

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 24, 2019 at 11:00 a.m.

1. <u>12-38500-E-13</u> DARLENE GRAY	PRE-TRIAL CONFERENCE RE:
<u>18-2097</u>	COMPLAINT
GRAY VS.	6-20-18 [1]

Final Ruling: No appearance at the October 24, 2019 Pre-Trial Conference is required.

Plaintiff's Atty: Connie Tche

Defendant's Atty:

Adam N. Barasch [Wells Fargo Home Mortgage]

Jennifer C. Wong [Quality Loan Services Corp.]

Adv. Filed: 6/20/18

Answer: 10/3/18

Nature of Action:

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

Injunctive relief - other

The Pre-Trial Conference has been continued to March 2020, a date to be determined.

Notes

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Initial disclosures by 10/19/18

Close of discovery ~~4/26/19~~; ~~8/30/19~~; 11/29/19

Dispositive motions heard by ~~6/17/19~~; ~~9/16/19~~; 1/31/20

Pretrial conference set on ~~8/21/19~~; ~~10/24/19~~; TBD March 2020

Joint Stipulation of Dismissal with Prejudice as to Defendant Quality Loan Service Corp Only filed 10/26/18 [Dckt 26]; Order dismissing as to Quality Loan Service Corp filed 11/19/18 [Dckt 27]

Stipulation to Extend Deadlines filed 4/29/19 [Dckt 30]; Order approving filed 4/29/19 [Dckt 32]

Order Approving Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 6/13/19 [Dckt 35]

Joint Stipulation of Dismissal with Prejudice as to Defendant Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. filed 10/3/19 [Dckt 44]; Order dismissing as to Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. filed 10/8/19 [Dckt 45]

OCTOBER 24, 2019 STATUS CONFERENCE

The court has issued an Order to Show Cause why this Adversary Proceeding should not be dismissed without prejudice, all of the named defendants having been dismissed.

BLACK V. AKINS

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
Answer: none
Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:
Continued from 8/15/19. Status Conference Statements to be filed and served on or before 9/20/19.
Joint Status Conference Statement and Proposed Discovery Plan filed 9/24/19 [Dckt 77]

The Status Conference is XXXXXXXXXX.
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OCTOBER 24, 2019 CONTINUED STATUS CONFERENCE

On September 23, 2019, the Parties filed a Joint Status Conference Statement. Dckt. 77. While filing a Joint Status Conference Statement, Defendant Joseph Atkins has not filed an answer and not denied any of the allegations in the First Amended Complaint. Instead of an "answer" as required by Federal Rule of Bankruptcy Procedure 12(a) and Federal Rule of Bankruptcy Procedure 7012, Defendant has chosen to create a document called a "Response." Dckt. 75. Defendant has assigned this "Response" a new Docket Control Number "RLF-6" which indicates that it relates to some (unknown) motion and not the First Amended Complaint." While Defendant may assert that whether Defendant calls it an "answer" as specified by the Supreme Court in the Federal Rules of Civil Procedure or a made up term, the court should just deem it an "answer." Words have significance, and if Defendant's counsel has chosen to use a word other than specified in the Federal Rules of Civil Procedure, the court infers that it has been done intentionally and for some strategy reason.

Defendant's "Response" does admit and deny specific allegations in the First Amended Complaint. The "Response" also include thirty-six (36) affirmative defenses.

In the "Response," to Paragraph 3 of the First Amended Complaint, Defendant admits that this is an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 4007 and 7001(6), but denies "the allegation that an existent debt and that 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4) & 523(a)(6) are applicable." Response, ¶ 3, Dckt. 21.

In Paragraph 3 of the First Amended Complaint, all that is alleged is that the adversary proceeding is brought to determine the nondischargeability of a debt, citing the above identified Federal

Rules of Bankruptcy Procedure and Bankruptcy Code provisions. It makes no affirmative allegations of a specific debt. It is unclear how Defendant could deny, in good faith, that the identified specific provision of the Bankruptcy Code are not applicable in a complaint alleging the nondischargeability based on those specified Bankruptcy Code Sections.

