

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -REOPENING/CLOSING

Case No. 2:22-cv-08671-FLA
Bankr. Case No. 2:20-bk-10654-VZ
Adv. Pro. Case No. 2:21-ap-01187-VZ Date May 22, 2024

Title: In re Debtor Cachet Financial Services

Present: The Honorable FERNANDO L. AENLLE-ROCHA

Twyla Freeman
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Plaintiffs:
N/A

Attorneys Present for Defendants:
N/A

-
- Proceedings: In Court In Chambers Counsel Notified
- Case previously closed in error. Make JS-5.
- Case should have been closed on entry dated April 15, 2024.
- Case settled but may be reopened if settlement is not consummated within _____ days.
Make JS-6.
- Other The case should should be closed at CM/ECF Docket No. 22. Please JS-6.
- Entered _____.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE CACHET FINANCIAL
SERVICES, A CALIFORNIA
CORPORATION,

Debtor/Plaintiff,

v.

THE BANCORP BANK, A
DELAWARE-CHARTERED
BANKING INSTITUTION,

Defendant.

Case No. 2:22-cv-08671-FLA
Bankr. Case No. 2:20-bk-10654-VZ
Adv. Pro. Case No. 2:21-ap-01187-VZ

**ORDER DENYING DEFENDANTS’
MOTION TO WITHDRAW
REFERENCE OF ADVERSARY
PROCEEDING TO BANKRUPTCY
COURT [DKT. 1]**

RULING

Before the court is Defendants DD Care Management LLC (a New York limited liability company, “DD Care NY”), DD Care Management LLC (a Florida limited liability company, “DD Care Florida”), H3 Energy LLC, H3 Advisory LLC, RKMA LLC, H3 Health Group LLC, H3 Food Group LLC, Access Management LLC, KG Kosher LLC, Dialyze Manager LLC, H3 Capital LLC, ACG Equities LLC, Henry Kauftheil (“Kauftheil”), and Joshua Rothenberg’s (“Rothenberg”) (collectively, the “DD Care Defendants”) Motion to Withdraw Reference of Adversary Proceeding to Bankruptcy Court (“Motion”). Dkt. 1 (“Mot.”); Dkt. 1-1 (“Mot. Br.”). On

1 December 29, 2022, Defendants Dime Community Bank (“Dime Bank”), John
2 Romano (“Romano”), and Yuriy Rubinov (“Rubinov”) (collectively, the “Dime Bank
3 Defendants”) filed a Joinder to the Motion. Dkt. 13 (“Joinder”). Debtor and Plaintiff
4 Cachet Financial Services (“Cachet” or “Plaintiff”) opposes the Motion. Dkt. 14
5 (“Opp’n”). On February 6, 2023, the court found this matter appropriate for
6 resolution without oral argument and vacated the hearing set for February 10, 2023.
7 Dkt. 16; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15.

8 For the reasons stated herein, the court DENIES the Motion in its entirety.¹

9 **BACKGROUND**

10 **I. Factual Background²**

11 Cachet was a national financial services company that processed Automated
12 Clearing House (“ACH”) transactions and provided related services for payroll
13 processing companies (commonly known as “Remarketers”). AP FAC ¶¶ 5, 40.
14 Defendant The Bancorp Bank (“Bancorp”) is a Delaware chartered commercial bank
15 and an Originating Depository Financial Institution (“ODFI”) that is permitted to
16 conduct ACH transactions pursuant to the National Automated Clearing House
17 Association (“NACHA”). *Id.* ¶ 6. On or around August 4, 2010, Cachet and Bancorp
18 entered into a Payroll Processing ODFI Agreement (the “ODFI Agreement”), whereby
19 Bancorp agreed to act as Cachet’s ODFI and facilitate Cachet’s ACH transactions for
20 Cachet’s Remarketer clients. *Id.* ¶ 45.

