

In its Notice of Removal (ECF No. 1), Defendant asserts that it is the successor to certain liabilities of Chrysler LLC, pursuant to the Master Transaction Agreement (MTA) (ECF No. 1–1) approved by the United States Bankruptcy Court for the Southern District of New York in connection with the chapter 11 bankruptcy of Chrysler LLC and affiliated entities. *In re Old Carco LLC (f/k/a Chrysler LLC)*, No. 09-50002 (Bankr. S.D.N.Y.). As specified in the Bankruptcy Court’s order approving the MTA, Defendant assumed from Chrysler LLC only those liabilities “expressly set forth in the Purchase Agreement.” (Bankr. Court Order ¶ 35, ECF No. 1–2.) The order further provides that “except as otherwise set forth ... all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding against the Purchaser ... with respect to any (a) Claim other than (i) Assumed Liabilities” (*Id.* ¶ 38.) In addition, the order states: “This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Sale Order including to ... protect the Purchaser against any Claims” (*Id.* ¶ 59.)

Under the terms of the MTA, Defendant did not assume any “Excluded Liabilities,” including “all Product Liability Claims arising from the sale of Products or Inventory prior to the Closing.” (MTA § 2.09(i), PageID # 15.) The MTA, however, also provides that Defendant assumed “all Liabilities pursuant to product warranties, product returns and rebates on vehicles sold by Sellers prior to the Closing.” (MTA § 2.08(g), PageID # 14.)

Discussion

Defendant maintains that (1) this Court has jurisdiction under 28 U.S.C. § 1334(b) because Plaintiff’s action arises under Title 11 based on the need to interpret and enforce the MTA and the Bankruptcy Court’s order approving the MTA; (2) this Court has jurisdiction because Plaintiff’s action is a “core proceeding” within the meaning of 28 U.S.C. § 157; and (3) this Court has

jurisdiction under 28 U.S.C. § 1331 because Plaintiff's action is preempted by the Bankruptcy Code. In his objection to the removal, Plaintiff argues, exclusively, that removal was improper because the United States District Court lacks subject matter jurisdiction. (Objection to Notice of Removal, ECF No. 9.)

“The burden of establishing federal jurisdiction is upon the party who removed the case to federal court.” *Maine Mun. Ass’n v. Mayhew*, 64 F. Supp. 3d 251, 263 (D. Me. 2014). To determine whether Plaintiff's claim arises under federal law and therefore falls within this Court's original jurisdiction, the Court “is to ask whether the plaintiff's *claim to relief* rests upon a federal right, and the court is to look only to *plaintiff's complaint* to find the answer.” *Rossello-Gonzalez v. Calderon-Serra*, 398 F.3d 1, 10 (1st Cir. 2004) (quoting *Hernandez-Agosto v. Romero-Barcelo*, 748 F.2d 1, 2 (1st Cir. 1984) (emphasis in original)).¹ To rest on a federal right, the claim must either have its “roots” in federal law, e.g., a constitutional claim or federal statutory claim, or it must contain “embedded federal questions.”² *Rhode Island Fishermen's All., Inc. v. Rhode Island Dep't Of Env'tl. Mgmt.*, 585 F.3d 42, 48 (1st Cir. 2009). However, “[t]he existence of a federal defense to a state-law cause of action will not suffice.” *Rhode Island Fishermen's All.*, 585 F.3d at 48.³

¹ While the Court must look to Plaintiff's pleading to assess the existence of jurisdiction, the Court is permitted to consider additional materials of which it may properly take judicial notice, such as the order of another court and an agreement authorized and incorporated into such an order. *Aguilar v. U.S. Immigration & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 8 & n.1 (1st Cir. 2007).

² Claims that justify the exercise of subject matter jurisdiction based on the presence of embedded federal questions involve state-law claims that “necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities.” *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314, (2005).

³ Defendant argues in part that jurisdiction is proper because Plaintiff's claim is preempted by the Bankruptcy Code. However, “a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (emphasis in original); *Rhode Island Fishermen's All.*, 585 F.3d at 49.

Pursuant to 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant ... to the district court of the United States for the district and division embracing the place where such action is pending.” The district courts have original jurisdiction of all civil actions “arising under” federal law. 28 U.S.C. § 1331. Under 28 U.S.C. § 1334, “the district courts shall have original and exclusive jurisdiction of all cases under title 11,” and “shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(a), (b). The First Circuit has explained:

The Bankruptcy Act, as amended, sets forth two types of cases as to which a bankruptcy court may take jurisdiction if properly referred by the district court: core proceedings and related proceedings. 28 U.S.C. § 157; *see generally* 17 Wright, Miller & Cooper § 4106. Core proceedings involve rights created by the Bankruptcy Act; they depend on the Bankruptcy Act for their existence. 28 U.S.C. § 157(b)(2); *In re Gardner*, 913 F.2d 1515, 1518 (10th Cir. 1990). Related proceedings do not arise under the Bankruptcy Act; they must, however, “potentially have some effect on the bankruptcy estate, such as altering debtor’s rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate.” *In re Smith*, 866 F.2d 576, 580 (3d Cir.1989); 28 U.S.C. § 157(c). “The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Pacor v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984) (citations omitted).

In re G.S.F. Corp., 938 F.2d 1467, 1475 (1st Cir. 1991), *overruled on other grounds by Connecticut Nat’l Bank v. Germain*, 503 U.S. 249 (1992).

