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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re Jeff Scott Hedges, Debtor.	Case No. 13-15582-B-7
Pacific Gas and Electric Company, Plaintiff, v. Jeff Scott Hedges, Defendant.	Adversary Proceeding No. 13-1111 Date: September 25, 2014 Time: 10:30 a.m. Place: Dept. B, Courtroom 12 5th Floor, U.S. Courthouse 2500 Tulare Street Fresno, CA

ORDER REGARDING MOTION FOR ENTRY OF DEFAULT JUDGMENT ORDER TO SHOW CAUSE REGARDING DISMISSAL

Before the court is a motion for entry of a default judgment filed by Pacific Gas and Electric Company ("PG&E"), a creditor and plaintiff in this proceeding. PG&E seeks an order liquidating its claim for utility services and a determination that the claim is nondischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(6)[1] (the "Motion"). PG&E contends that the debtor and defendant Jeff Scott Hedges ("Hedges" or the "Debtor") opened five accounts with PG&E over a period of four years and obtained utility services worth $16,292.59 that he never intended to pay for.

The Debtor was properly served with the summons and first amended

[1] Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9036, as enacted and promulgated *after* October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005, Pub. L. No. 109-8, 119 Stat. 23.

complaint, but did not file a responsive pleading. Pursuant to PG&E's request, the court entered the Debtor's default on March 12, 2014, and issued an order requiring PG&E to file a motion for entry of a default judgment (the "Default Order"). The Default Order sets forth PG&E's burden to come forward with admissible evidence and prove-up its claims in pertinent part:

> Plaintiff shall apply for a default judgment within 30 days of the date of this order. The motion need not be set for hearing but shall be filed and served on the defendant. *The motion shall be supported by declarations or affidavits or other admissible evidence establishing liability and a right to the relief requested*. Failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rule of Civil Procedure 16(f) and 41(b), including, without limitation, dismissal of this adversary proceeding without further notice or hearing. (Emphasis added.)

In support of its Motion, PG&E has attached a declaration from one of its representatives along with one month's billing statement for one account and payment summaries for all five accounts. However, for the reasons stated below, the well-pleaded facts in the complaint which the court can accept as true, considered in light of the documentary evidence offered in support of the Motion, do not establish the elements necessary to except PG&E's claim from the chapter 7 discharge. PG&E did not comply with the Default Order. Therefore, PG&E's Motion will be set for a hearing and the court will issue an order to show cause why the adversary proceeding should not be dismissed.

BACKGROUND.

This ruling is based upon facts as alleged in PG&E's first amended complaint (the "Complaint"),[2] as well as facts that have been judicially noticed by the court. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (allowing the court to

[2] Prior to the first status conference, PG&E requested entry of the Debtor's default. Upon reviewing the complaint, the court determined that the complaint failed to properly plead any claim for relief. By order dated December 4, 2013, the court *sua sponte* dismissed PG&E's original complaint with leave to amend. The first amended complaint was filed on January 2, 2014.

consider matters properly subject to judicial notice in a motion to dismiss). Accordingly, nothing in the discussion that follows constitutes a finding of fact or a conclusion of law.

In summary, the Complaint alleges that Hedges failed to pay, in part or in whole, for utility services provided by PG&E from May 2009 until August 2013 to properties where Hedges resided. At the commencement of this case, Hedges listed his address at 2449 East Clareton Way in Fresno, California (the "Clareton Way Property"). His schedules show that he does not own the Clareton Way Property, but it appears to be his residence since all of his personal property (listed on schedule B) is located there and he has formerly done business there under the name Hedges Speed Shop.[3] Prior to that, Hedges resided at 3652 West Tenaya Way in Fresno (the "Tenaya Way Property"). The five utility accounts at issue in this adversary proceeding relate to these two properties.

The Tenaya Way Account. When Hedges resided at the Tenaya Way Property, he opened one utility account under his own name (the "Tenaya Way Account"). It appears from PG&E's payment summary that PG&E provided utilities to this address from May 2009 until February 2011. PG&E sent 22 billing statements for the Tenaya Way Account: 15 payments were sent to PG&E, none of which were returned for insufficient funds, and the final unpaid balance on the account was $700.60. (Compl. ¶ 20)[4]

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[3] The amended petition filed on September 11, 2013, states that Hedges has also done business under the names West Coast Speed Custom, Cen cal Collision Center, and Cen Cal Speed & Custom. His amended schedule F acknowledges a debt to PG&E for the West Coast Speed Custom business in the amount of $11,264.59.

