APPENDIX TO PETITION FOR WRIT OF MANDAMUS

TABLE OF CONTENTS

Appendix A	Sixth Circuit order and judgment entered May 8, 2026, Case No. 25-5453	App. 2
Appendix B	Sixth Circuit mandate and Petitioner's constitutional objection / request to preserve Supreme Court review	App. 10
Appendix C	Bankruptcy Court order denying motion to disqualify, entered April 19, 2024	App. 16
Appendix D	Petitioner's filed motion/praecipe seeking disqualification, filed April 12, 2024	App. 25
Appendix E	Relevant excerpts from FTC stipulated permanent injunction and monetary judgment concerning John Preston Thompson	App. 33
Appendix F	Bankruptcy income/business disclosures and condensed PPP/business comparison records	App. 39
Appendix G	Communications, acknowledgments, promises to pay, and payment evidence continuing through 2021	App. 47

The appendix reproduces court orders and selected record materials relevant to understanding the petition. Condensed business/PPP summaries are expressly labeled as summaries prepared from the supplied records and are offered to identify issues for inquiry, not as adjudicated findings of wrongdoing.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 8, 2026
KELLY L. STEPHENS, Clerk

No. 25-5453

In re: JOHN PRESTON THOMPSON,

Debtor.

TEENA COLEBROOK,

Plaintiff-Appellant,

v.

JOHN PRESTON THOMPSON,

Defendant-Appellee,

JEANNE ANN BURTON; US TRUSTEE,

Trustees.

Before: COLE, THAPAR, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States Bankruptcy Court
for the Middle District of Tennessee at Nashville.

THIS CAUSE was heard on the record from the bankruptcy court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the bankruptcy court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 25-5453

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 8, 2026
KELLY L. STEPHENS, Clerk

In re: JOHN PRESTON THOMPSON, Debtor.	)	
TEENA COLEBROOK, Plaintiff-Appellant, v. JOHN PRESTON THOMPSON, Defendant-Appellee, JEANNE ANN BURTON; US TRUSTEE, Trustees.	)	ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT

ORDER

Before: COLE, THAPAR, and LARSEN, Circuit Judges.

Teena Colebrook, a pro se California litigant, appeals a bankruptcy court order that dismissed her adversary complaint. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm.

According to the allegations in her complaint, in 2012, Colebrook invested in two Tennessee properties through John Forbes, Inc. dba SevenX Investments. For the first property, she invested $20,000 in exchange for 50% of the sale proceeds. For the second property, she invested $15,000 and was promised a return of $30,000 when the property sold. From 2012 until

2021, debtor John Preston Thompson assured her that she would receive a return on her investments. But Colebrook later learned that Thompson never used her money to make these investments. Instead, Thompson used that money to "pay for his and his wife's personal expenses, buy a luxury home and vehicles and set up new [businesses]."

In 2023, Thompson petitioned for Chapter 7 bankruptcy. Colebrook filed an adversary complaint that the district court construed as asserting that Thompson's debt to her was non-dischargeable under 11 U.S.C. § 523(a)(2)(A), (a)(2)(B), (a)(4), and (a)(6). In addition to Thompson, she named as defendants Steven John Huffman, Warren Forbes, and "John Does 1 – 10." Upon initial screening under 28 U.S.C. § 1915(e)(2), the bankruptcy court dismissed Colebrook's complaint against Thompson as time-barred. The court also dismissed the remaining defendants for failure to state a claim and lack of jurisdiction. The Bankruptcy Appellate Panel affirmed. *Colebrook v. Thompson* (*In re Thompson*), 668 B.R. 156, 166 (B.A.P. 6th Cir. 2025).

On appeal, Colebrook argues that the bankruptcy court erred by (1) screening her complaint without first providing her notice, (2) denying her leave to amend her complaint, (3) concluding that she failed to state a claim, (4) concluding that the statute of limitations barred her claims, (5) not liberally construing her pleadings, (6) ignoring her allegations of fraud, and (7) refusing to impose sanctions. By failing to raise the bankruptcy court's dismissal of the defendants other than Thompson, she abandons appellate review of those dismissals. *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019).

In bankruptcy appeals, we review the bankruptcy court's factual findings for clear error and its legal conclusions de novo. *In re Teter*, 90 F.4th 493, 498 (6th Cir. 2024), *cert. denied*, 144 S. Ct. 2527 (2024).

