UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 21, 2015 at 2:30 p.m.

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1. 09-39605-E-13 TIFFANY EIDE
14-2313
EIDE V. REAL TIME RESOLUTIONS, INC.
ADVERSARY DISMISSED 12/3/14

STATUS CONFERENCE RE: COMPLAINT
11-14-14 [1]

Final Ruling: No appearance at the January 21, 2015 Status Conference is required.

Plaintiff's Atty: Richard D. Steffan
Defendant's Atty: unknown

The Adversary Proceeding having been dismissed, **the Status Conference is removed from the calendar.**

Adv. Filed: 11/14/14
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

2. **14-20309-E-13 PATRICK/JENNIFER RESTORI** **CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT**
14-2187 **8-15-14 [11]**
RESTORI ET AL V. NATIONSTAR MORTGAGE LLC

Final Ruling: No appearance at the January 21, 2015 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Bernard J. Kornberg

Adv. Filed: 6/26/14
Amd Complaint Filed: 8/15/14

Answer: none

The court having entered an Order Dismissing First Amended Complaint with Prejudice (Dckt. 42), **the Status Conference is removed from the Calendar.**

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 11/12/14

[BJK-2 INTERIM ORDER] Order granting in part Motion to Dismiss First Amended Complaint for Failure to State a Claim filed 11/17/14 [Dckt 40]. Final order to be entered after 1/5/15.

3. 12-28312-E-13 MARIANNE GULLINGSRUD
14-2214
GULLINGSRUD V. AURORA LOAN SERVICES, LLC ET AL

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-20-14 [11]

No Tentative Ruling:

Plaintiff's Atty: Scott D. Shumaker
Defendant's Atty: unknown

Adv. Filed: 7/23/14
Answer: none

Amd Cmplt Filed: 10/20/14
Reissued Summons: 12/15/14
Answer: none

Nature of Action:
Recovery of money/property - other

Notes:

Continued from 10/15/14 to allow Plaintiff to prepare and file an amended complaint and to engage in substantive settlement discussions.

JANUARY 21, 2015 STATUS CONFERENCE

On January 14, 2015, Defendant Nationstar Mortgage, LLC filed a Motion to Dismiss the First Amended Complaint. Dckt. 18. The Certificate of Service for the First Amended Complaint and Reissued Summons states that service has been made on Aurora Bank, FASB, Aurora Loan Services, LLC, and Nationstar Mortgage, LLC. Only Nationstar Mortgage, LLC has filed a response (the Motion to Dismiss).

The Motion to Dismiss states with particularity (Fed. R. Civ. P. 7(b)(1)(B) and Fed. R. Bankr. P. 7007) the following grounds upon which the requested relief is based:

A. Relief is sought for failure to state a claim for relief pursuant to Federal Rule of Civil Procedure 12(b)(6).

B. Plaintiff's main cause of action is for an order compelling Defendant to accept transfer of ownership and the corresponding legal and financial responsibility of the property.

C. The First Amended Complaint "goes so far" as to request the court "force" defendant to execute documents to transfer legal title of the property to Defendants.

D. Plaintiff provides no legal authority or support (apparently in the First Amended Complaint) for the relief sought in the First Amended Complaint.

E. The Motion is based on:

1. The Notice of Motion;

2. The Motion;

3. The Points and Authorities;

4. Unidentified items for which the court may take judicial notice;

5. Such other and further evidence as Defendant chooses to present (spring on) the court at the hearing.

Motion, Dckt. 18.

The Motion appears to fail to provide the minimum pleading required for a motion – state with particularity the grounds upon which the relief is requested. Rather, it advises the court that the grounds are strewn over the Notice, Points and Authorities, unidentified items for which the court will be requested to take judicial notice, and whatever else the Defendant puts in from of the Court and the Plaintiff at the hearing. That is not stating with "particularity in the motion" the grounds for the relief requested. Most charitably, it appears to be an attempt to turn the court into an associate attorney or paralegal to assemble the grounds (which the court thinks should be presented) upon which the motion should be based. Attempting to utilize the court as an advocate for a party is improper.

It appears that the Defendant may have the grounds upon which it bases (subject to Fed. R. Bankr. P. 9011) the grounds for relief buried among the citations, quotations, arguments, conjecture, speculation, and advocacy in the Points and Authorities. Dckt. 20.

Interestingly, upon reading the First Amended Complaint, the court sees that the claims being asserted are different than appeared from reading Defendant's motion. The First Amended Complaint is very simple. It alleges:

(1) Aurora Bank FSB is a creditor which was foreclosing on Property located in Florida.

(2) Plaintiff wants to "surrender" the Property to Aurora Bank FSB.

(3) Aurora Bank FSB will not accept the "surrender" of the Property.

(4) The First Cause of Action is for Specific Performance, by which pursuant to the Florida Doctrine of "equitable ownership" and Aurora Bank FSB can take title not only through a judicial foreclosure, but by accepting (requiring the agreement of both the debtor and creditor) by short sale, deed in lieu, or quitclaim.

(5) Plaintiff seeks specific performance by which Aurora Bank FSB is required to take title to the Property by a manner other than judicial foreclosure.

(6) In the Second Cause of Action Plaintiff seeks indemnification from Aurora Bank FSB for any claims relating to the Property since it has refused to agree to take a deed in lieu of foreclosure.

(7) In the Third Cause of Action Plaintiff seeks a declaration that Aurora Bank FSB is liable for any claims in the future which may arise from the

Property because it has not agreed to accept a deed in lieu of foreclosure.

First Amended Complaint. Dckt. 11. From reading the Motion, it appeared that Plaintiff was seeking to force Defendant to accept an assumption of the obligation under the note by another and a release of the debtor from the note. "Plaintiff's alleged main cause of action is for an Order compelling Defendant to accept transfer of ownership and the corresponding legal and financial responsibility of the property." The arguments in the Points and Authorities clarifies the relief being requested in the First Amended Complaint.

4. 13-23119-E-13 CYNTHIA MCDONALD
14-2210
MCDONALD V. JPMORGAN CHASE BANK, N.A. ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-21-14 [1]

No Tentative Ruling:

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Amy M. Spicer

Adv. Filed: 7/21/14
Answer: none

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 10/15/14 to allow Parties to conclude settlement discussions.

Stipulation to Extension of Time to Respond to Plaintiff's Adversary Complaint filed 12/12/14 [Dckt 12]; Order extending time to 1/15/15 filed 12/15/14 [Dckt 13]

JANUARY 21, 2015 STATUS CONFERENCE

For the October 15, 2014 Status Conference the court provided the parties with a detailed review of the Complaint and issues as perceived by the court. It appears that the dispute is over $1,435.01.

This Adversary Proceeding was commenced on July 21, 2014. The court has continued the Status Conference and afforded the parties a significant amount of time to engage in good faith settlement discussions. Though 184 days has

passed since the filing of the Complaint, the parties do not give the court any indication that they are proceeding in good faith to resolve this (apparently very, very, very modest dollar amount dispute).

Rather, on January 15, 2015, the Parties filed a Stipulation to further extend the time for Defendant to respond to the Complaint. Stipulation, Dckt. 14. The basis for requesting the further extension of time is stated as "The Parties are engaged in on-going settlement discussion in an attempt to resolve this adversary proceeding without litigation. The Parties have agreed to extend the time for Defendants' response to the complaint to and including February 27, 2015." *Id.* ¶ D. As identified in the stipulation, this is the Parties ***Fourth*** request for extension of time for Defendant to respond to the Complaint. This is exactly the same language (except for the date for the extension) used in the Stipulation filed on December 12, 2014 (Dckt. 12), almost identical to the Stipulation filed on October 14, 2014 (Dckt. 9), and similar to the general request made in the Stipulation filed on August 22, 2014 (Dckt. 7).

It appears that notwithstanding the efforts of the parties over the past six months, these matters cannot be resolved by agreement and litigation is necessary.

OCTOBER 15, 2014 STATUS CONFERENCE

Plaintiff states that the parties have stipulated to allow Defendant until September 30, 2014 to file a response to the Complaint. This was granted in light of the Parties engaging in settlement negotiations. The Plaintiff requests that the court continue the Status Conference for a sufficient amount of time for the Parties to conclude the settlement discussions.

As of the court's October 12, 2014 review of the Docket (twelve days after the deadline stipulated to for a response to the Complaint) no answer or responsive pleading has been filed. No motion for further extension of time to respond to the Complaint has been filed. Defendant has not appeared in this Adversary Proceeding.

The Complaint was filed on July 21, 2014. The October 15, 2014 Status Conference is eight-six (86) days after the Complaint was filed. The Complaint, with exhibits, is fifty-two (52) pages. The Complaint itself is thirteen (13) pages long. The Complaint states the following Causes of Action:

I. First Cause of Action Objection to the JPMOrgan Chase Bank Proof of Claim.

A. The substance of this Objection is that Proof of Claim No. 2 filed by JPMorgan Chase Bank, N.A. misstates the claim because it lists the following information,

1. Principal Balance.....$187,774.58
2. Arrearage.....$ 22,403.04

3. Which Amounts Total.....$210,177.62.

B. However, JPMorgan Chase Bank, N.A. has filed the claim for the lesser amount of $204,873.32, which is $5,300.00 than the total of the principal amount and arrearage.

