

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 4, 2021 at 2:00 p.m.

1. [17-21973-E-7](#) **JOSE/MARIA PIMENTEL** **STATUS CONFERENCE RE:**
[20-2181](#) **COMPLAINT**
EDMONDS V. BETTENCOURT **12-4-20 [1]**

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: unknown

Adv. Filed: 12/4/20
Answer: none
Reissued Summons: 2/3/21
Reissued Summons: 4/28/21

Nature of Action:
Recovery of money/property - turnover of property

Notes:
[SSA-1] Order granting Trustee's *Ex Parte* Application for Publication of New Alias Summons, Extension of Time to Serve Party Defendant and Authorization to Serve Party Defendant by Publication filed 4/27/21 [Dckt 18]

Status Conference continued as provided in the Reissued Summons [Dckt 19]

Request for Entry of Default by Plaintiff(s) filed 7/8/21 [Dckt 22]; Entry of Default and Order Re: Default Judgment Procedures filed 7/8/21 [Dckt 24]

[SSA-2] Motion for Entry of Default Judgment filed 7/23/21 [Dckt 27]; order pending

The Status Conference is XXXXXXX
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AUGUST 4, 2021 STATUS CONFERENCE

On July 8, 2021, the Default of Joao Bettencourt, AKA John Bettencourt was entered. Dckt. 24. The Entry of Default form has the box stating that an *ex parte* motion for entry of a default judgment

may be filed, with that check mark handwritten in. This court standard procedure is to set motions for entry of default judgments to be by a noticed hearing.

At the Status Conference, **XXXXXXX**

2. [18-25001-E-7](#) **JOSEPH AKINS**
[18-2187](#)

BLACK V. AKINS

**PRE-TRIAL CONFERENCE RE:
AMENDED COMPLAINT TO
DETERMINE
NONDISCHARGEABILITY OF A DEBT
4-4-19 [21]**

Plaintiff's Atty: Nicholas B. Lazzarini
Defendant's Atty: Sheila Gropper Nelson

Adv. Filed: 11/13/18
Answer: none
Amd. Cmplt. Filed: 4/4/19 [reissued Summons 4/24/19]
Answer: 9/12/19

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:
Set by order of the court filed 9/30/20 [Dckt 137]

Successor Representative's [Joseph H. Akins, Jr.] Pre-Trial Conference Statement filed 7/22/21 [Dckt 195]

Successor Representative's [Joseph H. Akins, Jr.] Amended Pre-Trial Statement filed 7/26/21

Plaintiff's Pretrial Conference Statement filed 7/26/21 [Dckt 201]

The Pretrial Conference is XXXXXXX
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SUMMARY OF COMPLAINT

Dominique Black ("Plaintiff") filed his first Amended Complaint on April 4, 2019, in this Adversary Proceeding. Dckt. 21. The allegations in the First Amended Complaint are summarized by the court as follows:

1. Plaintiff was the owner of what is described as a 1977 Classic GMC Motorhome (“Motor”).
2. Defendant and associates represented that they operated a licensed business specializing in restoration of vehicles such as the Motorhome.
3. Defendant and associates entered into a contract to restore the Motorhome.
4. Plaintiff advanced \$147,622.75 for the restoration.
5. Plaintiff alleges that Defendant and associates created false invoices and “embezzled” the monies that he provided for the restoration.
6. Defendant represented he had a California BAR license and a GMC license, and was under contract to GMC through an East Bay Dealership, Hilltop Buick.
7. Plaintiff asserts that he discovered in this process that Defendant’s brother was using the Motorhome as a residence and for other activities not related to restoration of the vehicle.
8. It is asserted that in 2006 Defendant attempted to seize title to the Motorhome by foreclosing on a mechanic’s lien.
9. Plaintiff made arrangements with the owner of the property on which Defendant was doing business, and for whom the lease was terminated, to go on the property to recover the Motorhome. It is alleged that Defendant then dismantled and vandalized the Motorhome, removing the valuable parts therefrom.
10. It is further alleged that Defendant then abandoned the Motorhome on a public roadway, further vandalized the Motorhome by pouring paint on it, leaving waste on it, and having used it for other than legal enterprises.
11. Plaintiff obtained a State Court Judgment against Defendant and associates in the amount of \$323,804.85, which Plaintiff computes to have a judgment balance of \$193,612.97 as of August 9, 2018 (Plaintiff having received a partial payment from some of the other judgement debtors on the State Court Judgment.).
12. Plaintiff asserts that the obligation on the State Court Judgment is nondischargeable pursuant to: 11 U.S.C. § 523(a)(2)(A) [fraud]; § 523(a)(4) [embezzlement, larceny]; and § 523(a)(6) [willful and malicious injury].

