

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 10-30359-E-13  
ELIZABETH LUCHINI, )  
Debtor. )  
\_\_\_\_\_) )  
ELIZABETH LUCHINI, ) Adv. Proc. No. 13-2321  
Plaintiff, ) Docket Control No. PLC-3  
v. )  
JPMORGAN CHASE BANK, N.A., )  
Defendant. )  
\_\_\_\_\_)

MEMORANDUM OPINION AND DECISION  
GRANTING MOTION FOR ENTRY OF DEFAULT JUDGMENT  
FOR THIRD CLAIM FOR RELIEF AND FOR ATTORNEYS' FEES  
AND  
DENYING WITHOUT PREJUDICE ALL OTHER RELIEF REQUESTED

Plaintiff Elizabeth Luchini ("Plaintiff"), moves the court for entry of a Default Judgment against JPMorgan Chase Bank N.A. ("Defendant"). Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Adversary Proceeding is a core matter arising under Title 11, including

1 11 U.S.C. §§ 523(a). 28 U.S.C. § 157(b)(2)(I).

2 Service and Notice of the Motion were made as required by  
3 Local Bankruptcy Rule 9014-1(f)(1). Plaintiff provided 45 days  
4 notice, with 28 days notice required.

5 Upon review of the Motion, Supporting Pleadings, and Files in  
6 this Adversary Proceeding, the court grants the Motion with respect  
7 to the Third Claim For Relief (Extinguishment of the Second Deed of  
8 Trust Claim), Sixth Claim for Relief (Cal. Civ. Code § 2914), and  
9 attorneys' fees and costs. The court denies without prejudice the  
10 Motion with respect to the First, Second, Fourth, Fifth, and  
11 Seventh Claims for Relief.

12 **OVERVIEW OF PLAINTIFF'S BANKRUPTCY CASE**

13 Plaintiff owns real property commonly known as 1916 Devon  
14 Avenue, West Sacramento, California ("Residence"). Plaintiff filed  
15 her Chapter 13 bankruptcy case on April 21, 2010.<sup>1</sup> As of the  
16 filing, there were two liens that encumbered the Residence: (1) a  
17 first Deed of Trust in favor of JPMorgan Chase Bank N.A. securing  
18 an obligation the amount of \$171,633.00 (Exhibit B, Dckt. No. 26),  
19 and a Second Deed of Trust in favor of JPMorgan Chase Bank N.A.  
20 securing a obligation in the amount of \$43,640.14 ("Defendant's  
21 Secured Claim"). On July 2, 2010, this court determined pursuant  
22 to 11 U.S.C. § 506(a) that Defendant's Secured Claim (the secured  
23 portion of the obligation secured by the Second Deed of Trust) had  
24 a value of \$0.00, with the balance of its claim to be a general  
25 unsecured claim for any bankruptcy plan.<sup>2</sup>

26  
27 <sup>1</sup> Bankr. E.D. Cal. 10-30359 ("Bankr Case").

28 <sup>2</sup> Bankr Case Dckt. 22.

1 Plaintiff confirmed her Chapter 13 Plan which provided for the  
2 Defendant's Secured Claim in Class 2 of the Plan.<sup>3</sup> No appeal was  
3 taken from the Order Confirming the Chapter 13 Plan and Order  
4 determining the \$0.00 value of Defendant's Secured Claim. Those  
5 orders are final orders, not subject to collateral attack. The  
6 order confirms the Plan providing for Defendant's Secured Claim and  
7 the Order determining the value of that claim are *res judicata* as  
8 to all justiciable issues decided by confirmation and the valuation  
9 of the Defendant's Secured Claim. The Plan is binding on the  
10 Debtors and all creditors. 11 U.S.C. § 1327(a); *Espinosa v. United*  
11 *Student Aid*, 559 U.S. 260, 270 (2010); *Finova Capital Corp. v.*  
12 *Larson Pharmacy Inc. (In re Optical Technologies, Inc.)*, 425 F.3d  
13 1294, 1030-1032 (11th Cir. 2011); *Ford Motor Credit Co. v.*  
14 *Bankruptcy Estate of Parmenter (In re Parmenter)*, 527 F.3d 606,  
15 608-609 (6th Cir. 2008); and *Trulis v. Barton et al*, 107 F.3d 685,  
16 691 (9th Cir. 1995).

17 Plaintiff completed her Chapter 13 Plan and was granted a  
18 discharge on November 4, 2013. In completing her Chapter 13 Plan,  
19 Plaintiff has fulfilled all of her obligations under the Plan which  
20 binds Plaintiff and the creditors (including Defendant).

21 In the Complaint Plaintiff alleges that the Defendant refused  
22 to reconvey the Second Deed of Trust recorded against the Residence  
23 after she completed the Chapter 13 plan, received her bankruptcy  
24 discharge, and made demand for the Second Deed of Trust to be  
25 reconveyed. The failure of Defendant to act forced Plaintiff to

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27 <sup>3</sup> *Id.*, Chapter 13 Plan, Dckt. 6; Order Confirming Chapter 13  
28 Plan and Order Determining Value of Secured Claim filed July 2, 2010,  
Dckt. 22.

1 commence this Adversary Proceeding to clear record title for the  
2 Residence of the Second Deed of Trust.

3 Plaintiff served on Defendant a Re-Issued Summons and the  
4 Complaint on December 18, 2013.<sup>4</sup> Defendant did not respond to the  
5 Summons and Complaint, resulting in Plaintiff requesting the entry  
6 of Defendant's default. On February 12, 2014, the Clerk of the  
7 Bankruptcy Court entered the default of Defendant JPMorgan Chase  
8 Bank, N.A. in this matter.

9 Plaintiff reports that in preparing the Motion for Entry of  
10 Default Judgment her counsel discovered that a reconveyance of the  
11 Second Deed of Trust occurred on December 17, 2013.<sup>5</sup> Counsel  
12 testifies that Defendant never contacted Counsel or the Plaintiff  
13 to notify them of the reconveyance and no copy of the reconveyance  
14 was provided to the Plaintiff or Counsel. The reconveyance  
15 document presented as Exhibit G has a Palm Harbor, Florida return  
16 document address for Defendant, not a return address for Plaintiff.

