UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 9, 2017, at 11:00 a.m.

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1. **16-27723-E-13** **DARRYL/BRIDGETTE MERRITT** **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
16-2254 **UST-1**
U.S. TRUSTEE V. MERRITT ET AL **2-9-17 [12]**

Final Ruling: No appearance at the March 9, 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 Defendant, Chapter 13 Trustee, on February 9, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment 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 Entry of Default Judgment is granted.

The United States Trustee ("Plaintiff") filed the instant Motion for Default Judgment on February 9, 2017. Dckt. 12. Plaintiff seeks an entry of default judgment for injunctive relief against Darryl Merritt and Bridgette Merritt ("Defendant") in the instant Adversary Proceeding No. 16-02254.

The instant Adversary Proceeding was commenced on December 14, 2016. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on December 15, 2016. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 6.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on January 23, 2017. Dckt. 10 &11.

SUMMARY OF COMPLAINT

Plaintiff filed a complaint for injunctive relief against Defendant. The Complaint alleges that Defendant has filed a series of fifteen noncompliant bankruptcy cases since 2009 that abuse the Bankruptcy Code.

Plaintiff requests that the court enjoin Defendant (jointly and individually) from filing another bankruptcy case for a period of five years, unless authorized after a pre-filing review by the chief bankruptcy judge in the district in which Defendant desires to file a bankruptcy case.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)).; *In re Kubick*, 171 B.R. at 661–62.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee,* 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

Applying these factors, the court finds that the Plaintiff will be prejudiced if default judgment for injunctive relief is not entered against Defendant to prevent the filing of further abusive bankruptcy petitions. Defendant has filed fifteen petitions and has not presented any reason to the court to believe that filings will stop after any future case dismissals. As the Plaintiff alleges in the Complaint, monetary sanctions would be insufficient to make Defendant stop presenting abusive filings, only injunctive relief at this point will have an impact upon Defendant. Defendant cannot dispute the U.S. Trustee's records of the cases filed by Defendant that were almost all dismissed for failure of some kind, whether failure to file documents, to pay fees, to make plan payments, or to file and serve confirmation motions.

The court finds that the Complaint is sufficient, and the request for relief requested therein is meritorious. It has not been shown to the court that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant has been given several opportunities to respond, and there is no indication that Defendant has a meritorious defense or disputes Plaintiff's right to judgment in this Adversary Proceeding. The court finds it necessary and proper for the entry of a default judgment against the Defendant.

The court grants the default judgment in favor of Plaintiff and against Defendant Darryl Merritt and Bridgette Merritt.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Default Judgment filed by Plaintiff United States Trustee 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 for Entry of Default Judgment is granted. The court shall enter judgment determining that Darryl Merritt and Bridgette Merritt ("Defendant"), and each of them, are enjoined from filing, individually or jointly, another bankruptcy case in any district for a period of five years beginning March 9, 2017, without first seeking and receiving the authorization of the chief bankruptcy judge of the district in which he, she, or they wish to file a bankruptcy petition.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Bankruptcy Court, and deputy clerks operating at the discretion and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Defendant during the five-year period if there is not prior authorization from the chief bankruptcy judge of the corresponding district.

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order, which judgment includes the express authorization to reject a presented filing by either Defendant for which there is not a prior authorization from the chief bankruptcy judge in that District.

2. **16-26043-E-13** **SUSAN GEDNEY** **MOTION FOR PRELIMINARY INJUNCTION**
17-2006 **TAG-2**
GEDNEY V. WRIGHT ET AL **2-22-17 [10]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Defendants on February 22, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion for Preliminary Injunction 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion for Preliminary Injunction is xxxxx.

Susan Gedney ("Plaintiff-Debtor") filed the instant Motion for Preliminary Injunction on February 22, 2017. Dckt. 10. Plaintiff-Debtor seeks a preliminary injunction to enjoin Sarah Wright, Gabriel Witkin, and Tenth Hall, Inc. ("Defendants") from continuing with the listing of Plaintiff-Debtor's real property commonly known as 16560 Leafwood Court, Meadow Vista, California, to be sold through the Chapter 13 bankruptcy case and requiring Defendants to execute a Cancellation of Listing Agreement.

FACTUAL BACKGROUND AND ALLEGATIONS

Plaintiff-Debtor filed a Chapter 13 bankruptcy case on September 9, 2016. Case No. 16-26043.

On January 9, 2017, Plaintiff-Debtor filed a motion in the bankruptcy case seeking a declaratory judgment holding that the Real Estate Listing Agreement with Realtor Sarah Wright and Broker Gabriel Witkin is void. That Motion contained the following grounds:

A. On the morning of September 9, 2016, the same day Plaintiff-Debtor filed the bankruptcy case, Plaintiff-Debtor signed a Real Estate Listing Agreement with realtor Sarah Wright and broker Gabriel Witkin for the sale of Plaintiff-Debtor's real property commonly known as 16560 Leafwood Court, Meadow Vista, California.

