IT IS ORDERED as set forth below:

Date: March 17, 2016

____

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

RONALD EDWARD SCIORTINO,
Debtor.

CASE NO. 14-71765-BEM

CHAPTER 7

RONALD EDWARD SCIORTINO,
Plaintiff,

v.

NEIL C. GORDON, CHAPTER 7 TRUSTEE;
CHARLOTTE NASH, CHAIRMAN OF THE BOARD OF COMMISSIONERS;
JACE BROOKS, COMMISSIONER;
LYNETTE HOWARD, COMMISSIONER;
TOMMY HUNTER, COMMISSIONER;
JOHN HERD, COMMISSIONER;
RON SEIBENHENER, DIRECTOR GWINNETT COUNTY DEPARTMENT OF WATER RESOURCES;
ATTORNEY FORREST FIELDS;
ATTORNEY MURRAY J. WEED;
MARIA WOODS, CFO; GWINNETT COUNTY DEPARTMENT OF WATER

ADVERSARY PROCEEDING NO. 15-5356-BEM

RESOURCES; GWINNETT COUNTY; JOHN DOE, JANE DOE, AKA YOU YOUR 1-285,000; et. al.,
Defendants.

O R D E R

This matter comes before the Court on Defendants' Charlotte Nash, Jace Brooks, Lynette Howard, Tommy Hunter, John Heard, Ron Seibenhener, Forrest Fields, Murray J. Weed, Maria Woods, Gwinnett County Department of Water Resources (the "Department"), and Gwinnett County (the "County" and collectively, the "County Defendants") Motion to Dismiss (the "County Defendants' Motion") and Defendant Neil C. Gordon's (the "Trustee" and with the County Defendants, "Defendants")[1] Motion to Dismiss (the "Trustee's Motion" and with the County Defendants' Motion, the "Motions") [Docs. 40, 43]. The County Defendants seek dismissal of the Emergency Motion for Injunctive Relief, Motion for Contempt, Motion for Violation of Automatic Stay, and Creditor Misconduct (the "Complaint") and all Defendants seek dismissal of the Amended Emergency Motion for Injunctive Relief, Motion for Violation of Automatic Stay, and Creditor Misconduct (the "Amended Complaint" and with the Complaint, the "Complaints") filed by Ronald Sciortino ("Plaintiff") [Docs. 1, 29]. Defendants argue that the Complaints fail to state a claim upon which relief may be granted and must be dismissed. The County Defendants filed a Reply to Plaintiff's Response in Opposition of the County Defendants' Motion to Dismiss (the "Reply") and a Motion to Strike Plaintiff's Amended Response[2]. [Docs. 53, 63].

Plaintiff commenced this proceeding on September 10, 2015. Plaintiff seeks, as discussed at some length in the Court's February 12, 2016 Order Denying Request For

[1] Plaintiff also named John Doe, Jane Doe, aka You Your 1-285,000 as defendants in this proceeding. References to Defendants in this Order do not include John Doe, Jane Doe 1-285,000 unless specifically stated.
[2] The Court granted Gwinnett County Defendants oral motion to withdraw the motion to strike at a hearing on March 1, 2016.

Emergency Hearing And Regarding Jurisdiction (the "Jurisdiction Order"), sanctions against the County Defendants related to billing for municipal water service and restoration of municipal water service. In seeking the imposition of sanctions Plaintiff alleges that the County Defendants violated the automatic stay of 11 U.S.C. § 362 and also the provisions of 11 U.S.C. § 366. With respect to the Plaintiff's claims against the Trustee, he asserts that the Trustee has failed to discharge his statutory duties because he did not pursue Plaintiff's claims against the County Defendants [Doc. 29 ¶¶ 42, 43].

Plaintiff filed a "Response in Opposition of Motion to Dismiss," (the "Amended Response[3]") [Docs. 46, 47] and a "Motion to Accept Plaintiffs Responses in Opposition to Defendants Motion to Dismiss" (the "Motion to Accept[4]"). [Doc. 48]. Plaintiff filed a Response in Opposition to the Trustee's Motion on February 2, 2016. [Doc. 51]. Plaintiff also filed a Motion to Deny Defendants Motion to Dismiss & Memo and a Motion to Deny Gwinnett County Defendants Response. [Docs. 67, 68]. This order memorializes and supplements the Court's March 3, 2016 oral ruling on the Motions.

