

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**October 4, 2018 at 10:30 a.m.**

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1. [17-25114-E-7](#)      **HSIN-SHAWN SHENG**      **MOTION FOR ENTRY OF DEFAULT**  
[18-2072](#)      **Gary Fraley**      **JUDGMENT**  
**DNL-1**           **9-5-18 [21]**

**NIMS V. PERALES ET AL**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants and Debtor September 5, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Entry of Default Judgment is granted.**

The Chapter 7 Trustee and Plaintiff in this Adversary Proceeding, Eric Nims ("Plaintiff" or "Trustee"), filed the instant Motion for Default Judgment on September 5, 2018. Dckt. 21. Plaintiff seeks an entry of default judgment against Saring Perales, Michelle Reynolds, and Frederick Thornborrow (collectively "Defendants") in the instant Adversary Proceeding No. 18-02072.

The instant Adversary Proceeding was commenced on May 21, 2018. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 21, 2018. Dckt. 3. The complaint and summons were properly served on Defendants. Dckt. 6.

Defendants failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on August 31, 2018. Dckts. 10, 12, and 15.

## **REVIEW OF COMPLAINT**

Plaintiff filed a complaint seeking injunctive relief for the turnover of property. The Complaint contains the following general allegations as summarized by the court:

- A. Debtor owns real property commonly known as 2769 Barrington Terrace Avenue, Fremont, California (“Property”).
- B. On her Schedules Debtor values the Property at \$850,000.00, states the Property is subject to Chase Home Mortgage’s secured claim in the amount of \$98,000.00, and claims an exemption of \$1.00 in the Property.
- C. Debtor filed her Chapter 7 case on August 2, 2017 (Petition, Bankr. E.D. Cal. No. 17-25114, Dckt. 1) and received a discharge on November 28, 2017. Order of Discharge, Bankr. E.D. Cal. No. 17-25114, Dckt. 61.
- D. Debtor notes on her Schedules that the Property is a rental property.
- E. Trustee researched and believes the current occupants/tenants of the Property are: Saring Perales, Michelle Reynolds, and Frederick Thornborrow (collectively “Defendants”).
- F. Trustee anticipates employing a broker to market and sell the Property. However, although Trustee has made demand personally, and through counsel, to Debtor’s counsel that Debtor turn over possession of the Property to Trustee for marketing and sale, Trustee’s demands have gone unanswered. Trustee has also made demands to the Defendants for all future rental payments and copies of any rental agreements.
- G. Trustee’s motion to turnover the Property by the Debtor is set to be heard June 28, 2018 in the above-captioned parent case.

### **First Claim for Relief—Judgement for Turnover Against the Defendants**

Plaintiff alleges the following for the First Cause of Action:

- A. Defendants are identified as possible current residents of the Property. The Property is property of the Debtor's bankruptcy Estate that Trustee may use, sell, or lease under 11 U.S.C. § 363. The Debtor Scheduled her interest in the Property and has an independent duty to surrender the Property to the Trustee. 11 U.S.C. § 521(a)(4).
- B. The Property is not of inconsequential value or benefit to the Estate. The Debtor values the Property at \$850,000.00 and subject to Chase Home Mortgage's secured claim in the amount of \$98,000.00.
- C. The Trustee is entitled to a judgement for turnover against the Defendants pursuant to 11 U.S.C. § 542(a).

### **Prayer**

Plaintiff requests the following relief in the Complaint's prayer:

- A. Judgement as set forth above; and
- B. For such other relief as the court deems just and proper.

### **MOTION FOR TURNOVER**

Plaintiff filed a Motion for Turnover of Property seeking an order compelling Hsin-Shawn Cyndi Sheng ("Debtor") to turn over the Property. Bankr. E.D. Cal. No. 17-25114, Dckt. 82. The court granted the Motion, and issued an Order requiring Debtor to deliver on or before July 5, 2018, possession of Property, all post-petition rent monies or other proceeds of said Property, and the original leases, rental agreements, and other agreements relating to said Property. Order, Bankr. E.D. Cal. No. 17-25114, Dckt. 109.

