

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 6, 2017, at 2:00 p.m.

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1. [12-41422-E-13](#) **DAVID/ANNA MONTOYA** **PRE-TRIAL CONFERENCE RE:**
[16-2057](#) **AMENDED COMPLAINT OBJECTING**
MONTOYA, JR. ET AL V. OCWEN **TO PROOF OF CLAIM AND RELATED**
STATE LOAN SERVICING, LLC ET AL
CAUSE OF ACTION
3-25-16 [7]

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Plaintiffs' Atty: Peter L. Cianchetta
Defendants' Atty: Brian A. Paino, Dhruv M. Sharma
Amd. Complaint Filed: 3/25/16
Answer: 5/25/16
Amd. Answer: 6/15/16

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

The court having granted the Joint Motion (Dckt. 43) to continue the Pre-Trial Conference, it is continued to a Date to Be Determined in late February or early March 2018.

Notes:

Order continuing the 5/31/17 pre-trial conference to 9/6/17 pursuant to stipulation filed 5/5/17 [Dckt 41]

SEPTEMBER 6, 2017 PRETRIAL CONFERENCE

The Pretrial conference is continued, at the request of the parties, one final time, to allow the parties to finalize a settlement or be prepared to go to trial.

The court not having set its 2018 Calendar, that date will be set by further order of the court.

2. [11-41628-E-13](#) **EDDIE DAKI**
[17-2122](#)
DAKI V. J.P. MORGAN CHASE BANK

STATUS CONFERENCE RE:
COMPLAINT
7-11-17 [[1](#)]

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown
Adv. Filed: 7/11/17
Answer: none

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

The Status Conference is continued to 2:00 p.m. on November 1, 2017.

Notes:
Plaintiff's 1st Status Statement filed 8/29/17 [Dckt 8]

SEPTEMBER 6, 2017 STATUS CONFERENCE

SUMMARY OF COMPLAINT

In the Complaint, Plaintiff-Debtor asserts that Defendant JP Morgan Chase Bank's secured claim was valued at \$0.00 in Plaintiff-Debtor's Chapter 13 case, that Plaintiff-Debtor has fully performed the Plan, and that Defendant's deed of trust recorded against Plaintiff-Debtor's home is void. Plaintiff-Debtor alleges that Defendant has failed to reconvey the void deed of trust as requested by Plaintiff-Debtor.

The Complaint asserts claims for Breach of Contract (deed of trust), to quiet title, damages for violation of statutory duty to reconvey the void deed of trust, and for contractual and statutory attorney's fees.

Allegation of Jurisdiction and Core Proceeding

Plaintiff-Debtor asserts that federal jurisdiction exists pursuant to 28 U.S.C. § 1334 and § 157. Complaint ¶ 4, Dckt. 1. Further, Plaintiff-Debtor asserts that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L), and 11 U.S.C. § 506(a) for determination that the deed of trust is void. Further, Plaintiff-Debtor argues that these claims would not arise but for the bankruptcy case, the confirmed Chapter 13 Plan, and Plaintiff-Debtor's rights under the Bankruptcy Code pursuant to the confirmed Chapter 13 Plan.

Service of Complaint

Plaintiff-Debtor filed a Status Report on August 29, 2017. Dckt. 8. Plaintiff-Debtor advises the court that the reason Defendant may not have responded to the Complaint is a defect in service. Plaintiff-Debtor obtained a reissued summons and has reserved the complaint with the reissued summons. Dckt. 10. It appears that Plaintiff-Debtor has addressed the potential defect.

3. [10-46636-E-13](#) **JOSEPH/KIMBERLY OLIVA** **STATUS CONFERENCE RE:**
[17-2105](#) **COMPLAINT**
 6-19-17 [1]
- OLIVA ET AL V. CITIMORTGAGE,
INC.**

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Plaintiffs' Atty: Rick Morin
Defendant's Atty: unknown

Adv. Filed: 6/19/17
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)

The Status Conference is continued to 10:30 a.m. on October 5, 2017. (Specially set day and time due to court's schedule of future adversary proceeding status conferences).

Notes:

Joint Stipulation for Extension of Time to File Responsive Pleading [to 8/18/17] filed 8/8/17 [Dckt 10];
Order granting filed 8/13/17 [Dckt 12]

Joint Stipulation for Extension of Time to File Responsive Pleading [to 9/17/17] filed 8/17/17 [Dckt 13];
Order granting filed 8/21/17 [Dckt 15]

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 Initial Status Conference having been scheduled for September 6, 2017, the court having extended the time for Defendants to file a responsive pleading to September 17, 2017, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 10:30 a.m. on October 5, 2017.