B. The Listing Agreement was for a period of one year.

C. Neither the realtor nor the broker appeared at Plaintiff-Debtor's open house.

D. Plaintiff-Debtor received complaints from other realtors and buyers' agents that Sarah Wright was not responding to phone calls or communicating in any way with potential buyers.

E. On October 26, 2016, Plaintiff-Debtor received from her counsel a Declaration in Support of Application to Employ Realtor Sarah Wright.

F. A Declaration for Sarah Wright was also provided for signature.

G. Plaintiff-Debtor e-mailed the additional Declaration to Sarah Wright for her signature.

H. On October 27, 2016, the realtor asked if she could sign the Declaration electronically.

I. Plaintiff-Debtor conferred with her counsel and informed the realtor that the Declaration needed to be signed physically.

J. The realtor did not return the Declaration with a physical signature and was unresponsive to requests for it.

K. Plaintiff-Debtor believed that the realtor and the broker had failed to provide services and communication, and she sought to terminate the Listing Agreement by requesting that the realtor and broker sign a Cancellation of Listing Agreement.

L. Neither the realtor nor the broker signed the Cancellation of Listing Agreement, and Plaintiff-Debtor asserted that they both indicated that they expected to be paid their full commissions upon sale of Plaintiff-Debtor's property.

M. Plaintiff-Debtor's property had not been sold.

At the January 24, 2017 hearing in Plaintiff-Debtor's bankruptcy case, the court denied without prejudice the motion for declaratory relief because it had not been sought through an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(9). On the same day as the hearing, Plaintiff-Debtor

filed the instant Adversary Proceeding alleging the same grounds as were presented to the court improperly at the January 24, 2017 hearing. Plaintiff-Debtor alleges seven causes of action against Defendants: (1) violation of 11 U.S.C. § 327(a); (2) violation of 11 U.S.C. § 330; (3) breach of fiduciary duties of care, integrity, honesty, and loyalty; (4) violation of 11 U.S.C. § 328; (5) violation of 11 U.S.C. § 362; (6) an executory contract will be rejected; and (7) an award of attorneys' fees.

APPLICABLE LAW

The Ninth Circuit sets forth the following standard for determining whether a court should grant an injunction:

> [Movant must] demonstrate either a combination of probability of success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in [its] favor. These formulations are not different tests but represent two points on a sliding scale in which the degree of irreparable harm increases as the probability of success on the merits decreases.

Associated Gen. Contractors of California, Inc. v. Coalition for Econ. Equal., 950 F.2d 1401, 1410 (9th Cir. 1991) (quotations and internal citations omitted).

In a subsequent ruling, a Ninth Circuit panel expressly disapproved prior Ninth Circuit decisions suggesting a lesser, sliding scale standard than the plaintiff being likely to prevail both on the merits and suffer irreparable harm. *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

Another Ninth Circuit Panel determined that a sliding scale standard remains under the Supreme Court's *Winter* decision, however. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). Joining the Second and Seventh Circuits in interpreting *Winter*, the Ninth Circuit Panel ruled that a "serious questions" version of the sliding scale test for preliminary injunctions remains viable. In the Ninth Circuit, "A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Id.* at 1134–35 (quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc)). The plaintiff must also establish the other two prongs for the issuance of a preliminary injunction—that the balance of the equities tips in his favor, and that an injunction is in the public interest.

MOTION

Plaintiff-Debtor argues in the Motion that she will suffer irreparable damage if the court does not issue a preliminary injunction because Plaintiff-Debtor "is unable to list her house for sale or comply with the terms of her proposed Chapter 13 Plan while Defendants control the MLS listing of [Plaintiff-Debtor's] real property." In turn, she will be unable to confirm a Chapter 13 if she cannot list her real property. Plaintiff argues that the worst case scenario without an injunction is that her house will be foreclosed upon and sold at auction.

Regarding likelihood of success on the merits, Plaintiff-Debtor asserts six arguments:

A. The court has not approved a professional realtor in Plaintiff-Debtor's bankruptcy case pursuant to 11 U.S.C. § 327(a);

B. The court has not approved compensation of a professional realtor in Plaintiff-Debtor's bankruptcy case pursuant to 11 U.S.C. § 330;

C. Defendants materially breached duties under the listing agreement, which entitles Plaintiff-Debtor to rescission as a valid remedy;

D. The court can deny compensation of professional employed in a bankruptcy case pursuant to 11 U.S.C. § 328.

E. Defendants are creditors in Plaintiff-Debtor's bankruptcy case, which bars them from attempting to collect any pre-petition debts pursuant to 11 U.S.C. § 362; and

F. The listing agreement is an executory contract that will be rejected upon confirmation of Plaintiff-Debtor's Chapter 13 plan.

