

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

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

**September 7, 2022 at 2:00 p.m.**

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1.	<a href="#"><u>20-22873-E-7</u></a> <b>KEVIN EHMKA</b>  <a href="#"><u>21-2063</u></a>  <b>U.S. TRUSTEE V. EHMKA</b>	<b>PRE-TRIAL CONFERENCE COMPLAINT FOR DENIAL OF DISCHARGE 8-31-21 [1]</b>
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Plaintiff's Atty: Justin C. Valencia  
Defendant's Atty: Pro Se

Adv. Filed: 8/31/21  
Answer: 9/29/21

Nature of Action:  
Objection/revocation of discharge

Notes:  
Scheduling Order-  
Initial disclosures by 11/30/21  
Disclose experts by 2/2/22  
Close of discovery ~~4/29/22~~; 6/28/22  
Dispositive motions by ~~5/31/22~~; 8/1/22

[UST-1] Motion to Continue Discovery and Pre-Trial Deadlines filed 4/15/22 [Dckt 17]; Stipulation filed 4/15/22 [Dckt 18]; Order granting filed 5/3/22 [Dckt 20]

**The Pretrial Conference is XXXXXXX**

**SUMMARY OF COMPLAINT**

The Complaint filed by the U.S. Trustee ("Plaintiff"), Dckt. 1 , asserts claims for Defendant-Debtor being denied his discharge in Defendant-Debtor's related Chapter 7 bankruptcy case. The Complaint details asserted undisclosed assets and transfers, inaccurate information on the original and amended schedules and statement of financial affairs, and Defendant-Debtor failure to provide documents and information in compliance with court authorized 2004 Examination. The Objection to

Discharge is sought on each of these independent grounds: 11 U.S.C. §§ 727(a)(2)(A), (a)(2)(B), (a)(3), (a)(4)(A), and (a)(5).

## SUMMARY OF ANSWER

Kevin Ehmka (“Defendant-Debtor”), in pro se, has filed an EDC 3-101 *pro se* form debtor answer, admitting that this is a core bankruptcy proceeding, and denying other allegations except the procedural facts regarding his filing of the bankruptcy petition. Dckt. 7.

## 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)(J). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant admits that this is a core matter proceeding, which necessarily includes admission that jurisdiction exists pursuant to 28 U.S.C. § 1334 Answer; Dckt. 7.

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 -----, **2022**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2022**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **202X**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **202X**.
- F. The Trial shall be conducted at **9:00 a.m. on -----, 202X**.

For this Adversary Proceeding, the following points, witnesses, and exhibits for the respective parties are set for trial. In light of Defendant-Debtor prosecuting this in pro se, the court does not determine the facts not in dispute, but leaves that for the Parties to do prior to trial.

Plaintiff	Defendant
<p>Jurisdiction and Venue:</p> <p>Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant admits that this is a core matter proceeding, which necessarily includes admission that jurisdiction exists pursuant to 28 U.S.C. § 1334 Answer; Dckt. 7.</p>	
<p>Undisputed Facts:</p> <p>None. Undisputed facts, if any, to be stated a pre-trial agreed statement on undisputed facts.</p>	
<p>Relief Sought:</p> <p>1. Denial of Defendant-Debtor's Discharge.</p>	<p>Relief Sought:</p> <p>1.</p>
<p>Plaintiff's Points of Law:</p> <p>1. 11 U.S.C. § 727(a)(2)(A) (transferred, removed, concealed, or so permitted property of Defendant-Debtor to so be within one year of filing the Chapter 7 case.</p> <p>2. 11 U.S.C. § 727(a)(2)(B) (transferred, removed, destroyed, mutilated, or concealed property of the Bankruptcy Estate)</p> <p>3. 11 U.S.C. § 727(a)(3) (concealed, destroyed, mutilated, falsified, or failed to keep or preserve record information)</p> <p>4. 11 U.S.C. § 727(a)(4) (knowingly and fraudulently made false oaths or accounts, including: Schedules, Statement of Financial Affairs, Monthly Statement of Income, and Chapter 7 Means Test)</p> <p>5. 11 U.S.C. § 727(a)(5) (failure to satisfactorily explain loss of assets or deficient assets to meet liabilities; including: transfers and withdrawals from personal, business, and brokerage accounts, which include SEP IRA transfers.</p> <p><u>Case Law</u></p> <p><i>Khalil v. Developers Sur. &amp; Indem. Co. (In re Khalil)</i>, 379 B.R. 163, 172 (9th Cir. BAP 2007), <i>aff'd</i>, 578 F.3d 1167, 1168 (9th Cir. 2009);</p> <p><i>Retz v. Samson (In re Retz)</i>, 606 F.3d 1189, 1197 (9th Cir. 2010);</p>	