This Adversary Proceeding was commenced on November 13, 2018. The Adversary Proceeding languished, with the court issuing an Order to Show Cause on why it should not be dismissed due to lack of prosecution on January 13, 2019 (Dckt. 7), Plaintiff failing to appear at the Status Conference and the Docket not showing that the summons and Complaint had been filed. Plaintiff then obtained counsel, which was substituted in by order of this court on February 19, 2019. Dckt. 15. The First Amended Complaint was filed on April 4, 2019. Dckt. 21.

On May 23, 2019, Defendant filed his first Motion to Dismiss. Dckt. 37. That Motion was denied without prejudice. A second Motion to Dismiss was filed on July 19, 2019. Dckt. 54. The court denied the second Motion to Dismiss. As discussed in the court's findings and conclusions:

Contrary to Defendant's assertion that the above is not "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests," it clearly does. While Defendant may need to avail himself of his right to conduct discovery, it is clear what is alleged to have occurred.

Plaintiff took the Vehicle to NORCAL and Defendant to have it restored, with a time period specified in which this occurred. It is alleged that NORCAL is a business that Defendant owned or was associated with, and one in which Defendant obtained sole control over the lease for the property in which NORCAL did business.

The specific promises made by NORCAL and attributed to Defendant are alleged as to the restoration and customization work to be done, the monies paid in reliance on the promises made, and that the work was not done. It is further alleged what Defendant failed to do, personally and through NORCAL, in addition to the taking and use of the Vehicle for use by Defendant's brother.

Defendant is clearly on fair notice as to what the claim is based on, with whom Plaintiff communicated, what is alleged to have been said, and how it is attributed or stated to have been said by Defendant.

Civil Minutes, Dckt. 67 at 10-11.

While Defendant may dispute what is alleged, that is subject to evidence to be presented to the court. The First Amended Complaint sufficiently states the basis for the claims asserted, with the Defendant being on full, fair, and quite detailed notice of what is alleged. Defendant's "concerns" over identifying specific dates is the subject of good faith discovery. There are no naked assertions, or formalistic pleading of sterile legal grounds in the First Amended Complaint. The "facts" alleged are many, sufficient, and clearly provide a basis

for Defendant to fairly know what is asserted, the claims made, and what he needs to address in asserting his defense.

Id. at 13.

This Adversary Proceeding follows extensive litigation between the parties in the State Court. The disputes date back to 1999 with the transactions at the hearing of the dispute occurring in the 2000's. The State Court litigation was commenced in 2009 and a \$323,804.85 judgment was entered.

The Parties all know this dispute, case, and State Court judgment very, very well.

Suggested deadlines

In their suggested dates and deadlines the Parties suggest the following:

1. Last Day to Make Initial Disclosures.....October 4, 2019
3. Close of Non-Expert Discovery.....April 30, 2020
4. Last Day for Designation of Experts.....May 15, 2020
5. Close of Expert Discovery.....June 19, 2020
6. Last Day to Hear Dispositive Motions.....September 10, 2019
7. Pre-Trial Conference.....October 2020

With respect to the need to have discovery extend June 2020 and have a pre-trial conference a year from now on a complaint to determine the nondischargeability of an existing State Court judgment, the parties explained **xxxxxxxxxxxxxxxxxxxxxx**.

APRIL 24, 2019 CONTINUED STATUS CONFERENCE

SUMMARY OF COMPLAINT

Dominique Black ("Plaintiff") filed her First Amended Complaint on April 4, 2019, in this Adversary Proceeding. Dckt. 21. The Certificate of Service states that it was served on April 18, 2019. Dckt. 26. It states that the "attached Summons and Notice of Status Conference in an Adversary Proceeding and a copy of the complaint" were served. No documents attesting to what was served are "attached."

Plaintiff's new counsel, who substituted in to represent the previously *pro se* Plaintiff in February 2019, filed a Status report on April 17, 2019. Dckt. 22. Plaintiff explains the investigation undertaken, the preparation of a First Amended Complaint, and that counsel is awaiting a reissued summons from the court.

Defendant-Debtor's counsel, making a special appearance at the hearing on an Order to Show Cause, provided a review of the applicable rules and law governing the initial prosecution of an

adversary proceeding and service of process. Dckt. 10.