4. [11-27845-E-11](#) **IVAN/MARETTA LEE** **CONTINUED PRE-TRIAL**
[15-2194](#) **CONFERENCE RE: AMENDED**
LEE ET AL V. CITY OF **COMPLAINT**
SACRAMENTO COMMUNITY **3-14-16 [92]**

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Plaintiff's Atty: Raymond E. Willis

Defendant's Atty:

Tim G. Ceperley [Bank of America, N.A.]

Beau E. Parkhurst [City of Sacramento; City of Sacramento Community
Development Department]

Gregory K. Jones [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]/*dismissed by stipulation on 2/11/16 [Dckt 68]*

B. Ben Mohandesi [New Penn Financial, LLC dba Shellpoint Mortgage
Servicing]/*dismissed by stipulation 2/24/16 [Dckt 87]*

Nature of Action:

Injunctive relief - other

Declaratory judgment

The Status Conference has been continued to October 25, 2017, at 10:30 a.m. by prior order of the court.

Notes:

Continued from 5/31/17. Defendants granted leave to file dispositive motions, notwithstanding prior deadlines for such motions set by the court.

[BMV-4] Motion to Dismiss Defendants City of Sacramento Community Development Department, Housing and Dangerous Building Division and City of Sacramento's Counterclaim Without Prejudice filed 7/27/17 [Dckt 162], set for hearing 9/21/17 at 11:00 a.m.

September 6, 2017, at 2:00 p.m.

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[BMV-5] Defendants' Motion for Summary Judgment filed 7/27/17 [Dckt 166], set for hearing 9/21/17 at 11:00 a.m.

[BMV-6] Ex Parte Motion to Continue Pre-Trial Conference filed 8/29/17 [Dckt 176]; Order granting and continuing pretrial conference to 10/25/17 at 10:30 a.m. filed 8/30/17 [Dckt 178]

5. [17-22347-E-11](#) **UNITED CHARTER LLC** **CONTINUED STATUS CONFERENCE
VOLUNTARY PETITION
4-7-17 [1]**

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Debtor's Atty: Jeffrey J. Goodrich

Notes:

Continued from 5/31/17

Operating Reports filed: 6/14/17 [Apr, May]; 8/2/17 [Jun]; 8/14/17 [Jul]

Application for Order Authorizing Employment of Counsel for Debtor in Possession filed 6/2/17 [Dckt 23];
Order granting filed 6/15/17 [Dckt 28]

[JJG-1] Motion for Approval of Cash Collateral Stipulation filed 8/3/17 [Dckt 32]; heard 8/17/17 and
continued to 8/31/17 by order filed 8/20/17 [Dckt 48]; Amended Stipulation for Use of Cash Collateral filed
8/24/17 [Dckt 50]

[JJG-2] Motion of Debtor in Possession for Order Approving Employment of Auctioneer and Sale of Real
Property by Auction filed 8/17/17 [Dckt 37]; heard 8/17/17 and continued to 8/31/17

[JJG-2] Amended Motion of Debtor in Possession for Order Approving Employment of Auctioneer and Sale
of Real Property by Auction filed 8/19/17 [Dckt 44]; set for hearing on 8/31/17

The Chapter 11 Status Conference is continued to 2:00 p.m. on January 17, 2018.

SEPTEMBER 6, 2017 STATUS CONFERENCE

Debtor in Possession and active parties in this case have been before the court for several recent matters relating to the actions being taken by Debtor in Possession in prosecution of this case. Such hearings have provided the court and the active parties in interest in this case with the information that would normally be presented at a Status Conference. In light of the proceedings in this case, the court continues the Status Conference.

September 6, 2017, at 2:00 p.m.

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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 scheduled for September 6, 2017, the court having conducted several hearings involving Debtor in Possession and the active parties in this case, those hearing providing the functional equivalent of a status conference, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on January 17, 2018.

6. [16-20852](#)-E-11 **MATHIOPOULOS 3M FAMILY
LIMITED PARTNERSHIP** **CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
2-16-16 [1]**

Final Ruling: No appearance at the September 6, 2017 status conference is required.