### ***EX PARTE* APPLICATION TO DISMISS PARTIES**

On September 17, 2018, communications from Defendants Frederick Thornborrow (individually "Thornborrow") and Michelle Reynolds (individually "Reynolds") to the deputy court clerk were filed as an *Ex Parte* Motion to Dismiss Parties. Dckt. 27. Among the documents are:

1. A letter from Thornborrow and Reynolds to the Deputy court clerk requesting they be removed from the case on the grounds that neither reside at the Property, having vacated December 15, 2017. Defendant Thornborrow identifies his new address of record as 35117 Clover Street, Union City, California. Dckt. 27 at 1-2.
2. A letter from Thornborrow and Reynolds to Nicholas Kohlmeyer explaining exhibits attached; stating that Reynolds is the mother of Thornborrow's partner whom stayed with them briefly; asserting that

neither Reynolds or Thornborrow currently reside at the Property; offering as new address of record 35117 Clover Street, Union City, California; and giving notice of an intent to attend the October 4, 2018 hearing. *Id.* at 3-4.

3. A series of emails indicating Thornborrow (and presumably his partner Jasmine) gave notice to Debtor of an intent to vacate the Property around December 7-15 2018, and showing Debtor's acknowledgment. *Id.* at 5-7.
4. A series of checks showing rent payments for November, October, September, and August 2017. *Id.* at 8-11.
5. A check from Debtor dated January 3, 2018, in the amount of \$3,000.00 and indicating it is for return deposit. *Id.* at 12.

### **ORDER DENYING EX PARTE APPLICATION TO DISMISS PARTIES**

The court issued an Order denying the *Ex Parte* Motion on September 18, 2018. Dckt. 28. In denying the *Ex Parte* Motion, the court reasoned that if the Defendants (or only Thornborrow and Reynolds) have vacated the Property, they can easily address the issue with the Trustee. Dckt. 28 at 2:13-22. The court reasoned further that if Trustee does not agree, Defendants can submit properly noticed motion set for hearing and supported by sufficient evidence.

### **APPLICABLE LAW**

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

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

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint,
- (4) the sum of money at stake in the action,
- (5) the possibility of a dispute concerning material facts,
- (6) whether the default was due to excusable neglect, and

- (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

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

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff’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.

### **Turnover of Property**

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from an entity other than a custodian who is in possession, custody, or control during the case of property that the trustee may sell. Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee and account for the property or the value of the property.

### **DISCUSSION**

The Plaintiff is seeking an order enforcing 11 U.S.C. § 541, expressly ordering Defendants to turn over the Property. Plaintiff has alleged that the Defendants are in possession of the Property, and that the Property is not of inconsequential value or benefit to the Estate (having several hundred thousand dollars of non-exempt equity). The alleged grounds entitle Plaintiff to relief under 11 U.S.C. § 542(a).

Defendants Thornborrow and Reynolds responded to this Adversary Proceeding by submitting an informal letter to the court (bypassing). Dckt. 27. Evidence was provided within that informal letter, but was not properly authenticated. Furthermore, while a new address of record was offered to the court, Thornborrow and Reynolds have not alleged service to them was improper.

The court through its Order Denying *Ex Parte* Motion notified the Defendants that any meritorious defense must be presented through properly noticed motion set for hearing and supported by sufficient evidence. Dckt. 28. A review of the docket in this Adversary Proceeding shows no motion filed by Defendants.

At the hearing, Defendants explained ~~XXXXXXXXXXXXXXXXXXXX~~.

**Ruling**

The court finds that the Complaint is sufficient, and the requests for relief requested therein are meritorious. The court has not been shown that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding through the court’s formal channels. Further, there is no evidence of excusable neglect by Defendant. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendants have been given several opportunities to respond, and there is no credible indication that Defendants have a meritorious defense to judgment in this Adversary Proceeding. Failing to respond to judicial process is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against Defendants.

The court grants the default judgment in favor of the Plaintiff.

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 Chapter 7 Trustee and Plaintiff in this Adversary Proceeding, Eric Nims (“Plaintiff” or “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 Entry of Default Judgment is granted.

