

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

June 11, 2015 at 2:30 p.m.

1. [15-90207-E-7](#) BOOTA BASI  
[15-9014](#)  
SINGH V. BASI

STATUS CONFERENCE RE: COMPLAINT  
4-15-15 [[1](#)]

Plaintiff's Atty: Trevor J. Zink  
Defendant's Atty: Lyle W. Johnson

Adv. Filed: 4/15/15  
Answer: 5/20/15

Nature of Action:  
Dischargeability - willful and malicious injury  
Objection/revocation of discharge  
Recovery of money/property - other  
Declaratory judgment

**The Status Conference is XXXXXXXXXXXXXXXXXXXX.**

Notes:

**SUMMARY OF COMPLAINT**

The Complaint seeks to have damages arising from a claim of libel (false statements in a publication) determined non-dischargeable pursuant to 11 U.S.C. § 523(a)(6) [willfull and malicious].

**SUMMARY OF ANSWER**

The Answer admits and denies specific allegations in the Complaint.

The parties filed a Joint Discovery Plan proposing deadlines for discovery and dispositive motions in this Adversary Proceeding. Dckt. 9.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Complaint ¶ 7, Dckt. 1. In the answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 7, Dckt. 8. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

June 11, 2015 at 2:30 p.m.

a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Complaint ¶ 7, Dckt. 1. In the answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 7, Dckt. 8. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before June 25, 2015.

c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.

d. Discovery closes, including the hearing of all discovery motions, on September 18, 2015.

e. Dispositive Motions shall be heard before October 23, 2015.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:30 p.m. on December 23, 2015.

2. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA  
[15-9005](#)  
FARRAR V. HARTFORD LIFE AND  
ANNUITY INSURANCE COMPANY

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-30-15 [[1](#)]

Final Ruling: No appearance at the June 11, 2015 Status Conference is required.

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Plaintiff's Atty: Aaron A. Avery  
Defendant's Atty: unknown

Adv. Filed: 1/30/15  
Answer: none

Nature of Action:  
Recovery of money/property - turnover of property

Notes:

Continued from 4/16/15

**Pursuant to prior order of the court, the Status Conference has been continued to 2:30 p.m. on July 23, 2015.**

3. [14-91334-E-7](#) CATHERINE BENDER  
[15-9003](#)  
BENDER V. UNITED STATES OF  
AMERICA ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-19-15 [[1](#)]

Plaintiff's Atty: Jason Borg  
Defendant's Atty: unknown

Adv. Filed: 1/19/15  
Answer: none

Nature of Action:  
Dischargeability - priority tax claims

Notes:

Continued from 3/16/15 to allow counsel for Plaintiff-Debtor to communicate with the Internal Revenue Service.

#### **JUNE 11, 2015 CONTINUED STATUS CONFERENCE**

No Status Report has been filed by Plaintiff in advance of the Status Conference. Plaintiff reported at the Status Conference ~~XXXXXXXXXXXXXXXXXXXX~~.

#### **SUMMARY OF COMPLAINT**

The Complaint alleges that Plaintiff-Debtor has income tax obligations (taxes, interest, and penalties) to the United States for tax years 2009, 2010, 2011, and 2012. It is alleged that the tax obligations for 2009 are dischargeable, the tax returns having been due and filed at least three years prior to the commencement of the bankruptcy case.

For the 2010, 2011, and 2012 tax years, the returns were not due and were not filed more than three years prior to the commencement of Plaintiff-Debtor's bankruptcy case. However, it is asserted that the penalties associated with the tax obligations for these three years are dischargeable.

#### **SUMMARY OF ANSWER**

No answer has been filed.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that Adversary Proceeding is a core proceeding and jurisdiction exists pursuant to 28 U.S.C. § 157(b). Congress has provided in 28 U.S.C. § 1334(a) and (b) that federal court jurisdiction exists for the bankruptcy case and all matters arising under the Bankruptcy Code, arising in the bankruptcy case, and related to the bankruptcy case. Determination of the dischargeability of a debt pursuant to 11 U.S.C. §§ 523 and 724 are matter arising under the Bankruptcy Code and core proceedings under 28 U.S.C. § 157(b).

