UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 15, 2019 at 10:00 a.m.

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1. **18-25001-E-7 JOSEPH AKINS** — **MOTION TO DISMISS ADVERSARY PROCEEDING**
18-2187 RLF-5 Shelia Nelson — **7-19-19 [54]**
BLACK V. AKINS

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 on July 19, 2019. By the court's calculation, 27 days' notice was provided. The court issued an Order designating the August 15, 2019 hearing date for a Motion To Dismiss. Dckt. 51.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 to Dismiss Adversary Proceeding is denied.

The Defendant in this Adversary Proceeding, Joseph H. Akins ("Defendant") moves for the court to dismiss all claims against it in the Plaintiff, Dominique Black's ("Plaintiff"), Complaint according to Federal Rule of Civil Procedure 12(b)(6). In the alternative, the Motion requests a more definite statement or that immaterial, irrelevant and inflammatory parts of the First Amended Complaint ("FAC") be stricken.

The Motion repeatedly states with particularity (FED. R. CIV. P. 7(b), FED. R. BANKR. P. 7007) a similar argument for each cause of action in the FAC, summarized as follows:

Plaintiff failed to plead the cause of action, as identified in the incorporated chart.

See Motion, Dckt. 54. The Motion does not identify where this "incorporated chart" is located in the various pleadings filed by Defendant.

Defendant's fifteen (15) page points and authorities does not include a chart.

Defendant's counsel, choosing to become a witness in this Adversary Proceeding has provided her declaration (Dckt. 57) and a second declaration as Exhibit B (Dckt. 59).

Defendant's counsel testifies in her declaration (Dckt. 57) that Exhibit A is the chart stating the grounds upon which the requested relief is based. The chart is twenty-four (24) pages long identifying various asserted pleading shortcomings.

In the chart there are various grounds stated with specificity. However, much of what is asserted are factual disputes.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition to the Motion on August 2, 2019. Dckt. 61. Plaintiff opposes the Motion on the following grounds:

1. The FAC is not attempting to deny Defendant's discharge.

2. The State Court Judgement referenced by Defendant has no collateral estoppel effect because it was based on breach of contract and no determination was made as to fraud.

3. Plaintiff can properly allege in the alternative both that Defendant was a partner in NorCal with Tirpak and engaged in an agency relationship (thereby committing fraud) and that Defendant was not in business with Tirpak at the time Tirpak acquired the Vehicle (thereby committing embezzlement).

4. Plaintiff alleged, in his larceny cause of action, that Defendant came into possession of the Vehicle wrongfully with fraudulent intent.

5. Plaintiff alleged, in his wilful and malicious injury cause of action, that Defendant knowingly harmed Plaintiff by retaining Plaintiff's vehicle, and that the coversion was wrongful.

DEFENDANT'S REPLY

Defendant filed a Reply Memorandum, Declaration, and Exhibits on August 9, 2019. Dckts. 63-65. The Reply Memorandum argues the following:

1. The Plaintiff's Opposition fails to provide specificity as every cause of action demonstrating the defects cannot be cured and the Motion should be granted without leave to amend.

2. Mr. Black's admissions, contained in his pleadings and papers, demonstrate that the missing elements in each of the COA actually don't exist and as such cannot be cured through amendment as they are factually non-existent.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion and Complaint

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 7007(b). The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

The pleading requirements in *Twombly* are less strict then those for motion. In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits, and a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. Gen. Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true. *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

The complaint must provide more than labels and conclusions, or a formulaic recitation of a cause of action; it must plead factual allegations sufficient to raise more than a speculative right to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 555 (2007). Federal Rule of Civil Procedure 8, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7008, requires that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). As the Court held in *Bell Atlantic*, the pleading standard under Rule 8 does not require "detailed factual allegations," but it does demand more than an unadorned accusation or conclusion of a cause of action. *Bell Atlantic*, 550 U.S. at 555.

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to

> draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009) (citations and quotation marks omitted). Rule 8 also requires that allegations be "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1).

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Review of Grounds Stated "in the" Motion and Complaint

Defendant asserts that the Complaint lacks specificity as to date, place, and content of the people conspiring to commit the alleged fraud. The Complaint is vague of the agency relationship between Sarganis, Tirpak, and Akins.

In filing this second Motion, Defendant has not cured the failure to comply with Federal Rule of Bankruptcy Procedure 7007(b).

The Motion contains an extensive list of legal conclusions, all alleging that the causes of action in the FAC fail to meet the applicable pleading standards. However, the actual content of the FAC is never referenced. Much of the Motion is based on the contention that the Complaint in ¶ 26 alleges that Plaintiff did not meet Defendant until late 2005 or early 2006 at the NORCAL facility, so that any allegations of representations made by alleged co-conspirators could not be attributed to Defendant. It is contended that when, as in ¶ 38 of the Complaint it is alleged that Defendant served a "fraudulent Notice of Stored Vehicle and Intent to Sell," that the elements of fraud are not pleaded - as opposed to a plain reading of the language that the "fraudulent Notice" means one which is not based on the law, ineffective, or false.