I. Jurisdiction

Plaintiff's claims asserted in the Complaints pursuant to 11 U.S.C. §§ 362, 366 are within this Court's core jurisdiction and the Court has authority to enter a final judgments in this proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).[5]

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[3] The only difference between Docs. 46 and 47 is Doc. 46 has a cover page and Doc. 47 contains a correction in paragraph 14. Doc. 46 at paragraph 14, states, in part "… has acted on thus has caused injury to Defendant" while, in Doc. 47 the language has been changed to "has acted on thus has caused injury to Plaintiff." Therefore, the Court construes Doc. 47 as an amendment to Doc. 46 and an Amended Response.

[4] The Motion to Accept does not assert new arguments.

[5] As stated in the Jurisdiction Order the Court does not have jurisdiction over the Motion for Injunctive Relief, Motion for Contempt, and Motion for Creditor Misconduct in the Complaints and those claims have been dismissed. [Doc. 61].

II. Factual Allegations

Plaintiff alleges the following facts in the Amended Complaint[6]: Plaintiff resides at 6038 Eagles Rest Trail, Sugar Hill, Georgia [Doc. 29 ¶ 6]. Plaintiff has foot drop, a neuromuscular disorder, and a herniated disc which have been aggravated by Plaintiff's current need to carry water [*Id.* ¶ 45]. Plaintiff also suffers from Post-Traumatic Stress Syndrome [*Id.* ¶ 7].

The County is a municipal corporation organized under the laws of the State of Georgia. [*Id.* ¶ 11]. The County has approximately 396,271 registered voters and there are approximately 285,000 water accounts in the County [*Id.* ¶ 12]. The County receives federal Community Development Block Grants and uses U.S. Army Corp. of Engineer resources as a supply for the water it distributes [*Id.* ¶ 13-14]. The County generates profits by charging fees above its costs [*Id.* ¶ 14]. Defendants Nash, Brooks, Howard, Hunter, Herd, Seibenhener, Wood, Fields and Weed (collectively, the "Individual County Defendants" so identified because they either work for the County, the Department or are a County Commissioner) work in close cooperation with one another. [*Id.* ¶ 25].

On November 3, 2014 Plaintiff filed a petition under chapter 13 [*Id.*, Ex. AA ¶¶ 1, 115]. The case is currently pending [*Id.*, Ex. AA ¶ 11]. Defendants restored water service to Plaintiff's residence on November 5, 2014 at 1:48 p.m. [*Id.*, Ex. AA ¶ 3]. Also on November 5, 2014, after being notified of Plaintiff's bankruptcy, Defendants created an Account Transaction Statement in reference to account number 20565094 (the "Prepetition Account") for the period

[6] Plaintiff has alleged additional facts in the following general categories: (i) concerns with billing charges, late fees, interest and seemingly inconsistent amounts due [Doc. 29 Ex AA¶¶ 5, 31-33, 36-38, 41, 46, 48-49, 51, 55, 63, 118, 122, 123]; (ii) correspondence from Plaintiff to the County Defendants regarding restoration of services, validation of debt and damages [*Id.* Ex AA ¶¶ 27-30, 43-45, 48, 57-58, 60-61, 65]; (iii) billing issues for the period prior to November 3, 2014 [*Id.* Ex AA ¶¶ 3, 73, 74-114]; and, (iv) termination notices and notices of liens filed [*Id.* ¶¶ 53, 72]. These facts are not relevant to the Court's determination on the Motions and are thus not set forth above. In the interest of completeness, the Court notes that Plaintiff has alleged additional facts.

October 14, 2014 through November 3, 2014 (the "November Invoice"). [*Id.* ¶ 39; Ex. A p. 82]. The November Invoice states that the balance forward is $2,936.42 and the total due is $2,946.60. [*Id.*, Ex. AA ¶ 117, Ex. A p. 82;].

The billing statement for account number 20592879 (the "Pre-Conversion Account") issued for December 2014, reflects payments through December 16, 2014 and states a balance forward of $310.74, current due before January 9, 2015 of $106.92 and a total due of $417.66 [*Id.* Ex. B p. 84]. This statement is for the period November 11, 2014 through December 11, 2014. On December 31, 2014 Plaintiff paid some amount to the County and/or the Department. [*Id.*, Ex. AA ¶ 6]. Defendants did not create a statement for December 12, 2014 through January 13, 2015 [*Id.*, Ex. AA ¶ 7].

