

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 22, 2016 at 2:30 p.m.

1. [10-28701](#)-E-13 STANLEY/JANELLE ORR
[15-2250](#)
ORR ET AL V. NATIONSTAR
MORTGAGE, LLC ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-23-15 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta

Defendant's Atty: Gary E. Devlin

Adv. Filed: 12/23/15

Answer: 5/12/16

Nature of Action:

Recovery of money/property - other

Declaratory judgment

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is continued to 1:30 p.m. on June 23, 2016, to be conducted in conjunction with the hearing on a motion to strike.

Notes:

Continued from 4/20/16 to afford the Parties the opportunity to continue their settlement discussions, file responsive pleadings if necessary, and consider such responsive pleadings prior to the continued status conference.

Answer and Affirmative Defenses of Defendants to Complaint filed 5/12/16 [Dckt 52]

Joint Discovery Plan filed 5/20/16 [Dckt 54]

[PLC-5] Motion to Strike Answers and Defenses of Defendants in the Alternative Request for More Definitive Statement filed 5/23/16 [Dckt 56], set for hearing 6/23/16 at 1:30 p.m.

June 22, 2016 at 2:30 p.m.

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2. [15-28108-E-11](#) WILLARD BLANKENSHIP
[16-2068](#)
BLANKENSHIP V. KLETCHKO ET AL

STATUS CONFERENCE RE: COMPLAINT
4-4-16 [[1](#)]

Plaintiff's Atty: Stephen M. Reynolds
Defendant's Atty: unknown

Adv. Filed: 4/4/16
Answer: none

Nature of Action:
Recovery of money/property
Validity, priority or extent of lien or other interest in property

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

JUNE 22, 2016 STATUS CONFERENCE

At the Status Conference, the Parties reported ~~XXXXXXXXXXXXXXXXXXXX~~.

SUMMARY OF COMPLAINT

William Blankenship ("Plaintiff-Debtor") seeks to avoid an abstract of judgment which was recorded within ninety days of the commencement of his Chapter 11 case.

SUMMARY OF ANSWER

Michael Kletchko and Patrick Ruedin ("Defendants") have not filed an answer or responsive pleading. Plaintiff and Defendants have engaged in extensive negotiations and efforts in drafting a consensual Chapter 11 Plan in Plaintiff-Debtor's bankruptcy case, and report that it appears that resolution of this Adversary Proceeding is included in the Chapter 11 Plan.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint 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)(F). Complaint ¶¶ 3, Dckt. 1.

3. [10-37416](#)-E-13 SHARION WILTON
[15-2243](#)
WILTON V. BANK OF AMERICA,
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-17-15 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 12/17/15
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

<p>The Status Conference is removed from the calendar, judgment having been entered in this Adversary Proceeding.</p>
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Notes:

Continued from 4/20/16 to afford Plaintiff-Debtor the opportunity to timely
file and prosecute a motion for entry of default judgment.

[DBJ-1] Motion for Default Judgment filed 4/21/16 [Dckt 16]; Order granting
filed 5/31/16 [Dckt 31]

Judgment against Bank of America, N.A. filed 6/10/16 [Dckt 32]

4. [12-41422-E-13](#) DAVID/ANNA MONTOYA
[16-2057](#)
MONTOYA, JR. ET AL V. OCWEN
LOAN SERVICING, LLC ET AL

STATUS CONFERENCE RE: AMENDED
COMPLAINT
3-25-16 [[7](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Brian A. Paino

Adv. Filed: 3/24/16
Answer: none

Amd. Cmplt. Filed: 3/25/16
Answer: 5/25/16

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

[PLC-5] Motion to Strike Defenses of Defendants in the Alternative Request for
More Definitive Statement filed 5/31/16 [Dckt 11], set for hearing 7/21/16 at
1:30 p.m.

JUNE 22, 2016 STATUS CONFERENCE

At the Status Conference, the Parties addressed the deficiencies of the
required pleading of the basis for federal court jurisdiction and what matters
are core and non-core, if any, stating as follows. ~~XXXXXXXXXXXXXXXX~~

SUMMARY OF FIRST AMENDED COMPLAINT

David and Anna Pimentel Montoya ("Plaintiff-Debtor") filed the seventy-
two page First Amended Complaint on March 25, 2016. Dckt. 7. The Complaint is
seven pages in length and has sixty-five pages of exhibits attached to it. The
First Amended Complaint alleges that Defendant filed a Proof of Claim, and
three Notices of Mortgage Payment Change in Plaintiff-Debtor's Chapter 13
bankruptcy case. Further, that the Proof of Claim and the Notices of Mortgage
Payment Change do not show an escrow shortage or change in the impound account
associated with the claim.

It is further alleged that Defendant's claim is provided for as a Class
4 claim under Plaintiff-Debtor's Chapter 13 Plan (secured claim not in default
and payments extend beyond the term of the Plan).

Plaintiff-Debtor further states that on March 15, 2016, Defendant sent
Plaintiff-Debtor a notice stating that there was projected an Escrow Shortage
of \$12,722.67. It is asserted that such alleged shortage is inconsistent with
the prior Notices from Defendant.

First Claim for Relief.

In the First Claim for Relief Plaintiff-Debtor requests the court disallow the asserted Escrow Shortage as any part of Defendant's Claim in this case. It is further asserted that the Notices filed violate Federal Rule of Bankruptcy Procedure 9011. Additionally, that Plaintiff-Debtor has a contractual right to attorneys' fees.

Second Claim for Relief.

The Second Claim asserts that Defendant's record maintenance procedures are deficient and violate RESPA. Because of these procedures, Plaintiff-Debtor has expended "hours of expert assistance researching the Notice of Mortgage Payment Change, securing evidence that the Notice Payment Change was not valid, retain counsel and file an adversary proceeding at great cost...."

Third Claim for Relief.

In the Third Claim for Relief, Plaintiff-Debtor seeks a "declaration" of the amounts due and owing and the right to attorneys' fees - which are the substantive claims being asserted in the First Two Claims for Relief. Essentially, it appears that Plaintiff-Debtor is seeking a declaration that the relief granted pursuant to the First and Second Claims for Relief is relief really granted by the court. FN.1.

FN.1.

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. FN.1.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.1.1. 28 U.S.C. §2201,

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be

sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

SUMMARY OF ANSWER

Ocwen Loan Servicing, LLC and Wells Fargo Bank, N.A., Trustee, ("Defendant") filed an Amended Answer to the First Amended Complaint on June 15, 2016. Dckt. 16. The Amended Answer admits and denies specific allegations in the First Amended Complaint, and includes six Affirmative Defenses.

JOINT STATUS REPORT

The Parties and their Counsel have cooperated to file a Joint Status Report. Dckt. 18. Both Parties anticipate conducting discovery involving the claims. The Parties project having a non-expert discovery cutoff date of December 1, 2016; disclosure of experts and exchanges of reports, if any, on or before January 1, 2017.

It is reported that Plaintiff-Debtor has filed a Motion to Strike (which appears to be to the original answer), which seeks to either strike the affirmative defenses or obtain a more definite statement of the grounds for such defenses.

Defendant states that Defendant intends to file a motion for judgment on the pleadings.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b). First Amended Complaint ¶ 1, Dckt. 7. However, there is no allegation of whether this is core or non-core matter, and if non-core, whether Plaintiff-Debtor consents to the bankruptcy judge entering all orders and the final judgement on non-core matters. Plaintiff-Debtor does allege that the claims in the Adversary Proceeding relates to Defendant's claim in the Plaintiff-Debtor's bankruptcy case and Chapter 13 Plan, which the court notes are core matters.

