

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

June 25, 2020 at 11:00 a.m.

1. [19-26730-E-11](#) HAESHING HWANG CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-29-19 [1]

Debtor's Atty: Stephan M. Brown

Notes:

Continued from 3/4/20 [specially set date and time]

Operating Reports filed: 4/15/20 [Mar]; 5/13/20 [Apr]; 6/9/20 [Feb]; 6/9/20 [May]

The Status Conference is ~~XXXXXXXXXX~~

JUNE 25, 2020 STATUS CONFERENCE

The Debtor in Possession filed her updated Status Report on June 23, 2020. Dckt. 60. Debtor in Possession reports that the real estate broker for the estate is aggressively marketing the property, with the listing price now being \$5,750,000. This reduction has "led to more interest in the Property," but will result in there not being sufficient proceeds to pay all claims in full. Debtor in Possession anticipates having to prosecute the confirmation of a Chapter 11 plan.

Creditor 1824 Swan Falls, LLC ("Creditor") has also filed a Status Report. Dckt. 62. Creditor reports that pursuant to the Stipulation for relief from the stay, a foreclosure sale is set for July 1, 2020.

At the status conference, **XXXXXXXXXX**

MARCH 4, 2020 STATUS CONFERENCE

The Debtor in Possession filed an Updated Status Report on February 19, 200. Dckt. 39. The Debtor in Possession reports that the Realtor authorized to be employed is aggressively marketing the property of the Bankruptcy Estate.

A Motion to Approve a Stipulation for Relief From the Stay with Creditor 1824 Swan Falls, LLC is set for hearing on March 5, 2020. Dckt. 41.

JANUARY 8, 2020 STATUS CONFERENCE SUMMARY

This voluntary Chapter 11 case was commenced October 29, 2019. The Status Report filed on November 22, 2019 (Dckt. 17), explains that the Debtor is “generally retired,” but provides some services as a personal trainer. Debtor holds a majority interest in a small workout studio in Roseville, California.

The Report discusses that Debtor purchased her current residence for \$6,900,000. Debtor liquidated her retirement and investment accounts, made a down payment of approximately 50% and the sellers are the payees on a note for the balance of the purchase price in the amount of (\$3,750,000) that is secured by the residence.

Debtor was unable to generate the monies to pay off the (\$3,750,000) note, has unpaid tax liabilities from liquidating her retirement and investment accounts, and has credit card liabilities.

For a bankruptcy plan, Debtor intends to have the home sold and creditors paid in full.

This bankruptcy case was filed on October 29, 2019. A review of the Docket indicates that in the past two months the Debtor in Possession has not sought authorization for the employment of a Realtor to market and sell the \$7,000,000 home.

The Monthly Operating Report for November 2019 was filed on December 31, 2019. Dckt. 24. For income, the Debtor in Possession reports \$0.00. For expenses, Debtor reports having paid (\$4,310) in expenses.

Review of Schedules

On Schedule A/B Debtor lists her Granite Bay residence with a value of \$7,960,000, and a second property in which she claims a 50% interest having a value of \$500,00. For personal property, Debtor’s household goods are listed as having a value of \$295,600. Debtor also lists a \$25,000 “Crystal Singing Bowl Collection.”

Debtor lists having \$8,000 in cash and \$1,700 deposited at banks.

On Schedule D, Debtor lists approximately (\$5,400,000) in claims secured by the real property, which includes state and federal tax claims totaling approximately (\$1,600,000) that are also secured by other assets.

For Debtor's residence, there are (\$71,924) in secured property taxes listed as a claim of Placer County.

2. [18-27720-E-13](#) **DAVID RYNDA**
[19-2023](#) **TLW-14**
RYNDA V. MACHADO ET AL

**MOTION TO SELL AND/OR MOTION TO
COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
ELINA MACHADO
5-11-20 [184]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff/Debtor, Chapter 13 Trustee, Defendant and Office of the United States Trustee on May 11, 2020. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

David Jerome Rynda, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Elina M. Machado ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the dispute over real property, including the adversary proceeding, 19-02023. Additionally, Movant requests authorization to sell real property of the bankruptcy estate commonly known as 9436 Windrunner Lane, Elk Grove, California ("Subject Property").