Debtor's Atty: J. Luke Hendrix

The Status Conference is continued to 10:30 a.m. on September 21, 2017, to be conducted in conjunction with the Plan Administrator's/Debtor motion to close the bankruptcy case.

Notes:

Continued from 6/21/17, the Plan Administrator/Debtor reporting the Chapter 11 case is ready to be closed.

Operating Reports filed: 8/31/17 [Feb, Mar, Jun]

[DNL-12] Post-Confirmation Status Report filed 8/9/17 [Dckt 228]

[DNL-13] Motion for Final Decree Closing Case filed 8/22/17 [Dckt 230], set for hearing on 9/21/17 at 10:30 a.m.

7. [12-39954-E-13](#) **JOHN/MICHELLE PINEDA**
[16-2002](#)

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
7-5-16 [18]

PINEDA, JR. ET AL V. WELLS
FARGO BANK, N.A.

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

Adv. Filed: 1/5/16
Answer: none
1st Amd Complaint Filed: 7/5/16
Answer: 7/29/16
2nd Amd Complaint Filed: 12/18/16
Answer: none

Nature of Action:
Injunctive relief - other

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Notes:
Continued from 5/31/17

Order Continuing Status Conference and Order to Appear filed 6/5/17 [Dckt 35] John Pineda, Jr. and Michelle Pineda, the Plaintiff-Debtors; Peter Cianchetta, counsel for Plaintiff-Debtors; a representative of Defendant Wells Fargo Bank, N.A. with personal knowledge of the matters in this Adversary Proceeding who is authorized to make litigation decisions; and Adam Barasch, counsel for Wells Fargo Bank, N.A.; and each of them, to appear in person - No telephonic appearances permitted.

SEPTEMBER 6, 2017 STATUS CONFERENCE

The court has ordered the parties and their attorneys to appear at the September 6, 2017 Status Conference, with no telephonic appearances permitted.

This Adversary Proceeding was commenced on January 5, 2016—which is 611 days before the September 6, 2017 continued Status Conference date. Plaintiff-Debtor has filed an original complaint, a first amended complaint, and a second amended complaint, all of which relate to the same Defendant. Defendant filed an answer to the First Amended Complaint.

No Status Report has been filed by any party in this case, not for the September 6, 2017 Status Conference or at any prior time.

At the Status Conference, ~~XXXXXXXXXXXXXXXXXXXX~~.

MAY 31, 2017 STATUS CONFERENCE

No further pleadings or status reports have been filed since the February 22, 2017 Status Conference. No answer or other responsive pleading has been filed.

It appears that both Plaintiff-Debtor and Defendant have abandoned any prosecution of this Adversary Proceeding and the determination of the issues raised herein.

At the Status Conference, the parties report that they are still reviewing information.

The court continues the Status Conference. In light of the lack of progress, in addition to continuing the Status Conference, the court further orders that the parties and counsel attend the next status conference in person, no telephonic appearances permitted.

FEBRUARY 22, 2017 STATUS CONFERENCE

Plaintiff-Debtor filed a Second Amended Complaint on December 28, 2016. Certificates of Service were filed on December 28 and 29, 2016. Dckts. 30, 32. No answer or other responsive pleading has been filed by the named Defendant.

The parties report that they have exchanged the financial information.

Debtor’s Atty: Edward A. Smith

Notes:
Continued from 5/31/17

Operating Reports filed: 6/14/17, 7/14/17

[TBG-4] Motion for Retroactive Approval of Use of Cash Collateral filed 7/21/17 [Dckt 67]; Order granting filed 8/1/17 [Dckt 77]

[TBG-5] Disclosure Statement filed 8/3/17 [Dckt 80]; Notice of Withdrawal filed 8/14/17 [Dckt 85]

Debtor In Possession’s Plan of Reorganization, Dated August 24, 2017 filed 8/14/17 [Dckt 87]
Debtor In Possession’s Disclosure Statement filed 8/14/17 [Dckt 88]

[TBG-7] *Ex Parte* Motion re granting approval of disclosure statement filed 8/14/17 [Dckt 90]; Order denying filed 8/21/17 [Dckt 92]

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

SEPTEMBER 6, 2017 STATUS CONFERENCE

The last Monthly Operating Report filed by ΔIP was on July 14, 2017, which was for the month of June 2017. No Monthly Operating Report has been filed for July 2017. The deadline for filing the August 2017 report has not yet expired.