Plaintiff-Debtor argues that there will be less harm resulting for Defendants if they are enjoined than there will be for Plaintiff-Debtor without an injunction. Plaintiff-Debtor states that if an injunction is issued but Plaintiff-Debtor is unsuccessful with this Adversary Proceeding, then Defendants' injuries will be monetary (i.e., lost commission from sale of real property). Plaintiff-Debtor's alleged harm, however, is damage to her credit and losing her house—injuries that cannot be remedied with money damages. Plaintiff-Debtor argues that her harm outweighs Defendants' harm because theirs is only monetary, while hers is non-monetary.

Plaintiff-Debtor submits that "the recent history of the housing market and foreclosure problems" demonstrates a public interest in favor of granting the Motion.

DISCUSSION

In applying the Ninth Circuit standard as to whether a preliminary injunction is proper, the court must determine whether the Plaintiff-Debtor demonstrated that there are serious questions going to the merits and that the balance of hardships tip sharply in the Plaintiff-Debtor's favor.

Recently, the court was presented with a Motion for an Extension of Time to File Responsive Pleadings to this Motion. In denying the request, the court noted that it was filed by one of the individual defendants, purporting to act for the other individual defendant and a corporate defendant. Order, Dckt. 16. However, the court did order that Defendants could present their opposition, if any, at the hearing on this Motion.

The court also notes that none of the Defendants have filed an answer or other responsive pleading to the Amended Complaint as of the court's March 6, 2017 review of the Docket. Requests for entry of default have been filed. Dckts. 19, 21, 23.

The Motion requests some relief that can be ordered by preliminary injunction, and some that cannot be ordered. First, the Plaintiff-Debtor requests that the Defendants be ordered to release the MLS Listing of Plaintiff-Debtor's real property.

No recommendation is made by Plaintiff-Debtor for the bond that would be appropriate in the granting of such relief. Fed. R. Civ. P. 65(c), Fed. R. Civ. P. 7065. Though Federal Rule of Civil Procedure 7065 authorizes the court to waive the posting of a bond, such waiver is not automatic.

It is not disputed that the Real Estate Listing Agreement was signed prior to the commencement of this bankruptcy case (approximately six hours). Motion, p. 2:10–13; Dckt. 10. The Parties have not addressed the status of such pre-petition contract in the bankruptcy cases. 11 U.S.C. § 365 applies to leases and executory contracts. Such "executory contracts" are subject to rejection pursuant to 11 U.S.C. § 365. As discussed by the Ninth Circuit Court of Appeals in *Marcus & Millichap v. Muhnple, LTD. (In re Munple, LTD.)*, a listing agreement is not executory if the buyer for the property was procured pre-petition. 868 F.2d 1120, 1131 (9th Cir. 1989).

Here, there is no buyer, with Debtor complaining that Defendants have failed to fulfill their obligations under the pre-petition listing agreement.

Additionally, Plaintiff-Debtor, as an individual, no longer has the power to "sell" the Property. Rather, it is the Plaintiff-Debtor, acting as the Chapter 13 Debtor fiduciary of the estate, exercising the powers of a bankruptcy trustee pursuant to sell property of the estate, who is the actual party who can sell the property.

Discussion of Executory Contract at Hearing

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxx**.

Additional Relief Requested Beyond Preliminary Injunction

Plaintiff-Debtor further requests that the court be ordered to cancel the Listing Agreement. That is not provisional relief pending the trial, but seeking to have the ultimate relief ordered without trial or the opportunity for a trial.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Preliminary Injunction filed by Plaintiff-Debtor 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 xxxxx.

3. **11-27845-E-11** **IVAN/MARETTA LEE** **MOTION FOR SUMMARY JUDGMENT**
15-2194 **TGC-5** **2-7-17 [145]**
LEE ET AL V. CITY OF SACRAMENTO COMMUNITY

Final Ruling: No appearance at the March 9, 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-Debtor and Defendants on February 7, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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 Summary Judgment is granted.

INTRODUCTION

Ivan Lee and Maretta Lee ("Plaintiff-Debtor") initiated this adversary proceeding against IndyMac Mortgage Services, a Division of OneWest Bank, N.A.; Shellpoint Mortgage Servicing; City of Sacramento Community Development Department, Housing and Dangerous Buildings Division; City of Sacramento; and Bank of America, N.A. ("Defendants") by filing a complaint on September 30, 2015 ("Complaint").