Most of Defendant's Motion can be read as, "well, Plaintiff's complaint does not prove each and every element of the causes of action, thus Plaintiff is to be thrown out of court." Such interpretation is inconsistent with the standard enunciated by the Supreme Court in Bell Atlantic v. Twombly, 550 U.S. at 454 (emphasis added):

> Federal Rule of Civil Procedure 8(a)(2) **requires only "a short and plain statement of the claim showing that the pleader is entitled to relief**," in order to **"give the defendant fair notice of what the ... claim is and the grounds upon which it rests**," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80. While a complaint attacked by a Rule 12(b)(6) motion to dismiss **does not need detailed factual allegations**, *ibid.*, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires **more than labels and conclusions,** and a formulaic recitation of a cause of action's elements will not do.

The court review of the First Amended Complaint and the short plain statement of the claims asserted therein and grounds stated is, as relevant to this Motion, as follows (identified to the paragraph (¶) of the First Amended Complaint:

¶ 3. Plaintiff seeks a determination that the obligation is nondischargeable as provided in 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6)

¶ 8. Plaintiff owned a 1977 Classic GMC Motorhome (the "Vehicle").

Defendant, along with several other "individuals:"

Conspired to deprive Plaintiff of his vehicle

Keep monies Plaintiff advanced for restoration and customization services of the Vehicle.

Dismantled the Vehicle and took the valuable parts thereof.

¶¶ 9, 10 Plaintiff purchased the Vehicle in 1999 and desired to have it restored and customized.

¶ 11 David Tirpak represented that he, Anthony Sarganis, and Defendant were owners and operators of Nor-Cal Classic Motorhome ("NORCAL"). Tirpak represented that NORCAL would do the restoration and customization work on the Vehicle.

¶ 12 Defendant, at an unspecified time, represented that NORCAL was a GMC licensed facility, specializing in the restoration and customization of the Vehicle.

¶ 13 Contrary to such representation, neither Defendant nor NORCAL did not possess such license or skill.

¶ 14 Defendant and his associates at NORCAL also represented on unspecified multiple occasions that NORCAL could provide the restoration and customization services requested by Plaintiff.

¶ 15 Defendant and his associates at NORCAL represented that they possessed a California Bureau of Automobile Repairs ("BAR") license.

¶ 16 In July 1999, Plaintiff entered into an oral agreement with Defendant and NORCAL to conduct an official California inspection of the Vehicle for California licensing.

¶ 17 Following the inspection, Plaintiff entered into an oral agreement with Defendant and NORCAL to preform restoration and customization of the Vehicle.

¶ 18 Between November 2000 and January 2006, Plaintiff entered into a series of oral amendment to the original contract due to changes and subsequent delays in the restoration and customization work to be done by NORCAL.

¶ 19 Between November 2000 and January 2006, Defendant and NORCAL (unspecified other representatives) on multiple (unspecified) occasions represented to Plaintiff that they were purchasing parties and materials for the work to be one on the Vehicle.

¶ 20 Between November 2000 and January 2006, Plaintiff conducted several audits (at unspecified times) of the restoration and customization work to be done on the Vehicle due to the delays in such work by NORCAL.

¶ 21 Plaintiff advanced $147,622.75 to Defendant and NORCAL based on invoices provided by Defendant and NORCAL for restoration and customization work represented to being done by Defendant and NORCAL.

¶ 22 In January 2006, Plaintiff spoke with Defendant and NORCAL about the delays, the monies advanced by Plaintiff, and the status of the restoration and customization work on the Vehicle.

¶ 23 In January 2006, Tirpak and Sarganis "admitted" that false invoices for the restoration and customization work had been created by NORCAL and had "embezzled" the monies advanced by Plaintiff.

¶ 24 In 2002, Tirpak informed Plaintiff that Defendant was an "associate" with NORCAL and Defendant was primarily responsible for the finish work on restoration and customization work done by NORCAL.

¶ 25 Plaintiff alleges that Defendant was an associate of Tirpak and an owner or "associate" of NORCAL.

¶ 26 Plaintiff first met Defendant in or about late 2005 or early 2006 at the NORCAL facility.

While Defendant says that this is inconsistent with saying that there was an oral contract with Defendant and NORCAL in 1999, the court reads this as "alleging" that Plaintiff first met with Defendant personally in 2005 or 2006, and the prior meetings were with persons authorized to bind Defendant to the terms of the oral contract with NORCAL.

¶ 27 At a meeting with Defendant, Defendant represented to Plaintiff that Defendant also had a BAR license and that Defendant would perform the specialized body and paint customization for the Vehicle.

¶ 28 Defendant also represented to Plaintiff that Defendant had a GMC license and that Defendant was under contract to GMC.

¶ 29 In June 2006, Defendant and NORCAL represented to Plaintiff that the Vehicle restoration and customization work was substantially complete and all that remained to be done was limited wiring, and the paid work to be completed by Defendant.

¶ 30 Defendant and NORCAL demanded (though not at a specified time, this appears to be made in the June 2006 period where it is alleged that Plaintiff was told the work was substantially completed) provide releases for the work done and payments made for the Vehicle restoration and customization.

¶ 31 Additionally in June 2006, Plaintiff was informed (by unspecified persons) that Defendant's brother had been using the Vehicle for living as well as drug manufacturing while it was being held by NORCAL for the restoration and customization work to be done by NORCAL and Defendant.

