UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 24, 2014 at 1:30 p.m.

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1. 10-36505-E-13 DONNA VICKS — **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
14-2022 PLC-5 — **3-20-14 [10]**
MICHAEL VICKS, JR., SUCCESSOR IN INTEREST TO DONNA V. WELLS

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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 the respondent creditor on March 20, 2014. By the court's calculation, 35 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 denied without prejudice.

Plaintiff, Donna Vicks, seeks entry of a default judgment against Defendant Wells Fargo Bank, N.A. ("Defendant") in this adversary proceeding. Entry of a default judgment is authorized by Federal Rule of Civil Procedure 55(b)(2) as made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7055.

This adversary proceeding was commenced on January 17, 2014, and a summons was issued by the Clerk of the United States Bankruptcy Court on

January 21, 2014. The complaint and summons were properly served on Defendant.

Defendant failed to file a timely answer or response or a request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055(a) by the Clerk of the United States Bankruptcy Court on March 13, 2014. Dckt. No. 8.

SERVICE

Plaintiff failed to serve Defendant Wells Fargo Bank, N.A. by certified mail. The Motion on its face identifies the Defendant as being Wells Fargo Bank, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Plaintiff served Wells Fargo Bank, N.A. at two locations, including at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve any of the addresses by certified mail to an officer as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

If Plaintiff can show that service was proper, the court will issue the following alternative ruling:

FACTS

Defendant Wells Fargo Bank, N.A. is the owner of the note and the second deed of trust recorded against the Debtor's residence. On August 17, 2010 Plaintiffs confirmed a plan that valued the second note and deed of trust held by Defendant at $0.00.

Plaintiff obtained a discharge in their bankruptcy case on December 13, 2013. Included in the debts discharged is the claim of Defendant. The Chapter 13 Plan provided for the payment of the value of Defendant's secured claim as determined by the court pursuant to 11 U.S.C. § 506(a). The

Debtor has completed her Chapter 13 Plan. Defendant failed to execute a reconveyance after the completion of the Chapter 13 Plan. Plaintiff filed this adversary proceeding against Defendant in order to determine the validity, priority or extend of Defendant's lien.

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. 3rd 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, as 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. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

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 the second deed of trust is not reconveyed, or the court does not enter judgment determining the Deed of Trust is void and the property held free of such purported interests thereunder. The continued existence of record of the Deed of Trust will cloud title and restrict Plaintiff's full and unfettered use of her real property and her interests therein. The court recently discussed the effect of a completed Chapter 13 Plan and the effect on a secured claim determined by the court pursuant to 11 U.S.C. § 506(a) in *Martin v. CitiFinancial Services (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013).

The court finds that the Complaint is sufficient and the requests for relief requested therein are meritorious. It has not been shown to the court there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding, nor did it dispute facts presented in the Plaintiff's bankruptcy case regarding the motion to value Defendant's secured claim to have a value of $0.00 or confirmation of the Chapter 13 Plan. Further, there is no evidence of

excusable neglect by the Defendant. 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. Failing to fulfill one's contractual and statutory obligations, and then failing to respond to judicial process, is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against the Defendant.

The Motion for Entry of Default Judgment is granted. The court shall enter judgment for Michael Vicks, Jr., successor in interest to Donna Vicks, Plaintiff, and against Wells Fargo Bank, N.A., Defendant, determining that the second deed of trust, and any interest, lien or encumbrance pursuant thereto, held by Wells Fargo Bank N.A. against the real property commonly known as 6880 Peck Drive, Sacramento, California recorded with the Sacramento County Recorder on March 8, 2005 in Book 20050308, Page 0280 is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant Wells Fargo Bank, N.A., has no interest in the real property pursuant to the deed of trust.

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall further provide that any attorneys' fees and costs allowed by the court shall be enforced as part of the judgment.

On or before May 15, 2014, Plaintiff shall file a costs bill and motion for attorneys' fees, if any. The motion for attorneys' fees, if any, shall clearly set forth the contractual or legal basis for an award of attorneys' fees.

The court grants the default judgment in favor of Plaintiffs and against Defendants and holds that the deed of trust is void.

