

FILED & ENTERED

SEP 14 2012

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:

Scott Allan Niner

Debtor.

Daniel Borsotti

Plaintiff,

v.

Scott Allan Niner

Defendant.

CHAPTER 7

Case No.: 2:11-bk-18734-TD

Adv No: 2:11-ap-02293-TD

**RESPONSE TO PLAINTIFF'S REQUEST
FOR AMERICANS WITH DISABILITIES ACT
["ADA"] ACCOMMODATIONS**

Date: July 17, 2012

Time: 11:00 a.m.

Courtroom: 1345

Plaintiff Daniel Borsotti has filed numerous requests for ADA accommodations in this adversary. Plaintiff believes he is entitled to such accommodations because he was diagnosed with permanent severe injuries caused by a 2003 car accident. He reports that medical and psychological evaluators have said he suffers from traumatic brain injury, post traumatic brain injury, post traumatic stress disorder and other injuries as well as permanent serious hearing impairments. He states that he has been

1 declared disabled by Social Security and various doctors. (See his Request filed May
2 24, 2011, in case number 2:11-bk-18734 TD.) Another written request was received
3 from Plaintiff shortly after in which he asked that his May 24 request be sealed and
4 reviewed in camera. The foregoing requests were not served on Defendant Scott Allen
5 Niner or Defendant's counsel.

6 At the court's initial adversary status conference hearing, on August 11, 2011,
7 the court advised Plaintiff (who is self-represented and not an attorney) that litigation in
8 this court cannot be conducted secretly or without written notice. Plaintiff must mail to
9 the Defendant and Defendant's attorney, and to the court, copies of all documents
10 Plaintiff sends to the court. The court also advised Plaintiff that his request for placing
11 his request under seal was inappropriate and would not be granted.

12 The court also addressed Plaintiff's ongoing requests for ADA accommodations
13 at status conference hearings herein on June 14 and July 19, 2012. The court
14 explained on the record at those hearings that it believes the court is in compliance with
15 all ADA requirements, insofar as the court can be. The court also observed that Plaintiff
16 appeared to hear, follow, and participate actively in the courtroom discussion
17 reasonably well. The court also attempted to ensure that Plaintiff was comfortable and
18 able to follow the discussion. The court accorded to Plaintiff the time he needed to
19 respond and to express himself. The court believes Plaintiff was accorded adequate
20 time to digest the courtroom hearing discussion, to collect his thoughts, and to express
21 his thoughts as he might wish.

22 The court cannot place special "ADA" restrictions on any defendant, or
23 defendant's counsel, in a pending adversary proceeding. Rather, because Plaintiff is
24 seeking an adversary judgment against a debtor in this court Plaintiff is required to (a)
25 familiarize himself with our Local Bankruptcy Rules (b) follow those rules thoroughly and
26 carefully, (c) prosecute his claims diligently, and (d) prove his legal claims and
27 assertions by a preponderance of the evidence if he chooses to pursue his claims to
28 trial. Plaintiff's motions filed June 7, June 25, and July 5, 2012, for the most part appear

1 to request special substantive assistance that would provide Plaintiff with an unfair
2 advantage inappropriate to a plaintiff seeking nondischargability of asserted debt that
3 Plaintiff believes was tortiously incurred.

4 Plaintiff's requests have not been properly set for hearing in every instance, while
5 most seek to establish special procedural rules to promote and accommodate Plaintiff's
6 litigation objectives to the disadvantage of Defendant and Defendant's counsel.

7 Plaintiff's ADA requests are denied with one exception. The court will continue to
8 accommodate Plaintiff at every hearing insofar as consistent with maintaining a normal
9 respectful, businesslike atmosphere considerate of every participant's comfort and
10 opportunity to ensure a full and impartial consideration of all issues, pleadings and oral
11 presentations.

12 The court may be able to allow Plaintiff to bring a portable recording machine to
13 court hearings. That is not normally allowed and may require some effort to accomplish
14 successfully without undue disruption of normal court operation procedures. If Plaintiff
15 wishes to bring a recorder, he should arrive an hour ahead of time with his equipment.
16 Please ask the security guards at the building entrance to call our chambers at
17 extension 3746 for permission to bring Plaintiff's recording equipment into the building.
18 Then the equipment will need to be checked by a court technician before the Plaintiff's
19 hearing to ensure that it does not interfere with the operation of the court's recording
20 system during any hearing.

21 Plaintiff also should consider the practicalities of attempting to capture on his
22 recorder all the courtroom discussion on his recorder's microphone or sound pickup.
23 The court will try to rearrange courtroom participants to the extent practical in order to
24 assist the recording process on Plaintiff's recorder, though the court cannot guarantee
25 the success of any courtroom arrangement or recording effort by Plaintiff. Plaintiff is
26 notified that no transcript or copy of his recordings may be presented as evidence in any
27 later court proceeding.

28 Many portable recording devices do not interfere with the court's recording

1 equipment, but some do. That is why a technician must check. If necessary, perhaps a
2 satisfactory adjustment can be made before the hearing.

3 The court wants Plaintiff to be aware that recorded disks of any hearing may be
4 purchased for \$30.00. Please check with the courtroom clerk to make arrangements if
5 you wish to order disks of any hearing.

6 If Plaintiff believes he is financially eligible for such, Plaintiff should consider
7 conferring with one or more local legal aid agencies available to assist financially limited
8 parties with court matters. One such agency is the Help Desk provided by Public
9 Counsel at the court's Los Angeles and Woodland Hills divisions. Plaintiff can check
10 with the court's website or Public Counsel for available office hours at either location.
11 Each agency is responsible for determining its own financial eligibility rules. The court
12 is not.

13 Plaintiff may ask an assistant to accompany him in court. Any such assistant is
14 not authorized to speak on Plaintiff's behalf or advocate for the Plaintiff's claims or
15 concerns without the court's specific permission unless the assistant is an attorney
16 authorized to practice before this court. However, the court may itself specifically
17 address questions to the assistant or subject the assistant to questioning by
18 Defendant's counsel.

19 SO ORDERED.

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24 DATED: September 14, 2012


United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER (1) DIRECTING PLAINTIFF TO EXPLAIN IN WRITING WHY THIS ADVERSARY PROCEEDING SHOULD NOT BE DISMISSED AND (2) COURT'S FURTHER RESPONSE TO PLAINTIFF'S REQUEST FOR AMERICANS WITH DISABILITIES ACT ["ADA"] ACCOMMODATIONS**

was entered on the date indicated as AEntered@ on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) – Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) 9/10/12, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

James T King on behalf of Defendant Scott Niner
ecfnotices@kingobk.com

Warren L Brown on behalf of Defendant Scott Niner
wbbk@msn.com

David L Hahn (TR)
trustee@hahnlife.com, dhahn@ecf.epiqsystems.com

United States Trustee (LA)
ustpreion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Debtor
Daniel Borsotti
27508 Sycamore Creek Dr
Valencia, CA 91354

Debtor
Scott Allan Niner
25809 Turquesa Drive
Valencia, CA 91355

☐ Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page