4. [09-93445-E-7](#) FELIPE/JENNIFER CASALDUC  
[14-9014](#)  
SKOBRAK ET AL V. CASALDUC ET  
AL

PRE-TRIAL CONFERENCE RE:  
COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
3-26-14 [[1](#)]

Plaintiff's Atty: Charles L. Hastings  
Defendant's Atty: David C. Johnston

Adv. Filed: 3/26/14  
Answer: 4/25/14

Nature of Action:  
Dischargeability - other

**The Pre-Trial Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:

Scheduling Order-  
Initial disclosures by 6/4/14  
Close of written discovery 9/4/14  
Close of depositions discovery 11/6/14  
Dispositive motions heard by 12/11/14

Pretrial Conference rescheduled from January 2015 to June 11, 2015, by stipulation of the parties.

Plaintiffs' Pretrial Statement filed 6/1/15 [Dckt 38]

Defendants' Pretrial Statement filed 6/2/15 [Dckt 40]

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. The Parties stated on the record at the May 22, 2014 Status Conference that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b) (2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c) (2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

B. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

C. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2015.

D. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2015.

E. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 2015.

F. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2015.

G. The Trial shall be conducted at ----x.m. on -----, 2015.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, -----, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <p>1. Jurisdiction, Venue, and the entry of final order and bankruptcy judge are proper in this Adversary Proceeding.</p>	<p>Jurisdiction and Venue:</p> <p>1. Jurisdiction, Venue, and the entry of final order and bankruptcy judge are proper in this Adversary Proceeding.</p>
<p>Undisputed Facts:</p> <p>1. A state court action was filed against the Defendants, and others.</p> <p>2.</p> <p>3.</p>	<p>Undisputed Facts:</p> <p>a. A state court action was filed against the Defendants and Hamptons Blueprint, Inc., doing business as Hampton Construction, the actual party with whom Steve Dkobrak and Veronica Skobrak (the "Plaintiffs") had a contract, during the pendency of the bankruptcy case.</p> <p>b. The Plaintiffs, with knowledge of the bankruptcy, proceeded to obtain a void judgment against the Defendants, and to thereafter record abstracts of judgment against the Defendants in at least two counties. (The Defendants have recently released the Stanislaus County abstract of judgment.)</p> <p>c. The construction contract in issue was between the Plaintiffs and Hamptons Blueprint, Inc., doing business as Hampton Construction.</p>
<p>Disputed Facts:</p> <p>1. On or about September 9, 2011, Plaintiffs and Defendants, and each of them, entered into an oral home improvement contract whereby Defendants agreed to remodel Plaintiffs' newly purchased house at 3849 Fourteen Mile Drive in Stockton, California, which property Plaintiffs intended to use as their</p>	<p>Disputed Facts:</p> <p>1. Defendant does not dispute the Facts stated in Paragraphs 2, 8, and 9.</p> <p>2. Defendant concurs that the "facts" in the other numerated paragraphs are in dispute.</p> <p>3. Defendant identifies the following additional disputed facts -</p>

personal residence once the remodeling work was completed, according to specifications, designs and materials agreed upon at that time by both Plaintiffs and Defendants, for which work of improvement Plaintiffs agreed to pay Defendants a total sum of \$85,000. Defendants began work on the improvement project on or about September 14, 2011. Plaintiffs were not living in the house at the start of work; they planned to move into the house when the as-contracted-for work was completed by defendants.

2. Since the start of work on the improvement project, Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms and conditions of the alleged contract. Plaintiffs' performance pursuant to the contract included, but was not limited to, 13 payments made to Defendants at their request between September 14, 2011 and March 29, 2012, totaling approximately \$98,700.

