No. _____

IN THE
Supreme Court of the United States

JONATHAN S. METCALF,
Petitioner,

v.

MICHAEL FITZGERALD, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Connecticut Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Bankruptcy Code preempt state-law vexatious-litigation claims arising from adversary actions in bankruptcy proceedings?

PARTIES TO THE PROCEEDING

Petitioner is Jonathan S. Metcalf.

Respondents are Michael Fitzgerald, Ion Bank, Myles H. Alderman, Jr., and Alderman & Alderman, LLC.

STATEMENT OF RELATED CASES

Connecticut Supreme Court:

Metcalf v. Fitzgerald, No. SC 20227 (Sept. 3, 2019) (decision below)

Connecticut Appellate Court:

Metcalf v. Fitzgerald, No. AC 41343 (Dec. 18, 2018) (order transferring case to Connecticut Supreme Court)

Connecticut Superior Court:

Metcalf v. Fitzgerald, No. UWYC176036631S (Jan. 22, 2018) (order granting motion to dismiss)

United States Bankruptcy Court for the District of Connecticut:

In re: Jonathan S. Metcalf, No. 12-31919 (May 2, 2016) (order of discharge)

Ion Bank v. Metcalf (*In re: Jonathan S. Metcalf*), No. 13-03006 (May 2, 2016) (order dismissing adversary proceeding)

In re: The Metcalf Paving Co., Inc., No. 09-32996 (May 1, 2018) (final account and distribution report)

Chorches v. Metcalf (*In re: The Metcalf Paving Co., Inc.*), No. 12-03015 (June 15, 2015) (order dismissing adversary proceeding)

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PETITION FOR WRIT OF CERTIORARI

Jonathan S. Metcalf petitions for a writ of certiorari to review the judgment of the Connecticut Supreme Court.

OPINIONS BELOW

The decision of the Connecticut Supreme Court (Pet. App. 1a-34a) is reported at 333 Conn. 1. The decision of the Connecticut Superior Court (Pet. App. 35a-36a) is unreported.

JURISDICTION

The judgment of the Connecticut Supreme Court was entered on September 3, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Federal Rule of Bankruptcy Procedure 9011(b)(1) provides:

(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or

later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation[.]

INTRODUCTION

At common law, a person who was the victim of the wrongful initiation of civil proceedings had a remedy in tort. *See Restatement (Second) of Torts* § 674, Westlaw (database updated June 2019). This tort "require[d] the plaintiff to prove that the defendant lacked probable cause to institute an unsuccessful civil lawsuit and that the defendant pressed the action for an improper, malicious purpose." *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 62-63 (1993). Most states recognize this tort today. *See* 8 *American Law of Torts* § 28:21, at n.23, Westlaw (database updated Mar. 2019) (collecting cases).

This case presents the question whether the Bankruptcy Code preempts this tort as applied to adversary actions in bankruptcy proceedings. The Connecticut Supreme Court answered that question in the affirmative, joining the Ninth Circuit, Ohio Supreme Court, and Pennsylvania Supreme Court. As the Connecticut Supreme Court acknowledged, its decision conflicts with decisions of the Texas Supreme Court and the Third Circuit. The Court should grant

certiorari to resolve this split of authority on a recurring and important question of bankruptcy law.

STATEMENT OF THE CASE

I. Bankruptcy Proceedings

In 2009, Metcalf Paving Company, a business owned by Petitioner Jonathan S. Metcalf, filed a bankruptcy petition in the District of Connecticut. Pet. App. 2a. Petitioner subsequently filed individually for bankruptcy. *Id.*

On January 31, 2013, Respondent Ion Bank commenced an adversary proceeding in Petitioner's individual bankruptcy case. Pet. App. 2a, 40a. Ion Bank alleged that Petitioner had committed misconduct in connection with those bankruptcy proceedings that warranted a denial of discharge. *Id.* Ion Bank continued to pursue this litigation for over three years, filing three different complaints alleging an array of fraudulent and obstructive acts. *Id.* 39a-46a. For instance, Ion Bank alleged that Petitioner failed to deliver several vehicles to the trustee; failed to disclose the existence of a website used for a new business Petitioner had started; and improperly withheld and destroyed financial information. *Id.* 42a-45a.

On February 5, 2016, Petitioner filed a motion for summary judgment in the bankruptcy court, providing factual evidence contradicting all of Ion Bank's allegations. Pet. App. 2a-3a, 46a. For instance, Petitioner submitted factual proof that the vehicles at issue had been repossessed and had GPS installed on them that allowed their whereabouts to be monitored; that Petitioner had explicitly disclosed the website at

issue to the trustee; and that Petitioner had, in fact, disclosed all relevant financial information to the trustee and to an accountant retained by the trustee. *Id.* 46a-47a. In fact, Ion Bank had actually filed an objection to the accountant's retention wherein it admitted knowledge of the existence of significant financial documents provided by Petitioner to the trustee. *Id.* 47a. Petitioner also alleged that the adversary proceeding was time-barred. *Id.*

Ion Bank did not even attempt to contest Petitioner's summary judgment motion. Rather, over three years after it initially filed its adversary proceeding, Ion Bank moved to dismiss its own proceeding. Pet. App. 3a, 48a. The bankruptcy court granted that request. *Id.* 3a, 48a.

II. State Court Proceedings

Legal background. As noted above, the common-law tort of wrongful initiation of civil proceedings "require[s] the plaintiff to prove that the defendant lacked probable cause to institute an unsuccessful civil lawsuit and that the defendant pressed the action for an improper, malicious purpose." *Prof'l Real Estate Inv'rs*, 508 U.S. at 62-63. Connecticut's version of this tort is known as "vexatious litigation,"[1] and follows the

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[1] A note about terminology: Some states refer to this tort as "malicious prosecution." Connecticut does not use that phrase because it reserves that phrase for the malicious pursuit of criminal (as opposed to civil) proceedings. *See Simms v. Seaman*, 69 A.3d 880, 891 (Conn. 2013) ("A vexatious litigation suit is a type of malicious prosecution

common-law rule: the plaintiff must prove "want of probable cause, malice and a termination of suit in the plaintiff's favor." *See Simms v. Seaman*, 69 A.3d 880, 891 (Conn. 2013) (citation omitted). Connecticut has also codified a statutory vexatious-litigation tort. *See* Conn. Gen. Stat. § 52-568; Pet. App. 19a.

Factual background. After Petitioner's debts were discharged by the bankruptcy court, Petitioner commenced the litigation at issue here. Petitioner brought common-law and statutory claims for vexatious litigation under Connecticut law against Ion Bank, Michael Fitzgerald (an Ion Bank official), Myles

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action, differing principally in that it is based upon a prior civil action, whereas a malicious prosecution suit ordinarily implies a prior criminal complaint") (quotation marks and brackets omitted). Connecticut's practice of limiting the phrase "malicious prosecution" to the criminal context tracks the common law. *See Prof'l Real Estate Inv'rs*, 508 U.S. at 62-63 n.7 (noting that the "common-law tort of wrongful civil proceedings" is "frequently called 'malicious prosecution,' which (strictly speaking) governs the malicious pursuit of criminal proceedings without probable cause."). The Restatement makes the same distinction. *Compare Restatement (Second) of Torts* § 653 (reserving the phrase "malicious prosecution" to the criminal context), *with id.* § 674 (defining distinct tort of "wrongful civil proceedings"). Consistent with Connecticut's practice, this petition will generally use the phrase "vexatious litigation." But because other jurisdictions use the phrase "malicious prosecution," that phrase will appear several times in this petition as well. The Court should treat the two phrases as interchangeable.

H. Alderman, Jr. (Ion Bank's lawyer), and Alderman & Alderman, LLC (Myles H. Alderman, Jr.'s law firm)—all of whom are respondents here. Pet. App. 37a-39a.

Petitioner's suit alleged that "[e]ach material allegation in the complaint(s) was unsupported by knowledge of facts, actual or apparent, strong enough to justify the defendants in the belief that they had lawful grounds for prosecuting Metcalf in the complaint(s)." Pet. App. 46a; *see id.* 48a ("At the time the complaint was filed in the Underlying Action, and at all times between the date of filing and the date of the withdrawal and the entry of the dismissal, the defendants knew or should have known, that all of the claims made against Metcalf were without factual merit and/or were time-barred by the applicable statutes of limitations."). The suit further alleged that "[t]he defendants instituted the Underlying Action against Metcalf without probable cause and with malice," and that "[a]fter the initiation of suit, the defendant, Fitzgerald, continued to maintain and prosecute the Underlying Action against Metcalf without probable cause and with malice." *Id.* 48a. Petitioner sought compensatory damages, including attorney's fees, damages flowing from the three-year cloud on his discharge, damages flowing from reputational harm, and other forms of damages. *Id.* 49a-63a. Petitioner also sought statutory double and treble damages. *Id.*

The Connecticut Superior Court dismissed Petitioner's suit on the basis of federal preemption, relying on *Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, 862 A.2d 368 (Conn. App. Ct. 2004). Pet. App. 35a-36a. Petitioner appealed to the Connecticut

Appellate Court, which transferred the appeal to the Connecticut Supreme Court. *Id.* 4a-5a.

The Connecticut Supreme Court affirmed. The court acknowledged that Petitioner's state-law claims were not expressly preempted, Pet. App. 9a-12a, but nonetheless held that they were impliedly preempted. *Id.* 13a. The court followed "the majority of federal as well as state courts that have analyzed whether the Bankruptcy Code occupies the field of penalties and sanctions." *Id.* It relied specifically on *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910 (9th Cir. 1996), which it viewed as "directly on point with the present case." Pet. App. 16a.

The court first opined that the "Bankruptcy Code occupies the field of penalties and sanctions for abuse of the bankruptcy process." Pet. App. 17a. It cited two bankruptcy provisions in support of this proposition. The first was 11 U.S.C. § 105, which provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* 18a & n.3. The court stated that this statute "broadly authorizes bankruptcy courts to issue *any* process, order, or judgment necessary to prevent abuse of the bankruptcy process," and inferred that "Congress did not limit or carve out from this broad grant a vexatious litigation exception for the states to legislate within." *Id.* 18a. The second was Federal Rule of Bankruptcy Procedure 9011(b), which authorizes a court to sanction parties who file documents "for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." *Id.* 20a-21a & n.11. The court

acknowledged that Rule 9011 is closely similar to Federal Rule of Civil Procedure 11, and that the advisory committee notes to Rule 11 state that it "'does not preclude a party from initiating an independent action for malicious prosecution or abuse of process.'" *Id.* 21a (quoting Fed. R. Civ. P. 11, advisory committee notes, 28 U.S.C. app., p. 783 (2012)). But the court observed that "[c]ommittee notes are a product of the rules advisory committee, not Congress." *Id.*

The court then held that in bankruptcy law, "the federal interest is so dominant that federal law is assumed to preclude enforcement of state laws on the subject." Pet. App. 23a. In the court's view, "permitting state law claims for abuse of the bankruptcy process threatens the uniformity of the bankruptcy system." *Id.* 24a. It expressed concern that state courts would "develop adjudication standards for matters such as probable cause, bad faith, and malicious prosecution" that are "at odds with, the standards that have developed in the bankruptcy courts." *Id.* 25a. The court also expressed concern that "permitting state law actions would allow parties to collaterally attack the bankruptcy process, threatening the finality of the proceedings as well as the ability of the parties—debtors and creditors alike—to make a fresh start once the bankruptcy proceeding concludes." *Id.* 26a.

The court also concluded that Petitioner's lawsuit was "preempted under a conflict preemption analysis because they are an obstacle to accomplishing Congress' purpose within the Bankruptcy Code." Pet. App. 31a. The court opined that "Congress enacted the

Bankruptcy Code inclusive of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights. Permitting parties to bring abuse of process actions in state court hinders Congress' objective of uniformly defining the scope and availability of remedies for abuse of the bankruptcy process." *Id.* 33a.

