

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

September 25, 2014 at 1:30 p.m.

- 
1. [14-20708](#)-E-13 NOEL ORLANDO MOTION FOR ENTRY OF DEFAULT  
[14-2083](#) JUDGMENT  
SNIDER LEASING CORP V. ORLANDO 8-21-14 [[18](#)]

**Final Ruling: No appearance at the September 25, 2014 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on August 21, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The hearing on the Motion for Entry of Default Judgment is continued to 2:30 p.m. on October 15, 2014.</b></p>
--

Below is the Court's Tentative Ruling which was prepared for the September 25, 2014 hearing. Due to the significant procedural and substantive deficiencies, the hearing is continued to the October 15, 2014 for the court to address with counsel the prosecution of this Adversary Proceeding in federal court.

The following tentative ruling is provided to provide information for Plaintiff and Counsel for the continued hearing and

**ON OR BEFORE OCTOBER 8, 2014, COUNSEL FOR PLAINTIFF SHALL FILE  
AND SERVE AN AMENDED MOTION WHICH STATES WITH PARTICULARITY  
(as required by Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007)  
THE GROUNDS UPON WHICH THE REQUESTED RELIEF IS BASED AND  
A SEPARATE POINTS AND AUTHORITIES (L.B.R. 9004-1 and  
the Revised Guidelines for Preparation of Documents)  
FOR THE RELIEF REQUESTED.**

September 25, 2014 at 1:30 p.m.

## REQUESTED RELIEF

Plaintiff, Snider Leasing Corp ("Plaintiff"), seeks a default judgment against the Defendant, Debtor Noel Orlando ("Defendant") in this action. The Defendant filed his Chapter 13 petition on January 27, 2014. On March 20, 2014, the Plaintiff filed a Complaint to Determine the Dischargeability of Debtor, alleging causes of action pursuant to 11 U.S.C. § 523(a)(3), Fraud as a Fiduciary, Embezzlement, Larceny, and pursuant to 11 U.S.C. § 523(a)(6), Willful and Malicious Injury.

On June 19, 2014, Plaintiff filed two declarations and exhibits with the court. Dckt. 14, 16, and 17. These two declarations did not relate to any motion or other relief requested from the court. Fed. R. Civ. P. 7007(a), (b) and Fed. R. Bankr. P. 7007. The two declarations and the exhibits do not bear a docket control number as required by Local Bankruptcy Rule 9014-1(c).

On August 21, 2014, Plaintiff filed a pleading titled "Motion for Entry of Default Judgment," "Supplemental Declaration of John Britton," and Exhibit M (Britton Letter to Defendant). Dckts. 18, 20, and 21.

The Defendant has not filed any responsive pleadings, and the clerk of court has issued his default in this proceeding. At the first status conference held on this action on May 28, 2014, the court continued the status conference to allow Plaintiff to file a motion for the entry of a default judgment.

## DISCUSSION

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

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

*Id.* at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. See *id.* at 775.

## **ANALYSIS**

In federal court, Federal Rule of Civil Procedure 7 and Federal Rule of Bankruptcy Procedure 7007 govern law and motion practice in federal court. Rule 7(b) specifically requires,

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(b) Motions and Other Papers.

(1) In General. A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) **state with particularity the grounds for seeking the order;** and

(C) state the relief sought.

Fed. R. Civ. P. 7(b) [emphasis added].

Plaintiff's Motion states with particularity the following grounds upon which the requested relief is based:

- A. The court has jurisdiction over this motion pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 523.
- B. Defendant-Debtor commenced a bankruptcy case on January 27, 2014.
- C. Plaintiff filed on March 20, 2014, a Complaint to determine dischargeability of debt pursuant to 11 U.S.C. § 523(a)(4) and (6).
- D. Defendant-Debtor has not filed any responsive pleading to the Complaint.
- E. Plaintiff filed the Declaration of Larui McCallum on June 19, 2014.
- F. Plaintiff filed the Declaration of John Britton on June 19, 2014.
- G. Plaintiff filed Exhibits on June 19, 2014.
- H. Plaintiff filed a Certificate of Mailing on June 19, 2014.
- I. Counsel John Britton testifies in a supplemental declaration

that counsel misread the Court's Status Conference Order and overlooked that a motion for entry of a default judgment is required. [The court notes that it is not the "court's order" that requires a motion, but the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure.]

- J. The Motion then includes a section titled "Points and Authorities." In this section Plaintiff states that (1) the Clerk has entered the Defendant-Debtor's default; (2) Defendant-Debtor was required to file an answer or other responsive pleading by April 20, 2014, and has failed to do so. [The "Points and Authorities" do not provide the court with any legal authorities why substantively proper grounds exist for the entry of a default judgment. Rather, it merely states that "no answer = judgment for Plaintiff." That is an incorrect statement of the law.] FN.1.

-----  
FN.1. Additionally, in the United States Bankruptcy Court for the Eastern District of California the motion, which states with particularity the grounds upon which the requested relief is based, and the points and authorities which presents the legal authorities, citations, quotations, and legal arguments, are filed as separate documents. L.B.R. 9004-1(a) and the Revised Guidelines for Preparation of Documents.  
-----

Plaintiff does not stated the grounds and establish the minimum basis for relief pursuant to Plaintiff's Complaint and its substantive claims. It provides no details of the claims stated in the Complaint, the damages and attorneys fees requested, if any, the possibility of a dispute regarding the material facts of the case, and other factors that the court is excepted to consider in determining whether it is proper to enter a default judgment in this case.

Rather, Plaintiff merely cites to the declarations and exhibits previsouly filed, and the Supplemental Declaration of John A. Britton filed in support of the Motion, as counsel for Plaintiff Snider Leasing Corp, apparently assigning to the court the tasks of,

- A. Choosing the grounds which the court believes the Plaintiff would assert in a motion (subject to the requirements of Fed. R. Bank. P. 9011);
- B. Selecting the claims in the Complaint for which the court identified grounds relate;
- C. Organize and state those grounds;
- D. Research the substantive law relating to those grounds;
- E. Draft and state the grounds for Plaintiff;
- F. Draft and state the substantive law for Plaintiff; and
- G. Then rule on the court's identified and stated grounds, rule on the court researched and stated law, and then grant Plaintiff

judgment as advocated by the court for Plaintiff.

**Mere Failure to Respond Does Not Give Plaintiff  
Absolute Right to Judgment**

Even when the clerk of court has issued a default for a non-responsive party, and all of the procedural requirements for a default judgment has been satisfied, the Movant is not automatically entitled to a default judgment as a matter of right. The court has discretion to determine whether default judgment is appropriate, after carefully considering the merits of the case, since the Federal Rules of Civil Procedure favor decisions on the merits tested through the rigors and review of litigation.

Here, the plaintiff has not presented grounds and the legal authority for whatever claims are asserted in the Complaint, why default judgment should be rendered, and that the court should properly issue a default judgment in favor of the Plaintiff.

In its Complaint, Dckt. No. 1, the Plaintiff alleges that the Defendant had previously operated a company known as Big Willie Style, Inc., which breached a Security Agreement leasing three vehicles, including a 1997 Great Dane Trailer and 1998 Fontaine Trailer which become the subject of this particular proceeding. Defendant's corporation allegedly became indebted to the Plaintiff, but refused to cooperate with Plaintiff in its demands to turnover the two vehicles to Plaintiff's repossession companies, and Plaintiff subsequently filed an action in the Sacramento County Superior court. The Plaintiff obtained from the state court an order for writ of possession. Plaintiff claims that the Defendant and Plaintiff's respective attorneys conducted a conversation in which it was represented that the Defendant would voluntarily return the vehicles. The vehicles have not since been returned to the Plaintiff, but to file the Complaint after the Defendant decided to petition for relief in the bankruptcy court. Plaintiff maintains that Defendant, as the personal guarantor of debts incurred by the company known as Big Willie Style, Inc., is still personally responsible to return the two vehicles that are the leased property of the Plaintiff.