I. Issue 1—Sua Sponte Dismissal

Colebrook first argues that the bankruptcy court erred by screening her complaint without notifying her. But nothing required the bankruptcy court to provide Colebrook notice before screening her complaint. *See* 28 U.S.C. § 1915(e)(2); *Benson v. O'Brian*, 179 F.3d 1014, 1015-16 (6th Cir. 1999) ("Congress directed the federal courts to review or 'screen' certain complaints sua sponte and to dismiss those that failed to state a claim upon which relief could be granted.").

II. Issues 2, 3, and 4—Failure to State a Claim

Colebrook next challenges the dismissal of her complaint as time-barred. She also contends that the bankruptcy court erred by not offering her leave to amend her complaint. The bankruptcy court determined that either Tennessee or California law applied, and neither party challenges that determination. Both Tennessee and California have a three-year limitations period for fraud and conspiracy-to-defraud claims seeking damages for injury to property. Tenn. Code § 28-3-105(1); Cal. Civ. Proc. Code § 338(d). The bankruptcy court dismissed the suit because it concluded that both states' rules barred the claim. We are less sure about California's rule. *See* Cal. Civ. Proc. Code § 360; *Martindell v. Bodrero*, 256 Cal. App. 2d 56, 59 (Cal. Ct. App. 1967) (providing for the tolling of the statute of limitations by partial payments on a debt made prior to the expiration of the statute of limitations). Nonetheless, we may affirm on any ground supported by the record. *Mockeridge v. Harvey*, 149 F.4th 826, 832 (6th Cir. 2025).

"[T]he federal circuits are split on whether state or federal law supplies the choice-of-law rules in bankruptcy cases." *In re Miller*, 513 F. App'x 566, 572 (6th Cir. 2013). And our court has not taken a position of our own. So we will consider both possibilities. On the federal side, whenever an "analysis is governed by the choice of law principles derived from federal common law"—as in ERISA cases or, perhaps, here—"we begin with the Restatement (Second) of Conflicts of Law." *Medical Mut. of Ohio v. deSoto*, 245 F.3d 561, 570 (6th Cir. 2001). Per the Second Restatement, "[a]n action will not be maintained if it is barred by the statute of limitations of the forum," i.e., Tennessee. Restatement (Second) Conflict of Laws § 142 (A.L.I. 1971). Similarly, in Tennessee, forum law "governs matters of procedure" "even if the law of another state governs the substantive issues." *Boswell v. RFD-TV the Theater, LLC*, 498 S.W.3d 550, 556 (Tenn. Ct. App. 2016). And "statutes of limitations constitute procedural matters." *SunTrust Bank v. Ritter*, 2018 WL 674000, at *4 (Tenn. Ct. App. 2018) (distinguishing statutes of limitation from statutes

of repose).[1] Consequently, we conclude that Tennessee's time-bar rule applies in this action, whether by way of Tennessee or federal choice-of-law rules.

For fraud claims in Tennessee, this three-year period begins to run when a plaintiff discovers the facts constituting fraud. *Ne. Knox Util. Dist. v. Stanfort Constr. Co.*, 206 S.W.3d 454, 459 (Tenn. Ct. App. 2006). For civil conspiracy claims, the period begins with either the actual or constructive discovery of the "injury and the cause of the injury," *Levine v. March*, 266 S.W.3d 426, 435 (Tenn. Ct. App. 2007), or the last overt act, *Emerson v. Machamer*, 431 S.W.2d 283, 286 (Tenn. 1968) (the last act is the act "which causes the suffering," "not when the suffering is done"), depending on the nature of the conspiracy.

The bankruptcy court did not err in concluding that the statute of limitations barred Colebrook's adversary complaint. Colebrook registered concerns about her investment in 2012. When Thompson missed "many months of payments," Colebrook assumed that Thompson had "no intention of ever paying [her] back for [her] life savings." In 2014, Colebrook wrote to Thompson that it was "clear to [her] that [Thompson] [had] no intention of paying [her]." And in

---

[1] Even if the time-bar provisions here were understood to be statutes of repose, and thus substantive under Tennessee's choice of law rules, *see SunTrust Bank*, 2018 WL 674000, at *3–4, Tennessee's law would govern due to the choice-of-law provision in the contract. *See* R. 1, Complaint, PageID 10, 13 ("This agreement has been entered into in the state of Tennessee and shall be construed and enforced under and subject to the laws of said state."). Such provisions are enforceable in Tennessee if "(1) the provision was executed in good faith; (2) the state whose law is chosen has a material connection to the transaction; and (3) the chosen state's law is not contrary to a fundamental policy of a state having a materially greater interest and whose law otherwise govern." *Andujar v. Hub Grp. Trucking*, 161 F.4th 1014, 1017 (6th Cir 2025). *See also Boswell*, 498 S.W.3d at 556 ("Tennessee will honor a choice of law clause if the state whose law is chosen bears a reasonable relation to the transaction and absent a violation of the forum state's public policy.").

