



AMERICAN
BANKRUPTCY
INSTITUTE

2018 Mid-Atlantic Bankruptcy Workshop

ABI Talks

James E. Van Horn, Moderator

McGuireWoods LLP; Baltimore

Hon. Richard E. Fehling

U.S. Bankruptcy Court (E.D. Pa.); Reading

Thomas M. Horan

Fox Rothschild LLP; Wilmington, Del.

Laura Davis Jones

Pachulski Stang Ziehl & Jones LLP; Wilmington, Del.

"Professionalism" could help you avoid 9011 sanctions, but it will definitely help avoid irritating your opponent and, more importantly, the judge.

PROFESSIONALISM
COULD HELP YOU AVOID 9011 SANCTIONS,
BUT IT WILL DEFINITELY HELP TO AVOID
IRRITATING YOUR OPPONENT AND, MORE
IMPORTANTLY, THE JUDGE.

DO NOT . . .

**Thank you for textual and
technical assistance!
Geoffrey B. Fehling, Esquire
Hunton, Andrews, Kurth,
Washington, D.C.
And
Denise Lavariere
Case Administrator
U.S. Bankruptcy Ct., E.D. Pa.**

Professionalism

A short time ago, I was struck by a pro se party's concluding remarks and actions in a hearing. The gentleman stood up and turned to the attorney for the opposing party. I feared that I might have to push the panic button to call security officers into my courtroom. But then the gentleman smiled, walked over to the attorney, said thank you, and shook his hand.

That pro se litigant exhibited professionalism at its finest. But it is only occasionally evident between and among members of our noble profession.

How many times have you exhibited that kind of professionalism?

How many times have you acted in what might be called an unprofessional manner and rationalized it as required by your obligation to zealously represent your clients?

PROFESSIONALISM



Of course, every observation that follows is peculiar to me. Other judges may find that items I dismiss are required; and other judges may find that items I demand are repulsive. Know your court; know your judge.

Professionalism



I will take a few minutes of your time to go over some issues that should not need to be addressed. I, and probably most judges, are in a unique position to see many, many lawyers appear before us each week and at times, we witness “The Good, the Bad, and the Ugly.”

Professionalism

Try to be good; not bad or ugly :

DO NOT . . .

PROFESSIONALISM – DO NOT . . .



Be like the **Colorado attorney** with a Colorado client who exchanged emails with an attorney in Minnesota to try to settle a matter.

The Minnesota Supreme Court ruled that his conduct constituted the unauthorized practice of law in Minnesota and sanctioned him.

WHAT?!?!?!?!?!?

In re Charges of Unprof'l
Conduct in Panel File No.
3902 (August 31, 2016).

PROFESSIONALISM -- DO NOT . . .



Be anything like two FL lawyers who orchestrated the DUI arrest of a lawyer they didn't like. They used a "flirtatious paralegal" (term used in original story), wine/liquor, and a friend in the Tampa Police Dept. The lawyers were disbarred and the cop was fired. Don't know what happened to the paralegal.

PROFESSIONALISM – DO NOT . . .



Tell your client that, for any reason, the Judge will be angry with them if they do or do not do something. Make no statement about any judge in reckless disregard of truth. Do not use the judge as a scapegoat.

PROFESSIONALISM



Wait! Wait a moment! Hold everything. Whose cell phone just beeped, dinged, rang, chimed, etc.?

DO NOT . . .

Fail to turn off your cell phones, lap tops, etc., upon entering Court. Or, at least, mute it.

OK – maybe the judge will be angry.

PROFESSIONALISM – DO NOT . . .



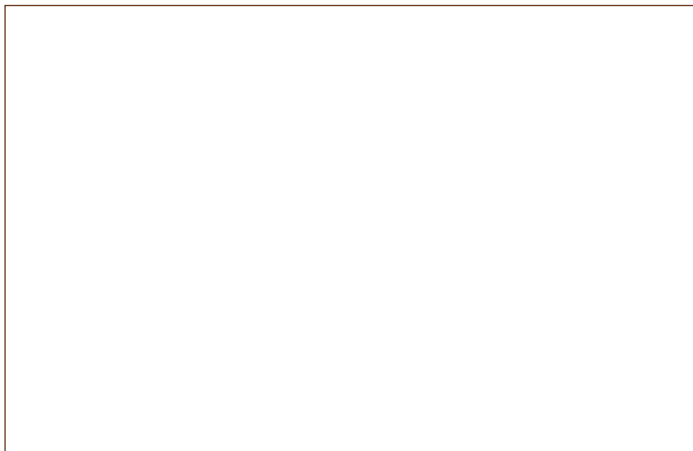
Be late!

Better that you're
30 minutes early
than 5 minutes
late!

You're wasting the
time of the Court,
the other side, and
all others in the
courtroom.

AT LEAST –
APOLOGIZE!

Professionalism -- Do Not . . .



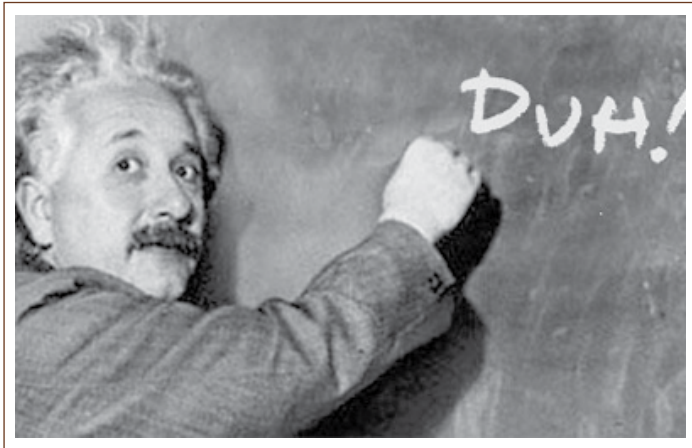
File an objection to
a motion and then
fail to appear at the
hearing without
letting opposing
counsel know. Do
not delay or burden
any person without
substantial
purpose.

Professionalism - Do Not . . .



Fear (or strategically avoid?) talking with counsel representing your client's opponent.
NOTE: Counsel is not **YOUR** opponent.

PROFESSIONALISM -- DO NOT . . .



Rely solely (or even a great deal) on your clients for necessary information.

Remember, your client either filed for bankruptcy protection or loaned money to someone who did.

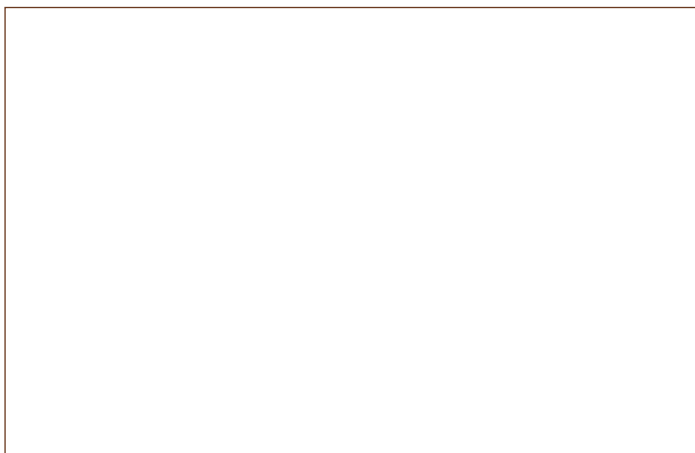
Trust. But verify.

PROFESSIONALISM – DO NOT . . .



File an ex parte motion asking for expedited consideration without, at very least, previously or at least simultaneously calling opposing counsel by telephone and serving counsel in advance by email or fax. How can that possibly be professional or, worse, not violate rules of ethics. Service on opposing parties by mail or courier (even overnight) for a hearing that is requested immediately is insulting. Service of an expedited matter by relying on BNC service to counsel also does not work.

PROFESSIONALISM – DO NOT . . .



Forget to explain why you need expedited consideration. What is the difficulty requiring expedited consideration? **Did you cause the need by delaying filing of some request for relief?** Did your client or some other (often real estate) person cause the delay?

Why the hurry?

PROFESSIONALISM – DO NOT . . .



Incorrectly serve contested motions and complaints. Service of adversary proceedings and contested matters is governed by Bankruptcy Rule 7004(b) & (h). No fax or email service is authorized by Rule 7004. OK to address it to an officer/agent without knowing the name. Use full addresses, including the person who entered appearance in the main docket or on the party's claims. Service on FDIC-insured bank differs. Service on attorney if entered appearance might be sufficient. Service rules are tricky. If in doubt, serve everyone.

PROFESSIONALISM -- DO NOT . . .



Forget that most judges' attitudes about disputes that counsel tells us "should" settle is . . . **we have none.** Counsel who recognizes and states that a matter "should" settle says it all – make it so. Or not. It's up to counsel.

PROFESSIONALISM -- DO NOT . . .



Abuse a judge's practice, in oral arguments, of giving great regard to oral certifications, stipulations, and presentations of counsel rather than having unnecessary hearings when no facts are in dispute. Do, or do not, know going into a hearing that you can stipulate to the facts.

PROFESSIONALISM – DO NOT . . .



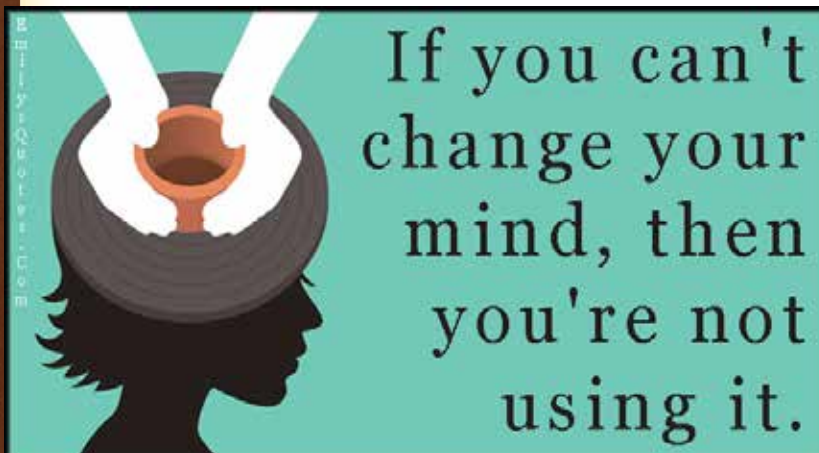
Forget that a debtor's **discharge** may be compromised by prior or co-existing **criminal convictions or guilty pleas**. Be co-counsel with client's criminal counsel in the wording of any plea deals. Educate (?) criminal defense counsel on discharge and the effect of guilty pleas in discharge litigation.

PROFESSIONALISM – DO NOT . . .



Forget that a debtor's **discharge** may be compromised by prior, co-existing, or future resolution of **domestic relations disputes**. Be co-counsel with family law counsel in the wording of any settlement stipulations. Educate (?) domestic relations counsel on discharge and the effect of settlement agreements in discharge litigation.

PROFESSIONALISM – DO NOT . . .



Forget that judges absolutely, positively change their minds often about cases because of what comes out at a hearing, at oral argument, with briefs, or even after they have started writing a decision.

PROFESSIONALISM – DO NOT . . .



Ask:

"Should I attend the hearing?"

"Must I attend the hearing?"
(Different question!)

"May I attend by telephone?"

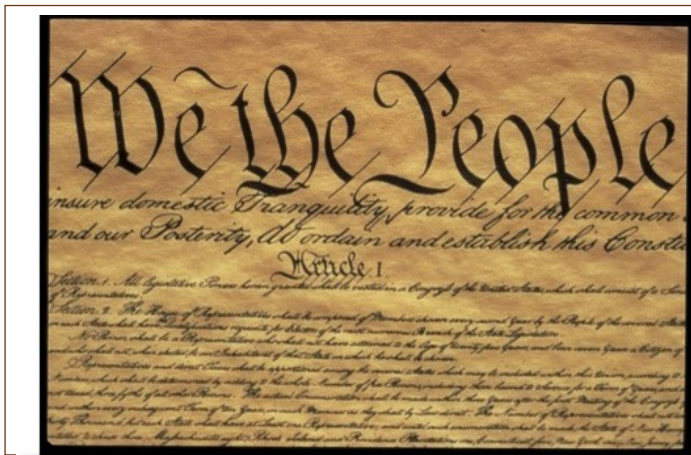
"Should I be at the hearing or
attend by telephone?" (Again, very
different questions!)

"Should I file a motion to do
a-b-c?"

"Should I schedule a hearing for
x-y-z?"

These questions are inappropriate
whether directed to the judge, the
law clerk, the Clerk's Office, or
your next-door neighbor.

PROFESSIONALISM -- DO NOT . . .



Mimic and copy the
writings from some
other source without
fully understanding and
VERY carefully editing
to fit your (usually
different)
circumstances.

It might sound great,
but does it fit your case?

PROFESSIONALISM -- DO NOT . . .



Forget the stay of Rule 6004(h) for an expedited sale of real estate.

Do not close within 14 days after the order approving the sale.

PROFESSIONALISM -- DO NOT . . .



Ask for free and clear short sale unless you satisfy §363(f) and provide title search, reference to a current title search, or your personal certification of no unpaid, non-consenting lienholders.

Encumbrances? Gas, electric, and water right-of-ways, for example. You probably don't want to satisfy encumbrances!

NOTE: Satisfaction of §363(f)(5) may arise pursuant to *In re Elliot*, 94 B.R. 343 (E.D. Pa. 1988); *In re Dulgerian*, 2008 WL 2205323 (Bankr. E.D. Pa. 2008).

NOTE: Bona fide dispute (possibly satisfying Section 363(f)(4)) if an adversary proceeding is at least started against the lienholder. Remember, of course, Rule 9011.

