

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**  
Bankruptcy Judge Joseph G. Rosania, Jr.

In re:

CRAIG L. OCHS,  
SSN: xxx-xx-5353

Debtor.

Case No. 18-14794-JGR  
Chapter 7

SHERYLANN DENNIE, KELLY JEAN  
OCHS, AND DEBORAH OCHS  
ALVAREZ, individually and in their  
capacity as beneficiaries of the sub-trusts  
of the Lawrence D. Ochs Trust known as  
the Lawrence D. Ochs Charitable Lead  
Trust and the Lawrence D. Ochs  
Charitable Remainder Trust,

Plaintiffs,

v.

CRAIG LAWRENCE OCHS,

Defendant.

Adv. Pro. No. 19-01129-JGR

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**ORDER DENYING DEFENDANT’S MOTION TO DISMISS**

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“The trouble is, you think you have time.”<sup>1</sup> Deadlines and timeframes are part of every stage of litigation. They begin a lawsuit, move it forward, and eventually bring the litigation to an end. They ensure finality and an orderly system of procedure. Until the United States Supreme Court weighed in on whether certain of the Federal Rules of Bankruptcy Procedure were “jurisdictional” or “procedural” in 2004, it was believed that time limits in the rules of civil and criminal procedure were all “jurisdictional,” meaning that they acted as statutes of limitation which could not be modified, because once a jurisdictional deadline expired, the Court was deprived of the power to extend such deadline.

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<sup>1</sup> JACK KORNFIELD, BUDDHA’S LITTLE INSTRUCTION BOOK (1994).

## I. BACKGROUND

Defendant Craig L. Ochs (“Defendant”) filed his Chapter 7 case on May 31, 2018, on the eve of his deposition scheduled in a state court action brought by Plaintiffs Sherylann Dennie, Kelly Jean Ochs, and Deborah Ochs Alvarez (“Plaintiffs”) in 2017. Plaintiffs, who are the beneficiaries of certain family charitable trusts, allege the Defendant, as the sole trustee of the family charitable trusts, misappropriated approximately \$1.3 million from the family charitable trusts.

The meeting of creditors for the Defendant’s case was conducted on June 26, 2018, the deadline to object to discharge and dischargeability was August 27, 2018, and the Defendant received his discharge on September 4, 2018.

On June 12, 2018, immediately after the bankruptcy filing, the Plaintiffs requested a Rule 2004 examination of the Defendant to produce documents and attend a deposition. The Defendant objected on specious grounds, accused the Plaintiffs of an improper motive, and claimed no discovery should be allowed until after the discharge deadline expired. On July 10, 2018, the Court held an evidentiary hearing and granted the motion for Rule 2004 examination over the Defendant’s strenuous objection.

The Plaintiffs notified the Court that the Defendant was not cooperating in discovery by refusing to produce documents and submit to a deposition. The Court conducted another discovery dispute hearing under the auspices of Local Rule 7026-1(d) on October 16, 2018. At the hearing, the Court heard argument of the parties and specifically ordered the Defendant to produce certain documents but exercised judicial discretion and narrowed the scope and timeframe of the document production as requested by the Defendant. The Court ordered that the documents be produced on or before October 31, 2018, and ordered the Defendant to submit to an oral examination on or before November 14, 2018.

The Plaintiffs ultimately filed this action on May 14, 2019, more than eight months after the dischargeability deadline of August 27, 2018. This action contains claims for revocation of discharge<sup>2</sup> and determination of dischargeability.

## II. MOTION TO DISMISS

On June 14, 2019, Defendant filed a Motion to Dismiss under Fed. R. Civ. P. 12, made applicable herein by Fed. R. Bankr. P. 7012, seeking to dismiss Plaintiffs’ Fifth Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(4)), Plaintiffs’ Sixth Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(2)), and Plaintiffs’ Seventh Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(6)).

The Plaintiffs responded to the Motion to Dismiss on July 2, 2019, and the Defendant did not reply.

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<sup>2</sup> The claims for revocation of discharge are timely under 11 U.S.C. § 727(e) because the complaint in this action was filed within one year of the entry of the discharge.

