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UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

SALMA H. AGHA,

Debtor.

Case No. 10-16183

SALMA AGHA-KHAN, MD.,

Plaintiff,

Adv. Proc. No. 16-01107

v.

Bank of America, a national bank, and a
California Business Entity; et al.,

Defendants.

**RECOMMENDATION FOR WITHDRAWAL OF THE REFERENCE
FOR THIS ADVERSARY PROCEEDING 16-01107
28 U.S.C. § 157(d) and (e)
(Non-Core Proceedings and Demand for Jury Trial)**

The Clerk of the Bankruptcy Court shall transmit a copy of this Recommendation to the Hon. Lawrence J. O'Neill, Chief Judge of the United States District Court for the Eastern District of California as the recommendation for the withdrawal of the reference for the above captioned adversary proceeding by the undersigned Chief Judge of the Bankruptcy Court for the Eastern District of California.

On December 15, 2016, Salma Agha-Khan, M.D. ("Plaintiff-Debtor") filed a Complaint with the United States Bankruptcy Court for the Eastern District of California (Fresno Division), titled *Salma Agha-Khan, M.D. v. Bank of America, et al.*, Bankr. E.D. Cal. No. 16-01107 ("Adv. Pro. 16-01107"). Plaintiff-Debtor is the bankruptcy debtor in Chapter 7 bankruptcy case number 10-16183

1 (“Bankruptcy Case”). That Bankruptcy Case was filed on May 30, 2010, with the Bankruptcy Court
2 for the Eastern District of California (Fresno Division). The bankruptcy court’s Docket reflects that
3 Plaintiff-Debtor was granted a Chapter 7 discharge on September 23, 2010. The Docket further
4 reflects that the bankruptcy case was closed on January 7, 2011 (Dckt.66);¹ reopened on
5 September 18, 2012 (Dckt. 70); re-closed on September 14, 2016 (Dckt. 260); and reopened on
6 September 20, 2016 (Dckt. 263).

7 The Complaint has nineteen named Defendants and additional Doe Defendants 1 to 100. The
8 fifty-two page Complaint (to which is attached 262 pages of exhibits) denominates fifteen causes
9 of action in the title.² Two of the named defendants are Bankruptcy Judge Richard Lee and
10 Bankruptcy Judge Fredrick Clement, both who sit in the Eastern District of California (Fresno
11 Division). Plaintiff-Debtor’s bankruptcy case is currently assigned to Judge Lee, with Judge
12 Clement having previously adjudicated issues in the Bankruptcy Case. Other named defendants
13 include private attorneys and law firms, financial institutions, and loan servicers.

14 After review of the Complaint, consideration of the claims therein, and the proper exercise
15 of federal judicial power by Article I bankruptcy judges, the undersigned respectfully recommends
16 that the reference of this Adversary Proceeding to the bankruptcy judges in this District be
17 withdrawn and the Adversary Proceeding adjudicated in the United States District Court before an
18 Article III judge.

19
20 **REFERRAL OF BANKRUPTCY CASES TO THE BANKRUPTCY
JUDGES FOR THE EASTERN DISTRICT OF CALIFORNIA**

21 Federal court jurisdiction for all bankruptcy cases arising under Title 11 of the United States
22 Code and all matters arising in or relating to said bankruptcy cases is vested in the United States
23 district courts. 28 U.S.C. § 1334. Pursuant to 28 U.S.C. § 157(a), the district court may refer any
24

25
26 ¹ Unless otherwise stated, all references to “Dckt.” are to the bankruptcy case docket in
case no. 10-16183.

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28 ² A copy of the Complaint is attached as Appendix A, without exhibits attached due to
the size of the document. The Complaint with all exhibits attached filed with the bankruptcy
court. Adv. Pro. 16-01107, Dckt. 1.

1 or all cases under Title 11, and any or all proceedings arising in or related to any case under Title 11,
2 to the bankruptcy judges in that district. All cases under Title 11, and all proceedings arising in or
3 related to any case under Title 11, have been referred to the bankruptcy judges in the Eastern District
4 of California. E.D. Cal. Gen. Orders Nos. 182, 223.

5 **PRIOR ADVERSARY PROCEEDING COMMENCED BY**
6 **PLAINTIFF-DEBTOR FOR WHICH REFERENCE WAS**
7 **WITHDRAWN BY DISTRICT COURT**

8 As stated in the Complaint, Plaintiff-Debtor has been litigating another complaint against
9 various persons, including the two above-named bankruptcy judges, in the Eastern District of
10 California. In that prior adversary proceeding, *Agha et al v. Clement et al*, E.D. Cal. Case No.
11 1:15-cv-00042-DAD (“2015 Action”), the reference of that matter to the Bankruptcy Court was
12 withdrawn,³ and the adversary proceeding was assigned to a District Court judge in the Eastern
13 District of California.