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17  
18 <sup>4</sup> A review of the Certificate of Service for the Original  
19 Summons and Complaint and the Certificate of Service for the Reissued  
20 Summons and Complaint provide an indication why Defendant received  
21 "double service" of the pleadings. Though the Original Summons and  
22 Complaint were served by certified mail on Defendant and Defendant's  
23 agent for service of process at addresses sufficient for Federal Rule  
24 of Bankruptcy Procedure 7004(h), the service was not addressed to  
25 either a specific officer or an "officer for service of process."  
26 Certificate of Service, Dckt. 6. The Reissued Summons and Complaint  
27 were served on the same addresses and Defendant's agent for service of  
28 process. The difference is that the service to Defendant's Columbus,  
Ohio address is specifically directed to "James Dimon, Chief Executive  
Officer." Certificate of Service, Dckt. 10. There is nothing to  
indicate in the record that, while the Original Service made on  
October 23, 2013 (Dckt. 6) may not have complied with Federal Rule of  
Bankruptcy Procedure 7004(h) since it was not directed to an  
"officer," Defendant did not have actual notice that it had not  
reconveyed the Second Deed of Trust as required by contract and  
statute.

<sup>5</sup> Declaration ¶ 12, Dckt. 24; Exhibit G, Dckt. No. 26.

1 The evidence presented shows that the December 17, 2013 recording  
2 was made substantially after the Complaint in this Adversary  
3 Proceeding had been filed and originally served. The Order  
4 approving the Chapter 13 Trustee's Final Report, discharging the  
5 Chapter 13 Trustee, and documenting that the Chapter 13 Plan had  
6 been completed, was filed on October 16, 2013. Notice that the  
7 Chapter 13 Plan was completed and that the court was entering the  
8 discharge was filed on October 17, 2013 and served on October 19,  
9 2013.<sup>6</sup>

#### 10 ENTRY OF DEFAULT JUDGMENT

11 Federal Rule of Civil Procedure 55 and Federal Rule of  
12 Bankruptcy Procedure 7055 govern default judgments. *In re McGee*,  
13 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default  
14 judgment is a two-step process which requires: (1) entry of the  
15 defendant's default, and (2) entry of a default judgment. *Id.*  
16 at 770.

17 Even when a party has defaulted and all procedural  
18 requirements for a default judgment are satisfied, a claimant is  
19 not entitled to a default judgment as a matter of right.  
20 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette  
21 & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is  
22 within the discretion of the court. *Eitel v. McCool*, 782 F.2d  
23 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as  
24 the judicial process prefers determining cases on their merits  
25 whenever reasonably possible. *Id.* at 1472. Factors which the  
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27 <sup>6</sup> Bankr. Case Order Approving Final Report, Notice of Intent to  
28 Enter Chapter 13 Discharge, and BNC Certificate of Service; Dckts. 57,  
58, and 59, respectively.

1 court may consider in exercising its discretion include:

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

10 *Id.* at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-  
11 05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph  
12 eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

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

#### 21 **CONSIDERATION OF EACH CLAIM FOR RELIEF**

22 The court considers each Claim for Relief stated in the  
23 Complaint, the evidence presented, and whether Plaintiff has  
24 established the right to such relief. In ruling on this Motion,  
25 the court has been presented with issues concerning whether claims  
26 for relief have been pleaded by the Plaintiff, and if so, whether  
27 sufficient, credible evidence has been presented to support  
28 granting the relief requested. The court begins with a brief

1 discussion of the minimum pleading requirements in federal court,  
2 which are applicable to all of the Claims for Relief stated in the  
3 Complaint.

4 Proper pleading of a claim in federal court for bankruptcy  
5 proceedings is governed by Federal Rule of Civil Procedure 8(a) and  
6 Federal Rule of Bankruptcy Procedure 7008(a). The basic  
7 requirement is stated as,

8 (a) Claim For Relief. A pleading that states a claim for  
9 relief must contain;  
10 ...

11 (2) a short and plain statement of the claim showing that  
12 the pleader is entitled to relief; and

13 (3) a demand for the relief sought, which may include  
14 relief in the alternative or different types of relief.

15 Fed. R. Civ. P. 8(a)(2), (3); Fed. R. Bankr. P. 7008(a).

16 These general pleading requirements for a complaint in federal  
17 court were addressed by the United States Supreme Court in *Bell*  
18 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and restated by the  
19 Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In  
20 discussing the minimum pleading requirement for a complaint (which  
21 only requires a "short and plain statement of the claim showing  
22 that the pleader is entitled to relief" (Fed. R. Civ. P. 7(a)(2)),  
23 the Supreme Court reaffirmed that more than "an unadorned, the-  
24 defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556  
25 U.S. at 678-679. Further, a pleading which offers mere "labels and  
26 conclusions" of a "formulaic recitations of the elements of a cause  
27 of action" are insufficient. *Id.* A complaint must contain  
28 sufficient factual matter, if accepted as true, "to state a claim  
to relief that is plausible on its face." *Id.* It need not be  
probable that the plaintiff will prevail, but that there are

1 sufficient grounds a plausible claim has been pleaded by the party.

2  
3 **First Claim for Relief: Ratification of Prior**  
4 **Order Valuing Defendant's Secured Claim**

5 Plaintiff first seeks to have the Court "ratify" the value of  
6 the Residence which was determined as part of the court's final  
7 order determining the value of Defendant's Secured Claim to be  
8 \$0.00. The court reads this First Claim for Relief to request that  
9 the court issue a judgment reaffirming that prior final order and  
10 supporting findings of fact valuing the Residence in determining  
11 that Defendant's Secured Claim has a value of \$0.00 are valid.

12 The court having already determined Defendant's Secured Claim  
13 to have a value of \$0.00, no reason exists to issue a judgment  
14 stating that the court's prior findings of fact are "affirmed."  
15 That prior order and the findings of fact thereunder are not  
16 subject to attack or dispute. The findings and that final order  
17 stand, are enforceable, and binding on the parties. No  
18 "reaffirming" is required. No case or controversy with respect to  
19 the findings and order has been shown or exists, and no basis  
20 exists for granting such relief. U.S. Constitution, Article III,  
21 Section 2.

22 The requested relief on the First Claim for Relief is not  
23 warranted and the Motion requesting such relief is denied.