On August 15, 2016, the court granted Defendant Bank of America, N.A.'s ("Defendant BANA") Motion for Judgment on the Pleadings. Dckt. 130. The court conclusively determined the following facts and conclusions of law:

> 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 (1127845, 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 [and] 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 Class 2d. and 2e. of the confirmed Second Amended Chapter 11 Plan.

Dckt. 130.

MOTION FOR SUMMARY JUDGMENT

On February 7, 2017, BANA filed a pleading which is entered on the Docket as a "Motion." Dckt. 145. That pleading is actually titled "Memorandum of Points and Authorities of Bank of America, N.A.'s Motion for Summary Judgment." Pursuant to Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, the motion must state with particularity the grounds upon which the requested relief is based. As provided in Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents, the motion, points and authorities, each declaration, and the exhibits (which exhibits may be combined into one document) must be filed separately.

Here, the "Points and Authorities" includes the grounds that are required to be stated in the motion. It appears that an error may have occurred, with Defendant BANA having made a clerical error by not uploading the separate order.

In light of the prior proceedings in this Adversary Proceeding, the cost and expense to parties to date, and no opposition having been filed to the "Motion," the court waives the deficiency and will treat the Points and Authorities as both the motion and the points and authorities.

FACTS

Defendant BANA has proffered the following information as to undisputed facts in this Adversary Proceeding. For purposes of the instant section, "SAC" means "Second Amended Complaint."

MOVING PARTY'S UNDISPUTED FACT	**MOVING PARTY'S SUPPORTING AUTHORITY**	**OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**
Plaintiff-Debtors are the owners of two parcels of real property located at 272 Christine Drive, Sacramento, CA ("Christine Property") and 2323-2331 Grove Avenue, Sacramento, CA ("Grove Property") (collectively, "Properties").	SAC ¶ 7 (Dckt. 92)	Undisputed
The Properties are encumbered by mortgages formerly held or serviced by Defendant BANA.	SAC ¶¶ 6 & 13	Undisputed
The Properties were a part of the Bankruptcy Estate in Case No. 11-27845-E-11.	SAC ¶ 7; Debtor's Final Amended Plan of Reorganization Chapter 11 Case No. 11-27845-E-11 (Dckt. 283)	Undisputed
On May 4, 2012, Plaintiff-Debtor's Plan of Reorganization was confirmed.	SAC ¶ 8	Undisputed
The Plan called for the Grove Property to be "surrendered and abandoned" to the Bank of New York Mellon as trustee for the Certificate Holders of CWMBS, Inc.	SAC ¶¶ 7–8; Debtor's Final Amended Plan of Reorganization Chapter 11 Case No. 11-27845-E-11 (Dckt. 283, pg. 12, §§ 2c & 2d)	Undisputed
The Plan called for the Christine Property to be "surrendered" to Defendant BANA.	SAC ¶¶ 7–8; Debtor's Final Amended Plan of Reorganization Chapter 11 Case No. 11-27845-E-11 (Dckt. 283, pg. 12, §§ 2c & 2d)	Undisputed

The operative complaint, the Second Amended Complaint, states four claims of relief against Defendant BANA, each of which is based on the contentions that: Defendant BANA violated the Plan by failing to transfer title to the Properties from Plaintiff-Debtor to itself by non-judicial foreclosure and by assigning the mortgages to third parties IndyMac Mortgage Services and Shellpoint Mortgage Servicing.	SAC ¶¶ 22–28, 37, 41–42, 47–53, and 57	Undisputed
The terms "surrender" and "surrender and abandon" do not transfer title of the Properties, do not mandate that creditors such as Defendant BANA foreclose on the Properties.	Court Order Granting Defendant BANA's Motion for Judgment on the Pleadings (Dckts. 127 & 130)	Undisputed
The terms "surrender" and "surrender and abandon" do not enjoin stay or prohibit the transfer of a creditor's claims or rights in the Properties, including any security interest in the Properties.	Court Order Granting Defendant BANA's Motion for Judgment on the Pleadings (Dckts. 127 & 130)	Undisputed

(Dckts. 25 and 37)

SUMMARY JUDGMENT STANDARD

In an adversary proceeding, summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000).

"[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza*), 545 F.3d 702, 707 (9th Cir. 2008) (citing *Anderson*, 477 U.S. at 248).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a properly submitted motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707 (citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002)). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc*., 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

Second Cause of Action: Declaratory Judgment, 11 U.S.C. § 1141

Plaintiff-Debtor's Second Claim for Relief requests a declaration that the terms of the confirmed Chapter 11 bind the parties.