SUMMARY OF ANSWER

The Answer for Defendant Joseph H. Akins, Jr., the person substituted in for the late Joseph H. Akins, Sr., to the First Amended Complaint was filed on September 12, 2019 (Dckt. 75). In the Answer, Defendant admits and denies specific allegations in the First Amended Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). First Amended Complaint ¶¶ 5, 6, Dckt. 21. In his Answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 5, Dckt. 75. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

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. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2021**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2021**.
- F. The Trial shall be conducted at ----**x.m. on -----, 2021**.

The Parties in their respective Pretrial Conference Statements, Dckts. 201, 199, 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 Dominique Black

Defendant Joseph H Akins, Jr.

Jurisdiction and Venue:

This Court has jurisdiction over the adversary proceeding pursuant to 28 U.S. C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S. C. §157. Venue is proper pursuant to 28 U.S. C. §1409.

Undisputed Facts:

1. Joseph H. Akins, Sr. filed Bankruptcy.

2. This Adversary Proceeding was filed.	
<p>Disputed Facts:</p> <p>1. Anything and Everything.</p>	<p>Disputed Facts:</p> <p>1. Anything and Everything</p>
<p>Disputed Evidentiary Issues:</p> <p>1. Asserts that some objections were resolved in ruling on the Motion for Summary Judgment.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. Anything and Everything</p>
<p>Relief Sought:</p> <p>1. \$193,612.97 Judgment, plus costs</p> <p>2. Judgment determined nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).</p>	<p>Relief Sought:</p> <p>1. States what relief Plaintiff seeks, not what relief Defendant seeks.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).</p> <p>Defenses including, but not limited to</p> <p>2. Standing</p> <p>3. Absence of Representation, Reasonable Reliance or Reliance,</p> <p>4. no damages,</p> <p>5. absence of interference to property,</p> <p>6. absence of willful conduct,</p> <p>7. absence of malice,</p> <p>8. no conversion,</p> <p>9. statutory defenses (unidentified),</p> <p>10. claim splitting,</p> <p>11. laches,</p>

	12. unclean hands, and 13. no standing for declaratory relief. 14.
Abandoned Issues: 1. None	Abandoned Issues: 1. None
Witnesses: 1. Dominique Black 2. Joseph H. Akins, Jr. 3. Akins, Albert 4. Akins, Joe 5. Andrade, Mike 6. Auvinen, John 7. Ball, David 8. Becker, Lauree 9. Black, Dominique 10. Brand, Beverly 11. Byers, M. 12. Casillas, Deanna 13. Davis, Jeff 14. Diekmann, Michael 15. Ellis, Claude "Henry" 16. Ford, Patricia 17. Fouche, Lori 18. Fraser, Laurel 19. Greenberg, Dave 20. Hammond, Mike 21. Haroche, Bob 22. Harvey, Sherrell 23. Hanson, Brian 24. Hino, Dave 25. Howard, Sharlene 26. Ischinger, Wolfgang 27. Johnston, Deanna 28. Kanomata, James 29. Kientz, Richard 30. King, Robert 31. LaRocco, Michael 32. Lesser, Don 33. Lutz, Janet	Witnesses: 1. Dominique Black 2. Patricia Black 3. Danielle R. Black 4. Persons employed by each business in which Plaintiff Black held or holds more than a 5% interest from 1999 to the present time. 5. Alan Black 6. Marie Fabris employed by Advance Software Talent LLC 7. Donald Kolko, employed by Advance Technology Solution Inc. 8. Person most knowledgeable Advance Software Talent 9. Person most Knowledgeable at Advance Technology Solution Inc. 10. Paul Smoot 11. Person most Knowledgeable at Institute for Independent Information Technology Professionals Inc. 12. Person most Knowledgeable at Advance Skills Inc. 13. Michael Yerby 14. James Turano 15. James Kanomata 16. Nicasio Gutierrez 17. Other Witnesses revealed Through Discovery including expert witness for successor representative 18. Rebuttal witnesses 19. Successor representative

