

## **Bankruptcy Interoffice Memo**

**To:** Professor Tina Adams  
**From:** Christina Wichert  
**Date:** November 27, 2023  
**Re:** Defense Against Cash in a Flash's Complaint

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In response to Cash in a Flash's complaint filed on November 15, 2023, under section 523(a)(2), I have identified several grounds upon which we can mount a defense on behalf of our client, Mr. Harper. This memorandum outlines the potential arguments and defenses based on relevant provisions of the United States Bankruptcy Code and pertinent case law, specifically considering 11 USC 341(a), 11 USC 4007(c), and 11 USC 523(a)(2).

### **I. Section 341(a) Meeting of Creditors**

As provided by 11 USC 341(a), the meeting of creditors is a crucial stage in bankruptcy proceedings, offering creditors the opportunity to examine the debtor under oath. In Mr. Harper's case, the initial meeting scheduled for March 1, 2023, was continued to April 15, 2023, due to his hospitalization. Also, the notice of the new date was timely sent to all relevant parties, including Cash in a Flash.

The continuation of the meeting provided Cash in a Flash with many opportunities to address concerns or inquire about Mr. Harper's financial affairs. The fact that Cash in a Flash was present at the rescheduled meeting further strengthens our position that the creditor had a fair and adequate chance to participate in the proceedings.

## **II. Timeliness of Complaint under 11 USC 4007(c)**

Cash in a Flash filed its complaint on November 15, 2023, well after the conclusion of the Section 341(a) meeting of creditors held on April 15, 2023. Pursuant to 11 USC 4007(c), a creditor must bring an action for the determination of the dischargeability of a debt within 60 days after the first date set for the meeting of creditors.

Given that the complaint was filed beyond the statutory deadline, we can argue that Cash in a Flash's claim should be dismissed as untimely. The Bankruptcy Code's time limitations are designed to ensure the efficient administration of bankruptcy cases and prevent undue delay in the resolution of dischargeability issues.

### **III. 11 USC 523(a)(2) and Case Law Analysis**

Cash in a Flash's complaint is grounded in 11 USC 523(a)(2), which renders debts obtained by false pretenses, false representations, or actual fraud non-dischargeable. Drawing on the case of *Kelly v. Gordon* (*In re Gordon*), 988 F.2d 1000 (9th Cir. 1993), we can argue that mere nondisclosure or omissions by the debtor are insufficient to meet the criteria for non-dischargeability under this section.

Additionally, *in re Sven*, 05-74660, provides guidance on the importance of establishing the debtor's intent to deceive at the time the debt was incurred. To successfully defeat Cash in a Flash's complaint, we should focus on demonstrating that Mr. Harper did not engage in fraudulent conduct or misrepresentation when obtaining the loan.

In conclusion, our defense against Cash in a Flash's complaint should emphasize the procedural regularity of the bankruptcy proceedings, highlighting the creditor's presence at the rescheduled Section 341(a) meeting. Furthermore, we should assert the untimeliness of the complaint under 11 USC 4007(c) and scrutinize the elements required by 11 USC 523(a)(2), drawing on relevant case law to substantiate our position.