The court expressly acknowledged the conflict of authority on the question presented. As the court explained, the Supreme Court of Texas has held that the Bankruptcy Code does not preempt state-law vexatious litigation claims arising from adversary actions in bankruptcy proceedings. Pet. App. 27a-29a; *see Graber v. Fuqua*, 279 S.W.3d 608 (Tex. 2009). The *Graber* court "concluded that 11 U.S.C. § 105 and rule 9011 do not preempt state law claims for malicious prosecution because they are imported from existing federal law and represent Congress' implicit acceptance of state law malicious prosecution claims." Pet. App. 28a-29a (citing *Graber*, 279 S.W.3d at 613). The Connecticut Supreme Court further observed that "[a]lthough that is still a minority view, some courts, in light of *Graber*, similarly have held that the Bankruptcy Code does not preempt state law causes of action providing damages for abuse of the bankruptcy process." *Id.* 29a (citing *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383, 393 (3d Cir. 2002), and *R.L. LaRoche, Inc. v. Barnett Bank of S. Fla., N.A.*, 661 So. 2d 855, 857 (Fla. Dist. Ct. App. 1995)).

But the Connecticut Supreme Court "disagree[d] with the minority approach to the preemption analysis." Pet. App. 29a. It found that the Texas

Supreme Court "failed to consider the structure and purpose of the Bankruptcy Code and, consequently, failed to recognize that Congress legislated so comprehensively as to occupy the entire field of regulation." *Id.* 29a-30a.

REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT OF AUTHORITY ON THE QUESTION PRESENTED.

As the Connecticut Supreme Court recognized, the court's decision deepens a conflict of authority on whether the Bankruptcy Code preempts state-law vexatious litigation claims arising from bankruptcy proceedings.

The decision below is consistent with *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 914 (9th Cir. 1996), a decision the Connecticut Supreme Court viewed as "directly on point with the present case." Pet. App. 16a. In *MSR*, as in this case, the plaintiff was a debtor in bankruptcy. After the bankruptcy proceeding concluded, the debtor brought a malicious prosecution claim against certain creditors, claiming that they had "maliciously filed and pursued creditors' claims." 74 F.3d at 911. The Ninth Circuit held that the claim was preempted. It found it "very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process." *Id.* at 914. The court concluded that "the highly complex laws needed to constitute the bankruptcy courts and regulate the rights of debtors and creditors also underscore the

need to jealously guard the bankruptcy process from even slight incursions and disruptions brought about by state malicious prosecution actions." *Id.*

Likewise, in *PNH, Inc. v. Alfa Laval Flow, Inc.*, 958 N.E.2d 120 (Ohio 2011), the Ohio Supreme Court concluded that "[t]he United States Bankruptcy Code preempts state-law causes of action for misconduct committed by a litigant during a bankruptcy court proceeding." *Id.* at 127. The court acknowledged the "split of authority regarding whether the Bankruptcy Code preempts state-law causes of action that allow the recovery of damages for a litigant's abuse of a bankruptcy court proceeding." *Id.* at 125. The court observed that "[s]ome jurisdictions hold that these types of claims are not preempted by federal bankruptcy law." *Id.* "In contrast, courts in other jurisdictions reason that because the uniformity of bankruptcy law is a constitutional requirement as well as a practical necessity, Congress has implicitly preempted state-law tort claims that would allow recovery for misconduct committed in bankruptcy cases." *Id.* at 125-26. The court adopted the latter view. *Id.* at 126. It reasoned that "Congress has established a comprehensive legislative scheme intended to promote the uniformity of bankruptcy law, which provides for federal remedies to deter the abuse of bankruptcy proceedings. Permitting additional state-law claims for misconduct occurring during a bankruptcy proceeding would, in our view, impermissibly disrupt the uniformity of bankruptcy law by establishing separate remedies for Ohio litigants in a

field of law that Congress intended to occupy exclusively." *Id.* at 126-27.

The Pennsylvania Supreme Court, too, has held that "the Bankruptcy Code preempts a state law claim of abuse of process based upon a frivolous claim filed in Bankruptcy Court proceedings." *Stone Crushed P'ship v. Kassap Archbold Jackson & O'Brien*, 908 A.2d 875, 880 (Pa. 2006). The court acknowledged that "courts have not uniformly determined whether the Bankruptcy Code preempts state law concerning a state action for abuse of process or wrongful use of civil procedure." *Id.* at 881. The court noted "a string of cases from other jurisdictions" finding preemption, highlighting the Ninth Circuit's *MSR* decision. *Id.* at 882-83. But "[c]onversely, a second line of cases exists in which abuse of process has been found to be outside of the scope of preemption of the Bankruptcy Code." *Id.* at 883. "After reviewing the case law from other jurisdictions," the court was "persuaded that, although the greater sanctions available under the Bankruptcy Code are not directly applicable to the case at hand, the Code's provision of remedies and sanctions implies an intent to govern sanctions as they relate to Bankruptcy Court proceedings." *Id.* at 886.

As the Connecticut Supreme Court recognized, however (Pet. App. 28a-29a), its decision conflicts with *Graber v. Fuqua*, 279 S.W.3d 608 (Tex. 2009). In *Graber*, the court considered the exact question here: "whether a state malicious prosecution claim is preempted by the federal bankruptcy regime simply because the claim arose out of the filing of an adversary action in a bankruptcy proceeding." *Id.* at 609-10. The

court held that "preemption of Fuqua's malicious prosecution claim is not warranted." *Id.* at 610. The court explained: "[T]he only broad provisions that apply to adversary proceedings—Rule 9011 and section 105(a)—evidence not an intent to preempt, but rather an intent to preserve the existing framework of federal procedure that does not preempt state malicious prosecution claims. In light of the well-established general rule that federal law does not preempt malicious prosecution claims predicated on conduct in federal court, we are unable to find the requisite evidence of an intent to preempt these same claims in bankruptcy." *Id.* at 616. The court then rejected the argument that "preemption is warranted by the risk of disrupting uniformity in bankruptcy." *Id.* at 617. It found that "Congress has yet to actually exercise its power to unify this aspect of bankruptcy and suppress the disparate state laws of malicious prosecution." *Id.* at 620.

The court expressly acknowledged it was creating a conflict of authority. It stated: "While some jurisdictions hold that bankruptcy statutes preempt malicious prosecution claims predicated on the bringing of an adversary proceeding, the opinions of those jurisdictions do not bind us; nor do the arguments that they have accepted persuade us." *Id.* at 620 n.13 (citations omitted).

Likewise, as the Connecticut Supreme Court acknowledged (Pet. App. 29a), its decision conflicts with *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383 (3d Cir. 2002). In *Higgins*, the court held that "the Federal Rules of Civil Procedure do not preempt claims

for abuse of process and similar torts providing relief for misconduct in federal litigation." *Id.* at 393. In reaching that conclusion, the court observed that "[d]espite the broad scope of remedies available in the [Bankruptcy] Code and the general exclusivity of the federal courts in bankruptcy, we have held that a state claim for malicious abuse of process was not preempted." *Id.* at 393. The court cited *Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47 (3d Cir. 1988), in which the court held that a debtor did not waive a bad-faith claim against a creditor by failing to raise it in the bankruptcy proceeding. *Id.* at 51-52.

Thus, there is a conflict of authority on whether the Bankruptcy Code preempts state-law vexatious-litigation claims arising from adversary actions in bankruptcy proceedings.

II. THE COURT SHOULD RESOLVE THE CONFLICT OF AUTHORITY IN THIS CASE.

The Court should grant certiorari and resolve the conflict in this case. No further percolation would be helpful. As explained above, the Connecticut Supreme Court's decision is one of numerous detailed decisions addressing the question presented. Indeed, not only the Connecticut Supreme Court, but also the Texas Supreme Court, Ohio Supreme Court, and Pennsylvania Supreme Court, have expressly acknowledged the split, analyzed the arguments on both sides, and picked a side. The arguments on both sides of the split have now been thoroughly aired in the lower courts, and this Court's intervention is now warranted.

The question presented is important. It affects the legal rights of any debtor who faces an adversary proceeding in bankruptcy. It is the subject of constant litigation in lower courts. *See* Pet. App. 14a-15a (collecting lower court cases). Yet this Court has offered little guidance on implied preemption in the bankruptcy context—forcing courts to reason from first principles. *See, e.g.*, *id.* 23a ("Nothing less than the constitution of the United States persuades us that Congress' interest in uniformity in the bankruptcy process is so dominant as to preempt collateral attacks through state law vexatious litigation and CUTPA claims."). This important issue cries out for Supreme Court guidance.

The conflict of authority may also create a risk of forum-shopping. Debtors frequently have the option of bringing a vexatious-litigation claim in multiple jurisdictions. The debtor could sue in the jurisdiction where the creditor resides (which would have general jurisdiction); it could sue in the jurisdiction where the bankruptcy petition was filed (which would presumably have specific jurisdiction); and it could sue in any other jurisdiction with a sufficient connection to the tort, such as where the defendants plotted or accomplished their tortious acts. Debtors will simply pick the jurisdiction in which federal law is most favorable—a result antithetical to the principle that federal law should be the same in every jurisdiction.

This case is an ideal vehicle. The trial court dismissed the complaint, and the Connecticut Supreme Court affirmed, purely on the basis of federal

preemption. That holding is squarely presented for this Court's review.

III. THE CONNECTICUT SUPREME COURT'S DECISION IS WRONG.

The Connecticut Supreme Court erred in holding that Petitioner's claims were preempted. The court should have followed the Texas Supreme Court's decision in *Graber*, and allowed the claims to proceed.

Nothing in Rule 9011 or 11 U.S.C. § 105 suggests that Congress intended to occupy the field of remedies for abusive litigation. As to Rule 9011, the Texas Supreme Court's analysis is persuasive and correct. "Because Rule 9011 is almost identical to Rule 11, courts often merge their substantive analysis of the rules." *Graber*, 279 S.W.3d at 613. "It is well settled that the Federal Rules of Civil Procedure, including Rule 11, do not preempt malicious prosecution claims predicated on federal civil actions." *Id.* "Because Rule 11 does not preempt state malicious prosecution claims normally, and because Congress intended to replicate that framework in bankruptcy adversary proceedings, Rule 9011 does not evidence Congress's intent to preempt malicious prosecution claims. Its importation militates, instead, directly against preemption." *Id.* at 614.

As to 11 U.S.C. § 105, this statute "gives bankruptcy courts broad, general police powers[.]" *Id.* But, as the Texas Supreme Court correctly explained, "federal courts hearing general civil actions possess this same power inherently." *Id.* at 614-15 (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991)). "For

the same reasons that merely importing Rule 11 does not evidence Congress's intent to create an exceptional preemption result, importing the power recognized by *Chambers* does not either." *Id.* at 615.

Nothing in the Connecticut Supreme Court's analysis supports a contrary conclusion. The Connecticut Supreme Court observed that Section 105 and Rule 9011(b) give bankruptcy courts broad authority to police abusive litigation, and leapt to the conclusion that "it is clear that Congress occupied the field by legislating comprehensively as to penalties and sanctions for abuse of that process." Pet. App. 22a. But nothing in the text of Section 105 or Rule 9011(b) suggests that Congress "occupied the field." These provisions are naturally understood to perform the same function as the analogous rules in ordinary civil litigation—they allow a judge to sanction abusive litigation in the judge's own courtroom, while leaving the door open for litigants to pursue follow-up vexatious-litigation claims in state court.