Plaintiff then includes a discussion for the three claims for relief advanced in the Adversary Complaint, which are nondischargeability of the debt (the monies owed by Defendant for the value of the two vehicles still owned by Plaintiff) pursuant to 11 U.S.C. § 523(a)(4), and non-dischargeability pursuant to 11 U.S.C. § 523(a)(6), and a separate claim for attorneys fees and costs as part of the overall damage claim in this action, in the body of the Complaint.

However, Plaintiff includes no description or analysis of the claims included in the Adversary Complaint in its Motion for Entry of the Default Judgment. It is not the court's responsibility, as the Plaintiff's failure to include the relevant claims and background of the case in its Motion would indicate, to sift through the pleadings and determine the merits of the Plaintiff's substantive claims. Under the Rules of Civil Procedure, a claimant is not entitled to a default judgment simply because the clerk of court has issued a default following the Defendant's failure to appear and file responsive pleadings in court. Rather, it is expected that the Plaintiff demonstrate to the court that Plaintiff has appropriately made a prima facie case for non-dischargeability of the debt under 11 U.S.C. § § 523(a)(4) and

(a)(6), and that the Plaintiff has met its burden of proof in setting forth its case. FN.2.

-----  
FN.2. The court notes from reading the declarations that Defendant-Debtor's conduct appears to be egregious, including failing to comply with orders for delivery of Plaintiff's collateral. As such, the court determines it appropriate to continue the hearing for a short period of time to allow for the filing of an amended motion and points and authorities to allow Plaintiff to comply with the Federal Rules of Civil Procedure (as opposed to how the law and motion practice is conducted in many state courts).

The court does not blindly enforce the Federal Rule of Civil Procedure, Federal Rule of Bankruptcy Procedure, Federal Rules of Evidence, and the Local Bankruptcy Rules merely because they are "the rules." They serve a valid purpose and are essential to the proper and fair administration of the law, including the court serving as the impartial, independent arbiter of the dispute - not serving as an advocate for either party. As in this motion, the rules can be enforced in a matter so as not to unduly delay the proper administration of the judicial proceeding.

-----

Based on the foregoing, the Motion for Entry of a Default Judgment is denied.

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 the 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 Entry of Default Judgment is continued to 2:30 p.m. on October 15, 2014.

**IT IS FURTHER ORDERED** that on or before October 8, 2014, Plaintiff shall file and serve an amended motion for entry of default judgment, which complies with Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, and a separate points and authorities providing the court with the legal basis for granting the relief requested in light of the evidence (L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents in this District). If timely filed and served, the court shall consider the amended motion at the continued October 15, 2014 hearing.

2. [11-46148-E-7](#) ASHWINDAR KAUR  
[13-2342](#) CWC-1  
EDMONDS V. MATHFALLU ET AL

MOTION FOR SUMMARY JUDGMENT  
8-20-14 [[28](#)]

**Tentative Ruling:** The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - No Opposition Filed, Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants, Chapter 7 Trustee, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 36 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Summary Judgment is granted as to the First Claim for Relief and Second Claim for Relief and denied as to the Third Claim for Relief.</b></p>
--

#### **INTRODUCTION**

Trustee Irma Edmonds, Trustee and Plaintiff in this case, moves the court for summary judgment against Defendants, Ashwindar Kaur and Amar Mathfallu, d/b/a Amar's Lawn & Garden ("Defendants") pursuant to Federal Rules of Bankruptcy Procedure 7036, 7056, and Local Rule of Practice 7056-1, for the relief demanded in Plaintiff's Complaint.

Trustee asserts that it is entitled to summary judgment because there is no genuine issue of material fact that needs to be tried in this adversary proceeding. Trustee filed an adversary proceeding under 11 U.S.C. § § 362, 549, and 550:

1. For avoidance of the Debtor/Defendant Ashwindar Kaur's transfer of \$166,270.00 from the Ashwindar Kaur d/b/a Willow Lakes Apartments, Debtor-in-Possession bank account with Bank of the West, Account No. XXX-XX0970 on or about November 15, 2011, to or for the benefit of the Defendant Amar Mathfallu as an unauthorized post-petition transfer and/or a violation of the automatic stay;
2. For a judgment of this court determining that Defendant Amar Mathfallu is obligated to repay such sums in full to the bankruptcy estate of the Debtor forthwith; and
3. For a judgment of this court determining that the Debtor/Defendant Ashwindar Kaur's breach of her duties under 11 U.S.C. § 1107 to be accountable as a Debtor-in-Possession for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a contempt of this court for which sanctions should be imposed.

Trustee requested in the complaint the judgment of this court declaring that:

1. Pursuant to 11 U.S.C. §§ 549 and 550 for avoidance of the transfer made to or for the benefit of the Defendants totaling \$166,270.00 according to proof at trial and a judgment of this court finding that Defendants have received the sums enumerated in the complaint as avoidable transfers, and that Defendants are obligated to repay such sums in full to the bankruptcy estate of the Debtor forthwith;
2. Pursuant to 11 U.S.C. § 362(a), a determination that the transfer of the \$166,270.00 is void as a direct violation of the automatic stay and that Defendant Ashwindar Kaur's breach of her duties as a Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a contempt of this court for which sanction should be imposed;
3. For attorney's fees and costs of suit herein incurred; and
4. For prejudgment interest at the legal rate from the date of the transfer to Defendant Amar Mathfallu of any judgment on the complaint as the Claims for Relief.

Defendants have not responded to Plaintiff's Request for Admissions, Set No. 1, which was served by first class mail on Defendants, in *Pro Per*, on May 7, 2014. Trustee states that on this basis, Defendant admits all elements of an unauthorized post-petition transfer and/or a violation of the automatic stay and admitting facts which bar all of Defendants claimed affirmative defenses. Trustee asserts that he is entitled to summary judgment against Defendant pursuant to Fed. R. Civ. P. 36 and 56, as made applicable by Fed. R. Bankr. P. 7036 and 7056. There are no issues as to any material fact, and Plaintiff is entitled to summary judgment as a matter of law.



Fed. R. Bankr. P. Rules 7036 and 7056 provide that requests for admissions are deemed admitted unless they are denied within 30 days after service of the request. Any matter admitted under Fed. R. Civ. P. 36 is "conclusively established unless the court on motion permits withdrawal or amendment of the admission." Trustee maintains that by not responding to Trustee's Request for Admissions Set No. 1, Defendant has admitted that the transfer which is the subject of this adversary proceeding is in fact a fraudulent conveyance and/or a preferential transfer, and has admitted facts which bar any affirmative defenses raised in Defendant's Answer.

Trustee asserts that the admitted facts establish all elements of an avoidable fraudulent conveyance and/or preferential transfer.

## **DISCUSSION**

### **A. UNDISPUTED FACTS**

The Ninth Circuit has held that unanswered requests for admissions may be exclusively relied on as basis for granting summary judgment. *Conlon v. United States*, 474 F.3d 616 (9th Cir. 2007). The failure to respond to request to admit will permit court to enter summary judgment if facts deemed admitted are dispositive; a court is not required to do so, and the court has discretion to allow untimely answers to request for admissions when such amendment will not prejudice the other party. Fed. R. Civ. P. 36; Fed. R. Bankr. P. 7036, 11 U.S.C.A. *In re Lucas*, 124 B.R. 57 (Bankr. N.D. Ohio 1991).