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

No answer has been filed to the First Amended Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Dominique Black alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), 11 U.S.C. § 523(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). First Amended Complaint ¶¶ 3, 5, 6; Dckt. 21. In a “Response” filed on September 12, 2019, Defendant admits the allegations of jurisdiction and that this is a core proceeding. Response, ¶ 5, Dckt. 75.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff Dominique Black alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), 11 U.S.C. § 523(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). First Amended Complaint ¶¶ 3, 5, 6; Dckt. 21. In a “Response” filed on September 12, 2019, Defendant admits the allegations of jurisdiction and that this is a core proceeding. Response, ¶ 5, Dckt. 75.
- b. Initial Disclosures shall be made on or before -----, **2019**.
- c. Expert Witnesses shall be disclosed on or before -----, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2019**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**.
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m.** on -----, **2020**.

3. [17-20220-E-7](#) **WILLIAM/FAYE THOMAS**
[18-2090](#)

PUTNAM V. THOMAS, JR. ET AL

**PRE-TRIAL CONFERENCE RE:
AMENDED COMPLAINT OF
CREDITOR ROBERT S. PUTNAM
CHALLENGING THE
DISCHARGEABILITY OF CLAIM #12
8-29-18 [\[18\]](#)**

Plaintiff's Atty: Pro Se
Defendant's Atty: Lucas B. Garcia

Adv. Filed: 6/7/18
Answer: none
Amd. Cmplt Filed: 8/29/18
Answer: 1/16/19

Nature of Action:
Recovery of money/property - fraudulent transfer
Validity, priority or extent of lien or other interest in property
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
[LBG-3] Motion to Dismiss Adversary Proceeding filed 9/11/19 [Dckt 83]; Order denying filed 10/1/19 [Dckt 89]

Plaintiff's Pretrial Statement filed 10/11/19 [Dckt 90]
Defendant's Pretrial Statement filed 10/15/19 [Dckt 92]

The Pre-Trial Conference is XXXXXXXXXX
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SUMMARY OF COMPLAINT

Robert Putnam ("Plaintiff") filed his First Amended Complaint, Dckt. 18. The court has granted a Motion to Dismiss the claim of nondischargeability under 11 U.S.C. § 523(a)(4), but denied as to the remaining relief sought pursuant to 11 U.S.C. § 523(a)(6). The First Amended Complaint alleges the following:

1. Plaintiff provided services as counsel for Defendant Debtor in a State Court Action.
2. The obligation for those services is alleged to be \$118,156.92.
3. Plaintiff asserts having a lien on the proceeds of the State Court Action.

4. Defendant-Debtor, as the Chapter 13 Trustee, purported to settle the State Court Action for no recovery for the bankruptcy estate without bankruptcy court approval.

5. Defendant-Debtor, through his conduct, has attempted to rendered a valuable State Court Action, and Plaintiff's lien thereon, valueless.

SUMMARY OF ANSWER

William Carter, ("Defendant-Debtor") has filed an answer admitting and denying specific allegations in the Complaint. Dckt. 63. Defendant-Debtor also pleads with specificity four Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Robert Putnam, alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to Federal Rule of Bankruptcy Procedure 4007 and 7001(6), jurisdiction for determination of the nondischargeability of a debt under 11 U.S.C. § 523 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). In the Answer, Defendant William Carter Thomas admits the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 63.

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 -----, **2019**.

C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2019**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **201X**.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **201X**.

F. The Trial shall be conducted at ----**x.m. on** -----, **201X**.

The Parties in their respective Pretrial Conference Statements, Dckts. 90, 92, and as stated on the record at the Pretrial Conference, have stated:

<p>Jurisdiction and Venue:</p> <p>Plaintiff Robert Putnam, alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to Federal Rule of Bankruptcy Procedure 4007 and 7001(6), jurisdiction for determination of the nondischargeability of a debt under 11 U.S.C. § 523 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). In the Answer, Defendant William Carter Thomas admits the allegations of jurisdiction and core proceedings. Answer ¶ 3, Dckt. 63.</p>	
<p>Undisputed Facts:</p> <p>1. None Clearly Stated</p>	<p>Undisputed Facts:</p> <p>1. None Clearly Stated</p>
<p>Disputed Facts:</p> <p>1. None Clearly Stated</p>	<p>Disputed Facts:</p> <p>1. None Clearly Stated</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None Stated</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified</p>
<p>Relief Sought:</p> <p>1. Debt of \$118,156.92, with interest, determined to be nondischargeable</p>	<p>Relief Sought:</p> <p>1. Judgment for Debtor denying Plaintiff the relief requested.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(6)</p> <p>2. <i>Carillo v. Su (In re Su)</i>, 290 F.3d 1140, 1142, 1146 (9th Cir. 2002).</p> <p>3. <i>Cablevision Systems Corp. V. Cohen (In re Cohen)</i>, 121 B.R. 267, 271 (Bankr. E.D.N.Y. 1990).</p>	<p>Points of Law (stated as a “brief with argument” rather than just identifying the relevant points of law):</p> <p>1. 11 U.S.C. § 523(a)(6)</p> <p>2. <i>Barboza v. New Form, Inc. (In re Barboza)</i>, 545 F.3d 702, 706 (9th Cir.2008)</p> <p>3. <i>Carrillo v. Su (In re Su)</i>, 290 F.3d 1140, 1146–47 (9th Cir.2002)</p> <p>4. <i>Petralia v. Jercich (In re Jercich)</i>, 238 F.3d 1202, 1206 (9th Cir.2001)</p>

	<ol style="list-style-type: none"> 5. <i>In re Bailey</i>, 197 F.3d 997, 1000 (9th Cir. 2001) 6. <i>Messerall v. Fulwider</i>, 199 Cal.App.3d 1324, 1329 (1988) 7. <i>Weiss v. Marcus</i>, 51 Cal.App.3d 590 (1975) 8. <i>Imperial Valley Co. v. Globe Grain & Milling Co.</i>, 187 Cal. 352, 202 P. 129 (1921) 9. <i>Del Bino v. Bailey</i>, AP 96–3224DM, at 10 (Bankr.N.D.Cal. Mar. 7, 1997)
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. William Thomas 2. Anthony Fritz 3. Robert Putnam 4. Violet Delgado 5. Gigi Valenti 6. Jill Turner 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. William Thomas 2. Faye Thomas 3. Anthony Fritz 4. Hank Spacone
<p>Plaintiff's Exhibits:</p> <ol style="list-style-type: none"> 1. February 15, 2013, the original proposed hourly agreement signed by Putnam and emailed to Violet Delgado, APS' bookkeeper for William Thomas' signature. 2. Hourly fee agreement with changes made by William Thomas. Email dated 2/15/13 from Violet Delgado to Putnam with attached hourly fee agreement with changes made by Thomas. 3. July 1, 2013 Putnam/APS Contingency Fee Agreement. 	

4. Van Dyke Cross-Complaint in the APS v. Van Dyke case.
5. Washington Cross-Complaint in the APS v. Van Dyke case
6. Tentative Ruling on Demurrer to Third Amended Complaint in the APS v. Van Dyke case.
7. Third Amended Complaint in the APS v. Van Dyke case.
8. Email dated September 22, 2016, from Putnam to Thomas asking Thomas whether he has facts that he would like to disclose in a declaration in support of APS's Opposition to the defendants' Motion to Continue the Trial in the APS case.
9. APS' Opposition to Defendant's Motion to Continue Trial Date.
10. March 23, 2017, email from Hernandez's office to William Thomas re: Settlement of the APS v. Van Dyke case must be approved by motion before the bankruptcy judge. [The email shows that Thomas forwarded that email to Putnam.]
11. March 24, 2017, email from Hernandez office to William, 4 Thomas re: Settlement of the APS v. Van Dyke case must be approved by the bankruptcy judge.
12. March 29, 2017, APS' Mandatory Settlement Conference Statement in the APS v. Van Dyke case.
13. March 29, 2017, Defendants' Mandatory Settlement Conference Statement in the APS v. Van Dyke case.
14. May 13, 2017 email from Putnam to Thomas stating: "I just spoke to [attorney] Bill Oaken about helping out in your case ... Would you have a problem with him associating in this case?"
15. May 29, 2017 email from Putnam to Thomas and Hernandez re: "Please put the attached contingency fee agreement in your file for the bankruptcy of William and Faye Thomas. As you will see, I have a lien on the APS v. Van Dyke case."
16. May 30, 2017 email from Hernandez to Putnam re: "If you have not yet filed a Proof of Claim with the court, then that is the only other thing you would need to do. The claim forms are available on the court's website for free."
17. June 3, 2017, email from Putnam to Thomas and Fritz offering to associate with Fritz
18. June 16, 2017, Putnam's Attorney's Fees lien filed in the APS v Van Dyke case.
19. June 22, 2017, Minute Order by the APS Court re: STATUS OF STAY, Hearing Continued to August 3, 2017, additional briefs to be filed by all parties.
20. August 3, 2019, APS court's tentative ruling on the hearing re: Status of Stay.
21. Fritz Declaration in Support of Motion for Relief From Automatic Stay filed in this bankruptcy

court. [Doc 181]