**IT IS FURTHER ORDERED** that Saring Perales, Michelle Reynolds, and Frederick Thornborrow (collectively "Defendants") shall deliver on or before ~~XXXXXXXXXX~~, possession of the real property commonly known as 2769 Barrington Terrace Avenue, Fremont, California (“Property”).

2. [14-29361-E-7](#)  
[DNL-29](#)

WALTER SCHAEFER  
Douglas Jacobs

MOTION FOR JUDGMENT AWARDING  
CORRECTIVE SANCTIONS  
9-20-18 [\[452\]](#)

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Judgement Awarding Corrective Sanctions is granted.**

The present Motion for Judgement Awarding Corrective Sanctions has been filed by the Chapter 7 Trustee, Kimberly Husted ("Plaintiff-Trustee"). Plaintiff-Trustee seeks an Order (judgement) in the amount of \$15,000.00 entered against Michael Pechbrenner, the Defendant, for failing to comply with the judgment of this court in Adversary Proceeding, No. 17-02178. The Judgement in favor of Plaintiff-Trustee, and requiring Defendant to pay Plaintiff-Trustee, for corrective sanctions was filed March 22, 2018. See Order, Bankr. E.D. Cal. No. 17-02178, Dckt. 37, March 22, 2018.

Though filed in the bankruptcy case itself, this request for sanctions flows from the judgment of the court in Adversary Proceeding No. 17-02178 and is part of the damages being incurred by the Plaintiff-Trustee by Defendant's continuing failure to comply with the judgment of this court. This Motion should properly have been filed in the Adversary Proceeding.

The ministerial act of filing this Motion in the bankruptcy case rather than the Adversary Proceeding is addressed by the court. The Clerk of the Court will transfer this Motion and all rulings thereon to the file for Adversary Proceeding 17-02178.

## **ADVERSARY PROCEEDING**

The present Motion stems from matters litigated in the Adversary Proceeding referenced, *supra*, which was filed on September 20, 2017. *See* Complaint, Dckt. 1, September 20, 2017<sup>FN.1</sup>.

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FN.1. References to the docket within the subheading “Adversary Proceeding” are to the Adversary Proceeding, No. 17-02178, unless stated otherwise.

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Summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff-Trustee filed its initial Motion for Default Judgement on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20. The court granted Plaintiff-Trustee’s Motion for Entry of Default Judgement on January 31, 2018. Judgement, Dckt. 26.

The Court’s judgment provides in pertinent part concerning the property commonly known as 184 Los Delfines, Tambor, Costa Rica:

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

. . .

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives’ failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction). . . .



## **Prior Motion for Contempt**

Plaintiff filed a prior motion seeking an order holding Defendant in contempt for violating the court's Judgment and granting compensatory and corrective sanctions on February 22, 2018. 17-2178, Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court's judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of \$15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id.*

## **REVIEW OF THE MOTION**

The grounds stated within the Motion now before the court include:

Pechbrenner has not delivered possession of Condo 184 to the Trustee, and presently occupies and exercises control over it in defiance of the Judgment and Order. Dckt. 452, at ¶ 10.

By this Motion, Trustee seeks an order awarding her corrective sanctions in the amount of \$15,000.00 against Pechbrenner due to his failure to comply with the Order. A party may be sanctioned for civil contempt for failing to comply with any order of this Court. *Id.* at 3:15-17.

The Order specifically provides that Pechbrenner was to deliver possession of Condo 184 to the Trustee by April 10, 2018 or a judgement in the amount of \$15,000.00 would be entered against Pechbrenner and in favor of the Trustee for corrective sanctions due to Pechbrenner's failure to comply with the Order. Pechbrenner has refused to comply with the Order and remains in possession of Condo 184, obfuscating the Trustee's efforts to market and sell the property for the benefit of the estate and creditors. *Id.* at 3:27-4:4.

Since the Trustee has shown by clear and convincing evidence that Pechbrenner has violated a specific and definite order of the Court, the burden now shifts to him to demonstrate inability to comply. *Id.* at 4:8-10.