Fed. R. Civ. P. Rule 36(a) states that a matter is deemed admitted "unless, within 30 days after service of the request ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney." Fed. R. Civ. P. 36(a). Once admitted, the matter "is conclusively established unless the court on motion permits withdrawal or amendment of the admission" pursuant to Rule 36(b). *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007).

Since Defendants did not file a response to Trustee's Request for Admissions, and has evinced no intent to do so after Trustee's counsel has contacted Defendants repeatedly regarding the requests, Defendants' failure to respond to Plaintiff's First Request for Admissions, First Request for Production of Documents, and First Set of Interrogatories will be construed by the court as admissions under Fed. R. Civ. P. 36(a). Specifically, the court makes the following finding of facts:

Undisputed Facts	Location in the Record	Disputed or Undisputed
Plaintiff filed a Complaint to Recover Avoidable Transfers as Adversary Proceeding No. 13-02342 against Defendants, Ashwindar Kaur and Amar Mathfallu, dba Amar's Lawn & Garden on October 31, 2013.	Complaint to Recover Avoidable Transfers filed in Adversary Proceeding No. 13-02342	Undisputed
A copy of the Summons and Complaint was served on both Defendants by first class U.S. Mail on November 13, 2013.	Proof of Service of Summons and Complaint (Dckt. 7) at page 1, line 25 to page 2, line 26.	Undisputed
On December 19, 2013 both Defendants, Ashwindar Kaur and Amar Mathfallu, in <i>pro per</i> requested an extension of time to February 10, 2014 for each defendant to respond to the complaint.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 8-12 and List of Exhibits at pages 2-3 inclusive.	Undisputed
On December 30, 2013, Plaintiff's counsel responded to each letter requesting an extension of time and confirming that a response to the Complaint was due on or before February 10, 2014 by each defendant.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 13-17 and List of Exhibits at pages 4-5 inclusive.	Undisputed
On February 11, 2014, Defendants, Ashwindar Kaur and Amar Mathfallu, in <i>pro per</i> filed an Answer denying the substantive allegations of the Complaint.	Answer (Dckt. 11) at page 1, line 23 to page 3, line 8	Undisputed
On February 27, 2014, Plaintiff's counsel provided separate correspondence to each defendant providing the initial discovery disclosures required under Federal Rule of Bankruptcy Procedure 7026(a).	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 21-25 and List of Exhibits at pages 6-9 inclusive.	Undisputed

On May 5, 2014, each defendant provided separate correspondence to Plaintiff's counsel providing the initial discovery disclosures required under Federal Rule of Bankruptcy Procedure 7026(a).	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, line 26 to page 4, line 2 and List of Exhibits at pages 10-17 inclusive.	Undisputed
On May 7, 2014, Defendant, Amar Mathfallu, was served by mail with Plaintiff's First Request for Admissions, Plaintiff's First Request for Production of Documents and Plaintiff's First Set of Interrogatories.	Plaintiff's First Request for Admissions (Dckt. 20), Plaintiff's First Request for Production of Documents (Dckt. 22), and Plaintiff's First Set of Interrogatories (Dckt. 21) and Proof of Service (Dckt. No. 23) at page 1, line 24 to page 2, line 28.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On May 7, 2014, Defendant, Ashwindar Kaur, was served by mail with Plaintiff's First Request for Admissions, Plaintiff's First Request for Production of Documents and Plaintiff's First Set of Interrogatories.	Plaintiff's First Request for Admissions (Dckt. 24), Plaintiff's First Request for Production of Documents (Dckt. 26), and Plaintiff's First Set of Interrogatories (Dckt. 25), and Proof of Service (Dckt. No. 27) at page 1, line 24 to page 2, line 28.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On June 30, 2014, Plaintiff's counsel contracted both Defendants by separate letter asking whether each Defendant intended to seek relief from the deemed admissions or to respond to Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, line 12-18 and List of Exhibits (Dckt. 32) at pages 18-19 inclusive.	Undisputed

Both Defendants, Ashwindar Kaur and Amar Mathfallu, have failed to timely file a response to Plaintiff's First Request for Admissions on or before June 6, 2014, the time allowed, with applicable extensions, under Federal Rule of Bankruptcy Procedure 7036	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, lines 7-11.	Undisputed
To date, neither Defendant, Ashwindar Kaur, nor Defendant, Amar Mathfallu, has moved for withdrawal of the deemed admissions or otherwise responded to the Plaintiff's propounded discovery.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, lines 19-22.	Undisputed
On November 2, 2011, Defendant Ashwindar Kaur filed a petition under Chapter 11 of the Bankruptcy Code, in the above-entitled Court.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 5, line 21-23.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On February 14, 2012, this case was converted to a case under Chapter 7 with Irma C. Edmonds being appointed as the Chapter 7 Trustee on February 15, 2012.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, lines 2-5.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Subsequent to commencement of the Chapter 11 bankruptcy case, Defendant Ashwindar Kaur established a Debtor-in-Possession bank account with Bank of the West, Account No. XXX-XX0970 denominated "Ashwindar Kaur dba Willow Lakes Apartments, Debtor-in-Possession".	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, lines 8-12.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Defendants Ashwindar Kaur and Amar Mathfallu are the spouse of one another, or former spouses of one another.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 15-16. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 6, line 15-16.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>

Subsequent to November 2, 2011, the date of the commencement of Ashwindar Kaur's Chapter 11 bankruptcy case, she transferred property to or for the benefit of Amar Mathfallu totaling approximately \$166,270.00 (hereinafter referred to as the "Transfer").	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 19-24. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 6, line 19-24.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer consisted of a payment by check signed by Ashwindar Kaur from the Ashwindar Kaur dba Willow Lakes Apartments, Debtor-in-Possession, bank account with Bank of the West, Account No. XXX-XX0970 on or about December 15, 2011.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 26-28+ Plaintiff's First Request for Admissions, Amar Mathfallu Dckt. 20) at page 6, line 26 to page 7, line 2.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer was deposited into the bank account of Amar Mathfallu with bank of the West, Account No. XXXXX6910.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 2-3. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 7, line 5-6.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer occurred after the commencement of Ashwindar Kaur's Chapter 11 case without either Ashwindar Kaur or Amar Mathfallu obtaining prior authorization of the court for such Transfer.	Plaintiff's First Request for Admissions, Ashwindar Kaur Dckt. 24) at page 7, line 6-8. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 7, line 9-12.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>

Defendant Amar Mathfallu was the initial transferee of the subject Transfer or the entity for whose benefit such transfer was made, or is the immediate or mediate transferee of the initial transferee of such transfer.	Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 7, line 15-18.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Debtor Ashwindar Kaur's Transfer of the above-described \$166,270.00 to or for the benefit of Amar Mathfallu was an act to obtain possession of property of the bankruptcy estate or of property from the bankruptcy estate or to exercise control over property of the bankruptcy estate.	Plaintiff's First Request for Admissions, Ashwindar Kaur Dckt. 24) at page 7, line 17-21. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 7, line 21-26.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Ashwindar Kaur's Transfer of the above-described \$166,270.00 to or for the benefit of Amar Mathfallu is void as a direct and willful violation of the automatic stay pursuant to 11 U.S.C. § 362(a).	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 24-27. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 8, line 2-3.	Disputed
In transferring the above-described \$166,270.00 to or for the benefit of Amar Mathfallu that Defendant, Ashwindar Kaur breached your duties as a Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24), at page 8, line 2-3.	Disputed
Defendant Ashwindar Kaur is deemed to have admitted that her Transfer of the above-described \$166,270.00 to or for the benefit of Amar Mathfallu was a willful and deliberate violation of the automatic stay which constitutes a civil contempt of the Bankruptcy Court.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24), at page 8, line 8-11.	Disputed

There are no witnesses who can testify in support of the allegations and contentions set forth in the nine Affirmative Defenses stated in Defendants' Answers.	Plaintiff's First Request for Admissions, Ashwindar Kaur Dckt. 24) at page 8, line 14-15. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 8, line 6-8.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Defendants have no documentary evidence to support the allegations and contentions set forth in the nine Affirmative Defenses stated in Defendants' Answers.	Plaintiff's First Request for Admissions, Ashwindar Kaur Dckt. 24) at page 8, line 19-21. Plaintiff's First Request for Admissions, Amar Mathfallu (Dckt. 20) at page 8, line 11-13.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>

#### **B. SUMMARY JUDGMENT STANDARD**

In an adversary proceeding, summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), *incorporated by* Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); 11 James Wm. Moore et al., *Moore's Federal Practice* § 56.11[1][b] (3d ed. 2000) ("Moore").