¶ 32 Plaintiff alleges that:

> Defendant and NORCAL representations that the Vehicle would be released only in exchange for certain payments or actions (with releases being specifically alleged above) were false
>
> The requirements stated by Defendant and NORCAL were made to induce Plaintiff to not remove the Vehicle from Defendant's and NORCAL's possession
>
> This was done to allow Defendant and NORCAL to use the Vehicle for their personal benefit, including (unspecified, but drug manufacturing is alleged above) criminal activity.

¶ 33 It is alleged Defendant and NORCAL made such representations so they could continue to retain possession of the Vehicle.

¶ 34 On September 22, 2006, Defendant and Tirpak executed an assignment, whereby Defendant assumed Tirpak's interest in the lease of the NORCAL business and facilities.

This paragraph refers to the document attached as Exhibit 2 to the First Amended Complaint. This document is an assignment of lease, which identifies David Tirpak as the lessee/assignor and Defendant as the assignee. This appears to be an assignment of a lease of real property to substitute Defendant in as the lessee and the creation of a new lease term. Though somewhat convoluted, it appears that the allegation is that Defendant became the lessee for the property on which NORCAL did business.

¶ 35 It is alleged that following the execution of the assignment in September 2006, Defendant took sole possession of the NORCAL business and the Vehicle.

¶ 36 Plaintiff did not consent to the transfer of possession of the Vehicle to Defendant.

¶ 37 Plaintiff made multiple demands (at unspecified times) to Defendant and NORCAL to return the Vehicle, but Defendant and NORCAL refused.

Though the time period is not specified, in the context of the pleading, this appears to have been after the time the work was reported as substantially completed, including the period when it is alleged that Defendant has possession and control of the Vehicle.

¶ 38 In December 2006, Defendant attempted to "seize" title to the Vehicle by foreclosing on a Vehicle lien.

> Defendant served on Plaintiff a Notice of Stored Vehicle and Intent to Sell, which is identified as Exhibit 3 to the Complaint.

The Notice includes the following information:

> Storage rate is $20 a day, with a total of $2,400 owed for storage
> (This represented 120 days)
>
> It states that the Vehicle has been towed from private property and stowed at "our facility."
>
> The possessory lien holder is identified as the Defendant personally.
>
> That unless the $2,470 (including title search fee) is paid, Defendant will sell the Vehicle

The Notice of Pending Lien Sale includes the following information:

> Defendant intends to sell the Vehicle
>
> Storage fees of $2,400 are owed
>
> Defendant signs the Notice of Pending Sale under penalty of perjury.

¶ 39 Plaintiff filed his opposition to the Lien Sale. Defendant and NORCAL retained possession of the Vehicle.

¶ 40 On August 31, 2007, Defendant's lease of the property at which NORCAL had it business terminated.

¶ 41 Plaintiff made arrangements directly with the lessor of the property to take possession of the Vehicle that was on the leased property.

¶ 42 Defendant, upon learning of Plaintiff's arrangements to obtain possession of the Vehicle form the lessor, dismantled and vandalized the Vehicle, taking all of the remaining valuable parts before abandoning the Vehicle.

¶ 43 Defendant abandoned the Vehicle on a public roadway outside the leased property on which NORCAL had maintained its business. When abandoned, the Vehicle was inoperable and dismantled beyond economic repair.

¶ 44 Defendant further vandalized the Vehicle by pouring paint on the Vehicle, leaving waste in the vehicle, and using the Vehicle as a place to manufacture narcotics.

¶ 45 On February 2, 2009, Plaintiff commenced state court litigation ("State Court

Action") against NORCAL, the Defendant, and related parties, with causes of action for breach of contract, fraud, and common counts.

¶ 46 Defaults of the various defendants in the State Court Action and following a prove-up hearing, judgment was entered in the amount of $323,804.85 ("Judgement") against Defendant and the other defendants in the State Court Action, imposing liability jointly and severally. A copy of the Judgment is attached as Exhibit 3.

The Judgment provides:

> The judgment is for $328,804.85
>
> The judgment is against Anthony Sarganis, Nor-Cal Classic GMC Motorhome, Joseph Akins (Defendant) and Albert Akins
>
> The Judgment does not state under what causes of action the relief was granted.

Contrary to Defendant's assertion that the above is not "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests," it clearly does. While Defendant may need to avail himself of his right to conduct discovery, it is clear what is alleged to have occurred.

Plaintiff took the Vehicle to NORCAL and Defendant to have it restored, with a time period specified in which this occurred. It is alleged that NORCAL is a business that Defendant owned or was associated with, and one in which Defendant obtained sole control over the lease for the property in which NORCAL did business.

The specific promises made by NORCAL and attributed to Defendant are alleged as to the restoration and customization work to be done, the monies paid in reliance on the promises made, and that the work was not done. It is further alleged what Defendant failed to do, personally and through NORCAL, in addition to the taking and use of the Vehicle for use by Defendant's brother.

Defendant is clearly on fair notice as to what the claim is based on, with whom Plaintiff communicated, what is alleged to have been said, and how it is attributed or stated to have been said by Defendant.

Causes of Action

The First Amended Complaint then states four causes of action over sixty-nine (60) paragraphs. The court will not provide a paragraph by paragraph recitation of these detailed paragraphs, but will summarize in a narrative.

1st Cause of Action - Nondischargeable Debtor for Fraud - 11 U.S.C. § 523(a)(2)(A).