C. The amount of the Proof of Claim and the total of the Principal Balance and Arrearage cannot be reconciled.

D. This difference which "cannot be reconciled" is sufficient to disallow the Proof of Claim.

II. Second Cause of Action for Violation of California Rosenthal Act.

A. It is asserted that Plaintiff misapplied non-specific payments made by Plaintiff in 2012 and 2013, and that by misapplying the payments Defendant violated the Rosenthal Act.

B. It is asserted that the Proof of Claim filed is a "misrepresentation of the debt," and such misrepresented Proof of Claim is a violation of the Rosenthal Act.

III. Third Cause of Action for Negligence.

A. It is alleged that JPMorgan Chase Bank, N.A. had a duty to file a Proof of Claim in Plaintiff's bankruptcy case which "has some semblance of accuracy."

B. JPMOrgan Chase Bank, N.A. violated the duty to file such proof of claim when it filed Proof of Claim No. 2 in Plaintiff's bankruptcy case.

IV. Fourth Cause of Action for Fraud and Intentional Misrepresentation (Cal. Civ. §§ 1572, 1709, and 1710)

A. It is alleged that when JPMorgan Chase Bank, N.A. filed Proof of Claim No. 2 it knew that the information therein was false. It is alleged that the Bank misapplied payments made by Plaintiff.

V. Fifth Cause of Action for Violation of Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 et seq.).

A. JPMorgan Chase Bank, N.A. misapplied nonspecified payments made by Plaintiff for the loan upon which Proof of Claim No. 2 is based.

VI. Sixth Cause of Action for Breach of Contract

A. It is alleged that JPMorgan Chase Bank, N.A. has breached the terms of the contract (promissory note) with Plaintiff. The breach of contract arises from misapplying nonspecified payments made by Plaintiff.

VII. Seventh Cause of Action for Conversion.

A. It is alleged that JPMorgan Chase Bank, N.A. misapplying nonspecified payments made by Debtors to the Bank on the loan constitutes a conversion of said monies.

VIII. Eight Cause of Actions for Attorneys' Fees.

A. Pursuant to a nonspecified term of the Note and Deed of Trust and the California Civil Code, Plaintiff is entitled to attorneys' fees.

Recently the court addressed an adversary proceeding in which the Plaintiff-Debtor was represented by counsel for Plaintiff in this case and Nationstar Mortgage, LLC, in which similar claims were asserted. Adv. Pro. 14-2187. In considering a motion to dismiss the first amended complaint in that case, the court reviewed the contention that because the amount of the secured claim stated on the proof of claim form was less than the amount of the principal balance and arrearage. In that Adversary Proceeding the court noted that merely adding the principal balance to the arrearage (which includes the missed monthly payments) would not necessary accurately state the amount of the claim. This is because the missed monthly payments each contain a small principal payments. Attempting to add the principal balance and the arrearage, as done by Plaintiff, would necessary overstate the amount of the claim (double counting a portion of the principal).

Proof of Claim No. 2 filed by JPMorgan Chase Bank, N.A. is attached as Exhibit 2 to the Complaint. The amount of the claim is stated to be $204,873.32. Included as Proof of Claim No. 2 is the Mortgage Proof of Claim Attachment [Form 10(Attachment A)]. The information on Attachment is,

A. Principal.....$187,774.58
B. Interest Due as of Commencement.....$ 15,356.30
C. Pre-petition Fees and Expenses.....$ 2,707.17

D. Total Claim Computed From Part 1 and Part 2 of Attachment.....$205,838.05

Though less than Plaintiff's Principal + Arrearage Calculation, it is still higher than the $204,403.04 amount stated by JPMorgan Chase Bank, N.A. on the Proof of Claim (Section 4).

From a review of the Proof of Claim attachment the court cannot readily identify the $1,435.01 overstated amount.

5. 07-27123-E-13 DOREEN GASTELUM **CONTINUED MOTION FOR CONTEMPT**
PGM-4 **10-21-13 [123]**

No Tentative Ruling:

Scheduling Order-
Expert witnesses disclosed by 6/6/14
Expert witness reports by 6/6/14
Close of discovery 9/30/14

JANUARY 21, 2015 PRE-EVIDENTIARY HEARING CONFERENCE

Plaintiff filed a Second Evidentiary Hearing Conference Statement. Dckt. 169. The statements made therein concerning this ligation include:

A. Debtor received her discharge in her prior Chapter 13 Case. 07-27123. In that case, her Chapter 13 Plan provided for the "surrender" of properties located in Chicago.

B. Debtor has not been in possession of the properties. (The creditors did not foreclose on the properties.)

C. The City of Chicago asserts that Debtor owes $200,000.00 in liability relating to the surrendered properties.

D. Facing that asserted liability, Debtor has filed a second Chapter 13 case (instant case) and confirmed her plan.

E. Debtor has contacted "the only party seemingly interested" in one of the properties and made an offer to sell the property.

F. Debtor is also seeking to have Chicago proceeding with a tax lien sale on the second property.

G. Debtor thinks that as an "ultimatum" the court could require the parties to conduct a voluntary dispute resolution program.

H. Debtor asserts that the Parties should be given an additional 120 days to try and resolve this dispute.

I. All discovery has been concluded.

DECEMBER 3, 2014 PRE-EVIDENTIARY HEARING CONFERENCE

The attorneys for Debtor Movant and City of Chicago defendants advised the court that substantive settlement discussions were progressing. The parties believe that allowing the City of Chicago to exercise its lien rights against

the properties may be the basis for settling this Adversary Proceeding.

FEBRUARY 11, 2014 CIVIL MINUTES

PRIOR HEARING

Debtor Doreen M. Gastelum ("Debtor") moves for an order to show cause concerning the violation of discharge under 11 U.S.C. § 1328 against the City of Chicago, A Municipal Department, City of Chicago Office of the Mayor Rahm Emanuel, Markoff Kransy LLC, Law Offices of Talan & Ktsanes, City of Chicago Department of Buildings, City of Chicago Department of Police, City of Chicago Department of Streets and Sanitation, and the City of Chicago Department of Revenue ("City"). Debtor seeks (1) injunctive relief by the court to determine whether Debtor should be liable for the pre-petition liability arising from the complaints relating to the real properties located at 1517 W. 61st Street, Chicago, Illinois and 356 West 45th Street Chicago, Illinois; and (2) a determination of whether the City is in violation of 11 U.S.C. § 1328 by seeking a claim that runs with the land prior to the filing of the Chapter 13 bankruptcy.

Debtor alleges that the City began enforcement of both pre-petition and post-petition claims after the Chapter 13 case was filed, confirmed and discharged. Debtor asserts the claims in this case start pre-petition and have grown to staggering amounts. Debtor has filed a new Chapter 13 bankruptcy, Case NO. 13-311441-E-13C on August 30, 2013 to remedy any post-petition claims.

EVIDENCE

Debtor alleges the following pre-petition activity by the City:

1. On or about January 13, 2007, the City filed and noticed an Administrative Complaint regarding the 45 Street Property. (Exhibit 1, Dckt. 128);

2. On or about February 23, 2007, the City conducted a hearing of the Administrative Complaint regarding the 45 Street Property. (Exhibit 2, Dckt. 128);

3. On or about March 6, 2007, a Findings, Decisions & Order was entered concerning the 45 Street Property. (Exhibit 3, Dckt. 128);

4. On or about March 21, 2007, the City mailed a "Collection Notice" regarding the Administrative Judgment against the 45 Street Property. (Exhibit 4, Dckt. 128);

5. On or about May 25, 2007, the law firm of Wexler & Wexler, LLC, acting as Counsel on behalf of the City of Chicago, A Municipal Corporation, sent a collection letter advising Debtor that an Administrative Judgment had been entered, in the amount of $532.25, which Debtor paid on June 4, 2007, with check #1004. (Exhibits 5 and 6, Dckt. 128);

6. On or about June 5, 2007, the law firm of Wexler & Wexler, LLC sent a collection letter advising Debtor that an Administrative

Judgment had been entered. (Exhibit 7, Dckt. 128).

CITY'S OPPOSITION

The City argues that Debtor points to no pre-petition conduct to support the allegation that the discharge injunction was violated. The City alleges that the Debtor is without any evidence from which the court can conclude the City violated the discharge injunction. The City argues that it has pursued nothing other than post-petition, post-discharge fines imposed upon the Debtor in its exercise of police powers.

The City argues that Debtor has recognized in a variety of pleadings (from the related Adversary Proceeding) that the City's actions were post-petition.

As to the allegations of the City's pre-petition activity, the City argues that the pre-petition collection effort for the removal of an obstruction and repair to a defective house drain pipe was adjudicated and the judgment paid three months before the debtor sought Chapter 13 bankruptcy protection on September 4, 2007. The city states the debtor does not explain the relevance of these allegations to her claim that the City violated the discharge injunction for post-petition, post-discharge debts she incurred later.

The City also states that the violative property conditions, and the fines did not exist at either the filing of Debtor's petition, or at the time of the Debtor's discharge. The City claims it is not in dispute that the City did not begin conducting its investigation, or enforcing the various municipal code violations until after the debtor received her discharge on February 3, 2011. The City argues that its actions to ameliorate the debtor's illegal conduct occurring on her properties, post-petition and after discharge does not threaten the letter nor the spirit of the bankruptcy laws.