24 **Second Claim for Relief: Determination of The**  
25 **Extent of the Second Trust Deed Claim**

26 Plaintiff requests that pursuant to 11 U.S.C § 506(a) and  
27 Federal Rule of Bankruptcy Procedure § 3012 the Court "[r]atify  
28 the nature and extent of the Second Deed of Trust on the (Real)  
Property as determined...by Order on July 2, 2010, of zero as



1 stated in the order attached as Exhibit B.”<sup>7</sup> This appears to be a  
2 rehash of the First Claim for Relief, with a slight twist by  
3 focusing on the Second Deed of Trust, not the claim.

4 The court first notes that the requested relief, that the  
5 nature and extent of the Second Deed of Trust is “zero,” misstates  
6 the court’s prior order. The court determined that the value of  
7 the “secured claim” is \$0.00, not that the Second Deed of Trust is  
8 “zero.” A deed of trust is an interest in real property to secure  
9 an obligation, and is not the debt.<sup>8</sup> *Monterey S.P. Partnership v.*  
10 *W. L. Bankgham, Inc.*, 49 Cal. 3d 454, 460 (1989); *Bank of Italy*  
11 *National Trust and Savings Association v. Bentley*, 271 Cal. 644  
12 (1933). An interest in real property is not, and does not, become  
13 “zero.”

14 The court has already issued a final order determining that  
15 Defendant’s Secured Claim has a value of \$0.00. There has been no  
16 ruling that “[t]he nature and extent of the SECOND TRUST DEED on the  
17 (Real) Property...of zero as stated in the attached order...”<sup>9</sup>

18 The Motion requesting entry of a default judgment on the  
19 Second Claim for Relief is denied.

20  
21 **Third Claim for Relief: Extinguishment**  
**of the Second Trust Deed Claim**

22 Plaintiff has completed her Chapter 13 Plan and requested that  
23 the Defendant reconvey the Second Deed of Trust. Evidence has been

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24 <sup>7</sup> Complaint, ¶ 12

25 <sup>8</sup> In some situations the deed of trust may create obligations,  
26 which themselves are secured by the deed of trust. These commonly  
27 include obligations to pay property taxes, not use the property for  
illegal purposes, and not to commit waste.

28 <sup>9</sup> Complaint, ¶ 10.

1 presented that Defendant called the Plaintiff's Counsel on  
2 October 21, 2013, and advised Counsel that Defendant would not  
3 discuss it with Plaintiff's bankruptcy attorney of record (the same  
4 person as Counsel for Plaintiff) without separate written  
5 authorization from the Plaintiff. Defendant did not provide  
6 Plaintiff with, or notification that the reconveyance of the Second  
7 Deed of Trust would be recorded and the lien thereunder released.

8 Plaintiff now requests judgment from the court to extinguish  
9 the second deed of trust legally described as:

10 The real property in the City of West Sacramento, County  
11 of Yolo, State of California, described as:

12 Lot 104, Arlington Oaks Unit 2, in the City of West  
13 Sacramento, County of Yolo, State of California, as on  
14 the Map filed April 30, 1953 in Book 4, Page(s) 57 and 58  
15 of Maps, in the Office of the County Recorder of said  
16 County.

17 APN: 045-051-08-01 20.

18 As documented by the Trustee's Final Report and Account in the  
19 Plaintiff's bankruptcy case, Plaintiff's Chapter 13 Plan was  
20 confirmed on July 2, 2010, and completed on May 22, 2013. The  
21 Plaintiff received her discharge on November 4, 2013.<sup>10</sup>

22 Plaintiff has properly stated a claim for, and presented  
23 evidence in support of the Motion for Entry of Default Judgment.  
24 Plaintiff is entitled to the full reconveyance of the Second Deed  
25 of Trust and to have title free and clear of such encumbrance.  
26 This court has previously addressed in detail the basis under  
27 California state law, standard note and deed of trust contractual  
28 law, and bankruptcy law for a deed of trust being void upon the

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<sup>10</sup> Bankr. Case, Dckts. 53 and 60, respectively.

1 completion of a Chapter 13 Plan which provides for payment of the  
2 11 U.S.C. § 506(a) determinated secured claim value. Upon  
3 completion of such a plan, the creditor is required (contractually  
4 and statutorily) to reconvey the deed of trust to clear record  
5 title of the void deed of trust. *In re Frazier*, 448 B.R. 803  
6 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012); *Martin*  
7 *v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122  
8 (Bankr. E.D. CA 2013).

9 Upon completion of the Chapter 13 Plan and its terms becoming  
10 the final, modified contract between the Plaintiff, Defendant, and  
11 other creditors, there remains no obligation which is secured by  
12 the Second Deed of Trust. As a matter of California law, the  
13 Second Deed of Trust is void. The lien is also rendered void by  
14 operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13  
15 Plan.<sup>11</sup>

16 In addition, California Civil Code § 2941(b)(1) imposes a  
17 statutory obligation on Defendant, as the beneficiary under the  
18 Second Deed of Trust, to reconvey that deed of trust when the  
19 secured obligation has been satisfied. The Chapter 13 Plan having  
20 been completed and Defendant having been paid the full amount of  
21 the secured claim as determined pursuant to 11 U.S.C. § 506(a), the  
22 Defendant's Secured Claim has been satisfied and there remains no  
23 obligation secured by the Second Deed of Trust.

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24  
25 <sup>11</sup> WITKIN SUMMARY OF CALIFORNIA 9 LAW, TENTH EDITION, § 117,  
26 citing California Civil Code § 2939 et seq.; Rest.3d, Property  
27 (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed  
28 of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d,  
§ 179:511. See *Martin v. CitiFinancial Services, Inc. (In re Martin)*,  
491 B.R. 122 (Bankr. E.D. CA 2013), for discussion of 11 U.S.C.  
§ 506(d) application in this situation.

1 Plaintiff directs the court to the Second Deed of Trust, and  
2 not any specific portion thereof, as grounds for the relief  
3 requested. The court, reading through the Second Deed of Trust,  
4 has identified Paragraph 23 which is titled "Reconveyance." It  
5 provides that upon payment of all sums secured by the Second Deed  
6 of Trust, Defendant shall have the interests under the Second Deed  
7 of Trust Reconveyed. This is a contractual obligation to reconvey  
8 the Second Deed of Trust now that the Chapter 13 Plan has been  
9 completed.