The Defendant argues that even if the Court accepts the allegations of the Fifth, Sixth, and Seventh claims for relief as true, the Court must dismiss such claims. Specifically, the Defendant argues the claims are time-barred due to the Plaintiffs' failure to strictly comply with the deadlines of Fed. R. Bankr. P. 4007(c) and file either a dischargeability complaint under 11 U.S.C. § 523 or a motion for extension of time before the Fed. R. Bankr. P. 4007(c) deadline expired. He contends it is fair to time bar the Plaintiffs because they have been actively involved in his bankruptcy case and had actual knowledge of the dischargeability bar date established in his case.<sup>3</sup>

The Plaintiffs argue the deadline in Fed. R. Bankr. P. 4007(c) is "procedural," not "jurisdictional," and therefore subject to equitable doctrines such as equitable tolling. They claim their complaint has adequately pled equitable tolling and the facts in support in detail, and the Court should deny the Motion to Dismiss and allow the late-filed dischargeability claims based on the doctrine of equitable estoppel.

### III. LEGAL STANDARDS

This Court has jurisdiction over the subject matter of the motion to dismiss under 28 U.S.C. §§ 1334, 157(a), and 157(b)(2)(I) and (J), because this adversary proceeding concerns objections to discharge and determination of dischargeability of particular debts.

11 U.S.C. § 523(a) sets forth statutory exceptions to the dischargeability of a debt. Paragraph (2) excepts from discharge claims obtained through false pretenses, false representations, or actual fraud. Paragraph (4) excepts from discharge debts for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny. Paragraph (6) prevents the discharge of debts for willful and malicious injury.

11 U.S.C. § 523(c) addresses claims brought under these three paragraphs:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

The time within which a creditor may seek a determination of dischargeability of a debt under paragraphs (2), (4), or (6) is governed by Fed. R. Bankr. P. 4007(c):

Time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case; notice of time fixed. Except as otherwise provided in subdivision (d), a complaint to determine the

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<sup>3</sup> The Court assumes the Defendant is arguing that Fed. R. Bankr. P. 4007(c) is jurisdictional (not procedural), strictly construed, and not subject to any extension.

dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Thus, generally, a creditor has sixty days after the first date set for the meeting of creditors to file either a complaint to determine dischargeability or a motion for extension of time to file such complaint.

The Tenth Circuit Court of Appeals previously held that the time limitations of Fed. R. Bankr. P. 4004(a) and 4007(c) are strictly construed and "jurisdictional." However, it allowed a late-filed complaint under 11 U.S.C. §§ 523 and 727 because the creditor relied on a bankruptcy court notice setting an incorrect deadline in the case of *Themy v. Yu*, 6 F.3d 688, 689 (10th Cir. 1993) (citing *Walker v. Wilde (In re Walker)*, 927 F.2d 1138, 1145 (10th Cir. 1991), and *Yukon Self Storage Fund v. Green (In re Green)*, 876 F.2d 854, 857 (10th Cir. 1989) for the proposition that the deadlines are strictly construed.).

However, in *Kontrick v. Ryan*, 540 U.S. 443, 447 (2004), the United States Supreme Court flatly rejected the historical analysis that the bankruptcy rules were jurisdictional and held that the time period within which to object to discharge under 11 U.S.C. § 727 prescribed in Fed. R. Bankr. P. 4004(a) is not "jurisdictional."<sup>4</sup>

Fed. R. Bankr. P. 4004(a) states:

Time for Objecting to Discharge; Notice of Time Fixed. In a chapter 7 case, a complaint, or a motion under §727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under §1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

In *Kontrick*, a debtor argued the creditor's complaint objecting to discharge was not timely filed and the bankruptcy court lacked subject matter jurisdiction to conduct a trial on the complaint. However, the debtor did not raise the jurisdictional argument until after he lost at trial.

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<sup>4</sup> In 2005, the Supreme Court held that deadlines in Federal Rules of Criminal Procedure 33 and 45 are also not jurisdictional in the case of *Eberhardt v. United States*, 546 U.S. 12, 19 (2005) (per curiam).