Plaintiff converted his chapter 13 case to chapter 7 on February 10, 2015. [*Id.*, Ex. AA ¶ 9]. Defendants were notified of the conversion by order entered February 10, 2015 [*Id.* ¶ 40, Ex. AA ¶ 10]. On February 18, 2015, the Department mailed a billing statement for $643.63 for pre-conversion period January 14, 2015 through February 9, 2015 [*Id.* ¶ 40, Ex. AA ¶ 12].

County Defendants have denied Plaintiff water service on seven or more occasions since December 2013 [*Id.* ¶ 27]. On March 4, 2015 a Department employee named Suzanne turned off Plaintiff's access to water and it remained off for nine days [*Id.* ¶ 40, Ex. AA ¶ 13]. The order to turn off Plaintiff's water was generated on February 13, 2015 [*Id.*, Ex. AA ¶ 15]. Suzanne informed Plaintiff that he must make a cash payment to restore his water service [*Id.*, Ex. AA ¶ 16]. Defendants demanded a payment of $643.63 to restore water service [*Id.*, Ex. AA ¶ 17]. Plaintiff spoke to Defendant Fields on March 6, 2015 and sent an email on March 9, 2015 providing notice of the bankruptcy and attempting to resolve the matter [*Id.*, Ex. AA ¶ 18-

20]. A March 10, 2015 email from Defendant Fields advised that Plaintiff would need to pay $360.74 to have water service restored [*Id.*, Ex. AA ¶ 21].

Plaintiff made a payment of $360.74 on March 11, 2015 [*Id.*, Ex. AA ¶¶ 24, 26]. County Defendants required an additional $125.00 for same day restoration of water service. [*Id.*, Ex. AA ¶ 25]. No credit for the $360.74 paid on March 11, 2015 appears on account number 20610308 (the "Post-Conversion Account") [*Id.* ¶ 40]. The $360.74 payment was applied to the Pre-conversion Account. [*Id.* ¶ 26]. A statement for the Pre-conversion Account dated March 17, 2015, provides that for the period of January 14, 2015 through February 12, 2015 Plaintiff owes $643.63, including $50.00 for "Lock off Charges," a "Balance Forward" of $322.89 including late fees of $33.29, and the current amount due by April 10, 2015 of $415.43. On March 20, 2015 Defendants mailed Plaintiff a Notice of Intent to Terminate Water Service which states that the past due amount of $216.94 is owed and $415.43 was now due [*Id.*, Ex. AA ¶ 29].

Plaintiff's meeting of creditors was held on March 18, 2015 and Defendant Weed was present [*Id.*, Ex. AA ¶ 28]. Plaintiff told the Trustee at the 341 meeting[7] about the $360.74 which was applied to the Pre-Conversion Account. [*Id.* ¶ 41].

An April 13, 2015 letter from the Department notified Plaintiff that the Post-Conversion Account had been created with a balance of $338.18 due on May 7, 2015 plus a deposit of $225.00 and a non-refundable activation fee of $60.00 [*Id.*, Ex. AA ¶ 35]. The Post-Conversion Account statement for April 13, 2015 does not reference the $360.74 payment made on March 11, 2015. [*Id.*, Ex. AA ¶ 36].

On August 12, 2015 Defendants shut off Plaintiff's water service, and it has yet to be restored [*Id.* ¶ 38, Ex. AA ¶ 59].

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[7] Plaintiff alleges that that the 341 meeting was held March 23, 2015. This is incorrect and, the Court believes is merely a scrivener's error since Plaintiff correctly states the date as March 18, 2015 elsewhere in the Amended Complaint.

Plaintiff previously filed a petition for relief under chapter 7 on December 5, 2011 in Case No. 11-84809-JEM. On April 25, 2012, that case was dismissed. On March 31, 2014, Plaintiff again filed a petition for relief under chapter 7 in Case No. 14-56502-BEM. That case was dismissed on June 4, 2014. Plaintiff filed a petition under chapter 13 in case number 14-71765 on November 3, 2014, that case was converted to one under chapter 7 on February 10, 2015. Plaintiff has not filed a motion to extend or impose the stay[8].