"[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), *incorporated by* Fed. R. Bankr. P. 7056.

In response to a properly submitted motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707 (citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002)). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

### **C. RULING ON MOTION**

On May 7, 2014, Defendants were served by mail Plaintiff's First Request for Admissions, as well as requests for Production of Documents and Interrogatories. On June 30, 2014, Plaintiff's counsel contacted both Defendants by separate letter asking whether each Defendant intended to seek relief from the deemed admissions, or to respond to the interrogatories and Trustee's Request for Production of Documents and Trustee's First Set of Interrogatories. Plaintiff did not receive any response to the communications and the discovery requests.

The court will proceed to consider whether all elements of the Trustee's Claims for relief have been satisfied by the deemed admitted facts.

#### **1. First Claim for Relief**

Trustee's first claim for relief is based on 11 U.S.C. § 549. 11 U.S.C. § 549 gives Trustee the right to avoid a post-petition transfer of property. A Chapter 7 Trustee may recover a post-petition transfer if the Trustee can show that: (1) the transfer involved property of the estate; (2) the transfer occurred after the commencement of the case; and (3) the transfer was not authorized by any provisions of the Bankruptcy Code or by the court. 11 U.S.C. § 549(a).

Here, the post-petition transfer of property satisfies 11 U.S.C. § 549 and gives the Trustee the right to avoid the transfer. The \$166,270.00 was property of Defendant Ashwindar Kaur's Chapter 11 estate, coming from the Debtor-in-Possession bank account at Bank of the West, Account No. XXX-XX0907. The transfer took place after November 2, 2011, the date of Defendant Ashwindar Kaur's Chapter 11 bankruptcy case, as evidenced by the check from the Debtor-in-Possession bank account in the amount of \$166,270.00 to "Amars Lawn & Garden" on November 15, 2011. The transfer was not permitted by the Bankruptcy Code nor by the court.



Thus, the post-petition transfer of property is avoidable by the Trustee.

## **2. Second Claim for Relief**

Trustee's Second Claim for Relief is brought under 11 U.S.C. § 550, which provides that to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of Title 11, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

Defendant Amar Mathfallu was the initial transferee of the Transfer or entity for whose benefit the transfer was made. Furthermore, Defendant Ashwindar Kaur is the immediate or mediate transferee of the initial transferee of such transfer. The transfer can be avoided, therefore, by the provisions of 11 U.S.C. § 550.

## **3. Third Claim for Relief**

Trustee's Third Claim for Relief is brought under 11 U.S.C. § 362, arguing that the transfer is void as a direct and willful violation of the automatic stay.

However, Trustee does not provide any points or authorities asserting a legal basis for this claim for relief. Merely stating that Debtor/defendant, Ashwindar Kaur's, breach of her duties as Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a civil contempt of this court for which the court should impose sanctions against Debtor/defendant, Ashwindar Kaur, including the recovery by plaintiff of actual damages, costs and attorney's fees." Dckt. 1. The Trustee merely cites to 11 U.S.C. § 362(a) as grounds for the relief sought. Under 11 U.S.C. § 362(a), there are eight separate subparts for which the stay is applicable. The Trustee cites generically to this code section, expecting the court to discern and develop arguments for the Trustee to support his contention. The court will not take up a guessing game as to which grounds the Trustee argues. While the Trustee does utilize some of the § 362(a) "buzzwords," the court is not responsible to prepare a points and authorities for the parties. FN.1.

-----  
FN.1. The court does note that the Trustee may not even have standing under 11 U.S.C. § 362(k) to recover actual damages, costs and attorney's fees since the recovery for willful and deliberate violations under 11 U.S.C. § 362 is limited to "**an individual injured** by any willful violation of a stay."  
-----

Because the Trustee does not provide any authority or basis on which the Third Claim for Relief may be granted, the court denies Trustee's Motion for Summary Judgment as to the Third Claim for Relief. The denial of this portion of the Motion is without prejudice to any of the asserted, or

assertable rights, that the trustee may have against the prior fiduciary of the estate. Only the narrow issue of whether a claim for "sanctions" against the former Debtor in Possession in her control, possession, and disposition of property of the bankruptcy estate.

## **CONCLUSION**

Thus, all elements of Trustee's first two claims for relief, in avoiding the transfer of the subject property by Debtor Defendant Ashwindar Kaur to Defendant Amar Mathfallu under 11 U.S.C. §§ 549 & 550, have been met. The Motion for Summary Judgment is granted as to the First and Second Claim for Relief and denied as to the Third Claim for Relief. The transfer will be avoided under 11 U.S.C. §§ 549 & 550 for the benefit of the bankruptcy estate.

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 Trustee 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 Summary Judgment is granted as to the First Claim for Relief and the Second Claim for Relief and denied as to the Third Claim for Relief.

**IT IS FURTHER ORDERED** that the transfer by the Defendant Debtor Ashwindar Kaur of \$166,270.00 from Defendant Debtor's Debtor-in-Possession account with Bank of the West, Account No. XXX-XX0970 to Defendant Amar Mathfallu made on November 15, 2011 is avoided pursuant to 11 U.S.C. § 549 and § 550.

**IT IS FURTHER ORDERED** that Defendants Ashwindar Kaur and Amar Mathfallu shall repay the \$166,270.00 in full to the Trustee.

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order and Ruling upon which it is based. On or before November 1, 2014, the Plaintiff-Trustee shall file and serve a costs bill, motion for determination of pre-judgment interest, if any, and motion for attorneys' fee, if any is proper, and any costs, prejudgment interest, or attorneys' fees allowed shall be enforced as part of the judgment.

3. [11-46148-E-7](#) ASHWINDAR KAUR  
[13-2343](#) CWC-1  
EDMONDS V. KAUR ET AL

MOTION FOR SUMMARY JUDGMENT  
8-20-14 [[28](#)]

**Tentative Ruling:** The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - No Opposition Filed, Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants, Chapter 7 Trustee, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 36 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Summary Judgment is granted as to the First Claim for Relief and Second Claim for Relief and denied as to the Third Claim for Relief.</b></p>
--

#### **INTRODUCTION**

Trustee Irma Edmonds, Trustee and Plaintiff in this case, moves the court for summary judgment against Defendants, Ashwindar Kaur and Indar Jeet Kaur ("Defendants") pursuant to Federal Rules of Bankruptcy Procedure 7036, 7056, and Local Rule of Practice 7056-1, for the relief demanded in Plaintiff's Complaint.

