitioning Creditor Ajay Sood filed an Updated Status Report on May 13, 2021. Dckt. 38. Petitioning Creditor reports that through the long and concentrated efforts of the Parties and Russell Cunningham, Esq., the BDRP Mediator, a settlement has been reached. It is anticipated that June 24, 2021 is the anticipated hearing date for the Motion to Approve Compromise that was achieved through the Mediation, and Petitioning Creditor recommends continuing this Status Conference and the related Motion to Set Involuntary Petition Trial Date to 2:00 p.m. on June 24, 2021.

The court concurs and the Status Conference is so continued, but to 10:30 a.m., which is the time at which a motion to approve compromise would be heard.

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 having been continued by the court, it being reported to the court that a settlement has been reached through the BDRP Mediation Program and it is anticipated that June 24, 2021 will be the day set for the hearing on the Motion to Approve Compromise, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Status Conference is continued to **10:30 a.m. on June 24, 2021** (Specially Set Time).

Final Ruling: No appearance at the May 20, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Set Trial Date has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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| <p>The hearing on the Motion to set Involuntary Petition Trial Date is continued to 10:30 a.m. on June 24, 2021.</p> |
|---|

Petitioning Creditor Ajay Sood filed an Updated Status Report on May 13, 2021. Dckt. 38. Petitioning Creditor reports that through the long and concentrated efforts of the Parties and Russell Cunningham, Esq., the BDRP Mediator, a settlement has been reached. It is anticipated that June 24, 2021 is the anticipated hearing date for the Motion to Approve Compromise that was achieved through the Mediation, and Petitioning Creditor recommends continuing this Status Conference and this Motion to Set Involuntary Petition Trial Date to 2:00 p.m. on June 24, 2021.

The court concurs and the Status Conference is so continued, but to 10:30 a.m., which is the time at which a motion to approve compromise would be heard.

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 Set the Involuntary Petition Trial Date filed by Ajay Sood, the Petitioning Creditor having been presented to the court, it being reported to the court that a settlement has been reached through the BDRP Mediation Program and it is anticipated that June 24, 2021 will be the day set for the hearing on the Motion to Approve Compromise, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Set Trial Date is continued to **10:30 a.m. on June 24, 2021.**

18. [16-90898-E-7](#) **THOMAS COPE**
[20-9015](#)
COPE V. SCHULTZ, JR. ET AL

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-21-20 [1]**

Final Ruling: No appearance at the May 20, 2021 Status Conference is required.

Plaintiff's Atty: David C. Johnston
Defendant's Atty: Riley C. Walter; Garrett R. Leatham

Adv. Filed: 12/21/20
Answer: 5/7/21

Counterclaim Filed: 5/7/21
Answer: none

Nature of Action:
Dischargeability - other
Injunctive relief - other

Notes:
Continued from 3/11/21

[WJH-4] Fourth Stipulation to Extend Time to Answer filed 4/20/21 [Dckt 23]; Order granting filed 4/27/21 [Dckt 25]

Answer and Counterclaim filed 5/7/21 [Dckt 27]

Adversary Proceeding Status Conference Statement [by Defendants] filed 5/11/21 [Dckt 29]

Plaintiff's Status Report filed 5/13/21 [Dckt 31]

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| The Status Conference is continued to 2:00 p.m. on July 29, 2021. |
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SUMMARY OF COMPLAINT

The Complaint filed by Thomas R. Cope ("Plaintiff-Debtor"), Dckt. 1, asserts claims for violation of the discharge injunction. Plaintiff-Debtor asserts that he commenced his Chapter 7 bankruptcy case, 16-09898, on September 29, 2016. On January 12, 2018, the Chapter 7 Trustee filed a no asset report,

which report was served on the Defendant. On February 6, 2017, Plaintiff-Debtor was granted his discharge in the Chapter 7 case.

Plaintiff-Debtor asserts that on August 20, 2020, Defendant filed a lawsuit in the California Superior Court that was based on an obligation discharged in the 2016 bankruptcy case. In the First Cause of Action, Plaintiff-Debtor seeks a determination that the debt upon which the State Court Action is based was discharged. In the Second Cause of Action, Plaintiff-Debtor seeks to enforce the Discharge Injunction, issue a judgment specifically enforcing the injunctive effect of the Discharge Injunction, that acts taken in violation of the Discharge Injunction are void, and costs

SUMMARY OF ANSWER

On May 7, 2021, Richard Schultz, Jr. And Ann Marie Schultz, collectively “Defendant” filed an Answer. The Parties had agreed and the court authorized an extension of time to answer as the Parties attempted to find a consensual resolution to this litigation.

Defendant admits and denies specific allegations in the Complaint. Answer, Dckt. 27. The Answer also includes seven Affirmative Defenses.

Counter-Claim for Nondischargeability of Debt

Defendant has filed a Counter-Claim asserting that Defendants have a claim for failure to provide services for restoration of a vehicle, for which they alleged to have paid \$130,528.43, and that such claim is nondischargeable as provided in 11 U.S.C. § 523(a)(2)(A) and § 523(a)(3)(B).

The time for filing an answer or responsive pleading to the Counter-Claim has not yet expired.

CONTINUANCE OF STATUS CONFERENCE

In their respective Status Reports (Dckts. 29, 31) both Defendant and Plaintiff request that the Status Conference be continued sixty (60) days so that all initial pleadings can be filed and the parties work to develop a discovery and scheduling plan to present to the court.

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 in this Adversary Proceeding having been scheduled, the filing of responsive pleading having been extended to allow the Parties to focus on a possible settlement, an Answer and Cross-Claim having been filed, the time period for responding to the Counter-Claim not having yet expired, the Parties requesting a sixty (60) day continuance to complete the initial pleadings and develop a discovery and scheduling proposal to present to the court, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on July 29, 2021. The Parties shall file their updated Status Conference Reports at least ten (10) days before the continued Status Conference.