

**FILED & ENTERED**

**DEC 08 2014**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re

**AMERGENCE TECHNOLOGY INC.,**  
Debtor(s).

Case No. 2:12-bk-35473-RK

Chapter 7

Adv No. 2:14-ap-01500-RK

**JASON RUND, Chapter 7 Trustee**  
Plaintiff(s),

**ORDER DENYING MOTION TO  
DISMISS AND RESCHEDULING  
STATUS CONFERENCE**

vs.

**YIAN CHEN aka DAVID CHEN, an  
individual; SHAVONNE TRAN, an  
individual; DORON STEPHEN aka  
DORON ISRAELI, an individual; and  
DSI COMPUTERS, INC., a California  
Corporation,**

Hearing:  
Date: December 9, 2014  
Time: 3:00 p.m.  
Place: Courtroom 1675

Defendant(s)

Having considered the moving and opposing papers relating to the motion of defendant David Chen to dismiss, the court dispenses with oral argument, vacates the hearing on December 9, 2014, takes the motion under submission and rules as follows.

1 For the reasons stated in the trustee's opposition to the motion, the court should  
2 deny the motion to dismiss. The court determines that it does not lack subject matter  
3 jurisdiction to hear this adversary proceeding pursuant to the Supreme Court's decision in  
4 *Executive Benefits Insurance Agency v. Arkison*, 134 S.Ct. 2165 (2014) because the  
5 court may hear so-called *Stern* constitutional core claims, such as fraudulent transfer  
6 claims, subject to *de novo* review by the United States District Court as an Article III  
7 tribunal. *See also, Stern v. Marshall*, 131 S.Ct. 2594 (2011). The court determines that  
8 the complaint alleges plausible claims for relief based on theories of preference transfer,  
9 fraudulent transfer and breach of fiduciary duty, and does not fail to state claims upon  
10 which relief can be granted for purposes of Fed. R. Civ. P. 12(b)(6) or Fed. R. Civ. P. 9.  
11 *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Regarding the trustee's allegations based on  
12 information and belief, the court agrees with the trustee that they are sufficiently particular  
13 as they are accompanied by statements of fact on which the trustee's belief is founded.  
14 *See Shroyer v. New Cingular Wireless Services, Inc.*, 622 F.3d 1035 (9th Cir. 2010).  
15 While it appears to the court that such pleading based on information and belief is  
16 somewhat annoying to a reader since such pleading does not appear to be necessary,  
17 the pleading in this manner is not inadequate. The trustee's allegations contain specific  
18 information relating to the alleged preferential and fraudulent transfers, such as the dates  
19 and the amounts of the transfers, and the circumstances surrounding the transfers, which  
20 show that such transfers may be preferential and/or fraudulent, and thus, such  
21 allegations are sufficient to enable defendant to respond to in an answer. The court also  
22 agrees with the trustee's argument in response to defendant's claim that the complaint  
23 should be dismissed for failure to offer authenticated evidence. *See, e.g., 2 Schwarzer,*  
24 *Tashima and Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial,*  
25 *¶ 9:218 at 9-84 (2014)(problems of proof irrelevant to Rule 12(b)(6) motion), citing inter*  
26 *alia, Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969).

1 For the foregoing reasons, the court denies the motion to dismiss, and defendant  
2 David Chen is ordered to serve and file his answer within 14 days of entry of this order  
3 pursuant to Fed. R. Civ. P. 12(a)(4).

4 The hearing on Defendant's motion to dismiss, currently set for hearing on  
5 December 9, 2014 at 3:00 p.m. is vacated. The status conference is continued from  
6 January 13, 2015 at 1:30 p.m. to January 27, 2015 at 1:30 p.m. A joint status report is  
7 due on January 20, 2015.

8 IT IS SO ORDERED.

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23 Date: December 8, 2014



Robert Kwan  
United States Bankruptcy Judge