Dated: August 14, 2020
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re JAMES BANKS and ELAINE HOWELL-BANKS, Debtors.	Case No. 19-27543-K Chapter 13
James Banks and Elaine Howell-Banks for the Bankruptcy Estate, Plaintiffs, v. Freedom Debt Relief, LLC, Defendant.	Adv. Proc. No. 20-00058

OPINION

BEFORE THE COURT is Defendant *Freedom Debt Relief LLC's Motion to Dismiss and Motion to Compel Arbitration*, filed June 16, 2020 [Dkt. No. 17]. The Plaintiffs filed their response on July 6, 2020 [Dkt. No. 20], and the Defendant filed its reply on July 20, 2020 [Dkt. No. 27]. The court heard oral argument on August 4, 2020. The Motion seeks dismissal of Counts I, III,

IV, and V of the Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) (made applicable to this proceeding pursuant to Bankruptcy Rule 7012(b)), and to compel arbitration of Count VI based on the arbitration clause in the parties' Debt Resolution Agreement. Based on the pleadings, the arguments of counsel and the entire record in this adversary proceeding, the Defendant's motions should be granted.

JURISDICTION, VENUE, AND AUTHORITY

Jurisdiction over a case under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(a). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Counts I, II, III, IV, and V of the Amended Complaint arise under the Bankruptcy Code. Thus, they are core bankruptcy proceedings. 28 U.S.C. § 157(b)(1). The bankruptcy court has authority to consider these counts and enter orders upon them subject only to appellate review under section 158 of title 28. Count VI, however, arises under the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679, et seq. It is not a core bankruptcy matter, and this court would have no authority to hear it save for its having been raised as an ancillary count in this proceeding. The nature of this count is discussed more fully below.

BACKGROUND FACTS

Plaintiffs James Banks and Elaine Howell-Banks, Debtors in Chapter 13 Bankruptcy Case No. 19-27543, commenced this adversary proceeding on behalf of the Chapter 13 bankruptcy

estate[1] seeking damages and other remedies arising from the Defendant's alleged misconduct and breach of the parties' Debt Resolution Agreement. The Amended Complaint alleges, among other things, that the Defendant's debt settlement program failed to improve the Debtors' financial situation as warranted and instead left the Debtors in a much worse financial position, forcing them to seek relief in bankruptcy court. Plaintiffs allege that, as a result of the Defendant's practices, the bankruptcy estate has been unjustly deprived of funds that could otherwise be distributed to creditors. Plaintiffs seek a return of the funds that the Debtors paid into Defendant's program for debt settlement and service fees, in addition to other remedies that the Court may allow. The Defendant responded to the Complaint with the pending motion to partially dismiss[2] pursuant to Fed. R. Civ. P. 12(b)(6) and to compel arbitration based on the arbitration clause in the parties' Debt Resolution Agreement.

RULE 12(b)(6) STANDARD

Federal Rule of Civil Procedure 12(b)(6) states that "[e]very defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:… (6) failure to state a claim upon which relief can be

[1] The Debtors allege derivative standing to bring this action on behalf of the estate pursuant to the terms of the Order Confirming Chapter 13 Plan entered on December 23, 2019. The Order provides, in pertinent part: "All property shall remain property of the Chapter 13 estate under 11 U.S.C. § 541(a) and 1306(a) and shall revest in the Debtor(s) only upon discharge pursuant to §1328(a), conversion of the case, or specific order of the Court which states otherwise. The debtor(s) shall remain in possession of and in control of all property of the estate not transferred to the Trustee, and shall be responsible for the protection and preservation of all such property, pending further orders of the Court." [*In re Banks*, Case No. 19-27543, Dkt. No. 31].

[2] Defendant has not included Count II of the Amended Complaint, which alleges avoidable fraudulent transfers, in its motion to dismiss. It has also conceded that it may be compelled to turn over books and records related to the Debtors' property and financial affairs under Count I of the Complaint, and that it may be compelled to produce an accounting of its transactions with and concerning the Plaintiffs under Count III.

granted." When considering a motion to dismiss based on Rule 12(b)(6), "the court should 'construe the complaint in the light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff can prove a set of facts in support of its claims that would entitle it to relief.'" *French v. Am. Gen. Fin. Servs. (In re French),* 401 B.R. 295, 302-03 (Bankr. E.D. Tenn. 2009) (quoting *Bovee v. Coopers & Lybrand, C.P.A.,* 272 F.3d 356, 360 (6th Cir. 2001)). Even if all factual allegations are deemed to be true, however, "the court is not required to accept legal conclusions or unwarranted factual inferences as true." *Id.* at 303, citing *Mich. Paytel Joint Venture v. City of Detroit,* 287 F.3d 527, 533 (6th Cir. 2002). "[T]he relevant question is whether, assuming the factual allegations are true, the plaintiff has stated a ground for relief that is plausible." *Ashcroft v. Iqbal,* 556 U.S. 662, 696 (2009) (citing *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 564 n.8 (2007)); *Malin v. JPMorgan,* 860 F. Supp. 2d 574, 578 (E.D. Tenn. 2012) (citations omitted).