3. Defendants failed to perform the conditions, covenants and promises required on their part to be performed in accordance with the terms and conditions of the herein alleged contract. Defendants' failed to complete the work of improvement agreed upon by the parties for the agreed-upon price of \$85,000, and further failed to complete the work of improvement within a reasonable time and/or by dates agreed to by the parties. Indeed, on or around September 9, 2011, at Plaintiffs' request, Defendants promised to complete the work by Christmas of 2011, but again failed to do so. At Plaintiffs' request, Defendants then identified April 2012, a date certain when the work would be completed, only to again fail to complete the work on that date. Finally, on or about May 24, 2012,

a. The amount of damages, if any, sustained by the Plaintiffs.

b. The parties to the contract.

c. Offsets for violations of the automatic stay and permanent injunction (discharge order).

d. The Plaintiffs' knowledge of the Defendants' bankruptcy case.

by way of letter of that date, mailed certified mail, return receipt to defendants at 3004 Queens Gate Court, Modesto, CA 95355, Plaintiffs demanded that Defendants contact them by May 30, 2012, so that the parties could agree to a reasonable time frame for completion of the improvement project, and further that the work be fully completed by a date agreed upon at that time. On May 30, 2012, Plaintiffs and Defendants entered into an oral agreement that defendants would complete the work of improvement no later than July 6, 2012. Defendants did not complete the work of improvement by July 6, 2012, and never returned.

4. On or about September 9, 2011, Defendants, and each of them, made representations of material fact when they entered into the oral agreement with Plaintiffs regarding the home improvement project, knowing these representations were false. At that time, Defendants represented to Plaintiffs that they would complete the work for an agreed-on price of \$85,000. Defendants further represented to Plaintiffs that they would complete the work by December 25, 2011, and when the work was not done at that time, Defendants represented that they would finish the work on or around mid February 2012, and then by April 2012, and, finally, by July 6, 2011.

5. Plaintiffs were induced to enter into the alleged home improvement agreement with Defendants in reliance on false or fraudulent representations or false statements knowingly made by Defendants. Defendants' misrepresentations regarding price and work completion dates were made with the intent to defraud and induce Plaintiffs to rely upon said promises. Plaintiffs did not know Defendants' representations were false and

believed them to be true, and so reasonably and justifiably relied on said representations by entering into the agreement and by continuing to make payments for labor and materials during the year upon request by Defendants, eventually paying Defendants more than the agreed-upon price for the home improvement project, to their extreme detriment: Plaintiffs have paid Defendants \$98,700 for a home improvement project that was never completed by Defendants.

6. On or about November 8, 2011, Defendants directed Plaintiffs to pay them \$11,600 for the purpose of purchasing appliances for the Fourteen Mile Drive house. Defendants represented to Plaintiffs that they would use these funds to purchase the appliances. Plaintiffs paid Defendants the money requested for the purpose of purchasing the appliances on or about November 8, 2011. Defendants did not use the \$11,600 to purchase the appliances and in fact never did purchase the appliances, and have instead retained the \$11,600 for their own unauthorized purposes. When Defendants represented to Plaintiffs that they would purchase the appliances with the money Plaintiffs advanced them for that purpose, their representations to that effect were in fact false, as they had no intention of purchasing appliances with the advanced funds. Instead, they made these representations to Plaintiffs with the intent to defraud and induce Plaintiffs to rely on them by giving them \$11,600.

7. As a direct and proximate result of the Defendants' and each of their fraud and deceit, Plaintiffs have been damaged. Said damages include, but are not limited to, monies expended by Plaintiffs in reasonable and justifiable reliance on Defendants' fraudulent promises, including but not limited to the

\$11,600 advanced by Plaintiffs for the purchase of appliances, as well as any and all costs which have or will be incurred by Plaintiffs to complete the improvement work on the house at 3849 Fourteen Mile Drive, and any and all costs to Plaintiffs proximately resulting from their being unable to move into the house at 3849 Fourteen Mile Drive for an extended period of time, all of which costs have been incurred as a proximate result of Plaintiffs' reasonable reliance on Defendants' fraudulent promises.

8. On September 26, 2012, Plaintiffs filed a State Court action against Defendants asserting Plaintiffs' claims of fraud against Defendants.

9. On October 23, 2012, Defendants converted their Chapter 13 case to one under Chapter 7. Based thereon, the Bankruptcy Court scheduled the Chapter 7 341 meeting which then established the deadline of January 28, 2013 to file a Complaint to Determine Dischargeability of a Debt.

10. Although Defendants were aware of the claim by Plaintiffs, Defendants failed to amend their schedules to include Plaintiffs until January 27, 2013, the day before the deadline to file a complaint to determine dischargeability of a debt. Plaintiffs were not aware of the Defendants' bankruptcy, nor its conversion to Chapter 7 until after the deadline to file a complaint to determine the dischargeability of a debt.