34. Moore, Dan 35. Moua, Becky 36. Murphy, Joaquin 37. Murphy, Melinda 38. Narey, Sally 39. Nikitenko, Tatiana 40. Perry, Joe 41. Perry, Stephen 42. Randolph, Nancy 43. Schubert, Victoria 44. Stachura, Paul 45. Summers, Lisa 46. Tucker, Carolyn 47. Turano, James 48. Turner, Keith 49. Weins, Clay 50. Yerby, Michael 51. Fireman's Fund Insurance Company 52. Pennbrook and Associate	
Exhibits: 1. <i>Black v. Tirpak, et al.</i> , Marin County Superior Court Case No. CV081975 – Judgment, docket, related documents 2. Invoices sent to Plaintiff related to the VEHICLE 3. Payment receipts related to VEHICLE 4. Correspondence between Plaintiff, David Tirpak, Anthony Sarganis, Joseph H. Akins, and other parties 5. Mechanic's Lien filed by Joseph H. Akins dated December 8, 2006 6. Photographs of VEHICLE	Exhibits: 1. Photos and claims reports relating to insurance claim for Vehicle 2. Copies of alleged payments 3. Postal delivery signed return receipt requested and communications to and from Dominique Black, plaintiff. 4. 541 Irwin Street Lease assignment 5. fictitious business name registrations 6. pleadings, papers and depositions of or by plaintiff in this and other lawsuits 7. Additional exhibits as may be determined pursuant to the party and party representative depositions.
Discovery Documents: 1. Plaintiff may offer Defendant's responses dated November 30, 2020 to	Discovery Documents: 1. Written discovery has concluded pursuant to the modified scheduling order

<p>Plaintiff's Request for Admissions (Set Two), Requests for Production of Documents (Set Two), and Special Interrogatories (Set Two).</p> <p>2. Plaintiff may offer Defendant's responses dated January 27, 2021 to Plaintiff's Requests for Production of Documents (Set Three), and Special Interrogatories (Set Three).</p>	<p>issued by the Court.</p>
<p>Further Discovery or Motions:</p> <p>1. Plaintiff may file a motion to reopen fact discovery to complete depositions of material witnesses.</p>	<p>Further Discovery or Motions:</p> <p>1. None identified</p>
<p>Stipulations:</p> <p>1. None</p>	<p>Stipulations:</p> <p>1. None</p>
<p>Amendments:</p> <p>1. None</p>	<p>Amendments:</p> <p>1. None</p>
<p>Dismissals:</p> <p>1. None</p>	<p>Dismissals:</p> <p>1. None</p>
<p>Agreed Statement of Facts:</p> <p>1. None</p>	<p>Agreed Statement of Facts:</p> <p>1. None</p>
<p>Attorneys' Fees Basis:</p> <p>1. No right asserted</p>	<p>Attorneys' Fees Basis:</p> <p>1. No right asserted</p>
<p>Additional Items</p> <p>1. None</p>	<p>Additional Items</p> <p>1. None</p>
<p>Trial Time Estimation: None Stated</p>	<p>Trial Time Estimation: None Stated</p>

3. [20-20726-E-7](#) LISA SAHAR
[20-2123](#)
SAHAR V. U.S. DEPARTMENT OF
EDUCATION, FEDLOAN SERVICING

**PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
6-24-20 [1]**

Plaintiff's Atty: Mary Ellen Terranella
Defendant's Atty: Jeffrey J. Lodge

Adv. Filed: 6/24/20
Answer: 9/3/20

Nature of Action:
Discharge ability - student loan

Notes:
Scheduling Order -
Initial disclosures by 1/1/21
Disclose expert witnesses by 2/22/21
Exchange expert witness by 3/22/21
Close of discovery 5/17/21
Dispositive motions heard by 7/1/21

Plaintiff's Pre-Trial Statement filed 7/26/21 [Dckt 41]

United States' Pretrial Statement filed 7/26/21 [Dckt 43]

Stipulated Dismissal of Defendant FedLoan Servicing From Adversary Proceeding No. 20-02123 filed 7/28/21 [Dckt 45]

The Pretrial Conference is XXXXXXX
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SUMMARY OF COMPLAINT

This Adversary Proceeding was commenced on June 24, 2020, by the filing of the Complaint to Determine Dischargeability of Debt by Plaintiff-Debtor Lisa Sahar. Dckt. 1. The allegations in the Complaint are summarized by the court as follows:

A. Plaintiff-Debtor filed a voluntary Chapter 7 case on February 9, 2020. The First Meeting of Creditors was concluded on March 18, 2020. The court notes that the file for Plaintiff-Debtor's Chapter 7 Case, 20-20726, discloses that Plaintiff-Debtor was granted a discharge on July 13, 2020.

B. Plaintiff-Debtor has, as of the filing of the bankruptcy petition, \$174,985.11 in student loan debt.

C. Since she began paying on the student loan debt in 2011, the Plaintiff-Debtor has paid \$49,527.72 in principal and \$22,710.97 in interest on the student loan debt.

D. Plaintiff-Debtor alleges physical injuries, the amount of her income, and the alimony and child support payments she receives.

E. Given Plaintiff-Debtor's age, being a single parent of three children, physical limitations, and her demonstrated efforts to pay the student loan debt obligations, Plaintiff-Debtor asserts that the obligation may properly be discharged as placing an undue burden on her.