Despite Colebrook's allegations about Thompson's bad faith dealing generally, we have no reason to believe that this provision was executed in bad faith. After all, Tennessee, the location of SevenX and both the investment properties, has a material connection to the agreement to share in the profits of those sales. Those facts similarly prevent us from concluding that California has a materially greater interest in the dispute. So Tennessee's time bar applies.

The federal analysis obtains the same result if California's time bar is really a repose rule. "An action will not be entertained in another state if it is barred in the state of the otherwise applicable law by a statute of limitations which bars the right and not merely the remedy." Restatement (Second) of Conflict of Laws § 143 (A.L.I. 1971).

2015, Colebrook expressed frustration with Thompson because she trusted his "guarantee of payment with interest," yet received only "crumbs." She also learned that year that the "John Forbes [corporation] went under well" before 2015. Colebrook continued emailing to seek repayment until 2021, when she asked Thompson to explain why he was "nearly two years behind." At the latest, her fraud claims accrued in 2015 when Colebrook learned that the John Forbes, Inc. had dissolved. Similarly, the last act done in furtherance of the alleged conspiracy to defraud almost certainly transpired at or around the formation of the contracts in July and September 2012. Though the complaint alleges activities done to conceal the fraud, concealment is not an overt act, *Livett v. F.C. Fin. Assocs.*, 124 Cal. App. 3d 413, 419 (Cal. Ct. App. 1981) and Colebrook gained knowledge of the fraud no later than 2015. So, whichever rules apply, Colebrook's conspiracy claim accrued no later than 2015. That meant she had until 2018 to file her complaint. *See* Tenn. Code § 28-3-105(1). But she waited until 2024. The bankruptcy court, therefore, did not err in finding that the relevant statutes of limitation barred Colebrook's complaint.

Nor did the bankruptcy court err in concluding that Colebrook is not entitled to equitable tolling. Courts apply equitable tolling sparingly. *Zappone v. United States*, 870 F.3d 551, 556 (6th Cir. 2017). For equitable tolling to apply, Colebrook must show that her "failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond [her] control." *Id.* (citation modified). This generally occurs when an opposing party "engaged in any misrepresentations or other wrongdoing that caused [a plaintiff] to miss [her] filing deadline." *Amini v. Oberlin Coll.*, 259 F.3d 493, 501 (6th Cir. 2001). Here, despite knowing John Forbes, Inc. dissolved, Colebrook knew that "litigation would be very expensive," so she decided to "rely on [Thompson's] verbal assurances and written promises to pay." Her decision not to file a suit pro se, as she has now done, is not attributable to "circumstances beyond [her] control." *Zappone*, 870 F.3d at 556 (citation modified).

Alternatively, Colebrook argues that a 2021 email exchange revived the debt. We disagree. In Tennessee, Thompson could revive Colebrook's debt only through either an explicit promise to pay or by both recognizing the obligation and demonstrating an intent to satisfy it. *Ingram v.*

Earthman, 993 S.W.2d 611, 633-34 (Tenn. Ct. App. 1998), *rev'd on other grounds by Fahrner v. SW Mfg., Inc.*, 48 S.W.3d 141 (Tenn. 2001); *see also Belote's Ex'rs v. Wynne*, 15 Tenn. (7 Yer.) 534, 541 (Tenn. 1835).

The bankruptcy court, therefore, did not err in concluding that the statute of limitations barred Colebrook's complaint and that neither equitable tolling nor revival applied. Because the statute of limitations plainly barred Colebrook's complaint, the court did not err by dismissing it for failure to state a claim. *See Jones v. Brock*, 549 U.S. 199, 215 (2007).

The court also did not err by refusing to let Colebrook amend her complaint. Any amendment would have been futile because the statute of limitations barred her claim which, as previously discussed, her complaint and its exhibits affirmatively show. *See Clabo v. Johnson & Johnson Health Care Sys., Inc.*, 982 F.3d 989, 995 n.2 (6th Cir. 2020).