A status hearing was held on September 22, 2015 at which time Defendant Weed did not advise the Court that $360.74 was collected March 11, 2015 and applied to the Pre-Conversion Account [*Id.*, Ex. AA ¶ 70]. Defendant Weed advised the Court that Plaintiff owed $536.06 and offered to reduce the amount to $91.43 in a letter dated September 29, 2015 [*Id.*, Ex. AA ¶ 70]. The gravamen of the claims remaining after entry of the Jurisdiction Order is that the County's issuance of the November Invoice as well as other post-petition invoices and the application of the $360.74 collected on March 11, 2015 to pre-conversion amounts owed violated the automatic stay.

III. Legal Standard and Analysis

A. Standard For Motions To Dismiss

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964 (2006), the pleading standard Rule 8 announces does not require "detailed factual allegations," but demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Id*. at 555 (citing *Papasan*

[8] The Court has taken judicial notice of its own records. "A court may take judicial notice of its own records and the records of inferior courts." *United States v. Glover*, 179 F.3d 1300, 1302 n.5 (11th Cir. 1999).

v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932 (1986)). A pleading that is "a formulaic recitation of the elements of a cause of action will not do" nor will a complaint which tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 555, 557.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.* at 570. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id*. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* at 557 (brackets omitted); *Ashcroft v. Iqbal*, 566 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

Complaints filed *pro se* are liberally construed and "held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007) (citations and internal quotation marks omitted). "Even so, a *pro se* pleading must suggest (even if inartfully) that there is at least some factual support for a claim; it is not enough just to invoke a legal theory devoid of any factual basis." *Jones v. Fla. Parole Comm'n*, 787 F.3d 1105, 1107 (11th Cir. 2015). The pleading standard does not require the Court to re-write a deficient pleading. *Standifer v. S.E.C.*, 542 F. Supp.2d 1312, 1316 (N.D. Ga. 2008) (citing *GJR Invs., Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998) (overruled on other grounds)).

Plaintiff argues that Fed. R. Civ. P. 8(a)(2) and Fed. R. Civ. P. 12(b)(6) function as an aid in making fair rulings instead of denying justice based upon a technical default. Plaintiff argues that to survive a motion to dismiss the threshold of sufficiency is exceedingly

low and that a claim should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim. Plaintiff further "invokes" the maxims of equity.

In arguing that he has alleged sufficient facts to withstand a motion to dismiss Plaintiff relies on the outdated and more forgiving standard for Rule 12(b) motions announced in *Conley v. Gibson*, 355 U.S. 41 (1957). In *Conley,* the Court determined that a complaint should not be dismissed under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* at 45-46. That standard was specifically rejected by *Twombly. Twombly,* 550 U.S. at 1969. Even if the lower standard applied, Plaintiff's claims, with one limited exception, would still fail as a matter of law.

Plaintiff argues further that the Court can grant relief because the bankruptcy court is a court of equity. As noted in the Jurisdiction Order this Court's jurisdiction is much more limited than Plaintiff contends and the Court can only exercise its "statutory and inherent powers" in a manner that does not "contravene specific statutory provisions" of the Bankruptcy Code (hereinafter, the "Code"). *Law v. Siegel,* 134 S. Ct. 1188, 1194 (2014). With that in mind the Court begins its analysis with the provisions of §§ 362 and 366 of the Code.

1. 11 U.S.C. §362(k)

Plaintiff seeks sanctions based upon the County Defendants' alleged violations of the stay of 11 U.S.C. § 362(a)[9]. Section 362(a)(6) provides, in relevant part: "…a petition filed under section 301, 302, or 303 of this title…operates as a stay, applicable to all entities, of – any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case …" and § 362(k) states in relevant part: "an individual injured by any willful

[9] Plaintiff does not cite to § 362(a) in the Complaints or identify which subsections he asserts has been violated. It appears that section (a)(6) could apply. That section is cited above.

violation *of a stay provided by this section* shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k) (emphasis added). "A debtor need show only that the party accused of violating the stay had knowledge of the stay and acted intentionally." *Thomason v. Chestatee Cmty. Ass'n (In re Thomason)*, 493 B.R. 890, 897 (Bankr. N.D. Ga. 2013) (Brizendine, J.). Thus, to bring a claim for a violation of the automatic stay, the automatic stay that arises upon the filing of a petition in bankruptcy must be in place.

