

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 10, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	15-29406-D-7	STEVEN JANICE	MOTION FOR RELIEF FROM
	WFM-1		AUTOMATIC STAY
	CITIMORTGAGE, INC. VS.		1-7-16 [16]

Final ruling:

This matter is resolved without oral argument. This is Citimortgage, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

2. 15-28708-D-7 PAMELA WILLIAMS
15-2233 KGH-3
WILLIAMS V. WILMINGTON SAVINGS
FUND SOCIETY, FSB ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING AND/OR MOTION FOR A
MORE DEFINITE STATEMENT
1-8-16 [6]

Tentative ruling:

This is the motion of defendant Wilmington Savings Fund Society, FSB to dismiss the complaint in this adversary proceeding for failure to plead fraud with particularity, lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, and failure to join necessary parties, or in the alternative, for a more definite statement. The plaintiff has filed opposition. For the following reasons, the complaint will be dismissed.

By way of her complaint, the plaintiff, who is the debtor in the underlying chapter 7 case in which this adversary proceeding is pending, seeks actual and punitive damages, civil penalties, injunctive relief, and other relief against a variety of named defendants and alleged "Doe" defendants.¹ These remedies are sought based on alleged predatory lending practices, violations of the Truth in Lending Act, and other conduct in connection with a loan secured by a deed of trust against the plaintiff's residence and a pending foreclosure proceeding.²

Because the plaintiff has failed to demonstrate that she has standing to pursue the claims she purports to state in the complaint, the complaint will be dismissed. Any claims the plaintiff may have against the defendant (or against any of the other named defendants or the so-called "Doe" defendants) are property of the bankruptcy estate in the plaintiff's chapter 7 case and the trustee has not abandoned those claims back to the plaintiff.³ A debtor's causes of action become property of his or her bankruptcy estate. Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). As such, the debtor has no standing to pursue them. Dunmore v. United States, 358 F.3d 1107, 1112 (9th Cir. 2004).

"Standing is a jurisdictional requirement which is open to review at all stages of litigation. . . . The burden to establish standing remains with the party claiming that standing exists." Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (9th Cir. BAP 1997). As standing is an element of subject matter jurisdiction (Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1121-22 (9th Cir. 2010)), it is an issue the court may raise on its own. "Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000), citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982). See also Fed. R. Civ. P. 12(h) (3), incorporated herein by Fed. R. Bankr. P. 7012(b) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). The court concludes in this case that because the plaintiff has no standing to pursue the claims, this court has no jurisdiction to consider them.⁴ Therefore, the motion will be granted and the complaint will be dismissed.

The plaintiff's opposition to the motion is an almost verbatim copy of her complaint. The only place she refers to the defendant's motion is in the introduction, where she states that "for the reasons set forth below, each and every cause of action set forth in Plaintiff's complaint is properly plead and Defendants'

boiler-plate demurrer should be overruled in its entirety." Opp. at 5:6-9 [page 1 of the text]. She adds that "if the Court finds that one or more causes of action are not properly plead, Plaintiffs seek leave of court to amend the complaint to cure any defects or technical deficiencies." Id. at 5:9-11.

The problem with the plaintiff's complaint is not a technical deficiency or a defect in the pleading of one or more causes of action.⁵ It is a fundamental jurisdictional defect in the form of the plaintiff's lack of standing to pursue any of the claims. As such, it is not a defect that can be cured by amendment. Although amendments to pleadings are to be liberally allowed,⁶ where an amendment would be futile, leave to amend will be denied. Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1051 (9th Cir. 2008). As the claims the plaintiff purports to state in her complaint are claims that belong to the bankruptcy estate, the court finds that amendment of the complaint would be futile, and leave to amend will be denied.

The court will hear the matter.

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- 1 The use of "Doe" defendants is disfavored in federal court. Smith v. HSBC Bank of USA, 2011 U.S. Dist. LEXIS 44820, *10-11 (E.D. Cal. 2011)). However, since the outcome of this adversary proceeding depends on the issue of the plaintiff's standing, the plaintiff's naming of "Doe" defendants is irrelevant.
 - 2 The plaintiff received a chapter 7 discharge in 2013 in a case commenced in 2012, Case No. 12-38740 in this court. Thus, she is not eligible for a discharge in this case (§ 727(a)(8)), and it appears her main purpose, if not the only one, for filing this chapter 7 case was to stay the foreclosure, first by way of the automatic stay and now by this adversary proceeding. (According to the defendant's motion for relief from stay, a notice of default was recorded on July 9, 2015 and a notice of sale was published on October 21, 2015. The debtor filed her petition commencing the case on November 9, 2015. She filed opposition to the defendant's motion for relief from stay on December 8, 2015 and filed her complaint commencing this adversary proceeding the same day.)
 - 3 The case is still open; thus, abandonment pursuant to § 554(c) has not come into play. However, even if the case were closed, the plaintiff's claims against the defendant would not have been abandoned to her because she failed to list any claims against the defendant (or anyone) on her bankruptcy schedules. See § 554(c) and (d).
 - 4 The complaint states that the plaintiff brings the action "individually and on behalf of the general public of the United States Government and specifically the citizens of the State of California" Compl. at 3:20-21. The claims set forth in the complaint do not arise under the Bankruptcy Code, do not arise in a case under the Bankruptcy Code, and are related to a case under the Bankruptcy Code only insofar as they are claims of the named plaintiff, who is the debtor in the pending bankruptcy case. See 28 U.S.C. §§ 1334(b), 157(a); Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009); Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995); In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984); Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 490 (9th Cir. BAP 2008). Thus, as to any other plaintiff, this court has no jurisdiction to consider the claims, and as to those other plaintiffs, the complaint must be dismissed.