10 The Plaintiff is entitled to a determination that the Second  
11 Deed of Trust is void and of no force and effect. The court shall  
12 issue a judgment that the Second Deed of Trust is null and void,  
13 and of no force and effect, with respect to the following property:

14 The real property in the City of West Sacramento, County  
15 of Yolo, State of California, described as:

16 Lot 104, Arlington Oaks Unit 2, in the City of West  
17 Sacramento, County of Yolo, State of California, as on  
18 the Map filed April 30, 1953 in Book 4, Page(s) 57 and 58  
19 of Maps, in the Office of the County Recorder of said  
20 County.

21 APN: 045-051-08-01 20

22 **Fourth Claim for Relief: Violation of**  
23 **Rosenthal Fair Debt Collection Practices Act**

24 Plaintiff alleges that Defendant has violated the California  
25 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"). The  
26 collection of debts incurred primarily for personal, family, or  
27 household use, are subject to both federal and state statutes  
28 regulating collection practices - principally the Federal Fair Debt  
Collection Practices Act (15 U.S.C. §§ 1692-1692o) and the  
California Fair Debt Collection Practices Act (Rosenthal Fair Debt

1 Collection Practices Act, California Civil Code §§ 1788-1788.32).<sup>12</sup>  
2 The Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act")  
3 is California's version of the Fair Debt Collection Practices Act  
4 ("FDCPA"), which pre-dated the FDCPA and now incorporates by  
5 reference specific FDCPA's requirements and remedies.<sup>13</sup>

6 The FDCPA and the state Rosenthal Act differ in one key  
7 respect: the Rosenthal Act provides broader protection for  
8 consumers than the federal law. The FDCPA applies to any person or  
9 employee collecting consumer debt - not merely third-party debt  
10 collectors.<sup>14</sup> Thus, a creditor might be exempt from the FDCPA, but  
11 subject to the Rosenthal Act, which imposes exactly the same  
12 limitations and restrictions as the FDCPA.<sup>15</sup>

13 Plaintiff contends that Defendant is a debt collector under  
14 the Rosenthal Act who is attempting to collect a consumer debt.  
15 Plaintiff asserts Defendant's Secured Claim is a "debt" under the  
16 Rosenthal Act, constituting a "consumer credit transaction" as  
17 defined in California Civil Code §§ 1788.2 (d), (e) and (f).

18 However, Plaintiff also alleges that the debt at issue is  
19 "attempting to be collected by Specialized Loan Servicing  
20 ['Specialized']," which is not named as a defendant in the  
21

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22 <sup>12</sup> 1-1 MB Practice Guide: CA Debt Collection 1.17.

23 <sup>13</sup> *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir.  
24 2012); Cal. Civ. § 1788.17.

25 <sup>14</sup> Cal. Civ. § 1788.2(a)(c), (b), (f), and (e); and 15 U.S.C.  
26 § 1692a(6), California and Federal definitions of "debt collector"  
subject to the collection laws.

27 <sup>15</sup> *Pirouzian v. SLM Corp.*, 396 F Supp2d 1124, 1131 (S.D. Cal.  
28 2005) ("By enlarging the pool of entities who can be sued, the  
[Rosenthal Act] merely affords a separate state remedy, which grants  
protection beyond what is provided by the FDCPA.")

1 Complaint or served with the Summons, Reissued Summons, or  
2 Complaint.<sup>16</sup>

3 Plaintiff offers no evidence that JPMorgan Chase Bank, N.A.,  
4 has been collecting or attempting to collect a debt. Moreover,  
5 Plaintiff acknowledges that another company has been servicing the  
6 loan secured by the second Deed of Trust on Plaintiff's property.  
7 The Complaint fails to set forth a short and plain statement of the  
8 claim showing that Plaintiff is entitled to the requested relief.

9 The lack of evidence supporting Plaintiff's contentions is  
10 particularly conspicuous. Plaintiff offers no declarations or  
11 documents of any conduct by Defendant in violation of the Rosenthal  
12 Act. The limited evidence presented is that Defendant has failed  
13 to take action with respect to reconveying the Second Deed of Trust  
14 and then communicating the December 2013 reconveyance to Plaintiff  
15 and Plaintiff's Counsel.

16 Plaintiff has not sufficiently pleaded a claim against  
17 Defendant for a violation of the Rosenthal Act. Further, to the  
18 extent that Plaintiff argues a claim has been properly pleaded  
19 (Fed. R. Evid. 8(a)(2), Fed. R. Bank. P. 7008), Plaintiff has  
20 failed to provide sufficient, credible evidence of any violation by  
21 Defendant.

22 The Motion requesting entry of a default judgment on the  
23 Fourth Claim for Relief is denied.

24 ///

25 ///

26 ///

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28 <sup>16</sup> Certificates of Service, Dckts. 6, 10.

1                   **Fifth Claim for Relief: Violation of Plaintiff's**  
2                   **California Constitutional Right of Privacy**

3           Plaintiff alleges that her California constitutionally  
4 protected right of privacy was invaded when Defendant continued to  
5 "contact and harass" Plaintiff. The California Supreme Court in  
6 *Hill v. National Collegiate Athletic Assn.*, 865 P. 2d 633 (1994)  
7 articulated a private cause of action against a business for  
8 violating a Californian's right of privacy. Plaintiff argues that  
9 Defendant is still contacting Plaintiff and demanding payment on a  
10 discharged loan, despite the Plaintiff having obtained a stay under  
11 11 U.S.C. §362 and a discharge injunction under 11 U.S.C. §524.

12           The California Supreme Court in *Hill* held that the elements of  
13 a private cause of action for invasion of the state constitutional  
14 right of privacy are:

15           (1) A legally protected privacy interest which consists  
16 of either "informational privacy" or "autonomy privacy."  
17 "Informational privacy" is an interest which precludes  
18 the dissemination or misuse of sensitive and confidential  
19 information. "Autonomy privacy" is an interest in making  
20 intimate personal decisions or conducting personal  
21 activities without observation, intrusion, or  
22 interference.

23           (2) A reasonable expectation of privacy. Consent,  
24 customs, social practices, and physical settings can  
25 create or inhibit a reasonable expectation of privacy.  
26 This is an objective entitlement founded on "broadly  
27 based and widely accepted community norms."

28           (3) A serious invasion of the privacy interest. Not every  
invasion is a legal wrong. The invasion must be  
"sufficiently serious" to constitute "an egregious breach  
of the social norms underlying the privacy right."