14 The District Court’s docket for the 2015 Action indicates that the defendants in that action
15 have been dismissed with prejudice (2015 Action, Dckt. 134) and that the order of dismissal is on
16 appeal before the Ninth Circuit Court of Appeals. An order of the Ninth Circuit Court of Appeals
17 filed November 16, 2016, summarily affirming the dismissals of the two bankruptcy judges,
18 members of the Office of the U.S. Trustee, and the United States is on the District Court Docket.
19 2015 Action, Dckt. 148.

20 **SUMMARY OF CLAIMS ASSERTED IN COMPLAINT**

21 A summary of the causes of action includes, but is not limited to, the following claims
22 asserted in the Complaint:⁴

23 ³ The “referral” of bankruptcy cases and proceedings to a bankruptcy judge is commonly
24 called the “reference” to the judge and the withdrawal is commonly called a “withdrawal of the
25 reference.” The terms “referred,” “referral,” or “reference” are used in this Recommendation in
26 connection to bankruptcy cases and bankruptcy-related proceedings referred to bankruptcy judges
27 pursuant to 28 U.S.C. § 157, and the withdrawal thereof by a district court to bankruptcy court
28 judges.

⁴ The Complaint, which is fifty-two pages in length and includes 253 numbered
paragraphs, contains extensive citations and general references to “California Statutes” and
“Nevada Statutes.” This court does not attempt to provide an exhaustive restatement of each and

- 1 A. First Cause of Action – asserting a claim against the Defendants arising under the
2 federal law for bankruptcy crimes. 18 U.S.C. § 157 (scheme or artifice to defraud
3 using a bankruptcy petition, filing documents in a case under Title 11, or false
4 representation, claim, or in a related proceeding). Complaint ¶¶ 128–37.
- 5 B. Second Cause of Action – asserting a claim against the Defendants under the federal
6 bankruptcy crime statutes. 18 U.S.C. § 152 (including false oath, statement, or
7 declaration under penalty of perjury). Complaint ¶¶ 138–46.
- 8 C. Third Cause of Action – asserting a claim against the Defendants for “fraud,” based
9 on misrepresentations made to recorders in Nevada and California, on the world wide
10 web, and in state courts and the bankruptcy court. This appears to be a claim based
11 on the applicable non-bankruptcy state law. Complaint ¶¶ 147–55.
- 12 D. Fourth Cause of Action – asserting a claim against the Defendants for violation of
13 Plaintiff’s rights arising under 42 U.S.C. § 1982 (property rights) and 42 U.S.C.
14 § 1983 (civil action for deprivation of rights). Complaint ¶¶ 156–69.
- 15 E. Fifth Cause of Action – asserting a claim against the Defendants for violations of due
16 process under the U.S. Constitution, Nevada Constitution, and California
17 Constitution. Complaint ¶¶ 170–80.
- 18 F. Sixth Cause of Action – asserting a claim against the Defendants for “negligence”
19 against all of the Defendants. This appears to be a claim based on the applicable state
20 law. Complaint ¶¶ 181–87.
- 21 G. Seventh Cause of Action – asserting a claim for “conversion” against the Defendants,
22 specifically identifying Citi et al. and its attorneys. This claim appears to be based
23 on applicable state law. Complaint ¶¶ 188–94.
- 24 H. Eighth Cause of Action – asserting a claim for “Trespass to Chattel” against the
25 Defendants, specifically identifying Citi et al., Citimortgage, and their attorneys.
26 This claim appears to be based on applicable state law. Complaint ¶¶ 195–201.
- 27 I. Ninth Cause of Action – asserting a claim for “Defamation” against the Defendants.
28 This claim appears to be based on applicable state law. Complaint ¶¶ 202–08.
- J. Tenth Cause of Action – asserting a claim for “False Light” against the Defendants
for publishing false and damaging information which placed Plaintiff in a “false
light.” This claim appears to be based on applicable state law. Complaint
¶¶ 209–13.
- K. Eleventh Cause of Action – asserting a claim for “Slander of Title” and to “Quiet
Title” against the Defendants for property of the Plaintiff. This claim appears to be
based on applicable state law. Complaint ¶¶ 214–24.
- L. Twelfth Cause of Action – asserting a claim against the Defendants, specifically
identifying GMAC, for violation of Nevada foreclosure statutes, civil and criminal.
This claim appears to be based on applicable state law. Complaint ¶¶ 225–30.

every specific allegation or legal grounds, but provides a general summary as assistance to the District Court in beginning its consideration of whether the referral for Adv. Pro. 16-01107 should be withdrawn.

