

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT FOR NEW YORK

In re:

Chapter 7

KEVIN C. DAVIS ,

Case No. 09-16161 (SMB)

Debtor.

SONIA GLUCKMAN, WARREN R. GRODIN,
MANDEL AIRPLANE FUNDING AND LEASING,
CORPORATION d/b/a Mandel Airplane Funding
And Leasing, Inc. and SUSAN STEIGER,

Plaintiffs,

Adv. Proc. No. 10-

-against-

Kevin C. Davis,

Defendant.

FILED
U.S. BANKRUPTCY COURT
2010 FEB 16 P 3:57
S.D. OF N.Y.

**COMPLAINT FOR EXCEPTION TO DISCHARGE
OF CLAIM PURSUANT TO U.S.B.C. §523(a)(2)(A) & (a)(4)**

Plaintiffs Sonia Gluckman (“Sonia Gluckman”), Warren R. Grodin (“Warren Grodin”),
Mandel Airplane Funding And Leasing, Inc. d/b/a Mandel Airplane Funding And Leasing
Corporation (“Mandel Airplane”), and Susan Steiger (“Susan Steiger”), by their attorney, Martin
S. Rapaport hereby files this Complaint for the granting by this Court of an exception to

discharge of Sonia Gluckman's claim against the Debtor Kevin C. Davis ("Debtor"), for the granting by this Court of an exception to discharge of Warren Grodin's claim against the Debtor, for the granting of an exception to discharge of Mandel Airplane's claim against the Debtor, and for the granting of an exception to discharge of Susan Steiger's claim against the Debtor.

NATURE OF THE ACTION

1. This is an adversary proceeding brought in the above-captioned chapter 7 case pursuant to Part VII of the Bankruptcy Rules seeking to obtain from this Court an exception to discharge pursuant to §523 of the Code of the claims held by Sonia Gluckman in the amount of \$50,000.00 against the Debtor, held by Warren Grodin in the amount of \$100,000.00 against the Debtor, held by Mandel Airplane in the amount of \$300,000.00 against the Debtor, and held by Susan Steiger in the amount of \$50,000.00 against the Debtor (all currently the subject of an action in Supreme Court, New York County, Sonia Gluckman et al. vs. Laserline-Vulcan Energy Leasing, LLC et al., Index No. #601687/2008 – "hereinafter the Supreme Court Action") arising out of transactions in which the Debtor acted fraudulently towards and was party to a fraud upon each of the Plaintiffs and in which the Debtor was also acting in a fiduciary capacity towards each of the Plaintiffs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b).

3. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(F).
4. Venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C.

§1409(a).

PARTIES

5. On October 15, 2009 (the “Petition Date”), the Debtor filed a voluntary petition pursuant to §301 of the Bankruptcy Code and a Trustee, Roy Babitt, Esq. of Arent Fox LLP. was appointed by the United States Trustee’s Office to act as Bankruptcy Trustee.

6. At all times relevant hereto, Sonia Gluckman was and is a resident of the State of New York, County of New York and resides at 35 West 92nd Street, New York, New York 10025.

7. At all times relevant hereto, Warren Grodin was and is a resident of the State of New York, Rockland County and resides at 3 Woods Road, Valley Cottage, New York 10989.

8. At all times relevant hereto, Mandel Airplane was and is a corporation formed under the laws of the State of New York and maintained an office for business at 4 East 81st Street, New York, New York 10075.

9. At all times relevant hereto, Susan Steiger was and is a resident of the State of New York, County of New York and maintains an office for business at 60 East 42nd Street, New York, New York.

10. At all times relevant hereto the Debtor was involved either as an officer, director, or manager or was in legal or de facto control or management and/or ownership of the following legal entities:

Vulcan Energy LLC
Vulcan Power Leasing, LLC
Vulcan AMPS, LLC
Vulcan Advanced Mobile Power Systems, LLC
Vulcan Energy Solutions, LLC
Vulcan Capital Management, Inc.

and/or of other companies which managed, operated, dominated, controlled or owned one or more of the above named entities or each other.

11. At all times relevant hereto the Debtor shared the management, operating, control, dominance or ownership with Ford F. Graham ("Ford Graham") as well as with one or more of the above referenced entities.

12. At all times relevant hereto the Debtor utilized and occupied offices on the 11th floor, 150 East 52nd Street, New York, New York 10022 or utilized and occupied offices and facilities at 664 Ben Greene, Industrial Park Drive, Elizabethtown, North Carolina 28337 which offices and facilities were also the offices and facilities used by the entities named in ¶7 above.