Debtor's Request for Authority to Sell Real Property

The Bankruptcy Code permits David Jerome Rynda, the Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as: 9436 Windrunner Lane, Elk Grove, California.

However, there is no sale presented to the court. Rather, the Settlement Agreement provides for a future sale in the event that the escrow being set up cannot be funded by Debtor other than from a sale.

Settlement Agreement

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 187):

- A. Parties have exchanged complete and mutual release as to any and all known and unknown claims between them arising in any way or manner out of the events, claims, and allegations that relate in any manner to the real property located at 9436 Windrunner Lane, Elk Grove, California ("the Subject Property").
- B. The Settlement shall not be treated as an admission of any fact or allegation by any party for any purpose.
- C. Movant to pay Settlor \$20,000.00.
- D. Movant to pay all existing liens on the Subject Property that are under Settlor's name, except for a credit card judgment lien in Settlor's name as recorded with Sacramento County.
- E. The following are liens included under the settlement: PHH Mortgage, Department of Housing and Urban Development, Lakeside Community Owner's Association, Consolidated Utilities Billing & Service, City of Elk Grove, and any other liens, taxes, and assessments at the time of close of escrow that relate to the Subject Property.
- F. Settlor to provide quit claim deed to Movant, to be recorded at the close of escrow.
- G. Settlor will not oppose Movant's Motion for Entry of Default Judgment against Gabriel Machado to quiet his interest in the Subject Property.
- H. Within 30 days of close of escrow, the Parties will dismiss all pending actions against the other. Settlor will consent to the dismissal of the Cross-Complaint, and Movant will dismiss Settlor individually from the Adversary Proceeding, case no.19-02023.

- I. Parties waive and relinquish any rights and benefits they have or may have pursuant to section 1542 of the California Civil Code.
- J. Each of the parties will bear its own attorneys' fees and costs incurred in connection with all claims and legal actions that have been filed by the Parties. In the event that either party is required to utilize attorney services to enforce the Settlement, the prevailing party in any such proceeding will be entitled to receive reasonable attorney's fees and costs incurred in such action or proceeding.
- K. The Settlement shall be governed by the laws of the state of California and the proper place for trial for any action arising out of, or related to, the Settlement Agreement shall be Sacramento County, California, to the exclusion of any other forum of jurisdiction. Parties consent to the jurisdiction of the Sacramento County Superior Court should any trial or action arise.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Plaintiff-Debtor believes Plaintiff-Debtor has a high probability of success on the basis that Plaintiff has fully performed on his agreement, and there are many defenses that bar Defendant's counterclaims. However, it is likely that litigation will continue given Defendant's arguments and claims, and this would cause great expense of time and money for both sides. This will continue unless it is settled.

Difficulties in Collection

If judgment is granted in Debtor's favor, he would receive quiet title he can record and there

would be no difficulty in collection.

Expense, Inconvenience, and Delay of Continued Litigation

The expense, inconvenience and delay in continued litigation has been extremely time consuming and costly for both sides. In addition, Debtor encountered issues with the current tenants of the real property and cannot evict unless his name is on the title. Until the litigation is either settled, or quiet title is won at trial, Debtor will continue to encounter issues with the tenants, and will continue to incur attorney fees and costs.

Paramount Interest of Creditors

Debtor has been unable to make plan payments to the Trustee due to the tenant issues. Settling the dispute will allow Debtor to address tenant issues, collect rent payments, and thus make plan payments to pay the creditors.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it will allow for the sale of the real property which will bring funds into the estate to pay creditors. The Motion is granted.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by David Jerome Rynda, the Chapter 13 Debtor, (“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 the Motion for Approval of Compromise between Movant and Elina M. Machado (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 187).

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on March 11, 2020 By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Entry Default is granted.

David Jerome Rynda (“Plaintiff”) filed ths adversary proceeding on February 11, 2019. Dckt. 1. Plaintiff filed the instant motion on November 18, 2019.

On May 11, 2020, Plaintiff filed the instant Motion for Default Judgment pursuant to Federal Rule of Civil Procedure 12(c). Dckt. 85.