## **APPLICABLE LAW**

The bankruptcy court judge has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The requesting party must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

## DISCUSSION

Here, the court's Order was explicit:

**IT IS FURTHER ORDERED** that if Defendant fails to timely deliver possession of the Property, an Order (judgment) in the amount of \$15,000.00 shall be entered against Defendant and in favor of Plaintiff, and Defendant shall pay Plaintiff, for corrective sanctions due to Defendant's failure to comply with this Order

*See* Order, Bankr. E.D. Cal. No. 17-02178, Dckt. 37, March 22, 2018.

Defendant is still in possession of the 184 Condo. Plaintiff-Trustee has shown by clear and convincing evidence that Defendant failed to abide by the court's March 20, 2018 Order. The Motion is granted.

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

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

The Motion for Sanctions for Violation of the Automatic Stay by Chapter 7 Trustee, Kimberly Husted ("Plaintiff-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 is granted, and judgment in the amount of \$15,000.00 shall be entered against Defendant in Adversary Proceeding, No. 17-02178, Michael Pechbrenner ("Defendant") and in favor of Plaintiff-Trustee. This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the

Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

3. [14-29361-E-7](#)  
[17-2178](#)  
DNL-3

WALTER SCHAEFER  
Douglas Jacobs

CONTINUED MOTION TO AMEND  
JUDGMENT  
8-8-18 [40]

HUSTED V. PECHBRENNER  
CASE CLOSED: 02/20/2018

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant and Chapter 7 Trustee on August 8, 2018. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Application for Amended Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Application for Amended Judgement is denied without prejudice.**

#### REVIEW OF APPLICATION TO AMEND JUDGMENT

Kimberly Husted, the Chapter 7 Trustee, ("Plaintiff" or "Trustee") filed the instant Application for Amended Default Judgment (the "Application") on August 8, 2018. Dckt. 40. Plaintiff seeks to amend the entry of default judgment against Michael Pechbrenner ("Defendant") in the instant Adversary Proceeding No. 17-02178 to include a monetary judgement in the amount of \$190,000.00 for the value of the Debtor and Estate's interest in real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Property"), and to issue new sanctions against Defendant for his continued non-compliance with this court's Judgement and Orders.

## Entry of Judgment and Orders in this Adversary Proceeding

### Entry of Judgment in This Adversary Proceeding

The instant Adversary Proceeding was commenced on September 20, 2017. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff filed its initial Motion for Default Judgment on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20.

In granting the Motion for Entry of Default Judgment on January 31, 2018, the court issued the following order:

**IT IS ORDERED, ADJUDGED, AND DECREED** that judgment is granted for Kimberly Husted, the Plaintiff Chapter 7 Trustee, and against Michael Pechbrenner, the Defendant; determining that Kimberly Husted, the Plaintiff Chapter 7 Trustee, through ABC Trustee of California Sociedad Anonima, a Costa Rican Entity, by which Plaintiff Chapter 7 Trustee holds title to property commonly known as 184 Los Delfines, Tambor, Costa Rica, has all the right, title, and interest to said property, and that Michael Pechbrenner, the Defendant, has no right, title, or interest to said property, and that Defendant does not have any lien against said property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

*Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.*

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives' failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and

corrective sanctions or incarceration (to induce compliance with the mandatory injunction).

Additionally, the court reserves for post-judgment determination of the referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant Michael Pechbrenner, or his agents or representatives, fail to comply with the mandatory injunction after the issuance of this court's order for compensatory and corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that no claims for damages arising from the violation of the automatic stay are presented in the Complaint before the court, and any such claims shall properly be brought pursuant to a motion for contempt in the Bankruptcy Case, No. 14-29361, or as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, in an adversary proceeding if jointed with other claims for which such adversary proceeding is required. Kimberly Husted, the Plaintiff Chapter 7 Trustee, as the prevailing party shall file and set for hearing as appropriate a costs bill and a post-judgment motion for attorney's fees as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054. Any award of costs or attorney's fees shall be enforced as part of this judgment.