13. At all times relevant hereto, the Debtor and Ford Graham for themselves, by, through and with one or more of the afore referenced "Vulcan" companies or other companies as yet unknown to the Plaintiffs and/or with one or more other associates or partners held themselves out as being in the business of manufacturing, selling, installing and servicing energy and power producing systems.

14. At all times relevant hereto, the Debtor and Ford Graham for themselves, by, through and with one or more of the afore referenced "Vulcan" companies or other companies hereinafter referred to and/or with one or more other associates or partners were actually, to a large extent, in the business of obtaining investors for various schemes in which the said

investors were induced to give over their monies through artifice, fraud and misleading representations and statements.

15. At all times relevant hereto, the Debtor, Ford Graham, a business associate named Mark Eddington of Rancho Mirage California (“Mark Eddington”), a Utah formed company owned by Mark Eddington called “Laserline Lease Finance, Corp.” together with one or more of the “Vulcan” companies referred to above developed a scheme to obtain monies by artifice, fraud or misrepresentation from investors and aided, abetted each other and worked together in the implementation of such scheme as follows. The Debtor, Ford Graham, Mark Eddington and the other participants in this scheme are referred both individually and as “co-conspirators hereinafter.

16. Upon information and belief, in or about the spring or summer of 2004, the Debtor and Ford Graham together with one or more of the companies owned, managed or controlled by them and with Mark Eddington and Laserline Lease Finance Corp. developed a scheme by which to obtain monies from the Plaintiffs and other investors for the alleged production and sale of an allegedly technologically advanced mobile power plant known as a “Vulcan Advanced Mobile Power System” electric generator (a “VAMPS”).

17. It was the plan, hope and intention of the Debtor and his co-conspirators, at or about the time that the said scheme was perfected that the investors would rely upon representations and statements (as hereinafter set forth) made to induce the payment over of the investors monies but that the investors monies would be utilized and enjoyed by the Debtor and one or more of his co-conspirators for their own purposes and benefit.

18. As subsequently stated and represented to potential investors in a document

characterized as a "Construction Loan Request," each VAMPS unit was:

...capable of generating 22.5 megawatts of power enough energy for 22,000 homes. The units are compact, trailer mounted and highway ready for virtually any situation where temporary power is needed on short notice. The units have a state of the art emission control system, as well as sound attenuation components that allow the units to be operated in virtually any location. The first units manufactured by Vulcan were shipped to Iraq and are being operated by the Army Corp. of Engineers.

19. In implementation of said scheme, the Debtor and/or one or more of the Debtor's co-conspirators including Ford Graham, Vulcan Energy, LLC, Vulcan AMPS, LLC, Vulcan Power Leasing, LLC, Mark Eddington and Laserline Lease Finance Corp. caused a joint venture to be formed known as "Laserline-Vulcan Energy Leasing, L.L.C." ("LVEL") under the laws of the State of Utah on July 27, 2004.

20. At all times relevant hereto, LVEL maintained offices in the Debtor's office space at 11th floor, 150 East 52nd Street, New York, New York 10022 and at Rancho Mirage, California .

21. Under its Articles Of Organization, LVEL was to be managed by Vulcan Power Leasing, LLC and said Laserline Lease Finance Corp. ("Laserline Lease Finance Corp."). The stated purpose of LVEL was "the sale and leasing of advanced mobile power systems."

22. In further implementation of said scheme, the Debtor and/or one or more of the Debtor's co-conspirators including Ford Graham, Vulcan Energy, LLC, Vulcan AMPS, LLC Vulcan Power Leasing, W. Mark Eddington and Laserline Lease Finance Corp. caused to be prepared and distributed, collaborated upon or participated in the preparation and distribution of the said document entitled a "Construction Loan Request" dated 8/24/04 to each of the Plaintiffs ("Construction Loan Request").

23. A copy of the Construction Loan Request is attached at Exhibit A hereto.

24. The Construction Loan Request was a solicitation to raise \$2,500,000.00 as part of the \$10,500,000.00 investment monies which was said to be necessary to construct and sell a single VAMPS unit.

25. The Construction Loan Request represented that said \$10,500,000.00 was to be obtained thus:

In order to complete construction of the Unit, Vulcan will provide \$5,500,000 of the construction cost to the joint venture and LLFC will provide \$5,000,000 of the construction cost.