The purpose of a motion to dismiss under Rule 12(b)(6) is to "test the sufficiency of the complaint, not to decide the merits of the case." *Abroms v. Kern (In re Kern),* 289 B.R. 633, 637 (Bankr. S.D. Ohio 2003). The Court will consider the sufficiency of Counts I, III, IV, and V of the Amended Complaint pursuant to this standard.

Count I — Turnover of Property Not of the Estate

Count I of the Complaint seeks turnover of "any and all records (whether stored in electronic or hard copy format) related to any and all aspects of the promised services, including but not limited to, any and all records related to any and all individuals in Tennessee for whom Freedom performed or agreed to perform any aspect of the services" pursuant to section 542(e) of the Bankruptcy Code. [Amended Complaint ⁋ 62; Dkt. No. 3]. Section 542(e) provides that the

Court may order "an attorney, accountant, or other person that holds recorded information … relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee." 11 U.S.C. § 542(e). The Defendant concedes that it may be compelled to turn over information concerning the Debtors' property and financial affairs, but objects that the Plaintiffs go too far in requesting turnover of information related to its other clients.

The Defendant is correct. While the Plaintiffs may request relevant information concerning the Defendant's other clients through the discovery process (and the court expresses no opinion about the propriety of its doing so), they may not obtain it by way of section 542(e). For this reason, the motion to dismiss Count I of the Amended Complaint is granted insofar as it seeks recovery of information related to the property or financial affairs of persons other than the Plaintiffs. Count I of the Amended Complaint should be limited to turnover of information related to the property and financial affairs of the Plaintiffs.

Count III — Accounting Related to Clients Other Than the Plaintiffs

Count III of the Amended Complaint seeks an accounting pursuant to the trustee's authority under section 542(a), including information concerning the Plaintiffs' transactions with the Defendant and "any and all records (whether stored in electronic or hard copy format) relating to any and all aspects of the promised services, including, but not limited to, any and all records relating to any and all individuals in Tennessee for whom Freedom performed or agreed to perform any aspect of the services." [Amended Complaint ¶ 69; Dkt. No. 3].

The Defendant has provided an accounting of its transactions with the Plaintiffs, but objects that the relief requested is beyond the scope of section 542(a), which permits the trustee to obtain an accounting of "property that the trustee may use, sell, or lease under section 363 of [title 11],

or that the debtor may exempt under section 522 of [title 11]." This section does not permit a trustee to obtain an accounting of funds paid to a third party by persons other than the debtor because that is not property that the trustee could use, sell, or lease, or that the debtor could exempt. The Defendant provided a spreadsheet as Exhibit 3 to its reply memorandum, filed July 20, 2020, which purports to be an accounting of its transactions concerning the Plaintiffs. The Defendant says this renders Count III of the Amended Complaint moot. The Court is not prepared to say that the information provided by the Defendant in its spreadsheet fully responds to the request set forth in Count III of the Amended Complaint, but it is clear that the Plaintiffs are not entitled to obtain an accounting of information concerning the Defendant's other clients. Count III of the Amended Complaint should be dismissed insofar as it requests information concerning clients other than the Plaintiffs.

Count IV — 11 U.S.C. § 329

Count IV of the Amended Complaint asks that the Defendant be compelled to return all payments made to it by the Plaintiffs pursuant to section 329 of the Bankruptcy Code and Bankruptcy Rule 2017. The Defendant counters that this section and this rule are limited to transactions with attorneys. The Defendant is correct. Section 329 provides:

> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to –
>
> (1) the estate, if the property transferred –

(A) would have been property of the estate; or
(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
(2) the entity that made such payment.

11 U.S.C. § 329. Likewise, Bankruptcy Rule 2017 titled "Examination of Debtor's Transactions with Debtor's Attorney," states, in pertinent part:

> (a) *Payment or Transfer to Attorney Before Order for Relief.* On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

Fed. R. Bankr. P. 2017(a).