In the Answer Defendant fails to admit or deny federal court jurisdiction and fails to affirmatively plead whether matters are core or non-core, and if non-core whether Defendant consents to the bankruptcy judge entering all orders and the final judgment

Required Pleading of Jurisdiction and Core/Non-Core Matters in

Complaint and Answer

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint "[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction....," apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the addition pleading requirement concerning whether the matters in the complaint are core or non-core:

"Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.**"

Fed. R. Bankr. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

"(b) Applicability of Rule 12(b)-(I) F.R.Civ.P. Rule 12(b)-(I) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall admit or deny an allegation that the proceeding is core or non-core.** If the response is that the proceeding is **non-core**, it **shall include a statement that the party does or does not consent** to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties."

Fed. R. Bank. P. 7012(b) (emphasis added).

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). **First Amended Complaint, ¶¶ X, X, Dckt. X.** The Defendant admits the jurisdiction and that this is a core proceeding.

Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, 2016.
- c. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- e. Dispositive Motions shall be heard before -----, 2016.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

5. [11-22122-E-13](#) RUSSELL/TINA BREY
[16-2073](#)
BREY ET AL V. JP MORGAN CHASE
BANK, N.A.

STATUS CONFERENCE RE: COMPLAINT
4-13-16 [[1](#)]

ADV PROCEEDING DISMISSED 6/9/16

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.

6. [10-47727-E-13](#) ROBIN JARRED
[16-2017](#)
JARRED V. PNC BANK, NATIONAL
ASSOCIATION

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-2-16 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 2/2/16
Summons Reissued: 5/10/16
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Plaintiff reporting that this Adversary Proceeding has been settled, **the Status Conference is continued to 2:30 p.m. on September 7, 2016.**

Notes:

Continued from 4/20/16 by request of Plaintiff-Debtor

Request for Entry of Default by Plaintiff filed 4/28/16 [Dckt 11]; Memorandum re Default Papers [summons and complaint not served within 7 days after summons was issued] filed 4/28/16 [Dckt 12]

Reissued Summons 5/10/16 [Dckt 13]; Certificate of Service of Reissued Summons and Notice of Status Conference and Complaint filed 5/11/16 [Dckt 14]

Plaintiff's Status Conference Statement filed 6/6/16 [Dckt 15]

JUNE 22, 2016 STATUS CONFERENCE

On June 6, 2016, Plaintiff filed a Status Report. Dckt. 15. Plaintiff states that this matter seeking the reconveyance of a deed of trust upon completion of a Chapter 13 Plan (commonly called a "lienstrip") has been resolved. The Complaint states a very straightforward claim and relief sought, which is consistent with the Defendant being able to quickly settle the action. Plaintiff requires a continuance of the Status Conference of approximately sixty days so the parties can conclude the settlement and dismiss this Adversary Proceeding.

7. [10-49127](#)-E-13 MICHAEL/AMY WALTZ
[16-2077](#)
WALTZ ET AL V. BANK OF
AMERICA, N.A.

STATUS CONFERENCE RE: COMPLAINT
4-14-16 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 4/14/16
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

<p>The Plaintiff reporting that this Adversary Proceeding has been settled, the Status Conference is continued to 2:30 p.m. on September 7, 2016.</p>
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Notes:

Plaintiff's Status Conference Statement filed 6/9/16 [Dckt 8]

JUNE 22, 2016 STATUS CONFERENCE

On June 6, 2016, Plaintiff filed a Status Report. Dckt. 15. Plaintiff states that this matter seeking the reconveyance of a deed of trust upon completion of a Chapter 13 Plan (commonly called a "lienstrip") has been resolved. The Complaint states a very straightforward claim and relief sought, which is consistent with the Defendant being able to quickly settle the action. Plaintiff requires a continuance of the Status Conference of approximately sixty days so the parties can conclude the settlement and dismiss this Adversary Proceeding.

8. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD
BUFFET, INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-15-14 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 1/20/16

[RLC-20] Motion to Approve Employment of Accountant Nunc Pro Tunc filed 6/10/16
[Dckt 194], set for hearing 7/21/16 at 10:30 a.m.

The Status Conference is continued to 2:30 p.m. on October 12, 2016, to afford the Debtor and Plan Administrator to conclude post-confirmation matters and close the Chapter 11 case.

9. [10-46031](#)-E-13 TERRY/LISA TAYLOR
[16-2078](#)
TAYLOR ET AL V. RABO BANK,
N.A.
ADV. CASE CLOSED: 06/06/2016

STATUS CONFERENCE RE: COMPLAINT
4-14-16 [[1](#)]

ADV. CASE DISMISSED 5/19/16
ADV. CASE CLOSED 6/6/16

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.

10. [16-20734](#)-E-13 EUGENE SPENCER
[16-2059](#)
SPENCER V. SPENCER, III

STATUS CONFERENCE RE: COMPLAINT
3-25-16 [[1](#)]

By request of Parties, reset to 6/23/16 at 1:30 p.m. to be heard in conjunction with Motion for Abstention and Remand to State Court

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Mark A. Serlin
Defendant's Atty: Pro Se

Adv. Filed: 3/25/16
Answer: 4/25/16

Counterclaim & Jury Demand Filed: 4/25/16
Answer: 5/9/16
Amd. Answer: 5/10/16

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

The Status Conference is continued to 1:30 p.m. on June 23, 2016.
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Notes:

[MAS-1] Motion for Abstention and Remand to State Court filed 5/6/16 [Dckt 8], continued to 6/23/16 at 1:30 p.m.

Order Resetting Status Conference to 6/23/16 at 1:30 p.m. filed 6/13/16 [Dckt 19]

11. [10-49649-E-13](#) NANCY ROBERTS
[16-2044](#)
ROBERTS V. WELLS FARGO BANK,
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-9-16 [[1](#)]

Plaintiff's Atty: David M. Brady
Defendant's Atty: unknown

Adv. Filed: 3/9/16
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

<p>The Status Conference is XXXXXXXXXXXXXXXXXXXX.</p>
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Notes:
Continued from 5/18/16

JUNE 22, 2016 STATUS CONFERENCE

No further documents have been filed and the Adversary Proceeding has not been dismissed. At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

MAY 18, 2016 STATUS CONFERENCE

At the Status Conference the Plaintiff Debtor reported that the deed of trust has been reconveyed. Counsel for Wells Fargo Bank, N.A. appeared and the Status Conference and concurred in the estimate that the Parties should be able to have this matter concluded and the Complaint dismissed within thirty days.

SUMMARY OF COMPLAINT

Nancy Roberts ("Plaintiff-Debtor") in which she seeks to have the court determine that a deed of trust is void, the secured claim (as valued pursuant to 11 U.S.C. § 506(a) in Plaintiff-Debtor's Chapter 13 case) has been paid in full through Plaintiff-Debtor's now completed Chapter 13 Plan. Plaintiff asserts the right to recover damages, including \$500.00 in statutory damages pursuant to California Civil Code § 2941(d), and attorneys fees.

In the body of the Complaint, the person against whom relief is requested is identified as "Wells Fargo Bank." No adversary proceeding caption naming the parties is included on the Complaint. Service was made, by certified mail, on the entity named on the Certificate of Service as "Wells Fargo Bank, **N.A.**" (Emphasis added.)

The FDIC website lists thirty-six entities with the words "Wells Fargo Bank"

in their names. (Of these, five are listed as having an "Active" FDIC status.)
FN.1. The California Secretary of State lists five corporations (two listed as
"Active") having the words "Wells Fargo Bank" in their names.