Contrary to the Connecticut Supreme Court's reasoning, the need for "uniformity of bankruptcy law" provide no basis for preemption. The court expressed concern that "state courts evaluating claims that involve abuse of the bankruptcy process would need to develop adjudication standards for matters such as probable cause, bad faith, and malicious prosecution, to name a few. Those standards may be different from, and at odds with, the standards that have developed in the bankruptcy courts." Pet. App. 25a. That observation does not justify the Connecticut Supreme Court's sweeping preemption holding. If those

standards *are*, in fact, inconsistent with the standards developed in bankruptcy courts, then such state-law standards would be preempted. But the Connecticut Supreme Court identified no actual inconsistency between Connecticut's standards and the standards that have developed in bankruptcy courts.

The Connecticut Supreme Court also stated that "permitting state law actions would allow parties to collaterally attack the bankruptcy process, threatening the finality of the proceedings as well as the ability of the parties—debtors and creditors alike—to make a fresh start once the bankruptcy proceeding concludes." Pet. App. 26a. But the "threat[]" to "finality" is no greater than in ordinary civil litigation. And nothing in the Bankruptcy Code guarantees a fresh start for debtors or creditors who abuse the bankruptcy process. A person who commits bankruptcy fraud, for instance, may be denied a discharge and may be criminally prosecuted for his actions after the bankruptcy proceeding concludes.

The Connecticut Supreme Court similarly erred in finding conflict preemption. The court found that "[p]ermitting parties to bring abuse of process actions in state court hinders Congress' objective of uniformly defining the scope and availability of remedies for abuse of the bankruptcy process." Pet. App. 33a. But nothing in the Bankruptcy Code suggests that Congress actually had this "objective"—as opposed to the objective of giving bankruptcy courts the authority to manage their proceedings, while also permitting litigants to pursue traditionally available remedies for abusive litigation.

Of course, conflict preemption unquestionably serves an important purpose in federal bankruptcy law. Any time a state imposes a substantive rule that is inconsistent with a substantive rule of federal bankruptcy law, the state law is preempted. For instance, lower courts have uniformly held that state laws that would have the effect of altering the federal priority scheme are preempted. *See, e.g.*, *In re Leslie*, 520 F.2d 761, 762 (9th Cir. 1975). This is because the Bankruptcy Code embodies a judgment that certain creditors should get funds in a certain order; a state law that redistributed those funds to other creditors would be inconsistent with that judgment. Likewise, state laws that would have the effect of hindering debtors or creditors from exercising rights guaranteed to them under the Bankruptcy Code would be preempted. *See, e.g.*, *In re Thorpe Insulation Co.*, 677 F.3d 869, 890 (9th Cir. 2012).

But nothing of the sort is at issue here. Nowhere did the Connecticut Supreme Court suggest that Petitioner was seeking a remedy based on conduct that would *not* have been sanctionable in the bankruptcy court. Petitioner did not move for sanctions in the bankruptcy court, but he did not have to: as the Texas Supreme Court explained, the availability of a sanctions remedy in federal court does not bar a litigant from bringing a vexatious-litigation claim in state court. If *federal law* would regard a claim as malicious and sanctionable, the existence of a state remedy for the filing of that malicious and sanctionable claim is not an obstacle to any federal purpose.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Appendix A

Supreme Court of Connecticut.

Jonathan S. METCALF
v.
Michael FITZGERALD et al.

(SC 20227)

Argued March 29, 2019

Officially released September 3, 2019

D'AURIA, J. In this appeal, we are asked to determine whether the United States Bankruptcy Code provisions permitting bankruptcy courts to assess penalties and sanctions preempt state law claims for vexatious litigation and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. The plaintiff, Jonathan S. Metcalf, brought state law claims against the defendants, Michael Fitzgerald, Ion Bank (bank), Myles H. Alderman, Jr., and Alderman & Alderman, LLC (law firm), for alleged vexatious litigation and for unfair and deceptive business acts or practices during the plaintiff's underlying bankruptcy proceeding. The plaintiff appeals from the trial court's granting of the motion to dismiss filed by Alderman and the law firm, for lack of subject matter jurisdiction on the ground that federal bankruptcy law preempts the claims. The trial court determined that the outcome of the motion was controlled by the Appellate Court's decision in *Lewis* v. *Chelsea G.C.A. Realty Partnership, L.P.*, 86 Conn. App. 596, 862 A.2d 368 (2004), *cert. denied*, 273 Conn. 909, 870 A.2d 1079 (2005). The court in *Lewis* held that the

Bankruptcy Code preempted CUTPA and vexatious litigation claims for alleged abuse of the bankruptcy process. *Id.*, at 605–607, 862 A.2d 368. The plaintiff contends that the court in *Lewis* did not properly evaluate each of the three types of preemption by which Congress manifests its intent to preempt state law and failed to consider the relevant Bankruptcy Code provisions. *See* 11 U.S.C. § 105 (2012); Fed. R. Bankr. P. 9011. We disagree and affirm the judgment of the trial court.

The following facts, as set forth in the plaintiff's complaint, and procedural history are relevant to our review of the plaintiff's claim. The plaintiff's business, Metcalf Paving Company, filed a chapter 11 bankruptcy petition in 2009. *See* 11 U.S.C. § 1101 et seq. (2012). The Metcalf Paving Company bankruptcy thereafter was converted to a case under chapter 7 of the Bankruptcy Code. *See* 11 U.S.C. § 701 (2012). The plaintiff then filed individually for bankruptcy under chapter 7. The bank, one of the plaintiff's creditors in the bankruptcy proceeding, subsequently commenced an adversary proceeding against the plaintiff under §§ 523 (a) and 727 (a) (7) of the Bankruptcy Code. Under these provisions, the bank objected to the discharge of the plaintiff's debt, asserting, among other allegations, that the plaintiff had failed to deliver a check, failed to provide documents, failed to disclose a website that he allegedly used for a new business, took possession of expensive machinery, unlawfully transferred property, destroyed property of the estate, defrauded creditors, and fraudulently withheld information from the chapter 7 trustee. In response, the plaintiff presented evidence to the

Bankruptcy Court to contradict the allegations and moved for summary judgment. Upon reviewing the plaintiff's evidence, the bank moved to dismiss the adversary proceeding. The Bankruptcy Court granted the motion to dismiss.

The plaintiff subsequently commenced this action in the Superior Court. In his complaint, the plaintiff set forth claims for vexatious litigation against all the defendants, and CUTPA claims against Fitzgerald and the bank. In support of the vexatious litigation claims, the plaintiff alleged that the defendants had initiated the adversary proceeding without probable cause and with malice, maintained the proceeding without probable cause and with malice, and, as a result, caused him to suffer damages. The plaintiff claimed that the defendants knew or should have known that the allegations they made during the adversary proceeding were without factual merit and were barred by the applicable statute of limitations. In support of the CUTPA claims, the plaintiff alleged that Fitzgerald and the bank repeatedly engaged in unfair and deceptive acts or practices during the bankruptcy proceeding, and that their conduct had been so frequent as to constitute a general business practice. The plaintiff claimed damages that included attorney's fees, losses from an inability to manage his business affairs, emotional distress, expenditures of time, effort and resources, and injuries to his business and professional reputation. The plaintiff alleged that he was entitled to damages and costs under the common law, double damages and treble damages under Connecticut's vexatious litigation statute, General Statutes § 52-568, and punitive

damages and attorney's fees under CUTPA. *See* General Statutes § 42-110g.

Alderman and the law firm moved to dismiss the vexatious litigation claims on the ground that the claims arose from conduct that allegedly had taken place within a bankruptcy proceeding and were, therefore, preempted by the Bankruptcy Code. The trial court agreed, granted the motion to dismiss the vexatious litigation claims and, on its own motion and for the same reason, dismissed the remaining counts of the complaint, including the CUTPA claims, for lack of subject matter jurisdiction. The trial court cited *Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, *supra*, 86 Conn. App. at 596, 862 A.2d 368, in support of its decision.

In *Lewis*, the Appellate Court held that bankruptcy law preempted state law CUTPA and vexatious litigation claims. *Id.*, at 605–607, 862 A.2d 368. The Appellate Court reasoned that "[t]he exclusivity of federal jurisdiction over bankruptcy proceedings, the complexity and comprehensiveness of Congress' regulation in the area of bankruptcy law and the existence of federal sanctions for the filing of frivolous and malicious pleadings in bankruptcy must be read as Congress' implicit rejection of alternative remedies such as those the plaintiff seeks." *Id.*, at 605, 862 A.2d 368. Accordingly, the court in *Lewis* remanded the case to the trial court with direction to dismiss the action. *Id.*, at 607, 862 A.2d 368.

Upon the trial court's dismissal of the present action, the plaintiff timely appealed to the Appellate Court. The appeal was then transferred from the Appellate Court to

this court. *See* General Statutes § 51-199 (c); Practice Book § 65-1.

On appeal, the plaintiff's sole claim is that the trial court incorrectly concluded that federal bankruptcy law preempted his state law claims for vexatious litigation and violations of CUTPA.[1] Specifically, the plaintiff argues that this court should not follow the holding in *Lewis* because that court failed to conduct a proper preemption analysis. Additionally, the plaintiff argues that his state law claims are neither expressly nor implicitly preempted and do not conflict with Congress' objectives in the Bankruptcy Code. We disagree.

We begin with our well established standard of review for reviewing a trial court's decision on a motion to dismiss: "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without

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[1] Count seven of the plaintiff's complaint alleged that Fitzgerald and the bank violated CUTPA. Fitzgerald and the bank moved to dismiss counts eight through thirteen of the complaint, which alleged vexatious litigation. On its own motion, the trial court dismissed the CUTPA claim on the same ground as it dismissed the vexatious litigations claims—lack of subject matter jurisdiction.

In his brief to this court, the plaintiff did not specifically identify or analyze the CUTPA claim but, rather, referred to it only generally by stating that the "vexatious litigation claims *and the like* were not intended to be preempted by the Bankruptcy Code and its rules" and that, "[a]ccordingly, it should be held that *no claim brought here* was preempted or intended to be preempted by the federal rules applicable." (Emphasis added.) Although the plaintiff's brief is imprecise, because the defendants have not argued that the plaintiff has waived the CUTPA claims, we consider the plaintiff's argument as applying to both the vexatious litigation claims and the CUTPA claims.

jurisdiction.... [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo.... When a ... court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light.... In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.... The motion to dismiss ... admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone.... In undertaking this review, we are mindful of the well established notion that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Dorry v. Garden*, 313 Conn. 516, 521, 98 A.3d 55 (2014).

Turning to the legal principles at issue, we note that the supremacy clause of the United States constitution; *see* U.S. Const., art. VI, cl. 2; provides that federal law "shall be the supreme Law of the Land; and the Judges in every [S]tate shall be bound thereby, any Thing in the Constitution or Laws of any [S]tate to the Contrary notwithstanding.... Under this principle, Congress has the power to pre-empt state law." (Citation omitted; internal quotation marks omitted.) *Arizona v. United States*, 567 U.S. 387, 399, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

The bankruptcy clause of the United States constitution grants Congress the power "[t]o establish ... uniform Laws on the subject of Bankruptcies

throughout the United States ...." U.S. Const., art. I, § 8, cl. 4. District courts of the United States have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334 (a) (2012). Through title 11 of the United States Code, Congress provided "a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights." *Eastern Equipment & Services Corp. v. Factory Point National Bank*, 236 F.3d 117, 120 (2d Cir. 2001); *see* 11 U.S.C. § 101 et seq. (2012). As for sanctions for abuse of the bankruptcy process, the Bankruptcy Code provides a variety of remedies. *See, e.g.*, 11 U.S.C. § 105 (a) (2012) (authority to prevent abuse of process);[2] 11 U.S.C. § 303 (i) (2) (2012) (bad faith filing of involuntary petitions);[3] 11 U.S.C. § 930 (a) (2) (2012) (dismissal for unreasonable delay);[4] *see also* Fed. R. Bankr. P. 9011 (b) and (c)

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[2] Section 105 (a) of title 11 of the 2012 edition of the United States Code provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

[3] Section 303 (i) of title 11 of the 2012 edition of the United States Code provides in relevant part: "If the court dismisses a petition under this section other than on consent of all petitioners and the debtor ... the court may grant judgment ... (2) against any petitioner that filed the petition in bad faith for ... (A) ... any damages proximately caused by such filing; or (B) punitive damages."