For the First Cause of Action Plaintiff alleges that false representations were made by Defendant, directly or through his associates, about being a registered, licensed GMC repair facility to do restoration and customization work as requested by Plaintiff. Defendant, and his associates, falsely

represented that they possessed all of the licenses required under California law to do the work on the Vehicle. These false representations occurred over a period running from 1999 through 2006. Defendant and NORCAL misrepresented that they ordered parts and made restoration work when such did not occur.

The misrepresentations were made to induce Plaintiff to make additional payments and advances to Defendant and NORCAL for work not actually done and parts not actually purchased. Defendant and NORCAL misrepresented that work was being done to retain possession of the Vehicle so that Defendant's brother could continue to use it for living accommodations and a drug manufacturing laboratory.

Plaintiff relied upon those misrepresentations, allowing Defendant and NORCAL to retain possession of the Vehicle and made payments of money to Defendant and NORCAL. Plaintiff has been damaged by such misrepresentations and reliance thereon in an amount of not less than $193,612.97.

2nd Cause of Action - Embezzlement - 11 U.S.C. § 523(a)(4)

The Second Cause of alleges that Plaintiff, as the owner of the Vehicle, entrusted the vehicle to Defendant, NORCAL, and associates. This was under an oral contract for Defendant and NORCAL to do restoration and customization work on the Vehicle owned by Plaintiff. In 2006, Plaintiff demanded that Defendant return the Vehicle to Plaintiff. Defendant failed to return the Vehicle, retaining it for Defendant's personal use, including as a residence and drug manufacturing laboratory.

In addition to the unauthorized use, Defendant also removed parts from the Vehicle entrusted to him by Plaintiff. Defendant then took and used those parts for Defendant's own benefit. Plaintiff also paid Defendant and NORCAL for additional parts to be used in the restoration and customization of the Vehicle. When purchased with the monies provided by Plaintiff, the parts were taken by Defendant and NORCAL and used for their own personal benefit. The damages flowing from this alleged conduct are not less than $193,612.97.

3rd Cause of Action - Larceny - 11 U.S.C. § 523(a)(4)

In the Third Cause of Action, Plaintiff alleges an alternative theory of liability in the event that Defendant was not an owner of NORCAL and not involved in the business such that he was entrusted with the Vehicle and the parts purchased with monies advanced by Plaintiff. It is alleged that Defendant took possession of the Vehicle when he had no right to so do (it not being entrusted to him for the restoration and customization) and used, without authorization, the vehicle with his brother as alleged above. Further, that Defendant then dismantled the vehicle, took and sold the dismantled parts, and took and sold the parts purchased with the monies advanced by Plaintiff. Defendant's taking of the vehicle, dismantling, taking of parts, and selling of parts were unauthorized and Defendant was not entitled to possession of the vehicle or parts taken. The damages arising from the alleged larceny is $193,612.97.

4th and 5th (misnumber as a second "4th cause of action) Causes of Action - Intentional Injury/Conversion, 11 U.S.C. § 523(a)(6) and Intentional Injury/Damage to Property

For these two Causes of Action asserted under 11 U.S.C. § 523(a)(6) Plaintiff asserts that the Vehicle, while entrusted to Defendant for the restoration and customization work was vandalized by

Defendant as alleged above. This included: (1) intentionally spilling paid on the Vehicle, (2) intentionally removing parts from the Vehicle, (3) intentionally and improperly taking possession of parts purchased with monies advanced by Plaintiff for the Vehicle and disposing of those parts for Defendant's own benefit, (4) Defendant improperly took and retained possession of the Vehicle without authorization from Plaintiff, and (5) manufacturing drugs in the Vehicle, which damaged the Vehicle. These were intentional acts with Defendant knew would necessarily cause damage to Plaintiff and Plaintiff's property (the Vehicle). Defendant had no just cause or excuse to cause such damage to Plaintiff and Plaintiff's property. Defendant's knowledge of the wrongfulness of his conduct is manifested by Defendant demanding releases from Plaintiff in advance as a condition of any return of the Vehicle to Plaintiff. The damages caused by Defendant are at least $193,612.97.

RULING

While Defendant may dispute what is alleged, that is subject to evidence to be presented to the court. The First Amended Complaint sufficiently states the basis for the claims asserted, with the Defendant being on full, fair, and quite detailed notice of what is alleged. Defendant's "concerns" over identifying specific dates is the subject of good faith discovery. There are no naked assertions, or formalistic pleading of sterile legal grounds in the First Amended Complaint. The "facts" alleged are many, sufficient, and clearly provide a basis for Defendant to fairly know what is asserted, the claims made, and what he needs to address in asserting his defense.

The Motion is denied. Defendant shall file and serve his Answer on or before September 6, 2019.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Adversary Proceeding filed by the defendant, Joseph H. Akins ("Defendant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied.
>
> **IT IS FURTHER ORDERED** that Defendant Joseph Atkins shall file and serve his answer on or before September 6, 2019.

2. **18-25001-E-7** **JOSEPH AKINS** **CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 4-4-19 [21]**

18-2187 **Shelia Nelson**
BLACK V. AKINS
1 thru 2

Plaintiff's Atty: Nicholas B. Lazzarini
Defendant's Atty: Sheila Gropper Nelson

Adv. Filed: 11/13/18
Answer: none
Amd. Cmplt Filed: 4/4/19
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

The Status Conference is continued to 2:00 p.m. on September 25.

