

B 104 [08/07]

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS LESLIE T. GLADSTONE, Chapter 7 Trustee	DEFENDANTS BARRIE MORINE LOGAN, an individual; and JOHN C. BENNETT, an individual	
ATTORNEYS (Firm Name, Address, and Telephone No.) GARY E. SLATER (SBN. 99141) (858) 675-0755 SLATER & TRUXAW, LLP (858) 675-0733 FAX 15373 Innovation Dr., Ste. 210 San Diego, CA 92128	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR TURNOVER OF PROPERTY OF THE ESTATE [11 U.S.C. Sections 105, 542]		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<input checked="" type="checkbox"/> FRBP 7001(1) – Recovery of Money/Property 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other <input type="checkbox"/> FRBP 7001(2) – Validity, Priority or Extent of Lien 21 - Validity, priority or extent of lien or other interest in property <input type="checkbox"/> FRBP 7001(3) – Approval of Sale of Property 31 - Approval of sale of property of estate and of co-owner - § 363(h) <input type="checkbox"/> FRBP 7001(4) – Objection/Revocation of Discharge 41 - Objection / revocation of discharge - § 727(c),(d),(e) <input type="checkbox"/> FRBP 7001(5) – Revocation of Confirmation 51 - Revocation of confirmation <input type="checkbox"/> FRBP 7001(6) – Dischargeability 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	<input type="checkbox"/> FRBP 7001(6) – Dischargeability (continued) 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other <input type="checkbox"/> FRBP 7001(7) – Injunctive Relief 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other <input type="checkbox"/> FRBP 7001(8) Subordination of Claim or Interest 81 - Subordination of claim or interest <input type="checkbox"/> FRBP 7001(9) Declaratory Judgment 91 - Declaratory judgment <input type="checkbox"/> FRBP 7001(10) Determination of Removed Action 01 - Determination of removed claim or cause <input type="checkbox"/> Other SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ Unknown	
Other Relief Sought		

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR BARRIE MORINE LOGAN		BANKRUPTCY CASE NO. 06-2980-B7
DISTRICT IN WHICH CASE IS PENDING Southern District of California	DIVISIONAL OFFICE San Diego	NAME OF JUDGE Peter W. Bowie
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /S/ Gary E. Slater		
DATE 9/11/09	PRINT NAME OF ATTORNEY (OR PLAINTIFF) GARY E. SLATER	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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4 F:\Data\BK\9097\Bennett Adversary\Final.Complaint for Turnover of Property-Bennett.wpd

5
6 **Attorneys for Leslie T. Gladstone, Chapter 7 Trustee, Plaintiff**

7
8
9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 In re)	Adv. Proc. No.
12 BARRIE MORINE LOGAN,)	Chapter 7
13 Debtor.)	COMPLAINT FOR TURNOVER OF
14 Related Case No. 06-2980-B7)	PROPERTY OF THE ESTATE
15 _____)	[11 U.S.C. §§ 105, 542]
16 LESLIE T. GLADSTONE, Chapter 7)	Honorable Peter W. Bowie
17 Trustee,)	
18 Plaintiff,)	
19 vs.)	
20 BARRIE MORINE LOGAN, an)	
21 individual; and JOHN C. BENNETT, an)	
22 individual)	
23 _____)	
24 Defendants.)	

24 Plaintiff, LESLIE T. GLADSTONE, Chapter 7 Trustee ("Plaintiff"), complains and
25 alleges as follows:

26 **JURISDICTION, PARTIES AND VENUE**

27 1. This adversary proceeding is brought pursuant to Fed. R. Bankr. P. 7001, and §§
28 105 and 542 of Title 11, United States Code (the "Bankruptcy Code").

1 number GBG6H1J6VJ113377 (“Truck”) and 2000 Atwood TPD Trailer, license number
2 1KD4598, vehicle identification number 1T9C40034Y1090040 (“Trailer), both of which are
3 referred to at paragraph 10 in Debtor’s Amended Statement of Financial Affairs (“Schedules”),
4 a complete true and correct copy of which is attached hereto and incorporated herein as Exhibit
5 “A”. On or about September 25, 2006, Debtor sold the Truck and Trailer to San Diego Motor
6 Sport Rental Co. Inc. Debtor received \$9,500 for the Truck, and \$9,500 for the Trailer, as
7 evidenced by copies of San Diego Motor Sport Rental Co. Inc.’s check number 1762 made payable
8 to Debtor and check number 1763 made payable to Bennett (the “Checks”), true and correct copies
9 of which are attached hereto and incorporated herein as Exhibits “B and “C”, respectively.

10 11. Plaintiff is further informed and believes, and thereon alleges, that Debtor endorsed
11 check number 1762 over to Bennett, where it was then deposited into Bennett’s Bank of America
12 checking account on or about September 25, 2006 (“the Deposit”). Bennett then cashed check
13 number 1763, wherein \$9,500 in \$100.00 bills was disbursed to him (“Disbursement”) on or
14 about September 25, 2006. True and correct copies of the Deposit and the Disbursement are
15 attached hereto and incorporated herein as Exhibits “D” and “E”, respectively.