SUMMARY OF ANSWER

The U.S. Department of Education filed its Answer (Dckt. 15), admitting and denying specific allegations in the Complaint. These admissions and denials include that the Defendant is without sufficient information or belief at this time to admit or deny the factual allegations and thereon denies them.

In the Answer, the Defendant asserts the following Affirmative Defenses:

A. First Affirmative Defense - Failure to State a Claim.

B. Second Affirmative Defense - Failure to Exhaust Administratively; asserting that there are various non-judicial options.

In the response to the First Cause of Action, the U.S. Department of Education affirmatively states only that "Education denies that the plaintiff can satisfy the applicable legal standard," but does not deny that the grounds stated do not establish, and thereby, the U.S. Department of Education admits that the student loan debt is dischargeable.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff -Debtor Lisa Sahar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding. Complaint ¶¶ 1, 2, Dckt. 1. At the hearing, Defendant U.S. Department of Education confirmed on the record at the Status Conference to the allegations of jurisdiction and core proceedings. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2021**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2021**.
- F. The Trial shall be conducted at ----x.m. on -----, **2021**.

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

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>Plaintiff -Debtor Lisa Sahar alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding. Complaint ¶¶ 1, 2, Dckt. 1. At the hearing, Defendant U.S. Department of Education confirmed on the record at the Status Conference to the allegations of jurisdiction and core proceedings. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.</p>	
<p>Undisputed Facts:</p> <p>1. Stated as a long narrative in the Plaintiff's Pretrial Statement</p>	<p>Undisputed Facts:</p> <p>1. The debts at issue in this case are student loans within the meaning of the Bankruptcy Code.</p> <p>2. Plaintiff Lisa Sahar ("Sahar") is 49 years old, divorced, and has three dependents ages 18, 16, and 14.</p> <p>3. Sahar has a Doctor of Chiropractic</p>

	<p>degree and is currently employed as a teacher.</p> <p>4. Sahar refuses to participate in any of the student loan debt forgiveness/repayment plans available to her.</p> <p>5. The Family Court has imputed income to Sahar in the amount of \$4,831 per month and ordered her ex-husband, a plastic surgeon, to pay child support and spousal support totaling approximately \$4,600 per month. This could increase.</p> <p>6. Sahar has no medical conditions that materially affect her ability to work.</p> <p>7. Sahar received a bankruptcy discharge on December 17, 2020.</p>
<p>Disputed Facts:</p> <p>1. Stated in narrative paragraphs.</p> <p>2.</p> <p>3.</p>	<p>Disputed Facts:</p> <p>1. Stated in narrative paragraphs</p> <p>2.</p> <p>3.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None stated, with Pretrial Statement identifying disputed facts.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. There are no expert witnesses.</p> <p>2. Documents produced for the first time after the close of discovery are not admissible, including any new medical records or other documents that were not produced through discovery.</p> <p>3. Documents which were not authenticated prior to the close of discovery should not be admitted into evidence.</p>
<p>Relief Sought:</p> <p>1. Determine that student loan debt is</p>	<p>Relief Sought:</p> <p>1. Dismissal of Adversary Proceeding with</p>

dischargeable.	costs to Defendant.
<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. section 523(a)(8) 2. <i>Brunner v. New York State Higher Educational Services</i>, B.R. 752, 758 (S.D.N.Y. 1985), <i>aff'd</i> 831 F.2d 395,396 (2nd Cir. 1987) 3. <i>United Student Aid Funds, Inc. v. Pena</i>, 155 F.3d 1108, 1112 (9th Cir. 1998). 4. <i>England v. United States (In re England)</i>, 264 B.R. 38, 48 (Bankr. D. Idaho 2001) 5. <i>Hamilton v. U.S. Dep't of Edu. (In re Hamilton)</i>, 361 B.R. 532, 558 (Bankr. D. Mont. 2007) 6. <i>Educ. Credit Mgmt, Corp. v. Jorgensen (In re Jorgensen)</i>, 479 B.R. 79, 89 n.4 (9th Cir. BAP 2012) 	<p>Points of Law:</p> <ol style="list-style-type: none"> 1. 11 U.S.C. § 523(a)(8) 2. Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965) (codified as amended at 20 U.S.C. § 1071); 34 C.F.R. parts 682 and 685 3. <i>Nys v. Educ. Credit Mgmt. Corp. (In re Nys)</i>, 308 B.R. 436, 441–42 (9th Cir. BAP 2004), <i>aff'd</i>, 446 F.3d 938 (9th Cir. 2006). 4. <i>Shells v. U.S. Dept. Education</i>, 530 B.R. 758 (Bankr. E.D. Cal. 2015) 5. <i>In re Brunner</i>, 46 B.R. 752, 753 (S.D.N.Y. 1985), (<i>aff'd</i>, <i>Brunner v. New York State Higher Education Services Corp.</i>, 831 F.2d 395 (2d Cir. 1987) 6. <i>United Student Aid Funds v. Pena (In re Pena)</i>, 155 F.3d 1108, 1111 (9th Cir. 1998)
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None identified 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None identified
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Lisa Sahar 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Lisa Sahar
<p>Exhibits:</p> <ol style="list-style-type: none"> 1. None identified, with Plaintiff stating: “[a]ll documents supplied to Defendant pursuant to its requests for production of documents, requests for interrogatories and requests for admissions, as well as any and all documents 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Schedules and Summaries 2. Transcript of Deposition of Lisa Sahar (Sahar Depo.) 3. Family Court order dated Jan 22, 2020,