With respect to the stay of § 362(a) being in place, consideration of § 362(c)(3) of the Code is relevant to resolution of the Motions. Section 362(c)(3) states:

> (a) Except as provided in subsections (d), (e), (f), and (h) of this section--
>
> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
>
> (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

11 U.S.C. § 362(c)(3). Put simply, if an individual debtor has a case dismissed and then files another case within a one year period, the automatic stay only lasts for 30 days. Two exceptions exist, if the case was dismissed pursuant to § 707(b) and the second case was filed under chapter 11 or 13, or if a party brings a motion to extend the stay.

Here, Plaintiff filed his present case on November 3, 2014 [Doc. 29, Ex. AA ¶ 1]. Plaintiff previously filed a chapter 7 petition in case number 14-56502 on March 31, 2014. Case number 14-56502 was dismissed on June 4, 2014. [Doc. 42, Case 14-56502].[10] The filing of Plaintiff's current case on November 3, 2014 was within one year of the filing and dismissal of case number 14-56502. Thus, Plaintiff filed two cases which were pending within one year. A review of the docket in the Plaintiff's current case shows that no motion to extend the stay under § 362(c)(3)(B) was filed within 30 days of November 3, 2014, or otherwise. Further, Plaintiff's prior case was not dismissed under § 707(b). As a result, the automatic stay in Plaintiff's current case expired 30 days after the petition date of November 3, 2014 and the automatic stay in case number 14-71765 was in place only between November 3, 2014 and December 3, 2014. After that date, there was no automatic stay in place in Plaintiff's current bankruptcy case, case number 14-71765.

Plaintiff argues that conversion of his case resulted in a stay. However, "[t]he filing of a petition under section 301 … operates as a stay under section 362. A conversion under section 348 does not." *Brittish Aviation Ins. Co. Ltd v Menut (In re State Airlines, Inc.)*, 873 F.2d 264, 268 (11th Cir. 1989). Section 348 governs the "Effect of Conversion," and nothing in that section triggers the automatic stay. Thus, any action taken after December 3, 2014 could not violate the automatic stay because there was no stay in place after that date. Consequently, an element necessary to Plaintiff's claim for violation of the automatic stay based on action taken at any point after December 3, 2014 is missing and fails as a matter of law.

2. 11 U.S.C. § 366

In addition to complying with the automatic stay, a utility such as the Department must also comply with the provisions of 11 U.S.C. § 366. That section states:

[10] The Court has taken judicial notice of its own records. *Glover*, 179 F.3d at 1302 n. 5.

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date . . .

(c) (1) (A) For purposes of this subsection, the term "assurance of payment" means--
(i) a cash deposit;
(ii) a letter of credit;
(iii) a certificate of deposit;
(iv) a surety bond;
(v) a prepayment of utility consumption; or
(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.
(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment

Simply put, § 366(a) prohibits a utility from terminating service during the first twenty (20) days of a bankruptcy case based on a pre-petition debt. *See In re Whittaker*, 882 F.2d 791, 793-94 (3d Cir. 1989). After the expiration of that initial 20 day period, § 366(b) prohibits the utility from terminating service if the debtor has timely furnished adequate assurance of payment for post-petition service by the means outlined in § 366(c)(1)(A). *Id.* If the debtor fails to provide timely adequate assurance, the utility may then terminate debtor's service without violating § 362(a). *See In re Marion Steel Co.*, 35 B.R. 188, 196-97 (Bankr. N.D. Ohio 1983).

Here, no such assurance was provided [Doc. 63, case no. 14-71765]. And, consequently, the County could have changed or terminated service at any time at or after 20 days after November 3, 2014. *See Weisel v. Dominion Peoples Gas Co.*, 428 BR 185, 188 (W.D. Pa 2010) (citing cases, including *Begley v. Philadelphia Elect. Co.,* 760 F.2d 46, 49-51 (3d Cir. 1985); *Robinson v. Michigan Consol. Gas Co.,* 918 F.2d 579, 588 (6th Cir. 1990); *In re Security*

Investment Properties, Inc., 559 F.2d 1321, 1325 (5th Cir. 1977)); *see also In re Speer*, Case No. 14-21007, 2015 Bankr. LEXIS 2063 *7 (June 24, 2015 Bankr. Conn) ("a debtor's failure to pay post-petition utility bills allows a utility to terminate a debtor's service without requesting permission from the bankruptcy court.") (citing *Jones v. Boston Gas Co. (In re Jones)*, 369 B.R. 745, 749 (B.A.P. 1st Cir. 2007)). In concluding that a utility may terminate service without stay relief, the courts have noted that the "purpose and policy of section 366 . . . is to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid." *Begley* 760 F.2d 46, 49 (3rd Cir. 1985) (citing *In re Security Investment Properties*, 559 F.2d 1321, 1325 (5th Cir. 1977)).