[4] The Complaint, however, alleges that the unpaid debt on the Tenaya Way Account was $690.40. Therefore, where the amount alleged in the Complaint is less than the amount provided in the billing records, PG&E prays that the lesser amount be excepted from the discharge. *See* Fed. R. Civ. P. 54(c) (providing that "default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings").

Hedges Speed Shop Account. Hedges apparently moved to the Clareton Way Property in early 2011. After that transition, four accounts were opened with PG&E, for utility services at that address, under four different business names. First, it is alleged that "Debtor arranged" for a utility account under the name Hedges Speed Shop LLC and PG&E provided utility services to the Clareton Way Property between February 2011 and December 2011 (the "Hedges Speed Shop Account"). (Compl. ¶ 11.) PG&E's billing record for the Hedges Speed Shop Account shows that (1) PG&E sent 13 billing statements, (2) 8 payments were sent to PG&E, (3) 2 of those payments were returned for insufficient funds, and (4) the final unpaid balance on the Account was $4,559.07.[5]

The Andre Hagio Account. Second, "Debtor and/or his wife or other individual working in concert with him arranged for" an account to be opened under the name Andre Hagio, dba Cen Cal Collision Service. Under this account, PG&E provided utility services to the Clareton Way Property between December 2011 and June 2012 (the "Andre Hagio Account"). (Compl.¶ 12.) PG&E's billing record for the Andre Hagio Account shows that (1) PG&E sent 8 billing statements; (2) four payments were sent to PG&E; (3) all of those payments were returned for insufficient funds; and (4) the final unpaid balance on the account was $2,136.84.[6]

The Cen-Cal Motorsports Account. Third, "Debtor arranged for" an account to be opened under the name Cen-Cal Motorsports, Inc., and PG&E provided utility services to the Clareton Way Property between June 2012 and December 2012 (the "Cen-Cal Motorsports Account"). (Compl. ¶ 13.) PG&E's billing record for the Cen-Cal Motorsports Account shows that (1) PG&E sent 10 billing statements;

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[5] The Complaint, however, alleges that the unpaid debt on the Hedges Speed Shop Account was $4,524.74.

[6] The Complaint, however, alleges that the unpaid debt on the Andre Hagio Account was $2,067.01.

(2) 11 payments were sent to PG&E; (3) all of those payments were returned for insufficient funds; and (4) the final unpaid balance on the account was $4,461.49.[7]

The West Coast Speed and Custom. Lastly, "Debtor arranged for" an account to be opened under the name West Coast Speed Custom, aka West Coast Speed and Custom, and PG&E continued to provide utility services to the Clareton Way Property between December 2012 and August 2013 (the "West Coast Speed Custom Account"). (Compl. ¶ 14.) PG&E's billing record for the West Coast Speed Custom Account shows that (1) PG&E sent 9 billing statements, (2) 25 payments were sent to PG&E,[8] (3) all of those payments were returned for insufficient funds, and (4) the final unpaid balance on the account was $4,548.95. Altogether, 39 payments made to the four Clareton Way accounts were dishonored and returned to PG&E for insufficient funds during the three-year period that PG&E provided utilities to that location. (Compl. ¶ 27.)

ISSUE PRESENTED.

Dischargeability complaints are frequently filed in the bankruptcy courts. The debtor-defendants often do not respond for economic reasons or otherwise, in which case, the dischargeability question ultimately comes before the court, as here, in the form of a motion for entry of a default judgment. The fundamental issue presented in this case is whether PG&E has made an adequate showing based on well-pleaded facts in the Complaint and any admissible supporting evidence that the Debtor's failure to pay for PG&E's utility services represents a debt for services obtained by "false pretenses, a false representation, or actual fraud" under § 523(a)(2)(A) or a debt for "willful and malicious injury" under § 523(a)(6). PG&E was required by the

[7] The Complaint, however, alleges that the unpaid debt on the Cen-Cal Motorsports Account was $4,548.95.