The City alleges that regardless, its collection efforts are exempt from discharge as fines due to government entities. The City cites 11 U.S.C. § 362(b)(4), the police power exemption, that excepts from the automatic stay the commencement or continuation of an action or proceeding by a governmental unity to enforce such governmental unit's police and regulatory power. The city argues that there is no dispute that the City's pursuit of municipal code violations at the debtor's properties was, and is, for the protection of its residents, and to protect public health and safety. The City further alleges that even if the fines had been entered pre-petition or for pre-petition violations, any pre-petition debt composed of fines or penalties payable to a governmental unit would have been excepted from the debtor's discharge under § 523(a)(7).

DEBTOR'S REPLY

Debtor responds to the City's opposition, stating that the pre-petition letters presented evidence actions taken by the City and that the amount claimed by the City could have in fact included these pre-petition claims. Debtor requests that this Motion should be continued to allow discovery as to the material disputed issues.

STATUS CONFERENCE STATEMENT

Debtor filed a status conference statement stating that Debtor has received her Chapter 13 discharge in her Chapter 13 case no. 07-27123-E-13L, Dckt. No. 114. Debtor filed this new Chapter 13 Plan in an attempt to remedy any future claims. Debtor states there is a pending objection to the claims of Fifth Third Bank.

Debtor's counsel states he has called the only party interested in the property in the City of Chicago and has made a cash sale offer to sell, and is awaiting a reply to date. Debtor's counsel has also discussed with the City of Chicago's counsel regarding the pending tax lien on the second property, how to accelerate the tax lien sale process to resolve title transfer in this property, and the willingness to transfer the first property as the claim with the collection process for this property would ultimately result in the tax lien sale.

Debtor states that as the Court continued this matter to afford the parties time to address these issues and work to structure a sale of the propertied at issue, no discovery has been initiated by either party. Debtor asserts that the discovery process should start within (90) days, if nothing further develops to resolve the transfer of title.

Debtor's counsel also suggests that the Bankruptcy Dispute Resolution Program could be initiated to meaningfully resolve these unique issues before the Court allows discovery to begin. Debtor's counsel believes this matter can be resolved through the B.D.R.P. while minimizing future litigation and preserving the Judicial Economy.

No Status Report has been filed by the City of Chicago (and none was ordered by the court). In light of the Status Report filed by Debtor, a Report from the City stating its view of the current status and whether there will be a prompt resolution will be of assistance to the court.

CITY OF CHICAGO STATUS REPORT

The City has filed a succinct Status Report, which is at odds with that of the Debtor. The City states that the Debtor refuses to take any responsibility for the properties at issue, refuses to pay anything, and failed to cooperate when a potential purchaser of the 356 West 45th Street Property in late November 2013. The City believes that the Debtor will not be able to sustain a claim for violation of the Discharge Injunction.

SETTING OF DISCOVERY SCHEDULE

The court has insured that the parties have had sufficient time to address the contentions, consider their respective rights, and determine if there was a practical solution. The matter has not been resolved. In such situations these matters proceed to trial, with the court doing its job and making a ruling based on the evidence and the law. Rarely does such a decision making process result in a compromise result where each party protects some portion of the position. Judgements and orders generally result in a winner and a loser.

6. 09-44339-E-13 GLEN PADAYACHEE
14-2282
PADAYACHEE V. TERRY, III

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-30-14 [1]

No Tentative Ruling:

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Pro Se

Adv. Filed: 9/30/14
Answer: 10/31/14

Nature of Action:

Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 12/3/14. With the lien having been reconveyed, Plaintiff intends to dismiss this Adversary Proceeding.

JANUARY 15, 2015 STATUS CONFERENCE

On January 15, 2014, Defendant Thomas Terry III filed a Status Conference Statement. Dckt. 11. If the Adversary Proceeding is not dismissed, as was represented to the court at the December 3, 2014 Status Conference by Plaintiff, Defendant requests the court set the following dates and deadlines:

A. Rule 26 Disclosures.....February 23, 2015

B. Designation of Experts.....March 20, 2015

C. Discovery Closes.....May 22, 2015

D. Dispositive Motion Heard By.....July 31, 2015

DECEMBER 3, 2014 STATUS CONFERENCE

The Plaintiff and Defendant report that the reconveyance has been recorded, with the original being sent to Plaintiff's counsel. With the lien having been reconveyed, Plaintiff intends to dismiss this Adversary Proceeding.

SUMMARY OF COMPLAINT

The Complaint alleges that Plaintiff-Debtor obtained an order of the court valuing the Defendant's secured claim to have a value of $0.00 for treatment through the Chapter 13 Plan in the Plaintiff-Debtor's bankruptcy case. In the

First Cause of Action Plaintiff-Debtor states that he is seeking declaratory relief pursuant to Fed. R. Bankr. P. 7001(9) [which is merely the rule stating that declaratory relief must be requested by adversary proceeding and does not create a right for declaratory relief] that the relief requested requires that Defendant release its lien. This sounds as a claim for a declaration that Plaintiff-Debtor has rights which may be enforced (either by a determination that the lien is void or injunctive relief), but is not enforcing those rights, but merely wants a judgment stating that such rights could be enforced if so sought to be enforced.

The Second Cause of Action asserts that the Defendant's deed of trust is "completely unsecured" and that the deed of trust is an unsecured claim. The court interprets this statement to be an allegation that the court has determined that the debt secured by the Defendant's deed of trust has a value of $0.00 pursuant to 11 U.S.C. § 506(a). The Chapter 13 Plan provided for payment of the $0.00 secured claim in full. The Chapter 13 Plan has been completed, making the modification of the rights between the Plaintiff-Debtor and Defendant binding. The modified rights of the parties, including the $0.00 valuation, being binding and final, there is no obligation secured by Defendant's deed of trust. Finally, pursuant to applicable California law the deed of trust is void, and Defendant has an obligation (statutory and contractual) to reconvey the deed of trust and clear record title of this void lien. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013); *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

It is then alleged that pursuant to "applicable law" the court may "extinguish" the deed of trust. This allegation is inconsistent with the prior (as interpreted by the court) allegations that there is no obligation to be secured by the deed of trust and said deed of trust is void. The term "extinguish" connotes that there is a valid deed of trust, but the court must "put it out" for the Plaintiff-Debtor. FN.1.

FN.1. The definition of "extinguish," as relevant to this Complaint, includes, "1 a(1) : to bring to an end : make an end of <hope for their safety was slowly extinguished>;... c : to cause extinction of (a conditioned response)...2 a : to cause to be void : nullify <extinguish a claim>; b : to get rid of usually by payment <extinguish a debt>." http://www.merriam-webster.com/dictionary/extinguish. None of these appear consistent with a deed of trust which is void by virtue of there being no obligation to be secured.

The Complaint also seek $500.00 in statutory damages in the Third Cause of Action (Cal. Civ. § 2941(d)) and attorneys' fees.

SUMMARY OF ANSWER

The Answer admits and denies specific allegations. It has been filed by the Defendant in pro se. In the Affirmative Defenses Defendant asserts that he was not notified that Plaintiff-Debtor had completed his plan and the asserted discharge. He further asserts that Plaintiff-Debtor and Plaintiff-Debtor's counsel have not communicated any demand for (or right to receive) a reconveyance of the deed of trust.

In the prayer to the Answer, Defendant requests (1) that the court make a "final determination" that the March 12, 2010 order was a "final non-appealable order" determining Defendant's lien has a value of $0.00; (2) confirm that Plaintiff-Debtor has completed his plan; (3) draft for Defendant an order, in a format allowable for recording, that extinguishes Defendant's lien; and (4) disallow attorneys' fees and statutory damages. FN.2.

FN.2. The answer appears to make it clear that Defendant is "willing" to get the title to Plaintiff-Debtor's property cleared of the deed of trust - if that it proper. In substance, the Defendant is asking the court for legal advice or representation. Further, the court is then tasked with the responsibility of preparing the reconveyance for the Defendant (again, further legal or real estate professional representation). In addition, the Defendant seeks to have the Plaintiff commence this Adversary Proceeding, the court provide legal representation, and then the court prepare all of the documents for the parties – with Defendant asserting that Plaintiff-Debtor should not recover the statutory damages provided by the California Legislature or be reimbursed for the legal expenses he had to incur to enforce his legal rights against the Defendant.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). To the extent not core, Plaintiff consents to all final orders and judgment being entered by the bankruptcy judge. Complaint ¶¶ 1-5, Dckt. 1. In his Answer, Thomas J. Terry III, Defendant, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1,2, 5, Dckt. 8.

7. 10-26240-E-13 STEVE/KRISTINE SCHARER
14-2253
SCHARER ET AL V. WELLS FARGO BANK, N.A.