21
22 ¹ For purposes of this Motion, the court cites filings in: (1) *In re Debtor Cachet*
23 *Financial Services*, Case No. 2:20-bk-10654-VZ (Bankr. C.D. Cal.) (the “Bankruptcy
24 Action”) as “BA Dkt. #”; (2) *Cachet Financial Services v. The Bancorp Bank, et al.*,
25 Case No. 2:21-ap-01187-VZ (Bankr. C.D. Cal.) (the “Adversary Proceeding”) as “AP
26 Dkt. #”; and (3) *The Bancorp Bank v. Advanced Payroll Solutions, Inc., et al.*, Case
27 No. 1:19-cv-02088-MN (D. Del.) (the “Interpleader Action”) as “IA Dkt. #.”

28 ² On May 31, 2022, Cachet filed a First Amended Complaint in the Adversary
Proceeding (“AP FAC”). AP Dkt. 11 (“AP FAC”). These factual allegations are
stated herein to provide background regarding the parties’ dispute only and do not
represent findings of fact by this court.

1 Cachet contends that, beginning in the summer and fall of 2019, several of its
2 clients engaged in fraudulent conduct that led ultimately to the parties’ dispute. *See*
3 *id.* ¶¶ 53–57, 67–102. According to Cachet, around August and September of 2019,
4 Cachet’s client, MyPayroll HR, and its principal, Michael Mann (“Mann”),
5 manipulated and/or altered Cachet’s batch file specifications—“the instructions that
6 dictate the direction, timing and flow of funds”—to steal more than \$26 million from
7 Cachet’s accounts. *Id.* ¶¶ 53–56; BA Dkt. 511 (Am. Disclosure State.) at 5–6.

8 On October 18, 2019, Bancorp informed Cachet it had been contacted by Dime
9 Bank about possible suspicious activity involving the DD Care Defendants. AP FAC
10 ¶ 96. Cachet alleges Rothenberg and/or Kauftheil caused batch files to be uploaded to
11 Cachet’s servers that caused the disbursement of approximately \$21.5 million from
12 Cachet’s settlement account to accounts controlled by DD Care NY and DD Care
13 Florida (collectively, “DD Care”), without a corresponding credit to Cachet’s
14 accounts, resulting in a multi-million-dollar theft (the “DD Care Incident”). *Id.* ¶¶ 89–
15 94; BA Dkt. 511 at 7. According to Cachet, this was the result of an ongoing
16 fraudulent scheme perpetrated by Rothenberg and Kauftheil, assisted by Defendant
17 Dime Bank. AP FAC ¶¶ 62–103.

18 On October 23, 2019, Bancorp terminated the ODFI Agreement unilaterally and
19 froze the funds in Cachet’s accounts with Bancorp (the “Stake”). *Id.* ¶ 107. On
20 November 4, 2019, Bancorp filed the Interpleader Action in the United States District
21 Court for the District of Delaware (the “Delaware District Court”), requesting leave to
22 deposit the Stake with the court, an order discharging it from liability related to the
23 Stake, and the distribution of the funds to claimants through interpleader proceedings.
24 IA Dkt. 1. According to Cachet, it was unable to process ACH transactions for its
25 clients, forced to cease operations as an ACH processor, and became subject to
26 numerous lawsuits from Remarketers, employers, and employees as a result of
27 Bancorp’s actions. AP FAC ¶ 120; BA Dkt. 511 at 4.

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1 II. Procedural Background

2 On January 21, 2020, Cachet filed a voluntary petition for Chapter 11
3 bankruptcy relief in the United States Bankruptcy Court for the Central District of
4 California (the “Bankruptcy Court”). BA Dkt. 1; AP FAC ¶ 121. On January 24,
5 2020, the Delaware District Court stayed the Interpleader Action pending direction
6 from the Bankruptcy Court. IA Dkt. 247.

