UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 2, 2017, at 11:00 a.m.

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1. **11-27845-E-11** **IVAN/MARETTA LEE**
15-2194 **BMV-3**
LEE ET AL V. CITY OF SACRAMENTO COMMUNITY

MOTION FOR JUDGMENT ON THE PLEADINGS
12-16-16 [138]

Final Ruling: No appearance at the February 2, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff and Defendant on December 16, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Judgment on the Pleadings has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Judgment on the Pleadings is granted, and judgment shall be entered for the named defendants City of Sacramento Community Development Department, Housing and Dangerous Building Division, and the City of Sacramento and against Ivan S. Lee and Maretta P. Lee, the Plaintiffs who are the Plan Administrators under the confirmed Chapter 11 Plan in Plaintiff's bankruptcy case (Bankr. E.D. Cal. 11-27845) on each and every claim for relief stated in the Second Amended Complaint.

OVERVIEW OF ADVERSARY PROCEEDING

This Adversary Proceeding was commenced on September 30, 2015 by Ivan and Maretta Lee, the revested Plan Administrator Debtors under their confirmed Chapter 11 Plan, ("Plaintiff-Plan Administrators"). The Original Complaint sought injunctive relief and a declaratory judgment that the confirmed Chapter 11 Plan required the defendant creditors to take real property collateral in satisfaction of their claims, that the creditors could not foreclose on the collateral, and the creditors were to transfer title to the collateral (which title is vested in the Plaintiff-Plan Administrators) from the Plaintiff-Plan Administrators to the creditors. Dckt. 1. The allegations centered around language in the confirmed Chapter 11 Plan which provides for the "surrender and abandonment," "surrender," and termination of the automatic stay with respect to the collateral. Plaintiff-Plan Administrators asserted that the defendants were in violation of the Chapter 11 Plan in their attempts to conduct non-judicial foreclosure sales on their collateral.

As identified in the Second Amended Complaint, at issue is whether Plaintiff-Plan Administrator is the owner of real property commonly known as 272 Christine Drive, Sacramento, California and 2323–2331 Grove Avenue, Sacramento, California (collectively "the Property"). As discussed in this ruling, the Plaintiff-Plan Administrator's claims against the City of Sacramento Community Development Department, Housing and Dangerous Building Division, and the City of Sacramento (collectively the "City Defendants") succeeds or fails on the legal effect of the confirmed Chapter 11 Plan in Plaintiff-Plan Administrator's bankruptcy case (Bankr. E.D. Cal. 11-27845).

First Amended Complaint

Defendant Bank of America, N.A. filed a Motion to Dismiss the Complaint, which was granted without prejudice. Order, Dckt. 28. On January 8, 2016, Plaintiff-Plan Administrators filed a First Amended Complaint ("FAC"), again alleging that defendants' actions to conduct non-judicial foreclosure sales were in violation of the Chapter 11 Plan and that defendants were required to transfer title from the Plaintiff-Plan Administrators to the creditors without conducting non-judicial foreclosure sales. Plaintiff-Plan Administrators further asserted that they were not responsible to the City of Sacramento for the properties that secured the creditors' claims, as the properties had been "surrendered and abandoned" and "surrendered" under the terms of the confirmed Chapter 11 Plan. FAC, Dckt. 34. FN.1.

FN.1. This contention of the Plaintiff-Plan Administrators is summarized in the January 15, 2016, Status Report they filed as:

> "8. Based on the facts stated in the First Amended Complaint, the pending adversary proceeding should proceed as against Bank of America, N.A., because (1) since Bank of America, N.A., was the creditor of the two properties that were surrendered and abandoned at the time Bank of America, N.A., was the creditor, Bank of America, N.A., violated the bankruptcy court confirmation of the Chapter 11 Plan surrendering and abandoning the two properties by assigning the loans to IndyMac and Shellpoint after the properties were surrendered and abandoned and (2) since Bank of America, N.A., was the creditor of the two properties that were surrendered and abandoned at the time Bank of America, N.A., was the creditor, **Bank of America, N.A., violated the bankruptcy court confirmation of the Chapter 11 Plan surrendering and**

abandoning the two property by not transferring the deeds of the properties from Plaintiffs to Bank of America, N.A.

9. There is no apparent dispute as to any material facts in this case.

10. Based on the absence of any relevant disputed material facts, if the parties do not execute a stipulation resolving this adversary proceeding, Plaintiffs intend to file a motion for summary judgment in this case **for the issuance of a judgment confirming Defendants' violation of the Court order approving the loan modification, injunctive relief,** and for the damages, attorneys fees and costs Plaintiffs have been forced to incur due to Defendants' actions in violation of the applicable Bankruptcy laws."