26. The Construction Loan Request was sent to each of the Plaintiffs and other potential investors.

27. Upon reading the Construction Loan Request, each of the Plaintiffs was made to understand and understood that he or she and other potential investors were being asked to participate in the raising of \$2,500,000 of the \$5,000,000 which Laserline Lease Finance Corp. was obliged to provide towards the full cost of construction because, as the Construction Loan Request also represented:

“The remaining \$2,500,000.00 has already been committed to and approved.”

28. The Construction Loan Request further represented that:

We presently have a purchase order from Veteren, S.A. for four units at a purchase price of \$14,500,000.00 each.

29. The Construction Loan Request further represented that:

Based upon a \$2,500,000.00 loan, the participant will receive 12.5% of the profit over the \$10,500,000.00 cost or an anticipated return of approximately \$500,000.00 plus return

of the \$2,500,000.00 loan.

30. The Construction Loan Request stated further that: "It will take 60-75 days to complete the first unit" and that the "Loan Term" was to be: "As soon as the Unit is manufactured and delivered to purchaser but in no event longer than 6 months."

31. The Construction Loan Request also represented that there was to be security for any monies invested, to wit:

As security for the construction loan, Vulcan will (i) provide a completion bond from an acceptable insurance company, (ii) guarantee the return of the construction loan; and (iii) will give the construction loan participant a first lien on the Unit evidenced by appropriate UCC-1 filings.

32. "Vulcan" was defined in the Construction Loan Request as "Vulcan Energy LLC" and "Vulcan Energy LLC" was stated to be one of the LVEL joint venturers.

33. The Construction Loan Request indicated that "Vulcan AMPS, LLC" was to be the manufacturer of the VAMPS and that the manufacturing was to be done in Elizabethtown, North Carolina at Vulcan AMPS's manufacturing facility.

34. The Construction Loan Request also stated that:

The first units manufactured by Vulcan were shipped to Iraq and are being operated by the Army Corp of Engineers.

35. Based upon the Construction Loan Request, each of the Plaintiffs was made to understand and understood that any monies which she, he or it might invest were to be sent on to Vulcan Energy, LLC and Vulcan AMPS, LLC and that each of these entities would be undertaking specific responsibilities in connection with the business project.

36. After receiving the Construction Loan Request, each of the Plaintiffs spoke with

Mark Eddington who made statements and representations to each of them on behalf of the co-conspirators repeating or confirming those appearing in the Construction Loan Request.

37. In addition to the preparation and distribution of the Construction Loan Request and in further implementation of said scheme to induce each of the Plaintiffs and other potential investors to give over their monies to the co-conspirators, Mark Eddington and Ford Graham, in collaboration with the Debtor and other co-conspirators caused to be fabricated and distributed to each of the Plaintiffs and others, an alleged Purchase Order of an Illinois company called "Carbo Dynamics, LLC" for a VAMPS unit to be delivered by September 1, 2005 for a price of \$14,5000,000.00 to generate power for a Greek agricultural project (the "Carbo Dynamics Purchase Order").

38. After each of the Plaintiffs received the Construction Loan Request, they were contacted by Mark Eddington and representations were made by him that in addition to the "Veteran's S.A." purchase order mentioned in the Construction Loan Request, LEVEL had been contacted by said Carbo Dynamics "which is very likely to buy a VAMPS by June, 2005." Shortly thereafter, each of the Plaintiffs received a copy of the alleged Carbo Dynamics Purchase Order and later, an amended purchase order from "Carbo-Dynamics, LLC" for one 20MW Power Station (i.e. a VAMPS unit) at a price of \$14,500,000.00.

39. The said Carbo Dynamics Purchase Order dated 10/9/04 was countersigned on behalf of: "LaserLine-Vulcan Energy Leasing, L.L.C., 150 East 52nd Street, 11 Floor, New York, New York 10022, Attn: Ford Graham" and was signed by Ford Graham with the title "Partner."

40. In reliance upon the statements and representations in the Construction Loan Request, upon similar statements and representations made to Plaintiffs by Mark Eddington on

behalf of the Debtor and other co-conspirators, and upon the representation by Mark Eddington and Ford Graham that the joint venture had in hand the Carbo Dynamics Purchase Order, Sonia Glucksman invested \$50,000.00, Susan Steiger invested \$50,000.00, Warren Grodin invested \$100,000.00 and Leslie Mandel invested \$300,000.00 in the VAMPS project (the "Plaintiffs' Investment Monies").