produced following the deposition of Ms. Sahar, additional documents that have been provided as they became available, and any additional documents from recent family court proceedings and recent medical records as they may become available to debtor.”	produced by Sahar through discovery 4. Responses to First Set of Requests for Admission
Discovery Documents: 1. No discovery documents identified, with Plaintiff stating: “Plaintiff has produced to Defendant all documents to which she currently has access.”	Discovery Documents: 1. See Exhibits Above
Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. None
Stipulations: 1. None	Stipulations: 1. None identified
Amendments: 1. None	Amendments: 1. None
Dismissals: 1. FedLoan Servicing has been dismissed from this Adversary Proceeding.	Dismissals: 1. 2. 3.
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. Possible
Attorneys’ Fees Basis: 1. Plaintiff “reserves right,” but does not identify the statutory or contractual	Attorneys’ Fees Basis: 1. No basis for fees.

basis for attorney's fees.	
Additional Items 1. None	Additional Items 1. None
Trial Time Estimation: ½ to 1 day	Trial Time Estimation: ½ day

4. [21-21751](#)-E-11 BIONICA INC.

**CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
5-11-21 [\[1\]](#)**

SUBCHAPTER V

Debtor's Atty: Roderick L. MacKenzie

Notes:

Continued from 6/22/21

Ex Parte Application for an Order Directing Debtor Bionica, Inc. to Produce Documents and Appear for Examination filed 6/28/21 [Dckt 51]; Order granting filed 7/1/21 [Dckts 54, 55, 56, 57]

[TF-1] Amended Order granting motion for relief from automatic stay

Motion to Deem Creditor's Debt as Unliquidated, Ambiguous, and Contingent Together with Points and Authorities in Support of Motion re Thomas Aoki and Adri filed 7/16/21 [Dckt 63], set for hearing 8/26/21 at 10:30 a.m.

The Status Conference is continued to XXXXXXX.

AUGUST 4, 2021 STATUS CONFERENCE

At the Status Conference, XXXXXXX

JUNE 22, 2021 STATUS CONFERENCE

This Subchapter V case was filed on May 11, 2021 by Bionica, Inc., the Debtor and Debtor in Possession. Lisa A. Holder is the Subchapter V Trustee. The Order setting the Initial Status Conference required the Debtor/Debtor in Possession to file a status report. No status report has been filed.

On Schedule A/B, Dckt. 17 at 1-8, Debtor states that it had no cash, no bank or other

financial accounts, and no real property. Debtor reports having some inventory and tools, and a “factor/warehouse” in which it is a tenant. *Id.* at 6. Debtor/Debtor in Possession’s Monthly Operating Report for May 2021 reports there being \$0.00 in cash or other monies received and no disbursements in connection with the business of the bankruptcy estate. Dckt. 35.

5. [15-20352-E-13](#) **GREGORY/CLARICE BRIDGES** **STATUS CONFERENCE RE:**
[21-2023](#) **COMPLAINT**
4-19-21 [1]

**BRIDGES ET AL V. LONG BEACH
MORTGAGE CO. ET AL**

Plaintiff’s Atty: Peter G. Macaluso
Defendant’s Atty: unknown

Adv. Filed: 4/19/21
Answer: none
Reissued Summons: 5/10/21

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

Notes:

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

AUGUST 4, 2021 STATUS CONFERENCE

A Certificate of Service (Dckt. 9) was filed on June 2, 2021, attesting to service on Long Beach Mortgage Company and Deutsche Bank Trust Company. No answer or other responsive pleading has been filed, and Plaintiff has not sought the entry of any defaults.

At the Status Conference, XXXXXXX

6. [20-25057-E-7](#) **DAVID FLETCHER**
[21-2040](#)
HUSTED V. FLETCHER

STATUS CONFERENCE RE:
COMPLAINT
6-7-21 [1]

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: unknown

Adv. Filed: 6/7/21
Answer: none

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

Notes:

The Status Conference is xxxxxxx
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AUGUST 4, 2021 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The Complaint filed by Kimberly Husted, the Plaintiff-Trustee, Dckt. 1, asserts claims for (1) Turnover of Property of the Bankruptcy Estate (11 U.S.C. §542); (2) Recovery of Preferential Transfers (11 U.S.C. § 547, § 550); and (3) Recover of Fraudulent Conveyances (Cal. Civ. 3439.05 and 11 U.S.C. §§ 544(b), 550).