Judgement, Dckt. 26 (emphasis added).

### **Motion for Contempt**

Plaintiff filed a motion seeking an order holding Defendant in contempt for violating the court's Judgment and granting compensatory and corrective sanctions on February 22, 2018. Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court's judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of \$15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id.*

### **Review of Application for Amended Default Judgement**

The Plaintiff's Application states the following grounds with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007):

1. On January 31, 2018, the Court entered Judgment for Plaintiff-Trustee determining that the Plaintiff-Trustee holds title to the Condo 184 Property and for the turnover of possession of Condo 184 by the Defendant to Trustee. Motion ¶ 6, Dckt. 40.
2. The Judgment provides that issuance of sanctions for failure to comply with the Judgment will be the subject of post-judgment motions. Order, p. 2:15-27; Dckt. 26.
3. The Judgment further provides:

“Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.”

Order, *Id.* at 2:12-14.

4. On March 22, 2018, the court entered an order finding Defendant in contempt for failure to turnover the Property as required by the judgment, further ordered Defendant to turnover the Property by 12:30 p.m. (Local Costa Rica Time) on April 10, 2018, and that corrective sanctions in the amount of \$15,000.00 would be imposed if Defendant failed to so comply. Order, Dckt. 37; Motion ¶ 9, Dckt. 40.
5. The Defendant presently occupies and exercises control over Condo 184, over the objection of the Trustee, and in defiance of the Judgment. Motion ¶ 10, Dckt. 40.
6. On August 24, 2016, the court entered an order in the parent bankruptcy case granting DNL-22, the Trustee’s application to employ C21 BEACH AREA PROPERTIES, LOCATED AT LOS DELFINES GOLF & COUNTRY CLUB, PLAYA TAMBOR COSTA RICA (“Broker”) as the estate’s broker to market Condo 184. Joseph Callahan, a real estate agent for the Broker, has advised the Trustee that the fair market value of the Property is approximately \$190,000.00. Motion ¶ 11, Dckt. 40.
7. The Defendant has received copies of both the Judgment and Order. The Defendant has refused to comply with the court’s orders and remains in possession of Condo 184, obfuscating the Trustee’s efforts to market and sell the Property for the benefit of estate creditors. *Id.*, at 3:23-25.

8. The Defendant presently occupies and exercises control over Condo 184.  
*Id.*, ¶ 10.

Plaintiff provides the Declaration of Kimberly Husted, Chapter 7 Trustee, to support the facts stated within the Application. Dckt. 42.

Plaintiff also provides the Declaration of Joseph Callahan, a real estate professional licensed to practice in Costa Rica with 18 years' experience. Dckt. 43. Callahan states he is the exclusive broker for the Los Delfines Golf & Country Club, and values the Property at \$190,000.00 given the current "buyer's market" in Tambor and required repairs. *Id.*

### **SEPTEMBER 20, 2018 HEARING**

At the September 20, 2018 hearing the court continued the hearing on the Motion to October 4, 2018 at 11:00 a.m. Dckt. 49. In part, the continuance was granted to permit the Defendant time to engage counsel in the United States to make an appearance, and to allow possible informal resolution of this matter (given Defendant professes he is only seeking to be paid, affirmatively stating that he is not attempting to impede the Plaintiff-Trustee in fulfilling her statutory obligations to recover all property of the Bankruptcy Estate, wherever located in the world; liquidating such property; and then properly paying creditors' claims, secured and unsecured.).

### **ANCILLARY DOCUMENTS SENT TO COURT BY DEFENDANT**

On September 17, 2018, a "Complaint"<sup>FN.2</sup> and supporting documents sent by Defendant Michael Pechbrenner to the Office of the United States Trustee were delivered to the court. Those documents are filed under Docket No. 451.

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FN.2. The court puts the word "Complaint" in quotes to distinguish it from the complaint commencing this Adversary Proceeding.  
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In his email to the U.S. Trustee, Defendant states that he is making a complaint against the Trustee and that these documents should be sent to the judge (which they were as requested by Defendant) prior to the September 20, 2018, hearing.