PROFESSIONALISM - DO NOT . . .



Abrogate **YOUR** responsibility for typos, correct captions, correct title of motion, correct prayer for relief, and appropriate language in your proposed order. It is **NEVER** your staff's fault. You lose cosmic points if you blame anyone in your firm but yourself.

PROFESSIONALISM – DO NOT . . .



Forget that pro se parties rightfully get every benefit of the doubt as required by District and Circuit Courts. Avoid frustration.

PROFESSIONALISM – DO NOT . . .



Forget that telephonic participation by you, your client, and your witness might be permitted, depending on the judge's practices and procedures. **But notice is probably required.** Telephonic attendance in Court might not be limited to out-of-state or out-of-town witnesses, parties, or counsel. Counsel fostering a telephonic appearance suffers from any technical or other glitches that might occur.

PROFESSIONALISM -- DO NOT . . .



Fail to remember that a hearing is a hearing is a hearing – with witnesses, evidence, testimony, exhibits, and all that neat law school type stuff. But, of course, a “hearing,” with testimony and exhibits, might not be required **IF** all parties and the judge are OK with the lawyers’ offers/stips/statements of uncontested facts & exhibits.

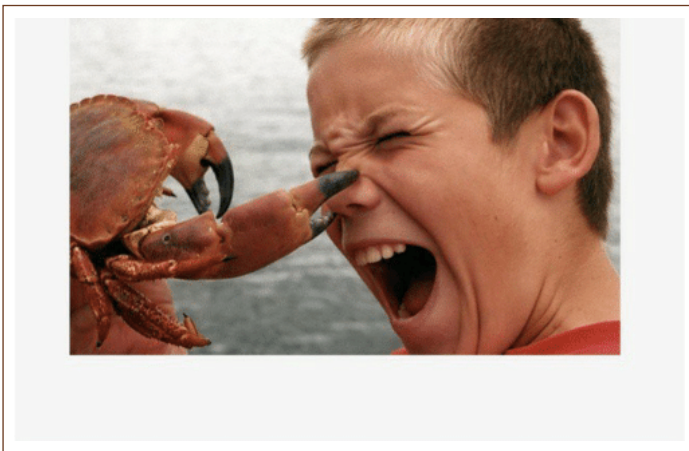
PROFESSIONALISM -- DO NOT . . .



File a Chapter 11 case as an IFP.

A Ch 11 Debtor asking for IFP is an abomination against nature and deserves to be put out of its misery immediately.

PROFESSIONALISM -- DO NOT . . .



Treat an individual Chapter 11 as a large Chapter 13 or you'll be lucky to only have a pinched nose.

AMERICAN BANKRUPTCY INSTITUTE

Thomas M. Horan

Sovereign Citizens and Bankruptcy

14th Annual Mid-Atlantic Bankruptcy Workshop

August 4, 2018

Resources for Study of Sovereign Citizens:

- On Twitter, there are active accounts for people who study sovereign citizens and other extremist movements.
 - Mark Pitcavage, Senior Research Fellow, Anti-Defamation League, <https://twitter.com/egavactip>
 - JJ MacNab, Fellow, George Washington University Program on Extremism, <https://twitter.com/jjmacnab>
- There also are serious studies of the sovereign citizen movement from a policy perspective
 - *Sovereign Citizen Movement: an empirical study on the rise in activity, explanations of growth, and policy prescriptions*, Brian S. Slater, available at <http://scholarworks.uark.edu/cgi/viewcontent.cgi?article=3062&context=etd>
 - *An Analysis of the Sovereign Citizen Movement: Demographics and Trial Behaviors*, Stephen Garrett Smith, available at <http://scholarworks.uark.edu/cgi/viewcontent.cgi?article=3062&context=etd>
 - Sovereign Citizens Movement, Southern Poverty Law Center, available at <https://www.splcenter.org/fighting-hate/extremist-files/ideology/sovereign-citizens-movement>
 - *Without Prejudice: What Sovereign Citizens Believe*, J.M. Berger, available at <https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/downloads/JMB%20Sovereign%20Citizens.pdf>
 - *Uncommon Law: Understanding and Quantifying the Sovereign Citizen Movement*, Michelle M. Mallek, December 2016, Thesis, Naval Postgraduate School, available at <http://www.dtic.mil/dtic/tr/fulltext/u2/1031403.pdf>

- *The Sovereign Citizen Denaturalization and the Origins of the American Republic*, Patrick Weil, University of Pennsylvania Press, 2012, ISBN 9780812222128
- *The Lawless Ones: The Resurgence of the Sovereign Citizen Movement*, 2d Ed., Anti-Defamation League, available at <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Lawless-Ones-2012-Edition-WEB-final.pdf>
- *A Cultural Topography of the Sovereign Citizens Movement: Are They a Terrorist Threat?*, Piper Blotter Biery, available at <https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=4584&context=etd>
- *Sovereign Citizens and Competency to Stand Trial*, George F. Parker, Journal of the American Academy of Psychiatry and the Law Online June 2018, available at <http://jaapl.org/content/46/2/167.full-text.pdf>
- *What is the Sovereign Citizen Movement, what do they believe and how are they spreading?*, Matthew Sweeney, June 19, 2018, available at <https://www.radicalisationresearch.org/guides/sweeney-sovereign-citizen-movement/>
- Resources from a law enforcement point of view
 - *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, Federal Bureau of Investigation Counterterrorism Analysis Section, September 1, 2011, available at <https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement>
 - *Sovereign Citizens: An Introduction for Law Enforcement*, Federal Bureau of Investigations Domestic Terror Operations Unit, available at http://www.mschiefs.org/wp-content/uploads/2012/05/Sovereign_Citizens_Intro_For_LE.pdf

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In The United States Bankruptcy Court
Northern District of Illinois Eastern Division

In RE: Guidano's Enterprises, Inc.) Case No. 11-06098
et. al) Judge: Pamela Hollis
/ Chapter 11
/ Debtors,

NOTICE OF MOTION.

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
JUN 27 2011
KENNETH S. GARDNER, CLERK
PS ES

To: Judge Pamela Hollis

PLEASE TAKE NOTICE that on June 28, 2011, at
^{10:00}
~~9:30~~ AM or as soon thereafter as I may be heard, I
shall appear before the Honorable Judge Pamela
Hollis or any other presiding Judge presiding
in her place.

X Room 644, the courtroom usually occupied
by said Judge, in the DuSable Federal Building
219 S. Dearborn, Chicago, Ill. 60604.

Proof of Service

The undersigned does hereby certify that a copy
of this Notice and Motion was hand delivered to the
above person, at their/her respective address on
June 28th, 2011.

John Apostolou
John Apostolou
Marshall Home
Marshall Home, Proper

2018 MID-ATLANTIC BANKRUPTCY WORKSHOP

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John Apostolou

Marshall Home

**3051 W. Mexico St.
Tucson, Arizona non-domestic
520-396-0667**

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
JUN 27 2011
KENNETH S. GARDNER, CLERK
PS ES

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re

GIORDANO'S ENTERPRISES, INC., *et al.*) Chapter 11

**Debtors.)
) Case No. 11-06098
) (Jointly Administered)
)
) Hon. Eugene R. Wedoff
) Hearing Date: Tuesday,
June 28, 2011 10:00
) Hearing Time 9:30 a.m.**

MOTION FOR CITIZEN'S DEMAND FOR TRIAL BY JURY BK C § 426

COMES NOW Marshall Home and John Apostolou, American Citizens, non-corporate, sui juris non-licensed attorney litigant, the undersigned, and, without accepting the jurisdiction of this court, moves the court as follows:

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1. Pursuant to the Rights secured for him in the Constitution of the United States of America, Article III, Section 2, Paragraph 3, and in the 6th Amendment to said Constitution; and in Article II, Sections 12 and 18, of the Arizona State Constitution Marshall Home and John Apostolou **hereby states their demand for trial by jury**, BK C § 426.

2. Marshall Home and John Apostolou demands that the presiding judge, pursuant to his oath, honor and abide by said oath, uphold and support the referenced National and state Constitutions, and Marshall Home and John Apostolou's Rights secured therein, and provide due process of law, in a judicial forum, as required, by law, to honor and uphold the Constitution and Apostolou's and Home's unalienable Rights.

Respectfully submitted,

All Rights Reserved

Marshall Home

MARSHALL HOME™ American Citizen

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was sent, ^{hand delivered} by email,

Marshall E. Home

Affiant: Marshall E. Home ©Secured Party Creditor

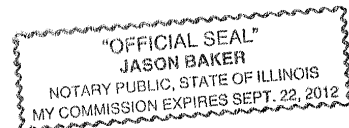
ACKNOWLEDGEMENT

SUBSCRIBED TO AND SWORN before me this 28 day of June, A.D. 2011, a Notary, that **Marshall Home**, personally appeared and known to me to be the man whose name subscribed to the within instrument and acknowledged to be the same.

[Signature]
Notary Public in and for said State

My Commission expires; 11/23/12

(Seal)



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Marshall E. Home
3051 W. Mexico St.
Tucson, Arizona non-domestic
520-396-0667

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

JUN 17 2011

KENNETH S. GARDNER, CLERK
PS REP. - AI

United States Bankruptcy Court
NORTHERN District Of ILLINOIS
EASTERN DIVISION

In re

Chapter 11

)
) **Case No: 11-06098**
)
GIORDANO'S ENTERPRISES, INC., et al.) **Hon. Eugene R. Wedoff**
)
Debtors.)

SECURED PARTY MARSHALL HOME, JOHN & EVA APOSTOLOU'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OVER CASE NO: 11-06098, WITH CONDITIONAL ACCEPTANCE FOR VALUE OF ALL UNBONDED INCHOATE UNSECURED CLAIMS AND SANCTIONS OF THE TRUSTEE PHILIP V MARTINO, REGARDING GIORDANO'S ENTERPRISES, INC. PREDICATED UPON PROOF OF CLAIM THAT THE FORECLOSURE CLAIMANTS PRODUCE THE ORIGINAL WET-INK NOTE ESTABLISHING THE RIGHT TO ENFORCE THE INSTRUMENT / AND RETURNS FOR SETTLEMENT AND CLOSURE, ACCORDING TO THE FOLLOWING TERMS AND CONDITIONS, IN ACCORDANCE WITH THE UCC;

1. If the foreclosure claimant cannot produce the NOTE or a valid chain of custody in the form of valid assignment back to the holder of the NOTE, the case is over for lack of establishing the court's subject matter jurisdiction over the case.

2. In light of the fact that virtually all promissory notes taken by banks, mortgage companies, were sold at some time after the "closing" for the respective transactions --- without the right in discovery to physically inspect, and photocopy the original wet-ink

instrument, (production of the original instrument), meaning that the bank, mortgage company, etc. retained physical possession of the NOTE, or can PROVE a valid assignment of the rights of the holder to enforce the instrument from the holder of the original wet-ink NOTE, standing in a court to enforce the instrument in foreclosure is impossible pursuant to the Uniform Commercial Code. If the Bank is suing to enforce a NOTE and foreclose on property, if the bank sold (transferred) the NOTE, the bank lost the right to enforce the NOTE as a holder. UCC§ 3-309(a)(2).

Statutory Requirements for Establishing the Right to Enforce an Instrument

1. **Prove** status of **holder** of the instrument. (UCC § 3-301(i)); or

UCC § 1-201(21) "Holder" means:

- the person in possession of a negotiable
- A) instrument that is payable either to bearer or to an identified person that is the person in possession; or
 - the person in possession of a document of title
 - B) if the goods are deliverable either to bearer or to the order of the person in possession.

<http://www.law.cornell.edu/ucc/1/article1.htm#s1-201>

2. **Prove** status of **non-holder in possession** of the instrument who has the rights of a holder. (UCC § 3-301(ii)); or
3. **Prove** status of being **entitled to enforce the instrument as a person not in possession of the instrument pursuant to UCC § 3-309** or UCC § 3-418(d). (NOTE is lost, stolen, destroyed).

UCC § 3-309, requirements.

- a. **Prove possession** of the instrument **and entitled to enforce it** when loss of possession occurred. (UCC § 3-309(a)(1)).

NOTE: If illegality or fraud were involved in the original transaction, it cannot be proved that the person

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is entitled to enforce the instrument. (See UCC § 3-305. DEFENSES)

- b. **Prove non-possession of the NOTE is NOT the result of a transfer. (UCC § 3-309(a)(2)).**

NOTE: If discovery shows that the instrument was sold by the person claiming the right to enforcement, a transfer occurred, and such person is NOT entitled to enforce the instrument. (See UCC § 3-309(a)(2)).

- c. **Prove** that the person seeking enforcement cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process. (UCC § 3-309(a)(3)).

NOTE: If discovery shows that the instrument was sold by the person claiming the right to enforcement, a transfer occurred, and such person is NOT entitled to enforce the instrument. (See UCC § 3-309(a)(2)).

- d. A person seeking enforcement of an instrument under subsection (a) **must prove the terms of the instrument and the person's right to enforce the instrument. (UCC § 3-309(b)).**

UCC § 3-309 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(a) **A person not in possession of an instrument is entitled to enforce the instrument if**

- 1) **the person seeking to enforce the instrument**

- was **entitled ** to enforce** the instrument
- A) **when loss of possession occurred, or**
- has directly or indirectly acquired
- B) ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

the loss of possession was ~~not~~ the result of a

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2) **transfer by the person** or a lawful seizure; and

3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) **A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument.** If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument. (**UCC § 3-203(a)**).

If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee. (**UCC 3-203(d)**)

UCC **§** **3-201.** NEGOTIATION.

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

NO
TE:

Only a valid holder in physical possession of the NOTE can assign the holder's right to enforce the NOTE to a

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non-holder.