The Supreme Court stated that Court-prescribed rules of practice and procedure, “do not create or withdraw federal jurisdiction.” *Id.* at 453. The Court ruled that the filing deadlines in Fed. R. Bankr. P. 4004(a) and 9006(b)(3) are “claim processing rules” that do not delineate what cases bankruptcy courts are competent to adjudicate. The Supreme Court further held that a debtor forfeits the right to challenge the rule’s time limitation if the debtor does not raise such limitation before the bankruptcy court reaches the merits of the objection to discharge, because only lack of subject matter jurisdiction is preserved post-trial. The Supreme Court did not reach the issue of whether equitable tolling could excuse the untimely filing of a complaint because that issue was not before the Court.

The language of Fed. R. Bankr. P 4004(a) and 4007(c) is identical. Accordingly, this Court believes that, under the reasoning of *Kontrick*, Fed. R. Bankr. P 4007(c) is also “procedural” rather than “jurisdictional.”

The Supreme Court recently undertook a similar analysis in the case of *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13 (2017). The Supreme Court held that Fed. R. App. P. 4(a)(5)(C), which governs extensions of time to file appeals from the district courts to the circuit courts, was a claim processing rule rather than a jurisdictional requirement. The Court distinguished between a time limit arising from a rule, in contrast to a non-waivable and non-forfeitable jurisdictional requirement arising from a statute. It found that the statute in question, 28 U.S.C. § 2107(c), did not specify how long an extension may run, rendering Fed. R. App. P. 4(a)(5)(C) a claim processing rule. It noted that the distinction was critical because a jurisdictional time limit deprives the court of adjudicative authority, necessitating dismissal. Whereas, claim processing rules must be enforced, but they can be waived or forfeited.

Thus, the analysis for Fed. R. Bankr. P. 4004 and 4007 focuses on whether the time limits therein arise from a statute. The Supreme Court in *Hamer* ruled that the limit in Fed. R. App. P. 4(a)(5)(C) on extensions of time does not arise from a statute. Similarly, a review of the language of 11 U.S.C. §§ 523 and 727 reflects that there are no “built-in” time constraints in the two statutes.

The Ninth Circuit Bankruptcy Appellate Panel applied the reasoning of *Hamer* to find that Fed R. Bankr. P. 8002(a), governing the time to file appeals from the bankruptcy court, was jurisdictional in the case of *Wilkins v. Menchaca (In re Wilkins)*, 587 B.R. 97 (B.A.P. 9th Cir. 2018). In doing so, the B.A.P. emphasized that the relevant statute, 28 U.S.C. § 158(c)(2), specifically provides that an appeal is taken “in the time provided by Rule 8002 of the Bankruptcy Rules.” *Id.* at 106.

This Court’s conclusion that *Kontrick* holds that Fed. R. Bankr. 4004(a) is not jurisdictional and that a strict standard should not apply to Fed. R. Bankr. 4004(a) **and** 4007(c), is consistent with two recent bankruptcy decisions from the United States Bankruptcy Court for the District of New Mexico which hold that Fed. R. Bankr. P. 4007(c) is not jurisdictional and is subject to equitable tolling.

*McNaughton v. Maytorena (In re Maytorena)*, Nos. 09-10325-m7, 09-11934-m7, 11-1079-j, 11-1080-j, 2011 Bankr. LEXIS 4469 (Bankr. D.N.M. Nov. 4, 2011), involved claims arising from a failed real estate venture. Plaintiffs filed a complaint seeking to

determine the dischargeability of debts under 11 U.S.C. § 523(a)(2), (4), and (6), and claims for revocation of discharge under 11 U.S.C. § 727.

*Maytorena* involved defendants in two separate bankruptcy cases. Prior to the bankruptcy case filings, separate state court litigation was pending. While plaintiffs were not listed in the bankruptcy cases as creditors and did not receive notice of the case-related deadlines directly from the Bankruptcy Court, suggestions of bankruptcy were filed in the state court case, providing actual notice of both bankruptcy case filings. Although plaintiffs' complaint was filed well after the deadlines established by Fed. R. Bankr. P. 4004(c) and 4007(a) had expired, they argued equitable tolling should apply because they did not receive notice of the case deadlines directly from the Bankruptcy Court. The Court ruled that the creditors did not establish equitable tolling applied because even though they did not receive formal notice of the bankruptcies directly from the Bankruptcy Court, they had actual knowledge of the bankruptcies within a few days of the filings, they failed to protect their rights for many months, and there were no extraordinary circumstances.