The "Complaint" attached to the email is in letter form. Defendant states that he has not retained a lawyer with respect to this "Complaint." Defendant asserts that the Trustee and her attorney have filed false documents in the courts in both the United States and Costa Rica. He further asserts that he is not connected with the Debtor, Walter Schaefer, nor does he have "jurisdiction" to assert a claim in Mr. Schaefer's bankruptcy case.

Defendant contends that he is a creditor of Mr. Schaefer, having done work on Condo 184. His "Complaint" does not state when the work was done, but he states that a lien was registered on June 20,



2016. This was almost two years after Mr. Schaefer commenced his bankruptcy case and eighteen months after the case was converted to one under Chapter 7.<sup>FN.3</sup>

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FN.3. Walter Schaefer commenced his voluntary Chapter 13 case on September 18, 2014, which was converted to one under Chapter 7 by Order entered on January 31, 2015 (Dckt. 48).  
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Defendant also includes a discussion of his non-lawyer opinion concerning the Plaintiff-Trustee setting up a new corporation to take title to the property, ascribing various nefarious motives. Clearly, Defendant was not a participant in the Chapter 7 case and the challenges created by the Debtor in delaying, deflecting, and blocking the Plaintiff-Trustee's efforts to fulfill her duties and obtain possession of Condo 184 as property of this bankruptcy estate.

Defendant also recounts disputes concerning his asserted lien on Condo 184.

The "Complaint" continues, asserting that Defendant has a lien on Condo 184, the Plaintiff-Trustee has filed an Amended Schedule D showing a secured claim (14-29361; Amended Schedule D, Dckt. 365) for Defendant.

The "Complaint" concludes with Defendant stating that he does not want to interfere with the liquidation of the property of the bankruptcy estate, but that it must be done properly under both United States and Costa Rica law. Further, Defendant states he will cooperate with the Plaintiff-Trustee so long as his lien interest is recognized and paid.

Though claiming only a "lien" against Condo 184, Defendant details his fight to stay in possession of Condo 184.

Defendant then provides an email thread of discussions between Defendant and counsel for the Plaintiff-Trustee. In his email dated November 27, 2016, Defendant affirmatively states that he has a claim for services provided, which he seeks to enforce under Costa Rica law. He does not believe that if he were to release his lien and transfer his claim to "American law," such would be recognized by Costa Rica law.

Defendant affirmatively states that his only objective is to get paid the debt he is owed. Further, that his attorney is scheduled to meet with Plaintiff-Trustee's Costa Rican attorney.

The other attachments appear to be in Spanish, for which no English translation is provided.

### **Defendant's Desire to be Paid**

To the extent that Defendant has a lien on Condo 184 for work done on Condo 184, and such lien is enforceable, then he and the Plaintiff-Trustee should be allies in getting Condo 184 delivered to the Plaintiff-Trustee, marketed, and sold. Defendant would be paid for the obligation secured by the lien and the Plaintiff-Trustee would be able to proceed with administering the bankruptcy estate.

But this would necessitate Defendant not occupying Condo 184, not retaining possession of Condo 184, and not blocking the Plaintiff-Trustee's ability to have her real estate agent market Condo 184

for sale. Much of Defendant's "Complaints" are inconsistent with a creditor who is only seeking to be paid on his secured (lien) claim. Such may arise from Defendant not being knowledgeable of the clear Bankruptcy Laws that provide for such creditor's rights and not availing himself of engaging an attorney in the United States to help Defendant be quickly paid on his secured (lien) claim to the extent it is valid. (This court adds this reference to "valid" not because it questions such claim, but to make it clear that the right of a creditor to be paid turns on the applicable law, which in this case may be a hybrid on United States and Costa Rica law.)

## **SUPPLEMENTAL BRIEF**

Plaintiff filed a Supplemental Brief "In Support" of the Application for Amended Default Judgement on September 25, 2018. Dckt. 50. In the Brief, Plaintiff provides a detailed overview of the Adversary Proceeding history. *See* Dckt. 50.