STATUS CONFERENCE RE: AMENDED COMPLAINT
10-9-14 [12]

No Tentative Ruling:

Plaintiff's Atty: Selwyn D. Whitehead
Defendant's Atty: Regina J. McClendon; Selwyn D. Whitehead

Adv. Filed: 8/28/14
Answer: none

Amd Cmplt Filed: 10/9/14
Reissued Summons: 10/10/14
Answer: none

Nature of Action:
Dischargeability - other
Other (e.g. other actions that would have been brought in state court if unrelated to the bankruptcy case)

Notes:

[LLL-2] Stipulation Extending Defendant's Deadline to Respond to First Amended Complaint filed 10/22/14 [Dckt 21]; Order extending deadline to 11/24/14 filed 11/3/14 [Dckt 23]

Joint Discovery Plan filed 11/5/14 [Dckt 26]

[LLL-3] Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim filed 11/24/14 [Dckt 29], set for hearing 2/26/15 at 1:30 p.m.

JANUARY 21, 2015 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The First Amended Complaint States ten denominated causes of action:

First Cause of Action - RESPA;

Second Cause of Action – Violation of Automatic Stay, application of post-petition mortgage payments;

Third Cause of Action – Breach of 2007 Loan Contract;

Fourth Cause of Action – Breach of Covenant of Good Faith and Fair Dealing;

Fifth Cause of Action – Fraud (Civ. 1572);

Sixth Cause of Action – Common Law Fraud;

Seventh Cause of Action – Constructive Fraud;

Eight Cause of Action – Unjust enrichment;

Ninth Cause of Action – Negligent Loan Administration and Negligent Infliction of Emotional Distress;

Tenth Cause of Action – Intentional Infliction of Emotional Distress;

Eleventh Cause of Action – Fraudulent Business Practices (Cal. B&P 17200); and

Twelfth Cause of Action – Unfair Business Practices (Cal. B&P § 17200).

Dckt. 12.

The First Amended Complaint states in the prayer the following requested relief:

A. Actual damages according to proof;

B. Punitive damages

C. Sanctions and

D. Other relief as court may deem proper.

The basic operative facts are stated in the General Allegations in the First Amended Complaint. Plaintiffs obtained a loan from World Savings Bank which was secured by real property. When the bankruptcy case was filed in 2010, the creditor asserting the claim based on the loan was Wachovia.

In 2013 Defendant requested that Plaintiffs submit paper for a three month trial loan payment period in order to qualify for a permanent loan modification. Plaintiffs completed the paperwork, but never received a response from the Defendant.

In January 2014, Defendant advised the Plaintiffs that if they made three trial loan modification payments of $2,790.15, then they would be granted a permanent loan modification. No paperwork for the loan modification was sent to the Plaintiffs.

As instructed, Plaintiffs made the reduced $2,790.15 payments for February, March, and April 2014. In April 2014 Defendant sent loan modification paperwork, which had a significantly higher interest rate over the life of the loan. Plaintiffs rejected a loan modification on those terms.

Beginning in May and continuing through August 2014, Plaintiffs made regular monthly payments of $2,944.17. Additionally, Plaintiff made a payment of $462.06, the difference in amount of the regular loan payment and the reduced amount of $2,790.15 for the months of February, March, and April 2014.

Defendant has sent monthly statements to Plaintiffs showing a “prior unpaid amount” of $5,888.34 [which appears to be two payments of $2,944.17 each] and demanding an immediate payment of $8,832.51. When Plaintiffs

contacted Wells Fargo Bank about this statement, they were told that the loan was three months past due - stating that no payments had been made in May, June and July 2014.

SUMMARY OF MOTION TO DISMISS

Wells Fargo Bank, N.A. has filed a Motion to Dismiss (Dckt. 29) which states with particularity (Fed. R. Evid. 7(b) and Fed. R. Bank. P. 7007) grounds upon which it is asserted that the First Amended Complaint should be dismissed. Grounds asserted include:

A. RESPA does not apply to trial loan modification payments;

B. No private right of action exists for RESPA §§ 2603 and 2604;

C. The RESPA Claim should be dismissed because no damages are alleged;

D. The unlawful taking/control should be dismissed for failure to plead a plan statement showing a basis for relief. Fed. R. Civ. P. 8(a) and Fed. R. Bankr. P. 7008.

E. The Breach of Contract Claims (Third and Fourth Causes of Action) should be dismissed for failure to allege the elements of breach of contract, have not alleged that there was an agreement to contract, or there is no written contract as required by the statute of frauds.

F. The fifth, sixth and seventh claims do not sufficiently allege the basis as required by Federal Rule of Civil Procedure 9 and Federal Rule of Bankruptcy Procedure 7009 (stated in the motion as only “heightened pleading standards” and not what has, or has not, been pleaded in those Causes of Action).

G. No fiduciary duty has been asserted to support a claim for constructive fraud.

H. The elements of fraud has not been alleged, including no damages are alleged from the fraud.

I. Defendant has no duty of care to Plaintiff regarding the loan for the negligent loan administration and negligent infliction of emotional distress.

J. Defendant has no duty to modify the loan or accept reduced payments (Ninth Cause of Action).

K. Plaintiff does not allege extreme or outrageous conduct in support of the Tenth Cause of Action, or the nature or extent of any emotional distress.

L. For the Eleventh, Twelfth, and Thirteenth Causes of Action Plaintiff does not allege what constitutes the alleged unfair, unlawful, or fraudulent business practice, nor has it been alleged that Plaintiffs lost money or property as a result of

the alleged B&P 17200 violations.

Motion to Dismiss, Dckt. 29.

8. 09-26842-E-13 ROBERT SISEMORE
14-2246
SISEMORE V. GREEN TREE SERVICING, LLC

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-22-14 [1]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Adam N. Barasch

Adv. Filed: 8/22/14
Answer: none

Nature of Action:
Dischargeability - other
Other (e.g. other actions that would have been brought in state court if unrelated to the bankruptcy case)

Notes:

Continued from 11/12/14 to allow the Parties to document their settlement and dismiss the Adversary Proceeding.

SUMMARY OF COMPLAINT

The Complaint alleges that Defendants secured claim was valued at $0.00 by the court pursuant to 11 U.S.C. § 506(a).
Further, that Plaintiff-Debtor has completed his chapter 13 Plan, having provided for the $0.00 secured claim of Defendant. Plaintiff-Debtor seeks a determination that the deed of trust securing Defendants claim is void and that Plaintiff-Debtor holds title to the real property free and clear of said lien. Damages and attorneys fees are sought relating to the Defendants failure to reconvey the void deed of trust.

9. 12-36944-E-13 EDA URRIZA
14-2227
URRIZA V. AMERICA'S SERVICING COMPANY ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-6-14 [1]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Bernard J. Kornberg

Adv. Filed: 8/6/14
Amd Cmplt Filed: 8/7/14
Reissued Summons: 8/8/14

Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 12/3/14

DECEMBER 3, 2014 STATUS CONFERENCE

The parties report that they are in active settlement discussions, with what may be the final counter offer being presented to the Defendant. They further report that they believe this Adversary Proceeding will be settled and dismissed.

OCTOBER 15, 2014 STATUS CONFERENCE

In this Complaint Plaintiffs allege that the Proof of Claim filed in this case cannot be relied upon and is objected to by Plaintiffs. Other causes of action are for (3) Violation of Rosenthal Act, (4) Breach of Contract, (5) Conversion, (6) Attorneys Fees, and (7) Failure to pay an attorneys fees award (Federal Rule of Civil Procedure 70(e) contempt).

10. 11-36470-E-13 WASIF/IRUM ASGHAR
WW-3

CONTINUED OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 29 AND/OR MOTION TO CONDITIONALLY DETERMINE THE VALUE OF THE CLAIM PENDING RESOLUTION OF THE APPEAL
7-15-13 [73]

The Evidentiary Hearing on the Objection to Claim shall be conducted at xxxxx on xxxxx, 2015.

PROCEDURAL HISTORY

At the September 10, 2013 hearing on the Objection to Claim, the court continued the hearing so that the Objection could be heard after the State Board of Equalization's review of Debtor's appeal. Dckt. No. 85. The court further stated that if the review had not been completed in a timely manner, this court would have to determine the issue as a necessary proceeding for the administration of federal law.

At the March 4, 2014 hearing, the parties reported that an offer for settlement in being reviewed by the State Board of Equalization and requested an additional 60 day continuance. The court continued the hearing.

A review of the case docket at the May 6, 2014 hearing showed that nothing was filed by either the Debtors or the Board of Equalization, to show whether the determination on the appeal has been made. The court continued the Objection to Proof of Claim No. 29 of the State Board of Equalization to this hearing date to bring the objection to conclusion pursuant to 11 U.S.C. § 505.

REVIEW OF OBJECTION

The Proof of Claim at issue, listed as claim number 29 on the court's official claims registry, asserts a $37,470.60 claim alleging a priority tax debt for the tax period of July 1, 2007 through June 30, 2008 and indicates the debt is contingent upon dual determination from account no. SR KH 100-713773.

The Debtor objects to the Proof of Claim on the basis that he was not the responsible party during the time period for which the tax claim is asserted. Debtor Wasif Asghar asserts that he was involved in an accident and due to the illness relating thereto was not involved in the operation of the business during that period.

Debtor asserts that the former business partner Qamaruddin Shaikh was in fact operating the business during the relevant time period. Debtor states that the State Board of Equalization has not yet completed its review and investigation with respect to the dual determination but that their claim should be disallowed in its entirety as Debtor was not the responsible party and should not be held liable for the claim.

