

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,
Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

**CITY OF DETROIT’S OBJECTION TO CLAIM NUMBER 799 FILED BY
DARRYL CAIN**

The Debtor, the City of Detroit (“City”), by and through its undersigned counsel, files this objection (“Objection”) requesting that the Court enter an order, substantially in the form attached as **Exhibit 1**, disallowing and expunging claim number 799 filed by Darryl Cain. In support of this Objection, the City respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and Article VII, Section A of the Plan (defined below). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS

2. On February 8, 2013, Darryl Cain (“Cain”) filed a prisoner civil rights complaint in the District Court for the Eastern District of Michigan (“District”



Court”) against Frank Carroll (“Carroll”), a City police officer, creating Case Number 13-10525 (“District Court Case”) in the District Court.

3. On June 24, 2013, Cain filed an amended complaint (“Complaint”), clarifying that he was suing Carroll in both his individual and official capacity and adding the City as a defendant.

4. The Complaint alleges that Carroll arrested Cain without a warrant on June 7, 2010, and that Cain’s probable cause hearing was held June 10, 2010.

5. Cain alleges that because his probable cause hearing was held more than 48 hours after his arrest, his constitutional civil rights were violated.

6. The Complaint seeks \$51,320,000 in damages.

7. On July 18, 2013 (“Petition Date”), the City filed a petition for relief in this Court, thereby commencing the largest Chapter 9 bankruptcy case in history.

8. On July 25, 2013, this Court entered an order confirming the automatic stay of all proceedings against the City. (“Stay Order,” Doc. No. 167.)

9. On August 1, 2013, the District Court entered an order referencing the Stay Order and staying the District Court Case. (District Court Case, Doc. No. 20.)

10. On November 12, 2013, the City filed its Motion of Debtor Pursuant to Sections 105 and 502 of the Bankruptcy Code, for Entry of an Order Approving

Alternative Dispute Resolution Procedures to Promote the Liquidation of Certain Prepetition Claims (Doc. No. 1665) (“ADR Procedures Motion”).

11. On December 24, 2013, this Court entered an order approving the ADR Procedures Motion (Doc. No. 2302) (“ADR Order”).

12. The Alternative Dispute Resolution Procedures (“ADR Procedures”) attached as Annex 1 to the ADR Order permitted the City to serve on claimants a

notice that the Stay/Injunction is lifted to permit the underlying claim to be liquidated in a non-bankruptcy forum consistent with the terms, conditions and limitations of Section II.E. below (a “Stay Modification Notice”). In that event, immediately upon the filing of the Stay Modification Notice, the Stay/Injunction shall be deemed modified with respect to the applicable Initial Designated Claim solely to permit the liquidation of the claim in a non-bankruptcy forum...

ADR Procedures, Section I.B, p. 4.

13. On or about February 10, 2014, Cain filed claim number 799 (“Claim 799,” attached as **Exhibit 6**) in the City’s bankruptcy case.

14. On June 27, 2014, the City filed a Stay Modification Notice allowing Cain to liquidate his claim in the District Court. (“Stay Mod Notice,” Doc. No. 5641.)

15. On July 14, 2014, the City’s claims agent received a ballot from Cain, voting to accept *Eighth Amended Plan for the Adjustment of Debts of the City of*

Detroit (October 22, 2014), [Doc. No. 8045] (“Plan”), and making a convenience class election for Claim 799.

16. On February 16, 2015, the District Court entered an order reopening its case (“Reopen Order”).¹

17. The parties moved for summary judgment, and on July 16, 2016, the District Court granted summary judgment in favor of the City and Carroll. (“Judgment,” District Court Case, Doc. No. 45.)

18. Cain appealed the Judgment and the Sixth Circuit reversed, finding Cain had produced sufficient evidence to resist summary judgment. (District Court Case, Doc. Nos. 52, 53.)

19. On September 27, 2019, the District Court referred the District Court Case to Magistrate Judge Stephanie Dawkins Davis for all pretrial proceedings. (District Court Case, Doc. No. 72.)

20. On November 6, 2019, the City filed its Notice of Convenience Class Election for Cain’s claim to provide notice as to the treatment of Claim 799 under the Plan as a \$25,000 Class 15 Convenience Claim in accord with the Ballot. (Doc. No. 13164.)

¹ The District Court interpreted the Confirmation Order as meaning that the City had “formally exited bankruptcy,” allowing the District Court Case to resume. Though inaccurate, the Stay Mod Notice prevented the Reopen Order from violating the discharge injunction.

21. The District Court Case remains pending.

ARGUMENT AND RELIEF REQUESTED

22. Bankruptcy Code section 502(b)(1) provides:

Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

- (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

11 U.S.C. § 502(b)(1).

23. Claim 799 should be disallowed and expunged because it is unenforceable against the City for all of the reasons expressed in the motions and other papers filed by the City in the District Court Case and appeal, which are incorporated into this Objection. Cain has been provided copies of these underlying papers. To the extent this matter proceeds to trial, the City will also present evidence at the trial demonstrating that Claim 799 is unenforceable against the City. Consequently, the City files this Objection pursuant to Section 502(b) of

the Bankruptcy Code,² seeking entry of an order disallowing and expunging Claim 799 because it does not identify a valid claim. Finally, to the extent Claim 799 is found to be valid (which it should not be), the amount of Claim 799 must be reduced to \$25,000 (or such lesser amount as is determined in the District Court Case) pursuant to the convenience class election made by Cain and the City objects on this ground as well.