11. Plaintiffs' claim, which is based on fraud, was not scheduled by Defendants under 11 U.S.C. section 521(a)(I) in time to permit the timely request for a determination of the dischargeability of the debt. As such, Plaintiffs claim is non-dischargeable pursuant to 11

U.S.C. 523(a)(3)(B).	
Disputed Evidentiary Issues: 1. None Identified	Disputed Evidentiary Issues: 1. None Identified
Relief Sought: 1. Debt determined to be nondischargeable pursuant to 11 U.S.C. § 523(a)(3) [not listed or scheduled creditor]	Relief Sought: 1.
Points of Law: 1. 11 U.S.C. § 523(a)(3).	Points of Law: 1. The Plaintiffs acknowledge that their claims was scheduled prior to the deadline for filing such a complaint, yet they allowed the time to expire and then waited for 14 more months to file their complaint. 2. The complaint does not delineate who made the alleged misrepresentations and to whom. In particular, the unspecified damages sustained and their relationship to alleged misrepresentations is not alleged. See Oregon Public Employees Retirement Fund v. Apollo Group, Inc., No. 12-16624, 2014 WestLaw 7139634 (9th Cir. 2014).
Abandoned Issues: 1. None Identified.	Abandoned Issues: 1. None Identified
Witnesses: 1. Steve Skobrak 2. Jennifer Skobrak 3. Coy Elvis General Contractor	Witnesses: 1. Both plaintiffs 2. Both defendants
Exhibits: 1. Unsigned Construction Contact	Exhibits:

<p>2. Estimate - Phase I Scope of Work</p> <p>3. Estimate - Phase 2 Scope of Work</p> <p>4. List of unfinished work</p> <p>5. E-mails between Plaintiffs and Defendants</p> <p>6. Checks showing the payments to Hampton Construction</p> <p>7. Invoices</p> <p>8. Orders</p> <p>9. Receipts</p> <p>10. New Remodeling Proposal from Coy N. Elvis General Contractor to complete unfinished remodel of Plaintiffs' home..</p>	<p>a. The amended Schedule F wherein the Plaintiffs were scheduled as creditors.</p> <p>b. The proof of service for item 9.a.</p> <p>c. Documents filed in the Superior Court case after filing of the amended Schedule F.</p>
<p>Discovery Documents:</p> <p>1. The deposition transcripts of Defendants</p>	<p>Discovery Documents:</p> <p>1. None Identified</p>
<p>Further Discovery or Motions:</p> <p>1. Depositions of Defendants</p>	<p>Further Discovery or Motions:</p> <p>1. None Identified</p>
<p>Stipulations:</p> <p>1. None Proposed.</p>	<p>Stipulations:</p> <p>1. To allow the Deposition of defendant Felipe Casalduc.</p>
<p>Amendments:</p> <p>1. None Anticipated.</p>	<p>Amendments:</p> <p>1. None Anticipated.</p>

Dismissals: 1. None Anticipated.	Dismissals: 1. None Anticipated.
Agreed Statement of Facts: 1. None Provided.	Agreed Statement of Facts: 1. None Provided.
Attorneys' Fees Basis: 1. None Sought.	Attorneys' Fees Basis: 1. None Sought.
Additional Items 1. None Identified.	Additional Items 1. None Identified.
Trial Time Estimation: 1-2 Days	Trial Time Estimation: 2-3 Days

5. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
[15-9013](#)  
GARCIA ET AL V. G STREET  
INVESTMENTS, LLC. ET AL

STATUS CONFERENCE RE: COMPLAINT  
4-10-15 [[1](#)]

**Final Ruling: No appearance at the June 11, 2015 Status Conference is required.**

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Plaintiff's Atty: Mark J. Hannon  
Defendant's Atty:  
David M. Wiseblood [G Street Investments, LLC]  
unknown [Iain MacDonald]

Adv. Filed: 4/10/15  
Answer: none

Amd Cmplt Filed: 5/30/15  
Reissued Summons: 6/1/15  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Injunctive relief - imposition of stay  
Subordination of claim or interest

Notes:

**The Status Conference is continued to 2:30 p.m. on July 23, 2015.**

Plaintiff filed an Amended Complaint on June 1, 2015. The Status Conference is continued to allow Defendants to respond to the Amended Complaint.

