

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**PRE-HEARING DISPOSITIONS**

**DAY:** WEDNESDAY  
**DATE:** OCTOBER 5, 2016  
**CALENDAR:** 10:30 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

**GENERAL DESIGNATIONS**

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

**ORAL ARGUMENT**

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

**COURT'S ERRORS IN FINAL RULINGS**

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-11001](#)-A-7     DONNIE WILLIAMS  
[16-1059](#)  
WILLIAMS V. WILLIAMS  
WILLIAM EDWARDS/Atty. for pl.  
RESPONSIVE PLEADING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
5-29-16 [[1](#)]

**No tentative ruling.**

2. [12-11008](#)-A-7     RAFAEL ALONSO  
[15-1049](#)  
GORSKI V. ANGULO  
PHILLIP GILLET/Atty. for pl.  
ANSWER

CONTINUED PRE-TRIAL CONFERENCE  
RE: AMENDED COMPLAINT  
12-10-15 [[44](#)]

**No tentative ruling.**

3. [16-11513](#)-A-7     BARBRA HART  
[16-1051](#)  
HART V. NAVIENT (SALLY MAE) ET  
AL  
BARBRA HART/Atty. for pl.  
ANSWER

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
4-29-16 [[1](#)]

**No tentative ruling.**

4. [16-11513](#)-A-7     BARBRA HART  
[16-1051](#)             KWS-1  
HART V. NAVIENT (SALLY MAE) ET  
AL  
  
KEN WHITTALL-SCHERFEE/Atty. for mv.

MOTION TO DISMISS NAVIENT  
(SALLY MAE) AND WILLIAM M.  
DIEFENDER, III AND/OR MOTION  
FOR SUMMARY JUDGMENT  
9-8-16 [[23](#)]

### **Tentative Ruling**

**Motion:** Dismiss Parties as Defendants or, in the Alternative, Summary Judgment Dismissing Parties as Defendants

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. Any opposition to the relief sought has been waived. See *id.* ("Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.").

## **RULE 21 DISMISSAL**

Navient Solutions, Inc. f/k/a Sallie Mae, Inc. ("Navient") and William M. Diefender III ("Diefender"), the chairman of the board of directors of Navient, have brought this motion seeking their dismissal as party defendants. They have brought a motion to dismiss themselves as party defendants or alternatively, a motion for summary judgment dismissing themselves as party defendants.

The court will treat the motion as one for dismissal of Navient and Diefender as party defendants under Fed. R. Civ. P. 21.

"Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." Fed. R. Civ. P. 21, *incorporated by* Fed. R. Bankr. P. 7021.

A leading treatise on procedure discusses the remedy for improper joinder of a party under Rule 21. "If the court determines a party or parties to have been improperly joined, it may order that party dropped from the action (i.e., dismissed). Or, it may order any *claim* against a party severed and proceeded with separately." James M. Wagstaffe, William W. Schwarzer & Hon. A. Wallace Tashima, *Federal Civil Procedure Before Trial* ¶ 7:159, at 7-66 (rev. 2016).

The record shows that Navient filed a claim with the guarantor of the loan, NYSHESC, under the regulations governing the FFELP program, 34 C.F.R. 682.402, *et seq.* The record further shows that the guarantee was honored when NYSHESC took assignment of all interests in the Smart Consolidation Loan (student loans) on which the Plaintiff in this action may be liable. NYSHESC is the sole holder of this consolidation loan, and after the transfer to the guarantor, the record shows that Navient holds no interest, even as a servicer, in Plaintiff's consolidation loan. Navient, through its representative, has affirmed that Plaintiff owes no debt to Navient or any of its related companies, corporations, or entities.

Diefender is a chairman of the board of directors of Navient. If Navient holds no debt owed by the Plaintiff in this action to determine such debt dischargeable, then neither does Diefender, a chairman and director of Navient.

Accordingly, Navient and Diefender will be dismissed from this action as party defendants on the basis of their misjoinder. They are not the proper defendants as they do not hold the debt the Plaintiff seeks to determine dischargeable in this action. See 11 U.S.C. § 523(a)(8).

ECMC has been added as a defendant in this proceeding after intervening in the action. The motion indicates on information and belief that ECMC is the creditor who now holds the debt that is the subject of this action.

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the motion is granted. Navient Solutions, Inc. f/k/a Sallie Mae, Inc. and William M. Diefender III are hereby dismissed as party defendants from this action. Fed. R. Civ. P. 21.

- ## Final Ruling

## Final Ruling

The motion withdrawn, the matter is dropped as moot.