F N . 1
[https://research.fdic.gov/bankfind/results.html?name=wells+fargo+bank&fdic=&add
ress=&city=&state=&zip=.](https://research.fdic.gov/bankfind/results.html?name=wells+fargo+bank&fdic=&address=&city=&state=&zip=)

FN.2. <http://kepler.sos.ca.gov/>.

SUMMARY OF ANSWER

No Answer or other responsive pleading has been filed.

12. [12-39954-E-13](#) JOHN/MICHELLE PINEDA
[16-2002](#)
PINEDA, JR. ET AL V. WELLS
FARGO HOME MORTGAGE

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-5-16 [[1](#)]

**APPEARANCE OF PETER L. CIANCHETTA, ESQ.
COUNSEL FOR DEBTORS
AND
ADAM BARISH
COUNSEL FOR WELLS FARGO HOME MORTGAGE
REQUIRED FOR JUNE 22, 2016 HEARING**

Telephonic Appearances Permitted

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Adam N. Barasch

Adv. Filed: 1/5/16
Answer: none

Nature of Action:
Injunctive relief - other

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 4/20/16. Parties to file updated Status Conference Statements, either jointly or separate, on or before 6/13/16. Plaintiff-Debtor to provide Defendant a statement of damages on or before 5/26/16.

Status Conference Statements not filed as of 6/16/16.

JUNE 22, 2016 STATUS CONFERENCE

Though ordered to file updated status reports, neither the Plaintiff-Debtor nor Wells Fargo Bank, N.A. have filed updated status reports. Dckt. 12.

APRIL 20, 2016 STATUS CONFERENCE

The Plaintiff-Debtor reports that the initial accounting should be completed

The court continued the Status Conference to June 22, 2016 (sixty-three day continuance) and ordered that the Parties file updates status reports (either jointly or individually) on or before June 13, 2016. The court also ordered Plaintiff-Debtor to provide Defendant with a statement of damages on

or before May 26, 2016.

SUMMARY OF COMPLAINT

John and Michelle Pineda (Plaintiff-Debtor) commenced this action alleging violation of the automatic stay. It is alleged that Plaintiff-Debtor commenced a Chapter 13 bankruptcy case on November 13, 2012, the plan was confirmed on February 27, 2013, the bankruptcy case was dismissed on October 17, 2015, and the dismissal was vacated on November 25, 2015.

Plaintiff-Debtor alleges that December 16, 2015, Defendant Wells Fargo Bank, N.A. sent a statement to Plaintiff-Debtor asserting that the obligation secured by Plaintiff-Debtors property was in default. Exhibit A to Complaint. Dckt. 1. The statement lists the delinquent payments and advises Plaintiff-Debtor that a foreclosure may have already started. Further, if Debtors want to retain their home, they need to pay the delinquency or seek other options.

It is further alleged that on January 4, 2016, Plaintiff-Debtor received a certified letter advising them that their mortgage loan was delinquent. It is alleged that the certified letter was signed for by the Plaintiff-Debtors child, which alarmed that child.

Plaintiff-Debtor seeks compensatory and punitive damages pursuant to 11 U.S.C. § 362(k). Additionally,

Plaintiff-Debtor seeks to have Wells Fargo Bank, N.A. held in contempt of court. Plaintiff-Debtor also seeks the recover of attorneys fees pursuant to 11 U.S.C. § 362(k).

SUMMARY OF ANSWER

Wells Fargo Bank, N.A. has not filed a responsive pleading.

STATUS OF PLAINTIFF-DEBTORS BANKRUPTCY CASE

The court confirmed Plaintiff-Debtors Modified Chapter 13 Plan on January 21, 2016. Order; 12-39954, Dckt. 82. Notwithstanding a deficient Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024 motion to vacate, the court vacated the dismissal. Civil Minutes; *Id.*, Dckt. 63. The court took into account that Plaintiff-Debtor had invested three years into the plan, and the dismissal of the case after three years, based on the failure to respond to the Chapter 13 Trustees motion to dismiss caused significant prejudice to Plaintiff-Debtor. *Id.*

ORDER FOR PROSECUTION OF ADVERSARY PROCEEDING

The failure of the Parties to file the updated status reports as order leaves the court handicapped in trying to evaluate whether the parties are prosecuting this Adversary Proceeding diligently and in good faith, or whether it is being left to languish. No answer has been filed by the "person," an entity named as "Wells Fargo Home Mortgage, a Division of Wells Fargo Bank N.A." No explanation is provided as to why or how, "Wells Fargo Home Mortgage" is a legally existing entity.

An entity named "Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. executed a stipulation with the Plaintiff-Debtor to extend the time to file a responsive pleading through and including March 3, 2016. Though that date has come and gone, no responsive pleading has been filed by the entity purporting to appear named "Wells Fargo Home Mortgage."

The California Secretary of State reports that the entity named "Wells Fargo Home Mortgage, Inc." was "Merged Out" and is not an active legal entity in California. <http://kepler.sos.ca.gov/>. For limited liability companies, the Secretary of State reports that the entity "Wells Fargo Home Mortgage of Hawaii, LLC has had its status "cancelled," but there is an active entity, "Wells Fargo Home Mortgage, LLC," but its "agent resigned 05/20/2014." No other corporations or limited liability companies are listed by the California Secretary of State to do business in California.

The court is unsure what "Wells Fargo Home Mortgage" entity is purported to be sued and is purporting to appear in this court. Presumably, if "Wells Fargo Home Mortgage" is a dba for Wells Fargo Bank, N.A., then its counsel would have appeared and identified the client as "Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage."

It appearing that the Complaint may not name an entity which exists, and thereby cannot satisfy the Constitutional requirement that the court have before it the real parties in interest with an actual case or controversy FN.1., the court issues a Scheduling Order setting the following dates and deadlines:

- A. John Pineda, Jr. And Michelle Lee Pineda, the Plaintiff-Debtor, shall file and serve either: (1) a statement identifying the defendant named as "Wells Fargo Home Mortgage, A Division of Wells Fargo Bank, N.A. and how the court can determine that it is a legally existing entity named as a defendant, or (2) an amended complaint naming the true defendant on or before July 5, 2016.
- B. If Plaintiff-Debtor and Wells Fargo Bank, N.A. agree that the reference to Wells Fargo Home Mortgage, A Division of Wells Fargo Bank, N.A., is intended to identify Wells Fargo Bank, N.A. as the defendant, on or before July 5, 2016, Plaintiff-Debtor and Wells Fargo Bank, N.A. shall file a joint ex-parte motion to correct the name of the defendant in the Complaint and lodge with the court an order so correcting the caption and the references in the Complaint.
- C. If the Complaint is corrected to name Wells Fargo Bank, N.A. as the defendant, then on or before July 30, 2016, Wells Fargo Bank, N.A. shall file an answer to the Complaint.

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 continued June 22, 2016 Status Conference having been conducted by the court, neither the Plaintiff-Debtor or putative defendant Wells Fargo Bank, N.A. having filed updated status reports

as ordered by the court (Dckt. 12), this Adversary Proceeding being six months old without the filing of an answer or other responsive pleading by a defendant, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Pretrial Conference is continued to 2:30 p.m. on August 10, 2016.