22. July 18, 2017 Trustee's Response to Motion for Relief from Stay by Affiliated Professional Services, Inc., re: APS lawsuit listed on Schedule B requesting \$550,001.00. [Doc 26]

23. August 1, 2017, this Bankruptcy Court's Order Continuing Motion for Relief From Automatic Stay from August 1, 2017 to August 29, 2017, and further ordering William and Faye Thomas to file supplemental pleadings on or before August 15, 2017. [Doc 39]

24. APS v. Van Dyke Settlement Agreement signed by Van Dyke 17 and Washington August 16, 2017.

25. August 22, 2017, Proof of Service re: Notice of Settlement and Request for Withdrawal of Hearing on Motion for Relief From Stay by Affiliated Professional Services, Inc., filed in this bankruptcy court by Thomas/Fritz.

26. August 26, 2017, email from Putnam to Thomas and Fritz re: "WITHDRAW THE SETTLEMENT, GO FORWARD WITH THE MOTION FOR RELIEF FROM STAY AND I WILL TRY THE CASE MYSELF. . ."

27. August 26, 2017, email from Putnam to Thomas and Fritz re: "If you have not yet filed a Request for Dismissal, DO NOT DO IT."

28., August 26, 2017, email from Putnam to Thomas and Fritz re: "Rescind the settlement agreement. . ."

29. August 29, 2017, email from Fritz to Putnam re: Fritz believes APS would have prevailed in the APS v. Van Dyke case, etc.

30. The Settlement Agreement in the APS. case signed by Fritz on August 26, 2017.

31. September 6, 2017, Request for Dismissal filed by Fritz on behalf of APS and Thomas in the APS v. Van Dyke case.

32. Fritz time sheets from May 2017 through December, 2018.

33. Calculations made by Putnam from the Fritz time sheets for time Fritz spent on bankruptcy work, including incomplete Motion for Relief From Automatic Stay, assisting Hernandez with objecting to claims made by Van Dyke and Washington, and representing Thomas in the OEX by JP Morgan Chase. \$15,798.25

34. Fritz's unfiled Motion to Extend 5 Year Statute in the 17 APS v. Van Dyke case which shows that the 5 year statute was not a threat to the APS case. [WCT001946-WCT1953, from documents subpoenaed by Putnam and produced by Fritz]

35. Calculations made by Putnam from Fritz time sheets for time Fritz spent on unnecessary Motion to Extend Five Year Period to Bring Action to Trial which was never filed. \$5,460.00

