

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**December 12, 2019 at 11:00 a.m.**

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1. <a href="#"><u>17-26125-E-7</u></a> <b>FIRST CAPITAL RETAIL,</b>	<b>CONTINUED STATUS CONFERENCE RE:</b>
<a href="#"><u>18-2030</u></a> <b>LLC</b>	<b>AMENDED COMPLAINT</b>
<b>FIRST DATA MERCHANT SERVICES</b>	<b>5-17-18 <a href="#"><u>[39]</u></a></b>
<b>LLC V. MCA RECOVERY, LLC ET AL</b>	

Plaintiff's Atty: Randy 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 [13<sup>th</sup> Floor/Pilot, LLC]

Adv. Filed: 3/22/18

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

Amd. Cmpl. Filed: 5/17/18

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

Answer: none

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

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

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

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

Notes:

Continued from 10/24/19 to allow the Parties to document the settlement and complete motions required in the parent case noticed and set for hearing.

**December 12, 2019 at 11:00 a.m.**

**- Page 1 of 11 -**

**Final Ruling: No appearance at the December 12, 2019 Hearing is required.**

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Set by order of the court [Dckt 12]

Certificates of Debtor Education filed for each Debtor 11/29/19 [Dckts 15 & 16]

<p><b>The request for Temporary Waiver is granted, and the required Certificates of Debtor Education were filed on November 29, 2019.</b></p>
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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 for Temporary Waiver of the filing of the required certificates of Debtor Education having been reviewed, the Debtor Education Certificates having been filed on November 29, 2019 (Dckts. 15, 16), and good cause appearing,

**IT IS ORDERED** that the time for completing and filing the Certificates of Debtor Education in this case is extended through and including December 12, 2019.

HUSTED V. MEPCO LABEL SYSTEMS  
ET AL

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, and Defendant's Attorney on October 28, 2019. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion for Summary Adjudication and/or Summary Judgment is *continued to xxxxxxxxxxxx, 2020*.**

Currently, there are three motions pending before this court, one Motion for Summary Adjudication filed the Defendants in Adversary Proceeding No. 19-02006, one Motion for Partial Summary Judgment filed on behalf of Georgene Gassner in Adversary Proceeding No. 19-02038, and one Motion to excuse Turnover filed on behalf of Defendant, Laura Strombon, Trustee of the Thomas Gassner Trust in the general bankruptcy case No. 10-27435.

#### **Adversary Proceeding 19-02006**

Chapter 7 Trustee, Kimberly J. Husted filed Adversary Proceeding No. 19-02006 on January 7, 2019. Dckt. 1. Defendants filed their Answer on February 5, 2019. Dckt. 8. Initial disclosures were exchanged on April 30, 2019. Dckt. 19. The Discovery Conference was held on February 27, 2019. Discovery is still in process.

Defendants filed the present Motion on October 28, 2019. Dckt. 50. Plaintiff Chapter 7b Trustee filed an Opposition on November 21, 2019. Dckt. 62. Followed by a Response filed by Defendants on November 27, 2019. Dckt. 67.

Defendants requests through this Motion a termination by the court that the Thomas Gassner Trust is a spendthrift trust protected by California Probate Codes 15301(a), 15302, and 15303, and therefore, is neither the Trust nor its assets are “property of the estate” pursuant to 11 U.S.C. §541(c)(2) and cased law cited in Defendants Points and Authorities in Support of the Motion and in their Reply to Plaintiff’s Opposition.

### **Adversary Proceeding 19-02038**

Plaintiff Georgene Gassner filed Adversary Proceeding No. 19-02038 on March 12, 2019. Dckt. 1. Plaintiff Gassner filed a first Amended Complaint on July 12, 2019. Dckt. 20. Defendant filed their Answer on April 11, 2019. Dckt. 8. Plaintiff Gassner filed the Motion for Summary Judgment on October 31, 2019. Dckt. 36. On November 6, 2019 Plaintiff Gassner filed a Motion to Allow Supplemental Pleading to first Amended Complaint. Dckt. 50. Discovery has not begun.