Trustee asserts that it is entitled to summary judgment because there is no genuine issue of material fact that needs to be tried in this adversary proceeding. Trustee filed an adversary proceeding under 11 U.S.C. § § 362, 549, and 550:

1. For avoidance of the Debtor/Defendant Ashwindar Kaur, transfer

of \$10,000.00 from the Ashwindar Kaur d/b/a Willow Lakes Apartments, Debtor-in-Possession bank account with Bank of the West, Account No. XXX-XX0970 on or about December 12, 2011, to or for the benefit of the Defendant Indar Jeet Kaur as an unauthorized post-petition transfer and/or a violation of the automatic stay;

2. For a judgment of this court determining that Defendant Indar Jeet Kaur is obligated to repay such sums in full to the bankruptcy estate of the Debtor forthwith; and
3. For a judgment of this court determining that the Debtor/Defendant Ashwindar Kaur's breach of her duties under 11 U.S.C. § 1107 to be accountable as a Debtor-in-Possession for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a contempt of this court for which sanctions should be imposed.

Trustee requested in the complaint the judgment of this court declaring that:

1. Pursuant to 11 U.S.C. §§ 549 and 550 for avoidance of the transfer made to or for the benefit of the Defendants, Indar Jeet Kaur and Ashwindar Kaur, totaling \$10,000.00 according to proof at trial and a judgment of this court finding that Defendants, Indar Jeet Kaur and Ashwindar Kaur, have received the sums enumerated in the complaint as avoidable transfers, and that Defendants are obligated to repay such sums in full to the bankruptcy estate of the Debtor forthwith;
2. Pursuant to 11 U.S.C. § 362(a), a determination that the transfer of the \$10,000.00 is void as a direct violation of the automatic stay and that Defendant Ashwindar Kaur's breach of her duties as a Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a contempt of this court for which sanction should be imposed;
3. For attorney's fees and costs of suit herein incurred; and
4. For prejudgment interest at the legal rate from the date of the transfer to Defendant Amar Mathfallu of any judgment on the complaint as the Claims for Relief.

Defendants have not responded to Plaintiff's Request for Admissions, Set No. 1, which was served by first class mail on Defendants, in Pro Per, on May 7, 2014. Trustee states that on this basis, Defendant admits all elements of an unauthorized post-petition transfer and/or a violation of the automatic stay and admitting facts which bar all of Defendants claimed affirmative defenses. Trustee asserts that he is entitled to summary judgment against Defendant pursuant to Fed. R. Civ. P. 36 and 56, as made applicable by Fed. R. Bankr. P. 7036 and 7056. There are no issues as to any material fact, and Plaintiff is entitled to summary judgment as a matter of law.

Fed. R. Bankr. P. Rules 7036 and 7056 provide that requests for

admissions are deemed admitted unless they are denied within 30 days after service of the request. Any matter admitted under Fed. R. Civ. P. 36 is "conclusively established unless the court on motion permits withdrawal or amendment of the admission." Trustee maintains that by not responding to Trustee's Request for Admissions Set No. 1, Defendant has admitted that the transfer which is the subject of this adversary proceeding is in fact a fraudulent conveyance and/or a preferential transfer, and has admitted facts which bar any affirmative defenses raised in Defendant's Answer.

Trustee asserts that the admitted facts establish all elements of an avoidable fraudulent conveyance and/or preferential transfer.

## **DISCUSSION**

### **A. UNDISPUTED FACTS**

The Ninth Circuit has held that unanswered requests for admissions may be exclusively relied on as basis for granting summary judgment. *Conlon v. United States*, 474 F.3d 616 (9th Cir. 2007). The failure to respond to request to admit will permit court to enter summary judgment if facts deemed admitted are dispositive; a court is not required to do so, and the court has discretion to allow untimely answers to request for admissions when such amendment will not prejudice the other party. Fed. R. Civ. P. 36; Fed. R. Bankr. P. 7036, 11 U.S.C.A. *In re Lucas*, 124 B.R. 57 (Bankr. N.D. Ohio 1991).

Fed. R. Civ. P. Rule 36(a) states that a matter is deemed admitted "unless, within 30 days after service of the request ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney." Fed. R. Civ. P. 36(a). Once admitted, the matter "is conclusively established unless the court on motion permits withdrawal or amendment of the admission" pursuant to Rule 36(b). *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007).

Since Defendants did not file a response to Trustee's Request for Admissions, and has evinced no intent to do so after Trustee's counsel has contacted Defendants repeatedly regarding the requests, Defendants' failure to respond to Plaintiff's First Request for Admissions, First Request for Production of Documents, and First Set of Interrogatories will be construed by the court as admissions under Fed. R. Civ. P. 36(a). Specifically, the court makes the following finding of facts:

<b>Undisputed Facts</b>	<b>Location in the Record</b>	<b>Disputed or Undisputed</b>
Plaintiff filed a Complaint to Recover Avoidable Transfers as Adversary Proceeding No. 13-02345 against Defendants, Ashwindar Kaur and Indar Jeet Kaur on November 1, 2013.	Complaint to Recover Avoidable Transfers filed in Adversary proceeding No. 13-02343 (Dckt. 1).	Undisputed

A copy of the Summons and Complaint was served on both Defendants by first class U.S. Mail on November 12, 2013.	Proof of Service of Summons and Complaint (Dckt. 7) at page 1, line 25 to page 3, line 16.	Undisputed
On December 19, 2013, both Defendants, Ashwindar Kaur and Indar Jeet Kaur, in <i>pro per</i> , requested an extension of time to February 10, 2014 for each defendant to respond to the complaint.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 7-11 and List of Exhibits (Dckt. 32) at pages 2-3, inclusive.	Undisputed
On December 30, 2013, Plaintiff's counsel responded to each letter requesting an extension of time and confirming that a response to the Complaint was due on or before February 10, 2014 by each defendant.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 12-16 and List of Exhibits (Dckt. 32) at pages 4-5, inclusive.	Undisputed
On February 11, 2014, Defendants, Ashwindar Kaur and Indar Jeet Kaur, in <i>pro per</i> , filed an Answer denying the substantive allegations of the Complaint.	Answer (Dckt. 11) at page 1, line 23 to page 3, line 8.	Undisputed
On February 27, 2014, Plaintiff's counsel provided separate correspondences to each defendant providing the initial discovery disclosures required under Federal Rule of Bankruptcy Procedure 7026(a).	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 20-24 and List of Exhibits (Dckt. 32) at pages 6-9, inclusive.	Undisputed

On May 5, 2014, each defendant provided separate correspondence to Plaintiff's counsel providing the initial discovery disclosures required under Federal Rule of Bankruptcy Procedure 7026(a).	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 3, lines 25-28+ and List of Exhibits (Dckt. 32) at pages 10-17, inclusive.	Undisputed
On May 7, 2014, Defendant, Indar Jeet Kaur, was served by mail with Plaintiff's First Request for Admissions, Plaintiff's First Request for Production of Documents, and Plaintiff's First Set of Interrogatories.	Plaintiff's First Request for Admissions (Dckt. 22), Plaintiff's First Request for Production of Documents (Dckt. 21), and Plaintiff's First Set of Interrogatories (Dckt. 20), and Proof of Service (Dckt. 23) at page 1, line 24 to page 2, line 28.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On May 7, 2014, Defendant, Ashwindar Kaur, was served by mail with Plaintiff's First Request for Admissions, Plaintiff's First Request for Production of Documents, and Plaintiff's First Set of Interrogatories.	Plaintiff's First Request for Admissions (Dckt. 24), Plaintiff's First Request for Production of Documents (Dckt. 26), and Plaintiff's First Set of Interrogatories (Dckt. 25), and Proof of Service (Dckt. 27) at page 1, line 24 to page 2, line 28.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On June 30, 2014, Plaintiff's counsel contacted both Defendants by separate letter asking whether each Defendant intended to seek relief from the deemed admissions or to respond to Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents.	Declaration of Carl W. Collins in support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, lines 10-16 and List of Exhibits (Dckt. 32) at pages 18-19, inclusive.	Undisputed