In *Begley*, a chapter 7 case, after debtors defaulted post-petition the court held that it was proper for the utility to terminate service rather than seek additional adequate assurance and "the bankruptcy court's jurisdiction over the issue of adequate assurance under section 366(b) to avoid termination proceedings is by that time no longer relevant." *Id.* That is, the time in which the utility can be required to provide service based on adequate assurance when Debtor has failed to maintain payments had passed.

Plaintiff argues that the County could not terminate service on March 4, 2015 because after his case was converted, his debt to the County became a pre-petition debt and, as such, is dischargeable. While, it is true that Plaintiff can discharge debts owed to the County for service provided prior to February 10, 2015, because there is no stay in Plaintiff's case and no discharge has been entered, the County could seek to collect unpaid post-petition obligations and refuse to provide services to Plaintiff (as occurred on March 4, 2015) without running afoul of a § 362 stay or a discharge injunction.

The Court now turns to the facts alleged in the Amended Complaint during the period in which § 366(a) prohibited alteration, termination, or refusal of service and during which the automatic stay was in place, that is from November 3, 2014 to November 23, 2014. Plaintiff alleges as follows: Plaintiff filed petition number 14-71765 under chapter 13 on November 3, 2014. [Doc. 29 ¶ 1, Ex. AA ¶¶ 1, 115]. On November 4, 2014, Notice and Order for Relief in Case No. 14-71765 was provided to Defendant. [*Id.*, Ex. AA ¶ 116]. Water service had been turned off prior to the filing, but after receiving notice of the filing, the County Defendants restored Plaintiff's water service at 1:48 p.m. on November 5, 2014. [*Id.*¶¶ 3, 4]. On November 5, 2014, after being notified of Plaintiff's bankruptcy, the Defendants created the November Invoice for Pre-Petition Account number 20565094 for the billing period October 14, 2014 through November 3, 2014. [*Id.*¶ 39, Ex. AA ¶ 117, Ex. A p. 82]. The November Invoice contains, in the payment coupon portion, the following: Payment Due 12/1/2014 and Pay this Amount $2,946.60 and in the body of the bill a current due before 12/2/2014 of 10.18. [*Id.*, Ex. A p. 82]. The November Invoice also includes a "deposit credit" of $376.00 and current charges for water and sewer of $10.18. [*Id.*, Ex. AA ¶ 118, Ex. A p. 82].

Accepting Plaintiff's allegations as true, these facts would support a finding that the County Defendants became aware of Plaintiff's bankruptcy case and the automatic stay on or about November 4, 2014. [*Id.*, Ex. AA ¶ 116]. The November Invoice was issued while the stay was in place and referenced a claim against Plaintiff that arose before the commencement of the case. November 5, 2014 was also within twenty days of the petition date, which means that the Department could not yet alter, refuse or discontinue service. Consequently, these facts are sufficient to allege a potential violation of the automatic stay based on an invoice, that on its face, could support a reasonable inference that the County and/or the Department sought to

collect a pre-petition debt. Thus, with respect to the November Invoice Plaintiff has alleged sufficient facts to satisfy the pleading standard of Federal Rule of Civil Procedure 8(a)(2).

However, with respect to the Individual County Defendants, Plaintiff has not alleged any facts to support a finding that these individuals or any of them were involved with issuing the November Invoice. Plaintiff does allege that that "Defendants work in close cooperation with one another" [*Id.* ¶ 25]. However, such a statement does not contain sufficient facts to tie the Individual County Defendants, or any of them, to the November Statement. Therefore, the Court will dismiss any claims as to the Individual County Defendants.

Similarly, with respect to the John Does and Jane Does 1 – 285,000 Plaintiff has not alleged any facts to support any claims against these defendants and the Court will dismiss them from this proceeding.