- 5 It is not necessary for present purposes that the court examine the various causes of action to determine whether they are properly pled, and the court makes no findings in that regard.
- 6 See Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a)(2); Magno v. Rigsby (In re Magno), 216 B.R. 34, 38 (9th Cir. BAP 1997) (citation omitted).

3. 15-24611-D-7 MICHAEL/SUSAN PAGE MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
DEUTSCHE BANK TRUST COMPANY 1-6-16 [40]
AMERICAS VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtors received their discharge on October 20, 2016 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

4. 15-24611-D-7 MICHAEL/SUSAN PAGE MOTION TO ABANDON
MDM-1 1-11-16 [47]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to abandon real and personal property and the trustee has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

5. 11-46117-D-7 RUBEN/NANCY FERNANDEZ ORDER TO SHOW CAUSE - FAILURE
12-2024 TO PAY FEES
RENTRAK CORPORATION V. 1-12-16 [75]
FERNANDEZ ET AL

ADV. CLOSED: 09/24/2012

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause. No appearance is necessary.

6. 15-28920-D-7 JANE RIVERS MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 1-4-16 [21]

7. 15-29828-D-7 JUAN CARLOS RIVERA GAONA MOTION TO COMPEL ABANDONMENT
LCL-1 AND SUZETTE MARIE RIVERA 1-4-16 [5]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

8. 15-25034-D-7 ANDREW WONG MOTION TO AVOID LIEN OF GMAC,
RJ-7 LLC
1-4-16 [66]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

9. 14-25148-D-11 HENRY TOSTA CONTINUED MOTION TO COMPROMISE
MF-34 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, CENTRAL VALLEY REGION
12-16-15 [556]

10. 14-25148-D-11 HENRY TOSTA MOTION FOR COMPENSATION BY THE
TH-3 LAW OFFICE OF TERPSTRA
HENDERSON FOR THOMAS H.
TERPSTRA, SPECIAL COUNSEL(S)
1-11-16 [558]

Tentative ruling:

This is the application of Terpstra Henderson (the "Applicant") for a third interim allowance of compensation as counsel for the debtors. The court has a preliminary concern. The Applicant filed a second and final application in August of 2015, apparently believing it would be their final application in this case. When the present application was filed (entitled "Third Interim Application"), the proofs of service from the "second and final" application were apparently used as templates, with the result that the proofs of service evidence service of the second and final application and related documents and not the third interim. The Applicant will need to file corrected proofs of service for the court to consider this application. The court will hear the matter.

11. 15-29548-D-7 ELTON HALLEY MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
DITECH FINANCIAL, LLC VS. FOR ADEQUATE PROTECTION
12-31-15 [16]

12. 14-20064-D-7 GLENN GREGO MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 12-31-15 [591]
COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

13. 15-27270-D-7 JOHN/CLASSIC LANE ORDER TO SHOW CAUSE - FAILURE
15-2253 TO PAY FEES
GRIMES V. LANE ET AL 1-11-16 [11]

14. 15-27870-D-7 DANIEL/MICHELE FRYE MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 12-30-15 [18]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

15. 15-29971-D-7 ELIZABETH SULLIVAN MOTION TO AVOID LIEN OF
SNM-1 CITIBANK, N.A.
1-4-16 [10]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

16. 15-29971-D-7 ELIZABETH SULLIVAN MOTION TO AVOID LIEN OF
SNM-2 CITIBANK, N.A.
1-4-16 [5]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

17. 16-20084-D-7 MARY TRACY

ORDER TO SHOW CAUSE - FAILURE
TO FILE DOCUMENTS
1-8-16 [28]

Final ruling:

The debtor has failed to file the information required under Bankruptcy Code §521(a)(1) within 45 days of the petition date. The consequence for failing to file this information is automatic dismissal effective on the 46th day following the petition date (the 46th day is January 3, 2016, a Sunday). Accordingly, the court will issue a minute order confirming that the case was automatically dismissed on January 4, 2016 pursuant to section 521(i) of the Bankruptcy Code. This matter is therefore removed from calendar as moot. No appearance is necessary.

18. 13-24087-D-7 LEO UNGUI AND VALARIE
SCB-5 HARPER-UNGUI

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LEE S. ATKINSON
1-13-16 [69]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

19. 13-24087-D-7 LEO UNGUI AND VALARIE
SCB-6 HARPER-UNGUI

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BLASINGAME,
BURCH, GARRARD & ASHLEY, PC
SPECIAL COUNSEL(S)
1-13-16 [76]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

20. 15-91087-D-11 SPYGLASS EQUITIES, INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-10-15 [1]

This matter will not be called before 10:30 a.m.

21. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
NII-1 AUTOMATIC STAY
ACCESS INVESTMENT, LLC VS. 1-12-16 [61]

This matter will not be called before 10:30 a.m.

22. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
NII-2 AUTOMATIC STAY
ANCHOR FUND, LLC VS. 1-12-16 [47]

This matter will not be called before 10:30 a.m.

23. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
NII-3 AUTOMATIC STAY
ANCHOR LOANS, INC. VS. 1-12-16 [54]

This matter will not be called before 10:30 a.m.

24. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
NII-4 AUTOMATIC STAY
ANCHOR LOANS, INC. VS. 1-12-16 [75]

This matter will not be called before 10:30 a.m.

25. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
NII-5 AUTOMATIC STAY
ANCHOR LOANS, INC. VS. 1-12-16 [68]

This matter will not be called before 10:30 a.m.

26. 12-27903-D-7 VICKI JIVIDEN MOTION TO AVOID LIEN OF
FF-2 CITIBANK, N.A.
1-26-16 [22]

27. 15-27611-D-7 TERRY/VERA ADAMS MOTION FOR RELIEF FROM
USA-1 AUTOMATIC STAY
UNITED STATES DEPT. OF 1-8-16 [31]
AGRICULTURE/FSA VS.

28. 15-28717-D-7 GILBERT/LISA ESCALANTE CONTINUED MOTION FOR RELIEF
CJO-1 FROM AUTOMATIC STAY
FEDERAL NATIONAL MORTGAGE 12-24-15 [25]
ASSOCIATION VS.

Tentative ruling:

The hearing on this motion was continued to allow the moving party to serve the newly appointment Chapter 7 trustee with the moving papers and notice of continued hearing. The Chapter 7 trustee was served with the initial moving papers, but no notice of continued hearing was filed; thus, it appears that the Chapter 7 trustee has not received notice of this continued hearing date. As a result the motion will be denied, or in the alternative, the court will continue this matter one more time to allow the moving party to correct this notice and service defect. The court will hear the matter.

29. 16-20121-D-7 ELIZABETH BARRETT MOTION TO COMPEL ABANDONMENT
RDS-1 1-22-16 [10]

30. 16-20121-D-7 ELIZABETH BARRETT MOTION TO COMPEL ABANDONMENT
RDS-2 1-22-16 [16]

31. 16-20221-D-7 WESLEY COX MOTION FOR RELIEF FROM
JCB-1 AUTOMATIC STAY
CARITAS ACQUISITIONS I, LLC 1-27-16 [21]
VS.

32. 15-28060-D-11 ACADEMY OF PERSONALIZED CONTINUED MOTION FOR
RAL-2 LEARNING, INC. AUTHORIZATION TO ASSUME
UNEXPIRED LEASE OF REAL
PROPERTY
12-16-15 [149]
33. 15-28060-D-11 ACADEMY OF PERSONALIZED CONTINUED MOTION FOR
RAL-3 LEARNING, INC. AUTHORIZATION TO ASSUME
EXECUTORY CONTRACT
12-16-15 [158]
34. 15-29971-D-7 ELIZABETH SULLIVAN CONTINUED MOTION TO COMPEL
SNM-3 ABANDONMENT
1-4-16 [15]
35. 15-28785-D-7 CHANDRA BOMBEN MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY, MOTION FOR
SAFEAMERICA CREDIT UNION VS. RELIEF FROM CO-DEBTOR STAY OR
MOTION FOR ADEQUATE PROTECTION
1-18-16 [14]

36. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
THE LEGACY GROUP, INC. VS. 1-27-16 [91]

This matter will not be called before 10:30 a.m.

37. 15-91087-D-11 SPYGLASS EQUITIES, INC. MOTION FOR RELIEF FROM
APN-2 AUTOMATIC STAY
THE LEGACY GROUP, INC. VS. 1-26-16 [84]

This matter will not be called before 10:30 a.m.

38. 15-23888-D-9 COMMUNITY FACILITIES MOTION TO CLOSE BANKRUPTCY CASE
AM-8 DISTRICT NO. 1990-1 1-27-16 [138]

39. 15-29690-D-7 PULEGA GRAY MOTION FOR RELIEF FROM
BRL-1 AUTOMATIC STAY
KEITH SLIPPER VS. 1-25-16 [31]

40. 15-29890-D-11 GRAIL SEMICONDUCTOR MOTION TO REJECT EMPLOYMENT
FWP-5 AGREEMENT WITH RONALD W. HOFER
1-27-16 [61]
41. 15-29890-D-11 GRAIL SEMICONDUCTOR MOTION TO REJECT EMPLOYMENT
FWP-6 AGREEMENT WITH BRAD A. WOODS
1-27-16 [66]
42. 16-20098-D-7 CHARLES EIERS MOTION TO CONFIRM TERMINATION
BN-1 OR ABSENCE OF STAY
THE GOLDEN 1 CREDIT UNION 1-20-16 [19]
VS.