SUMMARY OF ANSWER

No answers have been filed.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff xxxxxxx alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ xx, 2, Dckt. xx. In the Answer, Defendant xx admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ xx, xx, xx; Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (F). Complaint ¶¶ xx, 2, Dckt. xx. In the Answer, Defendant xx admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ xx, xx, xx; Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before xxxxxxxx, 2021.
- c. Expert Witnesses shall be disclosed on or before xxxxxxxx, 2021, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before xxxxxxxx, 2021.
- d. Discovery closes, including the hearing of all discovery motions, on xxxxxxxx, 2021.
- e. Dispositive Motions shall be heard before xxxxxxxx, 2021.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:00 p.m. on xxxxxxxx, 2021.

**HOPPER V. NAVY FEDERAL CREDIT
UNION ET AL**

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Unknown [Kelstin Group, Inc.; Patelco Credit Union; SolarCity Corporation; Tesla, Inc.]

Bryan M. Grundon [Navy Federal Credit Union]

Adv. Filed: 6/7/21 [reissued Summons 7/22/21]

Answer: 7/12/21

Nature of Action:

Validity, priority or extent of lien or other interest in property

Notes:

Joint Status Report & Discovery Plan filed 7/28/21 [Dckt 28]

The Status Conference is XXXXXXX
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AUGUST 4, 2021 STATUS CONFERENCE

The Parties filed their Joint Status Conference Statement on July 28, 2021. Dckt. 28.

SUMMARY OF COMPLAINT

The Complaint filed by J. Michael Hopper, the Plaintiff-Trustee, Dckt. 1, asserts claims to Determine the Extent, Validity, and Priority of Liens against property of the bankruptcy estate. One named Defendant has responded, and two others have not, with the court dismissing the requests for entry of default due to service of process issues. The Plaintiff-Trustee is addressing those issues.

SUMMARY OF ANSWER

Navy Federal Credit Union ("Defendant-NFCU") has filed an Answer, Dckt. 7, admitting and denying specific allegations. Defendant-NFCU also asserts an affirmative defense pursuant to California Code of Civil Procedure § 697.430.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C.

§ 157(b)(2). Complaint ¶¶ 2, 4, 5, Dckt. 1 In the Answer, Defendant-NFCU admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

Named Parties Who Have Not Responded and Whose Defaults Have Not Been Entered

The Plaintiff-Trustee has indicated that the non-responding named defendants, for whom service issues may exist, may ultimately be dismissed. The court believes this issue should be addressed sooner, not later, in this Adversary Proceeding.

At the Status Conference, **XXXXXXX**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 2, 4, 5, Dckt. 1. In the Answer, Defendant-NFCU admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before **XXXXXXX, 2021**.
- c. Expert Witnesses shall be disclosed on or before **XXXXXXX, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXXX, 2021**.
- d. Discovery closes, including the hearing of all discovery motions, on **XXXXXXX, 2021**.
- e. Dispositive Motions shall be heard before **XXXXXXX, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on XXXXXX, 2021**.

8. [19-24134-E-7](#) **FELIX/DEBORAH KIARSIS**
[21-2036](#)
FARRIS V. CARUSO ET AL

STATUS CONFERENCE RE:
COMPLAINT
6-1-21 [1]

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Unknown [Wells Fargo Bank, N.A.]

Shanna M. Kaminski [Troy Caruso; Radium2 Capital, LLC; Boris Yankovich]

Adv. Filed: 6/1/21

Reissued Summons: 6/14/21

Answer:

Nature of Action:

Recovery of money/property - preference

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

Notes:

Stipulation to Extend Deadline to Respond to the Complaint Pursuant to Local Rule 7012-1 filed 7/14/21 [Dckt 9]; Order approving filed 7/15/21 [Dckt 11]

Application for Admission to Practice Pro Hac Vice [attorney Shanna M. Kaminski] filed 7/20/21 [Dckt 13]; Order granting filed 7/22/21 [Dckt 14]

The Status Conference is continued to 11:00 a.m. on September 23, 2021.
(Specially set day and time to accommodate the Parties in light of the court's September 2021 available calendar dates.)