1 M. Thirteenth Cause of Action – asserting a claim against Defendants, specifically
2 identifying Citimortgage and their attorneys, for violation of California foreclosure
3 statutes, civil and criminal (Cal. Civ. §§ 2945 et seq. and Cal. Pen. § 115 identified
in this Cause of Action). This claim appears to be based on applicable state law.
Complaint ¶¶ 231–35.

4 N. Fourteenth Cause of Action – asserting a claim against the attorney Defendants for
5 violation of California Business and Professions Code and Canons governing the
6 conduct of attorneys. (The title also makes reference to Nevada Statutes, but none are
identified in the Fourteenth Cause of Action.) This claim appears to be based on
applicable state law. Complaint ¶¶ 236–42.

7 O. Fifteenth Cause of Action – asserting federal law claims against the “lending and
8 collecting entities” under “TILA,” “FERA,” “FCRA,” “RESPA,” “18 U.S.C.
§§ 1002, 1028,” and “15 U.S.C. §§ 1601 et seq.” This claim appears to be based on
9 applicable nonbankruptcy federal law. Complaint ¶¶ 243–47.

10 P. Unnumbered Cause of Action – seeking an award of punitive damages against all
11 Defendants pursuant to California law. This claim appears to be based on applicable
state law. Complaint ¶¶ 248–52.

12 The monetary damages are stated to be in excess of \$50,000,000.00, and punitive damages
13 are requested in the amount of \$22,000,000.00.

14 In the Complaint, Plaintiff-Debtor also makes demand for a jury trial. Though rarely
15 conducted in the bankruptcy court, Congress provides in 28 U.S.C. § 157(e) that a bankruptcy judge
16 may conduct a jury trial for non-core proceedings, but only with the consent of all parties. Here,
17 there are at least nineteen Defendants and the Plaintiff who must first consent to an Article I
18 bankruptcy judge conducting a jury trial to the extent Plaintiff is entitled to a jury trial.

19 **Summary of Allegations Regarding Bankruptcy Judges**

20 With respect to the judges, it is asserted that Judge Clement “deliberately, knowingly and
21 intentionally allowed fraud, forged documents and filings to be presented to this [bankruptcy] Court
22 in Plaintiff’s bankruptcy” to assist a long time attorney friend, David Chandler and the Chandler law
23 firm. Mr. Chandler represents clients asserting claims in Plaintiff’s bankruptcy case, which claims
24 Plaintiff asserts are fraudulent. In addition, Plaintiff asserts that Judge Clement improperly
25 reopened Plaintiff’s Bankruptcy Case so that fraudulent claims could be asserted in the bankruptcy
26 case and assets of Plaintiff improperly pursued.

27 As to Judge Lee, Plaintiff asserts that when he replaced Judge Clement in Plaintiff’s
28 bankruptcy case, he allowed fraudulent evidence to be presented in Plaintiff’s bankruptcy case.

1 Further, Plaintiff alleges that Judge Lee refused to have the defaults entered against persons Plaintiff
2 was litigating against and dismissed Plaintiff's complaint in that adversary proceeding, even as to
3 those defendants who had failed to respond. Plaintiff also contends that Judge Lee continued as the
4 judge in Plaintiff's bankruptcy case notwithstanding Plaintiff suing him in the 2015 Action.⁵

5
6 **RECOMMENDATION FOR WITHDRAWAL OF REFERENCE BY
DISTRICT COURT OF ADVERSARY PROCEEDING 16-01107**

7 In making this recommendation, this bankruptcy judge does not express any opinion as to
8 the merits of the Complaint or allegations therein. The recommendation, as discussed below, is
9 based on the nature of the claims asserted and the exercise of federal judicial power by a United
10 States district court judge (an Article III judge⁶) and a United States bankruptcy judge (an Article I
11 judge).

12 An Article I bankruptcy judge exercises federal judicial power to enter final orders and
13 judgments for all matters arising under Title 11 (the Bankruptcy Code) and in the bankruptcy case
14 (which are commonly referred to as "core proceedings"). For related-to matters (commonly referred
15 to as "non-core proceedings"), all parties must consent (express or implied) to the entry of final
16 orders and judgment by the bankruptcy judge. *See Wellness Int'l Network, Ltd. v. Sharif*, ___ U.S.
17 ___, 135 S. Ct. 1932 (2015); *Exec. Benefits Ins. Agency v. Arkison*, ___ U.S. ___, 134 S. Ct. 2165
18 (2014). If unanimous consent is not given for a non-core proceeding, the bankruptcy judge may
19 conduct the judicial proceedings and thereafter make proposed findings, conclusions, orders, and
20 judgment to an Article III district court judge, who will make the final determinations thereof after
21 *de novo* review. 28 U.S.C. § 157(c)(1). "Non-core" proceedings are commonly the normal state and
22 federal non-Bankruptcy Code rights and interests which would normally be adjudicated in actions
23 filed in the state court or the district court, and are not adjudicated in proceedings arising under the

24
25 ⁵ The court has identified the following paragraphs of the Complaint in which specific
26 allegations are made concerning the conduct of the two judges: ¶ 40, ¶ 41, ¶ 43, ¶ 44, ¶ 49, ¶ 110,
27 ¶ 111, ¶ 112, ¶ 114, ¶ 116, ¶ 119, ¶ 120, ¶ 121, ¶ 122, ¶ 123, ¶ 124, ¶ 125 and ¶ 126.