IT IS FURTHER ORDERED that:

- A. John Pineda, Jr. And Michelle Lee Pineda, the Plaintiff-Debtor, shall file and serve either:
 - 1. a statement identifying the defendant named as "Wells Fargo Home Mortgage, A Division of Wells Fargo Bank, N.A. and how the court can determine that it is a legally existing entity named as a defendant, or
 - 2. an amended complaint naming the true defendant on or before July 5, 2016.
- B. If Plaintiff-Debtor and Wells Fargo Bank, N.A. agree that the reference to Wells Fargo Home Mortgage, A Division of Wells Fargo Bank, N.A., is intended to identify Wells Fargo Bank, N.A. as the defendant, on or before July 5, 2016, Plaintiff-Debtor and Wells Fargo Bank, N.A. shall file a joint ex-parte motion to correct the name of the defendant in the Complaint and lodge with the court an order so correcting the caption and the references in the Complaint.
- C. If the Complaint is corrected to name Wells Fargo Bank, N.A. as the defendant, then on or before July 30, 2016, Wells Fargo Bank, N.A. shall file an answer to the Complaint.

IT IS FURTHER ORDERED that if Plaintiff-Debtor fails to timely comply with the obligations under Subparagraphs A.1., A.2., or B above, the court shall dismiss the Adversary Proceeding without further notice or hearing.

13. [15-29555-E-13](#) DIANNE AKZAM
[15-2247](#)
U.S. TRUSTEE V. AKZAM

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-18-15 [[1](#)]

Plaintiff's Atty: Allen C. Massey
Defendant's Atty: Pro Se

Adv. Filed: 12/18/15
Answer: 5/18/16

Nature of Action:
Injunctive relief - other

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 5/18/16 to allow for a review of the Answer, if filed, or the further prosecution of this Adversary Proceeding if no answer is filed.

Answer and Affirmative Defenses to Adversary Complaint of U.S. Trustee Tracy Hope Davis filed 5/18/16 [Dckt 21]

SUMMARY OF COMPLAINT

Tracy Hope Davis, the U.S. Trustee, ("Plaintiff-Trustee") seeks the entry of a judgment imposing a three injunction preventing Dianne Akzam from commencing another bankruptcy case unless the court in which she desires to commence the case issuing an order authorizing the filing. (Commonly called a prefiling review order.)

SUMMARY OF ANSWER

Dianne Akzam ("Defendant-Debtor") has filed an Answer which admits and denies specific allegations in the Complaint. In addition, Defendant-Debtor states ten Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint 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 (O)~~. Complaint ¶ 2, Dckt. 1. In her Answer, ~~Defendant~~ states that she is without sufficient information and belief to admit or deny the allegations of jurisdiction and core proceedings, and thereon denies. Answer ¶ 2, Dckt. 21.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

"(b) Applicability of Rule 12(b)-(i) F.R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties."

Fed. R. Bank. P. 7012(b) (emphasis added).

Defendant-Debtor cannot contend that she lacks information and thereon "denied" the allegations of federal court jurisdiction and whether this is a core proceeding. At the hearing, ~~XXXXXXXXXXXXXX~~.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). First Amended Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- B. Initial Disclosures shall be made on or before -----, 2016.
- C. Expert Witnesses shall be disclosed on or before -----, 2016, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2016.
- D. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- E. Dispositive Motions shall be heard before -----, 2016.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be

June 22, 2016 at 2:30 p.m.

conducted at ----- p.m. on -----, 2016.

14. [09-43956](#)-E-13 RAFAEL/ELSA MARTINEZ
[15-2131](#)
MARTINEZ, JR. ET AL V. LITTON
LOAN SERVICING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-18-15 [[1](#)]

ADV. PROCEEDING DISMISSED 6/1/16

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

<p>The Status Conference is removed from the Calendar, this Adversary Proceeding having been dismissed.</p>

15. [12-20173-E-7](#) LAVALLE/MARILYN GARY
[16-2039](#)
GARY ET AL V. AT&T ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-2-16 [[1](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 3/2/16
Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

<p>The Status Conference is continued to 2:00 p.m. on August 10, 2016.</p>

Notes:

Continued from 5/18/16

Plaintiffs' 2nd Status Statement filed 6/15/16 [Dckt 12]

Plaintiffs' Amended 2nd Status Statement filed 6/15/16 [Dckt 15]

JUNE 22, 2016 STATUS CONFERENCE

Plaintiff has filed a Status Report, advising the court that this matter has been settled. Dckt. 15. A copy of the fully executed settlement agreement is filed as an exhibit to the Report. Dckt. 16. Plaintiff requests a one month continuance of the Status Conference so that the settlement may be performed and this Adversary Proceeding dismissed by Plaintiff.

16. [13-31975](#)-E-13 JACK/LINDA GANAS
PLC-3

CONTINUED OBJECTION TO NOTICE
OF MORTGAGE PAYMENT CHANGE
AND/OR MOTION FOR ATTORNEY'S
FEES
11-13-14 [[55](#)]

**APPEARANCE OF PETER L. CIANCHETTA, ESQ.
COUNSEL FOR DEBTORS
AND
EDDIE JIMENEZ
COUNSEL FOR WELLS FARGO BANK, N.A.
REQUIRED FOR JUNE 22, 2016 HEARING**

Telephonic Appearances Permitted

<p>The hearing on the Objection to Notice of Mortgage Payment Change is removed from the Calendar, the court ordering the Objection dismissed without prejudice.</p>
--

JUNE 22, 2016 HEARING

This Objection was filed on November 13, 2014. It is still pending nineteen months later. While promising that this Objection has been settled and promising to dismiss the Objection, it is still pending - nineteen months later.

Debtor's Chapter 13 bankruptcy case was facing dismissal pursuant to a motion of the Trustee (Dckt. 116), but that motion was denied without prejudice due to Debtor having a modified plan and motion to confirm on file. Dckts. 126, 123. Debtor's opposition to the motion to dismiss was nothing more than a two sentence argument by counsel of, "Debtors are filing a Motion to Modify plan that will cure the arrears matching the plan payments to the Loan Modification to which Court Approval was recently obtained. Said hearing will be set for June 14, 2016." Opposition, Dckt. 121. Debtor failed, or refused, to provide any testimony in a declaration or other evidence in support of such opposition.

While promising to have the modified plan set for confirmation on June 14, 2016, it was not so set by Debtor. Rather, it was set for July 26, 2016. Notice of Hearing, Dckt. 124.

The proposed Modified Plan lists a creditor named "Wells Fargo" as having a Class 1 claim with no arrearage and a monthly contract installment of \$833.25. Dckt. 126 at 2. The Additional Provisions list a Class 1 Creditor named "Wells Fargo Bank, N.A." as having a claim in an unstated amount which is being modified by a consensual loan modification, which is subject to separate court approval. *Id.* at 7.

The court issued an order on March 23, 2016 (ninety-one days before this continued June 22, 2016 Status Conference) approving and authorizing Debtor to enter into a settlement with Wells Fargo Bank, N.A., which includes the

authorization to enter into the specified Loan Modification. Dckt. 114.

To date, nothing has been filed in connection with the instant Objection and it appears that neither Debtor nor Creditor are actively prosecuting the Objection.

At the hearing, the Parties advised the court **XXXXXXXXXXXXXXXXXXXX**.

Based on the files in this case, whatever dispute may have existed, neither Debtor nor Wells Fargo Bank, N.A. are prosecuting this Objection. Based on Debtor's motion to approve compromise and the order thereon, it appears that this Objection has been rendered moot.

Therefore, the court dismisses the Objection to Notice of Mortgage Payment Change without prejudice.