Both Defendants, Ashwindar Kaur and Indar Jeet Kaur, have failed to timely file a response to Plaintiff's First Request for Admissions on or before June 6, 2014, the time allowed, with applicable extensions, under Federal Rule of Bankruptcy Procedure 7036.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, lines 5-9.	Undisputed
To date, neither Defendant Ashwindar Kaur, nor Defendant, Indar Jeet Kaur, has moved for withdrawal of the deemed admissions or otherwise responded to the Plaintiff's propounded discovery.	Declaration of Carl W. Collins in Support of Plaintiff's Motion for Summary Judgment (Dckt. 30) at page 4, lines 17-20.	Undisputed
On November 2, 2011, Defendant Ashwindar Kaur filed a petition under Chapter 11 of the Bankruptcy Code, in the above-entitled Court.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 5, line 21-23.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
On February 14, 2012, this case was converted to a case under Chapter 7 with Irma C. Edmonds being appointed as the Chapter 7 Trustee on February 15, 2012.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 5, line 25-27.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Subsequent to commencement of the Chapter 11 bankruptcy case, Defendant Ashwindar Kaur established a Debtor-in-Possession bank account with Bank of the West, Account No. XXX-XX0970 denominated "Ashwindar Kaur dba Willow Lakes Apartments, Debtor-in-Possession".	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 8-12.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Defendants Ashwindar Kaur and Indar Jeet Kaur have admitted that Indar Jeet Kaur is the mother of Ashwindar Kaur.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 15-16. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 6, line 15.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>



Subsequent to November 2, 2011, the date of the commencement of Ashwindar Kaur's Chapter 11 bankruptcy case, she transferred property to or for the benefit of Indar Jeet Kaur totaling approximately \$10,000.00 (hereinafter referred to as the "Transfer").	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 19-24. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 6, line 18-22.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer consisted of a payment by check signed by Ashwindar Kaur from the Ashwindar Kaur dba Willow Lakes Apartments, Debtor-in-Possession bank account with Bank of the West, Account No. XXX-XX0970 on or about December 12, 2011.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 6, line 24-28+. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 6, line 25-28.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer was deposited into the bank account of Indar Jeet Kaur with bank of the West, Account No. XXXXX2976.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 2-3. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 7, line 2-3.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
The Transfer occurred after the commencement of Ashwindar Kaur's Chapter 11 case without either Ashwindar Kaur or Indar Jeet Kaur obtaining prior authorization of the Court for such Transfer.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 10-12. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 7, line 10-13.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>

Indar Jeet Kaur was the initial transferee of the subject Transfer or the entity for whose benefit such transfer was made, or are the immediate or mediate transferee of the initial transferee of such transfer.	Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 7, line 16-19	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Debtor, Ashwindar Kaur's, Transfer of the above-described \$10,000.00 to or for the benefit of Indar Jeet Kaur was an act to obtain possession of property of the bankruptcy estate or of property from the bankruptcy estate or to exercise control over property of the bankruptcy estate.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 21-25. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 7, line 22-26.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Ashwindar Kaur's, Transfer of the above-described \$10,000.00 to or for the benefit of Indar Jeet Kaur is void as a direct and willful violation of the automatic stay pursuant to 11 U.S.C. § 362(a).	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 7, line 3. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 8, line 2-3.	Disputed
In transferring the above-describe \$10,000.00 to or for the benefit of Indar Jeet Kaur that Defendant Ashwindar Kaur breached your duties as a Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 8, line 6-9	Disputed
Defendant Ashwindar Kaur is deemed to have admitted that her Transfer of the above-described \$10,000.00 to or for the benefit of Indar Jeet Kaur was a willful and deliberate violation of the automatic stay which constitutes a civil contempt of the Bankruptcy Court.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 8, line 12-15	Disputed

There are no witnesses who can testify in support of the allegations and contentions set forth in the nine Affirmative Defenses stated in Defendants' Answers.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 8, lines 18-20. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 8, line 6-8.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>
Defendants have no documentary evidence to support the allegations and contentions set forth in the nine Affirmative Defenses stated in Defendants' Answers.	Plaintiff's First Request for Admissions, Ashwindar Kaur (Dckt. 24) at page 8, line 23-25. Plaintiff's First Request for Admissions, Indar Jeet Kaur (Dckt. 22) at page 8, line 2-3.	Undisputed  <b>Admitted by Defendant by failing to answer. Fed. R. Civ. P. 36(a).</b>

#### **B. SUMMARY JUDGMENT STANDARD**

In an adversary proceeding, summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), *incorporated by* Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); 11 James Wm. Moore et al., *Moore's Federal Practice* § 56.11[1][b] (3d ed. 2000) ("Moore").

"[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), *incorporated by* Fed. R. Bankr. P. 7056.

In response to a properly submitted motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that

there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707 (citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002)). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

### **C. RULING ON MOTION**

On May 7, 2014, Defendants were served by mail Plaintiff's First Request for Admissions, as well as requests for Production of Documents and Interrogatories. On June 30, 2014, Plaintiff's counsel contacted both Defendants by separate letter asking whether each Defendant intended to seek relief from the deemed admissions, or to respond to the interrogatories and Trustee's Request for Production of Documents and Trustee's First Set of Interrogatories. Plaintiff did not receive any response to the communications and the discovery requests.

The court will proceed to consider whether all elements of the Trustee's Claims for relief have been satisfied by the deemed admitted facts.

#### **1. First Claim for Relief**

Trustee's first claim for relief is based on 11 U.S.C. § 549. 11 U.S.C. § 549 gives Trustee the right to avoid a post-petition transfer of property. A Chapter 7 Trustee may recover a post-petition transfer if the Trustee can show that: (1) the transfer involved property of the estate; (2) the transfer occurred after the commencement of the case; and (3) the transfer was not authorized by any provisions of the Bankruptcy Code or by the court. 11 U.S.C. § 549(a).

Here, the post-petition transfer of property satisfies 11 U.S.C. § 549 and gives the Trustee the right to avoid the transfer. The \$10,000.00 was property of Defendant Ashwindar Kaur's Chapter 11 estate, coming from the Debtor-in-Possession bank account at Bank of the West, Account No. XXX-XX0907. The transfer took place after November 2, 2011, the date of Defendant Ashwindar Kaur's Chapter 11 bankruptcy case, as evidenced by the check from the Debtor-in-Possession bank account in the amount of \$10,000.00 to Indar Jeet Kaur's bank account with Bank of the West, Account No. XXXXX2976 on December 11, 2011, in which Defendant Ashwindar Kaur is also a signator on the account. The transfer was not permitted by the Bankruptcy Code nor by the court.

Thus, the post-petition transfer of property is avoidable by the

Trustee.

## 2. Second Claim for Relief

Trustee's Second Claim for Relief is brought under 11 U.S.C. § 550, which provides that to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of Title 11, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

Both Defendants were the initial transferee of the Transfer or entity for whose benefit the transfer was made. Furthermore, Defendants are the immediate or mediate transferee of the initial transferee of such transfer because both are signatories on the Bank of the West, Account No. XXXXX2976. The transfer can be avoided, therefore, by the provisions of 11 U.S.C. § 550.

## 3. Third Claim for Relief

Trustee's Third Claim for Relief is brought under 11 U.S.C. § 362, arguing that the transfer is void as a direct and willful violation of the automatic stay.