Summary of Complaint

The Third Amended Verified Complaint to Quiet Title was filed by David Rynda, the Plaintiff-Debtor on October 16, 2019. Dckt. 72. The Third Amended Complaint is summarized as follows:

- A. The Plaintiff-Debtor is the Chapter 13 debtor in his bankruptcy case (No. 18-2770).
- B. The First Cause of Action is to quiet title to the real property commonly known as 9436 Windrunner Lane, Elk Grove, California (“Property”).
- C. The Defendants are Elina Machado and Gabriel Machado (collectively “Defendants”).

- D. Plaintiff-Debtor asserts that on November 22, 2014, Defendants executed and had notarized a quitclaim for the Property to Plaintiff-Debtor.
- E. The Quitclaim provisions include:
- For and in consideration of the sum of Ten Dollars (\$10,00) [sic] and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leandro, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA.
- F. Plaintiff-Debtor asserts that he, pursuant to the Quitclaim, is the owner of the Property.
- G. Defendants claim an interest adverse to that of Debtor.
- H. Plaintiff-Debtor seeks a determination that he is the owner of the Property, and that Defendants, and each of them, have no interest in the Property.
- I. The Second Cause of Action is to quiet title against Defendants, asserting such right pursuant to the doctrine of adversary possession.
- J. Plaintiff-Debtor asserts that he has been in actual, open, hostile, continuous, and exclusive possession of the Property since November 22, 2014. Further, that there has been more than five years of such possession.
- K. Plaintiff-Debtor has been in such possession by virtue of the Quitclaim executed on November 22, 2014, which was recorded by Plaintiff-Debtor on November 27, 2018.
- L. Plaintiff-Debtor's possession of the Property for more than five years, being adverse to all other persons, is curative of any defects in the Quitclaim.
- M. Plaintiff-Debtor asserts that he has paid all taxes and assessments that have been levied or assessed against the Property during the five years of possession.

Defendant Gabriel Machado Response

Defendant-Debtor Gabriel Machado has not filed an answer or other responsive pleading to the Complaint.

RELIEF SOUGHT IN MOTION FOR ENTRY OF DEFAULT JUDGMENT

On May 11, 2020, Plaintiff filed the Motion for Entry of Default Judgment, accompanied by a the Affidavit of Tracy Wood.. Dckt. 198.

The Motion requests for the court to grant a default judgment against Defendant Gabriel Machado who has not answered the complaint. For grounds to grant this relief, Movant directs the court to:

1. this motion,
2. the Request for Entry of Default Judgment,
3. the entry and order for default granted,
4. the pleadings and papers on file,
5. declaration in support of this motion and exhibits, if any, filed herewith, and
6. Such oral and documentary evidence as the court may permit upon the hearing of this motion.

No grounds are provided. The Affidavit filed in support of the Motion is offered by Plaintiff's Counsel, Tracy Wood. Dckt. 198. Obviously, this is not the testimony of Plaintiff under penalty of perjury. For purposes of this Motion for Default Judgment, this affidavit is not considered evidence.

The court reminds Plaintiff and Counsel that just because the other party did not respond to the Complaint, this does not mean that Plaintiff does not have to prove his case. As explained below, a Motion for Default Judgment must include well-pleaded allegations in support of the claims alleged.

For purposes of this motion, and this motion only, the court does consider the evidence in this file, which includes Plaintiff's Declaration in support of the prior Motion for Summary Judgment filed on February 22, 2020. Dckt. 123.

Declaration of Plaintiff David J. Rynda

- A. Gabriel Machado resides in Sacramento, California. Plaintiff testifies the acts occurred within and pertain to a property located in the County of Sacramento. ¶ 1.
- B. On November 22, 2014, Mr. Machado executed and notarized a Quitclaim for the property located at 9436 Windrunner Lane, Elk Grove, California to Plaintiff. ¶ 2.
- C. The Quitclaim was notarized by Lucerito Meza-Baez. Mr. Machado's and Plaintiff's signatures and thumb prints appear on Lucerito Meza-Baez's notary journal. ¶¶ 3-4.
- D. The Quitclaim states:

The undersigned Grantors, Elina Machado, whose address is 9436 Windrunner Lane, Elk Grove, California 95758, and Gabriel Machado, whose address is 9436 Windrunner Lane, Elk Grove, California 95758, declare that: For and in consideration of the sum of Ten Dollars (\$10,00)

and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leandro, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached Exhibit A. 9436 Windrunner Lane, Elk Grove, CA.