[8] While the billing record shows 25 payments being sent, the Motion and supporting declaration states that only 22 payments were sent.

Default Order to make that showing.

DISCUSSION AND CONCLUSIONS OF LAW.

Judgment by Default. Default judgments are governed by Federal Rule of Civil Procedure 55, which is made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055. The entry of a default judgment in an adversary proceeding is a two-step process, requiring (1) the entry of the party's default and then (2) the entry of a default judgment. *See* Fed. R. Civ. P. 55(a), (b); *Brooks v. United States*, 29 F. Supp. 2d 613, 618 (N.D. Cal.), *aff'd*, 162 F.3d 1167 (9th Cir. 1998) (unpublished table decision).[9]

The bankruptcy court is given broad discretion to enter a default judgment in an adversary proceeding; however, the plaintiff is not entitled to such judgment as a matter of right. *Cashco Fin. Servs., Inc. v. McGee (In re McGee)*, 359 B.R. 764, 771 (9th Cir. BAP 2006) (citing *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 659–60 (9th Cir. BAP 1994)). The court is permitted, but is not required, to draw inferences in a default judgment context. "In order to do justice, a trial court has broad discretion to require that a plaintiff prove up even a purported *prima facie* case by requiring the plaintiff to establish the facts necessary to determine whether a valid claim exists that would support relief against the defaulting party." *Id.* at 773 (emphasis omitted) (citing *Wells Fargo Bank v. Beltran (In re Beltran)*, 182 B.R. 820, 823 (9th Cir. BAP 1995) (noting that entry of default does not automatically entitle plaintiff to default judgment, regardless of general effect of entry of default that deems well-founded allegations as admitted); *Quarré v. Saylor (In re Saylor)*, 178 B.R. 209, 212 (9th Cir. BAP 1995) (finding no abuse of discretion by trial court in denying entry of default judgment after trial court directed plaintiff to submit

[9] The Debtor failed to respond to the Complaint, and his default was entered on March 12, 2014.

evidence of a *prima facie* case in support of default judgment), *aff'd*, 108 F.3d 219 (9th Cir. 2007).

The analysis of any adversary proceeding that culminates in the entry of a judgment by default should begin with the pleadings. *See id.* at 771 (noting that one factor considered for entry of default judgment is "the sufficiency of the complaint"). Pursuant to Federal Rule of Civil Procedure 8, a pleading, such as a complaint, must state a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2), *incorporated by* Fed. R. Bankr. P. 7008. A complaint alleging fraud must plead the circumstances constituting the fraud "with particularity." Fed. R. Civ. P. 9(b), *incorporated by* Fed. R. Bankr. P. 7009.

The plaintiff's duty to show its "'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The court has an affirmative obligation to review the underlying factual allegations and supporting evidence to make sure the plaintiff has pleaded and can prove its *prima facie* case. In light of the new heightened pleading standard established by the Supreme Court in *Twombly*, 550 U.S. 544, and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the plaintiff must plead more than a recitation of the underlying statute with the mere possibility of damages. The bankruptcy court cannot accept as true any legal conclusions couched as factual allegations. *See Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

The potential for abuse in the filing of dischargeability complaints, coupled with the more rigid pleading standards applicable to fraud claims, underscores the importance of judicial scrutiny of both the complaint and the ensuing default proceedings, filed against debtors who often cannot defend themselves. *See AT&T Universal Card Servs. Corp. v. Grayson (In re Grayson)*, 199 B.R. 397, 403 (Bankr.

W.D. Mo. 1996). The tension here was thoughtfully considered by one court in a recent unpublished opinion:

> A debtor who files leaves all non-exempt assets with a trustee, and seeks to emerge with only his future income, his exempt assets, and a discharge from personal liability. If that debtor is sued by a creditor claiming its debt cannot be discharged, the choice is either to fight the charge, though lacking the resources to pay a lawyer to do so, or simply to settle with the creditor, often agreeing to reaffirm the debt. And this is motivated often by the simple fact that the debtor cannot afford the fight—never mind whether the allegations are well taken or not. It is thus important to apply the *Twombly* standard rigorously to these sorts of complaints. Indeed, if anything, the more rigorous pleading standards applicable to fraud actions makes this scrutiny even more important.