CREDITOR'S OPPOSITION

Creditor California State Board of Equalization ("SBE") states that Debtors scheduled a disputed SBE 2008 tax claim in Schedule "E," in the amount of $1.00 allegedly incurred by QS Ventures, Inc., for which Debtor, Wasif Asghar, disclosed an ownership interest in Paragraph 18 of his Statement of Financial Affairs. SBE timely filed its Proof of Claim No. 29-1 in the amount of $37,470.60 (the "Claim"), which is asserted as a priority, but contingent, tax claim.

Although SBE does not oppose Debtors' request in Paragraph 11 of the Claim Objection for a six-month temporary suspension in Chapter 13 plan distributions on SBE's Claim pending administrative review, SBE questions and opposes Debtors' concurrent request in Paragraph 11 of the Claim Objection for a bankruptcy court adjudication of SBE's tax-based Claim on its merits under Federal Rule of Bankruptcy Procedure 9014.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtor seeks the this court to disallow the claim of SBE through a determination that he was not the "responsible party" and his therefore not personally liable for the tax obligation. Both parties agree that the tax appeal is currently pending, which addresses the same issues.

AUGUST 8, 2014 STATUS REPORT BY THE STATE BOARD OF EQUALIZATION

Tax creditor, the California State Board of Equalization (identified as the "SBE") submits a Status Report on the Debtors' Objection to Claim of State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal.

On July 15, 2013, the Debtors filed their Claim Objection against the SBE. This was because Chapter 13 Trustee, in compiling a list of timely filed claims, indicated that the plan may not be feasible, and that case dismissal may be warranted. Dckt. No. 51. The Court continued the original September 10, 2013 hearing on the Claim Objection to March 4, 2014. Dckt. No. 87, then to May 6, 2014, Dckt No. 90, then to August 19, 2014, Dckt. No. 93, so that the Debtors may engage in out of court settlement discussions with the SBE, and pursue their administrative appeals rights with the SBE's Appeals Division for a re-determination of tax.

On April 13, 2012, the contested tax was billed to Debtor, Wasif Asghar, in his capacity as a "responsible person" for the now-ceased QS Ventures, Inc., because its tax debts to the SBE remain outstanding. Cal. Rev. & Tax. Code § 6829; Cal. Code Regs., tit. 18 § 1702. The federal counterpart "responsible person" tax statute is at 26 U.S.C. § 6672, and is frequently

litigated in bankruptcy courts. 11 COLLIER ON BANKRUPTCY TAXATION §TX15.02 (2014).

SBE states that on or about April 2, 2014, the SBE informed the Debtors' counsel that the SBE rejected the Debtors' written tax settlement proposal under the guidelines of Cal. Rev. & Tax. Code § 7093.5(c).

The Debtors currently have a scheduled conference with a hearing officer with the SBE's Appeals Division on September 4, 2014, designated as Case Id. 611390. See Cal. Code Regs., tit. 18 § 5264. Because this multi-level appeals process has not yet concluded, this contested "responsible person" tax remains contingent for bankruptcy purposes. Notwithstanding this upcoming conference, the SBE states that it concurs with the Court's discussion in its previous minute orders that the Court has permissive jurisdiction under 11 U.S.C. § 505(a) for a determination of a contingent state tax liability, as a necessary proceeding for the administration of federal law.

Creditor again asserts that the Debtors have not met their burden of proof in objecting to the state tax claim. As briefed in the SBE's August 22, 2013 Opposition to the Debtors' Objection to the Claim of the California State Board of Equalization, or in the Alternative, to Conditionally Determine the Value of the Claim Pending Resolution of the Appeal ("Opposition"), Dckt. No. 82, in the context of a claim objection to a state tax, the burden of proof is determined by state tax law. *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000).

Under California law, a tax assessment billing by a revenue agency is presumed to be correct, and the burden of proof to show otherwise stays with the taxpayer. Flying Tiger Line v. State Bd. of Equalization, 157 Cal. App. 2d 85, 99 (1958); 67B AM. JUR. 2D Sales and Use Taxes § 214 (2013). A taxpayer who objects to his or her "responsible person" tax liability bears the burden of proof. *Latin v. State Bd. of Equalization* (*In re Latin*), 2009 Bankr. LEXIS 4523 *23-24 (B.A.P. 9th Cir. 2009) (explaining that Sales and Use Tax Regulation 1702.5 requires that a taxpayer provide evidence that he or she lacked responsibility or willfulness).

SBE argues that Debtor Wasif Asghar has was not sufficiently controverted the contention that he was the responsible person for taxes of the QS Ventures, Inc, during the relevant time period. As explained in SBE's Opposition to the Objection, Debtors' proof consisted only of a single Kaiser Permanente doctor's visit on or about July 31, 2007. SBE asserts that his in and of itself does not demonstrate that Debtor, Wasif Asghar, at all relevant times, was not a person responsible for payment of California sales taxes on behalf of QS Ventures, Inc. The Debtors have not met their burden of proof. Thus, SBE requests that the Objection be overruled.

SCHEDULING OF AN EVIDENTIARY HEARING

This bankruptcy case was filed on July 1, 2011 (three years ago). Creditor filed its proof of claim on November 30, 2011 (two years and eight months ago). Proof of Claim No. 29. This Objection to Creditor's Claim was filed on July 15 2013 (now more than one year ago).

The parties, now more than three years into this case, have been unable to resolve this dispute. The court has continued and re-continued the hearing

to afford good faith, bona fide settlement discussions to be conducted. After such good faith efforts, there is no resolution. Therefore, the court determines that it is necessary for the claims objection process to proceed and this court determine what claim, if any, is allowed in this case.

NOVEMBER 18, 2014 SCHEDULING CONFERENCE

The California State Board of Equalization filed a Status Report on November 12, 2014. Dckt. 99. The Board reports that written discovery has been exchanged with the Debtors' tax counsel. Further, that the discovery and ongoing communications have narrowed the issues and the parties believe that discovery should be completed by November 24, 2014.

The Board requests that the court set a further status conference, rather than setting the matter for an evidentiary hearing, to allow the parties to continue their good faith negotiations and focus on settling this matter.

The Parties are represented by their respective knowledgeable counsel. Affording these Parties and their counsel the opportunity to attempt and achieve an agreed resolution of this dispute is warranted as part of the diligent prosecution of this objection.

JANUARY 21, 2015 SCHEDULING CONFERENCE

California State Board of Equalization states in its Scheduling Brief that the matter has not been resolved. Further, that Objecting Debtor has not responded discovery propounded in this Contested Matter.

A. Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

B. On or before ----------, 2015, Wasif and Irum Asghar ("Objector") shall file and serve on California State Board of Equalization ("Creditor") a list of witnesses which Objector will present as their witnesses for their case in chief (excluding rebuttal witnesses).

C. On or before ----------, 2015, Creditor, shall file and serve on the Objector, a list of witnesses which Creditors will present as their witnesses for their case in chief (excluding rebuttal witnesses).

D. Objector, shall lodge with the court and serve their Testimony Statements and Exhibits on or before xxxxx, 2015.

E. Creditor, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before ----------, 2015.

F. Evidentiary Objections and Hearing Briefs shall be lodged with the court and served on or before ----------, 2015.

G. Oppositions to Evidentiary Objections shall be lodged with the court and served on or before —----------, 2015.

H. The Evidentiary Hearing shall be conducted at --------.m. on ----------, 2015.

11. 10-23577-E-11 GLORIA FREEMAN **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 2-16-10 [1]**

Final Ruling: No appearance at the January 21, 2015 Status Conference is required.

Debtor's Atty: Reno F.R. Fernandez

The Status Conference is continued to 2:30 p.m. on May 27, 2015.

JANUARY 21, 2015 STATUS CONFERENCE

The Debtor has been granted her discharge under the Confirmed Chapter 11 Plan. Dckt. 1597. The Chapter 11 Trustee/Plan Administrator is prosecuting evidentiary hearings asserting the right to recover monies from former counsel for the Debtor and Debtor in Possession. The Chapter 11 Trustee/Plan Administrator is prosecuting claims objections. Quarter reports have been filed.

The court continues the Status Conference, the parties appearing before this court on other matters in connection with this case.

Notes:

Continued from 9/10/14

Quarterly Operating Report filed: 10/13/14

Appeals dismissed: 9/22/14 [WFH-41 and WFH-37]; 9/29/14 [WFH-42]

[WFH-31] Motion for Order Reopening the Period for Lodging Direct Testimony Statements and Exhibits granted 1/8/15 [Dckt 1591 civil minutes]

[WFH-31] Evidentiary hearing re Order to Show Cause continued to 1/22/15 at 9:30 a.m. [Dckt 1521]

[MHK-1] Evidentiary hearing re Motion for Administrative Expenses and Order to Show Cause continued to 1/22/15 at 9:30 a.m. [Dckt 1523]

[MF-1] Motion for Entry of Discharge Under Settlement Agreement filed 12/11/14 [Dckt 1525]; Order granting filed 1/11/15 [Dckt 1592]

[WFH-46] Trustee's Objection to Claim 30-1 Filed By Debtor Gloria Freeman on Behalf of Internal Revenue Service on August 9, 2013 filed 1/6/15 [Dckt 1575], set for hearing 2/26/15 at 10:30 a.m.

[WFH-47] Trustee's Objection to Claim 30-1 Filed By Debtor Gloria Freeman on Behalf of Franchise Tax Board on August 9, 2013 filed 1/6/15 [Dckt 1575], set for hearing 2/26/15 at 10:30 a.m.