¶ 5. *See* Exhibit A, Dckt. 124.

- E. Plaintiff provides Exhibit A of the Quitclaim as the description of the Property. ¶ 6. *See id.*
- F. Plaintiff testifies that he received and accepted the original Quitclaim executed by Mr. Machado. ¶ 10.
- G. The Quitclaim identifies Mr. Machado as one of the grantors and Plaintiff as the grantee. At the time of signing, Mr. Machado was over the age of eighteen. ¶ 14.

The Declaration continues, with the paragraphs being renumbered on page 6.

- H. Plaintiff testifies that the Quitclaim includes a statement that Plaintiff accepted and signed the document. ¶ 9.
- I. Plaintiff declares that he copied the original Quitclaim, and moved into the Property upon paying the agreed upon consideration and receiving the Quitclaim. ¶ 14.
- J. Since purchasing the Property, Plaintiff testifies that he has occupied it. ¶ 18.
- K. After purchasing the Property, Plaintiff testifies that his original signed and notarized Quitclaim was lost or stolen before he could record it. ¶ 19.

APPLICABLE LAW

Standard for a Motion for Default Judgment

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (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.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not

avored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

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

Id. at 1471–72 (citing 6 MOORE’S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor’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-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

The court also takes into account that Defendant Gabriel Machado has not only not responded to any matters in this Adversary Proceeding, but nothing in the related bankruptcy case. This can be contrasted with Elina Machado, his ex-wife, who has been very active. This lack of activity on his part may indicate that he does concur with Plaintiff-Debtor’s interpretation of their “deal” and does not contest Plaintiff-Debtor’s claim of ownership.

Quiet Title Actions

Section 761.010 through 761.050 provides the California standards for a quiet title action. In *Deutsche Bank Nat’l Tr. Co. v. Pyle*, the Fourth District Court of Appeal reaffirmed that

The purpose of a quiet title action “is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he [or she] may be entitled to.” *Peterson v. Gibbs* (1905) 147 Cal. 1, 5, 81 P. 121. Actions to quiet title are governed by section 761.010 et seq.

Deutsche Bank Nat’l Tr. Co. v. Pyle, 13 Cal. App. 5th 513, 524, 220 Cal. Rptr. 3d 691, 699 (2017).

California Civil Procedure § 761.020

Specifically, Section 761.020 lists the elements a Plaintiff must satisfy in order to properly plead a quiet title action. The verified Complaint must include all of the following:

- (a) A description of the property that is the subject of the action.
In the case of tangible personal property, the description shall

include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.

(b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.

(c) The adverse claims to the title of the plaintiff against which a determination is sought.

(d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.

(e) A prayer for the determination of the title of the plaintiff against the adverse claims.

§ 761.020. Complaint; verification; contents, West's Ann.Cal.C.C.P. § 761.020.

California Civil Procedure § 325

Section 325 establishes the requirements for land to have been adversely possessed as follows:

(a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

- (1) Where it has been protected by a substantial enclosure.
- (2) Where it has been usually cultivated or improved.

(b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.

West's Ann.Cal.C.C.P. § 325.

California courts have interpreted adverse possession to include the following elements.

“To establish adverse possession, the claimant must prove: (1) possession under claim of right or color of title; (2) actual, open, and notorious occupation of the premises constituting reasonable notice to the true owner; (3) possession which is adverse and hostile to the true owner; (4) continuous possession for at least five years; and (5) payment of all taxes assessed against the property during the five-year period.”

Mehdizadeh v. Mincer, 46 Cal. App. 4th 1296, 1305 (1996).

DISCUSSION

First Cause of Action Quiet Title

Here, Plaintiff’s Third Amended Verified Complaint for Quiet Title satisfies the elements needed for an action to quiet title under Section 761.020, based on the copy of the original Quitclaim Deed (“Deed”) (Exhibit A, Dckt. 72; *see also* Exhibit A, Dckt. 124).