August 4, 2021 Status Conference

Plaintiff-Trustee Nikki Farris and Defendants r Troy Caruso, Radium2 Capital, LLC, Boris Yankovich, and Wells Fargo Bank, N.A. filed a Joint Status Report on August 3, 2021. Dckt. 18. The request that the Status Conference be continued in light of the Answer having been timely filed on July 28, 2021, and the Parties not yet having the time to address the matters for the Status Conference (the court inferring the latter part).

The court notes that in the Answer include a demand for a jury trial stated as:

The Defendants hereby demand trial by jury on all issues for which a trial by jury may be demanded. Moreover, the Defendants do not consent to the bankruptcy court conducting a trial by jury. The Defendants also do not consent to the bankruptcy court entering final judgment in this matter.

Answer, p. 2:8-11; Dckt. 16. Such is their right for non-core matters.

Looking at the sixty (60) page Complaint (Dckt. 1), the following causes of action are identified:

- | | |
|-------------|--|
| Count One | Turnover of Property of the Estate, 11 U.S.C. § 542(a) |
| Count Two | Sanctions for Violation of the Automatic Stay, 11 U.S.C. § 362(k), § 105(a). |
| Count Three | Conversion, California Civ. Code § 3336 |
| Count Four | Preferences, 11 U.S.C. § 547(b) and § 550(a)(1) |

Though the court could guess at to which are non-core matters for which a right to a jury trial and trial before an Article III judge exist, the Defendants shall in their Status Conference Statement identify the claims for which a right to jury trial is asserted, as well as a trial before an Article III District Court Judge.

In a prior proceeding where there were mixed core and non-core matters for which a jury trial was properly demanded, rather than the District Court withdrawing the reference and taking on all matters, the proceedings were bifurcated, with the Bankruptcy Judge fulfilling that judge's duties to adjudicate and issue rulings on all of the non-core matters. Then, taking those proceedings, findings, and determinations made therein, the District Court could then proceed to conduct the necessary jury/Article III judge portion of the adversary proceeding. Two separate judgments would be entered.

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 set for August 4, 2021, the Answer having been timely filed on July 28, 2021, the Parties not having sufficient time to conduct their pre-Status Conference meetings, the Parties requesting additional time, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **11:00 a.m. on September 23, 2021**. (Specially set day and time to accommodate the Parties in light of the court's September 2021 available calendar dates.)

The Parties shall file (separately or jointly) a status report, including any proposed Discovery Plan (See Order to Confer, Dckt. 5) on or before September 13, 2021.

The Defendants' Status Report shall identify the claims in the Complaint which are asserted to be non-core, to be subject to a right to a jury trial, or for which the parties have a right to have such claim(s) tried before an Article III judge, and the legal analysis of such (other than the Claim for Conversion other than state law, for which no legal analysis is required).

FINAL RULINGS

9. [10-22378-E-13](#) **DEREK/ALISA FREEMAN** **CONTINUED STATUS CONFERENCE**
[21-2010](#) **RE: COMPLAINT**
FREEMAN ET AL V. HFC ET AL **2-2-21 [1]**

Final Ruling: No appearance at the August 4, 2021 Status Conference is required.

Plaintiff's Atty: Timothy J. Walsh
Defendant's Atty: unknown

Adv. Filed: 2/2/21 [Reissued Summons 6/22/21]
Answer: none

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

Notes:
Continued from 6/16/21. Plaintiff-Debtors Derek Freeman and Alisa Freeman, to serve the Complaint and a Reissued Summons on or before 7/2/21, with Proof of Service filed by 7/2/21.

Proof of Service for Reissued Summons and Notice of Status Conference and Complaint filed 6/23/21 [Dckt 12]

The Status Conference is continued to 2:00 p.m. on October 13, 2021 (the court's next regularly scheduled Status Conference date), to afford Plaintiff the time to diligently prosecute the entry of the defaults and the prosecution of a noticed motion for entry of default judgment.

AUGUST 4, 2021 STATUS CONFERENCE

On August 2, 2021, Plaintiff filed a Status Conference Report. Dckt. 13. The report that though served, the named Defendants have not responded, and Plaintiff will be seeking the entry of their defaults and then filing a noticed motion for entry of a default judgment.

10. [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](#)]

ADVERSARY PROCEEDING
DISMISSED WITH LEAVE TO AMEND: 6/1/2021

Final Ruling: No appearance at the August 4, 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:
Order dismissing adversary proceeding with leave to amend filed 6/1/21 [Dckt 86]

[AF-4] Joint Stipulation to Allow Plaintiff 30 Additional Days to File an Amended Complaint filed 6/30/21 [Dckt 89]; Order granting filed 7/1/21 [Dckt 90]

Joint Status Report filed 7/26/21 [Dckt 91]

[AF-5] Joint Stipulation to Request a Stay of Proceedings for 90 Days

<p>By prior Order of the Court (Dckt. 93), the Status Conference has been continued to 2:00 p.m. on November 4, 2021.</p>
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11. [18-20456-E-13](#) MARIA ANDRICHUK
[21-2029](#)

STATUS CONFERENCE RE:
COMPLAINT
5-5-21 [\[1\]](#)

ANDRICHUK V. CLEAR RECON CORP.
ET AL

ADVERSARY DISMISSED: 7/22/21

Final Ruling: No appearance at the August 4, 2021 Status Conference is required.