Third Cause of Action: 11 U.S.C. §§ 1141 & 1142(b); Fed. R. Bankr. P. 7001(2)

Plaintiff-Debtor's Third Claim for Relief alleges that Plaintiff-Debtor does not have a valid lien or interest in the allegedly-surrendered Properties through the confirmed Chapter 11 Plan of Reorganization. Plaintiff-Debtor also claims that the Plan "binds" Defendant BANA to transfer the Properties from Plaintiff-Debtor to Defendant BANA by nonjudicial foreclosure. Plaintiff-Debtor further argues that Defendant BANA violated the Chapter 11 Plan by transferring mortgage loans to IndyMac Mortgage Services and Shellpoint Mortgage Servicing.

Fourth Cause of Action: 11 U.S.C. § 548

Plaintiff-Debtor's Fourth Claim for Relief alleges that Defendant BANA's transfers of the mortgages on the Properties amounts to actual fraudulent transfers, done willfully, intentionally, and with reckless disregard of the outcome.

Motion for Judgment on the Pleadings (BMV-3)

As quoted in the Introduction of this ruling, and as referenced by Defendant BANA in the undisputed facts, this court's August 15, 2016 ruling on the Motion for Judgment on the Pleadings establishes facts and conclusions of law that leave no genuine dispute for the court to address relating to Causes of Action Two, Three, and Four in the Second Amended Complaint.

As to the First Cause of Action, no claims are asserted against BANA.

As to the Second Cause of Action, the confirmed plan binds the parties, Plaintiff-Debtor and Defendants. However, it does not bind the parties as Plaintiff-Debtor asserted. The court grants judgment on the Second Cause of Action for Defendant BANA and against Plaintiff-Debtor, and each of them, determining that the confirmed Chapter 11 Plan does not bind BANA to take title to the Property, foreclose on the Property, or preclude BANA from exercising any rights and interests it has in the Note, Deed of Trust, or under applicable non-bankruptcy law to foreclose, or not foreclose, on the Property.

The court determined that—contrary to the allegations in the Third Cause of Action—the confirmed Chapter 11 Plan of Reorganization does "not mandate the creditors to foreclose on the collateral, [does] 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" provided for by the Plan. Dckt. 130. Defendant BANA was not bound by the Plan to transfer any property. Plaintiff-Debtor has not disputed Defendant BANA's contention in any way.

As to the Fourth Cause of Action, again, the transfers by Defendant BANA could not be—and were not—fraudulent transfers because the terms of the Plan do "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. 130. There is no genuine dispute as to this point, and Plaintiff-Debtor has not met its burden of responding with specific facts to demonstrate to the court that there is a genuine dispute.

Not only has Plaintiff-Debtor not responded with specific facts to meet the burden, but Plaintiff-Debtor has not opposed this Motion at all. The court interprets Plaintiff-Debtor's silence as acquiescence to Defendant BANA's Motion.

There being no genuine dispute for the court to address, the Motion for Summary Judgment is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Summary Judgment filed by Defendant Bank of America, N.A., 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 for Summary Judgment as to Causes of Action Two, Three, and Four in the Second Amended Complaint is granted for Bank of America, N.A., and against Ivan S. Lee and Maretta P. Lee, and each of them, with the court's findings of fact and conclusions of law stated in the Court's Civil Minutes from the March 9, 2017 hearing on the Motion and the prior order on the Motion for Judgment on the Pleadings (Dckt. 144), which determined facts and issues for all Parties in this Adversary Proceeding.

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.

4.	**11-22562-E-13** **PGM-1**	**JOSEPH/SABRINA MADDOCKS** **Peter Macaluso**	**CONTINUED MOTION FOR CONTEMPT** **12-14-16 [167]**

NO TELEPHONIC APPEARANCES PERMITTED

No Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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). The defaults of the non-responding parties and other parties in interest are entered.

The Status Conference on the Motion for Contempt is xxxxx.

The Motion before the court began as a "simple" motion asserting that creditor California Coastal Rural Development Corporation ("Cal Coastal") should be held in contempt for violating the discharge injunction, automatic stay, and order confirming the Chapter 13 Plan for making demand on a pre-petition abstract of judgment securing a pre-petition judgment obtained by Cal Coastal just before this bankruptcy case was filed.

This "motion" has grown in scope, adding potential claims for failure to reconvey deeds of trust under California law, filing proofs of claim for debts that no longer existed but had been replaced by the pre-petition judgment, and a declaration of the parties rights.

Cal Coastal asserts that there is an enforceable settlement agreement that may be enforced pursuant to California Code of Civil Procedure § 664.6 (which requires a written agreement signed by all parties or orally stated on the record before the court).