[WFH-48] Trustee's Objection to Claim 32-2 Filed By Internal Revenue Service on August 11, 2014 filed 1/6/15 [Dckt 1583], set for hearing 2/26/15 at 10:30 a.m.

12. 10-23577-E-11 GLORIA FREEMAN — **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
WFH-36 — **6-21-13 [784]**

13. 14-31280-E-13 JANET JENDREJACK **STATUS CONFERENCE RE: COMPLAINT**
14-2319 **11-18-14 [1]**
JENDREJACK V. NATIONSTAR MORTGAGE, LLC ET AL

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 11/18/14
Answer: none

Nature of Action:
Declaratory judgment

Notes:

JANUARY 21, 2015 STATUS CONFERENCE

This Adversary Proceeding was commenced on November 18, 2014. The Summons and Complaint were served on November 20, 2014, on Select Portfolio Servicing and Nationstar Mortgage LLC. Certificate of Service, Dckt. 6.

The Complaint alleges that Plaintiff and an unnamed "Defendant" entered into a settlement agreement, by which Plaintiff relinquished possession to that Defendant. (Exhibit A, the Settlement Agreement, identifies Nationstar Mortgage, LLC, "Defendant," as the other party to the Settlement.) Plaintiff seeks a determination that Defendants have the possessory right to the property and that they are responsible for the obligations arising therefrom.

Plaintiff further alleges that the property became property of the bankruptcy estate in her current case. If it is determined that notwithstanding the Settlement Agreement that Plaintiff is responsible for the property, then Defendants are obligated to pay her rent for their having obtained and retained possession of the Property. Defendants have not yet foreclosed on the Property.

To the extent that the Settlement Agreement is an "Executory Contract," Plaintiff desires to assume such executory contract pursuant to 11 U.S.C. § 365. Finally, Plaintiff asserts the right to attorneys' fees pursuant to the terms of the Settlement Agreement.

ANSWER TO COMPLAINT

No Answer or other responsive pleading has been filed by either Defendant.

14. 12-36884-E-7 JENNY PETTENGILL
14-2276
ROBERTS V. LAZUTKINE ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-19-14 [1]

Plaintiff's Atty: George C. Hollister
Defendant's Atty: unknown

Adv. Filed: 9/19/14
Summons Reissued: 9/23/14

Answer: none

Nature of Action:
Recovery of money/property - turnover of property
Validity, priority or extent of lien or other interest in property
Injunctive relief - other
Declaratory judgment

The Plaintiff, Chapter 7 Trustee John Roberts, having filed a Notice of Dismissal of this Adversary Proceeding Without Prejudice on January 16, 2015 (Dckt. 19), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rule of Bankruptcy Procedure 7041, **the Status Conference is Removed From the Calendar.** The Complaint having been dismissed, the Clerk of the Court may close the file for this Adversary Proceeding.

Notes:

Notice of Association of Counsel filed 12/18/14 [Dckt 11]

Status Conference Statement filed 1/7/15 [Dckt 14]

15. 14-29284-E-7 CHARLES MILLS **CONTINUED MOTION FOR RELIEF**
FWP-1 **FROM AUTOMATIC STAY**
12-4-14 [105]

JOSEPH AND STACY LACKEY VS.

No Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

Joseph and Stacy Lackey ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 201 Rua Esperanza, Lincoln, California (the "Property"). Movant has provided the Declaration of Stacey Lackey to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Lackey Declaration states that the Movant is a creditor with a secured claim based upon an All-Inclusive Purchase Money Promissory Note dated January

19, 2011 in the principal amount of $1,7200,000.00 and made in connection with the seller-financed sale of the Property by the Movant to the Debtor. To secure payment the Debtor executed an All-Inclusive Purchase Money Deed of Trust with Assignment of Rents dated January 19, 2011, naming the Movant as beneficiary with respect of the Property. The Deed of Trust was properly recorded on January 21, 2011 in the Placer County Recorder's Office.

The Lackey Declaration states that as of the petition date, the Debtor owes no less than $1,584,291.02. The Movant states that they recorded a Notice of Default on May 12, 2014 and properly noticed a non-judicial foreclosure sale of the Property with a sale date of September 17, 2014. The current continued sale date is January 2, 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $1,786.957.69 (including $1,584,291.02 secured by Movant's first deed of trust), as stated in the Lackey Declaration and Schedule D filed by Debtor. The value of the Property is determined to be at least $2,600,000, as stated in Schedules A and D filed by Debtor. (The property is currently in contract, with related normal personal furnishings, to sell for $2,850,000.00).

The Movant states that the Debtor proposed, and the court approved, a sale of the Property pursuant to the court's order dated October 28, 2014. Dckt. 74. The sale of the Property has been delayed numerous times, most recently due to the Buyer's inability to produce funds. The Debtor now asserts that the sale will be consummated no later than December 15, 2014.

The Lackey Declaration states that the monthly costs to maintain the Property is approximately $6,957.35, with costs including:

Type	Monthly Amount
Real Property Tax	$2,074.02 (pro-rated based on 2013/2014 taxes)
Real Property Insurance	$333.33 (pro rated)
Water	$800.00
Utilities (unoccupied)	$2,000.00
Landscaping Maintenance	$1,000.00
Pool Maintenance	$750.00
TOTAL	$6,957.35

The Movant alleges that the Debtor has misrepresented the status of liability insurance on the Property. At the Debtor's initial 341 meeting of creditors held on October 15, 2014, counsel for the Movant inquired whether the liability insurance on the Property was current. The Debtor responded that it was current. Later that afternoon, the Movant was informed by their insurance agent that the insurance had been cancelled nine days earlier on October 6, 2014 for non-payment of premiums. Dckt. 110, Exhibit D.

The Movant states that the Debtor later indicated that the insurance had

been reinstated. On October 25, 2014, however, the Movant was informed that despite the temporary reinstatement, Chubb Insurance made the determination that it would not continue the policy or honor the reinstatement due to Debtor's negative repayment history, and that the policy was cancelled.

The Movant argues that relief from the automatic stay is proper under 11 U.S.C. § 362(d)(1) for the following reasons:

1. Maintenance Costs of the Property. The Movant argues that as former owner, they are familiar with the monthly costs. As indicated in the above table, the minimum monthly cost of maintaining the Property is $6,957.25.

2. The Debtor does not have the funds to maintain the Property. The Debtor does not appear to have the funds required to maintain and insure the Property, which puts the Property at risk for damage, depreciation, and loss.

3. Economic hardship to Movant. The Debtor has not made his quarterly $25,000.00 payment to the Movant since August 2012 and, as a result, has been in default for over two years as to his quarterly payments. In addition, the Debtor has not made his monthly $10,312.27 payment to the Movant since April 2014, which payment was applied to the January payment due. As a result, the Debtor has been in default for 11 months as to his monthly payments.

Due to the Debtor's failure to make his payments, the Movant has suffered an acute loss in income, and have had to sell four investment properties and been unable to pay real property taxes.

4. Debtor's misconduct. The Debtor has misrepresented, under oath, the status of the liability insurance on the Property, and has failed to pay his filing fees, resulting in two orders to show cause why the case should not be dismissed

The Movant also asserts that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) should be waived so the Movant can avoid any further delay in exercising their rights and remedies under the relevant agreements and applicable law.

DISCUSSION

The court has converted the case to a case under Chapter 7.

Relief from the automatic stay, in this context, would not be proper as the Movant here would be able to foreclose on the Property at the expense of the Debtor-in-Possession's other creditors. To allow the senior lienholder to foreclose on the Property and reap the benefits of the foreclosure sale would be improper when under a Chapter 7 the Chapter 7 Trustee would be able to evaluate and administer the estate.

While the court appreciates the hardships of the Movant arising from the mismanagement of the Property, to allow the Movant to foreclose on the Property would be improper when a Chapter 7 Trustee will be able to take control of the Debtor-in-Possession's assets and manage the estate is in the best interest of

all creditors and the Debtor-in-Possession.

For this creditor and creditor's counsel, having an independent fiduciary who will take possession and control of the property, can provide the desired vehicle for everyone properly advancing, and protecting, their respective interests. This creditor can work with the Trustee to insure that insurance is in place, the property is effectively marketed, and in a commercially reasonable manner brought to sale.

The court continued the hearing to allow Movant to address the issues with the Trustee and have in place a proceeding which can be prosecuted without incurring further cost and expenses.

Appointment of Chapter 7 Trustee

The Chapter 7 Trustee has been appointed and obtained authorization to employ experienced bankruptcy counsel and a real estate broker.

16. 13-32494-E-13 THEODORE/MOLLY MCQUEEN
14-2004
G & K HEAVEN'S BEST, INC. V. MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-4-14 [1]

Final Ruling: No appearance at the January 21, 2015 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14
Answer: 2/5/14

Crossclaim Filed: 2/5/14
Answer: 2/24/14

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

The Status Conference is continued to 2:30 p.m. on May 27, 2015.

Notes:

Order Continuing Status Conference and Imposing Sanctions filed 12/5/14 [Dckt 56]. C. Anthony Hughes to pay $500.00 in corrective, compensatory sanctions on or before 12/20/14.