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 the Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Entry of Default Judgment is granted. The court shall enter judgment for Michael Vicks, Jr., successor in interest to Donna Vicks, Plaintiff, and against Wells Fargo Bank, N.A., Defendant, determining that the second deed of trust, and any interest, lien or encumbrance pursuant thereto, held by Wells Fargo Bank N.A. against the real property commonly known as 6880 Peck Drive, Sacramento, California recorded with the Sacramento County Recorder on March 8, 2005 in Book 20050308, Page 0280 is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant Wells Fargo Bank, N.A., has no interest in the real property pursuant to the deed of trust.
>
> Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall further provide that any attorneys' fees and costs allowed by the court shall be enforced as part of the judgment.

IT IS FURTHER ORDERED that on or before May 15, 2014, Plaintiff shall file a costs bill and motion for attorneys' fees, if any. The motion for attorneys' fees, if any, shall clearly set forth the contractual or legal basis for an award of attorneys' fees.

2. 12-36419-E-11 KFP-LODI, LLC — CONTINUED MOTION TO MODIFY CHAPTER 11 PLAN
SAC-10 Scott A. CoBen — 3-3-14 [388]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on March 3, 2014. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Modify has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Modify is continued to 3:00 p.m. on May 15, 2014. No appearance at the April 24, 2014 hearing is required.

KFP-LODI, LLC, the reorganized debtor ("Debtor") moves for an order approving and authorizing the modification to the treatment of the Class 2 Secured Creditor TerraCotta Realty Fund, LLC ("TerraCotta")provided under the Third Amended Plan of Reorganization, dated November 22, 2013.

Debtor asserts that distributions to creditors have not been commenced under the confirmed plan. The confirmed plan provides that the maturity of TerraCotta's loan is reduced from 20 years to 4 years and the Debtor is required to reimburse TerraCotta for a total of $85,000.00 in attorneys fees incurred by TerraCotta as a result of Debtor's bankruptcy. The Plan requires the Debtor to continue monthly payments to TerraCotta at the contract rate, which payments were not interrupted during the Debtor's bankruptcy.

Debtor believes that TerraCotta intends to continue to prosecute the Complaint filed in the Superior Court of California, County of San Joaquin (Case No. 39-2013-00299099), entitled TerraCotta Realty Fund, LLC v. Margaret Kim, et al. (the "State Court Action") despite its support for and acceptance of the Plan and despite the fact that it continues to receive the contract rate to which it is entitled under the TerraCotta Promissory Note as well as reimbursement for approximately $85,000.00 in legal fees incurred by TerraCotta as a result of the Debtor's bankruptcy proceeding.

Debtor argues that TerraCotta's continuation of the State Court Action jeopardizes the Debtor's ability to perform under the Plan since it

would require a significant diversion of time and resources from the Guarantors, in particular, the Debtor's Manager, Kyu Kim.

Debtor states that substantial consummation of the plan has not yet occurred as no distributions have been commenced under the plan. Debtor states the injunction prohibiting TerraCotta from continuing its prosecution of the State Court Action, the Debtor's ability to perform under its plan is jeopardized, as it would create a significant diversion of time and money for the Guarantors.

JOINDER

Secured Creditor SGB1, LLC ("SGB1") joins in KFP-LODI, LLC's ("Debtor") Motion to Modify Confirmed Plan to enjoin TerraCotta Realty Fund, LLC ("TerraCotta"), the first trust deed holder on real and personal property owned by Debtor, generally described as 16855 Old Harlan Road, Lathrop, California and related personal property where Debtor operates a 65-room Quality Inn & Suites Motel ("Motel"). SGB1, as the second trust deed holder in the amount of $3,500,000 on the Motel, desires to see Debtor reorganize and satisfy its obligations as required by Debtor's Third Amended Plan of Reorganization ("Plan"), which was consensually confirmed by this Court's Order Confirming Plan entered February 28, 2014.

SGB1 argues that tremendous effort was made by all parties and the Court to confirm the Plan. Both TerraCotta and SGB1 reached and entered comprehensive forbearance agreements with Debtor and the respective guarantors of the loans. SGB1 was surprised to learn that there was still pending litigation with TerraCotta concerning the Debtor's loan. This was especially true based on Debtor's representations that Debtor is and has been current on all payments to TerraCotta. SGB1 would like to see Debtor survive and make the required payments pursuant to the Plan and Confirmation Order. As the Motion does not seek to modify SGB1's Class 3 Plan treatment, SGB1 supports Debtor's Motion.