Status Report, Dckt. 40 (emphasis added).

On January 22, 2016, the City of Sacramento filed a Motion to Dismiss (Dckt. 45) and a Motion to Strike (Dckt. 50) the First Amended Complaint. Bank of America, N.A. filed a Motion to Dismiss (Dckt. 56) the First Amended Complaint. Pursuant to the stipulation of the parties, the above motions were dismissed without prejudice, and Plaintiff-Plan Administrators were to file a Second Amended Complaint.

Second Amended Complaint

The Second Amended Complaint was filed on March 14, 2016. Dckt. 92. In the Second Amended Complaint it is alleged that the court "did not direct" the Plan Administrators to execute deeds to transfer the property to be "surrendered and abandoned" and "surrendered" to the creditors. The Second Amended Complaint now alleges that Bank of America, N.A. failed to transfer the collateral by non-judicial foreclosure by a trustee (no longer contending that non-judicial foreclosure sales were barred by the confirmed Chapter 11 Plan). The Second Amended Complaint alleges that by not proceeding with non-judicial foreclosure sales the creditors are in violation of the Chapter 11 Plan. The Second Amended Complaint continues to allege that the transfers of the underlying claims between the original creditor and an assignee of the original creditor are a violation of the confirmed Chapter 11 Plan. The Second Amended Complaint seeks to "avoid" the transfer of the notes on which the claims are based from the original creditor to the assignee creditor.

The Second Amended Complaint resulted in an Answer, Counterclaim, and Cross Claim from the City of Sacramento. Dckt. 100. Bank of America, N.A. filed a Motion to Dismiss the Second Amended Complaint. Dckt. 98. That Motion was dismissed without prejudice (Dckt. 108) and the current Motion For Judgment on the Pleadings as to the meaning of the words "surrender and abandon" and "surrender" as used in the confirmed Chapter 11 Plan was filed.

The filing of an earlier Motion for Judgment on the Pleadings was addressed by the Parties at the May 18, 2016 Status Conference.

> "The determination of the legal effect of these provisions effect the rights and obligations of all parties to this Adversary Proceeding and a single determination of that legal question is necessary in this Adversary Proceeding. Therefore, the Parties agreed that Bank of America, N.A. would file a motion for judgment on the pleadings for the issue of the legal effect of confirming the plan which provides for the "surrender" and "surrender and abandonment" of Bank of American, N.A.'s collateral for satisfaction of the Bank's claim.
>
> Federal Rule of Civil Procedure 12(c) provides that after all pleadings have closed, a party may move for judgment on the pleadings. Though Bank of America, N.A. has not yet filed an answer to the Second Amended Complaint (the motion to dismiss having been filed), the parties agreed on the record to allow Bank of America, N.A. to file a motion for judgment on the pleadings on the issue of the legal effect of the provisions for the 'surrender' and 'surrender and abandon' provisions of the plan. The court concurs and so orders."

Civil Minutes, Dckt. 106.

REVIEW OF PRIOR MOTION FOR JUDGMENT ON THE PLEADINGS
Determination of Meaning of "Surrender and Abandon" and "Surrender"

Bank of America, N.A. filed a combined Notice of Motion and Motion for Judgment on the Pleadings on June 17, 2016. Dckt. 113. The Motion states the following grounds with particularity pursuant to Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, upon which the request for relief is based:

> Defendant BANK OF AMERICA, N.A. ("BANA" or "Defendant") will move the Court pursuant to Fed. R. Civ. P. 12(c) and the Court's Order of May 20, 2016 for a judgment as to the meaning of the terms "surrender" and "surrender and abandon" as used in the debtors' Chapter 11 Plan as follows . [sic]
>
> 1) The terms "surrender["] and "surrender and abandon" have the same meaning.
>
> 2) The terms "surrender["] and "surrender and abandon" mean that the debtors relinquish their rights to the subject properties and will make them available to the mortgage lenders and/or their servicers by not contesting foreclosure. These terms do not mean that the lenders/servicers are obligated to foreclose or to foreclose in any particular time frame or otherwise assume title to or possession of the properties. Further these terms do not constrain the lenders/servicers from transferring their interest in the mortgages secured by the properties or the rights to service those mortgages to third parties.

Dckt. 113. The Memorandum of Points and Authorities includes further "grounds," which are otherwise required to be stated in the Motion with particularity. While not complying with the requirements of Federal Rule of Civil Procedure 7(b) and Bankruptcy Rules of Procedure 7007 and 9014, Local Bankruptcy Rule

9004-1, and the Revised Guidelines for Preparation of Documents (which requires that the motion and the points and authorities be separate pleadings), in light of the history of this Adversary Proceeding, the stipulation of the parties to present issues to the court, the limited scope of the issue, and the ability of Plaintiff-Plan Administrators to present their Opposition, the court waived that failure to comply with the pleading rules.