Notes:
Continued from 7/11/19

[RLF-5] Defendant's Motion to Dismiss the First Amended Complaint filed 7/19/19 [Dckt 54], set for hearing 8/15/19 at 11:00 a.m.

The court having denied Defendant's Motion to Dismiss and having ordered the answer to be filed on or before September 6, the Status Conference is continued.

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 Status Conference having been conducted by the court, the court having set a deadline of September 6, 2019 for the filing of an answer, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on September 25, 2019.

IT IS FURTHER ORDERED that the parties shall file and serve their Status Conference Statements on or before September 20, 2019.

3.	**17-26202-E-7** **17-2235** **NATIONWIDE INSURANCE COMPANY OF AMERICA V. TIPTON ET AL**	**WILLIAM/FRAYBA TIPTON** **David Smyth**	**MOTION FOR SUMMARY JUDGMENT, MOTION FOR PARTIAL SUMMARY JUDGMENT** **6-28-19 [41]**

Final Ruling: No appearance at the August 15, 2019 Status Conference is required.

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, on February 28, 2019, 2019. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Summary Judgment is continued to 11:00 a.m. on September 5, 2019.

Due to the complexity of the pleadings and extensive documentary and testimony evidence filed, the court continues the hearing to provide for a further review of the Motion before the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Summary Judgment filed by Nationwide Insurance Company of America ("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 hearing on the Motion for Summary Judgment is continued to 11:00 a.m. on September 5, 2019.

4. 19-20520-E-7 KAE SAECHAO **ORDER TO SHOW CAUSE**
19-2059 RHS-1 Joseph Feist **7-23-19 [16]**
LOOFBOURROW V. SAECHAO

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Defendant, and Office of the U.S. Trustee as stated on the Certificate of Service on July 23, 2019. The court computes that 23 days' notice has been provided.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.

ORDER TO SHOW CASE
WHY ADVERSARY PROCEEDING SHOULD
NOT BE DISMISSED FOR FAILURE TO PROSECUTE

On May 2, 2019, the Office of the Clerk received a "To Whom it may concern" letter from the plaintiff, Vicki Loofbourrow ("Ms. Loofbourrow" or "Plaintiff"). Dckt. 1. In the To Whom it may concern letter, Ms. Loofbourrow makes assertions that Debtor Kae Luang Saechao ("Defendant-Debtor") has committed bankruptcy fraud. She asserts that his discharge should be denied pursuant to 11 U.S.C. § 727(a)(2)-(7).

Ms. Loofbourrow also discloses that Defendant-Debtor is her former spouse, and asserts that Defendant-Debtor has committed perjury in both federal and state court, failing to disclose "all the community monies and property." Dckt. 1 at 1 (emphasis in original). Plaintiff asserts that Defendant-Debtor's obligations to her are nondischarageable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).

Ms. Loofbourrow further states that a "ruling" was flawed and should be revoked or re-tried based on § 727(a)(8) or (9). It is not clear what "ruling" she is referencing to. In Defendant-Debtor's bankruptcy case, 19-20520, no discharge has been entered.

She further asserts that Defendant-Debtor had a scheme while they were married to incur debt for cars, a house, boat, and the like, and then file bankruptcy, keep everything, and not pay for it.

The letter closes with Ms. Loofbourrow's request that the court "PLEASE RE-INVESTIGATE CASE #19-20520."

The Clerk of the Court, based on established procedures, interprets such a letter as a "complaint" to initiate the necessary adversary proceeding for the denial of discharge or

nondischargeability of debt. FED. R. BANKR. P. 7001. This Adversary Proceeding was opened. The court then issued its Order Regarding Letter/Pleading Filed, in which the Clerk was authorized to open this adversary proceeding and Viki Loofbourrow, as Plaintiff, was ordered to:

A. Pay the $350.00 Adversary Proceeding Filing Fee;

B. File a completed Adversary Proceeding Cover Sheet, Form 1040, as required by the Local Bankruptcy Rules;

C. File an amended pleading, an amended complaint, complying with the pleading rules and stating the claims as required by federal law.

Order, Dckt. 5. That order was issued on May 2, 2019.

As of June 24, 2019, no amended complaint has been filed. No Adversary Proceeding Cover Sheet has been filed. Plaintiff Viki Loofbourrow has filed a Motion to Waive Filing Fee. Dckt. 9. The form Ms. Loofbourrow used is for the Chapter 7 filing fee by a debtor, and does not state the grounds and basis for waiving an adversary proceeding filing fee.

Ms. Loofbourrow went further, taking an Order form for waiving a Chapter 7 filing fee and purported to have it set the date, a date in the end of August 2019, for a hearing. Ms. Loofbourrow printed the name of the judge in the signature block where the judge would sign the order if the judge issued the order.

On June 3, 2019, Plaintiff elected to file an additional one-page document, not an amended complaint, on a pleading form, to which she attaches her prior letter. Dckt. 11. It is obvious that she took the Summons issued by the court, copied the page with the Adversary Proceeding caption (including the May 3, 2019 filing and Doc #2 data at the top of the page), blanked out the text below the caption, and merely placed handwritten additional conclusions that there will be testimony of assets being hidden, debt was intentionally incurred with the plan of filing bankruptcy, and says that her prior letter attached is her affidavit.