The foreclosure claimant must be able to prove the right to enforce the NOTE by production of valid and authentic assignment agreements all the way back to the holder presently in physical possession of the NOTE.

No assumptions! Make them PROVE IT!

If this cannot be proved, the claimant has no standing to bring a suit in foreclosure and the case must be dismissed because the court then lacks subject matter jurisdiction over the case.

**Proof of the Terms of the Instrument
(Promissory Note and Mortgage Agreement are NOT
Separable).**

"The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." [Fn3 *Jackson v. Blodget*, 5 Cowan 205; *Jackson v. Willard*, 4 Johnson 43.] Quotation and Footnote from: ***Carpenter v. Longan*, 83 U.S. (16 Wall.) 271, 274 (1872).** (emphasis added)
(Access Carpenter here:
<http://supreme.justia.com/us/83/271/case.html>)

The above referenced current and binding opinion of the Supreme Court of the United States, was recently utilized as basic law in ***Landmark Nat'l Bank v. Kesler***, No. 98,489, by the Supreme Court of the State of Kansas, (August 2009). Access ***Landmark*** here: [[Landmark Decision](#)]

If the bank, mortgage company, etc., sold the NOTE, they have no right to enforce the NOTE, through foreclosure or court proceeding pursuant to the fact that the UCC bars such claimant from invoking the court's subject matter jurisdiction of the case.

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Even if the claimant produces the original wet-ink NOTE, there is a defense to the action pursuant to **UCC § 3-305**.

Illegality and false representation (fraud) perpetrated in the transaction.

Did the bank disclose the **SOURCE** of the money for the transaction?

Did the bank disclose to the NOTE issuer (you) that the money for the transaction was provided **at no cost to the bank?**

Did the bank disclose that the NOTE would be sold at the earliest possible convenience, and that such sale and receipt of money from a third party would actually pay off the NOTE? (Satisfaction of Mortgage).

Did the bank make the false representation that a "LOAN" transaction was being executed?

Did the bank identify the issuer of the promissory note (you) as a "borrower?"

Many discovery questions to be asked when a claimant initiates foreclosure proceedings.

Many assume that the bank/broker/lender that begins the process is actually providing the money for making a "loan," when in fact, the bank/broker/lender is only making an "exchange," of notes, at no cost, and then, coercing the issuer of the promissory note into the comprehension that he is receiving a "loan." The following was stated in **A PRIMER ON MONEY, SUBCOMMITTEE ON DOMESTIC FINANCE, COMMITTEE ON BANKING AND CURRENCY, HOUSE OF REPRESENTATIVES, 88th Congress, 2d Session, AUGUST 5, 1964, CHAPTER VIII, HOW THE FEDERAL RESERVE GIVES AWAY PUBLIC FUNDS TO THE PRIVATE BANKS** [44-985 O-65-7, p89]

[2nd paragraph, "Primer on Money" PDF page 89 of 141]
"But the conditions under which private banks operate are very different. In the first place, one of the major functions of the private commercial banks is to create money. A large portion of bank profits come from the fact that the banks do create money. And, as we have pointed out, **banks create money without cost to themselves**, in the process of lending or investing in securities such as Government bonds.

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Bank profits come from interest on the money lent and invested, while the cost of creating money is negligible. (Banks do incur costs, of course, from bookkeeping to loan officers' salaries.) **The power to create money has been delegated, or loaned, by Congress to the private banks for their free use. There is no charge.**" (emphasis added).

[open (PDF) Primer on Money -- US Congress Subcommittee on Domestic Finance]

In this instance, the transaction was funded by using the prospective property (collateral) and the signer's promissory note as if the property and the Note already belonged to the bank/broker/lender.

So, if the bank used the promissory NOTE, as money, to create the cash reserve which was then used to validate the bank check issued on the face value amount of the promissory NOTE, at no cost to the bank, without NOTICE to the signer of the promissory NOTE, and without fully disclosing these facts and aspects of the transaction, the bank committed a **Deceptive Practice, False Representation, and Fraud.**

Followup:

After digesting the statutory requirements for enforcement of a promissory NOTE, and it is determined that the foreclosure claimant had failed to establish standing pursuant to the statutory requirements of **UCC § 3-301** and **UCC § 3-309**, it would be logical to conclude that the foreclosure was wrongful pursuant to the court's lack of subject matter jurisdiction over the case, therefore, the court's judgment in favor of the foreclosure claimant is voidable.

An action to void a judgment for lack of subject matter jurisdiction over the case can be brought up at any time, even after judgment, appeal, and subsequent execution of the judgment. See Rules of Civil Procedure, Rule 60(b), (void judgment - lack of subject matter jurisdiction).

NOTE: there is a distinction between the term "subject matter jurisdiction" and "subject matter jurisdiction over the case."

"subject matter jurisdiction" is a broad and general term referring to the court's general subject matter jurisdiction

over a class of case types. Without this jurisdiction, judgments of a court are VOID.

"subject matter jurisdiction over the case" is a sub classification within the general subject matter jurisdiction of the court. The court's lack of subject matter jurisdiction over a particular case makes the judgment in that case VOIDABLE.

See the following case for an explanation of the difference: **Edwin A. Hisle and Olive Sue Hisle Cook v. Lexington-Fayette Urban County Government**, Appeal From Fayette Circuit Court, Action No. 65-CI-17431, Commonwealth of Kentucky Court of Appeals, No. 2006-CA-001733-MR. [<http://162.114.92.72/COA/2006-CA-001733.pdf>]

If the demand to "Show me the NOTE!" and that means the original wet-ink NOTE, was unfulfilled, it is more than likely that the foreclosure claimant had no right to enforce the NOTE.

**Where's The Note, Who's The
Holder:
Enforcement Of Promissory Note
Secured By Real Estate**

In light of the fact that virtually all promissory notes taken by banks, mortgage companies, etc., were sold at some time after the "closing" for the respective transactions -- **without** the right in discovery to physically inspect, and photocopy the original wet-ink instrument, (production of the original instrument), meaning that the bank, mortgage company, etc., retained physical possession of the NOTE, or that the foreclosure claimant can PROVE a valid assignment of the rights of the holder to enforce the instrument in an unbroken chain of valid assignments from the present holder of the original wet-ink NOTE to the foreclosure claimant, standing in a court to enforce the instrument in foreclosure is impossible pursuant to the Uniform Commercial Code. (UCC). Therefore, the court has no subject matter jurisdiction over the case.

Without possession of the original wet-ink NOTE, or proof of authentic and valid assignment of the rights of the present holder of the original wet-ink NOTE, no foreclosure action can be sustained when confronted with the **Statutory Requirements for Establishing the Right to Enforce an Instrument**

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If the bank is suing to enforce a NOTE and foreclose on property, and it can be shown through discovery that the bank sold (transferred) the NOTE, the bank lost the right to enforce the NOTE. See UCC § 3-309(a)(2).

Repeating:

Authoritative foundational basis for the determination of the right to enforce an instrument in a foreclosure proceeding: The foreclosure claimant must predicate the claim upon proof and evidence of physical possession or valid assignment of BOTH the NOTE and the Mortgage Agreement.

"The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." [Fn3 Jackson v. Blodget, 5 Cowan 205; Jackson v. Willard, 4 Johnson 43.]

Quotation and Footnote from: Carpenter v. Longan, 83 U.S. (16 Wall.) 271, 274 (1872). (emphasis added)

(Access Carpenter here: <http://supreme.justia.com/us/83/271/case.html>)

The above referenced current and binding opinion of the Supreme Court of the United States, was recently utilized as basic law in Landmark Nat'l Bank v. Kesler, No. 98,489, by the Supreme Court of the State of Kansas, (August 2009). Access Landmark here: [[Landmark Decision](#)]

DATED: JUNE 14, 2011

By: Marshall Home
for John Apostolou

By: Marshall Home
for Eva Apostolou

By: Marshall Home
Marshall Home

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
OMB No. 1545-0047 (1099-A)
TRANSFER TAX CERTIFICATE

In re) Chapter 11
)
GIORDANO'S ENTERPRISES, INC., *et al.*,) Case No. 11-06098
) (Jointly Administered)
Debtors.)
) Hon. Eugene R. Wedoff
)
) **Hearing Date: June 28, 2011**
) **Hearing Time: 9:30 a.m. Central time**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Tuesday, June 28, 2011, at 9:30 a.m. Central time, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Eugene R. Wedoff, Room 744, United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or any other Judge sitting in his place or stead, and then and there present the **Trustee's Motion For Sanctions Against Marshall E. Home**, a copy of which is herewith served upon you.

Dated: June 8, 2011

PHILIP V. MARTINO, not individually,
but solely as Chapter 11 Trustee
for Giordano's Enterprises, Inc., *et al.*

By: /s/ Christopher Combest
One of his Attorneys

Christopher Combest
QUARLES & BRAUN LLP
300 North LaSalle Street, Suite 4000
Chicago, Illinois 60654-3406
Phone: (312) 715-5000
FAX: (312) 632-1727
christopher.combest@quarles.com

**THIS ITEM
IS THE OMISSION
FOR THE EXPIRATION
OF THE ITEM AND IS YOUR
AUTHORIZATION TO LEVY
THE STATE THROUGH MY
RESIDENT NAME**

CERTIFICATE OF SERVICE

I, Christopher Combest, an attorney, certify that, on the 8th day of June, 2011, I caused the foregoing **Trustee's Motion For Sanctions Against Marshall E. Home** to be served on the following party via UPS Next Day Air:

Marshall E. Home
3051 W. Mexico Street
Tucson, AZ 85746

QB\13583964.1

2018 MID-ATLANTIC BANKRUPTCY WORKSHOP

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I also caused a copy of referenced motion to be electronically filed via the Court's CM/ECF System and thereby to be served upon the parties listed below, to whom the System automatically delivered an electronic copy at the following electronic mail addresses:

- Thomas V Askounis taskounis@askounisdarcy.com, jburt@askounisdarcy.com
- Jennifer S Burt jburt@askounisdarcy.com
- Christopher M Cahill ccahill@lowis-gellen.com, abockman@lowis-gellen.com
- Joshua W Cohen jwcohen@daypitney.com
- Christopher Combest ccombest@quarles.com, Faye.Feinstein@quarles.com
- Thomas R. Fawkes tfawkes@freebornpeters.com, bkdocketing@freebornpeters.com
- Chester H. Foster chf@fostersmithlaw.com, jbf@fostersmithlaw.com; dbf@fostersmithlaw.com
- James G Froberg jgfroberg@lowis-gellen.com, jgfroberg@aol.com
- Cameron M Gulden USTPRegion11.es.ecf@usdoj.gov, cameron.m.gulden@usdoj.gov; USTPRegion11.es.ecf@usdoj.gov
- Aaron L Hammer ahammer@freebornpeters.com, bkdocketing@freebornpeters.com
- Christopher J. Horvay chervay@gouldratner.com
- Brian J Jackiw bjackiw@freebornpeters.com, bkdocketing@freebornpeters.com
- Vivek Jayaram vivek@jayaramlaw.com
- Gregory J Jordan gjordan@jka-law.com
- Danielle Juhle danielle.juhle@goldbergkohn.com, kristina.bunker@goldbergkohn.com
- Kathryn A Klein iln@riezmanberger.com, riezmanberger@gmail.com
- Randall Klein randall.klein@goldbergkohn.com, amy.halpin@goldbergkohn.com;logan.stortz@goldbergkohn.com
- Richard S Lauter rlauter@freebornpeters.com, bkdocketing@freebornpeters.com
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- Joanne Lee jlee@foley.com
- Terry M Long tmlong@tlong.com
- Philip V Martino philip.martino@quarles.com
- Philip V Martino philip.martino@quarles.com, pmartino@ecf.epiqsystems.com; jim.irving@DLA Piper.com; colleen.greer@quarles.com; wmet@quarles.com
- Mary E Olson molson@wildman.com, ecf-filings@wildman.com
- Andre Ordeanu andre@zanesmith.com, Patty@Zanesmith.com
- Lars A Peterson lapeterson@foley.com
- James M Philbrick jmphilbrick@att.net
- Jeffrey R Platt jplatt@comananderson.com, gmartinez@comananderson.com
- Mark L Radtke mradtke@shawgussis.com, bharrington@shawgussis.com
- Jason R. Sleezer jsleezer@skcounsel.com, rybarra@skcounsel.com
- Michael J. Small msmall@foley.com, khall@foley.com
- Jeffrey Strange jstrangelaw@aol.com, william.georgakis@gmail.com
- Pia N Thompson pthompson@gouldratner.com, lnaples@gouldratner.com
- Steven B Towbin stowbin@shawgussis.com

/s/ Christopher Combest
Christopher Combest

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
TRANSFER TAX CERTIFICATE

In re) Chapter 11
)
GIORDANO'S ENTERPRISES, INC., *et al.*,¹) Case No. 11-06098
) (Jointly Administered)
Debtors.)
) Hon. Eugene R. Wedoff
)
) **Hearing Date: June 28, 2011**
) **Hearing Time: 9:30 a.m.**

TRUSTEE'S MOTION FOR SANCTIONS AGAINST MARSHALL E. HOME

Philip V. Martino, the duly appointed and acting Chapter 11 Trustee ("Trustee") for the estates of the above-captioned debtors (collectively, the "Debtors") hereby requests that the Court enter an Order sanctioning Marshall E. Home for the conduct described herein. In support, the Trustee states:

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334(a), and Internal Operating Procedure 1(a) of the United States District Court for the Northern District of Illinois.

Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

3. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

¹ The Debtors in these cases are: Giordano's Enterprises, Inc., Illinois Management Company, Inc., JBA Equipment Finance, Inc., Altamonte Partners, LLC, Giordano's Franchise, Inc., Giordano's of Florida, Inc., Giordano's Restaurants, Inc., Giordano's Famous Stuffed Pizza, Inc., Americana Foods, Inc., Pizza Pizazze, Inc., Giordano's, LLC, Oakbrook Partners, LLC, Randolph Partners, LLC, Randolph Partners, LLC 20-24 Series, Randolph Partners, LLC – 327 Series, Randolph Partners, LLC – Lake Street Series, Randolph Partners, LLC – Formosa Series, Randolph Partners, LLC – Minooka Series, Randolph Partners, LP, Randolph Partners, LLC – 740 Series, Randolph Partners, LLC – 308 Series, Randolph Partners, LLC – Ogden Oswego Series, Randolph Partners, LLC – 1425 Series, Randolph Partners, LLC – Mount Prospect Series, Belmont Pizza, Inc., Rush Pizza, Inc., Greentown Pizza, Inc., Rosemont Pizza, Inc., Willowbrook Pizza, Inc., Randolph Partners, LLC – Sherberth Series, Randolph Partners, LLC – Oakbrook Partners Series, Randolph Partners, LLC – Cotton Lane Series, and Randolph Partners, LLC – Randall Orchard Series.

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4. The bases for the relief requested herein are 11 U.S.C. §§101(a), 362(a), 362(k), and the Court's inherent power to sanction vexatious and bad-faith conduct and otherwise to regulate practice before it.

FACTUAL BACKGROUND

5. On February 16 and 17, 2011 (the "Petition Dates"), Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.* (the "Code").

6. Pursuant to Code §§1107(a) and 1108, the Debtors initially operated their businesses and managed their financial affairs as debtors in possession.

7. On March 7, 2011, the United States Trustee appointed a committee of unsecured creditors (the "Committee").

8. On May 12, 2011, upon the motion of the United States Trustee, the Court appointed Philip V. Martino to be the Trustee for the Debtors, thereby taking the Debtors out of possession and placing their assets and businesses under the control of the Trustee.

9. Upon the Trustee's appointment, he learned that a man named Marshall E. Home ("Home") was planning to file or had filed a lawsuit in Arizona against the Trustee.

10. In response, counsel for the Trustee sent a letter dated May 16, 2011 (the "May 16 Letter"), to Home, informing him that no party may sue the Trustee without the prior permission of the Court, pursuant to *Barton v. Barbour*, 104 U.S. 126 (1881), and its progeny. A copy of the May 16 Letter is attached hereto as **Exhibit A**.

11. In fact, on May 12, 2011, the day the Trustee was appointed, Home and numerous other parties plaintiff (including John and Eva Apostolou, the principal equity holders of the Debtors) initiated an adversary proceeding by filing a complaint (the "Arizona Complaint") in

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OMB No. 1545-0877 (1099-A)
the United States Bankruptcy Court for the District of Arizona (the "Arizona Court"). The Arizona Complaint, a copy of which is attached hereto as Exhibit B, named as defendants, among many others:

- (a) the Trustee;
- (b) the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division;
- (c) United States Bankruptcy Judge Eugene R. Wedoff (to whom the captioned cases are assigned);
- (d) United States Bankruptcy Judge John H. Squires (who entered the order appointing the Trustee in Judge Wedoff's absence);
- (e) United States Bankruptcy Judge Eileen W. Hollowell of the Arizona Court;
- (f) Fifth Third Bank (Debtors' prepetition senior secured lender and their postpetition lender); and
- (g) Quarles & Brady LLP (Trustee's counsel).

12. The Arizona Complaint was filed within an involuntary chapter 11 case (Bankr. Case No. 11-06731) that had been commenced in March of 2011 by numerous purported petitioning creditors – including Home and the Apostolous – against, among many others, the United States federal government (styled "U.S. Corp.") and the State of Arizona.

13. On May 18, 2011, the Arizona Bankruptcy Court dismissed that involuntary case and entered an order (the "Arizona Bar Order") designating Home as a "vexatious litigant" because, among other reasons: (a) he and the other petitioning creditors had filed the involuntary case as a "device to harass their creditors" and (b) he had filed 173 *proofs of claim* on his own

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OMB No. 1545-0877 (1099-A)
TRANSFER TAX CERTIFICATE
 behalf or on behalf of other petitioning creditors, each alleging that the claimant was a secured creditor under the UCC with a claim in a large dollar amount, against a bank of a taxing authority that was involved in a collection action against the claimant, "in an effort to advance Home's claims that he and the other [p]etitioning [c]reditors are the *creditors* of their creditors." Arizona Bar Order at 5 (emphasis added). The Arizona Bar Order bars Home or any entity owned or controlled by him from filing any pleading in the Arizona Bankruptcy Court, other than an appeal of the order, unless he obtains prior authorization from the Court. A copy of the Arizona Bar Order is attached hereto as **Exhibit C**.

14. In response to the Trustee's May 10 Letter, Home sent a letter (the "Response Letter") to the Trustee's counsel, stating that he is the "Secured Party Creditor" in the Debtors' bankruptcy cases and that he has a lien against Giordano's Enterprises, Inc., in the amount of \$150,000,000. The Response Letter also claims that the Trustee must "repare the damage to [Home's] property, Giordano's Enterprises, Inc., that he has trespassed upon, by sending [him] without delay the insurance identity carriers and location of the bank in which he attempted grand larceny so that [he] can file more than 100 claims against their bonds with the US Trustee." (emphasis added). A copy of the Response Letter is attached hereto as **Exhibit**

D.

15. Home attached to his Response Letter a signed proof of claim (Claim No. 70, the "Home Claim"), dated May 13, 2011, asserting a secured claim against the Debtors in the amount of \$150,000,000 – more than three times the amount of the prepetition secured claim asserted by Debtors' senior prepetition lender, Fifth Third. Attached to the Home Claim is a UCC-1 financing statement (the "UCC-1 Financing Statement"), naming Home as secured party, which purports to perfect security interests in the assets of all of the Debtors to secure Home's

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alleged \$150,000,000 claim. Home's UCC-1 Financing Statement is stamped as filed with the California Secretary of State on May 13, 2011. The Home Claim was signed by Home on that same date and was filed with Debtors' claims agent on May 16, 2011. A copy of the Home Claim is attached hereto as **Exhibit E**.²

16. The Home Claim is fraudulent. It neither references nor includes any documentation to show that Debtors owe an obligation in any amount to Home or that Debtors granted Home a security interest in any of their property. To the Trustee's knowledge, Home is not owed a debt from the Debtors nor was he ever granted a security interest in any of the Debtors' assets.

17. Nonetheless, in a letter dated June 1, 2011 (the "Fifth Third Letter"), Home informed counsel for Fifth Third that he was the holder of a "Priority, Prepaid UCC lien on the [Debtors'] business and owns the debt of Giordano's Enterprises, Inc. and all its subsidiaries, companies, . . ." (Fifth Third Letter at 2.) In the Fifth Third Letter, Home offers to "settle" the captioned easess with Fifth Third in his purported capacity as the senior secured creditor. A copy of the Fifth Third Letter is attached hereto as **Exhibit G**.

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LEGAL ARGUMENT

A. Home Violated the Automatic Stay

18. The automatic stay prohibits "any act to create, perfect, or enforce any lien against property of the estate." Code §362(a)(4). *See also Redmond v. Fifth Third Bank*, 624 F.3d 793, 800 (7th Cir. 2010) (the automatic stay prohibits any act post-petition to convert an unsecured pre-petition claim into a secured claim or otherwise attempt to perfect a lien against property of the estate). Home violated the automatic stay by filing the UCC-1 Financing

² On May 13, 2011, the Apostolous also filed a proof of claim (Claim No. 69) in Debtors' cases, asserting a secured claim of almost \$104 million; however, the Apostolous filed a notice of withdrawal of that claim on April 22, 2011 (Docket No. 200). Copies of Claim No. 69 and the notice of withdrawal are attached hereto as **Exhibit F**.

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Statement with the California Secretary of State on May 13, 2011, three months after the Petition

Date.

TRANSFER TAX CERTIFICATE

B. The Court Should Impose Sanctions Against Home Under 11 U.S.C. § 362(k) for Willfully Violating the Automatic Stay.

19. Bankruptcy Code §362(k) states that “an individual injured by any willful violation of a stay...shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” Code §362(k). Courts have held that a case trustee is an “individual” for the purposes of recovering damages under Code §362(k). *See Martino v. First National Bank of Hawley (In the Matter of Garofalo’s Finer Foods, Inc.)*, 186 B.R. 414, 438-440 (N.D. Ill. 1995) (finding that to hold otherwise would “produce a result demonstrably at odds with Congress’ presumed intent”); *see also Budget Serv. Co. v. Better Homes of Va.*, 804 F.2d 289, 292 (4th Cir. 1986) (reading §362(k) in conjunction with the rest of §362 to determine that “it seems unlikely that Congress meant to give a remedy only to individual debtors...as opposed to debtors which are corporations and their creditors. Such a narrow construction would defeat much of the purpose of the section . . .”).

20. Further, a violation of the automatic stay is willful when a party acts with knowledge of the bankruptcy filing. *In re Betts*, 165 B.R. 233, 242 (Bankr. N.D. Ill. 1994). A willful violation of the stay does not require a specific intent to violate the stay, only that the creditor has notice of the stay and the creditor’s actions were intentional in and of themselves. *In re Welch*, 296 B.R. 170, 171 (Bankr. C.D. Ill. 2003).

21. Home had prior knowledge of the Debtors’ bankruptcy cases: the Arizona Complaint was filed on May 12, 2011 – the date the Trustee was appointed – naming the defendants described above on account of their roles in the Debtors’ bankruptcy cases; moreover,

because the UCC-1 Financing Statement was filed by Home on the same day he signed the Home Claim, the only reasonable inference is that the purpose of filing the UCC-1 Financing Statement was to support the fraudulent Home Claim.

C. Alternatively, Sanctions Against Home are Warranted Under 11 U.S.C. §105 (a).

22. Alternatively, the Court should grant sanctions against Home pursuant to its broad powers under 11 U.S.C. §105(a)³ to implement the provisions of the Code and to prevent an abuse of bankruptcy process. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997); *see also Geraci v. Bryson (In re Bryson)*, 131 F.3d 601, 603 (7th Cir. 1997) (explaining that a bankruptcy court's authority to impose sanctions under §105(a) permits it to punish conduct that Rule 9011 cannot reach); *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 283-85 (9th Cir. 1996) (§105 allows a bankruptcy court "to prevent an abuse of process" and to sanction bad faith or vexatious conduct that does not fall within the purview of Rule 9011 or 11 U.S.C. §1927). *Sanctions are warranted under §105(a) where the court finds that a litigant "intentionally abused the judicial process in an unreasonable and vexatious manner."* *In re Rimstat*, 212 F.3d 1039 (9th Cir. 2000).

23. Sanctions are warranted here for several reasons. Home willfully violated the automatic stay by filing the UCC-1 Financing Statement. Home then used that false UCC-1 Financing Statement to buttress his fraudulent proof of claim in the amount of \$150,000,000. Finally, Home represented to the Debtors' most significant secured creditor that he also holds

³ Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

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claims secured by liens and further has authority to speak for the Debtors in matters related to these cases.

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24. Home's actions should not be dismissed as the harmless antics of an impotent crank. They are potentially much more dangerous to the Debtors' estates than his scores of pointless filings in the Arizona Bankruptcy Court. The UCC-1 Financing Statement confuses the state of the title to Debtors' assets and corrupts the UCC-1 notice-filing system upon which creditors, debtors, and potential purchasers of these Debtors' assets all depend. The Home Claim fraudulently inflates the apparent liabilities of the Debtors and damages the integrity of the claims register and the Court's docket in these cases. Home's actions interfere with the Trustee's administration of the estates, forcing the Trustee and other parties in interest to spend time and money clarifying the confusion created by Home, including by requiring the Trustee to explain Home's actions to interested bidders and the media. Accordingly, it is appropriate for the Court to impose the sanctions requested below on Home, pursuant to 11 U.S.C. § 105(a) and the Court's inherent powers.

WHEREFORE, Philip V. Martino, as Chapter 11 Trustee, asks the Court to enter an order imposing sanctions upon Home by: (A) imposing upon Home monetary sanctions in, at minimum, the costs incurred by the Debtors' estates in preparing and prosecuting this Motion, along with such punitive damages as the Court deems appropriate; (B) holding Home in contempt of court for violating the automatic stay by filing the UCC-1 Financing Statement and for filing the fraudulent Home Claim; (C) provided that Home may purge the contempt by

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OMB No. 1545-0877 (1099-A)
withdrawing the Home Valuation and OCC-11 Financing Statement, and (b) granting the Trustee
such other and further relief as the Court deems appropriate.

TRANSFER TAX CERTIFICATE

Dated: June 8, 2011

PHILIP V. MARTINO, not individually,
but solely as Chapter 11 Trustee
for Giordano's Enterprises, Inc., *et al.*

By: /s/ Christopher Combest
One of his Attorneys

Christopher Combest
QUARLES & BRADY LLP
300 N. LaSalle Street, Suite 4000
Chicago, IL 60654
Telephone: (312) 715-5000
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christopher.combest@quarles.com

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I NEED IT TODAY!
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2018 MID-ATLANTIC BANKRUPTCY WORKSHOP

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United States Bankruptcy Court for the Northern District of Illinois

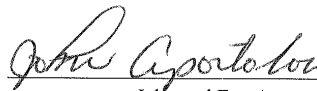
WITHDRAWAL OF CLAIM

Debtor Name and Case Number:	Giordano's Enterprises, Inc.
Creditor Name and Address:	John and Eva Apostolou 740 North Rush St. Chicago, Illinois (60611)
Court Claim Number (if known):	11-06098
Date Claim Filed:	February 16, 2011
Total Amount of Claim Filed:	\$ 100,000,000.00

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
APR 22 2011
PS REP: AU CLERK

I, the undersigned, am the above-referenced creditor, or an authorized signatory for the above-referenced creditor. I hereby withdraw the above-referenced claim and authorize the Clerk of this Court, or their duly appointed Claims Agent, to reflect this withdrawal on the official claims register for the above-referenced Debtor.