In *N.M. Dep't of Workforce Sols. v. Martinez (In re Martinez)*, Nos. 7-11-15027 JA, 12-1186 J, 2012 Bankr. LEXIS 3456 (Bankr. D.N.M. July 25, 2012), the creditor relied on a reaffirmation agreement, which was later rescinded after the dischargeability deadline, in lieu of filing a dischargeability complaint or a motion for extension of time. The creditor argued its untimely complaint should be allowed because of alleged wrongdoing on the debtor's part by signing and later rescinding the reaffirmation agreement after the dischargeability deadline had passed. The Court declined to apply the doctrine of equitable tolling, holding that the creditor should have protected its rights by filing a timely complaint, a timely motion for extension of the deadline, or a stipulation for extension of the deadline prior to expiration of the reaffirmation agreement rescission and dischargeability deadlines.

In both cases, Bankruptcy Judge Jacobvitz held that the doctrine of equitable tolling applies to the deadline established under Fed. R. Bankr. P. 4007(c). The Court opined that time limits for objecting to the dischargeability of a debt or to discharge imposed by the Bankruptcy Rules are not "jurisdictional," and equitable defenses like waiver, estoppel, and equitable tolling can apply to preserve a plaintiff's claim that a Chapter 7 debtor's discharge should be denied. *Maytorena*, 2011 Bankr. LEXIS 4469 at \*23-24; *Martinez*, 2012 Bankr. LEXIS 3456 at \*11 (Equitable tolling can apply because the time limit for objecting to dischargeability of a debt is not jurisdictional.).

This Court finds both cases authored by Judge Jacobvitz which follow *Kontrick* persuasive and adopts the holding that the time limits established by Fed. R. Bankr. P. 4004(a) and 4007(c) are procedural, not jurisdictional. See also *European Am. Bank v. Benedict (In re Benedict)*, 90 F.3d 50, 54 (2d Cir. 1996) (The time period imposed by Rule 4007(c) is not jurisdictional.).

However, the Ninth Circuit Court of Appeals strictly construed the deadlines in the case of *Anwar v. Johnson*, 720 F.3d 1183 (9th Cir. 2013). In *Anwar*, the plaintiff sought a retroactive extension of time within which to file a dischargeability complaint based on excusable neglect. Because of computer issues with the electronic filing system, the complaint was filed less than an hour after the deadline had passed. The Ninth Circuit Court of Appeals held that the sixty-day time limit for filing nondischargeability complaints

under 11 U.S.C. § 523(c) is “strict” and, without qualification, “cannot be extended unless a motion is made before the 60-day limit expires.” *Id.* at 1187. *Anwar* held that the federal rules do not provide for an “excusable neglect” exception. *Id.* at 1189.

This Court disagrees with the conclusions of—and is not bound by—the Ninth Circuit Court of Appeals. *Anwar* only mentioned *Kontrick* in a footnote, stating that the Supreme Court did not decide whether equitable tolling applies. The Ninth Circuit never addressed the Supreme Court’s conclusion that the time limit in Fed. R. Bankr. P. 4004(a) is not jurisdictional and is a procedural claim processing rule.

The Plaintiffs have the burden to establish they were actively deceived, actively misled, lulled into inaction, or in some extraordinary way prevented from asserting their rights. The Plaintiffs prove equitable tolling if they show: (i) they have been pursuing their rights diligently, and (ii) that some extraordinary circumstance has stood in the way. *Beister v. Midwest Health Servs.*, 77 F.3D 1264, 1267 (10th Cir. 1996) (citations omitted).