          With respect to this Claim for Relief, a number of reported  
cases have dismissed a claim for invasion of the California  
constitutional right of privacy on the ground that the behavior was  
not highly offensive and/or that the alleged injury was not

1 serious. 1 Rights of Publicity and Privacy § 6:19 (2d ed). See  
2 e.g. *Ruiz v. Gap, Inc.*, 540 F. Supp. 2d 1121, 1128 (N.D. Cal.  
3 2008), aff'd, 380 Fed. Appx. 689 (9th Cir. 2010) (Theft of a retail  
4 store's laptop containing social security numbers of job applicants  
5 did not constitute an egregious breach of privacy in violation of  
6 the California constitutional right to privacy. "The only harm  
7 Ruiz alleges in his Complaint is that, as a result of the laptop  
8 thefts, he is now at an increased risk of identity theft.");  
9 *Folgelstrom v. Lamps Plus, Inc.*, 195 Cal. App. 4th 986, 992,  
10 125 Cal. Rptr. 3d 260 (2d Dist. 2011), as modified, (June 7, 2011)  
11 (Plaintiff had neither a constitutional privacy claim nor a common  
12 law privacy claim because any privacy interest in his home address  
13 to prevent receiving unwanted mailed marketing materials from a  
14 company plaintiff bought a product from was not a "serious"  
15 invasion of privacy, but rather was "routine commercial  
16 behavior.").

17 Plaintiff's conclusory statements in the Complaint do not  
18 constitute a "short and plain statement of the claim showing that  
19 [Plaintiff] is entitled to relief" against Defendant on the Fourth  
20 Claim for Relief. Plaintiff does not allege, and has not provided  
21 credible evidence, that she has an informational or autonomy  
22 privacy right which has been violated in the alleged interactions  
23 with the Defendant. Plaintiff merely alleges in the Complaint that  
24 Defendant's failure to reconvey the Second Deed of Trust has  
25 violated her California constitutional right of privacy. Though  
26 there is the vague, non-specific allegation that Defendant is  
27 "repeatedly calling" and "sending notices" to Plaintiff after  
28 discharge, no evidence of such calls or notices has been provided.



1 At best, the Complaint is merely "stock language" of conclusions,  
2 upon which Plaintiff demands "pay me."

3 Plaintiff's allegations are lacking the basic elements of the  
4 "Five Ws" - a formula inculcated in grade school students and  
5 apprentice news reporters to identify "who, what, where, when, and  
6 why" in providing a complete picture of a situation. Plaintiff  
7 fails to allege any specific facts or provide evidence of conduct  
8 by Defendant asserted to violation the California constitutional  
9 right of privacy. Plaintiff provides no evidence with respect to  
10 the general allegation that "numerous calls were made" as to who  
11 made these calls, when they were made, the number of calls, the  
12 subject matter of the calls, and the effect of the calls.

13 Plaintiff concludes that "calling by telephone is no different  
14 than the Defendants coming to their door and banging on it."  
15 Plaintiff does not provide any legal authority for the proposition  
16 that a phone call is the same as someone banging on the door.  
17 Nothing is presented (or even alleged) regarding (1) how often  
18 Plaintiff was called, (2) who called, (3) time the calls were made,  
19 (4) dates the calls were made, (5) subject matters of the calls,  
20 (6) responses to the calls, (7) impact of the calls on the  
21 Plaintiff, (8) requests to cease such communications, and (9) where  
22 the calls were received (home, place of employment, neighbors'  
23 residence).

24 Not having offered sufficient factual allegations and not  
25 providing the court with credible evidence that Plaintiff's  
26 California constitutional right to privacy has been violated by the  
27 Defendant, the Motion for entry of default judgment on the Fifth  
28 Claim for Relief is denied.

1                   **Sixth Claim for Relief: Violation of**  
2                   **California Civil Code Section 2941(d)**

3           Plaintiff states that she executed and delivered to Washington  
4 Mutual, as beneficiary, a certain trust deed recorded in Yolo  
5 County, California, on August 27, 2007 as Doc # 2007-003027823, and  
6 covering the property. Defendant is the successor in interest to  
7 the Note and Second Deed of Trust, and is the creditor asserting  
8 the secured and unsecured claim thereunder in this case.<sup>17</sup> Upon  
9 completion of the Chapter 13 Plan and entry of her bankruptcy  
10 discharge, demanded that Defendant reconvey the Second Deed of  
11 Trust.<sup>18</sup> Plaintiff states that Defendant failed and refused to  
12 reconvey the Second Deed of Trust.

13           Plaintiff having completed the Chapter 13 Plan, the Second  
14 Deed of Trust is void (the 11 U.S.C. § 506(a) secured claim value  
15 having been paid in full) and Plaintiff is entitled to have the  
16 Second Deed of Trust reconveyed by Defendant. Plaintiff provides  
17 evidence that Defendant did not return the original note marked  
18 paid, reconveyed or instructed the reconveyance by the trustee  
19 thereunder of the Second Deed of Trust, and any other necessary  
20 documents required under California Civil Code § 2941 within  
21 30 days of the notice that the Chapter 13 Plan was completed.

22           The Bankruptcy Court Notice documenting the Chapter 13 Plan  
23 had been completed was served by the Clerk of the Court on  
24 October 19, 2013. Adding three days for service by mail (Fed. R.

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25  
26           <sup>17</sup> Defendant filed Proof of Claim No. 5 in Plaintiff's bankruptcy  
27 case, to which is attached the Washington Mutual Note and the Second  
28 Deed of Trust.

<sup>18</sup> The Demand for Reconveyance is provided as Exhibit C to the  
Complaint, Dckt. 1.

1 Bank. P. 9007(f), if applicable), Defendant had notice as of  
2 October 22, 2013, that the Chapter 13 Plan was completed and all of  
3 the rights and obligations provided for in the Plan were  
4 permanently fixed.

5 California Civil Code § 2941(b)(1) requires that within  
6 30 days of the obligation secured by a deed of trust having been  
7 satisfied, the beneficiary [Defendant] shall deliver to the trustee  
8 under the deed of trust an executed request for reconveyance and  
9 supporting documents. The trustee under the deed of trust then has  
10 21 days from receipt of the request for reconveyance to reconvey  
11 the deed of trust. Cal. Civ. § 2941(b)(1)(A). The trustee under  
12 the deed of trust, not the beneficiary, is responsible for  
13 providing a copy of the reconveyance to the owner of the property  
14 – here the Plaintiff. Cal. Civ. § 2941(b)(1)(B)(ii).