The court granted the Motion for Judgment on the Pleadings and made the following findings binding on all parties in this Adversary Proceeding:

> The terms of the confirmed Chapter 11 Plan in Bankruptcy Case No. 11-27845, Ivan S. And Maretta P. Lee, Debtors, providing for **the "surrender" and the to "surrender and abandon" the collateral** as the treatment for the Classes 2d. and 2e. secured claim (11-27845, Dckt. 283) in the Plaintiff-Plan Administrators' Chapter 11 Bankruptcy Case **provides for the termination of any stay on the right to foreclose on the collateral, that the creditors holding such secured claims may foreclose on their respective collateral**, and that the payment for those claims will be through, if an when any may occur, non-judicial foreclosure sales by the respective creditors, including assignees of such creditors, holding such claims.
>
> Further, the court finds that these provisions and the confirmed Second Amended Chapter 11 Plan, with respect to the Class 2d. and 2e. secured claims, **do not transfer title of the collateral** to the creditors, **do not prohibit the creditors from foreclosing** on the collateral, **do not mandate the creditors to foreclose** on the collateral, **do not impose any mandatory or prohibitory injunctions on the creditors** with respect to their collateral, and **does not enjoin, stay, or prohibit the transfer of any of the claims**, including the security interest in the collateral for the claims provided for in Classes 2d. and 2e. of the confirmed Second Amended Chapter 11 Plan.

Dckt. 127 (emphasis added). The court incorporates herein its ruling on determining the effect of the above plan terms (Civil Minutes, Dckt. 127) and Order entered thereon (Dckt. 130).

RULING ON MOTION FOR JUDGMENT ON THE PLEADINGS, TREATING IT AS A MOTION FOR SUMMARY JUDGMENT

Applicable Law – Motion for Judgment on the Pleadings

On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the allegations of the non-moving party must be accepted as true, while the allegations of the moving party, which have been denied, are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1548 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.,* and *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) (quoting *Yanez v. United States*, 63 F.3d 870, 872 (9th Cir. 1995), cert. denied, U.S. , 136 L. Ed. 2d 684, 117 S. Ct. 746 (1997) ("A district court will render a 'judgment on the pleadings when

the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.'") While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations. *Id*. (*citing General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988)).

A motion for judgment on the pleadings based on Federal Rule of Civil Procedure 12(c) is a functional equivalent of a motion to dismiss under Federal Rule of Civil Procedure 12(b), requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Thus, for a complaint to withstand a Rule 12(c) motion for judgment on the pleadings, it must contain more detail than "bare assertions" that are "nothing more than a formulaic recitation of the elements" required for the claim. *Ashcroft v. Iqbal,* 556 U.S. 662, 681 (2009). Courts must draw upon their "experience and common sense" when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. *Id.* at 679. The factual content on the face of the complaint—not conclusory statements in the pleading—and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a Rule 12(c) motion. *See id.* at 677.

As discussed below, the key assertion by Plaintiff-Plan Administrator is that confirmation of the Chapter 11 Plan divested Plaintiff-Plan Administrator of title to the Property and that the conduct of the various defendants asserting that Plaintiff-Plan Administrator owns the Property is not only wrong, but wrongful actionable conduct.

Attached as Exhibit A to the Second Amended Complaint is a copy of the order confirming the Chapter 11 Plan and the Chapter 11 Plan itself. It is the legal effect of provisions of this Chapter 11 Plan that Plaintiff-Plan Administrator contends worked to transfer title from, and responsibility for, the Property from Plaintiff-Plan Administrator to creditors. This Chapter 11 Plan is included in the pleadings before the court upon which judgment is requested. The Chapter 11 Plan, and legal effect thereof, is considered in the court's ruling on the Motion for Judgment on the Pleadings. *Northern Ind. Gun & Outdoor Shows v. City of S. Bend*, 163 F.3d 449, 452–53 (7th Cir. 1998).

This Adversary Proceeding has traveled a different path than the standard litigation. After several amended complaints and changing of theories by Plaintiff-Plan Administrator (in the original complaint it was alleged that the Chapter 11 Plan was violated by the creditors attempting to foreclose on the Property, and in the later complaint it was alleged that creditor had violated the Chapter 11 Plan by not foreclosing), the parties and court focused on the foundational issue in dispute—effect of the Chapter 11 Plan provisions providing for the Plaintiff-Plan Administrator to "surrender" and "surrender and abandon" the Property to creditors having claims secured by it. The Parties agreed to having that legal issue, the effect of those "surrender" and "surrender and abandon" plan terms being determined before proceeding with further litigation. Such was done, and the court had determined the legal effect of the confirmed Chapter 11 Plan. There were no factual issues in dispute, just the legal effect of the plan terms.