A Court may find equitable tolling applies to extend the deadline for an untimely action if a plaintiff shows: (1) lack of actual notice of filing requirement; (2) lack of constructive notice of filing requirement; (3) diligence in pursuing one’s rights; (4) absence of prejudice to the defendant; and (5) a plaintiff’s reasonableness in remaining ignorant of the notice requirement. *Maytorena*, 2011 Bankr. LEXIS 4469 at \*27.

This matter is before this Court on a motion to dismiss. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (U.S. 2009) (citation omitted). In reviewing a motion to dismiss, all well-pleaded factual allegations set forth in the complaint are taken as true. *Ash Creek Mining v. Lujan*, 969 F.2d. 868, 870 (10th Cir. 1992).

#### **IV. APPLICATION OF EQUITABLE TOLLING**

Paragraph 12 of the Complaint states:

In addition, the Granddaughters’ claim for a determination from this Court that the Debtor’s debts to them and/or the Charitable Lead Trust and the Charitable Remainder Trust are not dischargeable are timely under the doctrine of equitable tolling and/or 11 U.S.C. § 523(a)(3)(B).

Paragraph 75 of the Complaint states:

The Granddaughters sought to obtain relevant documents and information pursuant to this Court’s order and the Bankruptcy Code. However, the Debtor delayed and attempted thwart their efforts to discover information relevant to the Transfers and his use of the Charitable Trusts as follows:

- a. The Debtor objected to producing documents relating to the Charitable Lead Trust and the Charitable Remainder Trust in the Granddaughters' state court action;
- b. The Debtor filed his petition for bankruptcy on the eve of his deposition in the state court case;
- c. On July 18, 2018, the Granddaughters made their first request to the Debtor, through counsel, for available dates to conduct the Debtor's examination pursuant to Fed. R. Bankr. P. 2004;
- d. on or around August 14, 2018, the Debtor's counsel provided an examination date of September 7, 2018;
- e. on August 22, 2018, the Granddaughters' counsel sent the Debtor's counsel with a subpoena for document production and an examination, along with a waiver of service;
- f. counsel for the Debtor did not return a signed waiver of service until August 31, 2018, despite repeated requests from the Granddaughters' counsel;
- g. the Debtor failed to timely produce the documents pursuant to the Granddaughters' subpoena;
- h. from August through September 2018, through counsel, the Granddaughters' continued to confer with the Debtor regarding the subpoena and missing document production. The Debtor's counsel provided guarantees that the documents would be produced;
- i. on September 4, 2018, and during the parties' ongoing discovery discussions, the Court entered its order discharging the Debtor under § 727 of the Bankruptcy Code. ECF No. 46;
- j. on October 1, 2018, the Court held a hearing concerning the parties' discovery disputes as a result of the Debtor's failure to produce documents pursuant to the August 22, 2018 subpoena despite numerous unsuccessful attempts by the Granddaughters to obtain the documents through conferral with the Debtor's counsel;
- k. on October 8, 2018, the Debtor produced approximately half of the documents requested under the Granddaughters' subpoena;

l. on October 16, 2018, at the Granddaughters' request the Court held a second discovery dispute hearing to resolve the Debtor's objections and his failure to provide complete production. ECF No. 48;

m. at the discovery dispute hearing on October 16, 2018, the Granddaughters' counsel informed the Court that the examination on September 7th had been indefinitely postponed until the necessary documents were produced. The Court ordered that the Debtor respond to the other requests and ordered compliance by October 31, 2018 and set the examination of the Debtor for November 14, 2018. ECF No. 52;

n. the Debtor produced a second set of incomplete documents, which were received on October 31, 2018;

o. the remaining documents were produced on November 13, 2018, which did not provide sufficient time to review the documents prior to the scheduled November 14 examination. The Debtor's examination was continued by agreement of counsel to November 29, 2018;

p. on November 29, 2018, the Granddaughters' counsel conducted an examination of the Debtor pursuant to Fed. R. Bankr. P. 2004 (the "Debtor's Exam");

q. at the Debtor's Exam, the Debtor testified that he could not "recall specifically" the purpose and/or use of the various transfers from the Charitable Trusts' accounts into his personal accounts. E.g. (Debtor's Exam, 41-42, 48-50);