JANUARY 21, 2015 STATUS CONFERENCE

The Parties have reached an agreement which is part of the Chapter 13 Plan to be confirmed in this the Defendant-Debtors' bankruptcy case. On January 13, 2015, the court granted the Defendant-Debtors' motion to confirm the proposed Chapter 13 Plan (order pending).

The Status Conference is continued to allow the parties to document the settlement.

17. 13-32494-E-13 THEODORE/MOLLY MCQUEEN
14-2027
MCQUEEN ET AL V. G & K HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-21-14 [1]

Final Ruling: No appearance at the January 21, 2015 Status Conference is required.

Plaintiff's Atty: C. Anthony Hughes
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14
Answer: 2/17/14

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - preference

The Status Conference is continued to 2:30 p.m. on May 27, 2015.

Notes:

Order Continuing Status Conference and Imposing Sanctions filed 12/5/14 [Dckt 56]. C. Anthony Hughes to pay $500.00 in corrective, compensatory sanctions on or before 12/20/14.

JANUARY 21, 2015 STATUS CONFERENCE

The Parties have reached an agreement which is part of the Chapter 13 Plan to be confirmed in this the Plaintiff-Debtors' bankruptcy case. On January 13, 2015, the court granted the Plaintiff-Debtors' motion to confirm the proposed Chapter 13 Plan (order pending).

The Status Conference is continued to allow the parties to document the settlement.

18. 13-22028-E-13 FAITH EVANS
14-2105 BLG-1
EVANS V. MOULTON ET AL

CONTINUED MOTION TO COMPEL AND/OR MOTION TO HAVE ALL REQUESTS FOR ADMISSIONS DEEMED ADMITTED , MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, PLAINTIFFS ATTORNEY(S)
12-16-14 [22]

Tentative Ruling:

Local Rule 9014-1(f)(2) Motion – Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Defendants on December 16, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

No opposition was presented at the hearing. The Defaults of the non-responding parties were entered by the court.

The Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs is granted.

Faith Evans ("Plaintiff-Debtor") files a Motion to Compel Discovery and to Have All Requests for Admissions Deemed Admitted and Request for Attorney Fees and Costs against the Defendant Daniel Moulton ("Defendant").

On August 13, 2014, the Plaintiff-Debtor served her: (1) Plaintiff-Debtor's Fed. R. Civ. P. 26 Disclosures; (2) Plaintiff-Debtor's Interrogatories to Defendant Daniel Moulton Set One; (3) Plaintiff-Debtor's Requests for Admissions to Daniel Moulton, Set One; (4) Plaintiff-Debtor's Request for Admissions to Defendant Daniel Moulton, Set One; (5) Plaintiff-Debtor's Request for Production of Documents from Defendant Daniel Moulton, Set One. Responses were due September 15, 2014. More than thirty days have elapsed from the date responses were due.

On September 24, 2014, Plaintiff-Debtor's attorney sent a letter to the Defendant directly believing that he may actually not be represented by Mr. McCann. Defendant was given until October 24, 2014 to respond to the discovery request.

On October 22, 2014, Mr. McCann emailed Plaintiff-Debtor's attorney stating that he would like to set the disposition of the Plaintiff-Debtor and was working on the responses to the discovery and would have them completed shortly. Plaintiff-Debtor's attorney responded on October 24, 2014 asking for

clarification of whether Mr. McCann is in fact representing the Defendant and agreed to give an extension for answering until Monday, November 3, 2014. To date, Mr. McCann has not responded.

The court's scheduling order required that initial disclosures be due by August 4, 2014 and discovery, including the hearing of all discovery motions, to close on December 31, 2014. Dckt. 14.

Plaintiff-Debtor requests, pursuant to Federal Rule of Bankruptcy Procedure 7037, which also applies Federal Rule of Civil Procedure 37 to these proceedings, the following orders and relief:

a) Compelling Defendant to respond to Plaintiff-Debtor's Initial Disclosures on or before 12:00 noon January 30, 2015

b) Compelling Defendant to respond to Plaintiff-Debtor's Interrogatories to Defendant Daniel Moulton Set One on, without objection, or before 12:00 noon January 30, 2015;

c) Compelling Defendant to respond to Plaintiff-Debtor's Production of Documents from Defendant Daniel Moulton Set One on, without objection, or before 12:00 noon January 30, 2015;

d) Deeming all Requests for Admission, attached as Exhibit B, be deemed admitted, or in the alternative, compelling Defendant to respond to Plaintiff-Debtor's Requests for Admissions to Daniel Moulton, Set One on or before 12:00 noon January 30, 2015;

e) All responses to discover is to be delivered by the deadline stated herein in hard copy form to the office of Bankruptcy Law Group, 1851 Heritage Lane, Suite 298, Sacramento, California 95815;

e) Defendant's Discovery period is closed as of December 30, 2014 per the court's Scheduling Order;

f) Plaintiff-Debtor's Discovery period is extended for cause with a new closure date of March 30, 2015;

g) Defendant Daniel Moulton is to pay Plaintiff-Debtor's counsel attorney fees in the amount of $875.00 within 15 days of the date of this order.

APPLICABLE LAW

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Federal Rule of Civil Procedure 37 Civil Rule 37(c) sanctions the failure to supplement discovery responses.

The certification requirement of Federal Rule of Civil Procedure

37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

> [T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2)conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

Initial Disclosures

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). F. R. Civ. P. 26(a)(1).

Matters Deemed Admitted

Federal Rules of Bankruptcy Procedure 7036 and 7056 provide that requests for admissions are deemed admitted unless they are denied within 30 days after service of the request. Any matter admitted under Federal Rule of Civil Procedure 36 is "conclusively established unless the court on motion permits withdrawal or amendment of the admission."

DISCUSSION

In this case, Plaintiff-Debtor's counsel has made repeated attempts to reach out to Defendant and Defendant's apparent counsel in order to rectify Defendant's failure at providing any requested discovery. Plaintiff-Debtor's counsel attempted to contact both the Defendant (who at the time was still listed as a pro se defendant) and Mr. McCann in order to "meet and confer." Plaintiff-Debtor's counsel was amicable enough to even give more than a month extension at turning over the requested documents, interrogatories, and admissions from September 15, 2014 to October 24, 2014. Defendant and Defendant's counsel, however, ignored this courtesy and waited to respond until

the October 24, 2014 deadline, seeking to set deposition time and with the (unfulfilled) promise of having the discovery responses ready “shortly.”

Plaintiff-Debtor and Plaintiff-Debtor’s counsel have made a good faith effort in resolving this discovery dispute without the need for court intervention, making repeated attempts to contact the Defendant and Defendant’s counsel.

Admissions Have Been Made by Defendant

The Defendant has not provided responses to the Plaintiff’s Requests for Admissions, Request for Production of Documents from Defendant Daniel Moulton Set One, nor Plaintiff’s interrogatories to Defendant Daniel Moulton Set One to date. More than 30 days have passed since the service of Plaintiff’s Requests on August 13, 2014.

Since Defendant has not provided responses to these requests the matters in Plaintiff’s Requests for Admissions, Exhibits B, Dckt. 25 are deemed admitted under Federal Rules of Bankruptcy Procedure 7036 and 7056. The matters will be conclusively deemed admitted for the purposes of the adversary case. Moreover, Defendant, having failed to comply with the court's scheduling order and not providing timely responses to the Plaintiff, is barred from offering opposing evidence at trial to counter that which Defendant has admitted through discovery.

Production of Documents

At the heart of the Complaint in this Adversary Proceeding is the contention that the Defendant has improperly taken and retained property of the bankruptcy estate. Complaint, Dckt. 1. In connection with the bankruptcy case some of the assets have been recovered, with the determination of ownership pending in this Adversary Proceeding. Order Granting Motion to Sell Liquor License, Dckt. 54. Others await not only this determination, but the location of the assets. Proceeds from Sale of Rhodes Lane Property and from sale of Liquor Store, Complaint, Dckt. 1.

While the Plaintiff has presented the court with a copy of the Request for Admissions (Exhibit B, Dckt. 25), the court has not been provided with a copy of the Interrogatories or Request for Production of Documents. Because the court is being requested to order that specific Responses be made and specific Documents produced, or else the court will issue sanctions (including the striking of the answer), the court must be provided with such documents so that it knows what it is ordered to occur.

Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide a Response to Interrogatories or Production of Documents the court may compel such Responses and Productions, and order appropriate sanctions. The sanctions which may be ordered by the court include:

> (1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party;
>
> (2) prohibiting the party failing to produce the discovery

from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery;

(3) Striking pleadings (including the Answer), in whole or in part;

(4) Issuing a default judgment against the party failing to provide the Responses or Produce the Documents; or

(5) Treating as contempt of a federal court order the failure to comply with the order to provide Responses to the Interrogatories or Produce the Documents.

The court continues the hearing to afford the Plaintiff the opportunity to file supplemental exhibits of these documents.

For any Responses required or Documents order to be produced, the court shall also order the contingent sanctions or one or more of the above for the failure to comply with the court's order compelling the Responses and Production of Documents.