Among other details, Plaintiff makes representations that Luis Carballo, special counsel in Costa Rica ("Counsel"), has been proceeding successfully against Defendant in civil and criminal actions regarding the Property, including the dispute over Defendant's alleged contract for work and a pending eviction proceeding.

Plaintiff notes it is seeking contempt sanctions in a separate motion (Bankr. E.D. Cal. No. 14-29361, Dckt. 451, ) in accord with the court's tentative ruling denying its request for sanctions by this Motion. Plaintiff also states (recognizing the court's statement 11 U.S.C. § 542(a) does not provide for both turnover and value of property) that she is no longer seeking value of the Property and instead intends to stay course of pursuing eviction of the Defendant in Costa Rica proceedings.

## **APPLICABLE LAW**

### **Judgment for Turnover of Property**

The Bankruptcy Code provides that any person in possession of property of the bankruptcy estate—here, the 184 Los Delfines, Tambor, Costa Rica Property—must turnover such property or value of the property to the trustee in the bankruptcy case—here, Plaintiff in this Adversary Proceeding. 11 U.S.C. § 542(a). The order or judgment for turnover of the property is enforceable by way of contempt. *Maggio v. Zeitz*, 333 U.S. 56, 67–68 (1948); *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir. 1983). Such contempt proceeding by the bankruptcy court is for "enforcement" (corrective sanctions), not "punishment." "Punishment" sanctions are issued by the District Court.

If the property of the estate is not or cannot be turned over, at the election of the trustee the court makes the determination of the value as part of the relief available under 11 U.S.C. § 542(a) and then enters a monetary judgment for that amount. Such may be by a supplemental judgment or order. *See* general discussion of this process in *In re Pilate*, 487 B.R. 345 (Bankr. D.D.C. 2013).

## **RULING**

In its Supplemental Brief, Plaintiff clarifies that it is no longer seeking either (1) its requested relief for the value of the Property, or (2) the imposition of sanctions through the present Motion. No other relief being requested, the Motion 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 Application for Amended Default Judgment filed by the Chapter 7 Trustee, Kimberly Husted (“Plaintiff” or “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 Application for Amended Default Judgment is denied without prejudice.

4. [12-37605-E-13](#) [18-2026](#) CLEA JACOBS  
John Downing

**MOTION FOR ENTRY OF DEFAULT  
JUDGMENT**  
8-30-18 [19]

JACOBS V. J.P. MORGAN CHASE, N.A.

**Final Ruling: No appearance at the October 4, 2018 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on August 29, 2018. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Entry of Default Judgment is granted.**

Clea Jacobs (“Plaintiff-Debtor”) filed the instant Motion for Default Judgment on August 30, 2018. Dckt. 19. Plaintiff-Debtor seeks an entry of default judgment against J.P. Morgan Chase, N.A. (“Defendant”) in the instant Adversary Proceeding No. 18-02026.

The instant Adversary Proceeding was commenced on March 21, 2018. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on March 21, 2018. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 6.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on July 12, 2018. Dckt. 14.

## REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint for injunctive relief against Defendant. The Complaint contains the following general allegations as summarized by the court:

- A. Plaintiff-Debtor owns real property commonly known as 15700 Archery View, Truckee, California (“Property”).
- B. As of September 30, 2012, the date of the filing of the Chapter 13 bankruptcy case, the Property had a fair market value of approximately \$200,000.00.
- C. Plaintiff-Debtor filed a Motion to Value Secured Claim regarding the Property, which was granted on November 15, 2012, and the secured claim was determined to be in the amount of \$0.00 and wholly unsecured.
- D. On January 22, 2013, Chase filed Claim 11-1, which was based on the Lien in the amount of \$147,024.04 (the “Claim”).
- E. On December 17, 2014, Chase filed a Notice of Satisfaction of the Claim.
- F. Plaintiff-Debtor’s Chapter 13 Plan was confirmed on December 20, 2012; Plaintiff-Debtor completed the Plan, and an order of discharge was signed on March 19, 2018.
- G. Plaintiff-Debtor owned the Property at the time of filing for bankruptcy, and the Property was secured by two loans: a primary mortgage in favor of Bank of America, N.A. and second mortgage in favor of Defendant which was secured by a second deed of trust.
- H. On March 19, 2018, Defendant was served with the order of discharge.