28 ⁶ The "Article" reference being to the Articles of the United States Constitution, with
Article I defining the scope of the legislative branch of the federal government and Article III
establishing the judicial branch of government.

1 Bankruptcy Code (such as an objection to claim).

2 For both core and non-core proceedings, the district court may elect to withdraw the reference
3 to allow a United States district court judge, as an Article III judge, to exercise the federal judicial
4 power for which federal court jurisdiction exists pursuant to 28 U.S.C. § 1334(a).

5 **Allegation of Federal Court Jurisdiction**

6 In the Complaint, Plaintiff-Debtor alleges federal jurisdiction arising under 28 U.S.C. § 1334,
7 with that jurisdiction being vested in the district courts. Complaint ¶¶ 1, 4. Plaintiff-Debtor further
8 alleges that this matter has been referred to the bankruptcy judges in this District and that this is a
9 core proceeding (for which a bankruptcy judge may exercise federal judicial power without the
10 consent of the parties). Plaintiff does not specifically address what grounds exist under 28 U.S.C.
11 § 157(b)(2) for the various causes of action and matters therein to be a “core proceeding.”

12 **Recommendation**

13 A review of the various claims asserted discloses that the matters are based on non-
14 bankruptcy federal and state law. Some of the allegations relate to documents and arguments
15 presented in the bankruptcy court and rulings of the bankruptcy judges, but those documents and
16 proceedings relate to matters that did not arise in the bankruptcy case. While filed in bankruptcy
17 court, the claims appear to be significantly comprised of matters which would be adjudicated in
18 federal court (to the extent that non-bankruptcy § 1334 federal jurisdiction exists) or in the
19 appropriate state court of general jurisdiction. The claims relating to “bankruptcy fraud” and “false
20 oaths and claims” are stated in the context of the federal criminal statutes, not Bankruptcy Code
21 provisions. There do not appear to be any allegations indicating that the adjudication of the claims
22 asserted herein involve the ongoing administration of the bankruptcy estate.

23 The district court may withdraw, in whole or part, any referrals of bankruptcy matters made
24 to bankruptcy judges. 28 U.S.C. § 157(d). The withdrawal may be made by the district court on its
25 own motion or timely motion of any party for “cause shown.” *Id.*

26 In light of the demands for relief relating to matters which occurred outside of the bankruptcy
27 court proceedings and not arising under Title 11, it is submitted to the District Court that cause exists
28 to withdrawal the referral of Adversary Proceeding 16-01107. The full exercise of the Article III

1 federal judicial power will be required to adjudicate the various state law and federal non-bankruptcy
2 law claims, rights, and interests asserted by Plaintiff-Debtor. Additionally, the exercise of the
3 Article III federal judicial power will be required to make a determination of the ownership rights
4 and interests for those related to matters which do not arise under the Bankruptcy Code nor arise in
5 the Plaintiff-Debtor's Chapter 7 case.

6 It is therefore recommended that the referral of *Salma Agha-Khan, M.D. v. Bank of America,*
7 *et al.*, Bankr. E.D. Cal. No. 16-01107, to the bankruptcy judges in this District be withdrawn and the
8 Adversary Proceeding be assigned to an Article III district court judge.

9 Dated: January 4, 2017

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11 /s/
12 RONALD H. SARGIS, Chief Judge
13 United States Bankruptcy Court
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ADDENDUM A

[Insert Addendum A Complaint PDF in place of this page]

Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked X , via the U.S. mail.

Debtor(s)	Attorney for the Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Hon. Lawrence J. O'Neill, Chief Judge United States District Court, Eastern District of California (Fresno Division)
Salma Agha-Kahn, M.D. 3751 Motor Ave., #34727 Los Angeles, CA 90034	Hon. Dale A. Drozd United States District Court, Eastern District of California (Fresno Division)
Hon. W. Richard Lee United States Bankruptcy Court Eastern District of California (Fresno Division)	Hon. Anthony W. Ishii United States District Court, Eastern District of California (Fresno Division)
Hon. Fredrick E. Clement United States Bankruptcy Court Eastern District of California (Fresno Division)	