III. Issues 5 and 6—Judicial Bias

Colebrook next argues that the bankruptcy court exhibited judicial bias by failing to apply liberal pleading standards and ignoring her allegations of Thompson's fraudulent conduct. But those arguments fail because they are based solely on the bankruptcy court's prior adverse rulings. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994). In any event, no reading of Colebrook's complaint would have rendered it timely.

IV. Issue 7—Sanctions

Finally, Colebrook argues that the bankruptcy court erred by refusing to sanction Thompson. But she did not make this argument below, and this court will not consider new issues raised for the first time on appeal. *See Thomas v. City of Memphis*, 996 F.3d 318, 330 n.4 (6th Cir. 2021).

For these reasons, we **AFFIRM** the bankruptcy court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 05/08/2026.

Case Name: Teena Colebrook v. John Thompson
Case Number: 25-5453

Docket Text:
ORDER filed decision not for publication, pursuant to FRAP 34(a)(2)(C), : it is ORDERED that the judgment of the bankruptcy court is AFFIRMED. Mandate to issue. R. Guy Cole, Jr., Amul R. Thapar and Joan L. Larsen, Circuit Judges.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Ms. Teena Colebrook
6135 Alta Mira Lane
San Luis Obispo, CA 93401

Mr. John Preston Thompson
149 Timerline Drive
Franklin, TN 37069

A copy of this notice will be issued to:

Mr. Griffin Scott Dunham
Mr. William T. Magill

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Kelly L. Stephens
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: June 01, 2026

Mr. Christopher A. Call
U.S. Bankruptcy Court
220 W. Depot Street
Suite 218
Greeneville, TN 37743-0000

Re: Case No. 25-5453, *Teena Colebrook v. John Thompson*
Originating Case No. 3:23-bk-042593:24-ap-90025

Dear Mr. Call,

Enclosed is a copy of the mandate filed in this case.

Sincerely yours,

s/Kelly Stephens
Appeal Case Manager: Roy

cc: Ms. Teena Colebrook
Mr. Griffin Scott Dunham

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 25-5453

Filed: June 01, 2026

In re: JOHN PRESTON THOMPSON

Debtor

TEENA COLEBROOK

Plaintiff - Appellant

v.

JOHN PRESTON THOMPSON

Defendant - Appellee

JEANNE ANN BURTON; US TRUSTEE

Trustees

MANDATE

Pursuant to the court's disposition that was filed 05/08/2026 the mandate for this case hereby issues today.

COSTS: None

Randal S. Mashburn
U.S. Bankruptcy Judge

Dated: 4/19/2024

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE:	)	
	)	
John Steve Huffman,	)	Case No. 3:23-bk-03264
	)	Chapter 7
Debtor.	)	Judge Randal S Mashburn

Teena Colebrook,	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Proc. No. 3:24-ap-90018
	)	
John Steve Huffman, et al.,	)	
Defendants.	)	

ORDER DENYING MOTION TO DISQUALIFY PRESIDING JUDGE

Teena Colebrook, the *pro se* plaintiff in this adversary proceeding, has filed a motion titled "Praecipe to Automatic Reassign Disqualified Judge Mashburn to the Prothonotary/Office of the Clerks." Although the wording in the title is unusual, the intent is clear: Ms. Colebrook seeks to disqualify the Presiding Judge pursuant to 28 U.S.C. § 455(a) and (b)(1). Indeed, Ms. Colebrook cites those specific sections of the disqualification statute near the beginning of her request.

The underlying litigation that gives rise to the disqualification motion involves a complaint filed by Ms. Colebrook against the Debtor, John Steve Huffman, and others. Ms. Colebrook essentially alleges that Mr. Huffman and named and unnamed "co-conspirators" are guilty of fraud for promising, but failing, to pay contractual debt dating back to 2012 or potentially inducing Ms. Colebrook to invest with a false guarantee of repayment. Ms. Colebrook also asks that the related debt owed to her by Mr. Huffman be declared nondischargeable.

Ms. Colebrook's motion includes numerous assertions that she believes should justify disqualification of the Presiding Judge, but they generally fall into three categories:

1. Delays in moving the adversary proceeding forward.

2. Tone and demeanor of the Presiding Judge in dealing with the *pro se* party.

3. Denial of access to online filing.

The Court will address each of these categories of asserted grounds for disqualification, but a review of the standards for disqualification is required first.