At a minimum, it appears that Movant may well need to amend the Motion, include only such claims as may exist for "contempt," and file such separate complaints or other motions seeking different relief (to the extent it may be sought in a contested matter). The current pleadings, proofs of claims, contentions, and arguments create a confusing gumbo of legal theories and arguments that are destined to make significant unnecessary work for the court and parties if these proceedings are not managed properly by the court.

MARCH 7, 2017 HEARING

At the hearing, the court continued the matter to 11:00 a.m. on March 9, 2017, to ascertain how the parties intend to prosecute the present Motion, amend the Motion to limit these proceedings to only those matters for which a determination of contempt may properly be adjudicated, and what other proceedings may be ordered by the court that may help these parties come to grasp with the significant issues before the court.

The court announced that telephonic appearances would not be permitted for the Scheduling Conference on March 9, 2017.

DISCUSSION

Joseph Maddocks and Sabrina Maddocks ("Debtor") move for an order to show cause concerning violation of discharge under 11 U.S.C. § 1328 against California Coastal Rural Development Corporation ("Creditor"). Debtor seeks (1) declaratory and injunctive relief by the court to determine whether Debtor should be liable for the pre-petition liability arising from a demand for pre-petition claims in the amount of $59,248.14 and (2) a determination of whether Creditor is in violation of 11 U.S.C. § 1328. FN.1.

FN.1. The court notes that among the problems with the filing of this Motion is a request for declaratory and injunctive relief. Federal Rule of Bankruptcy Procedure 7001(9) states that an adversary proceeding includes "a proceeding to obtain a declaratory judgment . . . ." Here, Debtor did not file an adversary proceeding, but instead is relying on the motion practice outlined in Federal Rule of Bankruptcy Procedure 9014 and Local Bankruptcy Rule 9014-1 to seek relief. Declaratory relief is not permitted, nor is it proper, when seeking relief under such motion practice.

Debtor filed the instant bankruptcy case on January 31, 2011. Dckt. 1. Creditor filed Proofs of Claim 4-1 for $17,652.10 and 5-1 for $30,205.63 on February 16, 2011, each secured by a deed of trust. Debtor moved to value those two claims individually, which the court granted and valued them at $0.00 each. Dckts. 102 & 104.

Debtor proceeded to complete the Plan and was discharged on May 9, 2016. Dckt. 160. According to Debtor's allegations in the Motion, Debtor attempted to refinance around August 20, 2016, and had Old Republic Title Company contact Creditor about releasing an abstract of judgment. On October 19, 2016, Creditor responded that it was owed $59,248.14 by Debtor, and by October 28, 2016, Debtor's refinancing loan was cancelled, and the interest rate increased.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on January 10, 2017. Dckt. 176. Creditor asserts that it obtained a pre-petition judgment against Debtor in the amount of $48,241.72 and then filed an Abstract of Judgment to perfect the judgment lien against Debtor's real property. Creditor states that the judgment lien was not avoided during the course of the bankruptcy, although Creditor admits that two other of its liens against Debtor were avoided.

Creditor states that it was contacted by an escrow officer in October 2016, and a request for payoff was made. Creditor confirmed with its counsel that the judgment lien had not been avoided before making the request for payoff in the amount of $59,248.14. Creditor sent a letter to Debtor's attorney on December 9, 2016, stating that while two claims had been valued at $0.00 secured by the property, the judgment lien was valid.

Creditor states that a calculation error was made, and the amount owed to it presently should actually be $70,507.54, but Creditor originally calculated the amount owed to it based on the underlying documents instead of the amount stated in the judgment lien.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on January 17, 2017. Dckt. 183. The Trustee seeks to clarify issues raised by this Motion. The Trustee states that Creditor's Claim 4-1 was listed in Class 2 of the Plan, and Claim 5-1 was listed in Class 3 of Plan. Claim 5-1 was listed as secured in the Trustee's Final Report because it was listed in Class 3. The Trustee is not certain which claim, if either, represented the collateral to be surrendered.

The Trustee also mentions that two Motions to Value Secured Claim relating to Creditor's claims were heard and granted on May 24, 2011. *See* Dckts. 101 & 103.

JANUARY 24, 2017 HEARING

At the January 24, 2017 hearing, the court addressed with the parties their respective pleadings and some apparent inconsistencies. The hearing was continued for the parties to try to address the these issues and determine if a stipulation was possible. If this matter could not be settled, the court would then use the continued hearing as a Status and Scheduling Conference.