ΔIP filed a proposed plan and disclosure statement, setting a hearing for approval of the disclosure statement for August 31, 2017. On August 14, 2017, ΔIP filed a dismissal of the request for approval of the proposed disclosure statement.

On August 14, 2017, ΔIP filed an amended plan and amended disclosure statement, for which ΔIP requested ex parte preliminary approval, having the court advance this case directly to a hearing on confirmation of the proposed plan. The court denied such request, the basis stated in the court’s August 21, 2017 Order (Dckt. 92). For cause shown, the court *sua sponte* extended the deadlines for ΔIP to file and prosecute approval of the disclosure statement and confirmation of a plan in this case, which ΔIP has designated as a “small business case.”

At the Status Conference, counsel for ΔIP reported, XXXXXXXXXXXXXXXXXXXXXX.

MAY 31, 2017 STATUS CONFERENCE

At the Status Conference, Debtor in Possession reports that the broker has been employed and that the marketing of the property (residence) is proceeding.

On May 17, 2017, the Debtor in Possession provided the court with a Status Report. The updated information is that a motion to employ real estate broker is set for hearing on May 31, 2017.

JANUARY 18, 2017 STATUS CONFERENCE

Status Conference Summary

This voluntary Chapter 11 case was commenced on November 29, 2016. No prior bankruptcy case filings by are reflected in the records of this court.

December 16, 2017 Status Report (Dckt. 19)

In the Status Report, ΔIP reports that his business is a sole proprietorship, IB Tan Tanning Resort. While Debtor had a substantial equity in his home, he was unable to make payments on his credit card and mortgage. The bankruptcy case was filed to stay foreclosure on the home so that ΔIP could propose a plan and provide for the orderly sale of the home. For a plan, ΔIP projects being able to pay the creditors in full.

Attached to the December 2016 Monthly Operating Report are copies of checks from ΔIP account. The court notes a check for \$20,000.00 written to West America Bank on December 10, 2016. Dckt. 28 at 12. At the hearing, counsel for ΔIP explained that this was the transfer of monies into the Debtor in Possession account.

9. [13-24069-E-13](#) **DAWN LAWSON**
[17-2119](#)

STATUS CONFERENCE RE:
COMPLAINT
7-11-17 [1]

LAWSON V. JPMORGAN CHASE BANK,
N.A.

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 7/11/17
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:
Summons reissued 8/16/17 [Dckt 9]

Plaintiff's Discovery Plan filed 8/30/17 [Dckt 11]

Plaintiff's Initial Disclosures filed 8/30/17 [Dckt 13]

SUMMARY OF COMPLAINT

Dawn Larson, the Plaintiff-Debtor, alleges that in her Chapter 13 Case she has completed her Chapter 13 Plan. That Plan provided for the secured claim of JPMorgan Chase Bank, N.A., which was valued at \$0.00 pursuant to 11 U.S.C. § 506(a). Though the Plan has been completed and the secured claim of JPMorgan Chase Bank, N.A. having been provided for, JPMorgan Chase Bank, N.A. has not reconveyed the deed of trust for which there is no remaining obligation to be secured.

The First Cause of Action is titled "Declaratory Relief." The requested "relief" is a declaration that the law requires the voiding and release of the deed of trust. The court does not provide a declaration of "who is right and who is wrong," but adjudicates the actual rights and interests, entering a judgment thereon. Declaratory relief, 28 U.S.C. § 2201, is proper when it "[b]rings 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). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

Here, all of the bells have been rung and conduct taken by which Plaintiff-Debtor asserts her rights to have the void deed of trust removed from the property and have a judicial determination that the deed of trust is void and does not encumber the property.

The court reads (for this complaint) the First Cause of Action to be one seeking a judgment quieting title as between Plaintiff-Debtor and JPMorgan Chase Bank, N.A. and for a judgment determining that the Deed of Trust is void and does not encumber the Property. This is based on the confirmed Chapter 13 Plan, the order of this court valuing the secured claim pursuant to 11 U.S.C. § 506(a), and the completion of the Chapter 13 Plan.

In the Second Cause of Action, Plaintiff-Debtor asserts her rights under California Civil Code § 2841(d) for statutory damages, attorney's fees, and costs.

SUMMARY OF ANSWER

No answer or other responsive pleadings has been filed.