I. CONSIDERATION OF A MOTION TO DISQUALIFY

Bankruptcy Rule 5004(a) states that "[a] bankruptcy judge shall be governed by 28 U.S.C. § 455." A bankruptcy judge should be disqualified from presiding over any matter in bankruptcy "in which the disqualifying circumstances arises." Fed. R. Bankr. P. 5004(a). Under § 455, a federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

Recusal under § 455(a) is mandatory if, "based on an objective standard of a reasonable person with knowledge of all the facts, the Bankruptcy Judge concludes that her impartiality is reasonably placed in question." *In re Royal Manor Mgmt., Inc.*, 525 B.R. 338, 380 (B.A.P. 6th Cir. 2015) (quoting *Barna v. Haas (In re Haas)*, 292 B.R. 167, 175–76 (Bankr. S.D. Ohio 2003)), *aff'd*, 652 F. App'x 330 (6th Cir. 2016). Recusal is thus mandated when the circumstances warrant such action, but a federal judge also has a mandatory duty not to recuse himself when that standard has not been met. *Id.*

Further, a judge should disqualify himself where he has a "personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(b)(1). While that determination is subjective, such subjective bias or knowledge may also be revealed by evidence in the

record. "Expressing an opinion about litigation is not a reason for recusal." *In re Royal Manor Mgmt., Inc.*, 525 B.R. at 380. Rather, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

Generally, "bias must either be based on an extrajudicial source" or based on a showing of a judicial ruling that is "undeserved or excessive in degree" or "'so extreme as to display clear inability to render fair judgment.'" *Id.* (quoting *Liteky*, 510 U.S. at 555). "Conclusions, rumors, beliefs, and opinions are not sufficient to form a basis for disqualification." *Schilling v. Heavrin* (*In re Triple S Rests., Inc.*), 422 F.3d 405, 418 (6th Cir. 2005) (quoting *Gen. Aviation, Inc. v. Cessna Aircraft Co.*, 915 F.2d 1038, 1043 (6th Cir. 1990) (citations omitted)) (affirming bankruptcy judge's denial of motion to recuse when the record lacked "concrete examples of hostility").

II. REVIEW OF GROUNDS ASSERTED FOR DISQUALIFICATION

As noted earlier, the allegations made in Ms. Colebrook's motion fall into three broad categories:

A. Delays in moving the adversary proceeding along.

Ms. Colebrook contends that the Presiding Judge gave Mr. Huffman an "unlawful amount of extra time to respond to Plaintiff's complaint, flaunting the statutory bounds and requirements of the adversary procedures to this Plaintiff's detriment."

It is peculiar that Ms. Colebrook has asserted delays relating to an extension of time when it was Ms. Colebrook that has been granted additional time in this matter, not Mr. Huffman. Ms. Colebrook initially filed an objection to exemptions and discharge in the main case on November 16, 2023. However, the dischargeability issue raised in that objection could not be pursued by motion or objection in the main case but required a separate adversary proceeding. Ms. Colebrook then filed a motion

to extend the deadline to file a dischargeability complaint. The Court entered an order extending the deadline to file a complaint to February 12, 2024. Thus, Ms. Colebrook was given an extra two months to file her complaint beyond the original deadline of December 11, 2023.

Ms. Colebrook's complaint was filed on February 12, 2024, the last possible date under the extended deadline. The summons was issued on February 21, 2024, and it provides that Mr. Huffman's response to the complaint was due within 30 days after issuance of the summons. Ms. Colebrook filed a certificate of service indicating that she served the complaint on Mr. Huffman on February 26, 2026, by mail. Mr. Huffman, also acting *pro se*, filed an answer on March 29, 2024.

Taking into account the three extra days when service is completed by mail and the additional time when the last day falls on a weekend, the deadline for the answer was March 25, 2024. Fed. Bankr. R. 7012(a), 9006(a)(1)(C), & 9006(f). It appears that the answer was four days late, and Ms. Colebrook has now filed a motion to strike the answer as untimely. Notably, Ms. Colebrook's not unreasonable delay in serving the summons ate into the 30 days available to Mr. Huffman by five days. Additionally, no extension of time was ever requested by or granted to Mr. Huffman, so it appears that Ms. Colebrook is mistaken that the Presiding Judge had any impact whatsoever on the timing of Mr. Huffman's answer.[1] The only role the Presiding Judge had on the timing of pleadings in this adversary proceeding was in granting Ms. Colebrook's motion for more time to file the complaint.

Ms. Colebrook also contends that the Presiding Judge is biased because he failed to rule on a fee waiver motion for more than 45 days, thereby "denying Plaintiff due process and allowing Debtor defendant to ignore the rules of court with prohibited impunity that the law does not even allow."