Dated: February 13, 2020

Respectfully submitted,

By: /s/ Marc N. Swanson

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² Section 502 of the Bankruptcy Code applies to Chapter 9 proceedings pursuant to Section 901(a) of the Bankruptcy Code.

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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT LIST

Exhibit 1	Proposed Order
Exhibit 2	Notice
Exhibit 3	None
Exhibit 4	Certificate of Service
Exhibit 5	None
Exhibit 6	Claim 799

EXHIBIT 1: PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,
Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

**[PROPOSED] ORDER SUSTAINING
CITY OF DETROIT’S OBJECTION TO CLAIM NUMBER 799 FILED BY
DARRYL CAIN**

This matter having come before the Court on the *City of Detroit’s Objection to Claim Number 799* (“Objection”) upon proper notice and a hearing, the Court being fully advised in the premises, and there being good cause to grant the relief requested,

THE COURT ORDERS THAT:

1. The Objection is sustained.
2. Proof of claim number 799 is disallowed and expunged.
3. The City’s claims agent is authorized to update the claims register in accordance with the terms of this Order.
4. The Court retains jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

EXHIBIT 2: NOTICE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,

Debtor.

Chapter 9 Proceeding

Bankruptcy Case No. 13-53846

Honorable Thomas J. Tucker

NOTICE OF OBJECTION TO CLAIM

The City of Detroit has filed an objection to a claim in this bankruptcy case which may affect you.

Your claim may be reduced, modified, or disallowed. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the Court to disallow or change your claim, then on or before March 11, 2020, you or your attorney must:

1. File with the court a written response to the objection, explaining your position at:

U.S. Bankruptcy Court
211 W. Fort St., Suite 1900
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

Miller, Canfield, Paddock & Stone, PLC
Attn: Marc N. Swanson
150 West Jefferson, Suite 2500
Detroit, Michigan 48226

2. Attend the hearing on the objection, scheduled to be held on **March 18, 2020**, at **1:30 p.m.** in Courtroom 1925, United States Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan, unless your attendance is excused by mutual agreement between yourself and the City's attorney. (Unless the matter is disposed of summarily as a matter of law, the hearing shall be a pre-trial conference only; neither testimony nor other evidence will be received. A pre-trial scheduling order may be issued as a result of the pre-trial conference.)

If you or your attorney do not take these steps, the Court may deem that you do not oppose the objection to your claim, in which event the hearing will be canceled, and the objection sustained.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Marc N. Swanson

Marc N. Swanson (P71149)
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 496-7591
Facsimile: (313) 496-8451
swansonm@millercanfield.com

Dated: February 13, 2020

EXHIBIT 4: CERTIFICATE OF SERVICE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 13, 2020, he caused a copy of the *City of Detroit's Objection to Claim Number 799* to be served upon all parties registered for ECF service and by first class mail to the following party:

Darryl Cain
E.C. Brooks Correctional Facility
2500 S. Sheridan Drive
Muskegon, MI 49444

and

Darryl Cain
351791
Carson City Correctional Facility
10274 Boyer Road
Carson City, MI 48811

DATED: February 13, 2020

By: /s/ Marc N. Swanson

Marc N. Swanson
150 West Jefferson, Suite 2500
Detroit, Michigan 48226
Telephone: (313) 496-7591
Facsimile: (313) 496-8451
swansonm@millercanfield.com

EXHIBIT 6: CLAIM 799

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT of MICHIGAN		CHAPTER 9 PROBATE CLAIM RECEIVED FEB 10 2014 KURTZMAN CARSON CONSULTANTS
Name of Debtor: <u>City of Detroit, Michigan</u>		Case Number: <u>13-53846</u>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Cain, Darryl</u>		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: <u>11701846</u> (If known) Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Name and address where notices should be sent: Name ID: <u>846</u> <u>Cain, Darryl</u> <u>IN PRO PER</u> <u>E.C. Brooks Correctional Facility</u> <u>2500 S. Sheridan Drive</u> <u>Muskegon, MI 49444</u> Telephone number: _____ email: _____		
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: <u>\$51,320,000.00</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>False Imprisonment, 4th & 14th AM. violation</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: <u>1846</u>	3a. Debtor may have scheduled account as: <u>N/A</u> (See instruction #3a)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ <u>N/A</u> Annual Interest Rate (when case was filed) <u>N/A</u> % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable		
Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>N/A</u> Basis for perfection: <u>N/A</u> Amount of Secured Claim: \$ <u>N/A</u> Amount Unsecured: \$ <u>N/A</u>		
5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2). \$ <u>N/A</u>		
5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § <u>N/A</u> \$ <u>N/A</u>		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6) <u>N/A</u>		
7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <u>N/A</u>		
8. Signature: (See instruction # 8) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <u>Darryl Cain</u> Title: <u>Creditor</u> Company: _____ Address and telephone number (if different from notice address above): _____ _____ _____ Telephone number: <u>1353846-1111</u> email: <u>Doc132464</u> Filed: <u>02/10/2019</u> Entered: <u>02/10/2019 15:08:22</u> Page: <u>1</u> of <u>1</u>		
(Signature) <u>Darryl Cain February 3, 2014</u> (Date)		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for _____		



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