Review of Arguments and Authorities Presented By the Parties

Defendants City of Sacramento Community Development Department, House and Dangerous Building Division and City of Sacramento ("City Defendants") filed this Motion on December 16, 2016. Dckt. 138. They argue that "the Court has already adjudicated, as law of the case, that the terms of Plaintiffs' Chapter 11 plan do not render anyone other [than] Debtor and Plaintiff Maretta P. Lee the owner of 2323 Grove Avenue, Sacramento ("Grove Avenue property"), California." *Id.* Also they argue that record title to the property never changed, which means Plaintiff-Plan Administrator remained owner of the property subject to legal obligations.

As additional and alternative grounds, Defendants assert that they cannot violate a discharge or plan injunction when exercising police powers, such as filing a complaint in state court. They also argue that each of Plaintiff-Plan Administrator's claims fail as a matter of law because they do not establish wrongdoing, an actual controversy, a violation of the Chapter 11 Plan, and any transfer to or from the City of Sacramento that could be a fraudulent transfer.

Defendants City of Sacramento Community Development Department, House and Dangerous Building Division and City of Sacramento request judgment in their favor as to all causes of action in Plaintiff-Plan Administrator's Second Amended Complaint.

Plaintiff-Plan Administrators assert no opposition to the Motion.

DISCUSSION

The court has determined in this Adversary Proceeding the legal effect of the "surrender" and "surrender and abandon" terms of the confirmed Chapter 11 Plan. The court has previously determined that the "surrender" and "surrender and abandon" terms of the confirmed Chapter 11 Plan did not transfer title from or defease Plaintiff-Plan Administrators of title to the Property.

The legal effect of those plan terms having been determined, the court turns to the claims asserted against the City Defendants in the Second Amended Complaint:

FIRST CLAIM FOR RELIEF—Injunctive Relief

The Second Amended Complaint alleges that the City of Sacramento is improperly attempting to enforce the zoning and other ordinances concerning the use and condition of the Property. Exhibits 2 and 3 to the Second Amended Complaint are an Order Imposing an Administrative Penalty in the amount of $2,500.00 and an Order Imposing Monitoring Fees in the amount of $150.00, both of which are dated July 14, 2015. Dckt. 93 at 27–30. Both related to the real property commonly known as 8678 Butterbrickle Ct., Elk Grove, California—the Property which is the subject of the "surrender" and "surrender and abandon" terms in the confirmed Chapter 11 Plan.

Further, the City Defendants commenced a lawsuit, filed August 2015, concerning the Property. A copy of that state court complaint is filed as Exhibit 4 to the Second Amended Complaint. Dckt. 93 at

31–43. That state court complaint asserts claims against Maretta Dunigan aka Maretta Lee, one of the Plaintiff-Plan Administrators, as the owner of the Property, for: (1) Public Nuisance (Cal. Civ. §§ 3479, 3480), (2) Dangerous Building (Sac. City Code §§ 8.100 et seq.), (3) Substandard Housing (Sac. City Code §§ 8.100 et seq.), and (4) General Blight (Sac. City Code §§ 8.04 et seq.).

The First Claim for Relief asserts that the City Defendants should be enjoined because Plaintiff-Plan Administrator is not the owner of the property, based on Plaintiff-Plan Administrator's interpretation of the "surrender" and "surrender and abandon" terms of the confirmed Chapter 11 Plan. As the court has previously determined, the assertion that confirmation of the Chapter 11 Plan defeased Plaintiff-Plan Administrator Maretta Lee of title to the Property and transferred title to the creditor is incorrect.

Judgment is granted the City Defendants for all claims asserted in the First Claim for Relief, and against Plaintiff-Plan Administrator.

SECOND CLAIM FOR RELIEF—Declaratory Relief

The Second Claim for Relief seeks a declaration of the rights and duties of Plaintiff-Plan Administrator under the confirmed Chapter 11 Plan and a determination of the effect of the "surrender" and "surrender and abandon" terms of the confirmed Chapter 11 Plan. While not necessarily "declaratory relief," this claim sounds more in the nature of "quiet title" and a request for determination of who holds title to, and is responsible for, the Property.