36. Declaration of Anthony Fritz in support of Motion for Relief from Automatic Stay filed in this bankruptcy Court in which Fritz stated that the APS judge was inclined to allow the APS case to go forward and only stay the Washington cross-complaint.
37. August 14, 2017, email from Van Dyke to Fritz in which Van Dyke stated: "I don't know if you need permission from the bk Trustee but if you do I assume you will be able to obtain it??" [WCT000914]
38. August 26, 2017, email from Putnam to Thomas and Fritz stating: "If you have not yet filed a Request for Dismissal, DO NOT DO IT."
39. August 26, 2017, email from Putnam to Thomas and Fritz re: "Rescind the settlement agreement. . ."
40. September 11, 2017, email from Putnam to Thomas in which Putnam stated some of his reasons for wanting to substitute out of, [or associate with another attorney] in the APS case. [WCT001444]
41. September 11, 2017 email from Putnam to Thomas and Fritz asking whey they had settled the APS case for no money when the defendants had offered \$65,000 at the Mandatory Settlement Conference.
42. September 11, 2017, email from Thomas to Fritz stating that Putnam "quit" and left Thomas "high and dry. . ." [WCT001954-1955, from Fritz file obtained by subpoena]
43. September 15, 2017, email from Thomas to Fritz in which Thomas stated:
- Paragraph D references Putnam's representation of William Thomas? I was of the impression he represented only APS? That is how our Attorney Client Contract reads. No mention of me personally. Which raises the question of how he could sue me personally, as he has threatened, when there was no contract between us? He can have a default judgment against APS and stand in line. Bill [WCT001960-001961]
44. September 18, 2017, email from Putnam to Fritz asking "Does your client [Thomas] still refuse to acknowledge the \$60K offer? By email, Fritz responded: "I have no reason to believe that his recollection, or lack thereof, concerning Van Dyke's offer(s) made at the MSC has changed." [WCT001684] [WCTOO1440, 1442, 14511]
45. September 10, 2018, Order by this Court denying the debtor's Motion to Approve the Settlement of the APS v. Van Dyke matter, which was argued before this Court more than a year after the APS settlement. [Doc 215, Order]
46. September 11, 2017, email from Putnam to Thomas in which Putnam stated: "My contract was with APS. Bill Thomas, the individual, created a problem with his bankruptcy." [WCT001454-1455]
47. September 14, 2017, email from Putnam to Fritz re:

“...on August 26, I sent this email to both you and Bill:
WITHDRAW THE SETTLEMENT, GO FORWARD WITH THE MOTION
FOR RELIEF FOR STAY AND I WILL TRY THE CASE
MYSELF, NOTWITHSTANDING MY INABILITY TO
UNDERSTAND VAN DYKE. INTEND TO FIND AN
ASSOCIATE TO BE MY EARS AND TO HELP ME
WITH THE TRIAL. Bill called me two days later, on
August 28, when I was at the bankruptcy court getting
ready to file that bogus pleading I had hastily prepared in
an attempt to stop what I saw as a sabotage of the case.
When Bill called I asked him if Requests for Dismissals
had been filed. He said he needed to call you. He called
me back a few minutes later and said that you said that
the Request for Dismissal had already been filed. Then I
go to the [APS] courthouse and look at the file and see
that you filed and served your Request for Dismissal on
September 6. That's a full 9 days after I demanded that
the settlement be stopped so I could try the case. Why the
deliberate sabotage? Why go out of your way to prevent
me from getting any compensation for all the work I
performed on that case?" [WCT001548]

48. September 5, 2017, email from Thomas to Putnam in which Thomas stated: "You are the one who quit, not me." [WCT001267]

49. September 10, 2018, this Court's Order Denying Motion to Approve Compromise of the APS v. Van Dyke case.

50. September 18, 2017 email from Van Dyke to Fritz: "The below seems the most concerning otherwise I just can't stand him [Putnam] so my instinct is to reject all his stupid comments." [WCT001627]

51. Putnam Adversary Complaint.

52. Debtor's Answer to Adversary Complaint.

53. Deposition of William Thomas

54. Defendant's Response to Request for Admissions in this adversary proceeding.

55. Putnam time sheets in the APS v. Van Dyke case.

56. Plaintiff's Damages Calculations.

Defendant's Exhibits:

1. The settlement of the APS v Van Dyke underlying case

2. Attorney client fee agreement between APS and Plaintiff 3. Emails between Plaintiff and Defendant 4. Trustees Declaration in support of settlement/sale of case assets	
Discovery Documents: 1. Deposition of William Thomas. 2. Thomas' responses to Putnam's RFA's in this adversary case 3. Documents subpoenaed from Fritz by Putnam. 4. Documents produced by debtors to Putnam.	Discovery Documents: 1. Deposition of William Thomas
Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. None
Stipulations: 1. None	Stipulations: 1. None
Amendments: 1. None	Amendments: 1. None
Dismissals: 1. None	Dismissals: 1. None
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. None
Attorneys' Fees Basis: 1. Not Requested	Attorneys' Fees Basis: 1. "May be sought as appropriate." No

	basis stated – None Requested in this Adversary Proceeding.
Additional Items 1. None	Additional Items 1. None Stated - Argumentative Narrative.
Trial Time Estimation: Five to Ten Days.	Trial Time Estimation: One to Two Days

FIRST DATA MERCHANT SERVICES
LLC V. MCA RECOVERY, LLC ET AL

Final Ruling: No appearance at the October 24, 2019 Status Conference is required.