41. The Plaintiffs' Investment Monies were sent to Mark Eddington's offices in Rancho Mirage, California but shortly thereafter were given over entirely or largely shared with the Debtor, Ford Graham and/or to one or another of the Vulcan companies at the Debtor's New York office.

42. Ford Graham has stated and admitted that the Plaintiffs' Investment Monies ended up with Vulcan AMPS and was used "for its business."

43. At different times after the Plaintiffs' Investment Monies had been paid over to LVEL, as aforesaid, each of the Plaintiffs received from LVEL in the mail a packet of documents comprised of a promissory note, a "First Written Demand Financial Guarantee Performance Bond," a Collateral Pledge Agreement and a "Loan Security Agreement," and each of the Plaintiffs was informed by Mark Eddington that their investment could not be completed unless the Loan Security Agreement was signed and sent back to LVEL.

44. Plaintiffs were unrepresented by counsel in connection with the aforesaid described transaction with the Debtor and his co-conspirators.

45. The First Written Demand Financial Guarantee Performance Bond ("Performance Bond") purported to be a guarantee that Vulcan AMPS LLC would complete the VAMPS (which was the object of the Plaintiffs' investment) or Provident Capital Indemnity Ltd. of San Jose,

Costa Rica would pay out to LEVEL up to \$5,000,000.00 so that each of the Plaintiffs could in turn be repaid their respective investments.

46. By the terms of the Performance Bond, the viability and effectiveness of the Performance Bond was conditioned upon the posting by Vulcan AMPS, LLC of collateral of the value of \$6,500,000.00 as defined by a separate Pledge Agreement which was an addendum to the Performance Bond.

47. A copy of the Performance Bond containing copies of two slightly different Pledge Agreements was sent by LEVEL to each of the Plaintiffs. Each of these Pledge Agreements were supposed to be signed by Ford Graham on behalf of Vulcan AMPS, LLC.

48. The first Pledge Agreement which was written to be signed by Ford Graham on behalf of Vulcan AMPS, LLC (but which was not signed) described the following collateral as having a value of \$6,500,000.00, to wit:

Generator Manufactured by Parsons Peebles machines, Ltd.	Serial #26243 ½
Pratt & Whitney FT4 Aero-Engine and free Turbine	Serial #All P685128
Selective Catalytic reduction System	No Serial Number

49. The second Pledge Agreement which was signed by Ford Graham on behalf of “Vulcan AMPS” and dated November 30, 2005 made reference to the description set forth on an attached U.C.C.1 form for the collateral being posted, to wit:

One (1) Pratt & Whitney FT4...turbine and compressor	Serial #P685128
One (1) Parsons Peebles generator....	Serial # 26243 ½
One (1) Selective Catalytic Reduction unit....	No Serial Number

50. The Collateral Pledge Agreement represented that:

Such collateral pledged has a value in excess of Five Million United States dollars (\$5,000,000.00) estimated by attached invoices of purchase and are made part of this agreement.

51. The Loan Security Agreement represented, inter alia, in the Granting Clause that:

...to secure the prompt payment of the principal of and interest on, and all other amounts due...and all other amounts owing to Lender hereunder and the performance and observance by (Laserline Vulcan Energy Leasing, LLC) of all the agreements, covenants, indemnities and provisions contained herein...(Laserline Vulcan Energy Leasing, LLC) hereby grants, bargains, sells, assigns, transfers, conveys, mortgages, warrants, pledges and confirms unto Lender...for the security and benefit of Lender, a security interest in, mortgage lien on, and pledge of, all estate, right, title and interest of (Laserline Vulcan Energy Leasing, LLC) in, to and under the following described property, rights and privileges...:

(A) any of issued and outstanding membership interests of (Laserline Vulcan Energy Leasing, LLC) shall be pledged to the account of Lender as Security

52. In addition to the foregoing, the Loan Security Agreement also represented that as part of the "Security" being provided to each of the Plaintiffs for the Plaintiffs' Investment Monies, LVEL was granting, assigning and pledging:

(B) any and all rights of payment that may be due Owner;

(C) all of Owner's rights, interests and privileges in and to any property, equipment, the Equipment...or fixtures;

(D) all rents, issues, profits, revenues and other income or proceeds due Owner, without limitation, all payments or proceeds payable to Owner with respect to the sale, lease or other disposition of property, and all estate, right, title and interest of every nature whatsoever of Owner in and to the same and every part thereof;

(E) all insurance proceeds;

(F) all moneys and securities now or hereafter paid or deposited or required to be paid or deposited to or with Owner; and

53. The VAMPS for which the Plaintiffs' Investment Monies was solicited by the Debtor and his co-conspirators was never constructed for the joint venture.