FIA Card Servs. v. Travis (In re Travis), No. 10-5118-C, 2011 WL 1334387, at *2 (Bankr. W.D. Tex. Apr. 7, 2011) (citing *In re Grayson*, 199 B.R. at 403) (emphasis in original).

The court must therefore scrutinize PG&E's Complaint and the supporting declaration and documentary evidence to determine whether it has proven its *prima facie* case under § 523(a)(2)(A) and (a)(6).

"Fraud" Exception to Discharge under § 523(a)(2)(A). To balance the fresh start afforded to "honest but unfortunate" debtors through a discharge of debts, the Bankruptcy Code excepts from discharge any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or *actual fraud*." § 523(a)(2)(A) (emphasis added). To prove actual fraud, a creditor must establish each of the following five elements: (1) that the debtor made false representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *Citibank (S.D.), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1086 (9th Cir. 1996). These five elements mirror those of common law fraud. *See Field v Mans*,

516 U.S. 59, 69 (1995). In the nondischargeability action, the creditor must prove these elements by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 286 (1991).

Hedges' Roll in the Transactions. Here, the first problem with PG&E's Motion is its lack of any definitive evidence to show that the Debtor, Jeff Scott Hedges, actually entered into the contractual arrangements which PG&E contends he never intended to perform. The pleadings and evidence, at best, suggest ambiguously that Hedges "arranged for" the utility services. The Complaint at paragraph 12 reveals that the Andre Hagio Account may have actually been opened by someone else, allegedly "in concert with [Hedges]." If any or all of the accounts were opened fraudulently by someone other than Hedges, acting as his agent, then PG&E must offer evidence to show that Hedges was culpable, i.e., that he knew or should have known of the agent's fraud. *Huh v. Huh*, 506 B.R. 257, 266-71 (9th Cir. BAP 2014).

PG&E's testimonial witness, Pat Hazen, a bankruptcy representative within the company ("Hazen"), states conclusively that Hedges and others "arranged for" the utility services on the four accounts associated with the Clareton Way Property.[10] Hazen Decl. 2:4, 2:12–13, 2:20, 2:28, Mar. 6, 2014, ECF No. 30. Hazen obviously has no personal knowledge of Mr. Hedges, or who actually signed the contracts with PG&E, but basis the conclusion (that Hedges personally opened the accounts) on the statement: "PG&E's business records show that *[the] Debtor* resided at and contracted with PG&E for utility service to [the Clareton Way Property] from 2011 through the date of his bankruptcy filing." *Id.* at 1:27–2:1 (emphasis added). PG&E did not produce any business records to support that statement.

Intent to Defraud. PG&E must also establish that Hedges did not have the

[10] The Hazen Declaration was not filed with the Motion. It was filed on March 6, 2014, with PG&E's request for entry of default which resulted in entry of the Default Order.

intent to pay for the utility services that PG&E provided. The debtor's intent is determined by the totality of the circumstances; "a court may infer the existence of the debtor's intent not to pay if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor." *In re Eashai*, 87 F.3d at 1087. Assuming, arguendo, that Hedges actually opened all of the accounts at issue, the facts and circumstances must show that he did not intend to pay for the utility services at the time they were provided. *Cf. Anastas v. Am. Sav. Bank (In re Anastas)*, 94 F.3d 1280, 1285 (9th Cir. 1996) (stating that "central inquiry in determining whether there was a fraudulent representation [in credit card fraud cases] is whether the card holder lacked an intent to repay at the time he made the charge").

Looking first to the Tenaya Way Account, there is a history of payments to that account. Over the 22-month period, 15 payments were made to PG&E, none of which were returned for insufficient funds. The payments were in large amounts ranging from $282.73 to $1,560.00. Payment deadlines were frequently missed and sometimes months were skipped between payments,[11] but the utilities were generally paid for until November 2010, three months before the Tenaya Way Account was closed. This course of conduct does not establish that Hedges lacked the intent to pay for the utilities provided to the Tenaya Way Property.