REVIEW OF MOTION, OPPOSITION, AND SUPPLEMENTAL PLEADINGS

APPLICABLE LAW

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506–07.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

A contempt proceeding by the United States Trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, No. SC-08-1112-MoJuKw, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *In re Lehtinen*, 564 F.3d at 1058; *see also* 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DETAILED REVIEW OF THE MOTION ANDRESPONSIVE PLEADINGS

The parties have now filed respective supplemental pleadings, indicating that their reasonable minds have not been able to achieve a resolution of this dispute. Necessary for the court's consideration of scheduling in this Contested Matter, the court will review the pleadings in detail. These pleadings frame what is before the court and what the court may properly adjudicate.

The Motion to have Cal Coastal found to be in contempt was filed on December 14, 2016. The Motion[1] states the grounds with particularity (Fed. R. Bankr. P. 9013) upon which the relief is based, which grounds are summarized as follows:

A. Debtor filed this Chapter 13 case on January 31, 2011.

B. Cal Coastal filed Proof of Claim No. 4-1 on February 16, 2011.

1. The Motion fails to state that Proof of Claim No. 4-1 was:

   a. In the amount of $17,652.10;
   b. Is a secured claim for the entire amount; and
   c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

   a. Loan Agreement and Note;

[1] Much of the Motion consists of legal points and authorities, and arguments thereon, rather than the actual grounds upon which the relief is based. Under L.B.R. 9004-1 and the Revised Guidelines for the Preparation of Documents requires that the motion be a separately filed document from the points and authorities.

b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010;

C. On May 24, 2011 the court granted a motion to value the Cal Coastal secured claim.

1. The Motion does not allege what was determined to be the value of the Cal Coastal secured claim.

D. On May 9, 2016, Debtor received a Chapter 13 discharge.

1. The Motion does not allege that the plan was completed or whether a "hardship discharge" was granted notwithstanding the failure to complete the Chapter 13 plan.

E. That, on June 9, 2011,more than 30 days after the discharge, Cal Costal did not release the "abstract of judgment."

1. The prior grounds state nothing about an "abstract of judgment." No "abstract of judgment" is included as part of Proof of Claim No. 4-1. Proof of Claim No. 4-1 is not based on a judgment (which is necessary to have an abstract of judgment lien), but a note secured by personal and real property.

F. On or about August 20, 2016, Cal Coastal was contacted by an escrow company concerning a refinancing of real property (unidentified) of Debtor.

G. At the time of the August 20, 2016 contact, Debtor had a ninety day loan interest rate lock, with a 3.988% annual interest rate.

H. A Cal Coastal representative responded to the escrow company that $59,248.14 was owed by Debtor and that what it would cost to "release our deeds and judgments against" Debtor.

I. On October 28, 2016, the loan lock expired, and the interest rate increased to 4.37%. The Debtor could not obtain the loan because Cal Coastal refused to "release the [abstract of judgment]."

J. On November 29, 2016, representatives of Cal Coastal were contacted by Debtor's counsel and requested to address this matter. Resolution was not possible.

K. The orders violated by Cal Coastal are stated to be:

1. Automatic Stay;
2. Confirmation Order of Chapter 13 Plan; and
3. Discharge.

L. Cal Coastal's claim of $59,248.14 was discharged in this bankruptcy case.

As the court addressed with the Parties at the January 24, 2017 hearing, the allegations of there being an abstract of judgment, for which there must be a judgment, is inconsistent with what is stated in Proof of Claim No. 4-1—an obligation based on a note, secured by real and personal property. The existence of a note as the evidence of the obligation and there being a judgment issued based on the obligation are mutually inconsistent. *See* Cal. C.C.P. § 726; *Tomaselli v. Transamerica Ins. Co*, 25 Cal. App. 4th 1766, 1770 (1994).

In the Reply, Dckt. 186, to the Opposition filed by Cal Coastal, Debtor adds the following information to Debtor's arguments:

A. There are two notes which evidenced the obligation to Cal Coastal—a $15,000 note and a $30,000 note, each secured by a separate deed of trust.

B. Evidence of a judgment and abstract of judgment have not been included in the evidence presented in opposition to the Motion.

C. There are actually two separate proofs of claim which have been filed in this bankruptcy case.

D. No proof of claim has been filed for the judgment upon which the abstract of judgment was issued.

E. Debtor's ability to obtain the refinance at 3.68% due to the two deeds of trust.

1. This contention is directly in conflict with the grounds as stated in the Motion.

F. The Abstract of Judgment was issued for a judgment in the amount of $48,241.72, California Superior Court, for the County of Monterey Case No. M108313.

G. The Abstract of Judgment is applicable to the "one-judgment rule."

1. The pleadings are unclear as to what the "one-judgment rule" is and how, if the reference is to the "One Action Rule," how that applies to a judgment and the judgment lien issued pursuant thereto.