Initial Disclosures

Plaintiff also requests that the court order the Defendant to comply with Federal Rule of Civil Procedure 26(a)(1) and Federal Rule of Bankruptcy Procedure 7026, and provide the required initial disclosures. Federal Rule of Civil Procedure 37(a)(3) and Federal Rule of Bankruptcy Procedure 7037 provide that upon the failure to provide Initial Disclosures the court may compel such Disclosures and order appropriate sanctions.

The Court shall order that the Defendant provide the required Rule 26(a)(1) Initial Disclosures by a date certain, and if Defendant fails to do so, order appropriate sanctions as addressed above.

REQUEST FOR ATTORNEY FEES

For a party seeking reasonable payment of expenses in bringing a motion for an order to compel discovery, Federal Rule of Civil Procedure Rule 37(a)(5) states "If the motion is granted-or if the disclosure or requested discovery is provided after the motion was filed-the Court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movement's reasonable expenses incurred in making the motion, including attorney's fees".

Plaintiff-Debtor provides the Declaration of Patricia Wilson in support of the Motion and request for attorney fees. Dckt. 24. Ms. Wilson is one of the attorneys representing Plaintiff-Debtor in the instant matter and is an attorney with Bankruptcy Law Group. The declaration states that Plaintiff-Debtor has incurred $875.00 in attorneys fees in connection with the instant Motion. Specifically, the declaration reflects that there was a total of 6.7 hours involved in the discovery efforts of Plaintiff-Debtor and the preparation of the instant Motion to Compel. The declaration reflects that Plaintiff-Debtor's counsel is only seeking reimbursement for the 1.5 hours done to

prepare draft of Motion to Compel, Declaration & Exhibits ($525.00) and the 1.0 of the 2.0 hours done to prepare for, travel to, and attend the hearing on Motion to Compel ($350.00). The remaining costs and services were not charged. The declaration states that the services were performed by Chad Johnson, another attorney at the Bankruptcy Law Group. Mr. Johnson charged a rate of $350.00 for the services performed.

These court finds these fees and expenses to be reasonable and necessary in bringing the Motion to Compel for the Production of Documents, Exclusion of Evidence by Defendants, and Compensation.

The court will issue one final order compelling discovery and the granting of attorney fees following the continued January 21, 2015 hearing.

CAUSE FOR EXTENDING DISCOVERY SHOWN

The Motion before the court was filed on December 16, 2014, prior to the expiration of the Discovery Deadline in this case. The court had no hearing dates when a motion in this Adversary Proceeding could have been specially set after December 18, 2014. Due to the unavailability of hearing dates, the court also extends discovery, only for the Interrogatories, Documents, and Initial Disclosures which were requested or due prior to December 31, 2014. The court does not "reopen discovery" for either party.

Response to Written Interrogatories

On January 12, 2015, Plaintiff filed a Copy of Plaintiff's Interrogatories , Set One, for which the order compelling response is sought. Exhibit C, Dckt. 29 (Identified on page 2 of Dckt. 29 as Exhibit "A." Upon review of the Interrogatories, the court determines that in number (total of 25 question) and in nature that the interrogatories are not unreasonably burdensome or clearly outside the scope of discovery.

The court orders that Defendant Daniel Moulton shall respond to the written interrogatories, filed as Exhibit C, Dckt. 29, on or before noon on February 10, 2015. Plaintiff shall serve (personally or by depositing with the U.S. Postal Service, postage prepaid) the Order Compelling Response and another copy set of the Written Interrogators filed as Exhibit C, Dckt. 29, on or before January 26, 2015. Failure to timely reply shall result in a supplemental order of this court, pursuant to the present motion,

(1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party; and

(2) prohibiting the party failing to produce the discovery from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery.

Production of Documents

On January 12, 2015, Plaintiff filed a Copy of Plaintiff's Request For Production of Documents, Set One, for which the order compelling response is sought. Exhibit D, Dckt. 29 (Identified on page 7 of Dckt. 29 as Exhibit "B." Upon review of the Request For Production of Documents, the court determines

that in number (total of 7 requests) and in nature that the documents are not unreasonably burdensome or clearly outside the scope of discovery.

The court orders that Defendant Daniel Moulton shall produce the Documents listed on the Request for Production of Documents, filed as Exhibit d, Dckt. 29, on or before noon on February 10, 2015. Plaintiff shall serve (personally or by depositing with the U.S. Postal Service, postage prepaid) the Order Compelling Production of Documents and another copy of the Request for Production of Documents filed as Exhibit D, Dckt. 29 on or before January 26, 2015. Failure to timely reply shall result in a supplemental order of this court, pursuant to the present motion,

(1) directing that the matters or facts which are the subject of the discovery are established for the adversary proceeding as asserted by the requesting party; and

(2) prohibiting the party failing to produce the discovery from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel filed by Faith A. Evans, the Plaintiff, having been presented to the court, the default of Daniel Moulton having been previously entered by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the Motion is granted as set forth herein.
>
> **IT IS FURTHER ORDERED** that Daniel Moulton, the Defendant, is deemed to have admitted (having failed to deny or otherwise respond to the Request for Admissions) each of the items, paragraphs 1-12 of the Plaintiff's Request for Admissions filed as Exhibit B, Dckt. 25.
>
> **IT IS FURTHER ORDERED** that Daniel Moulton, the Defendant shall, on or before on or before noon on February 10, 2015. provide Plaintiff's counsel any Federal Rule of Civil Procedure Rule 26(a)(1) Initial Disclosures. Plaintiff shall serve (personally or by depositing with the U.S. Postal Service, postage prepaid) the Order Compelling Defendant to make the Rule 26(a)(1) Disclosures on or before January 26, 2015.
>
> **IT IS FURTHER ORDERED** that Defendant Daniel Moulton shall respond to the Written Interrogatories, Exhibit C, Dckt. 29, on or before noon on February 10, 2015. Plaintiff shall

serve (personally or by depositing with the U.S. Postal Service, postage prepaid) the Order Compelling Response and another copy set of the Written Interrogators filed as Exhibit C, Dckt. 29 on or before January 26, 2015.

IT IS FURTHER ORDERED that Defendant Daniel Moulton shall produce the Documents listed on the Request for Production of Documents, filed as Exhibit D, Dckt. 29, on or before noon on February 10, 2015. Plaintiff shall serve (personally or by depositing with the U.S. Postal Service, postage prepaid) the Order Compelling Production of Documents and another copy of the Request for Production of Documents filed as Exhibit D, Dckt. 29 on or before January 26, 2015.

IT IS FURTHER ORDERED that for each Initial Disclosure, Interrogatory, or Document which Daniel Moulton fails to file a Response, the court by supplemental order,

(1) directing that the matters or facts which are the subject of the each failure relating to the discovery are established for the adversary proceeding as asserted by the requesting party; and

(2) prohibiting Daniel Moulton, the Defendant, from supporting or opposing designated claims or defendants, or introducing designated matters into evidence with relate to the discovery.

IT IS FURTHER ORDERED that Plaintiff's request for attorneys fees and expenses is granted. Defendant Daniel Moulton shall pay Plaintiff $875.00 as sanctions for reimbursement of Plaintiff's reasonable and necessary attorneys fees and expenses pursuant to Federal Rule of Civil Procedure Rule 37(a)(5) on or before xxxxx, 2015.

19. 14-27755-E-13 ANTHONY FURR
RJ-1

STATUS CONFERENCE RE: MOTION TO VALUE COLLATERAL OF PENNYMAC HOLDING, LLC
8-5-14 [12]

Debtor's Atty: Richard L. Jare
Creditor's Atty: Timothy J. Silverman

Notes:

Evidentiary hearing scheduled for 1/23/15 at 9:30 a.m.

The court has scheduled an evidentiary hearing for a determination of the value of the secured claim of Pennymac Holding, LLC pursuant to 11 U.S.C. § 506(a). The Motion seeks to value the claim secured by the real property commonly known as 2822 H Street, Sacramento, California. Motion, Dckt. 12.

On December 18, 2014, counsel for Pennymac Holding, LLC filed a declaration titled declaration "to Vacate Hearing on Motion to Value Collateral." No motion is filed with the declaration requesting any relief from the court. See Fed. R. Civ. P. 7(b), Fed. R. Bank. P. 9013, 9014. The court found the declaration when preparing for this Status Conference.

The Declaration, Dckt. 120, states that on November 17, 2015 Pennymac Holding, LLC conducted a nonjudicial foreclosure sale (the automatic stay having been terminated) of the Property. Pennymac Holding, LLC asserts that neither the Debtor nor the Bankruptcy Estate have any interest in the Property which secured the claim of Pennymac Holding, LLC in this case. A copy of a trustee's deed, from a nonjudicial foreclosure sale, is filed as Exhibit 5 with the Declaration. Exhibit 5, Dckt. 121 at 14-15. On its face, the trustee's deed states that Pennymac Holding, LLC (the foreclosing beneficiary) is the grantee under the trustee's deed.

11 U.S.C. § 506(a) provides for valuing the secured claim of a creditor when the collateral is property in which the estate has an interest. Pennymac Holding, LLC is asserting a credible (in connection with the present motion) interest in the Property and that the Debtor or the estate do not have an interest in the Property. If a non-judicial foreclosure occurred, it may well be that Pennymac Holding, LLC is no longer a creditor in this case (at least under the claim secured by the Property) following the non-judicial foreclosure sale.

JANUARY 21, 2015 STATUS CONFERENCE