Plaintiff's Atty: Pro Se

Defendant's Atty:

Unknown [Clear Recon Corp.]

Adam N. Barasch [Bank of America, National Association]

Adv. Filed: 5/5/21

Answer: none

Nature of Action:

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

Notes:

[SW-1] Motion to Dismiss Adversary Complaint filed 6/16/21 [Dckt 7]; Order granting filed 7/22/21 [Dckt 16]

The Complaint having been dismissed, **the Status Conference is concluded** and the Clerk of the Court may close the file for this Adversary Proceeding.

AUGUST 4, 2021 STATUS CONFERENCE

On July 22, 2021, the court entered its order dismissing the Complaint pursuant to the Motion of Bank of America, N.A. Order, Dckt. 7.

ANDRICHUK V. CLEAR RECON CORP.
ET AL

Final Ruling: No appearance at the August 4, 2021 Status Conference is required.

Plaintiff's Atty: Pro Se

Defendant's Atty:

Fred T. Winters [Clear Recon Corp.]

Adam N. Barasch [Bank of America, National Association]

Adv. Filed: 5/17/21

Answer: none

Amd. Cmplt. Filed: 7/13/21 [Reissued Summons 7/14/21]

Answer: none

Nature of Action:

Recovery of money/property - other

Injunctive relief - imposition of stay

Declaratory judgment

Notes:

[FTW-1] Defendant Clear Recon Corp's Notice of Hearing and Motion to Dismiss Adversary Complaint filed 6/16/21 [Dckt 11], set for hearing 8/12/21 at 11:00 a.m.

[SW-1] Motion to Dismiss Adversary Complaint [by Bank of America, N.A.] filed 6/16/21 [Dckt 14]; Order dismissing motion as moot filed 7/22/21 [Dckt 31]

[SW-2] Motion to Dismiss Amended Adversary Complaint [by Bank of America, N.A.] filed 7/20/21 [Dckt 24], set for hearing 8/26/21 at 11:00 a.m.

Reissued Summons on First Amended Complaint sets a status conference on 10/13/21 at 2:00 a.m.

The Status Conference is continued to 11:00 a.m. on September 23, 2021 (specially set day and time in light of the court's limited status calendars in September 2021).

AUGUST 4, 2021 STATUS CONFERENCE

On July 20, 2021, Defendant Bank of America, N.A. filed a Motion to Dismiss the First Amended Complaint. Dckt. 24. That Motion is set for hearing on August 26, 2021.

The court continues the Status Conference.

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 scheduled for August 4, 2021, Defendant Bank of America, N.A. having filed a Motion to Dismiss the First Amended Complaint, for which the hearing is set in late August 2021, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **11:00 a.m. on September 23, 2021** (specially set day and time in light of the court's limited status calendars in September 2021).

13.	<u>21-22161</u> -E-13 <u>DPC-1</u>	NADINE/STEVEN MUENCH Peter Cianchetta	MOTION TO DISMISS CASE 7-20-21 <u>[32]</u>
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Final Ruling: No appearance at the August 4, 2021 hearing is required.

The Chapter 13 Trustee, David Cusick ("Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

14.	<u>18-23365</u> -E-13 <u>JB-2</u> 14 thru 15	TENA ROBINSON Jason Borg	ORDER TO SHOW CAUSE 7-16-21 <u>[201]</u>
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Final Ruling: No appearance at the August 4, 2021 hearing is required.

The court having entered an order Amending the Order to Correct a Clerical Error (Dckt. 206), the Matter is removed from the Calendar.

15. [18-23365](#)-E-13 TENA ROBINSON ORDER TO SHOW CAUSE
[JB-3](#) Jason Borg 7-16-21 [\[202\]](#)

Final Ruling: No appearance at the August 4, 2021 hearing is required.

The court having entered an order Amending the Order to Correct a Clerical Error (Dckt. 206), the Matter is removed from the Calendar.

16. [21-20890](#)-E-13 HAYDEN/MANDY COIT MOTION TO DISMISS CASE
[DPC-1](#) Mikalah Liviakis 7-20-21 [\[30\]](#)

Final Ruling: No appearance at the August 4, 2021 hearing is required.

The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on July 26, 2021, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Hayden Scott Coit and Mandy Erin Coit (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee's Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.