15 From the facts presented to this court, the thirty day period  
16 from after October 22, 2013, for Defendant to provide a request for  
17 reconveyance to the trustee under the Second Deed of Trust expired  
18 on November 21, 2013. Then, the twenty-one day period 21 for the  
19 trustee under the Second Deed of Trust to record the reconveyance  
20 expired on December 12, 2013.<sup>19</sup>

21 Defendant has elected not to appear in connection with the  
22 present Motion, and has not provided any evidence relating to its  
23 conduct and the relief requested. The reconveyance was recorded on  
24  
25

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26  
27 <sup>19</sup> The term “cause to be recorded” with respect to a deed of  
28 trust for California Civil Code § 2941 is statutorily defined to  
include sending the reconveyance and all required fees to the county  
recorder’s office. Cal. Civ. § 2941(c).

1 December 17, 2013.<sup>20</sup> That is more than the maximum combined thirty  
2 day request for reconveyance and twenty-one day recording of  
3 reconveyance periods. Even taking into account that "recording"  
4 can include depositing for delivery by a service which tracks  
5 delivery (such as USPS Certified mail, UPS, Federal Express  
6 services), the December 17, 2013 recording is outside what this  
7 court concludes, based on the evidence presented, the time period  
8 permitted under California Civil Code § 2924(b). The court infers  
9 from the evidence presented that Defendant failed to timely  
10 instruct the trustee to issue the reconveyance.<sup>21</sup>

11 California Civil Code § 2941(d) provides that a violation of  
12 the Civil Code 2941 requirement makes the violator liable to the  
13 Plaintiff for all damages sustained by reason of the violation, and  
14 additionally shall (not may) pay the Plaintiff \$500.00 in statutory  
15 damages.

16 Plaintiff has not alleged, and did not provide any evidence of  
17 any damages sustained by the violation. Plaintiff has demanded,  
18 and provided evidence to support the award of the mandatory \$500.00  
19 in statutory damages.

20 In addition, Plaintiff requests that the court award her the  
21 attorneys' fees for litigating this Adversary Proceeding as part of

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22 <sup>20</sup> Exhibit G, Dckt. 26; Reconveyance of Second Deed of Trust,  
23 bearing Yolo County, California Recorder's Stamp with December 17,  
24 2013 recording date.

25 <sup>21</sup> Though it might have been possible for Defendant to construct  
26 an argument or explanation that Defendant (and possibly the trustee)  
27 might have just squeaked under the filing deadline, it is not for the  
28 court to construct, develop, prosecute, and then rule such arguments  
for one of the parties. Defendant, having made the conscious decision  
not to not respond to the Complaint or the present Motion, it cannot  
be heard to complain that the court did not correctly develop and  
argue Defendant's position.

1 her actual damages. Clearly, California Civil Code § 2941(d) does  
2 not grant a statutory right attorneys' fees for § 2941 litigation  
3 with the creditor. The California Legislature knows how to, and  
4 has created such statutory attorneys' fees provisions - including  
5 California Civil Code §§ 1785.31(a)(1) [Consumer Credit Reporting  
6 Agencies Act], 1788.30(c) [Rosenthal Act], 1780(e) [Consumers Legal  
7 Remedies Act], and 1811.1 [Unruh Act]. No basis has been shown for  
8 the award of the attorneys' fees for Plaintiff prosecuting this  
9 Complaint.

10 Based on the evidence presented supporting Plaintiff's claim,  
11 the court grants the motion, awards the \$500.00 damages imposed by  
12 California Civil Code § 2924(d) to be paid by Defendant, and shall  
13 enter judgment thereon.

14  
15 **Seventh Claim for Relief: Violation of**  
**the Fair Credit Reporting Act**

16 Plaintiff alleges that the Defendant is reporting  
17 (unspecified) "derogatory information" about Plaintiff to one or  
18 more consumer reporting agencies (credit bureaus) as defined by  
19 15 U.S.C. § 1681a. Plaintiff alleges that she has a copy of their  
20 credit report and that she has determined that the credit report  
21 has "derogatory information" which has been reported by Defendant  
22 to the consumer reporting agencies.

23 Plaintiff further asserts that Defendant has not removed the  
24 "derogatory information" and has not provided notice of this  
25 disputed matter to the credit reporting agencies. Plaintiff  
26 asserts that this is a violation of 15 U.S.C. § 1681s-2, the  
27 Federal Fair Credit Reporting Act ("FCRA"). It is further alleged  
28 that Defendant did not complete an investigation of Plaintiff's

1 written dispute and provide the results of an investigation to  
2 Plaintiff within the thirty day period as required by 15 U.S.C.  
3 § 1681s-2.

4 The FCRA imposes a duty on furnishers of information to a  
5 consumer reporting agency to provide accurate information, and bars  
6 such agencies from reporting information if they have actual  
7 knowledge, after receipt of notice and confirmation of such errors,  
8 or that have reasonable cause to believe that the information being  
9 reported is inaccurate. 15 U.S.C. § 1681(a). Consumer credit  
10 reporting agencies have an affirmative duty to correct and update  
11 information, and furnishers of information must notify agencies of  
12 any information that may not be complete or accurate, of closed  
13 accounts, delinquent accounts, and disputed information.

14 In the instant Adversary Complaint, Plaintiff has not alleged  
15 what "derogatory information" was provided by Defendant and is  
16 being reported by a consumer reporting agency. Other than citing  
17 statutory provisions and saying that Defendant has violated them,  
18 there is no statement of sufficient factual matter, if accepted as  
19 true, to state a claim to relief that is plausible on its face.<sup>22</sup>

20 Plaintiff has offered no credible evidence in support of the  
21 naked assertions that Defendant has violated the FCRA. No copies  
22 of or quotations from the offending reports are provided.  
23 Plaintiff does not present evidence of Defendant providing false or  
24 unverified information to consumer reporting agencies concerning  
25 the debt owed to Defendant. Plaintiff alleges that Defendant has  
26

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27 <sup>22</sup> See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), discussed *supra*  
28 concerning the requested attorneys' fees, which discussing is equally  
applicable to all the claims stated in the Complaint.

1 "not provided notice of this disputed matter to the credit bureaus  
2 and is therefore in violation of 15 U.S.C. § 1681s-2," but does not  
3 provide any factual detail or evidence in support of a bald  
4 allegation that "Defendant broke the law."