Dated: April 21, 2011



Print Name: John and Eva Apostolou

Title (if applicable): Secured Party Creditors

DEFINITIONS

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to which the debtor owed a debt.

Proof of Claim

A form filed with the clerk of the bankruptcy court where the bankruptcy case was filed, to tell the bankruptcy court how much the debtor owed a creditor (the amount of the creditor's claim).

ITEMS TO BE COMPLETED ON THIS WITHDRAWAL OF CLAIM

Court, Name of Debtor and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name and address of the creditor that was listed on the previously filed Proof of Claim form.

Information identifying the Claim that is to be withdrawn:

Complete the section giving the court claim number, date claim was filed and total amount of claim filed to help identify the claim that is to be withdrawn.

Sign and print the name and title, if any, of the creditor or other person authorized to file this withdrawal of claim (attach copy of power of attorney, if any).

This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed or, if applicable, with their duly appointed Claims Agent as per any procedure approved by the court in the above-referenced bankruptcy proceeding.

AMERICAN BANKRUPTCY INSTITUTE

Case 11-06098 Doc 200 Filed 04/22/11 Entered 04/25/11 10:51:11 Desc Main Document Page 2 of 2

Illinois state)
Cook county) es verified

Re: Impecuniosities,
Inability to Pay

AFFIDAVIT

We, John and Eva Apostolou do hereby attest and subscribe that owing to my poverty or for other just cause, we are unable or otherwise nor required to bear the expense of the action or legal proceedings which we are about to commence in the nature of an Original Petition and that we verily believe we are justly entitled to the relief sought by such action, legal proceeding.

We owe our poverty to the fact and law that the Illinois state Legislature has failed to provide all free inhabitants of Illinois with a statutory inland Legal Tender declaring what "thing" shall be for At Law discharge, payment and extinguishment of debts, damages, fines, court cost/fees inter-alia. That We are American Freemen, free inhabitants of the Illinois state, and we find it impossible to obtain State declared Legal Tender at Law.

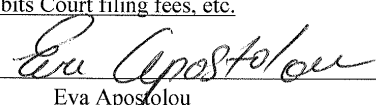
At the present time there is and has been only Federal Reserve Notes (Federal Reserve Accounting Unit Denominators) or F.R.A.U.D.s (FRAUDS) in ready circulation in the marketplace and all other sources. It is therefore impossible to pay at Law, but if FRAUDS, supra, are used, being only negotiable instruments under the law merchant general, or federal law merchant, the same are capable only of discharge in equity and are INCAPABLE of payment at Law.

The State Legislature is at fault and we retain and do not waive and have not waived our common law and constitutional rights and immunities and further do not waive our right NOT to become a involuntary party to DEBT, EVIDENCE OF DEBT (Swanson v. Fuline, 248 F. Supp 364; 31 ALR 240,246), NEGOTIABLE INSTRUMENTS, FEDERAL RESERVE NOTES, COMMERCIAL PAPER, LAWFUL MONEY OF THE UNITED STATES, nor any other "Thing" NOT intended by the Constitution for the United States of America

1:10:1 as mandated by the unrepealed 1792 U.S. Coinage Act nor so declared by the Illinois state Legislature,

Magna Charta Prohibits Court filing fees, etc.

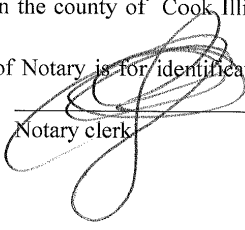

John Apostolou

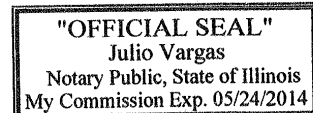

Eva Apostolou

Illinois state
county of Cook
United States of America

On this twenty-first day April Two thousand eleven, John Apostolou and Eva Apostolou did personally appear before me and is known to be the flesh and blood men/sovereign who executed and subscribed this document before me in the county of Cook Illinois state, United States of America, a Republic, under original

Jurisdiction. Purpose of Notary is for identification only and cannot be used to indicate entry into any corporate jurisdiction.


Notary clerk



Adversary Proceeding (see cover sheet)

Erik Von Kiel

CHAPTER 7

with Robert MacWray
 AS Limited power of Attorney
 and AS expert witness &
 legal aid and as "attorney
 at law" for (legal counsel)
 for the IAL

Banker # 10-21364 REF

Adversary # _____

plaintiffs
 (debtor in Bankruptcy)

Adversary Suit [in] off set of garnishment
 order(s)

Dept of Health & Human
 Services

Common Law: cheat

Breach of the contract

Fraud / usury

US Dept of Justice

Failure of consideration

Virginia Powell esq

Combination

Zane David memorandum

violation of Corp charter

misrepresentation

Failure to Disclose payoff and

Illegal representation

Related cases:

Adversary suit against US DOJ &

To ~~allow~~ to not allow plaintiff (debtor in

Bankruptcy) seeking Bankruptcy Rel. of &

Stoppage of garnishment action

Additional Adversary Suit is detailed

in suit

Adversary Proceedings of Erik Von Kiel with Limited Power of Attorney (LPOA) and expert witness & Att. at "Lawe" for the International Academy of Life (IAL), Robert MacWray objecting:

- ① To The US Trustee (and related Attorneys) objection to the plaintiff's (Debtor in Bankruptcy) Discharge Proceedings in Federal Bankruptcy Court
- ② To the garnishment of the U.S. Dept. of Education for a debt that did not exist & outright theft of IAL (church) property
- ③ To the garnishment & continued attempted/seeking garnishment by the US Dept. of Justice (DOJ) for a debt that does not exist & outright theft & continued seeking of outright theft of IAL (church) property.
- ④ Failure of original Banks to loan money promised (Fraud) (details of Fraud in body of Proceedings & attachments)
- ⑤ Failure of original Banks to disclose Proceeds of Deposit (details of Fraud/actions in body of Proceedings & attachments)
- ⑥ Proceeding with plaintiff's claim of \$178,256.00 to cover "Failure to Repay notes" (a series of 7 fraudulent claims)
- ⑦ to undisclosed commercial use of name/signature during Deposit

Process (see details in Body of Proceedings/Attachments)

- ⑧ to ILLEGAL Name Alteration/Corruption of creditor's (Plaintiff) NAME without authorization by the Student Marketing Assc., US DOJ, US Dept of Education (DOE) (see body of Proceedings/Attachments)
- ⑨ Proceeding with Adversary Proceeding/counter Complaint costs & fees & expenses (see Body of Proceedings & Attachments)
- ⑩ Proceeding with Notice of Plea in Abatement (see Body of Proceeding & Attachments)
- ⑪ To the Failure of the US DOJ to Release to me (&/or my Bankruptcy Attorney) my complete file through FOIA hindering my knowledge of level of conflict of interest/collusion & review of my payment history/schedule & other information
- ⑫ To whether the Loans in question are the actual Loans I was deceived in signing for when no original Loan paper Documents was/were ever presented.
- ⑬ to fact that even if Loans in question are correct (to be determined when original documents are secured) they only contain one signature (mine) and not the other party(ies) (Bank(s) (and signature of authorized Bank official) which would void the contract by standard contract Law.

- (14) to the issue that even if loans in question are correct & even if they are legitimate/legal (again need original Document to verify & need 2 contractual parties signatures) (to which plaintiff contests) they did meet the criteria for the original Bankrupt (Filed By Plaintiff-9-9-91) including paid on for at least 7 years (and all other criteria) and should have been (and were) discharged/dischargable at that time. They were listed but this was abused (violation of Federal Bankruptcy Law) by the US DOJ & US DGE who were not contractual parties to the original fraudulent in question loans (but were listed anyway in the Bankrupt)
- (15) The complaint of the US trustee objecting to the Plaintiff's (de) discharge as stating but not limited to, Plaintiff failed to disclose income/assets &/or transfers on his schedules and his statement of financial affairs but in fact that the US Trustee & related parties may have acted in collusion but at least were in conf. of interest with the DOJ (who are the same entity)
- (16) To the DOJ's (United States of America) motion for relief from automatic stay under 11 USC § 362(d) and all alleged and inaccurate statements therein but in fact that the DOJ

§ Related Attorneys may have acted in collusion with the US Trustee's § Related Attorneys (and/or at least acted in collusion By definition, as they are one and the same entity) and acted improperly in not allowing the Plaintiff (debtor) access to his file (through the FOIA) and at least acted with a conflict of interest along with the US Trustee § related Attorneys.

⑪ to issue that even if all other arguments were not standing, that there is actually no income UNAS alleged and little to no available money/funds available after all primary dependants are first secured.

⑫ to additional conflict of interest to all Federal Govt. Attorneys, officers of the Court (including but not limited to Judge through the 14th Amendment (US Constitution) section 4-2 ("Booby") § the actual personnel accounts/retirement accounts (as seen in Comprehensive Annual Financial Reports (CAFR)) stand to gain if a verdict for the US Govt. is (United States of America) secured

⑬ To the fact that the US DOJ received a copy of plaintiff's original law suit in 2008 § even though the filing of the same in US Eastern District Court was not accepted for format, the

US DOJ still had knowledge of suit (was given to the DOJ) and its Alleging of Fraud & did not investigate such alleged Fraud as would be their duty:

(20) To Judge Petrere B. Tucker denying The Requested hearing (by Plaintiff) to Prove that the alleged Loans were not valid currently (if ever) & despite having a copy of the original (2000) 'Lowe' suit and hence seeing that there is alleged fraud, denied such hearing, stating plaintiff had his chance of an earlier dispute that hearing was not about these issues & she did not investigate or turn over such alleged fraud issues to the proper authorities to do such investigation.

(21) The Secretaries of the US of America Treasury (all) From 1981 through the current & the US DOJ for violation of Law (US Secretary of Treasury) Title 31, USC 5119(a), Title 12 USC 411 & Title 31 USC 5112 (i) (1) & For not (DOJ) prosecuting the Secretaries of the Treasury (1981 - time of first alleged loan) to the present for same such violations of Law for but not limited to making Plaintiff's ability to pay back such alleged loans not with equal value lawful money as Plaintiff alleging obtained starting in 1981.

Jurisdiction

As jurisdiction is the ~~first~~ matter of Business and as the garnishment orders is/was captioned in a fictitious tense by novation, which thing is outside the law, comes now himself Erik Von Kiel, in his own proper upper & lower case noun name & stands in the present tense as a citizen-in-party where in there is lawful jurisdiction and original colours and counter-complaints in standard English as holder in due course & registered creditor of the debtor person complained against, identified originally as "Dennis Fluck". Erik Von Kiel in rebuttal to the US Govt (through US DOJ/DOE) garnishment claim, shows why the alleged "Loans" are already discharged, to wit:

Erik Von Kiel is an American creditor, holder in due course of his own name, which makes him a citizen-in-party with standing in-law located within the commonwealth of Pennsylvania.

This is a Suit-in-law as distinguished from a suit in equity, marine, admiralty or chancery law and is heard through an adversary proceeding through US Federal Bankruptcy Court at least initially as plaintiff is currently proceeding through the same at the current time which supercedes other jurisdiction in such conditions.

Plaintiff (debtor in Bankruptcy) resides at 4544 S. bent Rd
New Tripoli, Lehigh County, Pa, 18066. Debtor in Bankruptcy
Case #10-21364

Defendant(s) / "creditor" in Bankruptcy includes many parties,
Primarily The US DOJ (Phila, Pa office) and all related
parties; US Trustees(s), and related parties, Eastern District
of Pa.; US DOE; National Payment Center, Greenville TX; and
all related / responsible Attorney; Judge Tucker, Eastern District
Federal Judge; US Dept of Treasury Secretaries 1981 to present
Washington DC.; Student Loan Marketing Assoc, Washington DC &
Related Attorneys, Phila Pa; First Eastern Bank, Wilkesbarre, Pa;
First American Bank, NA, a Private Depositing Corp, Washington
Venue of This Proceeding is the United States District
Court for the Eastern District of Pennsylvania pursuant to
title 28 section 1409 (a) of the United States Code &
Part 1 Chapter 6

This Court has jurisdiction to hear & determine this Adversary
Proceeding pursuant to title 28 part 1 Chapter 6 and
possible other sections.

This is a core proceeding pursuant to title 28 part 1
Chapter 6 and section 157 2C, F, G, I, K AND
Possibly L

Parties

- ① Plaintiff is a man with a proper Noun Name standing in
The present tense plane
- ② Defendant(s) / Attorneys are all persons / corporations /
Franchises doing business under Law Merchants Incorporation
Names, The Names of the accommodations are unknown to The plaintiff
and are otherwise listed in the initial pages of The Adversary
Proceeding

The plaintiff Demands a Jury trial if the Presiding Judge Feels he or knows he has any conflict of interests in deciding this case, being a US Federal employee & Residing over a case where the US Trustee's office (and related Attorneys) are a US Federal Agency / employees of the US DOJ and the principle Plaintiff is the United States of America Represented By the US Do which is a US Federal Agency and its Attorney employees are US DOJ Federal employees, or has truthfully a Financial interest / Benefit in a verdict in Favor of the United States of America.

IF The Judge will/can swear that He truthfully has no conflict and can preside fairly over this adversary Proceeding then the Plaintiff will accept this and forgo a Jury trial.