7 On September 14, 2021, Cachet commenced an adversary proceeding against
8 Bancorp in the Bankruptcy Court. AP Dkt. 1. On May 31, 2022, Cachet filed the
9 operative FAC in the Adversary Proceeding, asserting claims against twenty
10 individuals and entities, including Bancorp, the DD Care Defendants, and the Dime
11 Bank Defendants. *See generally* AP FAC. The FAC asserts nineteen claims in total,
12 including ten claims against the DD Care Defendants: (1) the first cause of action for
13 fraud by misrepresentation of material fact; (2) the second cause of action for fraud by
14 promise without intent to perform; (3) the third cause of action for conversion; (4) the
15 fourth cause of action for aiding and abetting fraud and conversion; (5) the fifth cause
16 of action for money had and received; (6) the sixth cause of action for unjust
17 enrichment; (7) the ninth cause of action for violation of 18 U.S.C. § 1962(c) (the
18 Racketeer Influenced and Corrupt Organizations Act, “RICO”); (8) the tenth cause of
19 action for RICO conspiracy in violation of 18 U.S.C. § 1962(d); (9) the seventeenth
20 cause of action for theft of money in violation of Cal. Penal Code § 496(a); and (10)
21 the nineteenth cause of action for avoidance and recovery of constructive fraudulent
22 transfers. *Id.* ¶¶ 127–94, 226–79, 356–64, 378–84. Cachet asserts three causes of
23 action against the Dime Bank Defendants: (1) the seventh cause of action for aiding
24 and abetting fraud and conversion; (2) the ninth cause of action for violation of 18
25 U.S.C. § 1962(c); and (3) the tenth cause of action for conspiracy to violate 18 U.S.C.
26 § 1962(d). *Id.* ¶¶ 195–213, 226–79.

27 The DD Care Defendants, joined by the Dime Bank Defendants, now move to
28 withdraw the reference of the Adversary Proceeding from the Bankruptcy Court.

1 Mot.; Joinder. Plaintiff opposes the Motion. Opp'n.

2 DISCUSSION

3 **I. Legal Standard**

4 Pursuant to 28 U.S.C. § 157(a) (“Section 157(a)”), district courts may refer
5 “any or all cases under title 11 and any or all proceedings arising under title 11 or
6 arising in or related to a case under title 11 ... to the bankruptcy judges for the
7 district.” “Bankruptcy judges may hear and determine all cases under title 11 and all
8 core proceedings arising under title 11, or arising in a case under title 11, referred
9 under [28 U.S.C. § 157(a)], and may enter appropriate orders and judgments,” subject
10 to review by the district courts. *Id.* § 157(b)(1). “A bankruptcy judge may hear a
11 proceeding that is not a core proceeding but that is otherwise related to a case under
12 title 11.” *Id.* § 157(c)(1). “In such proceeding, the bankruptcy judge shall submit
13 proposed findings of fact and conclusions of law to the district court, and any final
14 order or judgment shall be entered by the district judge after considering the
15 bankruptcy judge’s proposed findings and conclusions and after reviewing de novo
16 those matters to which any party has timely and specifically objected.” *Id.*

17 “The district court may withdraw, in whole or in part, any case or proceeding
18 referred under [Section 157], on its own motion or on timely motion of any party, for
19 cause shown.” *Id.* § 157(d). “The district court shall, on timely motion of a party, so
20 withdraw a proceeding if the court determines that resolution of the proceeding
21 requires consideration of both title 11 and other laws of the United States regulating
22 organizations or activities affecting interstate commerce.” *Id.* Section 157(d)
23 “contains two distinct provisions: the first sentence allows permissive withdrawal,
24 while the second sentence requires mandatory withdrawal in certain situations.” *One*
25 *Longhorn Land I, L.P. v. Presley*, 529 B.R. 755, 759 (C.D. Cal. 2015) (quotation
26 marks omitted). “Under either provision, the ‘burden of persuasion is on the party
27 seeking withdrawal.’” *Id.* (quotation marks omitted).

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1 II. Analysis

2 The DD Care Defendants argue withdrawal is mandatory, or in the alternative,
3 that there is good cause to support permissive withdrawal. *See generally* Mot. Br.