[4] Section 930 (a) of title 11 of the 2012 edition of the United States Code provides in relevant part: "After notice and a hearing, the court may dismiss a case under this chapter for cause, including ...

(sanctions for frivolous and harassing filings).[5] The question before this court is whether the Bankruptcy Code preempts vexatious litigation and CUTPA actions brought in state court that provide for penalties and sanctions, as well as damages for abuse of process.

This court has explained that there are three types of preemption: (1) express preemption, whereby Congress has through clear statutory language manifested its intent to preempt state law; (2) implied preemption, whereby Congress has legislated so comprehensively that federal law occupies an entire field of regulation and leaves no room for state law (occupy the field preemption); and (3) conflict preemption, whereby state law conflicts with federal law such that it is impossible for a party to comply with both or the local law is an obstacle to the achievement of federal objectives. *See, e.g.*, *Sarrazin v. Coastal, Inc.*, 311 Conn.

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(2) unreasonable delay by the debtor that is prejudicial to the creditors ...."

[5] Rule 9011 of the Federal Rules of Bankruptcy Procedure provides in relevant part: "(b) By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation .... (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation...."

581, 592–93, 89 A.3d 841 (2014); *see also English v. General Electric Co.*, 496 U.S. 72, 78–79, 110 S. Ct. 2270, 110 L. Ed. 2d 65 (1990). The plaintiff contends that the Bankruptcy Code does not preclude his state court claims under express, implied, or conflict preemption. He further argues that this court should overrule the Appellate Court's holding in *Lewis* that the Bankruptcy Code preempts these claims because the Appellate Court failed to properly address the three types of preemption. Had it done so, according to the plaintiff, the court would have concluded that federal bankruptcy law does not preempt the state law claims at issue.

Before addressing the three types of preemption in turn, it is important to note that the question of preemption turns on Congress' intent. We therefore "begin as we do in any exercise of statutory [construction] with the text of the provision in question, and move on, as need be, to the structure and purpose of the [federal law] in which it occurs." (Internal quotation marks omitted.) *Air Transport Assn. of America, Inc. v. Cuomo*, 520 F.3d 218, 221 (2d Cir. 2008).

I

Regarding express preemption, the plaintiff argues that the Bankruptcy Code does not contain an express provision preempting the causes of action brought in this case. We agree. "Express preemption occurs when 'Congress ... withdraw[s] specified powers from the [s]tates by enacting a statute containing an express preemption provision.' " *Trikona Advisers Ltd. v. Chugh*, 846 F.3d 22, 35 (2d Cir. 2017); accord *Arizona v. United States*, *supra*, 567 U.S. at 399, 132 S. Ct. 2492. An express preemption provision "expressly directs that

state law be ousted to some degree from a certain field." *Assn. of International Automobile Manufacturers, Inc. v. Abrams*, 84 F.3d 602, 607 (2d Cir. 1996). We find no provision of the Bankruptcy Code that explicitly precludes a state law CUTPA or vexatious litigation claim.[6]

This conclusion is not at odds with the conclusion the Appellate Court reached in *Lewis*.[7] The court in *Lewis* did not evaluate express preemption because the parties

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[6] As an example of express preemption, the Medical Device Amendments of 1976, 21 U.S.C. § 360c et seq. (2012), provides in relevant part that, "[e]xcept as provided in subsection (b) of this section, no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement—(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter." 21 U.S.C. § 360k (a) (2012); *see also Mullin v. Guidant Corp.*, 114 Conn. App. 279, 285, 970 A.2d 733, *cert. denied*, 292 Conn. 921, 974 A.2d 722 (2009).

[7] Having determined that Congress impliedly preempted the state law claims by occupying the field, the court in *Lewis* did not need to analyze express preemption. *See Resolution Trust Corp. v. Diamond*, 18 F.3d 111, 125 (2d Cir.) (not addressing conflict preemption after holding that express preemption applied), vacated on other grounds sub nom. *Pattullo v. Resolution Trust Corp.*, 513 U.S. 801, 115 S. Ct. 43, 44, 130 L. Ed. 2d 5 (1994); *Depot, Inc. v. Caring for Montanans, Inc.*, Docket No. 16-74-M-DLC, 2017 WL 3687339, *5 (D. Mont. February 14, 2017) (not reaching issue of conflict preemption because plaintiffs' claims were expressly preempted). In the present case, we analyze all three types of preemption to add clarity and because the parties addressed each of them on appeal in this court.

did not raise the issue. The defendant in *Lewis* argued that bankruptcy law preempted vexatious litigation and CUTPA claims under the theory of implied preemption (occupy the field). *See Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, *supra*, 86 Conn. App. at 600, 862 A.2d 368. The court, therefore, did not reach the issue of express preemption.[8] "It is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial." *Southport Congregational Church-United Church of Christ v. Hadley*, 320 Conn. 103, 119 n.21, 128 A.3d 478 (2016); *see id.* (declining to address risk of loss provision raised for first time in brief).

Express *preemption* is not the only method by which Congress can address the role that state law plays in bankruptcy—it can affirmatively utilize state law and has done so. For example, § 522 of the Bankruptcy Code expressly permits debtors to choose either the bankruptcy property exemption scheme under federal law or the nonbankruptcy property exemption schemes available under state law. *See* 11 U.S.C. § 522 (b) (2012);

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[8] Neither the parties nor the trial court in *Lewis* performed a separate analysis of the three types of preemption. The defendant in *Lewis* argued generally, in its motion for summary judgment, that bankruptcy law preempted state law claims. The trial court granted the defendant's motion for summary judgment, stating that "[the] court is preempted by federal law from acting on a claim intended to sanction a party for its participation in a bankruptcy proceeding." *Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, Superior Court, judicial district of Waterbury, Docket No. X06-CV-96-0154801-S, 2003 WL 356680 (January 22, 2003) (34 Conn. L. Rptr. 5, 7), rev'd, 86 Conn. App. 596, 862 A.2d 368 (2004), *cert. denied*, 273 Conn. 909, 870 A.2d 1079 (2005).

see also In re Pruitt, 401 B.R. 546, 554 (Bankr. D. Conn. 2009). The plaintiff interprets Congress' utilization of state law as evidence that Congress "clearly intended for the bankruptcy courts to abstain from hearing certain matters involving state law and interests." We agree that when Congress affirmatively permits the operation of state law, state law can play a role. However, the operation of state law is conditional upon Congress' inclusion of state law. "State [l]aw has a role to play in bankruptcy only if Congress affirmatively permits it." *In re Pruitt*, *supr*a, at 554. Here, Congress did not affirmatively permit state law actions for abuse of the bankruptcy process, and, consequently, we conclude that the plaintiff's argument fails.

II

Second, the plaintiff argues that Congress did not intend to occupy the field of sanctions and remedies for abuse of the bankruptcy process. The plaintiff states that, by enacting the Bankruptcy Code, Congress intended only to provide a uniform and orderly administration of bankruptcy estates and payments to creditors. As to his claims for vexatious litigation, specifically, he contends that permitting such state law claims would not affect the equitable distribution of a debtor's assets, and, therefore, they are not preempted. We disagree.

To determine whether Congress has occupied a field, we look to the overriding purpose of bankruptcy law to infer Congress' intent. "[A]bsent an explicit statement that Congress intends to preempt state law, courts should infer such intent where Congress has legislated comprehensively to occupy an entire field of regulation,

leaving no room for the [s]tates to supplement federal law ...." (Internal quotation marks omitted.) *Barbieri v. United Technologies Corp.*, 255 Conn. 708, 717, 771 A.2d 915 (2001). "[O]ften, an [a]ct of Congress may touch a field of law in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Eastern Equipment & Services Corp. v. Factory Point National Bank*, *supra*, 236 F.3d at 120.

We conclude that the Bankruptcy Code impliedly preempts the plaintiff's state law CUTPA and vexatious litigation claims for two main reasons: (1) Congress legislated so comprehensively as to occupy the entire field of penalties and sanctions for abuse of the bankruptcy process, leaving no room for state law to supplement; and (2) the federal interest in uniformity is so dominant that we assume it precludes enforcement of state laws that threaten the uniformity and finality of the bankruptcy process for debtors and creditors alike.

A

We agree with the defendants that Congress has occupied the field of penalties and sanctions for abuse of the bankruptcy process, thereby implicitly preempting state law CUTPA and vexatious litigation claims. Our conclusion is consistent with the majority of federal as well as state courts that have analyzed whether the Bankruptcy Code occupies the field of penalties and sanctions. These courts have concluded that, because Congress has enacted such a comprehensive statutory scheme, inclusive of provisions for sanctions and remedies for abuse of the bankruptcy process, Congress has implicitly occupied the field, leaving no room for

state law. *See id.*, at 121 (concluding that preemption precludes state law damages claims for violating automatic stay provision of Bankruptcy Code because Congress created lengthy, complex and detailed Bankruptcy Code to achieve uniformity); *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 914 (9th Cir. 1996) (precluding state law claim for malicious prosecution because "the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal"); *Astor Holdings, Inc. v. Roski*, 325 F. Supp. 2d 251, 262 (S.D.N.Y. 2003) (barring state law claims for filing papers in bankruptcy proceeding in bad faith or for improper purpose because Bankruptcy Code contains remedies for misuse of process, and "thus such misuse is governed exclusively by that Code"); *Glannon v. Garrett & Associates, Inc.*, 261 B.R. 259, 263 (D. Kan. 2001) ("the Bankruptcy Code permits no state law remedies for abuse of the bankruptcy provisions"); *Raymark Industries, Inc. v. Baron*, Docket No. CIV 96-7625, 1997 WL 359333, *10 (E.D. Pa. June 23, 1997) (justifying preemption on ground that Congress expressed intent that bankruptcy matters be handled in federal forum by placing bankruptcy jurisdiction exclusively in district courts); *Koffman v. Osteoimplant Technology, Inc.*, 182 B.R. 115, 125 (D. Md. 1995) (holding that state law tort actions are preempted by Bankruptcy Code); *Idell v. Goodman*, 224 Cal. App. 3d 262, 271, 273 Cal. Rptr. 605 (1990) (holding that malicious prosecution action was preempted by federal law because "[t]he existence of federal sanctions for the filing of frivolous and malicious bankruptcy pleadings must be read as an implicit rejection of state court remedies"); *Smith v. Mitchell Construction Co.*, 225 Ga.

App. 383, 386, 481 S.E.2d 558 (1997) (" 'state tort suits are preempted by the federal Bankruptcy Code' "), *cert. denied*, Docket No. 597C1344, 1997 Ga. LEXIS 858 (Ga. October 3, 1997); *Sarno v. Thermen*, 239 Ill. App. 3d 1034, 1047, 180 Ill. Dec. 889, 608 N.E.2d 11 (1992) (precluding state law conspiracy claim arising out of involuntary bankruptcy proceeding); *Longnecker v. Deutsche Bank National Trust Co.*, Docket No. 12-2304, 2013 WL 6700312, *4 (Iowa App. December 18, 2013) ("we conclude the federal bankruptcy code preempts Iowa tort claims premised on litigants' conduct in bankruptcy court"); *Mason v. Smith*, 140 N.H. 696, 701, 672 A.2d 705 (1996) (holding that plaintiff's state law tort claims based on allegedly wrongful filing of involuntary bankruptcy petition were impliedly preempted by Bankruptcy Code); *Stone Crushed Partnership v. Kassab Archbold Jackson & O'Brien*, 589 Pa. 296, 314, 908 A.2d 875 (2006) (concluding that sanctions in Bankruptcy Code provide inference that Congress intended to preempt state law remedies for frivolous claims in field of bankruptcy).