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

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 add 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. BANKR. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Plaintiff-Debtor asserts that the "core" proceeding grounds include these determinations being based on the claim of Defendant in the bankruptcy case, the court's order valuing the secured claim pursuant to 11 U.S.C. § 506(a), the effect of confirmation of the Chapter 13 Plan pursuant to 11 U.S.C. § 1325, and the effect under federal law by the completion of the Chapter 13 Plan. Complaint ¶¶ 2, 3, and 4, Dckt. 1. In addition, the court notes that 11 U.S.C. § 506(d) also provides a federal basis for determining that a lien is void through a bankruptcy case.

SERVICES AND REISSUED SUMMONS

The Certificate of Service filed on July 12, 2017, states that service was made on JPMorgan Chase Bank, N.A. at 1111 Polaris Parkway, Columbus, Ohio. Dckt. 8. A summons was reissued on August 16, 2017. The reissued summons and Complaint were served on JPMorgan Chase Bank, N.A. at the 1111 Polaris Parkway address again on August 18, 2017, but by certified mail the second time. Dckt. 10. The Polaris Parkway address is the one listed by the FDIC on its website bank information page.

STATUS

The reissued summons is dated August 16, 2017, and Defendant JPMorgan Chase Bank, N.A. is given thirty days from that date to file an answer or other responsive pleading. As of the September 6, 2017 Status Conference that thirty-day period had not expired.

As the Status Conference, Counsel for Plaintiff-Debtor reported **XXXXXXXXXXXXXXXXXXXX**.

10. [09-29681-E-13](#) [16-2217](#) **FERNANDO/ALAPE GELVERIO** **CONTINUED STATUS CONFERENCE**
RE: COMPLAINT
10-7-16 [1]

**GELVERIO ET AL V. U.S. BANK
NATIONAL ASSOCIATION**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Meagan S. Tom, Regina J. McClendon

Adv. Filed: 10/7/16
Answer: 6/23/17

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.

Notes:
Continued from 6/21/17. U.S. Bank, N.A. to file and serve an answer in this Adversary Proceeding on or before 7/14/17.

U.S. Bank National Association's Answer to Adversary Complaint filed 6/23/17 [Dckt 19]

Plaintiff's 4th Status Statement filed 8/28/17 [Dckt 23]

U.S. Bank, National Association's Status Conference Statement filed 8/29/17 [Dckt 26]

SEPTEMBER 6, 2017 STATUS CONFERENCE

For the September 6, 2017 Status Conference each party filed updated reports for the court. Plaintiff-Debtor reports that the Complaint has been answered, the parties have met and confirmed, and that Plaintiff-Debtor has made the required initial disclosures. Plaintiff-Debtor requests a ninety-day discovery deadline. Dckt. 23.

Defendant U.S. Bank, N.A. first asserts in its Status Report that the deed of trust at issue was reconveyed on January 5, 2016 (which Defendant notes is nine months before the commencement of this Adversary Proceeding). Dckt. 26. Defendant then requests the court set the following deadlines:

Initial Disclosures.....September 14, 2017
Discovery Cutoff.....January 31, 2018
Plaintiff's Expert Disclosures.....December 31, 2017

Defendant's Expert Disclosures.....January 15, 2018

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Summary of Complaint

The basic allegations of the Complaint are that: (1) Defendant had a claim secured by a junior deed of trust in Plaintiff-Debtor's Chapter 13 bankruptcy case; (2) a motion to value Defendant's secured claim was granted (though it does not allege that it was valued at \$0.00); (3) Plaintiff-Debtor's Chapter 13 Plan provides that the lien of Defendant shall be void and stripped upon completion of the [Chapter 13] case; (4) the Chapter 13 Plan has been completed; and (5) Defendant (named First Financial Services, LLC dba The Lending Center aka U.S. Bank Consumer Finance) has not reconveyed the deed of trust that is now void.

The First Cause of Action seeks Declaratory Relief. It appears that this may actually be a claim for quiet title and a determination that the deed of trust is void and does not encumber the property.

The Second Cause of Action is titled as one for Extinguishment of the Second Deed of Trust Claim. This Cause of Action appears to assert that the deed of trust is not void, but in full force and effect. It requests that the court then extinguish the not-void deed of trust.

The Third Cause of Action asserts that Defendant failed to reconvey the deed of trust once no obligation existed for it to secure, and based thereon Plaintiff-Debtor has a statutory damages claim arising under California Civil Code § 2941(d). The statutory damages claim is stated in the amount of \$500 and all attorneys fees and costs, as allowed for in the contract between the parties.