4 A. Mandatory Withdrawal

5 “The Ninth Circuit has not squarely addressed mandatory withdrawal, but other
6 circuits have held that ‘mandatory withdrawal is required only when non-title 11
7 issues require the interpretation, as opposed to mere application, of the non-title 11
8 statute, or when the court must undertake analysis of significant open and unresolved
9 issues regarding the non-title 11 law.’” *In re Tamalpais Bancorp*, 451 B.R. 6, 8 (N.D.
10 Cal. 2011) (brackets omitted) (quoting *In re Vicars Ins. Agency, Inc.*, 96 F.3d 949, 954
11 (7th Cir. 1996)); *see Sec. Farms v. Int’l Bhd. of Teamsters, Chauffers, Warehousemen*
12 *& Helpers*, 124 F.3d 999, 1008 & n. 4 (9th Cir. 1997) (“Section 157 ... mandates
13 withdrawal in cases requiring material consideration of non-bankruptcy federal law.”
14 “By contrast, permissive withdrawal does not hinge on the presence of substantial and
15 material questions of federal law.”) (emphasis in original). Courts in this circuit have
16 largely adopted this approach. *See, e.g., In re Tamalpais Bancorp*, 451 B.R. at 8–9
17 (collecting cases); *In re Ruby’s Diner, Inc.*, No. 8:21-cv-00845-SVW, 2021 WL
18 4572001, at *1 (C.D. Cal. June 2, 2021); *One Longhorn*, 529 B.R. at 760 (collecting
19 cases); *In re Temecula Valley Bancorp, Inc.*, 523 B.R. 210, 214 (C.D. Cal. 2014).
20 Courts have also recognized “[t]he mandatory withdrawal provision should be
21 construed narrowly so as to avoid creating an ‘escape hatch’ by which bankruptcy
22 matters could easily be removed to the district court.” *In re Temecula Valley*
23 *Bancorp, Inc.*, 523 B.R. at 214 (quotation marks omitted). “[T]he weight of authority
24 places emphasis on what *issues* are to be addressed rather than what *statutes* are
25 involved.” *In re Tamalpais Bancorp*, 451 B.R. at 9 (emphasis in original).

26 The DD Care and Dime Bank Defendants argue withdrawal of the reference is
27 mandatory because all but one of the claims asserted against the DD Care Defendants
28 and all claims asserted against the Dime Bank Defendants are non-core proceedings,

1 which must ultimately be adjudicated by this court. Mot. Br. at 14–18; Joinder at 6–7.
2 Defendants do not cite any legal authority to support their contention that a
3 predominance of non-core issues *mandates* withdrawal. See Mot. Br. at 14–18;
4 Joinder at 6–7. That Section 157(c)(1) establishes a process whereby a bankruptcy
5 court may hear a non-core proceeding and submit proposed findings of fact and
6 conclusions of law to a district court, demonstrates that such predominance does not.
7 The court, therefore, finds mandatory withdrawal is not required here.

8 **B. Permissive Withdrawal**

9 A district court “may” withdraw reference of the Adversary Proceeding “for
10 cause shown.” 28 U.S.C. § 157(d). “In determining whether cause exists, a district
11 court should consider the efficient use of judicial resources, delay and costs to the
12 parties, uniformity of bankruptcy administration, the prevention of forum shopping,
13 and other related factors.” *Sec. Farms*, 124 F.3d at 1008. In making this
14 determination, “a district court should first evaluate whether the claim is core or non-
15 core, since it is upon this issue that questions of efficiency and uniformity will turn.”
16 *One Longhorn*, 529 B.R. at 762 (quotation marks omitted). “The Ninth Circuit has
17 suggested that permissive withdrawal is appropriate where ‘non-core issues
18 predominate.’” *Id.* at 763 (quoting *Sec. Farms*, 124 F.3d at 1008). However, “[t]he
19 determination of whether claims are core or non-core is not dispositive of a motion to
20 withdraw a reference.” *Id.* (quotation marks omitted). Ultimately, “[i]t is within a
21 district court’s discretion to grant or deny a motion for permissive withdrawal of
22 reference; that decision will not be disturbed unless the court abuses its discretion.”
23 *Id.* (quotation marks omitted).