For example, in *Eastern Equipment & Services Corp.*, the plaintiff-debtor brought state law claims in the United States District Court alleging that, during the bankruptcy proceeding, creditors wilfully violated the automatic stay provision of the Bankruptcy Code by pursuing foreclosure actions in state court. *Eastern Equipment & Services Corp. v. Factory Point National Bank*, *supra*, 236 F.3d at 119. The District Court granted the creditors' motion for judgment on the pleadings, concluding that the Bankruptcy Code preempted the state law claims, which should have been

brought in the Bankruptcy Court. *Id.* On appeal, the United States Court of Appeals for the Second Circuit explained that a conclusion of preemption was compelled by (1) Congress' establishment of bankruptcy jurisdiction exclusively in the district courts under 28 U.S.C. § 1334 (a), (2) Congress' creation of a lengthy, complex and detailed Bankruptcy Code to achieve uniformity, (3) the constitution's grant to Congress of exclusive power over bankruptcy law, and (4) the Bankruptcy Code's provision of several remedies designed to deter the misuse of the bankruptcy process. *Id.*, at 121.

In a case that is directly on point with the present case, the United States Court of Appeals for the Ninth Circuit in *MSR Exploration, Ltd.*, addressed the question of whether federal law preempts state law malicious prosecution actions for events that had occurred in connection with Bankruptcy Court proceedings. *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, *supra*, 74 F.3d at 912. In *MSR Exploration, Ltd.*, the plaintiff debtor filed a chapter 11 bankruptcy proceeding. *Id.* In response, the defendant creditors filed claims against the debtor, to which the debtor objected. *Id.* The Bankruptcy Court entered an order disallowing the creditors' claims. The debtor did not pursue abuse of process sanctions or penalties in the Bankruptcy Court. *Id.* Instead, the debtor brought a state law malicious prosecution action in the United States District Court. *Id.*

The Ninth Circuit concluded that the Bankruptcy Code preempted the state law action for two main reasons. *Id.*, at 913. "First, Congress has expressed its

intent that bankruptcy matters be handled in a federal forum by placing bankruptcy jurisdiction exclusively in the district courts ...." *Id.* Second, the complex, detailed, and comprehensive Bankruptcy Code demonstrates Congress' intent to provide uniform and centralized adjudication of all of the rights and duties of debtors and creditors alike. *Id.*, at 914. "It is very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process.... [T]he highly complex laws needed to constitute the bankruptcy courts and regulate the rights of debtors and creditors also underscore the need to jealously guard the bankruptcy process from even slight incursions and disruptions brought about by state malicious prosecution actions." (Citations omitted.) *Id.* Accordingly, the Ninth Circuit concluded that the malicious prosecution action should have been brought in the Bankruptcy Court and upheld the District Court's determination that it lacked subject matter jurisdiction over the action. *Id.*, at 916.

We agree with the holdings of the majority of courts that have analyzed the issue and concluded that the Bankruptcy Code occupies the field of penalties and sanctions for abuse of the bankruptcy process. The plaintiff, however, disputes our conclusion and argues that a closer analysis of the Bankruptcy Code provisions that permit penalties and sanctions reveals that Congress did not intend to preempt his state law claims. Performing the analysis the plaintiff advocates for only further supports our conclusion that Congress occupied the field of penalties and sanctions.

We first examine 11 U.S.C. § 105,[9] which grants bankruptcy courts broad equitable powers to "implement the provisions of Title 11 and to prevent an abuse of the bankruptcy process." *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997), citing *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996), and *In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1089 (10th Cir. 1994). The grant of equitable powers under § 105 broadly authorizes bankruptcy courts to issue *any* process, order, or judgment necessary to prevent abuse of the bankruptcy process. Congress did not limit or carve out from this broad grant a vexatious litigation exception for the states to legislate within. In practice, bankruptcy courts have sanctioned parties for vexatious litigation under that very provision. In *In re Volpert*, *supra*, at 497, for example, the United States Court of Appeals for the Seventh Circuit upheld a Bankruptcy Court's imposition of a $1000 sanction against an attorney who had "abuse[d] the judicial process." *Id.*, at 501. *In re Volpert* illustrates that bankruptcy courts have the authority, and in practice use that authority under § 105, to achieve a purpose similar to that of a state law remedy. *In re Volpert* supports our conclusion that Congress intended to occupy the field of penalties and sanctions for abuse of the bankruptcy process and

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[9] Section 105(a) of title 11 of the 2012 edition of the United States Code provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

left no room for state law to operate. Additionally, we are reassured by the fact that the Bankruptcy Code provides remedies for the kind of abuse of process of which the plaintiff complains. The plaintiff is not left without a remedy, even after the bankruptcy proceeding concludes.[10]

The plaintiff argues that, because a cause of action for vexatious litigation under Connecticut law provides relief that is different from the sanctions contemplated under 11 U.S.C. § 105, it falls outside the field that Congress intended to occupy. We agree that the penalties and damages available under a successful state law claim for vexatious litigation are potentially more extensive than those available under the Bankruptcy Code. In Connecticut, a plaintiff can recover double damages for an action brought without probable cause, and treble damages for an action brought with malicious intent to vex and trouble. General Statutes § 52-568. Similarly, CUTPA permits a plaintiff to recover actual and punitive damages. General Statutes § 42-110g (a).

In contrast, 11 U.S.C. § 105 grants bankruptcy courts the discretion to issue any judgment necessary to prevent abuse of the bankruptcy process. Although Congress' grant of such discretion is broad, the practical effects of it may be that bankruptcy courts impose sanctions less frequently, and for lesser dollar amounts, than if the bankruptcy provisions more closely mirrored

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[10] Bankruptcy policy provides for cases to be "reopened on motion of the debtor ...." Fed. R. Bankr. P. 5010. By opening the case, the Bankruptcy Court has discretion to "administer assets [and] to accord relief to the debtor ...." 11 U.S.C. § 350 (b) (2012).

the language of the Connecticut statutes. But this potential distinction in frequency and in kind does not warrant an inference that Congress did not contemplate penalties and sanctions. Rather, § 105 indicates that Congress indeed considered penalties and sanctions, and adopted a statutory scheme. "[I]t is for Congress and the federal courts, not the state courts, to decide what incentives and penalties are appropriate for use in connection with the bankruptcy process and when those incentives or penalties shall be utilized." *Gonzales v. Parks*, 830 F.2d 1033, 1036 (9th Cir. 1987).

Another provision furnishing bankruptcy courts with authority to issue penalties and sanctions is rule 9011 of the Federal Rules of Bankruptcy Procedure. *See* footnote 5 of this opinion. Under rule 9011 (b) and (c), a court may sanction parties who file documents in bad faith or for an "improper purpose, such as to harass or to cause unnecessary delay or ... cost ...." Fed. R. Bankr. P. 9011 (b) (1). The plaintiff analogizes rule 9011 to rule 11 of the Federal Rules of Civil Procedure [11]and argues that, on the basis of their similarity, rule 9011 does not preempt a state law vexatious litigation action. And it is true that the language of the two rules is nearly

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[11] Rule 11 (b) of the Federal Rules of Civil Procedure provides in relevant part: "By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation ...."

identical. The plaintiff correctly points out that the 1993 advisory committee notes to rule 11 provide that the rule "does not preclude a party from initiating an independent action for malicious prosecution or abuse of process." Fed. R. Civ. P. 11, advisory committee notes, 28 U.S.C. app., p. 783 (2012). Additionally, the 1983 advisory committee notes to rule 7001 of the Federal Rules of Bankruptcy Procedure, which pertains to adversary proceedings, provide that the bankruptcy rules "either incorporate or are adaptations of most of the Federal Rules of Civil Procedure." Fed. R. Bankr. P. 7001, advisory committee notes, 11 U.S.C. app., p. 723 (2012). The plaintiff therefore argues that, because the rules are similar, this court should conclude that rule 9011 incorporates the advisory committee notes from rule 11, permitting a party to bring an independent vexatious litigation or abuse of process action. We are unpersuaded.

Although courts often look to advisory committee notes for interpretive guidance; e.g., *In re Old Carco, LLC*, 406 B.R. 180, 209 n.40 (Bankr. S.D.N.Y. 2009); they do not constitute binding authority. *In re Bressler*, 600 B.R. 739, 744 (Bankr. S.D.N.Y. 2019) (discussing advisory committee notes to rules 4004 and 4007 of the Federal Rules of Bankruptcy Procedure). Committee notes are a product of the rules advisory committee, not Congress. *United States v. Vonn*, 535 U.S. 55, 64 n.6, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002). And while advisory committee notes can be "a reliable source of insight into the meaning of a rule"; (internal quotation marks omitted) *Hall v. Hall*, —— U.S. ——, 138 S. Ct. 1118, 1130, 200 L. Ed. 2d 399 (2018); the insight here speaks to

rule 11, not rule 9011. Rule 9011 is silent as to the application or inclusion of the advisory committee note. "An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent." *Burns v. United States*, 501 U.S. 129, 136, 111 S. Ct. 2182, 115 L. Ed. 2d 123 (1991). Here, in the context of the Bankruptcy Code, congressional intent is clear—the creation of "a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights." *Eastern Equipment & Services Corp. v. Factory Point National Bank*, *supra*, 236 F.3d at 120; *see* 11 U.S.C. § 101 et seq. (2012). Given this clear intent, it would be contrary to textual and contextual evidence that Congress intended to permit independent abuse of process actions outside the bankruptcy process.

In view of the provisions that address penalties and sanctions for abuse of the bankruptcy process, namely, 11 U.S.C. § 105 and rule 9011, it is clear that Congress occupied the field by legislating comprehensively as to penalties and sanctions for abuse of that process. Accordingly, we conclude that Congress impliedly preempted state law CUTPA and vexatious litigation claims.

The Appellate Court in *Lewis* came to the same conclusion, and we agree with Judge DiPentima's cogent analysis in that case. The Appellate Court explained that "[t]he code contains remedies for the misuse of the [bankruptcy] process ...." (Internal quotation marks omitted.) *Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, *supra*, 86 Conn. App. at 602, 862 A.2d 368.

"Although it is true that the federal remedies provided for in the bankruptcy context do not offer the substantial damages available under Connecticut's vexatious litigation statute and CUTPA, that is an insufficient basis on which to preclude preemption." *Id.*, at 603–604, 862 A.2d 368. "The exclusivity of federal jurisdiction over bankruptcy proceedings, the complexity and comprehensiveness of Congress' regulation in the area of bankruptcy law and the existence of federal sanctions for the filing of frivolous and malicious pleadings in bankruptcy must be read as Congress' implicit rejection of alternative remedies ...." *Id.*, at 605, 862 A.2d 368.

B

In addition to concluding that Congress implicitly preempted state law actions by occupying the field of bankruptcy law, we conclude that, in that field of law, the federal interest is so dominant that federal law is assumed to preclude enforcement of state laws on the subject. E.g., *Eastern Equipment & Services Corp. v. Factory Point National Bank*, *supra*, 236 F.3d at 120. Nothing less than the constitution of the United States persuades us that Congress' interest in uniformity in the bankruptcy process is so dominant as to preempt collateral attacks through state law vexatious litigation and CUTPA claims. The constitution grants Congress the authority to establish "uniform Laws on the subject of Bankruptcies throughout the United States ...." U.S. Const., art. I, § 8, cl. 4. As described by Justice Joseph Story, the reasons for conferring bankruptcy power upon the United States "result from the importance of preserving harmony, promoting justice, and securing equality of rights and remedies among the citizens of all

the states. It is obvious, that if the power is exclusively vested in the states, each one will be at liberty to frame such a system of legislation upon the subject of bankruptcy and insolvency, as best suits its own local interests and pursuits. Under such circumstances no uniformity of system or operations can be expected.... There can be no other adequate remedy than giving a power to the general government to introduce and perpetuate a uniform system." 2 J. Story, Commentaries on the Constitution of the United States (2d Ed. 1851) § 1107.