Preliminarily, Plaintiff, in asserting a state law warranty claim, does not allege a claim against the bankrupt debtors or the bankrupt estate. His claim, therefore, does not fall within the typical framework of a core proceeding or related proceeding, as set forth in *G.S.F. Corporation*.⁴

⁴ The Southern District of New York’s docket for the *In re Old Carco LLC (f/k/a Chrysler LLC)* bankruptcy reflects that the Court confirmed the Chapter 11 plan on April 23, 2010. Plaintiff herein filed his state court small claims action against Defendant on January 15, 2016, and Defendant removed the action on February 29, 2016. Defendant does not suggest in its Notice of Removal that there is any reasonable basis for this Court to conclude that, as of the

Nevertheless, an action against a party that purchased assets from a bankrupt estate is within the jurisdiction of the Bankruptcy Court where the Bankruptcy Court has enjoined actions on existing and future claims, and where the Bankruptcy Court has retained jurisdiction to enforce such an order. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 140, 150 – 51, 155 (2009) (holding that bankruptcy court had jurisdiction over claims against non-debtor insurer arising out of a bankruptcy terminated two decades earlier, where the Bankruptcy Court enjoined any future lawsuits against the insurer arising from the asbestos-related liability of its insured, the bankrupt John-Manville Corporation). Indeed, several courts have so ruled in the context of consumer claims against successors to the Chrysler Group. *See, e.g., Powell v. FCA US LLC*, No. 3:15-CV-00393, 2015 WL 5014097, at *4 (M.D. Ala. Aug. 21, 2015) (collecting cases); *Ritter v. Chrysler Grp., LLC*, No. 4:13-CV-02123, 2013 WL 7175621, at *1 (M.D. Pa. Oct. 28, 2013) (collecting cases), *report and recommendation adopted as modified*, 2014 WL 549706 (M.D. Pa. Feb. 11, 2014); *Martin v. Chrysler Grp., LLC*, No. 6:12-CV-00060, 2013 WL 5308245, at *4 (W.D. Va. Sept. 20, 2013); *Clark v. Chrysler Grp., LLC*, No. 2:10-cv-03030, 2010 WL 4486927, at *8 (E.D. Pa. Nov. 5, 2010).

In summary, although Plaintiff requests that the Court find that his claims are either outside of the bankruptcy or involve liabilities that Defendant expressly assumed pursuant to the MTA, at this stage of the proceedings, the sole issue is whether Defendant's assertion of federal jurisdiction is proper. The Court need not and should not determine at this point the merit of Defendant's

date of removal, Plaintiff's warranty claim has any potential to impact the *In re Old Carco* debtors or estate. In its Notice of Removal, Defendant characterizes Plaintiff's state law action as a products liability action and argues that the action involves a liability that Defendant did not assume. Assuming, arguendo, that Plaintiff's action involves a products liability claim, nothing in the Notice of Removal suggests that a judgment on that claim either for or against Defendant would have any tendency to impact the debtors in, or the administration of the estate in the *In re Old Carco LLC (f/k/a Chrysler LLC)* bankruptcy case.

contention that Plaintiff's claim involves excluded liabilities.⁵ Because Plaintiff's claim is, at a minimum, related to the bankruptcy proceedings,⁶ Defendant has satisfied its burden to establish federal jurisdiction in support of its Notice of Removal.

Conclusion

Based on the foregoing analysis, I recommend the Court deny Plaintiff's objection to removal (ECF No. 9), which objection I have construed as a motion to remand.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within fourteen (14) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within fourteen (14) days after the filing of the objection.

⁵ The parties have not raised the issue of abstention, *see* 28 U.S.C. § 1334(c), or whether the matter should be transferred to the United States District Court for the Southern District of New York, the Court overseeing the bankruptcy, *see* 28 U.S.C. § 1412, as some other courts have done. *See Powell*, No. 3:15-CV-00393, 2015 WL 5014097, at *6 (transferring case to the United States District Court for the Southern District of New York); *Ritter*, No. 4:13-CV-02123, 2013 WL 7175621, at *6, *report and recommendation adopted as modified*, 2014 WL 549706, at *2 (same); *see also Martin*, No. 6:12-CV-00060, 2013 WL 5308245, at *6 (transferring case directly to the United States Bankruptcy Court for the Southern District of New York rather than to the United States District Court for the Southern District of New York); *Clark*, No. 2:10-cv-03030, 2010 WL 4486927, at *9 (same). Nor have the parties raised the issue of a remand on "equitable grounds" pursuant to 28 U.S.C. § 1452(b), or whether that question is best addressed by this Court before it considers the propriety of a transfer. *See, e.g., Wiregrass Catering Serv., LLC v. Cmty. Bank & Trust of Se. Alabama*, No. 1:11-cv-00361, 2011 WL 2444676, at *3 (M.D. Ala. June 16, 2011) (finding removal jurisdiction under § 1334, and referring questions of abstention and equitable remand to bankruptcy court); *see also In re Santa Clara Cty. Child Care Consortium*, 223 B.R. 40, 46, 49 (B.A.P. 1st Cir. 1998). I have not, therefore, addressed the issues in this recommended decision. If the Court adopts this recommendation, the Court might consider a process by which the Court invites the parties to address abstention and transfer before the Court issues a scheduling order in this matter.

⁶ In *Powell*, *Ritter*, *Martin*, and *Clark*, the courts all found that analogous claims arising from the bankruptcy court's sale order were "core" bankruptcy proceedings, not merely "related to" proceedings. *Powell*, 2015 WL 5014097, at *4; *Ritter*, 2013 WL 7175621, at *3; *Martin*, 2013 WL 5308245, at *4; *Clark*, 2010 WL 4486927, at *8.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 26th day of April, 2016.