Special Status Conference

At that juncture in this Adversary Proceeding, Plaintiff Viki Loofbourrow had not filed the required amended complaint to prosecute this Adversary Proceeding. Before dismissing the Adversary Proceeding for failure to prosecute, the court ordered a Special Status Conference to be conducted. The attendance, in person, of Viki Loofbourrow was ordered. Ms. Loofbourrow did not appear at the Special Status Conference.

Order To Show Cause

The Adversary Proceeding not being prosecuted, the court issued an Order To Show Cause why this Adversary Proceeding should not be dismissed on July 23, 2019. Dckt. 16.

DISCUSSION

Nothing further has been filed by Plaintiff in this Adversary Proceeding since the June 3, 2019 Application for fee waiver and one-page additional document. Dckts. 9 and 11. No amended complaint has been filed. The Order is sustained.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the Adversary Proceeding, No. 19-2059, is dismissed.

5. **18-22747-E-13 DAVID/CHRISTINA CASTILLO**
19-2009 RHS-1 Ted Green
CASTILLO ET AL V. LVNV FUNDING, LLC ET AL
5 thru 8

ORDER TO SHOW CAUSE LACK OF PROSECUTION
6-24-19 [11]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff-Debtors, Defendant, Defendant's attorney, Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Service on June 26, 2019. The court computes that 50 days' notice has been provided.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.

ORDER TO SHOW CAUSE LACK OF PROSECUTION

On January 17, 2019, David Castillo and Christina Castillo, the Plaintiff-Debtors ("Plaintiff-Debtors"), commenced four adversary proceedings which are styled as Objections to Claims:

Adv. Pro. 19-2009: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2010: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2011: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2012: Castillo v. LVNV Funding, LLC

No Certificate of Service attesting to the service of a complaint in any of the above Adversary Proceedings have been filed, except in Adv. Pro. 10-2012.

The Adversary Proceeding having been commenced on January 17, 2019, service of the complaint in each had to be completed within 90 days of the complaint being filed. Fed. R. Civ. P. 4(m), Fed. R. Bankr. P. 7004. That 90 days expired April 18, 2019. Federal Rule of Civil Procedure 4(m) specifies that upon such expiration of the 90-day period, the court "must" dismiss the Adversary Proceeding without prejudice.

At the March 20, 2019 Status Conference in each of the Adversary Proceedings, counsel for the Plaintiff-Debtors, Aubrey Jacobson of the Law Office of Ted Greene, reported that the parties were working toward a settlement and requested that the Adversary Proceedings, which were "mere"

objections to claims, be continued so the settlement documentation could be completed.

At the May 29, 2019 continued Status Conference, attorney Ronald Roundy appeared from the Office of Ted Greene as counsel for Plaintiff-Debtors. He advised the court that Ms. Jacobson was no longer with Mr. Greene's firm. Mr. Roundy reported to the court that the matter "had been settled" and the parties were still working on the documentation of the settlement.

At Mr. Roundy's request for the Plaintiff-Debtors, the court continued the four status conferences to June 19, 2019.

The State Bar website reports that Ronald R. Roundy, of the Law Office of Ted A Greene, was ordered inactive by the California State Bar on June 10, 2019, and is ineligible to practice law. He was not ineligible to practice law when he appeared at the May 2019 continued status conference.

Failure to Prosecute Adversary Proceedings
and Failure to Appear at the June 19, 2019 Continued Status Conferences

No appearance was made by counsel for Plaintiff-Debtors at the June 19, 2019 continued Status Conferences. Reviewing the file, nothing has been filed by Plaintiff-Debtors since January 2019. While professing that the objections are being settled, no such settlement is reflected in the record.

As provided in Federal Rule of Civil Procedure 4(m) due to the lack of service of the complaint within 90 days, Adversary Proceedings 19-2009, 19-2010, and 19-2011 "must" be dismissed without prejudice.

For Adversary Proceeding 19-2012, the Plaintiff-Debtors have failed to prosecute that Adversary Proceeding - whether by diligently documenting a settlement or prosecuting the rights being asserted therein.

The lack of prosecution in the Adversary Proceedings includes the failure to attend the continued Status Conference which Plaintiff-Debtors specifically requested.

Issuance of Order To Show Cause

No action having been taken by Plaintiff-Debtor since January 2019,the court issued an Order To Show Cause on June 24, 2019. Dckt. 11. The Order required a written Response to the Order on or before August 1, 2019.

DISCUSSION

Nothing has been filed by Plaintiff-Debtor in response to the Order, or otherwise. The Order is sustained.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the Adversary Proceeding, No. 19-2009, is dismissed.

6. 18-22747-E-13 DAVID/CHRISTINA CASTILLO
19-2010 RHS-1 Ted Green
CASTILLO ET AL V. LVNV FUNDING, LLC ET AL

ORDER TO SHOW CAUSE LACK OF PROSECUTION
6-24-19 [11]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff-Debtors, Defendant, Defendant's attorney, Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Service on June 26, 2019. The court computes that 50 days' notice has been provided.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.