However, Trustee does not provide any points or authorities asserting a legal basis for this claim for relief. Merely stating that Debtor/defendant, Ashwindar Kaur's, breach of her duties as Debtor-in-Possession under 11 U.S.C. § 1107 to be accountable for all property of the estate and her willful and deliberate violation of the automatic stay constitutes a civil contempt of this court for which the court should impose sanctions against Debtor/defendant, Ashwindar Kaur, including the recovery by plaintiff of actual damages, costs and attorney's fees." Dckt. 1. The Trustee merely cites to 11 U.S.C. § 362(a) as grounds for the relief sought. Under 11 U.S.C. § 362(a), there are eight separate subparts for which the stay is applicable. The Trustee cites generically to this code section, expecting the court to discern and develop arguments for the Trustee to support his contention. The court will not take up a guessing game as to which grounds the Trustee argues. While the Trustee does utilize some of the § 362(a) "buzzwords," the court is not responsible to prepare a points and authorities for the parties. FN.1.

-----  
FN.1. The court does note that the Trustee may not even have standing under 11 U.S.C. § 362(k) to recover actual damages, costs and attorney's fees since the recovery for willful and deliberate violations under 11 U.S.C. § 362 is limited to "**an individual injured** by any willful violation of a stay."  
-----

Because the Trustee does not provide any authority or basis on which the Third Claim for Relief may be granted, the court denies Trustee's Motion for Summary Judgment as to the Third Claim for Relief. The denial of this portion of the Motion is without prejudice to any of the asserted, or assertable rights, that the trustee may have against the prior fiduciary of the

estate. Only the narrow issue of whether a claim for "sanctions" against the former Debtor in Possession in her control, possession, and disposition of property of the bankruptcy estate.

## **CONCLUSION**

Thus, all elements of Trustee's first two claims for relief, in avoiding the transfer of the subject property by Debtor Defendant Ashwindar Kaur to Defendant Indar Jeet Kaur under 11 U.S.C. §§ 549 & 550, have been met. The Motion for Summary Judgment is granted as to the First and Second Claim for Relief and denied as to the Third Claim for Relief. The transfer will be avoided under 11 U.S.C. §§ 549 & 550 for the benefit of the bankruptcy estate.

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 Trustee 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 Summary Judgment is granted as to the First Claim for Relief and the Second Claim for Relief and denied as to the Third Claim for Relief.

**IT IS FURTHER ORDERED** that the transfer by the Defendant Debtor Ashwindar Kaur of \$10,000.00 from Defendant Debtor's Debtor-in-Possession account with Bank of the West, Account No. XXX-XX0970 to Defendant Indar Jeet Kaur made on December 11, 2011 is avoided pursuant to 11 U.S.C. § 549 and § 550.

**IT IS FURTHER ORDERED** that Defendants Ashwindar Kaur and Indar Jeet Kaur shall repay the \$10,000.00 in full to the Trustee.

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order and Ruling upon which it is based. On or before November 1, 2014, the Plaintiff-Trustee shall file and serve a costs bill, motion for determination of pre-judgment interest, if any, and motion for attorneys' fee, if any is proper, and any costs, prejudgment interest, or attorneys' fees allowed shall be enforced as part of the judgment.

4. [09-46360](#)-E-13 MARGUERITE GALVEZ  
[13-2313](#) PLC-6  
GALVEZ V. WELLS FARGO BANK,  
N.A.

MOTION TO EXTEND DATES ON  
SCHEDULING ORDER  
8-19-14 [[77](#)]

**Final Ruling: No appearance at the September 25, 2014 hearing is required.**  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Counsel for the Respondent Creditor, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Extend Dates on the Scheduling Order has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Extend Dates on the Scheduling Order is granted. The Pretrial Conference is continued to a date to be determined in</b>
--

Marguerite Galvez, the Plaintiff in this Adversary Proceeding ("Plaintiff") seeks an order from the court extending the deadlines set out in its scheduling order filed on June 10, 2014.

The adversary proceeding in this case was filed on October 9, 2013, to ratify order on value of real property, ratify the extent of secured claims and to extinguish the lien of Wells Fargo Bank N.A., the Defendant in this case ("Defendant"), pursuant to 11 U.S.C. §506(a) and related state Causes of Action against Defendants.

On June 10, 2014 the Court providing a scheduling order setting forth the deadlines in this case:

Item	Date
Non-Expert Close of Discovery	October 31, 2014
Last date to Disclose Experts	December 12, 2014
Last day to exchange Expert Reports	December 12, 2014
Expert Close of Discovery	February 6, 2015

Close of Dispositive Motions to be Heard by:	March 27, 2015
Pretrial Conference	TBD

The Plaintiff states that it served Wells Fargo with admissions, interrogatories and production of documents on June 20, 2014. Exhibit A, Dckt. No. 81. As the deadline to respond approached, the deadline being July 20, 2014, the attorney for Wells Fargo, Dean Rallis, requested an extension of time for an unspecified date.

On July 25, 2014, 5 days after the deadline and no date set for a response, the Plaintiff served a "meet and confer" letter on Mr. Rallis, Exhibit B, Dckt. No. 81. This resulted in a telephone conference in the parties mutually agreed that Wells Fargo would provide the answers by August 11, 2014. It was emphasized, according to Plaintiff's counsel, that no more extensions would be given unless Wells Fargo provided "a substantial portion of the discovery propounded." On August 7, 2014, Mr. Rallis again requested an extension of time—this time, for 30 days, as all of the Defendant's employees who were capable of responding to the discovery were out for an unspecified time for personal reasons. Exhibit C, Dckt. No. 81.

On August 8, 2014, Plaintiff rejected the request on the basis that no discovery had been provided and Plaintiff believed that none was forthcoming. Exhibit D, Dckt. No. 81.

Plaintiff states that on August 11, 2014, the Plaintiff was served purported discovery by Wells Fargo. Plaintiff asserts that Defendant's responses to admissions, interrogatories and production of documents are "loaded with boilerplate objections and stock privilege assertions." Plaintiff argues that the responses are rife with stonewalling and partial answers or non-responsive that are all intended to delay the Plaintiff. Plaintiff states that it is considering filing a separate Motion to Compel if Plaintiff is unable to resolve the discovery issues.

An example of stonewalling provided by Plaintiff is identified as Exhibit E, Wells Fargo's Responses to Special Interrogatories Set No. One, Dckt. No. 81. In this Response, starting at page 19, Defendant argues that the rest of Plaintiff's Interrogatories exceed the permissible number of interrogatories allowed pursuant to Federal Rule of Civil Procedure 22 and Federal Rule of Bankruptcy Procedure 7033.

The Motion states that the Plaintiff pointed out in the Meet and Confer letter, Exhibit F sent on August 15, 2014, Dckt. No. 81, that Local Rule 7026-1(d) provides no limit. The production of documents resulted in a "document dump" of over 1,500 pages of documents, un-indexed, involving over 65 MBs of data, none of which, Plaintiff argues, was categorized as responsive to any specific document request,

Plaintiff further argues that substantial records are missing related to servicing of the Plaintiff's loans and credit reporting. Plaintiff also takes issue with Wells Fargo's assertion that the term "person most knowledgeable" related to specific departments at Wells Fargo is "vague,



ambiguous, and overly broad", and that for each separate activity at Wells Fargo, Defendant has provided a single person's name, Michael Dolan, and did not provide the contact information requested.