Turning to the Hedges Speed Shop Account, there was again a history of payments after that Account was opened. Over the course of 11 months, PG&E sent eight bills for this Account, six of which were paid in amounts ranging between $200 and $700. Only two payments to the Account were "returned for insufficient funds."

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[11] Although the court has some difficulty understanding the billing record, it seems that Hedges was not using the same amount of utilities in his final months at the Tenaya Way Property as he had in the past, which suggests he was not trying to take advantage of PG&E's services after making his last payment. Following that payment of $850, the balance on the Tenaya Way Account was $1,191.68. It increased by only $17.91 the next month to $1,209.59 and then increased by only $167.56 the following month to $1,377.15. In the final billing statement, the unpaid balance had, for some reason, *decreased* to $700.60.

That payment history does not establish Hedges had no intent to pay the debt on this account. If Hedges had no intent to pay for the utility services, then why were any checks sent to PG&E? The checks that were returned to PG&E were returned for insufficient funds, not because the checking account had been closed or some other nefarious reason. According to the billing record, the first insufficient payment was received on November 19, 2011, and the second came the next day on November 20. However, on that same day, PG&E apparently did receive a legitimate payment of $200, showing that someone was still making an effort to pay the outstanding balance on the Hedges Speed Shop Account.

Justifiable Reliance. For the three accounts following the Hedges Speed Shop Account, the payment history is less favorable to Hedges. However, the question here becomes one of justifiable reliance. If Hedges' previous history with PG&E was so egregious, what did PG&E rely upon when it opened three more accounts for Hedges and continued for months to provide utilities to the Clareton Way Property? The pleadings and evidence do not address this issue at all.

The Supreme Court has held that a creditor's reliance on a debtor's representation of intent to repay a debt must only be justifiable, rather than reasonable, to except the debt from discharge under § 523(a)(2)(A). *Field*, 516 U.S. at 74–75. The standard for "justifiable reliance" under § 523(a)(2)(A) is derived from the standard applied to the common law tort of fraud. *See id.* at 70. In *Field*, the Court looked to the Restatement (Second) of Torts to define that term. *Id.* Unlike an objective standard of reasonableness, "'[j]ustification is a matter of the qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases.'" *Id.* at 71 (quoting Restatement (Second) of Torts § 545A, cmt. b (1976)). This court must therefore determine whether PG&E's reliance was justifiable based on an "'individual

standard of [the Bank's] own capacity and the knowledge which [it] has, or which may fairly be charged against [it] from the facts within [its] observations in the light of [its] individual case.'" *Id.* at 72 (quoting W. Prosser, Law of Torts § 108, at 717 (4th ed. 1971)).

"Justifiability is not without some limits, however." *Id.* at 71. "[A] person cannot rely upon a representation if 'he knows that it is false or its falsity is obvious to him.'" *Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh (In re Kirsh)*, 973 F.2d 1454, 1458 (9th Cir. 1992) (quoting Restatement (Second) of Torts § 541). Rather, a person is "'required to use his senses, and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation.'" *Field*, 516 U.S. at 71 (quoting Restatement (Second) of Torts § 541, cmt. a). "'[A]lthough a person ordinarily has no duty to investigate the truth of a representation, a person cannot purport to rely on preposterous representations or close his eyes to avoid discovery of the truth.'" *In re Eashai*, 87 F.3d at 1090–91 (quoting *Romesh Japra, M.D., F.A.C.C., Inc. v. Apte (In re Apte)*, 180 B.R. 223, 229 (9th Cir. BAP 1995)). Thus, justifiable reliance means that a creditor cannot ignore red flags. *See In re Anastas*, 94 F.3d at 1286; *In re Eashai*, 87 F.3d at 1091 ("If the creditor had warning that the debtor's account was in danger of default, the creditor will not be able to establish justifiable reliance."); *Cashco Fin. Servs., Inc. v. McGee (In re McGee)*, 359 B.R. 764, 775 (9th Cir. BAP 2006) (finding that bankruptcy court did not err in declining to enter default judgment when creditor's evidence created inference that it knew of red flags in debtor's financial history based on loan's 190.37% interest rate).