COURT ISSUED ORDER

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 Objection to Notice of Mortgage Payment Change having been pending for nineteen months, the court having approved a settlement and authorized a loan modification for the claim to which the objection relates (Dckt. 114), the Parties having stated to the court at the April 2016 Hearing that a dismissal would be filed, no dismissal or other documents having been filed by any of the Parties to this Contested Matter, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Notice of Mortgage Payment Change is dismissed without prejudice.

PRIOR HEARING AND REVIEW OF PLEADINGS

APRIL 20, 2016 HEARING

To date, nothing has been filed in connection with the instant Motion.

On March 22, 2016, the court authorized the Debtor to enter into a settlement and modification with Defendant. Civil Minutes and Order, Dckts. 112 and 114, respectively.

Under the terms of the Settlement Agreement (Exhibit A, Dckt. 99), all issues in this contested matter are to have been resolved.

The Parties reported to the court that the dismissals will be filed and

requested that the court continue the Status Conference.

The court continued the matter to 2:30 p.m. on June 22, 2016.

JANUARY 20, 2016 HEARING

To date, nothing has been filed in connection with the instant motion. At the hearing the Parties report that the Settlement Agreement has been executed by Plaintiff-Debtors. But Defendant requested a revision, and has signed the revised agreement. Plaintiff-Debtors confirmed that the amendment is acceptable and is being signed by the Plaintiff-Debtors. A motion to approve the compromise will then be filed in the bankruptcy case.

The court continued the matter to 2:30 p.m. on April 20, 2016.

OCTOBER 14, 2015 HEARING

The Motion to Approve Compromise and Motion to Approve Loan Modification are being finalized by the parties. Plaintiff-Debtor has filed a motion to confirm the plan in their Chapter 13 case. The court continues this hearing and the status conference in the related Adversary Proceeding to allow the parties to consummate the settlement to 2:30 p.m. on January 20, 2016.

JUNE 24, 2015 HEARING

At the hearing, Plaintiff-Debtor's counsel reported that a settlement offer has been presented. There is a \$1,500.00 issue, which the parties are now investigating. Based on the representation of the various attorneys for the parties that this matter has been resolved, the court continues the status conference.

FEBRUARY 18, 2015 STATUS CONFERENCE

The parties reported that due to illness of counsel they have not been able to advance their settlement discussions. However, all attorneys are now available and actively addressing the issues. The court continues the Status Conference as requested. At the Status Conference, the court continued the hearing to 2:30 p.m. on June 24, 2015 to be heard in conjunction with the Status Conference. Dckt. 71.

DECEMBER 16, 2014 HEARING

At the hearing, the court continued to 2:30 p.m. on February 18, 2015 to be heard in conjunction with the Status Conference in Adversary case number 14-2080-E. Dckt. 67.

Jack and Linda Ganas ("Debtors") filed the instant Objection to Notice of Mortgage Payment Change and Request for Attorney's Fees on November 13, 2014. Dckt. 55.

Debtors state that Wells Fargo Bank, N.A. filed Proof of Claim No. 4 on January 15, 2014 where they claimed an arrearage existed at the time of the bankruptcy filing. The escrow shortage they listed was \$529.34 as of the petition

date. On October 28, 2014, Wells Fargo Bank, N.A. filed a Notice of Payment Change. The documents submitted with their Notice of Mortgage Payment Change state that there was an escrow shortage on the date of the petition of (\$8,977.23). Debtors argue that this pre-petition shortage was not listed on Wells Fargo's Proof of Claim and is unsupported by any explanation on an amended proof of claim or on the Notice of Mortgage Payment Change.

Wells Fargo Bank, N.A.'s Notice of Mortgage Payment Change requests that the current escrow payment change from \$167.74 to \$348.05.

Debtors allege that the inconsistencies are the result of pre-petition arrearage escrow amounts not being properly credited in the analysis which result in the pre-petition arrearage also being paid post-petition, thereby resulting in a duplicate payment. The deed of trust only provides for payment of collection fees in to protect their security interest as stated in paragraph 18 of the deed of trust note attached to Proof of Claim 4.

Debtor additionally requests that the court grant reasonable attorney's fees pursuant to California Civil Code § 1717.

WELLS FARGO BANK, N.A.'S OPPOSITION

Wells Fargo Bank, N.A. filed an opposition to the instant Objection on February 4, 2015. Dckt. 68. Wells Fargo Bank, N.A. objects on the following basis:

1. Debtors' objection should be overruled because it lacks merit as it fails to accurately represent Wells Fargo Bank, N.A.'s escrow analysis and has failed to establish an inconsistencies with Wells Fargo Bank, N.A. Proof of Claim.

Debtors misstate the escrow shortage as provided in Wells Fargo Bank, N.A.'s Notice. Debtors contend that the escrow shortage totals \$8,977.23. However, the quoted amount is the actual escrow balance, not the escrow shortage. The correct escrow shortage is \$1,998.08 (Notice, pg. 6). The reason for this escrow shortage was that Wells Fargo Bank, N.A. made several post-petition tax and hazard disbursements on the subject loan. As the Debtors have misinterpreted the escrow analysis, their premise that the Notice is inconsistent with Wells Fargo Bank, N.A.'s Proof of Claim is misrepresented.

Furthermore, Debtors contend that inconsistencies between the Notice and Proof of Claim are the result of pre-petition arrearage escrow amounts not being properly credited to Debtors' account. The alleged result of pre-petition escrow amounts not being properly credited is pre-petition arrears are being collected post-petition, resulting in a duplicate payment. However, there are no inconsistencies between the Proof of Claim and the Notice. In addition the Debtors have not offered any evidence the pre-petition arrearage escrow amounts not being properly credited to their account. As provided in the Proof of Claim, the pre-petition escrow shortage is \$529.34. This amount was not included in the post-petition escrow analysis. It was included on the Notice as a negative balance since it was claimed in the pre-petition arrears and also notes that "an escrow adjustment of \$529.34 is scheduled

to be repaid through the bankruptcy."

2. Debtors' Objection is substantially related to the adversary proceeding and should be continued until the Adversary Proceeding is concluded. The sole remaining cause of action is Debtors' objection to Wells Fargo Bank, N.A.'s Proof of Claim. Specifically, Debtors are alleging that the pre-petition accounting regarding the loan is incorrect. The resolution of this matter directly relates to the issues raised in the instant Objection. Wells Fargo Bank, N.A.'s counsel and Debtor's counsel are working towards a potential resolution of the Adversary Proceeding which will likely result in a global resolution of the Objection. Wells Fargo Bank, N.A. requests that the court continue the hearing so that the parties may reach a global resolution regarding Debtor's Adversary Proceeding and Objection.

TRUSTEE'S RESPONSE

The Trustee filed a response on May 28, 2015. Dckt. 75. The Trustee first states that he does not oppose the matter being continued as being substantially related to the pending adversary proceeding.

The Trustee agrees that the Escrow Analysis may be insufficient without further explanation. The Trustee states that he has examined the Notice of Mortgage Payment change filed on October 28, 2014 and notes that on page 6, a starting December 2014 balance of -<\$2,153.75> in the Projected Escrow balance column. This number appears to be the actual escrow balance as of November 2014, which appears to include pre-petition amounts as the analysis commences July 2013. No explanation is provided for the \$7,203.85 payment to escrow posted September 2014. Additionally, the Trustee notes the Projected Payments to escrow do not agree with the Escrow Disclosure Statement filed with Proof of Claim No. 4-1.

The Trustee states that the projected disbursements from escrow total \$2,178.50 or \$181.54 per month. The new monthly escrow payment computed per the Notice is \$348.05. Property taxes and insurance appear escrowed in the payment, and for 2014 were \$736.75 x 2 (\$1,473.50) and \$705.00 for a total of \$2,178.50; this would require payments of \$181.55 per month on average.