54. No monies of any kind were ever paid or distributed to the Plaintiffs by the Debtor or his co-conspirators.

55. The \$2,500,000.00 monies represented to the Plaintiffs as aforesaid as having already been raised by LVEL did not exist at the time of the co-conspirators solicitation and no such monies were ever thereafter raised.

56. Vulcan AMPS, LLC, which was in fact a shell company, was never in fact going to actually construct a VAMPS with the Plaintiffs' Investment Monies.

57. Upon information and belief, it was never the intention of the Debtor and his co-conspirators to use the Plaintiffs' Investment Monies to construct a VAMPS for the ultimate benefit of the Plaintiffs or other similar investors.

58. The Debtor, Ford Graham and the Vulcan entities involved in the venture never put up the \$5,500,000.00 which the Construction Loan Request represented they would contribute towards the construction and sale of a VAMPS unit.

59. The collateral pledged under the Collateral Pledge Agreement never actually existed because a large part of it, and in particular the Pratt & Whitney TF4 Generator allegedly pledged had – as of November 30, 2004 – had already been sold to the Washington Group by the Debtor and one or more of the Vulcan companies with which he was associated or which he managed and transported to Iraq where it was either destroyed or damaged so badly as to be completely inoperable and of no value.

60. The representation in the Construction Loan Request that “the first units manufactured by Vulcan were shipped to Iraq” was materially misleading because Vulcan shipped only one unit to Iraq which malfunctioned at the outset and because, upon information

and belief, Vulcan did not ever “manufacture” such unit but rather bought it from the Enron Corporation.

61. The Performance Bond sent to the Plaintiffs by the co-conspirators was not valid and unenforceable because the collateral posted either did not exist or had no appreciable value.

62. Upon information and belief, no real and enforceable purchase order from Veterens, S.A. ever existed.

63. Upon information and belief, either no real and enforceable Carbo- Dynamics Purchase Order ever existed either because Carbo Dynamics LLC was out of business at the date when such documents were sent to Plaintiffs or upon information and belief the Carbo Dynamics Purchase Order and amended purchase orders shown to the Plaintiffs were fabricated by the co-conspirators.

64. There never were any “rights of payments,” ‘Owner’s rights, interest and privileges... in property,” “rents, issue, profits, revenues and other income or proceeds due Owner,” “insurance proceeds,” or “money and securities” as recited in the Loan Security Agreement because the co-conspirators had no real intention of carrying out the venture which the Plaintiffs’ were induced to invest in and merely employed such recitals to induce the Plaintiffs not to take prompt action to try to recover their investments. The so-called “Security” was illusory.

65. Most, or all of the money ended up with the Debtor, Ford Graham and one or more of the Vulcan entities they managed, owned or controlled.

66. Upon information and belief, Vulcan Capital Management, Inc., provided so-called management and financial services to the co-conspirators in handling a part of all of the Plaintiffs’ Investment Monies, was therefore a part of the aforesaid fraudulent scheme, and the

Debtor at all times relevant hereto was the “Chairman” of Vulcan Capital Management, Inc.

67. Neither the Debtor, Ford Graham, any of the Vulcan companies or any of the other persons involved with the joint venture ever were willing to disclose what happened to the monies or to allow themselves to be held accountable.

68. Although dressed up as a “loan,” the transaction was in fact a securities transaction, that is – an Investment Contract.

69. Upon information and belief, the Debtor, Ford Graham, Mark Eddington and their co-conspirators knew or should have known at the time that the aforesaid representations and statements were made in the Construction Loan Request, in the Performance Bond, in the Collateral Pledge Agreement and in the Loan Security Agreement distributed to the Plaintiffs that any such statements with respect to existing monies already raised, with respect to monies to be contributed by the Debtor, Ford Graham and their Vulcan companies, with respect to the actual building of a VAMPS, with respect to the potential profitability of investing monies in the LVEL venture, with respect to the viability and effectiveness of the Performance Bond, with respect to the collateral posted in support of the bond, and with respect to statements made in the Loan Security Agreement suggesting that the Plaintiffs had actual and real security for their respective investments were false and untrue or materially misleading.

70. Upon information and belief, the Debtor, Ford Graham, Mark Eddington and their co-conspirators knew or should have known that in representing that LVEL had an existing purchase order from “Veterans, S.A.” and that in representing that LVEL had an existing purchase order or amended purchase orders from Carbo-Dynamics LLC, and that in distributing documents which were illusory, they were making false and materially misleading

statements.