Here, PG&E has not established justifiable reliance as to the debts on the Andre Hagio, Cen-Cal Motorsports, and West Coast Speed Custom Accounts. As Hazen's declaration states, "PG&E's business records show that *[the] Debtor* resided

at and contracted with PG&E for utility service to [the Clareton Way Property] from 2011 through the date of his bankruptcy filing." *Id.* at 1:27–2:1 (emphasis added). Thus, the court can infer that PG&E knew that Hedges was the accountholder of the four accounts associated with the Clareton Way Property even though the accounts were opened with business names. It appears that PG&E ignored an obvious red flag after the two payments on the Hedges Speed Shop Account were returned for insufficient funds, which began the streak of returned payments. If PG&E was aware that Hedges was the "culprit" behind the four accounts and that Hedges had begun sending deficient payments to PG&E, then why did PG&E allow Hedges to open the subsequent Andre Hagio, Cen-Cal Motorsports, and West Coast Speed Custom Accounts and why did PG&E continue to provide utility services to the Clareton Way Property while Hedges still resided there? By then, it should have been evident to PG&E that it was not going to be paid for those services. For these reasons, PG&E has not established its *prima facie* case under § 523(a)(2)(A).

"Willful and Malicious Injury" Exception to Discharge under § 523(a)(6). PG&E alternatively contends that its claim for utility services should be excepted from discharge under § 523(a)(6). That Code section applies to "any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." To be nondischargeable under this provision, the plaintiff's injury must result from an act "by the debtor." § 523(a)(6). In addition, the debtor's conduct must first be tortious (i.e., it constitutes a tort under state law). *See Lockerby v. Sierra*, 535 F.3d 1038, 1040–42 (9th Cir. 2008); *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1205 (9th Cir. 2001). The alleged "injury" must also be willful and malicious, with the "malicious" requirement being separate from the "willful" requirement. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008).

Here, PG&E has not established any tortious conduct by Hedges. First, as discussed above, it is not clear from the proffered facts that Hedges even opened the five utility accounts with PG&E. Further, although actual fraud may constitute a tort under state law, PG&E's inability to establish a *prima facie* case for actual fraud for any of the accounts also prevents the court from finding that the Debtor's alleged conduct was tortious. *See Field*, 516 U.S. at 69 (providing that common law elements of fraud define the elements of a § 523(a)(2)(A) claim); *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996) (setting forth same elements of fraud). All that remains from the Complaint is a possible breach of contract claim. However, "[i]t is well settled that a simple breach of contract is not the type of injury addressed by § 523(a)(6)." *Snoke v. Riso (In re Riso)*, 978 F.2d 1151, 1154 (9th Cir. 1992). Thus, the court is not persuaded on the facts before it that the Debtor willfully and maliciously injured PG&E.

The Third Claim for Relief has Been Abandoned. In the Complaint, PG&E also pleaded a third claim, which prays for denial of the Debtor's discharge for making a false oath under § 727(a)(4)(A). However, PG&E does not address that claim in the Motion or offer any evidence to support a favorable ruling on that issue. Therefore, the court deems PG&E's § 727(a)(4)(A) claim to be abandoned. *See J & J Sports Prods., Inc. v. Banuelos*, No. C 12-02244 PJH (LB), 2013 WL 1283344, at *3 n.3 (N.D. Cal. Mar. 7, 2013). Based thereon,

IT IS HEREBY ORDERED that PG&E's Motion for entry of a default judgment in the above-referenced adversary proceeding will be set for hearing on September 25, 2014, at 10:30 a.m., in Department B, Courtroom 12, Fifth Floor, U.S. Courthouse, 2500 Tulare Street, Fresno, California.

IT IS FURTHER ORDERED that PG&E shall appear and show cause why this adversary proceeding should not be dismissed based on PG&E's failure to comply

with the court's Default Order. Specifically, PG&E has failed to provide competent evidence sufficient to establish a *prima facie* case against the Debtor on either claim pled in the Complaint. The hearing on this matter will be held on September 25, 2014, at 10:30 a.m., in Department B, Courtroom 12, Fifth Floor, U.S. Courthouse, 2500 Tulare Street, Fresno, California. PG&E's responsive pleading with additional evidence, if any, shall be filed and served not later than September 11, 2014.

Dated: August 1, 2014

/s/ W. Richard Lee
W. Richard Lee
United States Bankruptcy Judge