16 12. Plaintiff is further informed and believes, and thereon alleges, that Debtor and
17 Bennett received the Estate Vehicle proceeds referred to hereinabove, all of which the Trustee
18 could have used, sold or leased under §363 of the Bankruptcy Code during the pendency of this
19 Case. Defendants are obliged under §542 of the Bankruptcy Code to deliver to Plaintiff, and to
20 account for, such property or the value and proceeds of such property.

21
22 **SECOND CAUSE OF ACTION**
[Turnover of Property to Estate - 11 U.S.C. §542]

23 13. Plaintiff incorporates herein by reference paragraphs 1 through 12, inclusive, of
24 this complaint.

25 14. Plaintiff is further informed and believes, and thereon alleges, that the Estate
26 Vehicles include a 1983 Ferrari, license number 2HJN363, vehicle identification number
27 ZFFEB068000045179 (“Ferrari) , referred to in Debtor’s Schedules. Plaintiff has obtained a
28 Notice of Release of Liability from the California Department of Motor Vehicles, as well as a

1 CARFAX report on the Ferrari, which along with Debtor's Schedules, indicate that on or
2 about February 4, 2006, Debtor sold the Ferrari to a Ramiro Contreras ("Contreras"), for
3 which Debtor received \$17,000 in payment. A copy of the Notice of Release of Liability is
4 attached hereto as Exhibit "F". The CARFAX report regarding the Ferrari is attached hereto
5 as Exhibit "G".

6 15. Plaintiff is further informed and believes, and thereon alleges, that Debtor
7 turned over possession, custody and control of said \$17,000 Ferrari payment to Bennett,
8 whereupon it was then deposited into one of Bennett's bank accounts.

9 16. Plaintiff is further informed and believes, and thereon alleges, that Defendants
10 received the Ferrari proceeds referred to hereinabove, which proceeds constitute property
11 which the Trustee could have used, sold or leased under §363 of the Bankruptcy Code during
12 the pendency of this Case. Defendants are obliged under §542 of the Bankruptcy Code to
13 deliver to Plaintiff, and to account for, such property or the value and proceeds of such
14 property.

15 **THIRD CAUSE OF ACTION**

16 **[Turnover of Property to Estate-11 U.S.C. §542]**

17 17. Plaintiff incorporates herein by reference paragraphs 1 through 16, inclusive, of
18 this complaint.

19 18. Plaintiff is further informed and believes, and thereon alleges, that the Estate
20 Vehicles include a 2005 Dodge Magnum R/T, vehicle identification number
21 2D4GV58225H618154 ("Dodge") and 2000 Porsche 911, vehicle identification number
22 WPOAA2990YS620233 ("Porsche), both of which are referred to in Debtor's Schedules.
23 Debtor sold both the Porsche and the Dodge to Dragoljub Milosavljevic for the aggregate sum
24 of \$40,000.00. Plaintiff has obtained CARFAX reports for the Porsche and the Dodge, which
25 indicate the Porsche was sold on February 6, 2006, and the Dodge on April 5, 2006, which
26 reports are attached hereto, respectively marked Exhibit "H" and Exhibit "I".

27 19. Plaintiff is further informed and believes, and thereon alleges, that Debtor
28 turned over to Bennett the \$40,000.00 proceeds from the Dodge and Porsche sales, and that

1 Bennett then deposited such property into Bennett's bank account.

2 20. Defendants received the proceeds referred to herein, which property the Trustee
3 could have used, sold or leased under §363 of the Bankruptcy Code during the pendency of
4 this Case. Defendants are each therefore obliged under §542 of the Bankruptcy Code to
5 deliver such \$40,000.00 to Plaintiff, and to account for, such property or the value and
6 proceeds of such property.

7 PRAYER

8 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against
9 Defendants as follows:

10 1. Order and adjudge that Defendants shall immediately turn over to Plaintiff for
11 the benefit of the Estate of each of the funds, payments and other issues and proceeds of each
12 of the Estate Vehicles referred to hereinabove, or the value thereof as of the date(s) of receipt
13 by each of the Defendants;

14 2. Order and adjudge that a temporary restraining order and preliminary injunction
15 shall issue providing that Defendants, their attorneys, representatives, agents, transferees, and
16 each of them, be restrained from liquidating, disposing of, transferring, conveying, spending
17 or encumbering each of the funds, payments and other issues and proceeds of each of the
18 Estate Vehicles referred to hereinabove, and all the issues, proceeds and profits thereof,
19 pending the trial or other final disposition of this adversary proceeding;

20 3. Order and adjudge that the judgment issued herein be declared to be a lien upon
21 each of the funds, payments and other issues and proceeds of each of the Estate Vehicles
22 referred to hereinabove, and all the issues, proceeds and profits thereof;

23 4. Order and adjudge that, not later than fifteen (15) days after entry of the Court's
24 order or judgment herein, each of the Defendants shall each deliver a detailed written account
25 to Plaintiff covering each of the funds, payments and other issues and proceeds of each of the
26 Estate Vehicles referred to hereinabove, and all the issues, proceeds and profits thereof;

27 5. To the extent deemed appropriate by the Court, award Plaintiff judgment against
28 Defendants for general and punitive damages equal to the aggregate amount of the funds,