24 “Core proceedings include, but are not limited to ... “(H) proceedings to
25 determine, avoid, or recover fraudulent conveyances[.]” 28 U.S.C. § 157(b)(2).
26 “[D]etermining the nature and extent of property of the estate is also a fundamental
27 function of a bankruptcy court ... and fundamental to the administration of a
28 bankruptcy case.” *In re Kincaid*, 917 F.2d 1162, 1165 (9th Cir. 1990) (brackets

1 omitted). “Actions that do not depend on bankruptcy laws for their existence and that
2 could proceed in another court are considered ‘non-core.’” *Sec. Farms*, 124 F.3d at
3 1008. As stated, “the weight of authority places emphasis on what *issues* are to be
4 addressed rather than what *statutes* are involved.” *In re Tamalpais Bancorp*, 451 B.R.
5 at 9 (emphasis in original).

6 Cachet’s claims against the DD Care and Dime Bank Defendants concern: (1)
7 DD Care’s alleged conversion and theft of approximately \$21.5 million from Cachet
8 through fraud; (2) the alleged fraudulent conveyance of such funds between the DD
9 Care Defendants; and (3) Dime Bank’s alleged assistance in this conversion, theft, and
10 fraud. *See, e.g.*, AP FAC ¶¶ 67–103, 196–211. Although these claims were framed
11 and asserted as state law and RICO claims, they center on the *issues* of whether these
12 funds were transferred and/or conveyed fraudulently and are recoverable by the
13 bankruptcy estate—which are core issues that the Bankruptcy Court may decide. *See*
14 28 U.S.C. § 157(b)(1), (2)(H); *see also* Mot. Br. at 19 (recognizing “the single
15 remaining core claim—relies on exactly the same facts as the Non-Core Claims”).
16 Accordingly, the court finds non-core issues do not predominate over core issues in
17 the Adversary Proceeding.

18 Next, the DD Care and Dime Bank Defendants argue judicial efficiency weighs
19 in favor of immediate withdrawal because “[the] Adversary Proceeding is at its
20 earliest stage and the Bankruptcy Court is no more familiar with the facts and legal
21 issues than is the District Court.” Mot. Br. at 18. These Defendants further note that
22 the Bankruptcy Court cannot decide all of Plaintiff’s claims and is authorized only to
23 offer findings of fact and conclusions of law for this court to review *de novo*. *Id.* at
24 18–19. These Defendants additionally argue withdrawal is appropriate because they
25 have demanded a jury trial which must proceed in this court absent the consent of the
26 parties, which they refuse to provide. *Id.* at 20–21.

27 Cachet responds that judicial efficiency favors denying withdrawal, as the crux
28 of the Adversary Proceeding involves a core issue which the Bankruptcy Court is

1 well-positioned to manage, given its familiarity with the bankruptcy and issues at
2 hand. Opp'n at 13. According to Cachet, having this court hear pretrial matters
3 would thwart judicial efficiency, given the Bankruptcy Court's familiarity and
4 expertise in handling Cachet's bankruptcy, and may also disrupt the resolution of that
5 bankruptcy. *Id.* Cachet further argues Defendants' request for a jury trial does not
6 constitute good cause for permissive withdrawal of the reference, as "a bankruptcy
7 court's pre-trial management, which includes discovery, motions, and pretrial
8 conferences, does not in any way diminish a party's right to a jury trial." Opp'n at 14
9 (citing *In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir. 2007)). Cachet also
10 contends this court's heavy caseload, limited resources, and need to prioritize other
11 matters further tips the efficiency balance against withdrawal. *Id.* The court agrees
12 with Cachet.