The Plaintiffs allege that approximately $20,000 paid to Defendant over the course of the parties' relationship exceeded the value of the services received, and that all payments should be returned. The Plaintiffs also allege that the payments were made in contemplation of, or in connection with bankruptcy.

As the Defendant points out, however, both the statute and the rule require that the payments be made to *an attorney* in contemplation of the filing of a petition in bankruptcy. The Amended Complaint identifies the Defendant as "a limited liability company organized under the laws of Delaware." Nowhere does the Amended Complaint allege that the Defendant is a law firm nor does it name any person employed by the Defendant as an attorney.

Count IV of the Amended Complaint should be dismissed.

Count V — 11 U.S.C. § 526

Count V of the Complaint alleges that the Defendant is a "debt relief agency" that provided "bankruptcy assistance" to the Plaintiffs, who were "assisted persons," all within the meaning of

the Bankruptcy Code. Count V further alleges that the Defendant failed to perform as promised in their written agreement, and thus violated section 526(a)(1) of the Bankruptcy Code. Further, Count V alleges that the Defendant misrepresented the services it would provide to the Plaintiffs and thus violated section 526(a)(3).

The Defendant responds that Count V contains bare allegations with no factual support for its claim that the Defendant is a debt relief agency. The Defendant is correct, and for this reason alone, Count V should be dismissed. In order to survive a motion to dismiss, the allegations in the complaint must be more than "conclusory allegations, which merely 'parrot the words needed to create a claim' without providing any factual basis" to support the claim. *BBX Operating, L.L.C. v. Bank of America, N.A. (In re Connect Transport, L.L.C.),* No. 19-11050, 2020 WL 4640426 *2 (5th Cir. Aug. 11, 2020) (quoting *Gulf Coast Hotel-Motel Ass'n. v. Miss. Gulf Coast Golf Course Ass'n.,* 658 F.3d 500, 506 (5th Cir. 2011)). "Dismissal is warranted when a complaint's factual averments are 'too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture.'" *Keach v. Wheeling & Lake Erie Ry. Co. (In re Montreal, Maine & Atl. Ry., Ltd.),* 888 F.3d 1, *6 (1st Cir. 2018) (quoting *SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010)).

Further, the Defendant attached to its initial memorandum the parties' Debt Resolution Agreement (a document conspicuously missing from the Amended Complaint). It clearly states: "YOU UNDERSTAND AND ACKNOWLEDGE THAT WE DO NOT PROVIDE LEGAL, TAX, BANKRUPTCY, ACCOUNTING, OR INVESTMENT ADVICE." [Defendant's Memorandum, ¶ 3.C.; Dkt. No. 15, Ex. A.]. A "debt relief agency," for purposes of the Bankruptcy Code, is "a person who provides any bankruptcy assistance to an assisted person." 11 U.S.C. § 101(12A). "Bankruptcy assistance" for purposes of the Bankruptcy Code means "any goods or

services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title." 11 U.S.C. § 101(4A). An "assisted person" for purposes of the Bankruptcy Code is "any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000." 11 U.S.C. § 101(3). "This title" in the definition of bankruptcy assistance is, of course, title 11 of the United States Code, i.e., the Bankruptcy Code. Bankruptcy assistance is precisely what the Plaintiffs say they did not want, and the Defendant says it does not provide. Therefore, the Plaintiffs cannot now complain that the Defendant violated sections of the Bankruptcy Code that are concerned solely with the provision of bankruptcy assistance.

In support of their argument that notwithstanding the clear words of the parties' agreement, the Defendant is a debt relief agency, the Plaintiffs rely on *Henderson v. Legal Helpers Debt Resolution, L.L.C. (In re Huffman),* 505 B.R. 726 (Bankr. S.D. Miss. 2014). The *Huffman* Court found that the debt resolution service provided by the defendant, Legal Helpers, was, in fact, "bankruptcy assistance" as contemplated under section 526. Legal Helpers was managed by consumer bankruptcy attorneys and retained at least one local attorney in states where it conducted business to manage its client files. The court found that it was "a law firm operating within the debt settlement industry." *Id.* at 735. The parties entered into a retainer agreement "for legal services," including a provision that "[Legal Helpers] will discuss specific debt related issues with Client and, if appropriate, *offer additional legal services in regard to bankruptcy* or other debt resolution services for Client's consideration," and "discuss and *advise Client as to the bankruptcy*

option ...." *Id.* at 737, citing Jt. Ex. 1 at 1, ⁋⁋ III and XVII (emphasis added). The retainer agreement also provided that "[Legal Helpers] will contact all your unsecured creditors in writing to inform them that *you are represented by the law firm* and that we are *advising you as to all alternatives for debt resolution*." *Id.* citing Jt. Ex. 1A (emphasis added).