Plaintiff Gassner’s Motion for Summary Judgment requests partial summary judgment on the issue of violation of the automatic stay. Defendant Strombon filed an Opposition on November 21, 2019. Dckt. 72. Defendants Carol L. Gassner and Alfred M. Gassner filed a Response on November 21, 2019. Dckt. 77. Plaintiff Gassner filed an Omnibus Reply to the Oppositions on November 27, 2019. Dckt. 80. Plaintiff Gassner filed Evidentiary Objections to Defendants Carol and Alfred Gassner on November 27, 2019. Dckt. 84.

Kimberly Husted, Trustee ("Plaintiff-Trustee") alleges in the Complaint (Dckt. 1) that:

1. The Bankruptcy Estate in the Chapter 7 case filed by Thomas Gassner is the owner of assets currently held in trust, which includes 2,000 shares of the MEPCO stock.
2. Debtor’s interest in the Trust was not disclosed on the Schedules, and in 2017 reopened Debtor’s case to amend Schedule B to list the trust interest as an asset.
3. The Complaint seeks the turnover of the property as property of the bankruptcy estate.
4. The Complaint seeks recovery for violation of the automatic stay.
5. The Third Count in the Complaint seeks to dissolve MEPCO.

Plaintiff's Atty: Holly A. Estioko

Defendant's Atty:

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]

Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19

Answer:

4/11/19 [Laura Strombom]

4/11/19 [Alfred M. Gassner; Carol L. Gassner]

Amd. Cmplt. Filed: 7/12/19

Answer:

8/5/19 [Alfred M. Gassner; Carol L. Gassner]

8/13/19 [Laura Strombom]

Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]

8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:

Sanctions for willful violation of automatic stay (against Settlers and Strombom)

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

Declaratory judgment

Injunctive relief - other

Notes:

Continued from 11/14/19 to be conducted in conjunction with the Motion for Partial Summary Judgment in this Adversary Proceeding.

<b>The Status Conference is continued to <del>xxxxxxx</del>, 2020.</b>
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**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's and Defendant's Attorney on October 31, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion for Summary Judgment is *continued to xxxxxxxx, 2020.***

Currently, there are three motions pending before this court, one Motion for Summary Adjudication filed the Defendants in Adversary Proceeding No. 19-02006, one Motion for Partial Summary Judgment filed on behalf of Georgene Gassner in Adversary Proceeding No. 19-02038, and one Motion to excuse Turnover filed on behalf of Defendant, Laura Strombon, Trustee of the Thomas Gassner Trust in the general bankruptcy case No. 10-27435.

#### **Adversary Proceeding 19-02006**

Chapter 7 Trustee, Kimberly J. Husted filed Adversary Proceeding No. 19-02006 on January 7, 2019. Dckt. 1. Defendants filed their Answer on February 5, 2019. Dckt. 8. Initial disclosures were exchanged on April 30, 2019. Dckt. 19. The Discovery Conference was held on February 27, 2019. Discovery is still in process.

Defendants filed Motion for Summary Judgment on October 28, 2019. Dckt. 50. Plaintiff Chapter 7 Trustee filed an Opposition on November 21, 2019. Dckt. 62. Followed by a Response filed by Defendants on November 27, 2019. Dckt. 67.

## **Adversary Proceeding 19-02038**

Plaintiff Georgene Gassner filed Adversary Proceeding No. 19-02038 on March 12, 2019. Dckt. 1. Plaintiff Gassner filed a first Amended Complaint on July 12, 2019. Dckt. 20. Defendant filed their Answer on April 11, 2019. Dckt. 8. Plaintiff Gassner filed the Motion for Summary Judgment on October 31, 2019. Dckt. 36. On November 6, 2019 Plaintiff Gassner filed a Motion to Allow Supplemental Pleading to first Amended Complaint. Dckt. 50. Discovery has not begun.