Plaintiff's Atty: Randye B. Soref; Andrew Joseph Nazar

Defendants' Atty:

Robert S. McWhorter [MCA Recovery, LLC]

Gabriel E. Liberman [First Capital Retail, LLC]

Jeffrey D. Ganz; J. Russell Cunningham [13th Floor/Pilot, LLC]

Adv. Filed: 3/22/18

Answer: 4/23/18 [First Capital Retail, LLC]

Amd. Cmplt. Filed: 5/17/18

Answer: 7/20/18 [13th Floor/Pilot, LLC]

7/20/18 [First Capital Retail, LLC]

7/20/18 [MCA Recovery, LLC]

Amd. Answer: 8/3/18 [MCA Recovery, LLC]

Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 7/20/18

Answer: none

Cross-Claim Filed [by MCA Recovery, LLC]: 8/3/18

Answer: 8/22/18 [13th Floor/Pilot, LLC]

Amd. Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 8/22/18

Answer: 10/23/18 [MCA Recovery, LLC]

Notes:

Continued from 8/21/19 to afford the Parties time to proceed with concluding the settlement of these and related issues.

The Status Conference is continued to 11:00 a.m. on December 12, 2019,
the documentation of the settlement and this matter will be dismissed or any to
allow the Parties to complete motions required in the parent case noticed and
set for hearing.

In the Joint Status Report the remaining Parties report:

On August 7, 2019, MCA's counsel circulated a draft settlement agreement to counsel for the Trustee and Pilot. Since then, the parties exchanged comments on the settlement agreement, but have not finalized the settlement agreement as there are certain terms that must be resolved. The parties will continue to work towards settlement.

Dckt. 165. The court continues the Status Conference to allow the Parties and their counsel to Diligently bring this Adversary Proceeding to a conclusion. The court declines, at this time, to conduct in person weekly status conferences as a method of managing the diligent prosecution by the Parties.

5. [18-26585-E-13](#) JULIAN PEREZ
[19-2087](#) UST-1 Jason Blumberg
U.S. TRUSTEE V. DAVIS

MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY
9-26-19 [\[9\]](#)

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on September 26, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Leave to Take Immediate Discovery 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Leave to Take Immediate Discovery is granted.

Plaintiff in this Adversary Proceeding, Tracy Hope Davis, United States Trustee for Region 17, ("Plaintiff") seeks an order of the court to take immediate discovery of JP Morgan Chase Bank, N.A. ("Chase Bank") with respect to a Chase Account that has been linked to Alan Davis ("Defendant").

Plaintiff argues their request is limited to asking Chase Bank for contact information that will allow them to serve Defendant. They seek information limited to "(i) the names of any present or former account holders of the Chase Account; (ii) the names of any persons that have or had signing authority with respect to the Chase Account; (iii) all signature cards for the Chase Account; and (iv) the addresses, phone numbers, email addresses, and Social Security Numbers for any past or present account holders and for any persons that have or had signing authority for the Chase Account." *Motion*, Dckt. 9. Further, Plaintiff argues that the burden on Chase Bank would be limited to routine costs in responding to Plaintiff's request. *Id.*

Defendant filed an Opposition to this Motion on October 16, 2019. Defendant contends that the Motion should be denied as moot. In its Opposition, Defendant argues that the motion is unnecessary

because its only purpose is to learn additional information that would allow it to serve the Defendant, information no longer needed because Defendant “has agreed to waive service.” *Opposition*, Dckt. 16.

APPLICABLE LAW

Federal Rule of Civil Procedure 26 applies in a bankruptcy case adversary proceeding. FED. R. BANKR. P. 7026. That rule permits the court discretion to order discovery before parties have conferred as required by the rules of civil procedure. The rule specifically provides:

(d) Timing and Sequence of Discovery.

(1) Timing. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

FED. R. CIV. P. 26(d)(1).