We approach the question of uniformity within the bankruptcy process cognizant of the fact that state courts can be hesitant to conclude that federal law preempts state law claims. On this point, the United States Supreme Court has stated that federal regulation "should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated matter permits no other conclusion, or that the Congress has unmistakably so ordained." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963). Yet, against this backdrop, state courts have concluded, as we do, that permitting state law claims for abuse of the bankruptcy process threatens the uniformity of the bankruptcy system. *See, e.g., Smith v. Mitchell Construction Co., supra,* 225 Ga. App. at 386, 481 S.E.2d 558 ("[a]llowing state tort actions based on allegedly bad faith bankruptcy filings ... would have the effect of permitting state law standards to modify the incentive structure of the Bankruptcy Code and its remedial scheme ... threaten[ing] the uniformity of

federal bankruptcy law"); *Mason v. Smith*, *supra*, 140 N.H. at 700, 672 A.2d 705 ("[a]llowing plaintiffs to pursue alternative remedies in state courts for wrongful filings would frustrate the uniformity of bankruptcy law intended by Congress by allowing each [s]tate to establish its own definition of 'bad faith' with regard to the filing of involuntary petitions").

Our concerns with respect to the uniformity of bankruptcy law are twofold. First, state courts evaluating claims that involve abuse of the bankruptcy process would need to develop adjudication standards for matters such as probable cause, bad faith, and malicious prosecution, to name a few. Those standards may be different from, and at odds with, the standards that have developed in the bankruptcy courts. *See Sarno v. Thermen*, *supra*, 239 Ill. App. 3d at 1044, 180 Ill. Dec. 889, 608 N.E.2d 11 (explaining that it would be inconsistent with Congress' intent for state courts to develop different, more liberal tradition of bad faith for malicious prosecution purposes than that developed in federal system). It is foreseeable that states might disagree over the extent of an available remedy for abuse of process and the standard to be met. "State courts are not authorized to determine whether a person's claim for relief under a federal law, in a federal court, and within that court's exclusive jurisdiction, is an appropriate one. Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating." *Gonzales v. Parks*,

supra, 830 F.2d at 1035. Varying standards for recovery from state to state would serve to undermine the federal interest in uniformity.

Second, permitting state law actions would allow parties to collaterally attack the bankruptcy process, threatening the finality of the proceedings as well as the ability of the parties—debtors and creditors alike—to make a fresh start once the bankruptcy proceeding concludes. One of the overriding purposes of the Bankruptcy Code is to provide debtors with a fresh start. "It is the purpose of the Bankrupt Act to convert the assets of the bankrupt into cash for distribution among creditors and then to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." *Williams v. United States Fidelity & Guaranty Co.*, 236 U.S. 549, 554–55, 35 S. Ct. 289, 59 L. Ed. 713 (1915); accord *In re Renshaw*, 222 F.3d 82, 86 (2d Cir. 2000).

Creditors benefit as well by having "a single forum where debts and priorities can be determined in an orderly manner, a forum where those debts can be collected in whole or (more likely) in part." *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, *supra*, 74 F.3d at 916. The potential threat of state court actions following on the heels of a bankruptcy proceeding may well interfere with the necessary actions that creditors take within the bankruptcy process. *Id.* "[T]he mere threat of state tort actions could prevent individuals from exercising their rights in bankruptcy, thereby disrupting the bankruptcy process." *Eastern Equipment & Services Corp. v. Factory Point National*

Bank, *supra*, 236 F.3d at 121, citing *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, *supra*, at 913–16. For example, the threat of a state law action could deter a creditor from filing an adversary proceeding in the Bankruptcy Court challenging the discharge of a debt. We face that exact circumstance in the present case. The threat is then compounded when the state law action provides for substantial damage awards, as is also the case at hand. *See, e.g.*, *Idell v. Goodman*, *supra*, 224 Cal. App. 3d at 269, 273 Cal.Rptr. 605 ("[t]he additional risk that substantial damage awards in state courts would create a material disincentive to those seeking to use the bankruptcy laws only exacerbates the problem" [internal quotation marks omitted]). Both of these uniformity concerns fortify our conclusion that the Bankruptcy Code impliedly preempts state law CUTPA and vexatious litigation claims. The Bankruptcy Code provides the forum, incentives, penalties, and sanctions that apply uniformly to debtors and creditors nationwide.

In response, the plaintiff urges this court to adopt the minority approach for evaluating implied preemption articulated by the Supreme Court of Texas in *Graber v. Fuqua*, 279 S.W.3d 608 (Tex.), *cert. denied*, 558 U.S. 880, 130 S. Ct. 288, 175 L. Ed. 2d 136 (2009). In *Graber*, the court considered whether the Bankruptcy Code preempted a state law malicious prosecution claim that arose out of an adversary action in a bankruptcy proceeding. *Id.*, at 609–10. Similar to the facts of this case, in *Graber*, a law firm had initiated an adversary proceeding against a debtor who had filed a voluntary chapter 7 petition in the Bankruptcy Court. *Id.* The

petition resulted in a criminal investigation, an indictment for bank fraud and tax fraud, and then ultimately a trial in state court in which a jury found the debtor not guilty on all charges. *Id.*, at 610. The debtor then sued the law firm in state court, alleging civil malicious prosecution. *Id.* The law firm argued that the court lacked subject matter jurisdiction because federal bankruptcy law preempted the state law claim. The trial court agreed and granted the motion to dismiss the action. *Id.* On appeal, the Texas Supreme Court held that Congress did not intend for the Bankruptcy Code to preempt a state law malicious prosecution claim. *Id.*, at 620.

The Texas Supreme Court in *Graber* approached the preemption issue by analyzing each provision in the Bankruptcy Code to determine whether Congress intended to occupy the field of sanctions and penalties. The court reasoned that where Congress "custom-built" certain provisions of the Bankruptcy Code—unique provisions without analogues in general federal litigation—those provisions are more likely to preempt state law causes of action because Congress "built" or created a unique remedial provision. *Id.*, at 612–13. Conversely, the court reasoned, where Congress imported provisions from existing federal law without any significant changes, preemption of state law causes of action is "improbable," and those provisions should incorporate common practices under those existing federal laws. *Id.*, at 613. The court concluded that 11 U.S.C. § 105 and rule 9011 do not preempt state law claims for malicious prosecution because they are imported from existing federal law and represent

Congress' implicit acceptance of state law malicious prosecution claims.[12] *Id.* Although that is still a minority view, some courts, in light of *Graber*, similarly have held that the Bankruptcy Code does not preempt state law causes of action providing damages for abuse of the bankruptcy process. *See, e.g.*, *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383, 393 (3d Cir. 2002) (holding that state law claim for malicious prosecution was not preempted); *R.L. LaRoche, Inc. v. Barnett Bank of South Florida, N.A.*, 661 So. 2d 855, 857 (Fla. App. 1995) (concluding that federal bankruptcy law did not preempt state law abuse of process and malicious prosecution claims).

We disagree with the minority approach to the preemption analysis. Notably, the court in *Graber* did not cite any case law as authority for categorizing provisions of federal law as either "custom-built" or imported when determining whether those provisions are more or less likely to preempt state law causes of action. Rather, the court effectively adopted its own "custom-built" method to analyze individual provisions of the Bankruptcy Code. By adopting this analysis, the court failed to consider the structure and purpose of the Bankruptcy Code and, consequently, failed to recognize that Congress legislated so comprehensively as to

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[12]The Texas Supreme Court decided *Graber* by a five to four margin. The dissenters concluded, as we have and as the Appellate Court did in *Lewis*, that federal law occupied the field and that permitting state law actions for malicious prosecution would undermine the uniformity of bankruptcy law mandated by the United States constitution. *See Graber v. Fuqua, supra*, 279 S.W.3d at 620–21 (Wainwright, J., dissenting).

occupy the entire field of regulation. *See, e.g.*, *Longnecker v. Deutsche Bank National Trust Co.*, *supra*, 2013 WL 6700312, at *6 (rejecting *Graber* approach and determining that state court did not err in "ruling, consistently with the majority of state and federal courts, that it lacked subject matter jurisdiction over claims alleging abuse of bankruptcy proceedings"); *PNH, Inc. v. Alfa Laval Flow, Inc.*, 130 Ohio St. 3d 278, 285, 958 N.E.2d 120 (2011) (rejecting *Graber* approach and concluding that federal law preempts state law causes of action for misconduct of litigants in bankruptcy proceedings), *cert. denied*, 565 U.S. 1262, 132 S. Ct. 1764, 182 L. Ed. 2d 533 (2012).

Like the substantial majority of federal and state courts that have concluded that the Bankruptcy Code preempts state law claims for abuse of process, we conclude that Congress clearly has "considered the need to deter misuse of the process and has not merely overlooked the creation of additional deterrents." *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, *supra*, 74 F.3d at 915. As previously stated, Congress decides what penalties are appropriate within the bankruptcy process, not state courts. *Gonzales v. Parks*, *supra*, 830 F.2d at 1036. Accordingly, we interpret Congress' grant of exclusive jurisdiction over bankruptcy petitions to the district courts, and the federal interest in uniform laws on bankruptcy, as occupying the field and implicitly rejecting state law claims for abuse of process.

III

Finally, the plaintiff argues that there is little similarity between the penalties, sanctions, and damages available under Connecticut law for his CUTPA and vexatious litigation claims, and the sanctions for abuse of process available under the Bankruptcy Code. The plaintiff asks this court to conclude that, because the remedies are different, there is no conflict, and, therefore, his claims are not preempted.[13] We agree with the plaintiff that state law actions are not in conflict with bankruptcy law because a party can comply with both state and federal law. However, we conclude that those actions are still preempted under a conflict preemption analysis because they are an obstacle to accomplishing Congress' purpose within the Bankruptcy Code.

"Conflict preemption exists when compliance with both state and federal law is impossible, and a subset of

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[13] Courts addressing the issue of preemption that we are faced with in the present case often combine the analysis for occupy the field preemption and conflict preemption, both of which are types of implied preemption, without significant distinction. *See, e.g.*, *Eastern Equipment & Services Corp. v. Factory Point National Bank*, *supra*, 236 F.3d at 120–21; *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, *supra*, 74 F.3d at 913–15, *Lewis v. Chelsea G.C.A. Realty Partnership, L.P.*, *supra*, 86 Conn. App. at 601–605, 862 A.2d 368. As a practical matter, it often will be the case that, when Congress has occupied the field, a state law cause of action likely will obstruct Congress' purpose, resulting in conflict preemption. We note that courts often have held that if one kind of preemption exists, the others need not be addressed. *See, e.g.*, *Resolution Trust Corp. v. Diamond*, 18 F.3d 111, 125 (2d Cir.) (not addressing conflict preemption after holding that express preemption applied), vacated on other grounds sub nom. *Pattullo*

conflict preemption referred to as obstacle preemption applies when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.... State law is in irreconcilable conflict with federal law, and hence preempted by federal law, when compliance with the state statute would frustrate the purposes of the federal scheme." (Internal quotation marks omitted.) *Sarrazin v. Coastal, Inc., supra*, 311 Conn. at 593, 89 A.3d 841, quoting *Sosnowy v. A. Perri Farms, Inc.*, 764 F. Supp. 2d 457, 464 (E.D.N.Y. 2011). Therefore, we must determine whether compliance with state and federal law would be impossible and then consider whether the plaintiff's vexatious litigation and CUTPA claims would be an obstacle to Congress' objectives.