The court has determined that confirmation of the Chapter 11 Plan did not transfer title from Plaintiff-Plan Administrator, nor did it place title in, or place an obligation to foreclose or transfer title to, any creditors. Plaintiff-Plan Administrator continue in ownership of the Property post-confirmation.

Judgement is granted to the City Defendants determining that title to the Property was not transferred from the Plaintiff-Plan Administrators by confirmation of the Chapter 11 Plan.

THIRD CLAIM FOR RELIEF—Violation of Chapter 11 Plan

In the Third Claim for Relief it is asserted that Plaintiff-Plan Administrator does "not have a valid lien or interest in the surrendered properties confirmed by the bankruptcy court in the Chapter 11 Plan." Second Amended Complaint, ¶ 45. It is further asserted that the confirmed Chapter 11 Plan bound Bank of America, N.A. to transfer title to the Property. It is asserted that the City Defendants are in violation of the Plan because they do not acknowledge that Bank of America, N.A. was to transfer title to the Property and that Plaintiff-Plan Administrator does not hold title to the Property. It is asserted that the City Defendants are in violation of the confirmed Chapter 11 Plan because they contend that Plaintiff-Plan Administrator is still the owner of the Property.

The court has determined that under the confirmed Chapter 11 Plan, Plaintiff-Plan Administrator continued to be the owner of the Property. The confirmation of the Plan with the "surrender" and "surrender and abandon" provisions did not transfer title to the property or require the creditors to foreclose or transfer title to the Property.

Judgment is granted to the City Defendants, and against Plaintiff-Plan Administrator on all claims asserted in the Third Claim for Relief.

FOURTH CLAIM FOR RELIEF—Avoidance of Actual Fraudulent Transfer of Surrendered Properties and Lawsuit Involving Surrendered Properties (11 U.S.C. § 548)

In this Fourth Claim for Relief, it is asserted that the City Defendants filed the state court lawsuit knowing that the Property had been surrendered by confirmation of the Chapter 11 Plan and that the contention that Plaintiff-Plan Administrator was the owner was false. It is further asserted that in filing the state court lawsuit the City Defendants engaged in willful and intentional conduct, in reckless disregard of the rights of Plaintiff-Plan Administrators. It is further asserted that this was malicious conduct because the City Defendants "knew" that Plaintiff-Plan Administrators did not own the Property—it having been transferred by confirmation of the Chapter 11 Plan.

Again, as with the other Claims for Relief, the Fourth Claim for Relief is based on a faulty conclusion that the confirmation of the Chapter 11 Plan worked a transfer of the Property from Plaintiff-Plan Administrator to the creditors. The court has determined that such is not the effect of the Plan terms .

Judgement is granted for City Defendants and against Plaintiff-Plan Administrator on all claims asserted in the Fourth Claim for Relief.

JUDGMENT FOR CITY DEFENDANTS

Upon consideration of the Complaint and accepting as true all allegations therein, with the exception of the determination of the court that the confirmed Chapter 11 Plan did not transfer title for the Property out of Plaintiff-Plan Administrator to any creditor or other person, Plaintiff-Plan Administrator's case is built on a contention that merely by confirming the Chapter 11 Plan they forced the transfer of the Property to creditors or some other person. That is incorrect. The case being built on that faulty foundation, all claims for relief by Plaintiff-Plan Administrator fail.

Based on the pleadings filed, including the Chapter 11 Plan attached as an exhibit, the court concludes that as a matter of law judgment for City Defendants is proper. There is no material issue of fact in dispute, only the legal effect of the confirmed Chapter 11 Plan. The legal effect of the confirmed Chapter 11 Plan cannot be "reconstructed," and there are no set of facts alleged by which judgment may be granted against the City Defendants.

The court having adjudicated the relevant matters to this Motion in a prior Motion for Judgment on the Pleadings, and Plaintiff-Plan Administrators having not presented any new (or at all) opposition, the Motion is granted.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Judgment of the Pleadings filed by Defendants City of Sacramento Community Development Department, Housing and Dangerous Building

Division, and the City of Sacramento having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and judgment shall be entered for the named defendants City of Sacramento Community Development Department, Housing and Dangerous Building Division, and the City of Sacramento and against Ivan S. Lee and Maretta P. Lee, the Plaintiffs who are the Plan Administrators under the confirmed Chapter 11 Plan in Plaintiff's bankruptcy case (Bankr. E.D. Cal. 11-27845) on each and every claim for relief stated in the Second Amended Complaint.

In light of the cross and counterclaims pending, the court does not enter a separate judgment for these Defendants at this time. If these Defendants believe that proper grounds exist for the entry of a separate judgment for them in this Adversary Proceeding, such request may be presented to the court by notice motion seeking such pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054.