r. in January 2019, the Granddaughters subpoenaed the US Bank's records relating to the Charitable Trusts, as well as those relating to the Debtor's personal accounts during the same time period;

s. on January 29, 2019 the Debtor provided a supplemental document production responsive to the Plaintiff's subpoena sent on August 22, 2018;

t. on January 30, 2019, the Granddaughters received the banks' document production;

u. on March 14, 2019, US Bank supplemented its production;

v. between February 8, 2019 and April 30, 2019, the Granddaughters sought discovery in the bankruptcy from the entities that provided the majority of funding to the trusts; and

w. on May 6, 2019, Pikes Peak Community Fund, the entity that bank records showed as hosting the Charitable Beneficiary of the charitable trusts.

Finally, paragraph 78 of the Complaint states:

The Granddaughters bring this action to have Debtor's discharge revoked because the Debtor would not have been entitled to a discharge but for the Debtor's fraudulent concealment of the Transfers and actions related to the Charitable Trusts prior to entry of his discharge order. In addition, the Granddaughters bring claims that under 11 U.S.C. § 523(a)(2)(A), (4), and (6), that Debtor's debt to them and the Charitable Trusts is not dischargeable. These non-dischargeability claims are timely because (1) the Charitable Trusts were not adequately listed on the Debtor's schedules, (2) the Granddaughters were not properly listed; and/or (3) the claims are equitably tolled as a direct result of the Debtor's actions.

Plaintiffs cannot prevail on the argument that the three claims are timely because they were not properly listed in the bankruptcy. 11 U.S.C. § 523(a)(3)(B) excepts from discharge claims specified in paragraphs (a)(2), (4), and (6) of Section 523 "unless such creditor had actual knowledge of the case" to allow for the timely filing of a complaint. It is not disputed that Plaintiffs have been actively involved in the bankruptcy case from the outset and had actual knowledge of the case to allow for the timely filing of a complaint, even though the Defendant did not initially schedule the Plaintiffs as creditors in his case.

However, in reviewing the allegations of the complaint, the Court finds that the Plaintiffs have met their weighty burden to establish that the doctrine of equitable tolling applies and allows for the late filing of the dischargeability claims at the dismissal stage.

The detailed factual allegations to support the application of the doctrine of equitable tolling are set forth in paragraph 12, twenty-three subparts of paragraph 75, and paragraph 78 of the complaint. When taken as true, the allegations establish that the Plaintiffs have been diligent. They further establish that Defendant engaged in a pattern of concealment and delay that states a claim for relief that Defendant's actions prevented Plaintiffs from timely asserting their rights, unlike the facts in *Maytorena* and *Martinez*.

The extraordinary circumstances include: (i) the Defendant's misappropriation of funds throughout the time period before and after his discharge from 2013 through 2018; (ii) his failure to list income from the transfers; (iii) his failure to list the Plaintiffs as creditors; (iv) his obstruction of legitimate discovery, requiring the Court to intervene twice in the bankruptcy discovery disputes and rule against the Defendant both times; (v) his failure to provide a complete document production, requiring the Plaintiffs to direct discovery to several third-party financial institutions to obtain documents in 2019; and (vi) when finally deposed after multiple delays, his vague and indefinite answers to questions under oath. The Plaintiffs are the major creditors of the Defendant, and the reason he

filed bankruptcy was to stay his state court deposition. The Defendant either delayed or failed to provide discovery, despite owing fiduciary duties to Plaintiffs under Colorado state law. To hold otherwise would reward the Defendant's active deception and discovery delay tactics.

## V. CONCLUSION

The Court finds that the Plaintiffs' complaint pleads sufficient facts to state a claim that the doctrine of equitable tolling allows for the late filing of Plaintiffs' Fifth Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(4)), Plaintiffs' Sixth Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(2)), and Plaintiffs' Seventh Claim for Relief (Determination of Dischargeability – 11 U.S.C. § 523(a)(6)). It is therefore

ORDERED Defendant's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED Defendant shall answer the Complaint on or before October 11, 2019.

Dated this 19th day of September, 2019.

BY THE COURT:



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Joseph G. Rosania, Jr.  
United States Bankruptcy Judge