*In re Devers*, 759 F.2d 751, 754 (9th Cir. 1985);

*Wolkowitz v. Beverly (In re Beverly)*, 374 B.R. 221 (9th Cir. BAP 2007);

*Maring v. PG Alaska Inv. Co (In re Maring)*, 338 F. App'x 655, 658 (9th Cir. 2009);

*In re Adeeb*, 787 F.2d 1339 (9th Cir. 2009);

*Beauchamp v. Hoose (In re Beauchamp)*, 236 B.R. 727 (9th Cir. BAP 1999);

*Boroff v. Tully (In re Tully)*, 818 F.2d 106, 111 (1st Cir.1987);

*Kavanagh v. Leija (In re Leija)*, 270 B.R. 497, 504 (Bankr. E.D. Cal. 2001);

*Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997);

*Fogal Legwear of Switz., Inc. v. Wills (In re Wills)*, 243 B.R. 58, 65 (9th Cir. BAP 1999);

*Emmett Valley Assocs. v. Woodfield (In re Woodfield)*, 978 F.2d 516, 518 (9th Cir. 1992);

*Adell v. John Richards Homes Bldg. Co. (In re John Richards Homes Bldg. Co.)*, 439 F.3d 248, 260 (6th Cir. 2006);

*In re Ward*, 92 B.R. 644 (Bankr. W.D. PA 1988);

*Stamat v. Neary*, 635 F.3d 974, 982 (7th Cir. 2011), citing *Payne v. Wood*, 775 F.2d 202, 205 (7th Cir. 1985);

*Keeney v. Smith (In re Kinney)*, 227 F.3d 679 (6th. Cir. 2000);

*Garcia v. Coombs (In re Coombs)*, 193 B.R. 557, 565-66 (Bankr. S.D. Cal. 1996);

*Hanson v. Moore (In re Hansen)*, 368 B.R. 868, 878 (BAP 9 th Cir. 2007);

*In re Neil Schafer*, 294 B.R. 126, 131 (N.D. Cal. 2003).

	Defendant-Debtors Points of Law:  1. None identified.
Abandoned Issues:  1. None	Abandoned Issues:  1. None
Witnesses:	Witnesses:

1. Carla Cordero Bankruptcy Analyst Office of the United States Trustee  2. Laurie Brugger Senior Paralegal Specialist Office of the United States Trustee  3. Cecilia Jimenez Paralegal Office of the United States Trustee  4. Kevan Karl Ehmka Defendant-Debtor	1. Kevan Karl Ehmka, Defendant-Debtor
Plaintiff's Exhibits:  EXH 01 – 2022.04.26 20-22873 Docket Report  EXH 02 – 2022.04.26 20-22873 ECF 1 Petition, Schedules, SOFA  EXH 03 – 2022.04.26 20-22873 Mailing Matrix  EXH 04 – 2022.04.26 20-22873 ECF 16 Order on Stipulation to Extend EXH 05 – 2022.04.26 20-22873 ECF 22 Motion for Rule 2004 Exam  EXH 06 – 2022.04.26 20-22873 ECF 24 Order for Rule 2004 Exam  EXH 07 – 2022.04.26 20-22873 ECF 27 Order to Extend  EXH 08 – 2022.04.26 20-22873 ECF 39 Motion to Convert to Chapter 13  EXH 09 – 2022.04.26 20-22873 ECF 40 Notice of Motion to Convert to Chapter 13  EXH 10 – 2022.04.26 20-22873 ECF 41 Declaration of James Keenan  EXH 11 – 2022.04.26 20-22873 ECF 45 Order Denying Motion to Convert  EXH 12 – 2022.04.26 20-22873 ECF 46 Order to Extend  EXH 13 – 2022.04.26 20-22873 ECF 47 Amended Petition, Schedules, SOFA  EXH 14 – 2022.04.26 20-22873 ECF 48 Chapter 13 Calculation of Monthly Income  EXH 15 – 2022.04.26 20-22873 ECF 55 Order to Extend	