OPPOSITION

TerraCotta opposes the modification enjoining them from prosecuting their claims against various nondebtors under a independent written guaranty. TerraCotta argues that the Bankruptcy Court does not have the power or authority to modify a plan when it (i) affects, alters, releases and/or changes the personal obligations of nondebtor guarantors, and/or (ii) contains any injunction enjoining, whether permanently or "temporarily," the exercise of TerraCotta's rights under those written guaranty agreements executed by nondebtors.

TerraCotta argues that the proposed "temporary injunction" against TerraCotta is unlawful under *Underhill v. Royal*, 769 F.2d 1426 (9th Cir. 1985) because it "affect[s] the obligations of" the nondebtor guarantors under their written guaranties in that the proposed injunction, among other things, releases the guarantors from their present liability and present obligation to pay TerraCotta and changes the timing of these payment obligations to pay TerraCotta under the written guaranties.

TerraCotta also argues that one of Debtor's alleged reasons for the proposed modification is that the "Lathrop Hotel Property" is required to

complete a “Property Improvement Project;” however, Debtor never disclosed at all, whether in its approved Disclosure Statement or at any time throughout the plan confirmation process, that the Lathrop Hotel Property was subject to a “Property Improvement Plan.” Debtor only disclosed a property improvement plan for the “Stockton Hotel Property.”

DISCUSSION

At the request of the court, the hearing on this matter is continued to 3:00 p.m. on May 15, 2014.

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 to Modify 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 continued to 3:00 p.m. on May 15, 2014.

3. 11-21422-E-13 SHMAVON MNATSAKANYAN AND YERMONIYA ARTUSHYAN SW-1
13-2300 MNATSAKANYAN ET AL V. BAC HOME LOANS SERVICING, LP ET AL
MOTION TO DISMISS ADVERSARY PROCEEDING
10-25-13 [8]

Final Ruling: The Defendant having filed a Withdrawal of the Motion to Dismiss the Adversary Proceeding, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Adversary Proceeding was dismissed without prejudice, and the matter is removed from the calendar.**

4. **13-34223-E-13 NAOMI LEBUS** **MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION FOR A MORE DEFINITIVE STATEMENT**
14-2049 KAS-1
LEBUS V. MCCARTHY ET AL
3-6-14 [7]

Final Ruling: The Motion to Dismiss the Adversary Proceeding is dismissed without prejudice. No appearance at the April 24, 2014 hearing is required.

The court reviewed the Motion to Dismiss with the parties at the April 15, 2016 Status Conference. Counsel for Plaintiff filed a substitution of attorney on April 15, 2014, and the attorneys for the respective parties have not yet addressed the issues raised in this Adversary Proceeding.

The Parties agreed to the dismissal of this Motion, without prejudice. New Counsel for the Plaintiff is considering what amendments, if any, are appropriate. The Parties also agreed that the Defendants shall have through and including May 30, 2014 to file a responsive pleading. The court has issued an order thereon.

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 to Dismiss the Adversary Proceeding filed by Defendants having been presented to the court, the Parties having Stipulated at the Status Conference to the dismissal of this Motion without prejudice and an extension of time to file responsible pleadings for Defendants to and including May 30, 2014, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

5. **10-30359-E-13 ELIZABETH LUCHINI** **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
13-2321 PLC-3
LUCHINI V. JPMORGAN CHASE BANK N.A.
3-10-14 [21]

Final Ruling: At the request of the court, the hearing on this matter is continued to **1:30 p.m.** on **May 15, 2014**. No appearance required at the April 24, 2014 hearing.

6. 13-27293-E-7 CHRISTOPHER/TANA CROSBY
13-2306 SG-3
SANDOVAL ET AL V. CROSBY

MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS
3-10-14 [18]

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's Attorney on March 10, 2014. By the court's calculation, 45 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Compel Defendant's Initial Disclosures pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7037 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Compel Defendant's Initial Disclosures pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7037 is granted. No appearance at the April 24, 2014 hearing is required.

Plaintiffs Jamie Sandoval and Mary Sandoval ("Plaintiffs") seek an order from the court compelling initial disclosures from Defendant Christopher Beck Crosby ("Defendant"), and for monetary sanctions against Defendant and his attorney of record, Steve Ruehmann. On December 9, 2013, this court issued a scheduling order requiring that the parties make their initial disclosures by December 12, 2013. On December 16, 2013, Plaintiff's consel emailed Defendant's counsel to request that Defendant electronically serve his initial disclosures. On December 20, 2013, Plaintiff's counsel again emailed Defendant's counsel to request that Defendant provide the disclosures. Defendant's counsel never responded to the emails and has not served any disclosures to date.