## Prayer

Plaintiff-Debtor requests the following relief in the Complaint’s prayer:

- A. A judgement voiding Defendant’s lien;
- B. For such other relief as the court deems appropriate.

## APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006).

Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

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

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

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

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

## DISCUSSION

### Judgement Voiding Lien

The Complaint seeks a declaration as between the parties that the court's October 28, 2012 order is a real, enforceable order and that it really means that Defendant's secured claim has a value of \$0.00 (now that the Plan has been completed), and therefore, there is no debt for the Deed of Trust to secure.

Plaintiff-Debtor states that on September 30, 2012, they filed a Chapter 13 bankruptcy case. As of that date, the Property had two liens encumbering it: (1) First Deed of Trust in favor of Bank of America, N.A. and (2) Second Deed of Trust in favor of Defendant J.P. Morgan Chase, N.A.

Plaintiff-Debtor states that Chapter 13 plan payments were completed, which required Defendant to reconvey the Second Deed of Trust on the Property. Plaintiff-Debtor was discharged on March 19, 2018. Case No. 12-37605, Dckt. 77.

According to the Trustee's Final Report and Account in Plaintiff-Debtor's bankruptcy case, Case No. 12-37605, Debtor's Plan was confirmed on December 20, 2012, and completed on September 2, 2017. Bankr. E.D. Cal. No. 12-37605, Dckt. 69, January 25, 2018. The discharge of Plaintiff-Debtor was entered on March 19, 2018. Bankr. E.D. Cal. No. 12-37605, Dckt. 77.

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between Plaintiff-Debtor, Defendant, and creditors, there remains no obligation that is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *In re Martin*, 491 B.R. at 127-30.

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FN.1. 4 B.E. WITKIN ET AL., WITKIN SUMMARY OF CALIFORNIA LAW § 117 (10th ed. 2005) (citing CAL. CIV. CODE § 2939 et seq.; RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 6.4; 4 POWELL § 37.33; 2 C.E.B., MORTGAGE AND DEED OF TRUST PRACTICE § 8.84 (3d ed.); 13 AM. JUR. LEGAL FORMS § 179:511 (2d ed.)).

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## RULING

The Complaint is sufficient, and the relief requested therein are meritorious. The court has not been shown that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding, nor did it dispute facts presented in the Plaintiff-Debtor's bankruptcy case regarding the motion to value Defendant's secured claim to have a value of \$0.00 or regarding confirmation of the Chapter 13 Plan. Further, there is no evidence of excusable neglect by Defendant. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant has been given several opportunities to respond, and there is no indication that Defendant has a meritorious defense or disputes Plaintiff-Debtor's right to judgment in this Adversary Proceeding. Failing to fulfill one's contractual and statutory obligations, and then failing to respond to judicial process, is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against Defendant.

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendant J.P. Morgan Chase, N.A. and holds that the deed of trust is void.

Plaintiff-Debtor has not sought within its Complaint a request seeking reconveyance of the deed of trust, or other relief. No other relief is granted.

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

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

The Motion for Entry of Default Judgment filed by Clea Jacobs ("Plaintiff-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Entry of Default Judgment is granted. The court shall enter judgment determining that the second deed of trust, and any interest, lien or encumbrance pursuant thereto, held by J.P. Morgan Chase, N.A. (“Defendant”) against the real property commonly known as 15700 Archery View, Truckee, California and recorded November 23, 2005, with the County Recorder for Nevada County, California (Document Number 20050044433), is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant has no interest in the real property pursuant to the Second Deed of Trust.

Requests for attorney’s fees and costs, if any, shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

**IT IS FURTHER ORDERED** that the debt associated with the second deed of trust has been satisfied and fully discharged pursuant to Federal Rules of Bankruptcy Procedure § 4007(a) and (b).

Counsel for Plaintiff-Debtor shall prepare and lodge the court with a proposed judgment consistent with this Order.