We agree with the plaintiff that compliance with both the Bankruptcy Code and Connecticut law would not be impossible. "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives." *Florida Lime & Avocado Growers, Inc. v. Paul, supra*, 373 U.S. at 142, 83 S. Ct. 1210.

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v. Resolution Trust Corp., 513 U.S. 801, 115 S. Ct. 43, 44, 130 L. Ed. 2d 5 (1994); *Depot, Inc. v. Caring for Montanans, Inc.*, Docket No. 16-74-M-DLC, 2017 WL 3687339, *5 (D. Mont. February 14, 2017) (not reaching issue of conflict preemption because plaintiffs' claims were expressly preempted). Because the plaintiff in the present case sets forth arguments unique to conflict preemption that warrant separate analysis, we have not combined our analysis of these two types of implied preemption.

Connecticut's vexatious litigation statute strives to deter parties from bringing claims without probable cause and with malicious intent. *See* General Statutes § 52-568. CUTPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. *See* General Statutes § 42-110b (a). To comply with Connecticut law, a party need only refrain from bringing claims without probable cause, and compete fairly and without deception. Obviously, no provision in the Bankruptcy Code mandates that a party bring claims without probable cause or compete unfairly or deceptively. Connecticut law can be enforced without impairing the federal superintendence. Therefore, the state statutes do not conflict with the Bankruptcy Code such that it would be impossible to comply with both.

However, our obstacle preemption analysis implicates many of the same factors that drove our implied (or occupy the field) preemption analysis and leads us to conclude that the plaintiff's state law abuse of process actions are preempted. Congress enacted the Bankruptcy Code inclusive of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights. Permitting parties to bring abuse of process actions in state court hinders Congress' objective of uniformly defining the scope and availability of remedies for abuse of the bankruptcy process.

We can imagine a myriad of claims that would lend themselves to vexatious litigation actions, including debtors' petitions, creditors' claims, disputes over reorganization plans, and disputes over pending discharges, to name a few. If such claims were not

preempted by federal law, redress for them would depend on the law of the state in which the plaintiff brought the action. *MSR Exploration, Ltd. v. Meridian Oil, Inc., supra*, 74 F.3d at 914. "Permitting assertion of a host of state law causes of action to redress wrongs under the Bankruptcy Code would undermine the uniformity the Code endeavors to preserve and would [stand] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (Internal quotation marks omitted.) *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 426 (6th Cir. 2000). Accordingly, the plaintiff's state law CUTPA and vexatious litigation claims are in conflict with the Bankruptcy Code provisions regarding sanctions for abuse of process and, thus, are preempted. The trial court properly dismissed these claims for lack of subject matter jurisdiction.

The judgment is affirmed.

In this opinion the other justices concurred.

Appendix B

ORDER 434448

DOCKET NO: UWYC176036631S	SUPERIOR COURT
METCALF, JONATHAN S. V. FITZGERALD, MICHAEL Et Al	JUDICIAL DISTRICT OF WATERBURY AT WATERBURY
	1/22/2018

ORDER

ORDER REGARDING:
11/21/2017 103.00 MOTION TO DISMISS PB 10-30

The foregoing, having been heard by the Court, is hereby:

ORDER: GRANTED

"The exclusivity of federal jurisdiction over bankruptcy proceedings, the complexity and comprehensiveness of Congress' regulation in the area of bankruptcy law and the existence of federal sanctions for the filing of frivolous and malicious pleadings in bankruptcy must be read as Congress' implicit rejection of alternative remedies such as those the plaintiff seeks." *Lewis v. Chelsea G.C.A. Realty P'ship, L.P.*, 86 Conn. App. 596, 605, 862 A.2d 368, 373 (2004).

This court thus lacks subject matter jurisdiction over the subject claims and this motion to dismiss is therefore granted. The court also on its own motion dismisses the

remaining counts of this complaint on the same basis as it grants the motion to dismiss now before it as the court also lacks subject matter jurisdiction over these remaining claims.

Judicial Notice (JDNO) was sent regarding this order.

434448
Judge: ANDREW W. RORABACK

Appendix C

RETURN DATE: NOVEMBER 21, 2017	: SUPERIOR COURT
	: J.D. OF WATERBURY
METCALF, JONATHAN S.	: AT WATERBURY
VS.	
	: OCTOBER 10, 2017
FITZGERALD, MICHAEL, ET AL	

COMPLAINT

COUNT ONE: (AGAINST FITZGERALD – VEXATIOUS LITIGATION – COMMON LAW

The Parties

1. At all times relevant hereto, the plaintiff, Jonathan S. Metcalf (hereinafter "Metcalf"), was and is an individual residing in Washington, Connecticut.

2. At all times relevant hereto, the defendant, Michael Fitzgerald, (hereinafter "Fitzgerald") was and is an individual residing in Hamden, Connecticut.

3. At all times relevant hereto, the defendant, Ion Bank, f/k/a Naugatuck Savings Bank (hereinafter "Ion Bank" regardless of its name at the relevant time), was and is a bank organized and existing under the laws of the State of Connecticut with

an office and principal place of business located in Naugatuck, Connecticut.

4. At all times relevant hereto, the defendant, Ion Bank, employed Fitzgerald as an assistant vice president in charge of special assets.

5. At all times relevant hereto, the defendant, Fitzgerald, was the servant, agent, or employee of Ion Bank, acting within the scope of his authority or employment.

6. At all times relevant hereto, the defendant, Myles H. Alderman, Jr., (hereinafter "Alderman") was and is an attorney licensed to practice law in Connecticut who resides in West Hartford, Connecticut.

7. At all times relevant hereto, the defendant, Alderman & Alderman, LLC, was and is a limited liability company offering legal services to the public and was organized and existing under the laws of the State of Connecticut with an office and principal place of business located in Hartford, Connecticut.

8. At all times relevant hereto, Alderman & Alderman, LLC employed Alderman as an attorney.

9. At all times relevant hereto, the defendant, Alderman, was the servant, agent, or employee of Alderman & Alderman, LLC, acting within the scope of his authority or employment.

10. At all times relevant hereto except for twenty-two (22) months from December 2013 to October

2015, Alderman & Alderman, LLC and Alderman represented Ion Bank in regards to certain legal proceedings brought by Ion Bank against Metcalf.

11. For the twenty-two (22) months from December 2013 to October 2015, Alderman continued to represent Ion Bank in regards to Metcalf but was employed by the firm of Halloran & Sage, LLP.

Metcalf Paving Bankruptcy

12. On October 23, 2009, Metcalf Paving Co., Inc. ("Metcalf Paving") filed a bankruptcy petition Under Title 11, chapter 11 of the bankruptcy code, 11 U.S.C. §101, et seq., (hereinafter the "Metcalf Paving Bankruptcy").

13. On or about February 25, 2011, the Metcalf Paving Bankruptcy was converted to a case under chapter 7 of the Bankruptcy code and Ronald Chorches was appointed trustee thereof.

Metcalf Bankruptcy

14. On August 23, 2012, the plaintiff filed a bankruptcy petition Under Title 11, chapter 7 of the bankruptcy code, 11 U.S.C. §101, et seq., Case #12-31919 (hereinafter the "Bankruptcy Petition").

15. At the time of filing the Bankruptcy Petition, the plaintiff was indebted to the defendant, Ion Bank.

The Underlying Action

16. On or about January 31, 2013, the defendants caused to be initiated an Adversary Proceeding

against Metcalf in United States Bankruptcy Court, captioned *Naugatuck Savings Bank v. Jonathan Shea Metcalf*; Adversary Case No. 13-03006 (hereinafter the "Underlying Action").

17. The Underlying Action was originally brought in three (3) counts as follows:

    a. Count One – Objection to Discharge of Debt Pursuant to 11 U.S.C. §523(a)(2)(A);

    b. Count Two – Objection to Discharge of Debt Pursuant to 11 U.S.C. §523(a)(4);

    c. Count Three – Objection to Discharge Pursuant to 11 U.S.C. §727(a)(7).

18. From January 31, 2013 to February 17, 2014, the defendants continued to maintain and prosecute the Underlying Action against Metcalf.

First Amended Complaint

19. On February 17, 2014, the defendants filed their First Amended Complaint whereby they withdrew Count One and Count Two and amended Count Three of the Underlying Action.

20. The First Amended Complaint in the Underlying Action set forth in Count Three that the plaintiff:

    a. Transferred, removed, destroyed and concealed property of the estate of Metcalf Paving within one (1) year before it filed for bankruptcy protection with intent to hinder, delay or defraud a creditor and the Chapter 7 Trustee;

b. During the Metcalf Paving Bankruptcy, the plaintiff transferred, removed and/or concealed (or permitted to be transferred, removed and/or concealed) property of the Metcalf Paving Bankruptcy estate with the intent to hinder, delay and/or defraud creditors of the estate and/or the Chapter 7 Trustee;

c. During the Metcalf Paving Bankruptcy, the plaintiff removed, destroyed, mutilated and/or concealed (or permitted others to removed, destroyed, mutilated and/or concealed) property of the Metcalf Paving, including shredding books, documents, records and papers, from which the financial condition or business transactions of Metcalf Paving might have been ascertained;

d. During the Metcalf Paving Bankruptcy, the plaintiff removed, destroyed, mutilated and/or concealed the computer hard drives that contained the books, documents and records from which the financial condition or business transactions of Metcalf Paving might have been ascertained, without justification under the circumstances;

e. During the Metcalf Paving Bankruptcy, the plaintiff failed to keep or preserve recorded information, including books, documents, records and papers, from which the financial condition or business

transactions of Metcalf Paving might have been ascertained;

f. During the bankruptcy case of Metcalf Paving, Jonathan Metcalf knowingly and fraudulently withheld from the Chapter 7 Trustee recorded information, including books, documents, records, and papers, relating to the property or financial affairs of Metcalf Paving;

g. In connection with the bankruptcy case of Metcalf Paving, Jonathan Metcalf refused to obey the order converting that case;

Second Amended Complaint

21. On October 20, 2014, the defendants filed their Second Amended Complaint whereby they again amended Count Three of the Underlying Action.