A Fourth Cause of Action for Breach of Contract is asserted based on the failure to reconvey the deed of trust.

A Fifth (intentional) and Sixth (negligent) Cause of Action are asserted for violation of the Federal Fair Credit Reporting Action, citing 15 U.S.C. § 1681(w). That specific code section relates to the Federal Trade Commission and several other entities issuing regulations relating to the disposal of consumer records. This Cause of Action then states that defendant(s) deliberately and/or recklessly did not maintain reasonable procedures to protect against reporting erroneous personal financial information in violation of 15 U.S.C. § 1681. Nothing other than a legal conclusion is stated in this Cause of Action.

The Seventh Cause of Action states that Defendant is liable for negligence per se for reporting (unidentified) financial information in violation of 15 U.S.C. § 1681. Nothing other than a legal conclusion is stated in this Cause of Action.

Plaintiff-Debtor requests attorney's fees and costs based on contract (deed of trust) and statutory law (Cal. Civ. § 2941).

In the Prayer of the Complaint, the specific relief requested by Plaintiff-Debtor is stated to be:

“A. The court issue a judgment that the deed of trust is an unsecured lien and that the lien should be treated as an unsecured claim.

B. The court issue a judgment voiding the second deed of trust.

C. Award of attorneys fees based on contract and statute.

D. \$500.00 Civil Penalty.

E. For further relief.”

No relief is requested for the various Fair Credit Reporting Act and Gramm-Leach-Bliley legal conclusions stated in the Complaint.

Summary of Answer

U.S. Bank, N.A. has filed its Answer admitting and denying specific allegations in the Complaint. Dckt. 19. In Paragraph 14 of the Answer, Defendant asserts that the deed of trust was reconveyed on January 5, 2017. The Answer includes Thirteen Affirmative Defenses.

JUNE 21, 2017 STATUS CONFERENCE

At the June 21, 2017 Status Conference, U.S. Bank, N.A. appeared through counsel and stipulated on the record to the substitution of it in as the real party defendant in place of the entities named in the Complaint. U.S. Bank, N.A. also agreed to file an answer on or before July 14, 2017.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor 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)(K) and (L). Complaint ¶¶ 2, 3, Dckt. 1. Plaintiff-Debtor further asserts that this is a core proceeding in that it would “arise” but for the federal law provisions of the Bankruptcy Code for valuation of a secured claim, the Chapter 13 Plan, confirmation of the Chapter 13 Plan, completion of the Chapter 13 Plan. *Id.*, ¶4. The Plaintiff-Debtor further expressly consents to the bankruptcy judge issuing all final orders and judgment for all non-core matters, if any, in this Adversary Proceeding. *Id.*, ¶ 6.

In its Answer, Defendant admits that this court has jurisdiction for this Adversary Proceeding and affirmatively consents to the bankruptcy judge issuing all final orders and judgment for non-core matters in this Adversary Proceeding. Answer ¶¶ 3,6, Dckt. 19.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

a. Plaintiff-Debtor 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)(K) and (L). Complaint ¶¶ 2, 3, Dckt. 1. Plaintiff-Debtor further asserts that this is a core proceeding in that it would “arise” but for the federal law provisions of the Bankruptcy Code for valuation of a secured claim, the Chapter 13 Plan, confirmation of the Chapter 13 Plan, completion of the Chapter 13 Plan. *Id.*, ¶ 4. The Plaintiff-Debtor further expressly consents to the bankruptcy judge issuing all final orders and judgment for all non-core matters, if any, in this Adversary Proceeding. *Id.*, ¶ 6.

In its Answer, Defendant admits that this court has jurisdiction for this Adversary Proceeding and affirmatively consents to the bankruptcy judge issuing all final orders and judgment for non-core matters in this Adversary Proceeding. Answer ¶¶ 3,6, Dckt. 19.

b. Initial Disclosures shall be made on or before **September 14, 2017**.

c. Plaintiff-Debtor Expert Witnesses shall be disclosed on or before -----, **2017**, and Plaintiff-Debtor Expert Witness Reports, if any, shall be exchanged on or before -----, **2017**.

d. Defendant Expert Witnesses shall be disclosed on or before -----, **2017**, and Defendant Expert Witness Reports, if any, shall be exchanged on or before -----, **2017**.

e. Discovery closes, including the hearing of all discovery motions, on **January 31, 2018**.

f. Dispositive Motions shall be heard before **March 30, 2017**.

g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on TBD, 2018**.