3. Shotgun Pleadings

The County Defendants also assert that the Complaint should be dismissed because it is a shotgun pleading. A shotgun pleading is a complaint which "incorporate[s] every antecedent allegation by reference into each subsequent claim for relief or affirmative defense." *Wagner v. First Horizon Pharm. Corp.*, 464 F.3d 1273, 1279 (11th Cir. 2006). Shotgun pleadings are those which fail to show which facts alleged are intended to support which claims. *Id.* at 1275. Such complaints have "been roundly, repeatedly, and consistently" disproved of by courts. *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 (11th Cir. 2008).

Although the Complaints are redundant and difficult to decipher the Court has thoroughly culled the Amended Complaint to identify the facts alleged and the statutes Plaintiff is moving under. Consequently, the Court will decline the County Defendant's invitation to dismiss the Complaints on this basis.

B. The Trustee's Motion to Dismiss

With respect to the Trustee's Motion to Dismiss [Doc. 43] for the reasons set forth in the Jurisdiction Order [Doc. 57 p. 11] and because the Court previously determined that the Trustee's abandonment of all claims was appropriate [Doc. 115, case 14-71765], the Court concludes that Plaintiff has failed to state a claim against the Trustee for failure to fully discharge his duties to collect the assets of the bankruptcy estate.

Plaintiff argues that the Trustee should pursue recovery of the $360.74 paid on March 11, 2015 and applied to a pre-conversion period by the County and/or the Department [Doc. 29, ¶¶ 42, 43, Ex. AA ¶¶ 24, 26]. In addition to the lack of jurisdiction over this post-petition claim noted in the Jurisdiction Order, because Plaintiff scheduled cash on hand of $25.00 and -$60.00 in his sole bank account [Doc. 27, case no. 14-71765] the Court concludes that the funds used to make the March 11 payment were not property of the chapter 7 estate. *Harris v. Viegelahn*, 135 S. Ct. 1829, 1837 (2015) ("By excluding post-petition wages from the converted Chapter 7 estate, §348(f)(1)(A) removes those earnings from the pool of assets that may be liquidated and distributed to creditors."). Therefore, the Trustee has no authority to seek recovery of $360.74 from the County and/or the Department. As such, Plaintiff has failed to state a claim against the Trustee for failure to discharge his duties as chapter 7 Trustee.

C. Service

The County Defendants also argue that Plaintiff has not served them with a summons and the Complaint as required by the Federal Rules of Civil Procedure as incorporated in this adversary proceeding by Federal Rule of Bankruptcy Procedure Rule 7004. At the Hearing, the Court advised that it appeared Plaintiff had corrected the service deficiency and denied the County Motion without prejudice.

Based on the foregoing, it is now hereby,

ORDERED that that Trustee's Motion to Dismiss is GRANTED and Neil C. Gordon is hereby dismissed from this proceeding.

IT IS FURTHER ORDERED that the County Defendants' Motion to Dismiss is GRANTED in part and any and all claims that are not related to the November Invoice are hereby DISMISSED.

IT IS FURTHER ORDERED that the County Defendants' Motion to Dismiss is DENIED to the extent of Plaintiff's claims related to the November Invoice.

IT IS FURTHER ORDERED that the Individual County Defendants, Charlotte Nash, Jace Brooks, Lynette Howard, Tommy Hunter, John Heard, Ron Seibenhener, Forrest Fields, Murray J. Weed, Maria Woods are DISMISSED from this proceeding.

IT IS FURTHER ORDERED that Defendants, John Doe, Jane Doe aka You Your 1-285,000 are DISMISSED from this proceeding.

IT IS FURTHER ORDERED that the Court will retain jurisdiction to consider the Trustee's request for a bar to Plaintiff's filing any other claims against the Trustee should the Trustee choose to brief that issue. To the extent the Trustee seeks to pursue such additional relief, he must file a Motion and brief in support of same within 30 days of entry of this Order.

The Court will enter separate judgments dismissing all Defendants except the Department and the County and dismissing all claims except the claim under § 362 of the Code with respect to the November Invoice.

END OF ORDER

Distribution List

Ronald Edward Sciortino
6038 Eagles Rest Trail
Sugar Hill, GA 30518

Charlotte J. Nash
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