---

[1] Had Mr. Huffman requested additional time to respond to the complaint, it would have been consistent with this Court's general practice to grant a reasonable extension, especially since he was attempting to find counsel at that point after he determined that his bankruptcy counsel would not be representing him in this adversary proceeding.

The Court can understand the frustration by Ms. Colebrook with the delay and the fact that the Court stayed the proceedings while a determination was made on the *in forma pauperis* motion, but the matter is being handled in a timely fashion under all the circumstances of the case. First, it is unusual for a plaintiff in an adversary proceeding to seek waiver of the filing fee based on indigency. Indeed, the Presiding Judge does not recall the request having been made in an adversary proceeding since he has been on the bench – more than 12 years.

As is explained more fully in an opinion to be entered regarding the *in forma pauperis* request filed by Ms. Colebrook, the Bankruptcy Code addresses the issue of a debtor obtaining a waiver of the filing fee in the main bankruptcy case, but no authority is expressly granted to a bankruptcy judge to waive a filing fee for a plaintiff in an adversary proceeding. In fact, some courts have concluded that no such authority exists. However, the Presiding Judge is following an approach used by some other courts reflecting that a bankruptcy judge may utilize the same process used in civil proceedings in United States District Courts.

As addressed in detail in the separate opinion, the review required for granting *in forma pauperis* status in an adversary proceeding involves a two-prong test. One prong deals with the financial circumstances of the plaintiff, but the other prong requires an in-depth review of the substance of the complaint. The same statute that allows a plaintiff to proceed with a fee waiver/deferral if the financial circumstances so justify also mandates that the Court review the complaint and dismiss it if the Court determines that it "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii) ("the court *shall* dismiss the case at any time if the court determines that [the action] fails to state a claim on which relief may be granted") (emphasis added). The word "shall" in that subsection of the statute is crucial. This is not a discretionary role for the Court.

The complaint filed by Ms. Colebrook included a wide range of allegations including claims against unidentified "co-conspirators." Therefore, the screening process dictated by the statute and applicable caselaw involved careful review – and

expenditure of some time. The review included not only a consideration of whether the facts asserted by Ms. Colebrook met the pleading requirements for the causes of action pursued but also a determination about statute of limitations problems raised by the complaint.

The timing of this review was further complicated by the fact that Mr. Huffman's bankruptcy has generated more issues than is typical for a Chapter 7 case, including the initiation of four adversary proceedings and the withdrawal of Debtor's counsel. Further, Ms. Colebrook has filed another adversary proceeding against another debtor where she has likewise sought *in forma pauperis* status that required a similar and concurrent screening process.

Ironically, the Court was prepared to enter an order regarding the fee waiver request within a day or two of when Ms. Colebrook filed her disqualification motion, which then necessitated addressing the disqualification issue before finalizing a ruling on the *in forma pauperis* motion.

Aside from the specific timing addressed above, it is also important to note that this adversary proceeding has been pending for less than 60 days. It is not uncommon for similar proceedings to take much more time before there is any substantive activity, so it appears that Ms. Colebrook's overall expectations about timing of litigation may be misinformed. In short, nothing about the timing in this case has been unusual, and there have been no significant time lapses and certainly no unwarranted delays.

B. Tone and demeanor of the Presiding Judge with the *pro se* party

Ms. Colebrook alleges that the Presiding Judge was "belittling and even harsh" in explaining to her the difficulty of successfully proceeding through litigation without an attorney and in "adamantly insisting" that she should get an attorney involved. She also argues that the Presiding Judge showed "impatience, derision and frustration" in dealing with her separate objection to exemptions claimed by the Mr. Huffman.

Ms. Colebrook has not cited any particular statements the Presiding Judge made in addressing these matters with her. However, the approach used by the Presiding Judge was the same as used with all *pro se* parties in this Court. This includes a discussion about how difficult it is for a *pro se* party to navigate the complexity of litigation, especially when the other side has an attorney. (This was before counsel for Mr. Huffman sought to withdraw as counsel in his bankruptcy and when everyone assumed that Mr. Huffman's attorney would represent him in Ms. Colebrook's adversary proceeding.)

There has been no requirement imposed that Ms. Colebrook obtain counsel, and she was told that she had a right to proceed *pro se* if she chose to do so despite the difficulties involved with that approach. There was simply an attempt to explain the potential problems that a *pro se* plaintiff would likely face under these circumstances, especially since many statements in her filings reflected a view that it was unfair for Mr. Huffman to get the benefit of bankruptcy in light of his alleged misconduct – but without asserting facts that would necessarily serve as a statutory basis to bar the bankruptcy relief sought by Mr. Huffman.