The Plaintiff properly described the Real Property which is the subject of the action with both the legal description and street address or common designation. Plaintiff provides the legal description of the property through the Deed as Lot 106 within the “Plat of Lakeside Unit No, 5-b recorded in the office of the county recorder of Sacramento County on August 3, 1994.” Dckt. 72. The Deed provides the street address of the property as “9436 Windrunner Ln, Elk Grove, CA 95624” attached to the Third Verified Amended Complaint. *Id.* Thus, Plaintiff has described the property that is the subject of the action.

Further, Plaintiff bases his title upon the Deed executed on November 22, 2014. The Deed “for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged” . . . “forever quitclaim[s] David Rynda . . . the following real property . . . 9436 Windrunner Lane Elk Grove, CA.” *Id.* The Deed was notarized by Lucerito Meza-Baez on November 22, 2014 with signatures and thumb prints taken from the Grantors on the same day. Exhibits B-C, Dckt. 72; *see also* Exhibits B-C, Dckt. 124. Thus, Plaintiff provides a basis of title.

Plaintiff also pleads that Defendant claims an adverse interest in the property on the basis that the State Court Judge will not allow him to move forward with the Unlawful Detainer action because Defendant’s name is listed as an owner of the Subject Property. Declaration, p. 2. Thus, Plaintiff adequately pled the adverse claims against him.

The Plaintiff seeks the date of determination as of November 22, 2014. Plaintiff has “sought. . . a date other than the date the complaint is filed” because the Complaint bases Plaintiff’s claim in both causes of action upon the Deed executed on November 22, 2014. Thus the date of determination has been properly pled.

Finally, Plaintiff satisfies the prayer “for the determination of the title of the plaintiff against the adverse claims” by stating in paragraph 8 of the Verified Third Amended Complaint:

“Plaintiff therefore seeks a declaration that the title to the subject property is vested in plaintiff alone and that the Defendants herein, be declared to have no estate, right,

title or interest in the subject property and that said Defendants be forever enjoined from asserting any estate, right, title or interest in the subject property adverse to plaintiff herein.”

Id. Thus, Plaintiff has properly entered a prayer for the determination of the title.

Second Cause of Action Adverse Possession

Plaintiff pleads a second cause of action on the basis of adverse possession.

Here, Plaintiff shows a claim of right because he bases such claim on the Deed executed on November 22, 2014. Complaint, Dckt. 72. Plaintiff further alleges he meets the elements of actual, open and notorious and hostile when he stated his possession of the property “has been actual, open, hostile, continuous, and exclusive since November 22, 2014 through Plaintiff’s occupation of the premises despite Defendant’s claims that they are the true owners of the property.” *Id.* According to the Complaint, Plaintiff will have occupied and claimed the property for over five years (November 22, 2014 - June 25, 2020), which amounts to five years, seven months, and three days. *Id.* Finally, the verified Complaint alleges Plaintiff has paid “all taxes that have been levied or assessed against the real property.” *Id.*

Granting of Default Judgment

As set forth above, Plaintiff-Debtor has provided the court with alleged grounds and evidence supporting his claim of title over any claims of Defendant Gabriel Machado in the real property commonly known as 9436 Windrunner Lane, Elk Grove, California.

Gabriel Machado has not opposed, at any step of the way in this Adversary Proceeding or Plaintiff-Debtor’s bankruptcy case, the Plaintiff-Debtor’s claim to the Property.

The court grants the Motion and judgment shall be entered for Plaintiff-Debtor and against Defendant-Gabriel Machado that Defendant Gabriel Machado has no right, title, or interest in the real property commonly known as 9436 Windrunner Lane, Elk Grove, California, and that Plaintiff-Debtor holds and has acquired all interests in and title to said real property that were held by Defendant Gabriel Machado.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by David Rynda (“Plaintiff”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is granted and judgment shall be entered for Plaintiff David Rynda and against Defendant Gabriel Machado determining that Defendant Gabriel Machado has no right, title, or interest in the real property commonly known as 9436 Windrunner Lane, Elk Grove,

California, and that Plaintiff-Debtor holds and has acquired all interests in and title to said real property that were held by Defendant Gabriel Machado.

The granting of this Motion does not determine or adjudicate any issues or claims relating to the interests asserted by Elina Machado, which claims have been resolved by a separate stipulation.