71. Notwithstanding that the aforesaid representations and statements were false and untrue or materially misleading and known by the Debtor and his co-conspirators to be false and untrue and materially misleading, the Debtor and his co-conspirators, nonetheless, made such representations and statements with the intention and hope that each of the Plaintiffs would be induced by such representations and statements and would rely upon such representations and statements to give over their respective monies to LVEL.

72. Each of the Plaintiffs in fact acted in reliance upon such representations and statements and gave their respective monies over to Mark Eddington who then transferred all or a large portion of the Plaintiffs' Investment Monies over to Vulcan AMPS, LLC and one or more of other companies of which the Debtor was either a manager, officer, director, owner or operator.

73. The Plaintiffs were each injured financially as a result of their reasonable reliance upon said representations and statements.

74. The taking of the Plaintiffs' Investment Monies under false pretenses by the Debtor and his co-conspirators as aforesaid constituted common law fraud.

75. All the participants in a scheme or transaction by which a fraud is committed are liable to the victim or victims of the fraud and liable for all damages arising from the fraud.

76. Those persons who control or have a fiduciary duty towards a company or corporation which is involved in a fraudulent scheme or transaction are equally liable to the victim or to the victims of the fraud and liable for all damages arising from the fraud.

77. The aforesaid fraudulent or materially misleading representations and statements

were made to each of the Plaintiffs by and on behalf of LVEL and as part of a scheme in which the Debtor was a participant and from which the Debtor and entities owned, managed, or controlled by the Debtor directly benefitted.

78. §523 of the Bankruptcy Code states in relevant part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –

(2) for money, property...to the extent obtained by –

(A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny....

79. In being a part of the aforesaid scheme and/or in being an officer, director, manager, member, shareholder or operator of several of the "Vulcan" entities participating in such scheme the Debtor was guilty of obtaining all or a part of the Plaintiffs' Investment Monies by false pretenses, false representations and actual fraud under U.S.B.C. §523 (a)(2)(A) and in consequence should be barred from obtaining any discharge in his Chapter 7 proceeding from the claims of each of the Plaintiffs.

80. In addition, in the ongoing scheme to obtain monies from the Plaintiffs by fraud and to appropriate the Plaintiff's monies for himself, for Ford Graham and other co-conspirators, the Debtor was acting with respect to the Plaintiffs in a fiduciary capacity.

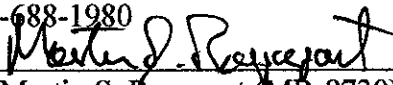
81. Each member of LVEL owed a fiduciary duty to the other members of the joint venture.

82. The Debtor was, upon information and belief, an officer, director, manager or in

control of Vulcan Power Leasing, LLC (one of the initial members of LVEL) or an officer, director, manager or in control of a Vulcan entity which itself was an officer, director, manager or in control of Vulcan Power Leasing, LLC. The Debtor was, upon information and belief, an officer, director, manager or in control of Vulcan Energy, LLC (represented in the Construction Loan Request to be a member of LVEL as well) or an officer, director manager or in control of a Vulcan entity which itself was an officer, director, manager or in control of Vulcan Energy, LLC. As such, the Debtor's fiduciary duty extended to the Plaintiffs because under the Loan And Security Agreement, each of the Plaintiffs was given a pledge of all of the membership interests in LVEL as Security for their respective investments.

83. Because the Debtor owed a fiduciary duty towards the Plaintiffs and because the Debtor and one or more of the companies to which the Debtor owed a fiduciary duty were involved in the perpetration and implementation of the fraud, the Debtor was guilty of obtaining all or a part of Plaintiffs Investment Monies by fraud while acting in a fiduciary capacity under U.S.B.C. §523(a)(4) and the Debtor should be barred from obtaining any discharge in this Chapter 7 proceeding from the claims of each of the Plaintiffs.

WHEREFORE, it is prayed that a judgment be entered in favor of the Plaintiff Sonia Gluckman, the Plaintiff Warren R. Grodin, the Plaintiff Mandel Airplane Funding And Leasing Corporation d/b/a Mandel Airplane Funding And Leasing Inc. and the Plaintiff Susan Steiger exempting and excepting the claims of each of the Plaintiffs against the Debtor Kevin C. Davis from discharge in this Chapter 7 proceeding.

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