6. [14-90473-E-7](#) ROBERT WOJTOWICZ AND  
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ  
HERTZIC-WOJTOWICZ V. IRM  
CORPORATION

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-11-14 [[1](#)]

Plaintiff's Atty: Shane Reich  
Defendant's Atty: unknown

Adv. Filed: 7/11/14  
Answer: none

Nature of Action:  
Recovery of money/property

Notes:

Continued from 3/26/15. Paul E. Echols, Esq. to appear at continued status conference (telephonic appearance permitted) to assist the court and parties in identifying his client who has the claim which is the subject of this bankruptcy proceeding.

**SUMMARY OF COMPLAINT**

The Complaint seeks to recover a "preferential transfer" from Defendant IRM Corporation. Plaintiff-Debtor asserts that within ninety days of the commencement of the bankruptcy case Defendant enforced a wage garnishment against the Plaintiff-Debtor, collecting \$932.30. Plaintiff-Debtor asserts that this is an avoidable transfer.

**SUMMARY OF ANSWER**

No Answer File.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (not citing to any specific provision, but 28 U.S.C. § 157(b)(2)(F) identifies recovery

**MARCH 26, 2015 STATUS CONFERENCE**

The court continues the Status Conference. To insure that the proper defendant is identified, the court orders that Paul E. Echols, Esq., the state court attorney for the Defendant creditor (Exhibit 2, Dckt. 29), appear at the continued Status Conference to assist the court in determining the identify of his client for which he was counsel of record in the state court action. Mr. Echols may appear telephonically.

7. [14-90473-E-7](#)      ROBERT WOJTOWICZ AND      CONTINUED REQUEST FOR ENTRY OF  
[14-9023](#)              SHERRI HERTZIC-WOJTOWICZ      DEFAULT  
HERTZIC-WOJTOWICZ V. IRM      11-6-14 [[11](#)]  
CORPORATION

**No Tentative Ruling:**

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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 Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 49 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 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 ~~XXXXXX~~**

Sherrri Hertzic-Wojtowicz ("Plaintiff-Debtor") requests entry of default of IRM Corporation ("Defendant") in this adversary proceeding on November 6, 2014. Dckt. 11. Plaintiff-Debtor alleges that a summons for this case was issued on July 14, 2014. Plaintiff-Debtor then served the summons and complaint properly and timely on Defendant on July 28, 2014. Defendant was required to file an answer or other response to the complaint on or before August 13, 2014, but Defendant failed to do so. The court has not granted Defendant an extension of time to file a response to the complain in this proceeding.

Plaintiff-Debtor requests that the default of the Defendant be entered.

**NOVEMBER 20, 2014 HEARING**

The court continued the hearing to January 29, 2015 at 3:00 p.m. Dckt. 23.

**JANUARY 29, 2015 HEARING**

The court continued the hearing to March 26, 2015 at 2:30 p.m. Dckt. 30.

**MARCH 26, 2015 HEARING**

The court continued the hearing to June 11, 2015 at 2:30 p.m. Dckt. 32.

No parties have filed an supplemental papers in connection with this Motion since the court continued the hearing.

**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**

The Certificate of Service filed by Plaintiff attests to the Summons and Complaint having been served on Paul Echols, as the managing or general agent of IRM Corporation. Dckt. 6. The California Secretary of State reports that the corporate powers of IRM Corporation have been suspended. <http://kepler.sos.ca.gov>. It also discloses that the agent for service of process for IRM Corporation is an individual named John Connolly, whose address is listed as 2151 Salvio St, Ste 325, Concord, California 94520. FN.1.

FN.1. The Secretary of State's information is consistent with that reported on the LEXIS-NEXIS research data base. The information reported thereunder indicates that the corporate powers were suspended March 1, 2014.

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The California State Bar website reports that a Paul Echols is an attorney licensed to practice law in the State of California. The address at which Plaintiff states to have served Mr. Echols as the managing or general agent of IRM Corporation is the same address as listed by the California State Bar for Paul Echols.