H. Cal Coastal has released the two deeds of trust and released the abstract of judgment on February 15, 2017.

I. Debtor asserts that Cal Coastal violated California Civil Code § 2941.

J. Debtor asserts that Cal Coastal filed two proofs of claim based on obligations which had been replaced by the judgment, but did not file a proof of claim for the obligation owed on the judgment.

Review of Opposition of Cal Coastal

Cal Coastal filed its Opposition on January 10, 2017. Dckt. 176. The court summarizes the Opposition as follows:

A. Cal Coastal obtained a judgment against Debtor in the amount of $48,241.72, then an abstract of such judgment, which was recorded to perfect the judgment lien against real property of Debtor.

B. The judgment lien obtained by Cal Coast was not "stripped" in this bankruptcy case.

C. The Chapter 13 Trustee's Final Report states that Cal Coastal was allowed a secured claim in the amount of $30,205.63.

D. There is no basis for Debtor contending that the discharge in this Chapter 13 case "extinguished" Cal Coastal's abstract of judgment and judgment lien created by the recording of that abstract of judgment.

E. Specific Facts asserted by Cal Coastal include:

1. Debtor owed Cal Coastal $46,112.14 pursuant to several loan agreements.

2. On January 10, 2100, judgment was entered for Cal Coastal and against Debtor on those obligations in the amount of $48,241.72, in California Superior Court, Monterey County Case No. M108313 ("Cal Coastal Judgment").

3. The abstract of judgment for the Cal Coastal Judgment was recorded on January 20, 2011. (This was only 11 days before the January 31, 2011 filing of this bankruptcy case by Debtor.)

4. Other liens that Cal Coastal had against Debtor's property had not been "stripped."

F. Cal Coastal, based on the abstract of judgment not having been stripped, made demand for payment of $59,248.14 (the amount Cal Coastal computed being owed on the judgment) for the release of its abstract of judgment.

G. Cal Coastal asserts that Debtor or its representatives never communicated with it about the demand made on the judgment lien.

H. Cal Coastal's version of the call from Debtor's counsel is a version that indicates that it was contentious.

Cal Coastal has provided its supplemental pleadings, filed on February 23, 2017 in the form of a Status Conference Statement, which provides the additional information as summarized by the court:

A. Cal Coastal states that is has accepted the settlement offer tendered by Debtor's counsel on February 8, 2017, that acceptance having been transmitted in writing.

1. It is further stated that on February 13, 2017, Cal Coastal's attorney submitted a written settlement agreement, and on February 14, 2017, transmitted modified attachments to the agreement as requested by Debtor's counsel.

B. An executed settlement agreement has not been returned by Debtor.

C. Cal Coastal intends to first seek to enforce the settlement agreement pursuant to California Code of Civil Procedure § 664.6.

1. Cal C.C.P. § 664.6. Judgment pursuant to terms of settlement

a. If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. In the supplemental pleadings, the court is not directed to either: (1) a writing signed by the parties or (2) a settlement stated orally by the parties before the court.

D. Cal Coastal states that Debtor failed to list Cal Coastal as having a secured claim based on the judgment in the original "Petition."

1. To be precise, the court is unsure as to what is meant by stating that Debtor failed to list the secured debt on the "Petition." Secured claims (debts) are listed on Schedule D filed by a debtor, and while informational, are not "deemed allowed" in a Chapter 13 case as they are in a Chapter 11 case. The burden on correctly and accurately stating claims, including secured claims, fall on the creditor.

E. Cal Coastal's judgment lien has not been "stripped" and therefore it remains valid, notwithstanding Debtor obtaining a discharge.

F. The supplemental pleading continues in a discussion of the settlement communications which occurred since the last hearing.

Review of Claims Register

While Debtor makes reference to only Proof of Claim 4-1, Cal Coastal filed two proofs of claim on February 16, 2011. This was one month after Cal Coastal obtained the judgment for $48,241.72, in California Superior Court, Monterey County Case No. M108313. The two Cal Coastal proofs of claim are summarized as follows:

A. Cal Coastal filed Proof of Claim No. 4-1 on February 16, 2011.

1. The Motion fails to state that Proof of Claim No. 4-1 was:

a. In the amount of $17,652.10;
b. Is a secured claim for the entire amount; and
c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

a. Loan Agreement and Note;
b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010.

B. Cal Coastal filed Proof of Claim No. 5-1 on February 16, 2011.

1. The Claim is:

a. In the amount of $30,305.63;
b. Is a secured claim for the entire amount; and
c. Is secured by unidentified real property.

2. Attachments to Proof of Claim No. 4-1 include:

a. Loan Agreement and Note;
b. Security Agreement, Personal Property; and
c. Deed of Trust against APN: 0125-121-010.

The court shall issue a minute order substantially in the following form holding that:

The Motion 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 xxxxx.