5 Plaintiff simply states that she seeks a judgment against  
6 Defendant for willful noncompliance of the Fair Credit Reporting  
7 Act and requests statutory remedies as defined by 15 U.S.C. § 1681.  
8 This is based on Plaintiff having determined that such violations  
9 occurred and that Plaintiff having determined that she is entitled  
10 to damages. To grant the relief requested, this court would be  
11 relegated to be nothing more than the Plaintiff's rubber stamp -  
12 signing a judgment merely because the Plaintiff instructed to court  
13 to do so.

14 No claim having been sufficiently pleaded (Fed. R. Evid. 8,  
15 Fed. R. Bankr. P. 7008) and there being no credible evidence to  
16 support a determination that a violation of the FDCPA occurred, the  
17 court denies the Motion for default judgment for the Seventh Claim  
18 for Relief.

#### 19 **Award of Attorneys' Fees**

20 Plaintiff requests an award of attorneys' fees. This claim  
21 for relief is not pleaded as a separate cause of action or claim in  
22 the Complaint. The requirements for stating a claim for attorneys'  
23 fees in Bankruptcy Court are set out by Federal Rule of Bankruptcy  
24 Procedure 7008(b), which provides that

25 A request for an award of attorney's fees  
26 shall be pleaded as a claim in a complaint,  
27 cross-claim, third party complaint, answer, or  
reply as may be appropriate.

28 As stated above, Federal Rule of Civil Procedure 8(a) and Federal

1 Rule of Bankruptcy Procedure 7008(a) require there to be "a short  
2 and plain statement of the claim showing that the pleader is  
3 entitled to relief," which must be more than merely "an unadorned,  
4 the-defendant-unlawfully-harmed-me accusation" or "formulaic  
5 recitations of the elements of a cause of action," as stated by the  
6 Supreme Court in *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*.

7 Courts have split on the issue of what constitutes a party  
8 having properly "pleaded as a claim in a complaint...., answer or  
9 reply" the right to attorneys' fees. This court identifies one  
10 line of cases from bankruptcy courts holding that a "claim" for  
11 attorney's fees does not need to be pleaded in the body of a  
12 complaint. See *First Nat'l Bank v. Bernhardt* (In re Bernhardt),  
13 103 B.R. 198, 199 (Bankr. N.D. Ill. 1989) (holding, without  
14 discussing Rule 7008(b), that "[t]here is no provision in the Code  
15 or the rules that requires [a debtor] to plead a request for  
16 attorney's fees" and that if there were such a provision requiring  
17 specific pleading, a prayer for "'such other relief as is just' is  
18 sufficient"); accord, *Thorp Credit, Inc. v. Smith* (In re Smith),  
19 54 B.R. 299, 303 (Bankr. S.D. Iowa 1985) ("[T]here [is no] good  
20 reason to hold that such pleading is required. 'Since § 523(d)  
21 clearly states that the debtor is entitled to costs and reasonable  
22 attorney's fees, the creditor is on notice that loss of his claim  
23 could result in his being assessed those fees and costs.'")  
24 (quoting *Commercial Union Ins. Co. v. Sidore* (In re Sidore),  
25 41 B.R. 206, 209 (Bankr.W.D.N.Y.1984)).

26 This court applies a plain language reading of the  
27 requirements of Federal Rule of Bankruptcy Procedure 7008 (a) and  
28



1 (b), and Federal Rule of Civil Procedure 8(b).<sup>23</sup> To hold that a  
2 "claim" for attorneys' fees merely needs to be demanded in the  
3 prayer is in derogation of the plain language of Federal Rule of  
4 Bankruptcy Procedure 7008(b) stating that it must be pleaded as a  
5 "claim in the complaint, cross-claim, third-party complaint,  
6 answer, or reply." Federal Rule of Civil Procedure 8(a)(2) and  
7 Federal Rule of Bankruptcy Procedure 7008(a) state the rules for  
8 pleading a claim, and the Supreme Court in *Bell Atlantic v. Twombly*  
9 and *Ashcroft v. Iqbal* has provided clear direction for applying  
10 these rules.

11 The Bankruptcy Appellate Panel for the Ninth Circuit in  
12 *Charley Y., Inc. v. Carey (In re Carey)*, 446 B.R. 384 (B.A.P. 9th  
13 Cir. 2011), concluded that while the claim does not need to be  
14 pleaded as a formal separate cause of action, the claim must be  
15 sufficient to comply with Federal Rule of Civil Procedure 8(a)(2)  
16 and Federal Rule of Bankruptcy Procedure 7008(a). *Id.*, 392-393.  
17 In concluding that a claim for attorneys' fees was sufficiently  
18 pleaded in the complaint before that court, the Bankruptcy  
19 Appellate Panel found that (1) the preamble to that complaint

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21 <sup>23</sup> The Supreme Court has been very clear in reading and applying  
22 the "plain language" stated by Congress in statutes. *Hartford*  
23 *Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S.  
24 1 (2000); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235,  
25 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989). The basic direction is  
26 that Congress says in a statute what it means and means in a statute  
27 what it says. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254, 117  
28 L. Ed. 2d 391, 112 S. Ct. 1146 (1992); (quoting *Caminetti v. United*  
*States*, 242 U.S. 470, 485, 61 L. Ed. 442, 37 S. Ct. 192 (1917));  
*United Savings Association of Texas v. Timbers of Inwood Forest*  
*Associates, LTD.*, 484 U.S. 365, 371 (1988). This court will not  
presuppose that the Supreme Court or Congress, in adopting the Federal  
Rules of Bankruptcy Procedure, did so expecting that the inferior  
court would not first look to the plain language meaning of the Rule.

1 stated that attorneys' fees were sought; (2) Paragraph 1 of the  
2 complaint identified a note as a contractual basis for the  
3 obligation; (3) Paragraph 7 of that complaint cited to a  
4 Replacement Guarantee contractual obligation; (4) Paragraph 10 of  
5 that complaint cited to the state court complaint on the same claim  
6 and that plaintiff sought attorneys' fees with respect to that  
7 claim; (5) the first claim for relief in that complaint realleged  
8 paragraphs 1-18 of the complaint; and (6) finally, the prayer for  
9 that complaint requested judgment for damages which expressly  
10 included attorneys' fees. The plaintiff in that case sought to  
11 enforce the contractual attorneys' fees provisions in the note and  
12 the restated guaranty.