Plaintiff Gassner's Motion for Summary Judgment requests partial summary judgment on the issue of violation of the automatic stay. Defendant Strombon filed an Opposition on November 21, 2019. Dckt. 72. Defendants Carol L. Gassner and Alfred M. Gassner filed a Response on November 21, 2019. Dckt. 77. Plaintiff Gassner filed an Omnibus Reply to the Oppositions on November 27, 2019. Dckt. 80. Plaintiff Gassner filed Evidentiary Objections to Defendants Carol and Alfred Gassner on November 27, 2019. Dckt. 84.

Plaintiff Georgene Gassner ("Plaintiff-Trustee") alleges in the Complaint (Dckt. 1) that:

1. Sanctions for willful violations of the automatic stay against Settlers of the Trust Carol and Alfred Gassner for attempting to sell the Trust assets.
2. Sanctions for willful violations of the automatic stay against Trust Trustee Laura Strombon for attempting to sell the Trust assets.
3. Breach of Fiduciary duty against Defendant Strombon for failing to distribute Trust assets to now-deceased Debtor once he turned age 50 on July 2, 2016 and knowingly participating in Defendants Gassners in attempting to deprive Debtor of the Trust Assets and attempting to sell said assets..
4. For declaratory relief, that the state court action filed in San Joaquin County is void.
5. Plaintiff seeks injunctive relief compelling Settlers to dismiss the state court action.
6. Plaintiff seeks damages including attorneys' fees, costs as well as punitive damages against Settlers for willful violation of the discharge injunction.

**Tentative Ruling:** The Motion to allow the Filing of Supplemental Pleadings to the First Amended Complaint has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

**Below is the court's tentative ruling.**  
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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's and Defendant's Attorney on November 6, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Allow Supplemental Pleading to First Amended Complaint 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Allow Supplemental Pleading to First Amended Complaint is  
XXXXX.**

The Motion seeks to supplement the filed First Amended Complaint with a subsequent settlement between Plaintiff and the Chapter 7 Trustee in the related bankruptcy case.



Rather than a “supplement to,” it appears that what is sought is the filing of a Second Amended Complaint.

At the hearing, xxxxxxxxxxxx

7.	<a href="#"><u>17-22887-E-7</u></a> <a href="#"><u>19-2119</u></a> CARTER ET AL V. STODDARD	SEAN STODDARD DBJ-5	<b>MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 10-14-19 [9]</b>
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**Final Ruling:** No appearance at the December 12, 2019 hearing is required.  
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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 Plaintiff’s Attorney, and Office of the United States Trustee on October 14, 2019. By the court’s calculation, 59 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The hearing on the Motion to Dismiss Adversary Proceeding has been continued to January 30, 2020 at 11:00 a.m. pursuant to the prior order of the court (Dckt. 32).</b></p>
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## No Tentative Posted

**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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants' Attorney on October 18, 2019. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Motion for Attorneys' Fees After Judgment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Leave to File Late Motion for Attorney's Fees After Judgment is  
XXXXX.**

Gevorg Poladyan and Armine Asatryan, the Plaintiffs, seek leave to file a late motion for attorneys' fees in this Adversary Proceeding. Dckt. 100. It is alleged in the Motion that though the Motion for attorneys' fees was prepared, counsel failed to file the Motion and supporting documents. The Motion ended up being filed seventeen days "late."

It is asserted that this failure to file was due to excusable neglect or mistake. Relief is sought pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. Plaintiffs seek the recovery of attorneys' fees having successfully defended an action for the nondischargeability of debt under 11 U.S.C. § 523.

## **Opposition**

Defendants oppose the Motion. Dckt. 115. Defendants argue that Plaintiff's counsel's assertion that he was negligent in filing the Motion for attorneys' fees seventeen days after the expiration of the fourteen day period for filing such motion provided in Federal Rule of Civil Procedure 54(d)(2)(B) is not sufficient. Defendant's further assert the seventeen day delay would be a disruption to efficient judicial administration. Further, that the allowing for the seventeen day late filing would be of prejudice to Defendants because they are not employed and do not have income.

## **DISCUSSION**

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