REVIEW OF NOTICE OF MORTGAGE PAYMENT CHANGE

Wells Fargo Bank, N.A. filed Proof of Claim 4 on January 1, 2014. In the Proof of Claim, Wells Fargo Bank, N.A. states that the "Escrow shortage or deficiency" as of the petition date is \$529.34.

Wells Fargo Bank, N.A. filed a Notice of Mortgage Payment Change on October 28, 2014. The Notice states the following:

1. Date of payment change: 12/1/2014
2. New total payment: \$1,138.35
3. Part 1: Escrow Account Payment Adjustment:
 - a. Current escrow payment: \$167.74

b. New escrow payment: \$348.05

The Notice of Mortgage Payment Change also has attached an escrow statement that, in part, outlines the Debtors' escrow account history. In relevant part, for September 2013, the statement provides:

Payments to escrow			Payments from escrow		Escrow balance	
Date	Projected	Actual	Projected	Actual	Projected	Actual
Sep. 2013	\$164.01	\$348.54	\$0.00	\$0.00	\$772.50	(\$8,977.23)

A review of the Objection, Proof of Claim No. 7, and the Notice of Mortgage Payment Change shows that there is no evidentiary basis for the substantial increase in escrow shortage. Wells Fargo Bank, N.A. does not explain how they calculated the escrow shortage to determine that, at the time of the petition, the (\$529.34) listed on the Proof of Claim 4 (filed on January 15, 2014) is actually (\$1,998.23) as listed on the Notice of Mortgage Payment Change (filed on October 28, 2014).

While Wells Fargo Bank, N.A. gives generic, nonspecific answers such as "several post-petition tax and hazard disbursements on the subject loan" were the cause of the recalculated escrow shortage, Wells Fargo Bank, N.A. gives no evidence or specifics of how the escrow shortage nearly quadrupled in amount. Instead, Wells Fargo Bank, N.A. attempts to shift the burden onto the Debtors.

The Escrow Analysis attached to the Notice of Mortgage Payment Change provides the following information. Page 4 of the Escrow Analysis provides the actual payments made during the period July 2013 through August 2014, and estimates for September - November 2014. Through August 2014, Wells Fargo Bank, N.A. reports receiving actual escrow payments totaling \$3,921.70. For these fourteen months, escrow payments of \$2,296.98 (14 x \$164.07 a month) were required.

For the period December 2014 through November 2015, Wells Fargo Bank, N.A. projects disbursements from escrow for taxes and insurance to total \$2,178.50. Escrow Analysis, pg. 3. During that period, monthly escrow payments of \$181.54 would be required. This portion of the Escrow Analysis states, "Scheduled escrow payment \$181.54." *Id.*

However, Wells Fargo Bank, N.A. then states on page 1 of the Escrow Analysis that the monthly principal and interest payment is \$790.30 and the Escrow payment will be \$348.54. The court cannot identify the basis for the additional \$167.00 a month in escrow payments for the twelve months through November 2015 - which total \$2,004.00 (12 x \$167.00).

Wells Fargo Bank, N.A.'s response concentrates on the fact that the pending Adversary Proceeding deals with the treatment and calculation of the pre-petition payments has a direct effect on the outcome of the instant Objection. As part of this foundational argument, Wells Fargo Bank, N.A. does not provide any specific pieces of evidence or explanation as to how the escrow shortage was calculated and instead just points to the same information the court initially reviewed at the first hearing on the Objection.

REQUEST FOR ATTORNEYS' FEES

As to the Debtor's request for attorney's fees under California Civil Code § 1717, the Debtor has not pleaded with particularity under Local Bankr. R. 9013 to justify such relief.

In support for attorney fees, the Objection states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. California Civil Code Section 1717 provides for attorney fees for the prevailing party whenever there is an attorney fee provision, there has been notice and a hearing, wherein the reasonable attorney's fees shall be fixed by the Court.

The Objection does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 for attorneys' fees because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the code section. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a

creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

While the Debtor's counsel does provide for a time sheet, the Debtor failed to provide the specific contract provisions that justify an award for attorneys' fees nor does Debtor provide how the applicable statute applies to the instant case. The court does not have the resources to fill-in the blanks for Debtor and Debtor's counsel.

17. [13-31975-E-13](#) JACK/LINDA GANAS
[14-2080](#)
GANAS ET AL V. WELLS FARGO
BANK, N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-14-14 [[1](#)]

**APPEARANCE OF PETER L. CIANCHETTA, ESQ.
COUNSEL FOR DEBTORS
AND
EDDIE JIMENEZ
COUNSEL FOR WELLS FARGO BANK, N.A.
REQUIRED FOR JUNE 22, 2016 HEARING**

Telephonic Appearances Permitted

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Eddie R. Jimenez

Adv. Filed: 3/14/14
Answer: none

Nature of Action:
Recovery of money/property - other
Other (e.g., other actions that would have been brought in state court if
unrelated to bankruptcy case)

The Status Conference is removed from the Calendar, the court ordering dismissal of the Adversary Proceeding pursuant to the terms of the Settlement Agreement presented by the Parties and previously authorized by the court.

Notes:
Continued from 4/20/16. Parties requested a continuance in order to file dismissals.

JUNE 22, 2016 STATUS CONFERENCE

This Adversary Proceeding was commenced on March 14, 2014 - twenty-seven months prior to this continued Status Conference being conducted on June 22, 2016.

Plaintiff-Debtor's Chapter 13 bankruptcy case was facing dismissal pursuant to a motion of the Trustee (Dckt. 116), but that motion was denied without prejudice due to Debtor having a modified plan and motion to confirm on file. Bankr. E.D. Cal. No. 13-31975, Dckts. 126, 123. Debtor's opposition to the motion to dismiss was nothing more than a two sentence argument by counsel of, "Debtors are filing a Motion to Modify plan that will cure the arrears matching the plan payments to the Loan Modification to which Court Approval was recently

obtained. Said hearing will be set for June 14, 2016." *Id.*; Opposition, Dckt. 121. Debtor failed, or refused, to provide any testimony in a declaration or other evidence in support of such opposition.

While promising to have the modified plan set for confirmation on June 14, 2016, it was not so set by Debtor. Rather, it was set for July 26, 2016. *Id.*; Notice of Hearing, Dckt. 124.

The proposed Modified Plan lists a creditor named "Wells Fargo" as having a Class 1 claim with no arrearage and a monthly contract installment of \$833.25. *Id.* Dckt. 126 at 2. The Additional Provisions list a Class 1 Creditor named "Wells Fargo Bank, N.A." as having a claim in an unstated amount which is being modified by a consensual loan modification, which is subject to separate court approval. *Id.* at 7.

The court issued an order on March 23, 2016 (ninety-one days before this continued June 22, 2016 Status Conference) approving and authorizing Debtor to enter into a settlement with Wells Fargo Bank, N.A., which includes the authorization to enter into the specified Loan Modification. *Id.*, Dckt. 114.

The court approved Settlement Agreement (Exhibit A, Dckt. 99) grants Wells Fargo Bank, N.A. relating to the claims asserted in the Complaint in this Adversary Proceeding, except for the obligations stated in the Settlement Agreement. The Obligations stated in the Settlement Agreement are:

- A. Wells Fargo Bank, N.A. issue a check in the amount of \$3,500.00 for Plaintiff-Debtor's attorneys' fees;
- B. Wells Fargo Bank, N.A. will provide Plaintiff-Debtor with a loan modification on the terms stated in the Settlement Agreement.