13 "In this Circuit, bankruptcy courts are not divested of pre-trial jurisdiction over
14 matters which they ultimately may be unable to decide," and are "permitted to retain
15 jurisdiction over ... action[s] for pre-trial matters." *In re Cedar Funding, Inc.*, 419
16 B.R. 807, 819 (B.A.P. 9th Cir. 2009) (citing *In re Healthcentral.com*, 504 F.3d at
17 787). As the Ninth Circuit noted, "requiring that an action be immediately transferred
18 to district court simply because of a *jury trial right* would run counter to our
19 bankruptcy system," as Congress has empowered the bankruptcy courts to hear title
20 11 actions and enter relevant orders. *In re Healthcentral.com*, 504 F.3d at 787 (citing
21 28 U.S.C. § 157(b)(1)) (emphasis in original).³ "[T]his system promotes judicial
22 economy and efficiency by making use of the bankruptcy court's unique knowledge of
23

24 ³ On reply, the DD Care Defendants cite *Salven v. Lyons*, No. 1:06-ap-01114-AWI,
25 2007 U.S. Dist. LEXIS 98938, at *6 (Bankr. E.D. Cal. Feb. 9, 2007), to argue courts
26 have found they must withdraw a reference where parties have not waived their right
27 to a jury trial, even if all other factors weigh in favor of leaving an action in
28 bankruptcy court. Reply at 6. The proposition cited conflicts directly with the Ninth
Circuit's subsequent decision in *In re Healthcentral.com*, 504 F.3d at 787, and no
longer reflects valid law.

1 Title 11 and familiarity with the actions before them.” *Id.* “Only by allowing the
2 bankruptcy court to retain jurisdiction over the action until *trial is actually ready* do
3 we ensure that our bankruptcy system is carried out.” *Id.* at 788 (emphasis in
4 original).

5 A review of the docket for the Adversary Proceeding demonstrates that multiple
6 Defendants, including the DD Care and Dime Bank Defendants, have filed motions to
7 dismiss Cachet’s claims, which are pending before the Bankruptcy Court. AP Dkts.
8 45, 54, 63, 80–81, 108. Withdrawing reference to the Adversary Proceeding at this
9 time would result in further costs and delay resolving pretrial motions which could
10 narrow the issues at trial or “obviate the need for trial altogether.” *See Hjelmset v.*
11 *Hung*, No. 5:17-cv-05697-BLF, 2018 WL 558917, at *5 (N.D. Cal. Jan. 25, 2018); *see*
12 *also In re Solid Landings Behav. Health, Inc.*, No. 8:20-cv-01167-JGB, 2020 WL
13 5934304, at *3 (C.D. Cal. July 28, 2020) (noting bankruptcy court’s rulings on pretrial
14 matters “[were] likely to narrow the issues, draw attention to the most important areas
15 of dispute, and provide the Court with valuable (but non-binding) guidance on issues
16 the Bankruptcy Court [was] most familiar with,” increasing the chances of resolving
17 the matter efficiently).

18 In short, the Bankruptcy Court is in a better position to handle pretrial matters
19 here because it has been presiding over Cachet’s bankruptcy since January 2020, and
20 the Adversary Proceeding since September 2021, and is more familiar with the facts
21 and issues than this court. *See In re Canter*, 299 F.3d 1150, 1154 (9th Cir. 2002)
22 (finding district court’s withdrawal of reference “was an inefficient allocation of
23 judicial resources, especially because the bankruptcy court was more familiar with the
24 facts and issues of the case....”). Similarly, the uniformity of bankruptcy
25 administration favors denying withdrawal, as the Bankruptcy Action has not yet
26 concluded and a potential recovery by Cachet and the resolution of its claims may
27 have a significant impact on the administration of the bankruptcy. There are no
28 concerns regarding forum shopping at issue here, and that factor is not relevant to the

1 court’s analysis.

2 In sum, the court finds that non-core issues do not predominate over core issues
3 in the Adversary Proceeding, and considerations of judicial efficiency, delay, costs to
4 the parties, and the uniformity of bankruptcy administration weigh against withdrawal.
5 The court, therefore, DENIES the DD Care and Dime Bank Defendants’ request for
6 permissive withdrawal.

7 **CONCLUSION**

8 For the foregoing reasons, the court DENIES the Motion in its entirety.

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10 IT IS SO ORDERED.

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12 Dated: April 15, 2024



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15 FERNANDO L. AENLLE-ROCHA
16 United States District Judge
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