If the Judge can not swear to no conflict of interest, then the plaintiff Requests / demands a Jury trial that allows for a fully informed jury with which the Plaintiff has equal control in selection & not be restricted to information or witness he selects for such trial.

Back Ground Facts

- ① plaintiff ("debtor" in Bankruptcy) (hence forth known as Plaintiff) was in medical school from 1981 to 1985 and did apply for "loans" in the first few years of medical school.
- ② As to the exact loans applied for is currently uncertain as to date because no original documents of such has ever been presented.
- ③ Copies of possible exact loans do not contain signatures of both parties involved with the contract.
- ④ The parties claiming to be creditors to these possible loans have no signatures on the copies of such paperwork making them not a party to such contract.
- ⑤ the Plaintiff signed some 7 promissory notes (again these may not be the ones the defendant's claim and originals need to be seen to verify whether they are or are not) pledging to pay the bank(s) the amount owed plus interest.
- ⑥ Plaintiff has discovered and now complains that the defendant banks did not lend money to the plaintiff at any time, but instead transferred bookkeeping credit entries in the form of "checks" which do not constitute any form of valid,

Valuable consideration, Breaching the Agreement.

- ⑦ The word "money" in standard English can only refer to lawful public money account.
- ⑧ The word "credit" in the Banking 'world' (with out full disclosure) refers to a Demand Deposit account Book keeping entry which is a Bank Liab. lity. These checks are not money, they can NOT move money, transfer or deliver money.
- ⑨ The "consideration" which the defendant loaned the plaintiff was in fact "credit", which defendants created in transacti accounts as book keeping entries and then transferred to checking accounts in the name of Plaintiff's transmittings. The only "consideration" which the bank extended to Plaintiff was their credit which was a mere book keeping entry in the form of a "promise to pay money".
- ⑩ There is no statute or law declaring "credit" to be lawful consideration. Such a "loan" is ultra vires for it is beyond the corporations charter Authority - voiding the transactions.
- ⑪ Defendants are not "holders in due course" of the subject promissory notes and have no lawful interest or title

in subject property. Defendants are not entitled to anything of value since they loaned no-thing of value. The credit extended by the BANK(S) to Plaintiff did not come on the books of the bank(s)

- (12) The plaintiff's last loans were (again they are correct only identified by original signed documents) in 1984
- (13) In Sept, 1991 The Plaintiff filed for Chapter 7 Bankruptcy for reasons (that can be proven) not related to the alleged student loan
- (14) Plaintiff made payments over the 7 years + period making such alleged student loans eligible for discharge by the US Federal Bankruptcy Laws in place in 1991.
- (15) The 1991 Bankruptcy was completed without any creditor disputes. All student loans were properly listed on this Bankruptcy.
- (16) In 2001, with the understanding by the plaintiff that he has no debts, took an oath of VAL of Poverty, officially recorded and signed by the Lt. Governor of VTAM.
- (17) The Plaintiff is an ordained minister of the IAL and has been so since 2001

- (18) Since 2001 Plaintiff has followed instruction of the church officials as per his church Directives (The most up to date included in attachments)
- (19) Since 2001 plaintiff (Because of above #s 16-18) has no property & receives gifting only from the Church to support his ministry & family & personal needs.
- (20) The Church Directive dictates Plaintiff to supply a medical ministry to incarcerated people.
- (21) He has been an advocate for incarcerated people for over 20 years.
- (22) He has supported legal causes/cases (and still does currently) for incarcerated people as it relates to their overall health.
- (23) many improvements for the health and well being of inmate have been secured over the years directly involving the Plaintiff's actions.
- (24) In order to lead a medical ministry as a Lic. physician in Pennsylvania the Plaintiff needed an arrangement with a Govt agency or a private vendor to gain such access. Through orders & approval from church officials He did secure such necessary arrangements.

- (25) All compensation from such (#24 above) ARRANGEMENT is NOT excepted By the plaintiff But Directly Received (electronically) By the church.
- (26) The Plaintiff has 10 dependants of which He does NOT reside with.
- (27) The Plaintiff has an agreement in place (orally) of Providing all financial needs of such dependants (without court order) which demands the vast majority of his church Gifting Received and at times even exceeds such Basic Gifting. (confirmed in Discovery / deposition with US trustee Attorneys)
- (28) Defendant, US DOJ (and related Attorneys) To date has not supplied the Plaintiff with his file at the DOJ as he, his Bankruptcy Attorney have Requested many months ago through the FOIA.
- (29) Such file would almost for certain supply the Plaintiff with critical information related to the case that he would not have without
- (30) The Defendant US DOJ (and related Attorneys) have Received a copy of Plaintiff's unsuccessfully filed Lawsuit

in Federal Court in 2008.

- (31) Despite the Recieving of such suit which including Allegations of Fraud they have not to date investigated the matter Charge/Allegation.
- (32) It is the Responsibility of the highest Law office in the United States of America (USDOJ) to make sure all allegation of Fraud are taken seriously and investigated.
- (33) The Plaintiff, showing Good Faith, supplied the US Trustee Attorneys with all requested Information which included many pages of Documents.
- (34) The Plaintiff, showing Good Faith, appeared at such hearings and depositions and answered all questions to the Best of His knowledge at the time with the information available.
- (35) The Plaintiff did not yet receive a copy of his deposition with the US trustee/Attorneys to make corrections and add Amendments. He wanted to add to questions that weent asked or ones he wanted to supplement additional information that he feels is important to the case (see attachment for some such information)

- (36) The US Trustee has already entered Complaint to the Court Requesting the Court to enter judgement against the plaintiff AND in favor of the US Trustee denying the "Defendant" (in the Bankruptcy) Plaintiff (in Adversary Proceeding) Request For discharge
- (37) The US DOJ, through its respective attorneys, has already Filed motion For Relief From automatic Stay of Garnishment.
- (38) The plaintiff's Attorney (Bankruptcy) is also entering a challenge to #36 & #37 above
- (39) It is a clear conflict of Interest to ("we're more than one Hat in a courtroom") Be Both the US Trustee (DOJ) & the plaintiff (DOJ) in a Bankruptcy case (in affect Judge/Jury & executioner)
- (40) The Trustee knew or should have known that he/she can't "Represent" the creditor of the same entity (DOJ) as the case (DOJ) which is what they did By Recommending in favor of the same!
- (41) Multiple alleged Background Facts By Both the Trustee Attorney & the DOJ Attorney are Blatantly false & should have been obvious to at least the DOJ vs trustee after the Deposition

of the Plaintiff that these statements made by the trustee Attorney in the Background facts were false. Contesting of these untruths are forth coming.

(42) Plaintiff has a Limited Power of Attorney, Robert MacWay that may need to be active at the trial as per the discretion of Plaintiff & of Mr MacWay.

(43) Plaintiff has a physician Diagnosed Diagnosis of Post Traumatic Stress Disorder (PTSD) that involves fear of over bearing, corrupt and/or uncontrolled Govt. officials that may be a significant factor in Govt. Run trial especially where the majority of all parties are Govt. themselves! The Plaintiff did misunderstand the US trustee Attorney at the last deposition in that while he does not have a physical impairment challenging his ability to be at trial, He does have a mental impairment in the PTSD as noted above.

(44) Plaintiff does not have control of the checking account receiving church gifts as defendants claim.

(45) Hence there is no sound reason why the US DOJ trustee should have attempted to request the court to deny the Plaintiff request to Discharge. Hence any such denial demonstrates evidence

of conflict of interest at best & collusion at worst.

(46) Plaintiff in no way made any false or fraudulent (as claimed by the defendant's) actions regarding this case of which will be detailed at the appropriate time.

(47) The US DOJ Trustee's statements charging the Plaintiff with such statements/actions (as per above) were false & malicious.

(48) The nature of US DOJ Trustee Attorney Memeger & DOJ Attorney Powell Response in their Rapid & obviously coordinated Responses & motion for Relief from automatic stay of garnishment is based on false & malicious accusations. The US DOJ Attorney(s) & The US DOJ trustee Attorney knew or should have known that all the information asked for by Plaintiff was given in good faith & that Bankruptcy was the Plaintiff's only relief & that their working in concert is a gross conflict of interest. Even an independent law firm has opined that there may be a conflict of interest (see attached

Arguments

① Count #1

Determination of Debt Existence

While the plaintiff acknowledges that he attempted to secure student loans while in medical school, he contends that the loans being accused of not "paying back" are not his "debt." Thus far the only paperwork available to determine this are non original copies with only a copy of what appears to be his name. The plaintiff demands to see the original document(s) with all responsible parties signatures to legally bind a contract between two or more parties. It is the responsibility of the party claiming to have legal authority to be owed such 'debt' to show a legal chain of custody of the original document(s) through all legally titled people or entities to legally prove their entitlement to such 'debt'. If this can not be proven then #1, plaintiff cannot be sure it was his debt to begin with & #2 - that the parties (US DOJ / US DOE) demanding such title legally to such 'debt' have no legal standing. A copy of one's signature on such a document is not acceptable. This could easily be a forgery. Corruption in the DOJ is well known. Plaintiff demands an original copy as proof and is the

DOJ & DOE responsibility to produce it. Also plaintiff demands to see the complete chain of custody of such original & all documents through all corp./persons & other entities (including bank.) for such documents as proof to legal right to the 'debt' they claim from plaintiff. Simply But, NO Documents equals NO 'debt'. This responsibility is the defendant's to produce of which they have not & never have to date. Plaintiff will be more than happy to pay a REAL & legal provable debt.

For mental pain & suffering plaintiff seeks > \$50,000 (seeks \$1,000,000)

② Count #2 True existence of any loan even if such paper work is found:

True existence of legal original paper work & chain of custody of all paper work through all entities through to the current time is demanded as noted above. However evidence exists that Banks and other entities are now producing fake, fabricated, fraudulent documents by hiring "foreclosure mills" involving forgery & perjury via companies such as DOC-X to create last documents such as original loan documents & all other documents through such required chain of custody. If the DOJ or the DOE produce such claimed original documents, the Plaintiff demands

The Right to have his experts inspect such claimed documents for fraudulency. IF The DOJ/DOE Do not produce such, Then they have no original & plaintiff goes back to count #1

③ Count #3 FRAUD of LOAN/other Related counts - see Attachment #
Even the correct loans plaintiff attempted to secure (which still need to be confirmed as in Counts #1 & #2 above) are not moneys currently owned by Plaintiff. The Loans I did attempt to obtain I have since learned are frauds. That is no substance of value was ever received by the lending institutions originally involved and named in this Adversary Proceeding. The Banks ledgered Book and they themselves received payment in the ledgering as has been detailed in Plaintiff's original suit & is now re introduced in its ~~entire~~ original form - as the complete argument for Count #3. See Attachment # 1

Also included is Relief sought for this count

IN Short, The Lender (Banks) was already "securitized" by deposit with the Federal Reserve (a private corp) the Note(s) and has been paid in full amount of each note creating an off-set claim in Plaintiff's favor. Discharging the claim which Discharge closed the accounts. The Defendant.

Do not produce the original Documents (notes) Because They would Bear the "For deposit only" Stamp Showing the Sale. They used Forgery & Theft to obtain deposit proceeds upon the sale of Plaintiff's note without full disclosure and this is a crime for which to Plaintiff's knowledge the DOJ has not yet investigated But yet continues to waste tax payers hard earned money pursuing the Plaintiff!

④ Count # 4 Loan Discharged in Bankruptcy already

Again - What Loan - Loan was a fraud on all arguments of counts #7/2/3; not withstanding even if a loan did exist (which none did) it was successfully discharged in Bankruptcy (9-9-91) At the time of the 9-9-Chapter 7 Bankruptcy the Requirement for Dischargeability of Student Loans just went from 5 to 7 years and questions arose by Plaintiff's then attorney's as to whether the Loans would qualify under 5 years (already paid on) or 7 years But either way they qualified. Payments were made over the 7+ years of time prior to the Bankruptcy (Payment history in the DOJ file not yet released). There was no Contestment of Plaintiff's Bankruptcy. Plaintiff's Bankruptcy was Not Because of or Related to student loans and thus can be verified. Plaintiff's Bankruptcy attorney's concluded after extensive

Research that the student loans qualified for & were
Dischargeable with plaintiff's 1991 Bankruptcy. All loans were
listed with original banks & student loan processing center.
Plaintiff does recall that his attorneys stated that they
qualified & should be discharged outright in the 1991 Bankruptcy
chapter 7. They stated that they could be challenged but at most
could be challenged to convert to a chapter 13 where 3 to 5 years of
payments could be required as per a court order, and if not
such challenge then they were discharged. While there was no such
challenge throughout the bankruptcy, plaintiff does recall that
while practicing medicine in the 1990's that the company he worked
for paid payments out of his pay for some 3 to 5 years for
student loans of which the plaintiff believed to be such arrangement.
Plaintiff was again not aware of any student loan 'debt' (as
though certainly such 'debt' was retired after above) until
found was in stated 'default' in or about 2006 thru 2008.
Any and all correspondence, if existed, would have been returned
by any party connected to plaintiff as paid in full and no
response return occurred to any party related to plaintiff
recalled. Hence as stated in counts #1 through #3, no loans

Existed, But any loan that for whatever argument did, was completely Discharged in Bankruptcy. Hence money already Stolen By DOE needs to Be Returned / Given to the IAL. All money Attempted to and continues to Be Attempted to Be garnished By The DOJ needs to Sense & dismiss. Plaintiff seeks relief from mental pain & suffering of \$1,000,000

- ⑤ Count #5 10 dependants NO money available to garnish
Even if all last 4 counts were with standing, the Plaintiff has 10 dependants & Does not have "disposable" Income. First he does not have any income But is gifted to By the church for his ministry & Living needs of dependants & himself as already stated. Hence Sterling church Gifting only leads to deprivation of 10 dependants and Potentially others involved in the church. And even if court considered PCM compensation to the church as income, it would still require all or near all of such for 10 dependants as per current agreement with same. Hence DOJ attempt to Steal such funds is outrageous and for mental pain and suffering Plaintiff seeks \$1,000,000

⑥ Count #6 Theft of Church property

Taking money (compensation) from Prime Care medical, INC (PCM) that is electronically wired to the IAL - not involving Plaintiff as per VOP & Church Directive is outright Piracy & theft of Church Funds

PCM is aware of Plaintiff's situation. Plaintiff can have a Corp VP acknowledge knowing Plaintiff has a unique situation among Physicians at Corp. Plaintiff Because of this & his PTSD is the only Physician who Does not have National Identifying numbers & the only Physician involved with / working with PCM who PCM does no Billing to insurances of any type. He is the only one Hence that has no involvement with insurances / Billings and money in any capacity & all compensation as stated is Directly & electronically sent to its rightful owner, IAL For theft & Attempted theft & continued attempt theft of Church Property, Plaintiff (on Behalf of Church as is with all Damages) Seeks for mental pain and suffering \$1,000,000

⑦ Count #7 Obstruction of Justice / Failure to obtain file

The DOJ has Refused to supply the Plaintiff with his file at the US DOJ Through the FOIA for many months. This is not just Bad Faith But is Obstruction of Justice. The DOJ records have many Important Facts as prior noted Regarding the Plaintiff's case. The record also has other information such as The DOJ attorney's turning plaintiff's file over to and recommending investigation by the IRS for no sound reason. The file certainly has no national security issues so is no reason for the DOJ to obstruct Justice. In fact if the DOJ has/had any questions to warrant any kind of investigation they could and should just simply ask ~~the~~ plaintiff and he will tell them / answer any questions they have directly.