Plaintiff-Debtor then committed to do the following under the terms of the Settlement:

"In exchange for the foregoing, **Plaintiffs** agree to **voluntarily dismiss the Adversary Proceeding and Complaint with prejudice** as to Wells Fargo **within seven (7) days after the entry of the order** on the Stipulated **Motion to Approve Compromise** that will be filed jointly by the Parties."

Id.; Settlement Agreement, last paragraph of Section 2, pg. 4, Exhibit A, Dckt. 99.

As stated above, the court issued the order approving the Settlement on March 23, 2016. Eighty Nine later, as the court reviewed the Docket for this Adversary Proceeding on June 20, 2016, Plaintiff-Debtor had failed to dismiss this Adversary Proceeding.

To date, nothing has been filed in connection with the instant Adversary Proceeding and it appears that neither Plaintiff-Debtor nor Defendant Wells Fargo Bank, N.A. are actively prosecuting the Adversary Proceeding.

At the hearing, the Parties advised the court **xxxxxxxxxxxxxxxxxxxxx**.

Based on the files in this case, whatever dispute may have existed, neither Debtor nor Wells Fargo Bank, N.A. are prosecuting this Objection. Based on Debtor's motion to approve compromise and the order thereon, Plaintiff-Debtor was obligated to dismiss this Adversary Proceeding with prejudice. Plaintiff-Debtor has failed to so act and has failed to prosecute this Adversary Proceeding. It appears that this Objection has been rendered moot.

Therefore, the court dismisses with prejudice this Adversary Proceeding pursuant to the Settlement of the Parties and Order of the Court.

COURT ISSUED ORDER

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.

This Adversary Proceeding has been pending for twenty-seven months. The court approved on March 23, 2016, a settlement of this and authorized a loan modification for the claim to which the objection relates (Bankr. E.D. Cal. 13-31975, Dckt. 114). The Settlement Agreement includes a provision that Plaintiff-Debtor is required to dismiss with prejudice this Adversary Proceeding upon the court approving the Settlement Agreement (*Id.*; Settlement Agreement, last paragraph of Section 2, pg. 4, Exhibit A, Dckt. 99). Plaintiff-Debtor has not dismissed the Adversary Proceeding. Neither Plaintiff-Debtor nor Defendant have provided the court with a Status Report or other information why this Adversary Proceeding should not be dismissed with prejudice pursuant to the terms of the Settlement Agreement. Therefore, upon review of the review of the pleadings, files in this Adversary Proceeding, the terms of the court approved settlement for the dismissal with prejudice of this Adversary Proceeding, Plaintiff-Debtor having failed to obtain a stipulation for the dismissal (Fed. R. Civ. P. 41(a)(1)(A)(ii)) or file a motion for dismissal (Fed. R. Civ. P. 41(a)(2) and Fed. R. Bank. P. 4041), Defendant Wells Fargo Bank, N.A. having taken no action in this Adversary Proceeding to prosecute it after the court approved the Settlement, and good cause appearing,

IT IS ORDERED that the Adversary Proceeding is dismissed with prejudice pursuant to the Settlement Agreement of the Parties approved by the court in the Plaintiff-Debtor's bankruptcy case.

PRIOR STATUS CONFERENCE

APRIL 20, 2016 STATUS CONFERENCE

To date, nothing has been filed in connection with the instant Adversary Proceeding.

On March 22, 2016, the court authorized the Debtor to enter into a settlement and modification with Defendant. Civil Minutes and Order; 13-31975; Dckts. 112 and 114, respectively.

Under the terms of the Settlement Agreement (Exhibit A, Dckt. 99), all

issues in this contested matter are to have been resolved.

The Parties reported to the court that the dismissals will be filed and requested that the court continue the Status Conference.

JANUARY 20, 2016 HEARING

To date, nothing has been filed in connection with the instant motion. At the hearing the Parties report that the Settlement Agreement has been executed by Plaintiff-Debtors. But Defendant requested a revision, and has signed the revised agreement. Plaintiff-Debtors confirmed that the amendment is acceptable and is being signed by the Plaintiff-Debtors. A motion to approve the compromise will then be filed in the bankruptcy case.

DECEMBER 3, 2014 STATUS CONFERENCE

The parties report that this Adversary Proceeding is being resolved. They requested a continuance to continue with the discussions in light of the courts ruling on the motion to file a First Amended Complaint.

On August 7, 2014 the court issued an order continuing the Status Conference to December 3, 2014. Dckt. 50. In pertinent part the order provides,

A. The Plaintiff-Debtors Motion to filed a First Amended Complaint was denied without prejudice.

B. In light of the substantive settlement negotiations and the nature of the issues in this Adversary Proceeding, pursuant to the agreement of the parties all matters in this Adversary Proceeding are stayed until further order of the court.

C. The Parties are to continue with the informal discovery as part of their settlement discussions.

D. Defendant Wells Fargo Bank, N.A. is granted an open extension for filing a responsive pleading to the Complaint.

The court shall set a deadline for such responsive pleading at the continued status conference.

A detailed discussion of the claims as pleaded by the Plaintiff-Debtors is provided in the courts Civil Minutes for the hearing on the motion for leave to file first amended complaint. Dckt. 48.

As of the courts December 2, 2014 review of the Docket, for further pleadings or a Status Conference Statement was filed by any of the parties.

JUNE 24, 2016 STATUS CONFERENCE

The Adversary Proceeding Status Conference is continued to 2:30 p.m. on October 14, 2015.

FEBRUARY 18, 2015 STATUS CONFERENCE

The parties reported that due to illness of counsel they have not been able to advance their settlement discussions. However, all attorneys are now available and actively addressing the issues. The court continues the Status Conference as requested.

DECEMBER 3, 2014 STATUS CONFERENCE

The parties report that this Adversary Proceeding is being resolved. They requested a continuance to continue with the discussions in light of the courts ruling on the motion to file a First Amended Complaint.

On August 7, 2014 the court issued an order continuing the Status Conference to December 3, 2014. Dckt. 50. In pertinent part the order provides,

A. The Plaintiff-Debtors Motion to filed a First Amended Complaint was denied without prejudice.

B. In light of the substantive settlement negotiations and the nature of the issues in this Adversary Proceeding, pursuant to the agreement of the parties all matters in this Adversary Proceeding are stayed until further order of the court.

C. The Parties are to continue with the informal discovery as part of their settlement discussions.

D. Defendant Wells Fargo Bank, N.A. is granted an open extension for filing a responsive pleading to the Complaint.

The court shall set a deadline for such responsive pleading at the continued status conference. A detailed discussion of the claims as pleaded by the Plaintiff-Debtors is provided in the courts Civil Minutes for the hearing on the motion for leave to file first amended complaint. Dckt. 48.

As of the courts December 2, 2014 review of the Docket, for further pleadings or a Status Conference Statement was filed by any of the parties.

MAY 28, 2014 STATUS CONFERENCE

Wells Fargo Bank, N.A. has filed a Motion to Dismiss the Adversary Proceeding. That Motion is set for hearing on June 5, 2014.

The Complaint alleges several claims. The First is an objection to the Wells Fargo Bank, N.A. Claim (Proof of Claim No. 4). It is asserted that the amounts stated in Proof of Claim No. 4 are internally inconsistent between the stated claim amount of \$96,957.30 and the stated principle amount of \$73,238.69 and a defaulted payment (cure) amount of \$32,856.92. FN.1.