On Schedule F Debtors list IRM Corporation as having a general unsecured claim for which a judgment was entered in 1993. Paul Echols, at the Modesto address, is listed as an additional notice person for the IRM Corporation judgment. If entered in 1993, such judgment would now be more than 20 years old.

8. [14-90780-E-7](#) RITU/ELISHA RAJ STATUS CONFERENCE RE: MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC 5-15-15 [[53](#)]

Debtors' Atty: Pro Se

**The Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Notes:

Set by order filed 5/22/15 [Dckt 54]. At least one of the Debtors to appear to show that the Motion is being effectively prosecuted.

**JUNE 11, 2015 STATUS CONFERENCE**

This voluntary Chapter 7 case was commenced by Ritu Raj and Elisha Marie Raj ("Debtors") on May 30, 2015. On September 2, 2014, the discharges for Debtors were entered. Dckt. 30. The bankruptcy case was closed on September 5, 2014.

On March 27, 2015, the U.S. Trustee filed a Motion to Reopen the Chapter 7 case and to have the Chapter 7 Trustee reappointed. Dckt. 36. The reopening of the case was requested because the U.S. Trustee had information concerning an undisclosed asset with a value of \$74,282.48. The case was reopened on March 29, 2015, and the Chapter 7 Trustee was reappointed.

On April 7, 2015, Debtors filed a document titled "Motion to Order a Judgment Lien Removed." Dckt. 53. The Motion was filed ex parte, no certificate of service has been filed, and it has not been set for a hearing. Such Motion must be properly set for hearing as provided in Local Bankruptcy Rule 9014-1(f) (1) or (f) (2).

Additionally, no evidence is filed in support of the Ex Parte Motion.

The Debtors identified a judgment lien of Portfolio Recovery Associates, LLC which they desired to have avoided. It appears from the Motion that the Debtor does not now own the property, but that it was sold by Debtors, for which they received \$49,000.00.

In light of the Debtors prosecuting this case, including the present Motion, in pro Se, the court sets a status conference for this Motion to address the deficiencies in the pleadings, notice, and service.

9. 15-23662-E-13 JUAN FLORES  
PP-1 Mark Caraska

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
5-26-15 [[18](#)]

TRAVANCORE PACIFIC, LLC VS.

Continued from 6/9/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on May 26, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The Motion for Relief From the Automatic Stay ~~XXXXXX~~**

Travancore Pacific, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1300 E. Bidwell St., Suite 120, Folsom, California (the "Property"). The moving party has provided the Declaration of Ramakrishna Hari Pillai to introduce evidence as a basis for Movant's contention that Juan Flores ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento, but Debtor filed this case before the hearing scheduled May 4, 2015. Exhibit

1, Dckt. 23.

The Pillai Declaration further states that there is one post-petition default in the payments, with a total of \$4,825.17 in post-petition payments past due. The Declaration also provides evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$21,335.37.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion.

Movant has provided a properly authenticated copy of the unlawful detainer complaint in the Superior Court for Sacramento County. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

Debtor appeared at the hearing, arguing that the property is essential to any plan and that there is a disagreement (possibly) about the amount of the monthly rent. There remain only several more months on the lease (to the extent that it has not been terminated pre-petition).

Debtor asserts that he paid \$4,500.00 toward the post-petition rent on June 5, 2015. This was for the June 2015 rent. Debtor failed to pay anything for the May 2015 rent, this bankruptcy case having been filed on May 2, 2015.

#### **JUNE 9, 2015 HEARING**

The court continued the hearing to 2:30 p.m. on June 11, 2015 to (1) allow Movant to confirm that the personal check for \$4,500.00 will be honored by Debtor's bank and (2) for Debtor to pay an additional \$4,354.00 in certified funds or cashier's check to be applied to the May 2015 rent. The court does not determine the amount of the rent, but requires the payments as adequate protection.

At the continued hearing the court stated that it shall consider the opposition which is presented, if the required \$8,854.00 in adequate protection payments are made, and whether further briefing of this Motion is warranted.

#### **JUNE 11, 2015 HEARING**

At the hearing, -----

The court shall issue an 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 Relief From the Automatic Stay filed by Travancore Pacific, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **xxxxxxx**