DISCUSSION

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

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

Federal Rule of Civil Procedure 37(a)(1), made applicable in

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

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

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

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

Defendant did not adhere to the deadline of making the initial disclosures by December 12, 2013. Plaintiffs state that they have made good faith attempts to confer with Defendant, but these attempts have not yielded the disclosures. Plaintiff's Counsel states in his declaration that on December 16, 2013, Plaintiff's counsel emailed Defendant's counsel to request the Defendant's Initial Disclosures. Defendant's counsel failed to respond to the email. On or about December 20, 2013, Plaintiff's Counsel emailed Defendant's Counsel yet again to request the disclosures; Defendant's Counsel again did not respond. ¶ ¶ 3 and 4, Declaration of Sean Gavin, Dckt. No. 20. Plaintiff's counsel's declaration satisfies the certification requirement of Federal Rule of Civil Procedure 37(a)(1), in moving the court for an order to compel discovery.

Additionally, Plaintiffs' attorney is claiming attorney's fees in the amount of $375.00 for having brought this motion, and is requesting that $375 in attorneys' fees and costs be ordered against the Defendant and his Attorney of Record, Steve Ruehmann. Plaintiff makes this request on the basis that Federal Rule of Civil Procedure 37(c)(1), as incorporated by the Federal Rule of Bankruptcy Procedure 7037, explains that the court may order payment of reasonable expenses, including attorneys' fees, caused by the failure of the opposing party to produce discovery.

STATEMENT OF NON-OPPOSITION BY DEFENDANT

On April 18, 2014, Defendant filed a statement of Non-opposition to Plaintiff's Motion to Compel the Initial Disclosures. Dckt. No. 22. Defendant responds by stating that Defendant provided his Initial Disclosure to counsel

for Plaintiffs on April 17, 2014. Thus, Defendant submits the statement of non-opposition to Plaintiffs' Motion to Compel pursuant to Local Rule 230(c) on the basis that the disclosures have been provided.

However, the court does not know what has, or has not, been produced. Out of an abundance of caution the court grants the Motion to avoid any confusion as to whether the disclosures were complete or that the court ruled that such disclosures were complete.

SANCTIONS

The court cannot understand why Defendant and Defendant's Attorney of Record, Steve Ruehmann, waited over four months to produce the Initial Disclosures to Plaintiffs, after Plaintiffs contacted Defendant twice to demand the disclosures. Defendant is in violation of the court's Scheduling Order filed on December 9, 2013, Dckt. No. 13, which ordered that both parties make the required initial disclosures by December 12, 2013. Defendant apparently waited 7 days before the hearing on a Motion to Compel, a drastic measure to compel disclosure and for appropriate sanctions under Federal Rule of Civil Procedure 37, as incorporated by Federal Rule 7037. This Motion can only be filed after a party fails to properly disclose information in compliance with Federal Rule of Civil Procedure 26, and requires showing that the Movant has in good faith attempted to confer with the delinquent party.

Defendant's complete lack of response to Plaintiff's Counsel's correspondence, obstinacy in responding attempts to meet and confer regarding the requested disclosures, and late served disclosures (without any explanation as to why the disclosures might be tardy) has wasted Plaintiffs', Plaintiffs' counsel's, and the court's time. Plaintiff has incurred additional attorneys' and court costs to remedy Defendant's non-compliance with a court scheduling order, forcing Plaintiffs to incur fees of $375.00 in the process of inducing compliance by the filing of this motion.

Bankruptcy courts have jurisdiction and the authority to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (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 *Price v. Lehitine*, 564 F. 3d at 1058.

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 contemptor 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. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Although the Defendant states that he has provided the disclosures to Plaintiffs, the court orders that Defendant pay $375.00 in attorneys' and filing costs to Plaintiff, as fines imposed for Defendant's disobedience of the court scheduling order filed on December 9, 2013. Dckt. No. 13. These fees will reimburse Plaintiffs for the reasonable and necessary expenses incurred in bringing this motion to compel the production of the required Initial Disclosures.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel filed by the Plaintiffs 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 to Compel Defendant's Initial Disclosures pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7037 is granted and all initial disclosures shall be made on or before May 1, 2014.
>
> **IT IS FURTHER ORDERED THAT** Defendant pay $375.00 to Plaintiffs, representing Plaintiffs' reasonable and necessary expenses in bringing the instant Motion to Compel Initial Disclosures, by May 15, 2014.