The Motion argues that these issues are illustrative of the problems encountered by Plaintiff during the discovery process in this case, and supports the need and Plaintiff's request to extend the deadlines. Plaintiff asserts that meeting the current deadline of October 31, 2014 of Non-Expert Close of Discovery will not be possible given the Defendant's extensive attempt to delay and hinder Plaintiff's ability to move forward with discovery. Plaintiff is sending out another round of discovery responses at this time, and states that Plaintiffs are actively attempting to engage in a fruitful meet and confer process to avoid filing a Motion to Compel.

Plaintiff states that it needs to identify proper "person most knowledgeable" about the matter at the department of Wells Fargo, so that the Plaintiff can depose them. Further, the Plaintiff states that many hours are being attempted to catalog the documents sent to Plaintiff, and that the Plaintiff's counsel has spent over 10 hours sorting the documents alone. Therefore, the Plaintiff requests that the dates in the Court's Scheduling Order be adjusted as follows:

Item	Date
Non-Expert Close of Discovery	December 19, 2014
Last date to Disclose Experts	February 13, 2015
Last day to exchange Expert Reports	February 13, 2015
Expert Close of Discovery	April 8, 2015
Close of Dispositive Motions	May 13, 2015
Pretrial Conference	TBD

## DISCUSSION

Federal Rule of Civil Procedure 16, which governs pre-trial procedures and issues, is made applicable to bankruptcy cases pursuant to Federal Rule of Bankruptcy Procedure 7015. Specifically, Federal Rule of Civil Procedure 16(b)(4) states that a scheduling order may only be modified for good cause, and with the judge's consent.

Although the Federal Rules of Bankruptcy and Civil Procedure do not provide a statutory definition of "good cause" within the meaning of Federal Rule of Civil Procedure 16, there is ample case authority raised by the Plaintiff and cases decided in this circuit that suggest the good cause is something more than a careless mistake, or ignorance of deadlines set by the scheduling order.

As stated above, the court in *Johnson v. Mammoth Recreations*, 975 F.2d

604 (9<sup>th</sup> Cir. 1993) held that an examination of the type of "good cause" necessary to justify amendment to scheduling order primarily considers diligence of party seeking amendment, rather than focusing on bad faith of parties seeking to interpose the amendment and to inflict prejudice to opposing party. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992). The carelessness of party seeking to amend scheduling order is not compatible with finding of diligence and offers no reason for grant of relief. *Id.* at 609.

In *Coleman v. Quaker Oats Co.*, the Ninth Circuit Court of Appeals determined that under the rule governing scheduling and planning by district courts, plaintiffs seeking to amend their complaints after the expiration of the time specified in a scheduling order must show good cause for failing to do so prior to expiration; this standard primarily considers the diligence of the party seeking the amendment. Federal Rule of Civil Procedure 16(b), *Coleman v. Quaker Oats Co.*, 232 F.3d 1271 (9th Cir. 2000).

Similarly, the Ninth Circuit held that once the party seeking modification of pretrial scheduling order is determined to be not diligent, the inquiry should end and the motion to modify should not be granted. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080 (9th Cir. 2002). In that case, the appellate court determined that a modification of pretrial scheduling order was not warranted, even though the district court in that case caused a five-month delay in issuing written scheduling order which resulted in some confusion; movant's counsel did not seek to modify order until four months after it was issued, and the court determined that the movant did not demonstrate diligence in complying with dates set by district court and good cause for modifying order, as required by Federal Rule of Civil Procedure 16. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080 (9th Cir. 2002).

Plaintiff argues that "cause" for extension of the deadlines established in the court's scheduling order, issued on June 10, 2014, Dckt. No. 70, is the Defendant's failure to provide meaningful responses to Plaintiff's propounded discovery. According to Plaintiff's attorney's testimony, Plaintiff's Counsel was asked multiple times to extend the deadline for Defendant to respond to discovery (the first deadline being July 20, 2014).

The Motion states that Defendant's counsel repeatedly asked for extensions of the discovery deadline, missing the initial deadline before Plaintiff counsel's sent a "meet and confer letter" to Defendant after receiving no response from Defendant to Plaintiff's admissions, interrogatories, and production of documents which were served on Defendant on June 20, 2014. Plaintiff states that after granting an extension to Defendant to respond to discovery, Defendant unavailingly asked Plaintiff for another extension. Following Plaintiff's rejection of Defendant's second request, the Defendant submitted responses that were filled with boilerplate language and "stock privilege assertions."

Plaintiff accuses Defendant of stonewalling with partial or nonresponsive answers to the requests for admission and interrogatories, and of producing a document "dump" consisting of over 1,500 pages of documents that were not tailored as responsive documentation to any of the Plaintiff's discovery requests. Additionally, the Plaintiff states that Defendant has not identified any knowledgeable employees who can provide the Plaintiff with the information requested. The Defendant's failure to provide meaningful responses up to this point in the litigation process notwithstanding, the Motion claims

that Plaintiff is again attempting to engage Defendant in a fruitful meet and confer process to avoid filing a Motion to Compel Discovery.

In arguing that good cause exists to modify the court's scheduling order, the court notes that the Plaintiff appears to have diligently communicated with Defendant regarding the scheduling and extension of the parties' discovery deadlines. The Plaintiff has indicated that an extension would allow the parties to engage in a meet and confer session that in the ideal, would resolve the Plaintiff's concerns regarding the allegedly inadequate discovery responses that the Defendant has produced. The court determining this to be good cause pursuant to Federal Rule of Civil Procedure 16(b)(4) to modify the current scheduling order governing the instant Adversary case, the Motion is granted. FN.1.

-----  
FN.1. In granting this Motion the court notes the following. First, if Defendant were merely a recalcitrant party attempting to improperly delay these proceedings to cause Plaintiff's counsel to incur otherwise unnecessary delay and expense, the court could well be playing into the hands of such a defendant. However, the court has not observed Defendant or Defendant's counsel engage in such conduct in other matters before this judge. The court accepts the non-response of Defendant as a tacit acknowledgment that the complexity of this Adversary Proceeding warrants the extension of time.

Second, Defendant and Defendant's counsel are very sophisticated and know that defendants who "make the consumer and consumer attorney work for it" in cases in which there are contractual or statutory attorneys' fee provisions, such defendants then have the "privilege" of paying for those attorneys' fees if Plaintiff prevails.

Third, the Amended Complaint was filed on March 25, 2014 (Dckt. 31), Answer to Amended Complaint filed on April 18, 2014 (Dckt. 37), Counterclaim filed on April 18, 2014 (*id.*), Motion to Dismiss Counterclaim filed on April 23, 2014 (Dckt. 46), Order denying Motion to Dismiss Counterclaim filed on June 9, 2014 (Dckt. 69), and Answer to Counterclaim filed on June 19, 2014 (Dckt. 73).

Fourth, as pleaded by the Parties, this Adversary Proceeding appears that it may have more complex issues than the usual post-plan completion, reconveyance of a deed of trust securing a claim valued under 11 U.S.C. § 506(a) and provided for in the bankruptcy plan.

-----  
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 Extend Dates on the Scheduling Order filed by the 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 to Extend Dates on the Scheduling Order is granted, and that the Scheduling Order

issued on June 10, 2014, Dckt. No. 70, by this court, will be modified to state the following schedule for this Adversary Proceeding:

Item	Date
Non-Expert Close of Discovery (including hearing all discovery motions - to be set on the court's regular law and motion calendar)	December 19, 2014
Last date to Disclose Experts	February 13, 2015
Last day to exchange Expert Reports	February 13, 2015
Expert Close of Discovery (including hearing all discovery motions - to be set on the court's regular law and motion calendar)	April 8, 2015
Close of Dispositive Motions (including hearing all discovery motions - to be set on the court's regular law and motion calendar)	May 13, 2015
<b>Pretrial Conference</b>	<b>TBD in June/July 2015</b>