ORDER TO SHOW CAUSE LACK OF PROSECUTION

On January 17, 2019, David Castillo and Christina Castillo, the Plaintiff-Debtors ("Plaintiff-Debtors"), commenced four adversary proceedings which are styled as Objections to Claims:

Adv. Pro. 19-2009: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2010: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2011: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2012: Castillo v. LVNV Funding, LLC

No Certificate of Service attesting to the service of a complaint in any of the above Adversary Proceedings have been filed, except in Adv. Pro. 10-2012.

The Adversary Proceeding having been commenced on January 17, 2019, service of the complaint in each had to be completed within 90 days of the complaint being filed. Fed. R. Civ. P. 4(m), Fed. R. Bankr. P. 7004. That 90 days expired April 18, 2019. Federal Rule of Civil Procedure 4(m) specifies that upon such expiration of the 90-day period, the court "must" dismiss the Adversary Proceeding without prejudice.

At the March 20, 2019 Status Conference in each of the Adversary Proceedings, counsel for the Plaintiff-Debtors, Aubrey Jacobson of the Law Office of Ted Greene, reported that the parties were working toward a settlement and requested that the Adversary Proceedings, which were "mere" objections to claims, be continued so the settlement documentation could be completed.

At the May 29, 2019 continued Status Conference, attorney Ronald Roundy appeared from the Office of Ted Greene as counsel for Plaintiff-Debtors. He advised the court that Ms. Jacobson was no longer with Mr. Greene's firm. Mr. Roundy reported to the court that the matter "had been settled" and the parties were still working on the documentation of the settlement.

At Mr. Roundy's request for the Plaintiff-Debtors, the court continued the four status conferences to June 19, 2019.

The State Bar website reports that Ronald R. Roundy, of the Law Office of Ted A Greene, was ordered inactive by the California State Bar on June 10, 2019, and is ineligible to practice law. He was not ineligible to practice law when he appeared at the May 2019 continued status conference.

Failure to Prosecute Adversary Proceedings
and Failure to Appear at the June 19, 2019 Continued Status Conferences

No appearance was made by counsel for Plaintiff-Debtors at the June 19, 2019 continued Status Conferences. Reviewing the file, nothing has been filed by Plaintiff-Debtors since January 2019. While professing that the objections are being settled, no such settlement is reflected in the record.

As provided in Federal Rule of Civil Procedure 4(m) due to the lack of service of the complaint within 90 days, Adversary Proceedings 19-2009, 19-2010, and 19-2011 "must" be dismissed without prejudice.

For Adversary Proceeding 19-2012, the Plaintiff-Debtors have failed to prosecute that Adversary Proceeding - whether by diligently documenting a settlement or prosecuting the rights being asserted therein.

The lack of prosecution in the Adversary Proceedings includes the failure to attend the continued Status Conference which Plaintiff-Debtors specifically requested.

Issuance of Order To Show Cause

No action having been taken by Plaintiff-Debtor since January 2019,the court issued an Order To Show Cause on June 24, 2019. Dckt. 11. The Order required a written Response to the Order on or before August 1, 2019.

DISCUSSION

Nothing has been filed by Plaintiff-Debtor in response to the Order, or otherwise. The Order is sustained.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the Adversary Proceeding, No. 19-2010, is dismissed.

7. 18-22747-E-13 DAVID/CHRISTINA CASTILLO
19-2011 RHS-1 Ted Green
CASTILLO ET AL V. LVNV FUNDING, LLC

ORDER TO SHOW CAUSE LACK OF PROSECUTION
6-24-19 [11]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff-Debtors, Defendant, Defendant's attorney, Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Service on June 26, 2019. The court computes that 50 days' notice has been provided.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.

ORDER TO SHOW CAUSE LACK OF PROSECUTION

On January 17, 2019, David Castillo and Christina Castillo, the Plaintiff-Debtors ("Plaintiff-Debtors"), commenced four adversary proceedings which are styled as Objections to Claims:

Adv. Pro. 19-2009: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2010: Castillo v. LVNV Funding, LLC

No Certificate of Service attesting to the service of a complaint in any of the above Adversary Proceedings have been filed, except in Adv. Pro. 10-2012.

The Adversary Proceeding having been commenced on January 17, 2019, service of the complaint in each had to be completed within 90 days of the complaint being filed. Fed. R. Civ. P. 4(m), Fed. R. Bankr. P. 7004. That 90 days expired April 18, 2019. Federal Rule of Civil Procedure 4(m) specifies that upon such expiration of the 90-day period, the court "must" dismiss the Adversary Proceeding without prejudice.

At the March 20, 2019 Status Conference in each of the Adversary Proceedings, counsel for the Plaintiff-Debtors, Aubrey Jacobson of the Law Office of Ted Greene, reported that the parties were working toward a settlement and requested that the Adversary Proceedings, which were "mere" objections to claims, be continued so the settlement documentation could be completed.

At the May 29, 2019 continued Status Conference, attorney Ronald Roundy appeared from the Office of Ted Greene as counsel for Plaintiff-Debtors. He advised the court that Ms. Jacobson was no longer with Mr. Greene's firm. Mr. Roundy reported to the court that the matter "had been settled" and the parties were still working on the documentation of the settlement.

At Mr. Roundy's request for the Plaintiff-Debtors, the court continued the four status conferences to June 19, 2019.