For such Obstruction of Justice, mental pain and suffering plaintiff demands financial benefit of \$1,000,000

⑧ Count #8 Failure of DOJ to Investigate Fraud

The original case / lawsuit By Plaintiff & POA Robert MacWray was not accepted in federal court, but a copy was given to the DOJ. Offices in Philadelphia and was Stamp ted and dated as such. It Alleged Fraud as same copy can be seen in a Attachment and included in this case. The fraud was clearly laid out

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I should have prompted an investigation by the DOJ as the charges made are very serious. To date no such investigation has been done. The DOJ is aware of this paperwork because they acknowledged it as "nonsense" when asking Judge Tucker to deny plaintiff a hearing and requesting her to proceed with garnishment. This is obviously deliberate neglect & willful misconduct by the DOJ. That if they had investigated this & if they have concluded fraud existed they would have found no grounds for garnishment that they are trying so hard to do. They would have at the very least obligated to investigate such fraud one would think as a high priority of which they have not even 'looked into.' Part of this is that they have not contacted Robert MacWasy or the plaintiff to date if they have otherwise not found enough information in the suit itself. This is likely a conflict of interest in this setting as well. The DOJ is the US Govt agency who is "guarantor" of the Bank "loans" with incentive to secure any alleged 'debt' to the Bank with a profit to gain as "Bill Collector". Furthermore the US Govt has bailed out (given taxpayer money via Federal Reserve to the banks) so

is in collusion with the same & an investigation of BANK fraud would at best be a conflict of interest or at least a "favorite son" status and hence "off limits". For mental pain & suffering Plaintiff seeks \$1,000,000.

⑧ Count 8 Trustee conflict of interest / DOJ conflict of interest

There exists an obvious conflict of interest between the US Trustee as an Attorney of the US DOJ (Dave Adams/Robert DeAngelis) & the US DOJ attorney (David Memeger/Virginia Powell) and all other related parties as they are in fact all one entity.

So in fact the same entity is determining or at least heavily influencing the Court to determine if "creditor" (same entity) is going to win case & garnish, obviously a conflict of interest of the highest order! It is one thing when private individuals &/or organizations conflict in interest but it is unacceptable when the highest law officer(s) in the land obviously & blatantly engages in this type of activity & this should warrant sanctions/disaffirming proceedings and at the very least an investigation into such activity. An independent legal opinion even states there may be a conflict of interest! (see Attachment 2) Having the US DOJ trustee, DOJ "creditor" (Plaintiff in Bankruptcy Proceedings) Both advisors

The US Federal Judge & Influencing the same is an arrangement in mockery representing a kangaroo court (i.e. judge, jury & execution) denying the Plaintiff (debtor in bankruptcy) a fair & honest trial. Plaintiff Demands US trustee recommending adversary proceeding to be struck from the Record & Bankruptcy proceedings to go forth and Plaintiff request court sanctions for DOJ trustee & DOJ Attorneys for proceeding with their approach when they knew or should have known better from the beginning and excuse themselves from the case or at least acknowledge the conflict of interest. Plaintiff demands for mental pain & suffering \$1,000,000.

- ⑨ Count #9 US trustee objecting to The debtors Discharge in Bankruptcy and The DOJ attorney trying to Restart garnishment proceedings. Beside the prior noted charges of collusion and conflict of interest, The US trustee &/or The US DOJ attorney separate or in concert, state that the plaintiff attempted to hide assets, had sole possession of a checking account and have excess income and other accusations (details responded to already by Attorney Lapotka). First, The Plaintiff has few if any assets. He did not hide any assets. He does not control such accounts

First, the account is not his, but property of TLM, INC of which he has no control or position in and TLM, INC can stop/end account at any time. Second he has a POA control by his POA Robert McNamee who supervises the account & checks over \$2500- must get permission & entire account periodically is reviewed & can have church stop gifting at any time. Third, Plaintiff has verbal agreement/arrangement to take care of 10 dependants of which takes nearly all money gifted by the church and if not supplied, spouse could seek legal proceedings to force such needs. Hence while plaintiff writes the checks & makes the withdrawals & needed for family dependants demand, he in fact does not control the account at all but in fact is merely (because others direct/allow him to) the custodian of the/such account and could by multiple parties be removed at any time and all accusations by the DOJ Attorneys (trustee included) are false and malicious. And through deposition the attorneys know or should have known as much. Hence plaintiff seeks financial award for mental pain & suffering of \$1,000,000.00. Secondly, as noted, plaintiff does not have excess income as nearly ~~all~~ or sometimes more than all money goes to 10 dependants.

(10) Court #10 US DOJ Attorney Requesting Removal of Automatic Stay of Garnishment

First, DOJ Attorney states that Bankruptcy was done solely as an attempt to stop garnishment. This is false. First, the Plaintiff attempted to get a hearing in Federal Court to challenge the garnishment order that the Judge (Tucker) was considering, but was denied such hearing. Judge Tucker stated denial of such hearing was because Plaintiff already had a chance of a hearing. This is incorrect. The only hearing offered the plaintiff was a hearing to explain assets available but not a hearing to argue debt in the first place. As such, the Bankruptcy (necessary because garnishment was not just for many reasons including listed below) was plaintiff's only avenue of relief. Second, plaintiff again had no assets including alleged "Income" which is property of the ~~REAL~~ AL.

Third, The loans in question have yet to be properly identified.

Fourth, any loans plaintiff allegedly did receive are a fraud.

Fifth, any REAL loans, if existed, were discharged in a prior

Bankruptcy. Sixth, Plaintiff does not only not have income to

garnish, but getting money is used almost exclusively for

dependant needs, so would not have 25% of "net income"

Available anyway. Second, issues of contact (lack of) and other responses is as per Bankruptcy attorney of Plaintiff. Third, Arguments of DOJ attorney of transferring, hide or conceal or preserve assets has already been addressed as false and malicious as are hiding or not providing or preserving all documents requested. There was Absolutely NO Fraud attempted or committed by Plaintiff. He has not had BENEFIT of withholding of garnishment Because there never should have been any garnishment. Thus Plaintiff, Since there is NO Fraud on his part & the DOJ hence has NO Fraud to prove, yet alleged that he did commit such Fraud, seeks Financial Relief for mental pain & suffering of \$1,000,000.00

- ⑪ Count #11 Personal conflicting gain By US trustee/US D. Attorneys and US Federal Judge Tucker all Potentially have conflicting Secondary gain via CAFR accounts & 14th Amendment Section 4-2 "Booty claims" and possible other methods to personally Benefit By money collected By Govt. agencies DOJ & DOE Creating a conflict of Interest of the highest order & possibly collusion & fraud. Failure to disclose such conflict of interest is at least unethical & potentially criminal. Plaintiff seeks for

mental pain & suffering \$1,000,000.

(12) Count #12 Judge Tucker Refusing to allow hearing in
Federal Court

Judge Tucker Refused to Grant plaintiff's request for a hearing prior to her granting an allowance of the DOJ to commence garnishment of which is not the plaintiff's "wage" or "earnings" Dispute including in plaintiff's plea for same a copy of the original Law suit from 2008 alleging fraud of the original loan in the first place. Such alleging of fraud should have prompted any Govt. official (especially a Judge) who has sworn to uphold the constitution, to at least investigate such potential fraud (which she didn't) or allow a hearing to at least satisfy herself fully that such fraud did not happen or proceed further if it did. She also did not question the DOJ. If they did indeed investigate such fraud. She herself would not be expert enough to know if such fraud was indeed done & did not investigate the same. For such lack of constitutional duty and mental pain & suffering plaintiff seeks financial gain of \$1,000,000.00.

It should be noted at this time the plaintiff does not seek Financial Gain for himself as he has sworn to a VOP But seeks such Financial Gain as would be due him through the Counteractions to be Given to the IAL.

The plaintiff seeks Financial Relief (to the IAL) For:

- ① \$34,005,925 For Count #3 (see attachment —)
- ② \$1,000,000 each For counts 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 & 12
- ③ \$30,000,000 For count #13

So total sought	\$34,005,925	
	\$11,000,000	(1 million x 11)
	\$30,000,000	
<u>total</u>	<u>\$75,005,925</u>	equivalent value Gold/Silver

⑬ Count #13 Fraud of secretaries of Treasury not prosecuted By DOJ

The alleged Loans were not lawful money contract. Lawful money By Constitutional Law is Redeemable in Gold or Silver & Federal Reserve Notes or checks are not. Hence "Loans" should be null & void Because it did not transfer anything of value only paper. Hence if plaintiff (after proven actually had a loan which didn't happen) would be happy to "Repay" "Loan" in equal weight of paper.

US Attorney needs to prosecute Secretary of Treasury for Dereliction of Duty. Law abuse with Loan at Banks as follows:

(36)

The money paid in so far is in violation of Law. US Attorney is responsible to investigate / charge Fraud of the Secretary of the Treasury AS of April 26th, 2009 in violation of 3 Laws:

- ① The Secretary is in violation of title 31 usc 5119 (a) For failing to maintain the equal purchasing Power of all United States Currency
- ② The Secretary is in violation of title 12 usc 411 For failing to redeem Federal Reserve notes at their face value for lawful money on demand.
- ③ The Secretary is in violation of title 31 usc 5112 (i)(1) For failing to maintain a sufficient supply of constitutionally lawful money / coin to meet public demand

- (14) Count #14 NonResponse of DOJ At. Virginia Powell to Letter By Plaintiff Responding to First Learning of Case & Garnishment &:

60+ Follow up letter with equal NonResponse from DOJ At. V. Pow

When Plaintiff first learned of "OPEN Lawsuit & Garnishment against Him, He Responded to DOJ Attorney VIRGINIA R. POWELL detailing all information & Demanding Proof of "Debt." ATT. POWELL Refused to Respond not only to the initial letter But a 60+ day Follow up letter thereby making the DOJ / US of America case null & void

Enclosed as Attachments #7 & #8 as proof of such letters sent by Registered mail. Hence DOJ - US of America are is null & void by lack of Response as DOJ is in Default.

(15) DOJ & Horney turning Plaintiff's File over to recommending Investigation By IRS

DOJ is Giving Plaintiff's File to apparently other agencies and who knows who else except violates the FOIA and won't give File to plaintiff. let it be known to the DOJ/Virginia Powell & any future IRS investigation that Plaintiff has no income & fully complies with the IRS as is in full accord of all IRS laws as follows full legal guidelines & regulations including but not limited to IRS Publication 517 of which a copy is in Adversary Proceedings as Attachment #9 for all concerned to review. If DOJ & Horney(s) have need of any other Documents or any further questions they can feel free to contact the plaintiff for as to his knowledge is following all regulations and codes.

Effort of Good will & attempt to resolve legal issues out of court, resolve financial dispute and avoid Bankruptcy By Plaintiff if if Defendants can show equal Good Faith effort to do the same & /or if Judge can encourage defendant to do the same. Effort on Plaintiff's part is explained in the later part of attachment #5 / explanation of PTSD / Promotion of Good will Resolution. Again Plaintiff is a Peaceful Law abiding US citizen who would like to have Amicable Resolution for Both sides of this legal matter and attempt to resolve all issues once and for all. It is hoped by the Plaintiff that defendants would also be of reasonable accord. It is further hoped that the Judge would encourage defendants to seek Amicable Resolution that Good will prevent need for Bankruptcy & further and future legal proceedings

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verification

I, Erik Van Kessel, testify that the enclosed Adversary Proceeding
Pro Se Litigation is true and accurate to the best of my knowledge.