The facts in *Huffman* are completely different from the facts in this case where the parties' agreement clearly and conspicuously limits the services being provided to the Plaintiffs, which do not include legal services of any kind. Thus, *Huffman* provides no support for Count V, which is inadequately pled and countered by the clear words of the agreement signed by the Plaintiffs.

Count V of the Amended Complaint should be dismissed.

Count VI — CROA, 15 U.S.C. § 1679

Count VI of the Complaint alleges several violations of the Credit Repair Organizations Act ("CROA"), 15 U.S.C. § 1679, et seq. The Defendant responds with its motion to compel arbitration pursuant to 9 U.S.C. § 1, et seq. Exhibit D to the parties' written agreement clearly provides for arbitration of any disputes arising from the agreement in bold capital letters. [Reply Memorandum, Ex. 3; Dkt. No. 27]. The Plaintiff nevertheless argues that the motion must be denied for three reasons:

> (1) the arbitration provision is invalid because it requires a consumer in financial distress (and in this case, a bankruptcy estate) to pay for it; (2) none of the eight factors considered in determining the enforceability of an arbitration provision in the bankruptcy context counsel in favor of arbitration; and (3) the arbitration provision is unenforceable because Freedom's failure to provide statutory disclosures invalidates the contract and the arbitration provision within it.

In its reply memorandum, the Defendant responds to each of these arguments. With respect to the Plaintiffs' first argument, it says that the agreement requires the consumer to pay no more

than $500 toward the cost of arbitration, and further, that it has in fact waived the cost-splitting requirement of that agreement in 2015 as the result of a request by the American Arbitration Association. It says that there will be no cost to the Plaintiffs if the CROA claim is referred for mediation. The Defendant would now be estopped to claim otherwise.

With respect to the Plaintiffs' third argument, the Defendant says that it puts the cart before the horse in that it asks this court to determine the validity of the arbitration clause before determining whether the complaint should be referred for arbitration. The Defendant asserts that if the arbitration clause is valid, the merits of the actual dispute must be submitted to arbitration. The Defendant asserts that the Plaintiffs' entire argument goes to the merits of their CROA claim rather than to the propriety of referring that dispute to arbitration. Rather than wade into that dispute, the court turns to the second argument, which it finds to be dispositive.

With respect to the Plaintiffs' second argument, the Defendant asserts that the bankruptcy court has no discretion to retain a claim otherwise subject to an arbitration agreement unless there is an inherent conflict between the Federal Arbitration Act and the statute at issue, in this case, the Bankruptcy Code. The CROA claim is not a core bankruptcy claim. It neither arises under the Bankruptcy Code nor in a bankruptcy case. It is related to the bankruptcy case only in that it is a potential asset of the bankruptcy estate. That does not, however, render it core. It arises under another federal statute, the Credit Repair Organizations Act.

The Sixth Circuit has expressed its strong support for arbitration saying: "[a] written agreement to arbitrate disputes arising out of a transaction in interstate commerce 'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation

of any contract.'" *Javitch v. First Union Secs., Inc.,* 315 F.3d 619, 624 (6th Cir. 2003) (quoting the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2). The court went on:

> To enforce this dictate, the Federal Arbitration Act (FAA) provides for a stay of proceedings when an issue is referable to arbitration and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement. 9 U.S.C. §§ 3 and 4.…
>
> Manifesting a "liberal federal policy favoring arbitration agreements," the FAA "is at bottom a policy guaranteeing the enforcement of private contractual arrangements." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 625, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985). Before compelling an unwilling party to arbitrate, the court must engage in a limited review to determine whether the dispute is arbitrable; meaning that a valid agreement to arbitrate exists between the parties and that the specific dispute falls within the substantive scope of that agreement. See *AT&T Techs. v. Communications Workers of Am*., 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp*., 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). The district court found that none of the arbitration agreements were enforceable against the receiver and, therefore, did not reach the question of whether any of the claims asserted by Javitch were within the scope of those agreements.

Id. "The party opposing enforcement of an agreement to arbitrate bears the burden 'to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue.'" *In re Patriot Solar Grp., LLC*, 569 B.R. 451, 457 (Bankr. W.D. Mich. 2017) (*quoting Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987)).