Ms. Colebrook also cites the handling of her objections to Mr. Huffman's exemptions as proof that the Presiding Judge is biased. However, when this matter was before the Court, Ms. Colebrook seemed upset not just with the Presiding Judge but with the entire bankruptcy system. She was opposed to Mr. Huffman exempting property even if existing liens reflected that there was no equity that could benefit the bankruptcy estate and creditors. (As she stated in one of her filings: "How dare Mr. Huffman request that he continues to live in a $1.5 million property ....")

The Court attempted to explain at some length the way exemptions work in bankruptcy and how the Chapter 7 Trustee had concluded that there was not any value that would exceed the liens and exemptions. It is unfortunate that Ms. Colebrook took umbrage at what the Presiding Judge was attempting to do in going into painstaking detail about the practicalities and technicalities of bankruptcy law as well as the hazards of proceeding *pro se*. However, the Court finds totally

unfounded the assertions that any statements made by the Presiding Judge reflect a bias that would warrant disqualification.

The Court does not question Ms. Colebrook's sincerity or her feelings. Her perceptions are no doubt created through the prism of believing that Mr. Huffman will not be held accountable for his alleged misconduct, that the bankruptcy system is unjust, and that the Presiding Judge is somehow unfair in pointing out the difficult road she has undertaken without counsel. However, under § 455(a), disqualification must be based on an objective standard of a reasonable person with knowledge of all the facts, not simply the feelings or perceptions of the moving party.

The determination under § 455(b)(1) involves a more subjective analysis, but it still must be considered based on facts that would reflect a bias or a judge's use of knowledge outside the scope of the proceedings. Ms. Colebrook's perceptions do not meet that test, and no facts have been alleged that would satisfy the requirements for disqualification under § 455(b)(1). She has not asserted any bias arising from an extrajudicial source or reflected in a judicial ruling that is "undeserved or excessive in degree" or "'so extreme as to display clear inability to render fair judgment." *In re Royal Manor Mgmt., Inc.*, 525 B.R. at 380 (quoting *Liteky*, 510 U.S. at 555).

C. Denial of access to online filing due to failure to pay filing fee

Ms. Colebrook also asserts as a basis for disqualification the fact that she did not have access to online filing due to the failure to pay the filing fee when she initiated the adversary proceeding. She contends that this reflects a "hidden disdain" for *pro se* litigants and that her rights were unfairly compromised by being required to file everything in person or by mail.

The Presiding Judge had no awareness of Ms Colebrook's lack of online access to the electronic filing system. Upon review of the situation, the Clerk of the Court was following the same procedures used for all parties, whether attorneys or *pro se* parties: access to the electronic filing system is cut off if the filing fee is not paid and there has been no waiver or installment payment plan approved.

It appears that the policy, consistent with most other districts and largely dictated by requirements at the national level, is geared toward activity in the main bankruptcy case and may need to be reconsidered when there is an adversary proceeding with a pending request by a plaintiff for *in forma pauperis* status. Given the extra layer of review required in that situation and the potential for delay in a ruling on the *in forma pauperis* matter, some modification in the policy may need to be considered. However, this situation virtually never occurs, so there was clearly no intent to single out Ms. Colebrook in this regard. The standard procedures were applied, and the Presiding Judge was not even aware of the impact on Ms. Colebrook until the disqualification motion was filed.[2] Certainly, the application of a standard policy by the Clerk's Office does not serve as a valid basis for disqualification of the Presiding Judge.

III. CONCLUSION

For the reasons stated, Ms. Colebrook has not demonstrated a basis for disqualifying the Presiding Judge under 28 U.S.C. § 455(a) or (b)(1). Accordingly, the motion to disqualify is denied.

IT IS SO ORDERED.

[2] Ms. Colebrook's access to the electronic filing system has been restored pending further action in this matter.

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.

TEENA COLEBROOK Plaintiff, vs. JOHN STEVEN HUFFMAN, PRESTON JOHN THOMPSON AND WARREN FORBES Defendants.	)	**BK Case No: 3:23-bk-03264** Adv. Proc. No. 24-90018-RSM **Judge Randal S. Mashburn** **Date:** **Time:** **Hearing info.** **ORDER ON MOTION TO DISQUALIFY JUDGE MASHBURN**

ORDER

Upon consideration of Plaintiffs motion to Disqualify Judge Mashburn, the court finds the motion should be granted and Judge Mashburn is hereby disqualified.