EXH 16 – 2022.04.26 20-22873 ECF 58 Order to Extend

EXH 17 – 2022.04.26 21-02063 Adv Proc Docket Report

EXH 18 – 2022.04.26 21-02063 Adv Proc ECF 1 UST 727 Complaint

EXH 19 – 2022.04.26 21-02063 Adv Proc ECF 7 Defendant Answer

t. EXH 20 – 2022.04.26 21-02063 Adv Proc ECF 13 Scheduling Order

EXH 21 – 2022.04.26 21-02063 Adv Proc ECF 15 Notice of Deposition

EXH 22 – 2022.04.26 21-02063 Adv Proc Email Stipulation for Remote Deposition

EXH 23 – 2022.04.26 21-02063 Adv Proc Email Stipulation to Continue Deposition

EXH 24 – Ehmka 2020.07.14 341 Transcript

EXH 25 – Ehmka 2020.08.11 341 Continued Transcript

EXH 26 – Ehmka, Kevin Karl 2021.02.22 Rule 2004 Exam Transcript\_Certified Copy

EXH 27 – 2020.12.21 Ehmka RFP and Rule 2004 Letter

EXH 28 – 2021.01.22 R 2004 Exam Appt Letter

EXH 29 – 2021.02.08 RFP and R 2004 Exam Appt Reschedule Letter

EXH 30 – EDD Covid Payment Activity

EXH 31 – BOA prepaid card for EDD payments

EXH 32 – Gemstar 2019 1120S CT3 Taxes\_Redacted

EXH 33 – Gemstar 2022.03.09 Entity is Active

EXH 34 – Funding Circle complaint 34-2020-00249966 filed 2020.06.02

EXH 35 – S-DR-0048998 Superior Court of California Placer County\_Brenda Ehmka

EXH 36 – Ehmka FL-158 – Supporting Declaration for Attorney’s Fees and Costs Attachment

EXH 37 – Ehmka Spousal Support Tentative Decision 2021.02.18

EXH 38 – Item 6.79 (Ameritrade) – 2019\_8\_Statement

EXH 39 – Item 6.80 (Ameritrade) – 2019\_9\_Statement

EXH 40 – Item 6.83 (Ameritrade) – 2019_12_Statement EXH 41 – Item 6.84 (Ameritrade) – 2020_1_Statement EXH 42 – Item 6.85 (Ameritrade) – 2020_2_Statement EXH 43 – Item 6.88 (Ameritrade) – 2020_5_Statement EXH 44 – Item 8.4 (Ameritrade) – 2020_5_Statement EXH 45 – Item 8.13 (Wells Fargo) – February 2020 EXH 46 – Item 6.203 (Wells Fargo) – February 2020 EXH 47 – Item 7.100 (Ameritrade) – 2019_6_Statement EXH 48 – Item 7.101 (Ameritrade) – 2019_7_Statement EXH 49 – Item 7.105 (Ameritrade) – 2019_11_Statement EXH 50 – BofA eStmt_2019-12-18 EXH 51 – Item 7.106 (Ameritrade) – 2019_12_Statement EXH 52 – BofA eStmt_2020-01-21 EXH 53 – Item 7.25 (Ameritrade) – 2020_1_Statement EXH 54 – BofA eStmt_2020-02-18 EXH 55 – Item 7.26 (Ameritrade) – 2020_2_Statement	
	Defendant-Debtor’s Exhibits: 1. None identified.
Discovery Documents: EXH 56 – Kevin Ehmka Deposition Transcript, taken April 28, 2022.	Discovery Documents: 1. None Identified
Further Discovery or Motions: 1. No further discover.	Further Discovery or Motions: 1. None Identified

2. Motion for Judicial Notice of the court's files in this Adversary Proceeding and Related Bankruptcy Case.	
Stipulations: 1. None anticipated.	Stipulations: 1. None identified.
Amendments: 1. None.	Amendments: 1. None identified.
Dismissals: 1. None.	Dismissals: 1. None identified.
Agreed Statement of Facts: 1. Will seek with Defendant-Debtor.	Agreed Statement of Facts: 1. None identified.
Attorneys' Fees Basis: 1. Not to be requested.	Attorneys' Fees Basis: 1. None identified.
Additional Items 1. Plaintiff considering requesting Video Trial.	Additional Items 1. None identified.
Trial Time Estimation: 1 Day	Trial Time Estimation: Not identified