FN.1. A review of Proof of Claim No. 4 discloses the following. The Proof of Claim Form itself states that the total amount of the claim as of the commencement of the case was \$96,957.30. Of this amount, it is stated that the arrearage as of the filing of the case was \$32,856.92.

Attachment A to Proof of Claim No. 4 provides a breakdown of the claim,

June 22, 2016 at 2:30 p.m.

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identifying the following:

Principal Due	\$73,238.69
Interest Due	<u>\$12,957.61</u>
Total Principal and Interest	\$86,196.30
Late Charges	\$474.24
Attorneys' Fees	\$413.07
Title Costs	\$350.00
Property Inspection Fees (Nine Inspections 6/2010 - 7/2012)	\$170.00
Escrow Shortage or Deficiency	\$529.34
Prior Bankruptcy Case Attorneys' Fees (The court's files indicate the Debtors having filed four prior cases since November 2011.)	<u>\$725.00</u>
Pre-Petition Fees, Expenses, and Charges	\$2,661.65
Total Pre-Petition Claim Computed From Attachment A	\$88,857.95

It is not obvious to the court from Proof of Claim No. 4 why the first page states the total amount of the Claim to be \$96,957.30 and Attachment A computes the Pre-Petition Claim to be \$88,857.95.

The cure amount is computed on Attachment A to be 24 monthly installments (principal, interest, escrow) payments of \$1,138.84 and 3 monthly installments of \$30,195.27. In addition, the cure amount includes the \$2,661.65 in Pre-Petition fees, expenses and charges. (Since the monthly installments include some principal reduction, the cure amount cannot merely be added to the principal amount and Pre-Petition fees and expenses to generate the total claim amount.

The Second Claim for Relief is asserted under the California Rosenthal Fair Debt Collection Practices Act. It is asserted that Wells Fargo Bank, N.A. has "no legal right to file a claim as has been filed in the Plaintiff's case and that the doing so was a misrepresentation of a debt thereby a violation of the Rosenthal Fair Debt Collection Practices Act.

The Third Claim for Relief is for negligence. It is alleged that (1) Defendant has a duty to file a claim that "has some semblance of accuracy;" (2) Defendant breached that duty in that the Proof of Claim is in conflict with prior accountings; (3) Defendant's internal controls are so poor or maintained in such a reckless manner that they do not come close to the minimum standard of care for Defendant; (4) Due to Defendant's negligence, Plaintiff contends that they have expenses hours of expert assistance researching the claim, securing evidence that the claim was not valid, retain counsel, and file the present adversary

proceeding; (5) Defendant's conduct is so reprehensible that it warrants punitive damages; (6) Plaintiff asserts that there are thousands of debtors who suffer from Defendant's improper proofs of claim; and (7) Plaintiff wants to be awarded attorneys' fees for the negligence claim [with no contractual or statutory basis stated].

The Fourth Claim for Relief is for Fraud and Intentional Misrepresentation (Cal. Civ. §§ 1572, 1709, and 1710). The Fifth Claim for Relief is based on the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 *et seq.* Statutory damages of \$1,000.00 and attorneys' fees are requested. The Sixth Claim for Relief is for Breach of Contract. It is asserted that Defendant applied payments made by Plaintiff in a manner not permitted by the Note and Deed of Trust. Attorneys' fees are requested under the Deed of Trust contractual provisions and California Civil Code § 1717. The Seventh and final Claim for Relief is for Conversion. It is asserted that Defendant "converted" payments made by Plaintiffs by applying them to amounts contrary to the contract between the Parties. This resulted in overcharges for late payment fees and asserted delinquency costs.

18. [12-36884-E-7](#) JENNY PETTENGILL

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-19-12 [[1](#)]

Debtor's Atty: Richard A. Hall

The Status Conference is ~~xxxxxxxxxxxxxx~~.

Notes:

Continued from 5/5/16

[HLC-6] Order denying Motion for Permissive Abstention and/or Relief from Automatic Stay filed 5/6/16 [Dckt 267]

JUNE 22, 2016 STATUS CONFERENCE

The Trustee reported that he desired to engage the services of the attorney who has been representing the Debtor in her battles with ex-husband Stanislav Lazutkine, a debtor in his own Chapter 7 case (Bankr. E.D. Cal. 13-21893) for which the Trustee in this case is also the Chapter 7 trustee.

Unfortunately, though it would otherwise appear that a significant common interest would exist for this Debtor and the Trustee on the issue of the Lake Tahoe Property and other personal property was community property as stated by Debtor Jenny Pettengill, and not property of entities in which Debtor Stanislav Lazutkine asserted he had no interest, it appears that any cooperation has fallen apart. On May 24, 2016, the Trustee dismissed his motion to employ the Debtor's state court counsel to prosecute the rights and interest of the estate as Jenny Pettengill has stated under penalty of perjury exist. Civil Minutes, Dckt. 269, 268.

At the Status Conference, ~~xxxxxxxxxxxxxxxxxxxxxx~~.

MAY 5, 2016 STATUS CONFERENCE

The court set a Chapter 7 Status Conference in this case. Order, Dckt. 241. The court reviewed the proceedings in this Chapter 7 case and that the Chapter 7 Trustee has been active in trying to sell shoreline residential real property located on North Shore Lake Tahoe since February 2014. Though the Chapter 7 Trustee and Corrigan Finance stipulated in February 2014 to litigate their disputes in this court, neither party has actively prosecuted their respective asserted rights.

Chapter 7 Trustee Status Report, Dckt. 258. The Trustee reports that Since the last hearing in this case in March 2014, the Trustee has decided that he now wants to litigate the estates rights in the Placer County family law court as part of the Debtor and her ex-husbands long pending, multi-year dissolution proceeding. Other than telling the court that he now, years into the bankruptcy case, wants to litigate in state court and not proceed as he stipulated, gives the court no reason for the bankruptcy Trustee subjecting himself and the estates rights to the civil family law process in which Debtor

June 22, 2016 at 2:30 p.m.

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and her ex-husband have been entangled.

Corrigan Finance filed its own Status Conference Report. Dckt. 256. Corrigan Finance states that it wants to litigate the rights and interests with the Trustee, but that the Trustee has failed to prosecute such actions. Corrigan Finance does not offer an explanation as to why it has not picked up the cudgel and advanced its rights in this court as stipulated.

At the Status conference the parties reported that they are talking and intend to remove, or commence in this court, the appropriate proceedings to determine the ownership of the properties (real and personal) in dispute.

19. [09-26693-E-13](#) TOM/KRIS SHORTRIDGE
[16-2032](#)
SHORTRIDGE ET AL V. GREENWICH
INVESTORS XXXII, LLC ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-7-16 [[7](#)]

Final Ruling: No appearance at the June 22, 2016 Status Conference is required.

Plaintiff's Atty: Robert S. Gimblin
Defendant's Atty: unknown

Adv. Filed: 2/17/16
Answer: none
Amd. Cmplt. Filed: 3/7/16
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is continued to 1:30 p.m. on June 23, 2016.
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Notes:
Continued from 4/10/16

Request for Entry of Default by Plaintiff [Greenwich Investors XXXII, LLC] filed 4/21/16 [Dckt 12]; Entry of Default and Order Re: Default Judgment Procedures filed 4/22/16 [Dckt 14]

Request for Entry of Default by Plaintiff [Land Home Financial Services, Inc.] filed 4/21/16 [Dckt 13]; Entry of Default and Order Re: Default Judgment Procedures filed 4/22/16 [Dckt 17]

Motion for Default Judgment filed 5/19/16 [Dckt 21], set for hearing 6/23/16 at 1:30 p.m.