22. The Second Amended Complaint in the Underlying Action set forth, *inter alia*, in Count Three that the plaintiff:

a. Failed to deliver thirteen (13) vehicles and a milling machine to the attorney for the trustee;

b. Failed to deliver a check in the amount of $700.00 which was alleged to be property of the Metcalf Paving Bankruptcy estate;

c. Failed to disclose and hid the existence of a website www.metcalfpaving.com and used it for a new business the plaintiff had started;

a. Failed to provide financial documents including, but not limited to, tax returns. profit and loss statements, bank statements and documents relating to accounts payable and receivable;

b. Claimed that the attorney for the trustee, accompanied by the defendant, Fitzgerald, conducted a complete inspection of the offices of Metcalf Paving but found no financial documents other than shredded documents;

c. Caused computer hard drives to be removed that were claimed to be property of Metcalf Paving;

d. Failed to deliver a laptop ("Laptop") that they alleged was property of Metcalf Paving;

e. Used the Laptop for personal use and for a new company the plaintiff had started;

f. Took possession of an expensive piece of machinery belonging to Metcalf Paving, a Roadtech rx-900, and used it for the new business the plaintiff had started;

g. Obtained title to three vehicles for less than fair value taking for himself the excess value;

h. Unlawfully transferred property from Metcalf Paving to the plaintiff's new company without permission;

i. Transferred, removed, destroyed and/or concealed property of the Metcalf Paving Estate;

j. In connection with the Metcalf Paving Bankruptcy, the plaintiff failed to explain satisfactorily the loss of assets that exacerbated the deficiency of assets available to meet the liabilities of Metcalf paving;

k. Transferred, removed and/or concealed (or permitted to be transferred, removed, and/or concealed) property of the Metcalf Paving Bankruptcy with the intent to hinder, delay and/or defraud creditors of the estate and/or the Chapter 7 Trustee;

l. Removed, destroyed, mutilated and/or concealed (or permitted others to remove, destroy, mutilate and/or concealed) property of the estate of Metcalf Paving Bankruptcy, including shredding books, documents, records and papers, including specifically all or part of the books and records of Metcalf Paving for the years 2008 through 2011, from which the financial condition or business transactions of Metcalf Paving might have been ascertained;

m. Removed, destroyed, mutilated and/or concealed the computer hard drives and the Laptop that contained the books, documents and records, including

specifically all or part of the books and records of Metcalf Paving for the years 2008 through 2011, from which the financial condition or business transactions of Metcalf Paving might have been ascertained, without justification under the circumstances;

n. Failed to keep or preserve recorded information, including books, documents, records and papers, including specifically documents with information regarding accounts payable, accounts receivable, and bank statements for Metcalf Paving, from which the financial condition or business transactions of Metcalf Paving might have been ascertained;

o. Knowingly and fraudulently withheld from the Chapter 7 Trustee recorded information, including books, documents, records, and papers, including specifically the Laptop with all or part of the books and records of Metcalf Paving for the years 2008 through 2011, relating to the property or financial affairs of Metcalf Paving;

p. Failed to explain satisfactorily, the loss of assets of Metcalf Paving that exacerbated the deficiency of assets available to met the liabilities of Metcalf Paving, during the time period beginning on or around October 23, 2009 and continuing through the present day;

q. Refused to obey the order converting that case, during the time period beginning on or around February 25, 2011 and continuing through the present day.

23. Each material allegation in the complaint(s) was unsupported by knowledge of facts, actual or apparent, strong enough to justify the defendants in the belief that they had lawful grounds for prosecuting Metcalf in the complaint(s).

Motion For Summary Judgment

24. On or about February 5, 2016, Metcalf filed a motion for summary judgment in the Underlying Action with supporting documentation and legal memorandum claiming that no issue of material fact existed as to any allegation made in the second amended complaint and that judgment should enter as a matter of law in favor of him.

25. In particular, Metcalf submitted factual proof to support the following:

a. Each vehicle and piece of equipment held under the security agreement in favor of Ion has a GPS installed and its whereabouts was monitored by the defendant, Fitzgerald, at all times;

b. Each vehicle and piece of equipment had been repossessed by lawful means by the defendant, Ion Bank, or by the purchase money lender and was not property of the Metcalf Paving Bankruptcy estate at the time the Underlying Action was

commenced and/or had been auctioned though the efforts of the trustee in the Metcalf Paving Bankruptcy;

c. The website had been disclosed to the trustee at the §341 meeting of creditors near the commencement of the Metcalf Paving Bankruptcy;

d. Substantial documents were maintained by Metcalf Paving in a room that was overlooked or ignored by Fitzgerald and/or the attorney for the trustee of the Metcalf Paving Bankruptcy. In fact, the plaintiff provided a thumb drive to the trustee containing all financial information from Quickbooks. In addition, the an accountant was retained by the trustee and over one hundred (100) boxes of financial information was obtained by the accountant with the knowledge of the trustee of the Metcalf Paving Bankruptcy and each defendant herein. In fact, the defendants caused to be filed an objection to the retention of the accountant acknowledging that dozens of boxes of documents had been provided;

e. Metcalf Paving caused monthly operating reports to be filed during the pendency of the bankruptcy proceedings under chapter 11 that disclosed fully all assets, liabilities, income and expense incurred.

26. The statute of limitations contained in 11 U.S.C. §727(a)(7) barred the claims asserted by the defendants.

Defendants' Response To Summary Judgment

27. Subsequent to the filing of the motion for summary judgment by the plaintiffs, the defendants decided that they no longer saw any benefit in prosecuting the Underlying Action.

Dismissal Of The Underlying Action

28. On February 25, 2016, the defendants filed a motion to dismiss the Underlying Action with prejudice which was granted by the court effective on May 2, 2016.

29. The withdrawal of Counts One and Two and the Court's entry of the dismissal of the Underlying Action in favor of Metcalf terminated the litigation in favor of Metcalf, and all time periods for appeal have since expired.

30. At the time the complaint was filed in the Underlying Action, and at all times between the date of filing and the date of the withdrawal and the entry of the dismissal, the defendants knew or should have known, that all of the claims made against Metcalf were without factual merit and/or were time-barred by the applicable statutes of limitations.

31. The defendants instituted the Underlying Action against Metcalf without probable cause and with malice.

32. After the initiation of suit, the defendant, Fitzgerald, continued to maintain and prosecute the Underlying Action against Metcalf without probable cause and with malice.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

COUNT TWO: (AGAINST FITZGERALD - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(1))

1 – 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Two as if fully set forth herein.

31. The defendant, Fitzgerald, initiated the Underlying Action against Metcalf without probable cause.

32. After the initiation of suit, the defendant, Fitzgerald, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

    a. Incurring attorney's fees necessary for the defense of the Underlying Action;

    b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

    c. Emotional distress;

    d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the

IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(1), Metcalf hereby claims double damages.

COUNT THREE: (AGAINST FITZGERALD - STATUTORY CLAIM PURSUANT TO C.G.S § 52-568(2))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Three as if fully set forth herein.

31. The defendant, Fitzgerald, initiated the Underlying Action against Metcalf without probable cause and with malicious intent.

32. After the initiation of suit, the defendant, Fitzgerald, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause and with malicious intent.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in

the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(2), Metcalf hereby claims treble damages.

COUNT FOUR: (AGAINST ION BANK – VEXATIOUS LITIGATION – COMMON LAW)

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Four.

31. After the initiation of suit, the defendant, Ion Bank, continued to maintain and prosecute the Underlying Action against Metcalf without probable cause and with malice.

32. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

COUNT FIVE: (AGAINST ION BANK – STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(1))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Five as if fully set forth herein.

31. The defendant, Ion Bank, initiated the Underlying Action against Metcalf without probable cause.

32. After the initiation of suit, the defendant, Ion Bank, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause.

33. As a direct and proximate result of the defendants instituting, maintaining and

prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(1), Metcalf hereby claims double damages.

COUNT SIX: (AGAINST ION BANK - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(2))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Six as if fully set forth herein.

31. The defendant, Ion Bank, initiated the Underlying Action against Metcalf without probable cause and with malicious intent.

32. After the initiation of suit, the defendant, Ion Bank, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause and with malicious intent.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

    a. Incurring attorney's fees necessary for the defense of the Underlying Action;

    b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

    c. Emotional distress;

    d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

    e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(2), Metcalf hereby claims treble damages.

COUNT SEVEN: (AGAINST FITZGERALD AND ION BANK - CUTPA)

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Seven as if fully set forth herein.

31. The foregoing conduct was unfair or deceptive acts or practices in violation of Conn. Gen Stat. 42a-110a et seq. ("CUTPA"):

32. Fitzgerald and Ion Bank repeatedly engaged in the aforesaid unfair and deceptive acts or practices in the course of the Underlying Action.

33. Fitzgerald and Ion Bank's conduct, as aforesaid, was committed with such frequency as to indicate a general business practice in that the conduct was carried out repeatedly in various and different manners over a period of time.

34. As a direct and proximate result of the aforesaid actions and conduct, Metcalf has incurred an ascertainable loss in that it has expended sums relating to the costs of litigation, attorneys' fees and other related expenses.

COUNT EIGHT: (AGAINST ALDERMAN & ALDERMAN, LLC VEXATIOUS LITIGATION - COMMON LAW)

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Eight.

31. After the initiation of suit, the defendant, Alderman & Alderman, LLC, continued to maintain and prosecute the Underlying Action

against Metcalf without probable cause and with malice.

32. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

COUNT NINE: (AGAINST ALDERMAN & ALDERMAN, LLC - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(1))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Nine as if fully set forth herein.

31. The defendant, Alderman & Alderman, LLC, initiated the Underlying Action against Metcalf without probable cause.

32. After the initiation of suit, the defendant, Alderman & Alderman, LLC, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

    a. Incurring attorney's fees necessary for the defense of the Underlying Action;

    b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

    c. Emotional distress;

    d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

    e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(1), Metcalf hereby claims double damages.

COUNT TEN: (AGAINST ALDERMAN & ALDERMAN , LLC - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(2))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Ten as if fully set forth herein.

31. The defendant, Alderman & Alderman, LLC, initiated the Underlying Action against Metcalf without probable cause and with malicious intent.

32. After the initiation of suit, the defendant, Alderman & Alderman, LLC, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause and with malicious intent.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

    a. Incurring attorney's fees necessary for the defense of the Underlying Action;

    b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

    c. Emotional distress;

    d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the

IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(2), Metcalf hereby claims treble damages.

COUNT ELEVEN: (AGAINST ALDERMAN - VEXATIOUS LITIGATION - COMMON LAW)

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Eleven.

31. After the initiation of suit, the defendant, Alderman, continued to maintain and prosecute the Underlying Action against Metcalf without probable cause and with malice.

32. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which

could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

COUNT TWELVE: (AGAINST ALDERMAN - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(1))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Twelve as if fully set forth herein.

31. The defendant, Alderman, initiated the Underlying Action against Metcalf without probable cause.

32. After the initiation of suit, the defendant, Alderman, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(1), Metcalf hereby claims double damages.

COUNT THIRTEEN: (AGAINST ALDERMAN - STATUTORY CLAIM PURSUANT TO C.G.S. § 52-568(2))

1 - 30. Paragraphs one through thirty of Count One are hereby made paragraphs one through thirty of Count Thirteen as if fully set forth herein.

31. The defendant, Alderman, initiated the Underlying Action against Metcalf without probable cause and with malicious intent.

32. After the initiation of suit, the defendant, Alderman & Alderman, LLC, prosecuted and continued to maintain the Underlying Action against Metcalf without probable cause and with malicious intent.

33. As a direct and proximate result of the defendants instituting, maintaining and prosecuting the Underlying Action, Metcalf has suffered damages, including but not limited to:

a. Incurring attorney's fees necessary for the defense of the Underlying Action;

b. Losses flowing from the inability to manage his business affairs due to the cloud upon his discharge with increases in the cost of insurance to conduct personal and company business;

c. Emotional distress;

d. Expenditure of time, effort and resources by Metcalf, detracting from efforts which could have been devoted to business pursuits to reduce or eliminate debt to the IRS resulting in the accumulation of significant interest and penalties; and

e. Injuries to Metcalf's business and professional reputation.

34. Pursuant to Conn. Gen. Stat. § 52-568(2), Metcalf hereby claims treble damages.

RETURN DATE: NOVEMBER 21, 2017	: SUPERIOR COURT
	: J.D. OF WATERBURY
METCALF, JONATHAN S.	: AT WATERBURY
VS.	
	: OCTOBER 10, 2017
FITZGERALD, MICHAEL, ET AL	

PRAYERS FOR RELIEF

WHEREFORE, the plaintiff prays for judgment against the defendants and claims as follows:

1. Fair, just and reasonable damages;
2. Double damages pursuant to Conn. Gen. Stat. § 52-568(1);
3. Treble damages pursuant to Conn. Gen. Stat. § 52-568(2);
4. Punitive damages pursuant to the common law and/or or General Statutes §42-110g;
5. Attorney's fees pursuant to the common law and/or or General Statutes §42-110g;
6. Costs associated with the suit; and
7. Such other relief as the Court deems just and proper.

The amount, legal interest or property in demand is more than Fifteen Thousand ($15,000.00) Dollars, exclusive of interest and costs.

THE PLAINTIFF
METCALF, JONATHAN S.

By:_____

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