Further, a party is permitted to take discovery before a discovery conference upon a showing of good cause. *See Semitol, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Good cause has been found when the need for expedited discovery outweighs the prejudice to the responding party. *Id.*

DISCUSSION

Plaintiff’s argument is well taken. Here, good cause exists in that Plaintiff has unsuccessfully been attempting to serve Defendant through no fault of her own. Defendant seems to thrive in staying behind the scenes and now is trying to avoid the current action. Defendant became involved in the related bankruptcy proceeding in October 2018. In that filing, Defendant failed to provide his contact information to any and all documents Plaintiff alleges Defendant prepared over the course of 8 to 9 months. Defendant and Counsel are aware that Plaintiff has been attempting service since July 2019 and refuse to cooperate. Defendant’s offer of waiver of service will not do. Plaintiff’s need for Defendant’s contact information (which he refuses to give) in order to provide service outweighs the administrative costs that Chase Bank might incur in providing this information. Therefore, the request to take immediate discovery of Chase Bank for purposes of obtaining contact information for Defendant is good cause for leave and the Motion is granted.

Defendant’s counsel makes the “interesting” argument that the motion to obtain the necessary information to serve the Defendant should be denied because, “Defendant has not yet been properly served with the complaint and has retained counsel to represent him in this process.” *Opposition*, p. 1:24-25; Dckt. 16. In a footnote, Counsel for Defendant states that he has advised Counsel for Plaintiff that Defendant will waive, sometime in the future, service of the complaint. But, notwithstanding counsel purportedly representing Defendant, such service has not been waived or that Counsel and Defendant confirm that Counsel is Defendant’s agent for service of process for this Adversary Proceeding.

Also, in making the above assertion, Counsel for Defendant states only that he has been retained to “represent [Defendant] in this process.” He does not say in this “adversary proceeding.” He

does not say that Defendant is making a general appearance and Counsel is Defendant's attorney of record in this Adversary Proceeding. Only that he is counsel with respect "to this process," which sounds like only to the extent of trying to keep Plaintiff from ascertaining a good location address for service.

Additionally, much of this information to be obtained is what Defendant is obligated to provide in making money by being a document petition preparer and "helping" people into bankruptcy cases.

Good cause is clearly shown here. The Debtor in *In re Perez*, 18-26585, has advised the court that Defendant has served as a document petition preparer and provided those services for compensation. Such statements appear to be credible and consistent with the paperwork filed.

The discovery is very, very limited. The U.S. Trustee seeks only the following information for purposes of making sure that the right person is served and this Adversary Proceeding can proceed:

- (i) the names of any present or former account holders of the Chase Account;
- (ii) the names of any persons that have or had signing authority with respect to the Chase Account;
- (iii) all signature cards for the Chase Account; and
- (iv) the addresses, phone numbers, email addresses, and Social Security Numbers for any past or present account holders and for any persons that have or had signing authority for the Chase Account.

This will make sure that all of the parties against who the U.S. Trustee believe may have been involved in the transactions at issue relating to Mr. Perez, and possibly others, paying for bankruptcy related services. This will then allow everyone to have full and fair notice and opportunity to address whatever issues, discovery, and other actions the U.S. Trustee would seek to take. The court does not find Defendant's assertion that such information and knowledge by other persons of such ongoing activities should be hidden from those other persons because Defendant now has an attorney communicating with counsel for the Plaintiff.

This is not substantive discovery of facts which will then be used against persons who had no opportunity to participate in the Adversary Proceeding, but only to get the right people properly served and give everyone their full Due Process rights. The court does not find persuasive Defendant's assertion that the U.S. Trustee should not be able to identify all of the people who have or had an interest in or control of the bankruptcy account into which the monies for the undisclosed document petition preparer services were deposited to insure that all of the real parties in interest have the opportunity of their day in court, and not merely be limited to only the Defendant standing behind his attorney coming out of the shadows.

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 for Leave to Take Immediate Discovery filed by Plaintiff in this Adversary Proceeding, Davis (“Plaintiff”) 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 and Plaintiff U.S. Trustee is authorized to proceed with discovery from JP Morgan Chase Bank, N.A. regarding the bank account identified as Professional Legal Aid’s corporate account at Chase Bank ending with the digits 3620 for the following information:

- (i) the names of any present or former account holders of the Chase Account;
- (ii) the names of any persons that have or had signing authority with respect to the Chase Account;
- (iii) all signature cards for the Chase Account; and
- (iv) the addresses, phone numbers, email addresses, and Social Security Numbers for any past or present account holders and for any persons that have or had signing authority for the Chase Account.