E. Van Kessel 11-6-10

Services

① US Dept of Justice & related Attorneys

Zare David memeger, esq
Virginia Powell, esq
615 Chestnut Street
Suite 1250
Phila, Pa 19106-4476

② US trustee office and related attorneys

Dave Adams, esq
Roberta DeAngelis, esq
Office of the US trustee
833 Chestnut Street
Phila, Pa 19107

③ US Dept of education

Po Box 4169
Greenville, TX 75403-4069

④ Student Loan Marketing Center

1050 Thomas Jefferson N.W.
Washington, DC 20007

⑤ Salzman & Salzman PC

Dore Salzman esq
Joel Kirk, esq
42 South 15 Street
Suite 1100
Phila, Pa 19102

⑥ ~~Enclosed~~ First Eastern Bank

11 West Market St
Wilkes Barre Pa 18701

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(7) Judge Patrese Tucker
US Federal Court House
Philadelphia, Pa 19106

(8) United States of America
Dept of treasury & Dept of Health and Human Services
Washington, Dc 20007

Attachments

- ① LAW SUIT [in] offset of Garnishment order
Re-introduce as count #3 adversary Proceedings in Federal Bankruptcy Court in entirety
- ② Legal opinion stating may be conflict of interest with DOJ as trustee & US DOJ attorneys
- ③ VAL of Poverty - Erik von Kiel
- ④ Church Directive, Erik von Kiel
- ⑤ PTSD (Attachment) Erik von Kiel / Promotion of Goodwill Resolution
- ⑥ Request For Hearing To Judge Tucker by Erik von Kiel
- ⑦ 10/10/06 Letter to DOJ Attn. Virginia Powell By Erik von Kiel
- ⑧ 60+ day F/U Letter to DOJ Attn. Virginia Powell By Erik von Kiel
- ⑨ IRS Publication 517

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Attachment #1

Initial Lawsuit in full



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF;
 THE MICHAEL DESTRY WILLIAMS®
 trust, the Executor of the Office
 of Executor and Beneficiary
 V.
 UNITED STATES OF AMERICA
 Corporation.

C.A. No. _____

Petition For Instructions

Now Comes: The Petitioner, in propria persona sui juris
 Complainant, Michael-destry Williams and in the capacity
 as Sole Foreign Beneficiary, Equity Title holder and Executor
 of the Office of Executor of the trust - MICHAEL DESTRY-
 WILLIAMS® (herein known as M.D.W.® trust), a Citizen
 of The United States of America, Citizen of Colorado
 State Republic, State Zoned Citizen, by Oath and
 Declaration, physically permanent disabled American,
 being incarcerated as a unwilling, compulsory, surety under
 threat, duress, coercion for the M.D.W.® trust, by and
 through a commercial claim in special laws of the
 UNITED STATES OF AMERICA corporation, a company of
 Delaware, in the Admiralty UNITED STATES DISTRICT OF
 THE DISTRICT OF COLORADO (herein known as USDCDC),
 Case # 12-cr-00140-CMA-(1), an inmate at the Federal
 Correctional Institute - FCI Englewood Prison, under
 B.O.P. # 39714-013, C/o 9595 W. Quincy Avenue, Littleton
 Colorado [80123]. Hereby respectfully petitions the
 Court for instructions. In support of the Petition,
 Petitioner represents as follows;

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Creation of Trust

- 1) • UNITED STATES OF AMERICA corporation, herein known as USA Corp., Grantor, on or between 23rd May 1964 and 23rd May 1982 created a trust known as MICHAEL DESTRY WILLIAMS © (M.D.W © trust).
- 2) • M.D.W. © trust was created for the Petitioner, the sole foreign Beneficiary, when he was a minor, under the age of majority, not able to lawfully enter into a contract.
- 3) • The Petitioner/Beneficiary has never contracted or agreed to the M.D.W. © trust, and or knowingly participated in the trust, upon reaching the age of majority 23rd May 1982, to date.
- 4) • M.D.W. © trust is a Irrevocable trust to the Grantor and is a Revocable trust to the Beneficiary, per Substantive Trust Law, where the trust was created for a child, a minor under the age of majority.
- 5) • M.D.W. © trust is a part of the Federal Old-Age and Survivors Insurance Trust Fund and created on the books of the Treasury of the United States.
- 6) • Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund are, of the United States - Secretary of the Treasury, Secretary of Labor and the Chairman of the Social Security Board, all ex officio.

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-
- 7) The local trustee of the M.D.W. trust may or may not be the County Treasurer of the Petitioners/Beneficiaries county of domicile, Pueblo, Colorado.
 - 8) M.D.W. trust File # 10519640164 57, ID - SS # xxx-xx-0608

Background

- 9) U.S.A. corp., the Grantor, was licensed/registered to conduct business originally in Delaware State.
- 10) Officers and Agents of the U.S.A. corp and or their subsidiaries corporations have never produced their claim of contractual obligation between the parties. Including but not limited to, the Commercial presentment and claim in the Admiralty USDCDC Case# 12-cr-00140-CMA-(1) and 4th Judicial District, El Paso County, Colorado Case# CO 212006M-001224-000137.

Chancery Petition

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- 11) The Grantor, Board of Trustees, Trustees and - or Officers and Agents thereof, have never disclosed their identity, titles, address etc., and or the M.D.W.® trust or body of the trust to the Petitioner/ Beneficiary, to date and nunc pro tunc, (back) to the age of majority - 23rd May 1982 of the Petitioner/ Beneficiary.
- 12) At no time, has the Petitioner/ Beneficiary received a "True Benefit" from the M.D.W.® trust to date.
- 13) Petitioner/ Beneficiary became aware of the M.D.W.® trust existence in January 2009.
- 14) The Petitioner/ Beneficiary, noticed and served the Deputy Commissioner (International) of the Treasury/ Internal Revenue Service, by Registered mail # RA 218 748 837 US and Cc: the Secretary of Treasury, the Petitioners, Standing, Status and Citizenship documents. On or around 26th February 2009, without a response to date. See Exhibits "K" "L" "M" and "U".

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- 15) On or about the 18th March 2009, the Petitioner/Beneficiary, noticed and served the Pueblo Social Security Office, Exhibit "I" - SSA-521 form dated 18th March 2009, Exercising Equitable Title Rights, requesting accounting, settlement, closure and distribution of the M.D.W.® Trust.
- 16) M.D.W.® trust was reported inactive, on or about June 2009. By an unknown I.R.S. agent to the Petitioner/Beneficiary by telephone, claiming they need a Power of Attorney to complete the closing of the trust. IRS agent refused to disclose the why and for whom, for said Power of Attorney.
- 17) An accounting of the M.D.W.® trust will provide prima facie evidence of the mismanagement and rape of said trust and the violations of fiduciary responsibilities of the Officers, agents and trustees thereof.
- 18) On the 26th June 2013, the UNITED STATES MARSHAL SERVICE, incarcerated the Petitioner/Beneficiary as the unwilling compulsory surety under a compelled performance, with threat duress coercion, without a legal or lawful authority or warrant, by and through the Admiralty USDCDC Under a Commercial presentment, Case # 12-cr-00140-CMA-(A). Stating that the U.S.A. corp. as plaintiff and M.D.W.® trust

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- 19) as the defendant under a alleged Contractual Obligation, under "special laws" in Color of Law, for their claim. Denying the Petitioner/Beneficiary full disclosure, true bill, true nature and cause of the action, true identities of the alleged parties and Beneficiaries Equitable Rights. See Exhibit "R", publicly recorded letter from I.R.S. identifying special laws under a employment agreement.
- 20) No names, titles or addresses were presented by the acting officers, agents of the plaintiff- U.S.A. Corp. or the Admiralty USDCDC to the Petitioner/Beneficiary.
- 21) On the 26th June 2013, the Petitioner, Under Equity title and authority as the Sole foreign Beneficiary, claimed and moved into the Office of Executor of the M.D.W. trust, arresting the UNITED STATES MARSHAL SERVICES commercial document, which was presented to the Petitioner/Beneficiary on that day, and discarded or hidden "from the light of day to date.
- 22) Petitioner/Beneficiary by occupying the Office of Executor of the M.D.W. trust, is notice to the world, that his trust is being Mismanaged and Raped. "Breach of Contract".

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- 23)• Petitioner does not have access to the Admiralty USDCDC documents, records, time frames of their Commercial proceedings from 26th June 2013 to date.
- 24)• Petitioner/Beneficiary was brought before two Admiralty magistrates on different days. Petitioner/Beneficiary informed the magistrates of his special appearance, standing, status and Citizenship, refusing to participate or contract with them.
- 25)• Days latter, Petitioner/Beneficiary was brought before Admiralty Judge Christine M. Arguello, upon the same Commercial matter. Judge Arguello was noticed of the Petitioners/Beneficiaries special appearance, standing, status and Citizenship.
- 26)• The Petitioner/Beneficiary requested, from Judge Arguello the Admiralty Courts authority and jurisdiction, (persona and subject matter), cause and nature of the action, the agreement or contract between the parties, Oath of Office and bond of all Admiralty Courts officers and agents, demand and or transfer of proceedings to a Article III Common law Court of Competent jurisdiction (Save the Suitors Clause), both verbal and written. See Exhibits "A", "B", "C".
- 27)• Judge Arguello refused all Petitioners/Beneficiaries requests, establishing her Commercial and Constitutional dishonor. See Exhibits "S", "V" and "EE".

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- 28) The Petitioner/Beneficiary is permanently physically disabled and during the preliminary hearing, had a heart attack in the Admiralty court room of Judge Arguello, collapsing onto the table and chair, no medical attention was provided to the Petitioner/Beneficiary. GEO Detention Center doctor confirmed report of heart attack during physical.
- 29) Judge Arguello proceeded with a Admiralty jury trial.
- 30) no trustee or legal title holder represented the M.D.W. trust in the Admiralty Court proceedings.
- 31) The Petitioner/Beneficiary did not participate in the trial or give his consent to the Commercial agreement and or proceedings.
- 32) Judge Arguello picked the jury members along with U.S. Attorney Kenneth Harman.
- 33) M.D.W. trust was found guilty, Petitioner/Beneficiary was incarcerated as surety for 71 months and 5 years probation for the alleged commercial debt.
- 34) An Appeal, Writ of Quo Warranto was filed on behalf of the Petitioner/Beneficiary on 16th December 2014, Case # 14-CV-02983-GPG with the Admiralty USDCDC and was denied.
- 35) The Petitioner/Beneficiary was imprisoned at FCI Englewood Prison - 9595 W. Quincy Avenue, Littleton Colorado 80123, under B.O.P. # 39714-03 on or about April 2014.

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- 36). The Petitioner/Beneficiary refused to sign or agree to any of the contracts presented to him, including the time frame from 26th June 2013 to date, by the Federal corporate agencies, officers and agents
- 37). The Petitioner/Beneficiary when assaulted, battered, forced to participate or sign their corporate commercial documents, signs under threat, duress, Coercion, (T.D.C), All Rights Reserved etc., by: Michael-destry: Executor of the Office of Executor of the M.D.W.® trust, or arrest and seizes the commercial document. See Exhibits "C", "D", "E", "F", "N" and "BB".
- Additional requests to close M.D.W.® Trust -
- 38). Exhibit "G" - SSA-521 form, Request for withdrawal of application SS-5, dated 11th April 2017
- 39). Exhibit "H" - SSA-521 form, Request for withdrawal of application SS-5, dated 15th May 2014
- 40). Exhibit "J" - Letter - Board of Trustees, withdrawal of SS-5 application 23rd May 2014
- 41). Exhibit "JJ" - Letter - Social Security Office (Pueblo) and Pueblos County Treasurer - 18th April 2017
- 42). Exhibit "kk" - Proof of Service, Fax receipt Pueblo County Treasurer
- 43). Exhibit "LL" - Proof of Service, certified mail envelope # 7014 0150 0004 4042 2621, Pueblo, Colorado Social Security Office, 19th April 2017

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- Additional attempts to extinguish all remedies for -
Relief of U.S. A. corp and subsidiaries Commercial
presentments, Case# 12-cr-00140-CMA-01, USDCDC,
4th Judicial District, El Paso county Colorado
Case# 212006M-001224-000137.

- 44) • Habeas Corpus Petition
 - Exhibit "W" Habeas Corpus Petition
 - Exhibit "O" Proof of Service, Fax receipt
Administrative Law Judge: Robert Spencer
 - Exhibit "P" Proof of Service, certified mail #
7014 0150 0001 4042 4960, Colorado
Office of Administrative Law Court.
 - Exhibit "Q" Proof of service, certified mail #
7014 0150 0001 4042 4304, Administrative
Office of the United States Courts.
- 45) • Common Law Administrative Procedures
 - Exhibit "X" First Notice - Complaint, Affidavit, Bill, etc.
17-pages, dated 1st February 2016.
 - Exhibit "Y" Affidavit of Service of First Notice
(Exhibit "X") 4-pages, 18th November 2016
 - Exhibit "Z" Fault Notice - 6 pages, 28th June. 2016
 - Exhibit "AA" Affidavit of Service of Fault Notice
(Exhibit "Z") 2-pages, 25th January 2017.

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- 46) • Complaint; Criminal Investigation Division
Internal Revenue Service
- Exhibit "MM" Affidavit of Service of 3949A forms.
 - 3949A forms Exhibits - "VV" "OO" "PP" "QQ" "RR"
"SS" "TT",
 - Exhibit "UU" Proof of Service - Envelope signed
by staff and mailed through FCI
Englewood Prison mail room.
- 47) • There were no names, titles, trustees and or addresses
noticed or served upon the Petitioner/Beneficiary by or
of the M.D.W. trust and or the U.S.A. corp. or its
subsidiaries.
- 48) • Petitioner/Beneficiary has served notice of this
filing of this Petition, Complaint upon;
- Admiralty UNITED STATES DISTRICT COURT OF THE
DISTRICT OF COLORADO - (USDCCO)
AHW: Clerk of the Court - Jeffrey P. Colwell
Admiralty Judge - Christine M. Arguello
901 19th Street
Denver, Colorado [80294]

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