The Sixth Circuit Court of Appeals has not specifically considered whether the FAA conflicts with the Bankruptcy Code. The courts of appeal that have, however, have concluded that it does not. *See* cases collected at *Patriot Solar Grp.*, 569 B.R. at 457 ("[O]ther circuit courts of appeal have overwhelmingly concluded that neither the text nor the legislative history of the

Bankruptcy Code reflects a congressional intent to preclude enforcement of agreements to arbitrate in the context of a bankruptcy case. *See, e.g.*, *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1020 (9th Cir. 2012); *Whiting–Turner Contracting Co. v. Elec. Mach. Enters., Inc. (In re Elec. Mach. Enters., Inc.)*, 479 F.3d 791, 796 (11th Cir. 2007); *Mintze v. Am. Gen. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 231 (3d Cir. 2006); *see also MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006) (addressing only whether inherent conflict exists); *Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co., L.L.C.)*, 403 F.3d 164 (4th Cir. 2005) (same).”). The decision of the Eleventh Circuit in *Electrical Machine Enterprises* is instructive. That court said:

> In *McMahon*, the United States Supreme Court promulgated a three factor test in order to determine Congress' intent: “(1) the text of the statute; (2) its legislative history; and (3) whether 'an inherent conflict between arbitration and the underlying purposes [of the statute]' exists.” *Davis*, 305 F.3d at 1273 (alteration in original) (quoting *McMahon*, 482 U.S. at 227, 107 S. Ct. at 2338). In applying the *McMahon* factors, “'questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.'” *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20, 26, 111 S. Ct. 1647, 1652, 114 L. Ed. 2d 26 (1991). Applying the *McMahon* factors to the Bankruptcy Code, we find no evidence within the text or in the legislative history that Congress intended to create an exception to the FAA in the Bankruptcy Code. See *Mintze v. Am. Gen. Fin. Servs., Inc. (In re Mintze),* 434 F.3d 222, 231 (3d Cir. 2006) (finding no evidence of such an intent in the statutory text or legislative history of the bankruptcy code). Therefore, we look to the third factor of the *McMahon* test and examine whether an inherent conflict exists between arbitration and the underlying purposes of the Bankruptcy Code.

In re Elec. Mach. Enters., Inc., 479 F.3d at 795-96. With respect to the question of whether an inherent conflict exists between arbitration and the underlying purposes of the Bankruptcy Code, the court said that where the dispute is a non-core proceeding, a bankruptcy court is generally without discretion to preclude the enforcement of the arbitration provision. *Id.* at 796 (citation

omitted). The question of enforceability with respect to core bankruptcy proceedings, it said, is another matter. *Id.* This court agrees. Where the subject dispute is a non-core proceeding such as the present one and the purpose of litigation is to augment the estate based upon a cause of action arising under a law or statute other than the Bankruptcy Code, there is no inherent conflict between the FAA and the Bankruptcy Code, and the applicable arbitration agreement should be enforced. This is so because the defendants to such actions should not be placed at any different or disadvantageous position based on the happenstance that the plaintiff is a bankruptcy debtor or trustee. Although the Plaintiffs' cause of action does not arise under state common law, as was the case in *Stern v. Marshall,* 564 U.S. 462, 131 S. Ct. 2594 (2011), it nevertheless arises under a federal statute wholly separate from the Bankruptcy Code. No part of the bankruptcy laws is implicated in the outcome of the dispute. It is a non-core proceeding, which the Plaintiffs apparently concede. ("This Court should deny Freedom's motion to compel arbitration and permit this claim to proceed together with the core bankruptcy claims for any one of three … reasons." [Response to Motion to Dismiss, p.11; Dkt. No. 20]).

The single case relied upon by the Plaintiffs to insist that the bankruptcy courts have discretion to retain even non-core proceedings rather than compel arbitration*, Pelikan Holding AG v. Nu-Kote Holding, Inc. and Citibank (In re Nu-Kote Holding, Inc.*), 257 B.R. 855, 863 (M.D. Tenn. 2001), says nothing of the sort. To the contrary, it emphasizes that even for core proceedings, the bankruptcy court must analyze whether an inherent conflict exists between the bankruptcy laws and the laws at issue in the potentially arbitrable dispute. In other words, *Nu-Kote Holding* falls in line with *Electrical Machine Enterprises* and other courts that have

concluded that the bankruptcy court has no discretion to preclude enforcement of an arbitration clause in a non-core proceeding.

For this reason, the Defendant's motion to compel arbitration should be granted.

CONCLUSION

For the foregoing reasons, the court will enter its order **GRANTING** the Motions to Dismiss and to Compel Arbitration.

cc: Debtors/Plaintiffs
Attorneys for Debtors/Plaintiffs
Defendant
Attorneys for Defendant
Chapter 13 Trustee