The State Bar website reports that Ronald R. Roundy, of the Law Office of Ted A Greene, was ordered inactive by the California State Bar on June 10, 2019, and is ineligible to practice law. He was not ineligible to practice law when he appeared at the May 2019 continued status conference.

Failure to Prosecute Adversary Proceedings
and Failure to Appear at the June 19, 2019 Continued Status Conferences

No appearance was made by counsel for Plaintiff-Debtors at the June 19, 2019 continued Status Conferences. Reviewing the file, nothing has been filed by Plaintiff-Debtors since January 2019. While professing that the objections are being settled, no such settlement is reflected in the record.

As provided in Federal Rule of Civil Procedure 4(m) due to the lack of service of the complaint within 90 days, Adversary Proceedings 19-2009, 19-2010, and 19-2011 "must" be dismissed without prejudice.

For Adversary Proceeding 19-2012, the Plaintiff-Debtors have failed to prosecute that Adversary Proceeding - whether by diligently documenting a settlement or prosecuting the rights being asserted therein.

The lack of prosecution in the Adversary Proceedings includes the failure to attend the continued Status Conference which Plaintiff-Debtors specifically requested.

Issuance of Order To Show Cause

No action having been taken by Plaintiff-Debtor since January 2019,the court issued an Order To Show Cause on June 24, 2019. Dckt. 11. The Order required a written Response to the Order on or before August 1, 2019.

DISCUSSION

Nothing has been filed by Plaintiff-Debtor in response to the Order, or otherwise. The Order is sustained.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the Adversary Proceeding, No. 19-2011, is dismissed.

8. **18-22747-E-13 DAVID/CHRISTINA CASTILLO**
19-2012 RHS-1 Ted Green
CASTILLO ET AL V. LVNV FUNDING, LLC

ORDER TO SHOW CAUSE LACK OF PROSECUTION
6-24-19 [16]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff-Debtors, Defendant, Defendant's attorney, Chapter 13 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Service on June 26, 2019. The court computes that 50 days' notice has been provided.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.

ORDER TO SHOW CAUSE LACK OF PROSECUTION

On January 17, 2019, David Castillo and Christina Castillo, the Plaintiff-Debtors ("Plaintiff-Debtors"), commenced four adversary proceedings which are styled as Objections to Claims:

Adv. Pro. 19-2009: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2010: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2011: Castillo v. LVNV Funding, LLC

Adv. Pro. 19-2012: Castillo v. LVNV Funding, LLC

No Certificate of Service attesting to the service of a complaint in any of the above Adversary Proceedings have been filed, except in Adv. Pro. 10-2012.

The Adversary Proceeding having been commenced on January 17, 2019, service of the complaint in each had to be completed within 90 days of the complaint being filed. Fed. R. Civ. P. 4(m), Fed. R. Bankr. P. 7004. That 90 days expired April 18, 2019. Federal Rule of Civil Procedure 4(m) specifies that upon such expiration of the 90-day period, the court "must" dismiss the Adversary Proceeding without prejudice.

At the March 20, 2019 Status Conference in each of the Adversary Proceedings, counsel for the Plaintiff-Debtors, Aubrey Jacobson of the Law Office of Ted Greene, reported that the parties were working toward a settlement and requested that the Adversary Proceedings, which were "mere" objections to claims, be continued so the settlement documentation could be completed.

At the May 29, 2019 continued Status Conference, attorney Ronald Roundy appeared from the Office of Ted Greene as counsel for Plaintiff-Debtors. He advised the court that Ms. Jacobson was no longer with Mr. Greene's firm. Mr. Roundy reported to the court that the matter "had been settled" and the parties were still working on the documentation of the settlement.

At Mr. Roundy's request for the Plaintiff-Debtors, the court continued the four status conferences to June 19, 2019.

The State Bar website reports that Ronald R. Roundy, of the Law Office of Ted A Greene, was ordered inactive by the California State Bar on June 10, 2019, and is ineligible to practice law. He was not ineligible to practice law when he appeared at the May 2019 continued status conference.

Failure to Prosecute Adversary Proceedings
and Failure to Appear at the June 19, 2019 Continued Status Conferences

No appearance was made by counsel for Plaintiff-Debtors at the June 19, 2019 continued Status Conferences. Reviewing the file, nothing has been filed by Plaintiff-Debtors since January 2019. While professing that the objections are being settled, no such settlement is reflected in the record.

As provided in Federal Rule of Civil Procedure 4(m) due to the lack of service of the complaint within 90 days, Adversary Proceedings 19-2009, 19-2010, and 19-2011 "must" be dismissed without prejudice.

For Adversary Proceeding 19-2012, the Plaintiff-Debtors have failed to prosecute that Adversary Proceeding - whether by diligently documenting a settlement or prosecuting the rights being asserted therein.

The lack of prosecution in the Adversary Proceedings includes the failure to attend the continued Status Conference which Plaintiff-Debtors specifically requested.

Issuance of Order To Show Cause

No action having been taken by Plaintiff-Debtor since January 2019,the court issued an Order To Show Cause on June 24, 2019. Dckt. 11. The Order required a written Response to the Order on or before August 1, 2019.

DISCUSSION

Nothing has been filed by Plaintiff-Debtor in response to the Order, or otherwise. The Order is sustained.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the Adversary Proceeding, No. 19-2012, is dismissed.