SO ORDERED

Signature: _____

Date: _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. ACRO SERVICES LLC, *et al.*, Defendants.	**Case No. 3:22-cv-00895-EJR-JSF** **STIPULATED ORDER FOR PERMANENT INJUNCTION AND MONETARY JUDGMENT AS TO DEFENDANT JOHN PRESTON THOMPSON**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief ("Complaint") pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6105(b). On November 21, 2022, on motion by the FTC, the Court entered an *ex parte* temporary restraining order ("TRO") with asset freeze and other equitable relief against Defendants, which was extended by the Court on November 30, 2022. On December 13, 2022, the Court entered a Stipulated Preliminary Injunction. Now, the Commission and Defendant John Preston Thompson ("Stipulating Defendant") stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that the Stipulating Defendant participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, in the provision of debt relief services to consumers.

3. Stipulating Defendant neither admits nor denies any of the allegations of the Complaint, except as specifically stated in this Order. Only for purposes of this action, Stipulating Defendant admits the facts necessary to establish jurisdiction.

4. Stipulating Defendant waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.

5. Stipulating Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

A. **"Acquirer"** means a business organization, Financial Institution, or an agent of a business organization or Financial Institution that has authority from an organization that operates or licenses a credit card system (e.g., VISA, Mastercard, American Express, and Discover) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, Products or Services, or anything else of value.

B. **"Assisting Others"** includes:

1. performing customer service functions, including receiving or responding to consumer complaints;

C. Engaging in any tactics to avoid fraud and risk monitoring programs established by any Financial Institution, Acquirer, or the operators of any payment system, including tactics such as balancing or distributing sales transactions among multiple Merchant Accounts or merchant billing descriptors; splitting a single sales transaction into multiple smaller transactions; or using shell companies to apply for a Merchant Account.

VI. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of $17,486,080.85 is entered in favor of the Commission against Stipulating Defendant as monetary relief. The liability of the Stipulating Defendant shall be joint and several with any other Defendants to the extent any judgment is entered against them.

B. In partial satisfaction of the judgment specified in Subsection A. above, the following assets shall be transferred to the Commission as follows:

1. CapStar Bank, its parent corporation, subsidiaries, principals, and agents shall, within seven (7) days of receiving a copy of this Order by any means, turn over all funds in the accounts listed below by electronic fund transfer in accordance with instructions provided by counsel for the Commission:

   a. Account No. XXXXXX8952, held in the names of John Preston Thompson and Heather Willis Thompson.

   b. Account No. XXXXXX9975, held in the names of John Preston Thompson and Heather Willis Thompson.

2. Regions Bank, its parent corporation, subsidiaries, principals, and agents shall, within seven (7) days of receiving a copy of this Order by any means, turn

Natalya Rice on February 2, 2023, concerning interests in and assets of certain business entities.

E. The suspension of the judgment will be lifted if, upon motion by the Commission, the Court finds that Stipulating Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

G. Stipulating Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

H. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

I. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

J. Stipulating Defendant acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Stipulating Defendant

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

Date: 4/25/23

Alan Bakowski
Margaret Burgess
Natalya Rice
Attorneys
Federal Trade Commission
233 Peachtree Street N.E., Suite 1000
Atlanta, GA 30303
(404) 656-1363 (Bakowski); abakowski@ftc.gov
(202) 250-4693 (Burgess); mburgess1@ftc.gov
(202) 445-8587 (Rice); nrice@ftc.gov

DEFENDANT JOHN PRESTON THOMPSON

Date: _____

John Preston Thompson

Date: _____

Heather Willis Thompson
As to Section VI.B. only

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION

_____ Date: _____

Alan Bakowski
Margaret Burgess
Natalya Rice
Attorneys
Federal Trade Commission
233 Peachtree Street N.E., Suite 1000
Atlanta, GA 30303
(404) 656-1363 (Bakowski); abakowski@ftc.gov
(202) 250-4693 (Burgess); mburgess1@ftc.gov
(202) 445-8587 (Rice); nrice@ftc.gov

DEFENDANT JOHN PRESTON THOMPSON

_____ Date: 2/23/2023
John Preston Thompson

_____ Date: 2/23/2023
Heather Willis Thompson
As to Section VI.B. only

Additional material from this filing is available in the Clerk's Office.