13 While Plaintiff's Complaint does not state a separate cause of  
14 action for attorneys' fees, the court finds that within the body of  
15 the Complaint grounds are stated in support of such relief. These  
16 include the following:

- 17 A. Allegations that secured claim, as determined pursuant to  
18 11 U.S.C. § 506(a), has been satisfied.
- 19 B. JPMorgan Chase Bank, N.A. has failed to reconvey the  
20 Second Deed of Trust and clear title to the Plaintiff's  
21 property of that void lien.
- 22 C. Attorneys' fees are requested pursuant to California  
23 Civil Code § 2941.
- 24 D. The Second Deed of Trust, ¶ 9, provides a contractual  
25 attorneys' fees provision, which is reciprocal as  
26 provided in California Civil Code § 1717.

27 Though the better practice is to plead a clear "claim" which  
28 states the basis for the requested attorneys' fees, the Complaint  
provides the court with the minimum pleading necessary. The  
elements of a "short and plain statement of the claim showing that  
the pleader is entitled to relief" can be cobbled together from the

1 Complaint.

2 **Amount of Attorneys' Fee**

3 Plaintiff seeks the recovery of \$4,774.75 in attorneys' fees.  
4 The evidence in support of these fees and costs is provided by the  
5 Declaration of Peter Cianchetta, counsel for Plaintiff, and  
6 Exhibit F, a detailed billing statement documenting the fees and  
7 costs. Dckts. 24 and 26, respectively. The detailed billing  
8 statement documents the services provided, the hourly rates  
9 charged, and the time expended for each charge.

10 These services include the pre-adversary proceeding "due  
11 diligence" to check the county real property records to confirm  
12 that JPMorgan Chase Bank, N.A. had failed to reconvey the Second  
13 Deed of Trust. The \$4,774.75 fees include the pre-filing due  
14 diligence, preparation and finalization of the Complaint, obtaining  
15 the original and a Re-Issued Summons, obtaining the entry of the  
16 default, preparing and filing the Motion for entry of default  
17 judgment, including the required supporting evidence. The  
18 requested fees do not include fees for the hearing on the Motion  
19 for Entry of Default Judgment or preparation of a proposed  
20 judgment.

21 The court considers whether an adjustment in the fees  
22 requested should be made in light of the court denying the relief  
23 requested under the Rosenthal Act claims, Fair Credit Reporting Act  
24 Claims, and California Constitutional Right of Privacy Claims. The  
25 detailed billing statement does not provide a breakdown of how much  
26 time and charges relate to these denied claims for relief.  
27 Plaintiff is not warranted in obtaining an award of attorneys' fees  
28 for such claims.

1 The court notes that counsel for Plaintiff has been very  
2 judicious in his billings and use of time in prosecuting this case.  
3 Clearly it is not a situation where a plaintiff's attorney saw an  
4 opportunity to excessively bill, hoping to have it slide by the  
5 court on a default judgment. Defendant has not opposed the award  
6 of attorneys' fee or asserted that the \$4,774.75 is not reasonable  
7 or proper.

8 Attorneys' fees in the amount of \$4,774.75 for obtaining a  
9 declaratory judgment that the Second Deed of Trust is void, an  
10 award of \$500.00 statutory damages for the violation of California  
11 Civil Code § 2941, obtaining the entry of the default, and  
12 prosecuting a motion for entry of default judgment and presenting  
13 the necessary evidence are reasonable. The court awards \$4,774.75  
14 in attorneys' fees for the Plaintiff.

15 Plaintiff has requested an additional \$113.00 costs and  
16 expenses in this Adversary Proceeding. These are not listed on the  
17 detailed billing statement. The Motion identifies these costs and  
18 expenses to be \$33.00 in County Recorder Fees, \$40.00 courier fee  
19 to obtained a certified copy of the court order, and \$40.00 courier  
20 fee to record the court order. While these costs are not described  
21 in detail, incurring \$113.00 in costs in prosecuting an adversary  
22 proceeding concerning real property title issues, obtaining the  
23 entry of a default, and prosecuting the motion for entry of a  
24 default judgment is not unreasonable.

25 The court allows \$4,774.75 in attorneys' fees and \$113.00 in  
26 costs for Plaintiff to be paid by JPMorgan Chase Bank, N.A.

#### 27 **CONCLUSION**

28 The court denies the Motion and does not enter judgment on the

1 First, Second, Fourth, Fifth, and Seventh Claims for Relief.

2 The court grants Judgment for Plaintiff and against Defendant  
3 for the Third Cause of Action, determining that the Second Deed of  
4 Trust is void and of no force and effect; for \$500.00 in statutory  
5 damages pursuant to California Civil Code § 29541(d) pursuant to  
6 the Sixth Cause of Action; and for \$4,774.75 in attorneys' fees and  
7 \$113.00 in costs.

8 The court not having entered judgment on all of the Claims for  
9 Relief, the Plaintiff shall file a motion to file an amended  
10 complaint for the First, Second, Fourth, Fifth, and Seventh Claims  
11 for Relief on or before **June 18, 2014**, if Plaintiff intends to  
12 prosecute any such claims. A copy of the proposed first amended  
13 complaint shall be filed as an exhibit with such motion.

14 If Plaintiff elects not to file such a motion or no such  
15 motion is filed on or before June 18, 2014, the court shall enter  
16 judgment granting relief on the Third and Sixth Claims for Relief  
17 and attorneys' fees, and dismiss without prejudice the First,  
18 Second, Fourth, Fifth, and Seventh Claims for Relief. If the  
19 Plaintiff elects to the dismissal of such claims, she may do so  
20 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and  
21 Federal Rule of Bankruptcy Procedure 7041 and not wait until after  
22 June 16, 2014 for the entry of the judgment. A copy of the Rule  
23 41(a)(1)(A)(i) dismissal will be emailed to Janet Larson, courtroom  
24 deputy for Department E, by Plaintiff if it is filed with the  
25 court.

26 This Memorandum Opinion and Decision constitutes the court's  
27 findings of fact and conclusions of law pursuant to Federal Rule of  
28 Civil Procedure 52 and Federal Rule of Bankruptcy Procedure 7052.

1 The court shall enter a separate order consistent with this Ruling.

2 Dated: June 4, 2014

3  
4 /s/  
5 RONALD H. SARGIS, Judge  
6 United States Bankruptcy Court  
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