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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 21-23841-E-13
DENNIS A. FRAZIER,)	
Debtor.)	
_____)	
FIRST TRUST,)	Adv. Proc. No. 22-2008
Plaintiff,)	
v.)	
DENNIS A. FRAZIER,)	
Defendant.)	
_____)	

**MEMORANDUM OPINION RE
COMPLAINT TO DETERMINE EXTENT, VALIDITY, AND AMOUNT
OF INTEREST IN REAL PROPERTY AND OBLIGATION SECURED THEREBY
AND
FOR NONDISCHARGEABILITY OF DEBT**

The court has been presented with a very interesting Complaint which is a good example of the broad range of State Law issues presented in Bankruptcy Court for adjudication by a Federal Judge. The Plaintiff, Carl Dexter, in his capacity as Trustee of First Trust,¹ (“Plaintiff-

¹ At the trial Carl Dexter testified that he is the Trustee of First Trust, and that First Trust is a “business trust,” and not a limited liability company, corporation, or other entity. As established under California and Federal Law and Rules, when a trust is a party to litigation, it is the trustee of the trust who is the named party, as trustee, and not the trust as an entity. See, Fed. R. Civ. P. 17(a)(E), requiring the “trustee of an express trust, to be the real party in interest to bring suit asserting rights of a trust; Fed. R. Bankr. P. 9017, and 4 MOORE’S FEDERAL PRACTICE - CIVIL § 17.10. See also, Cal. C.C.P. § 369(a), *Moeller v. Superior Court*, 16 Cal. 4th 1124, 1134 n. 3 (1994), *Presta v. Tepper*, 179 Cal. App.4th 909, 914 (Cal. App. 2009), and 60 Cal. Jur.3d, Trusts § 355.

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1 Trustee”)² has filed a complaint seeking to enforce rights and interests arising pursuant to the
2 Foreclosure Cancellation Guaranty Contract (Exhibit 2; referred to herein as “Foreclosure
3 Cancellation Guaranty” or “Contract”) and a Deed of Trust (Exhibit 4; “Deed of Trust”) recorded
4 against real property commonly known as 2 Odom Court, Sacramento, California (the “Residence”).
5 Dennis Frazier, the Defendant-Debtor, (“Defendant-Debtor”), who is the other party to the
6 Foreclosure Cancellation Guaranty, strongly opposes the Complaint. Defendant-Debtor opposes
7 the requested relief by Plaintiff-Trustee that the court determine that: (1) pursuant to the Foreclosure
8 Cancellation Guaranty Plaintiff-Trustee is a 50% joint venture owner of the proceeds from the
9 immediate sale of Defendant-Debtor’s Residence and (2) Defendant-Debtor’s financial obligations
10 to Plaintiff-Trustee pursuant to the Foreclosure Cancellation Guaranty are nondischargeable.

11 **REVIEW OF TESTIMONY, FINDINGS OF CREDIBILITY,**
12 **AND**
13 **FACTUAL DETERMINATIONS BY THE COURT**

14 For the contract at issue in this Adversary Proceeding, the Foreclosure Cancellation
15 Guaranty, the events leading up to the litigation relate to events similar to what many other
16 consumers have suffered in the past several years – Defendant-Debtor defaulting on the loan secured
17 by his Residence and then the default balance increasing during the COVID-19 period of mortgage
18 foreclosure and enforcement moratoria. Most of the facts are not in dispute, however, there is
19 testimony regarding some facts for which the court is required to expressly address the credibility
20 of the witnesses providing the testimony.

21 It is not in dispute that Defendant-Debtor owns and has owned his Residence for all periods

22 In open court on April 26, 2023, at a hearing called by the undersigned judge, the court addressed
23 with the respective counsel the correct identification of the real party in interest Plaintiff – that being Carl
24 Dexter, Trustee of First Trust, and not the Trust itself as named in the Complaint. As discussed with the
25 respective counsel for the Parties in this Adversary Proceeding in open court, the Parties consenting on
26 the record, and considering the real party in interest prosecuting the Complaint in this Adversary
27 Proceeding, Carl Dexter, as the Trustee of First Trust, has been substituted in as the real party in interest
28 as Plaintiff. Fed. R. Civ. Proc. 18(a)(1), (3) and Fed. R. Bankr. P. 7018. Civ. Minutes and Order; Dckts.
51, 52.

² In addressing the rights and interests of First Trust pursuant to the Foreclosure Cancellation
Guaranty, the court references “Plaintiff-Trustee,” as the party to this Adversary Proceeding for First
Trust for the determination of such rights and interests.

1 of time relevant to this Adversary Proceeding. Defendant-Debtor defaulted on the Freedom
2 Mortgage Loan secured by the Residence, and a Notice of Default was filed with the County
3 Recorder in the Fall of 2019. It is from that default that the relationship between Defendant-Debtor
4 and Plaintiff-Trustee grew and the results thereof are now before the court.

5
6 **Testimony of Defendant-Debtor
of Work Done by Plaintiff-Trustee**

7 Defendant-Debtor testified that after the Notice of Default was recorded, a woman came to
8 his door asking whether he wanted to sell the Residence. Defendant-Debtor testified that he told the
9 woman that he did not want to sell, but desired to modify the Freedom Mortgage Loan, cure the
10 default, and keep his Residence. He then further testified that the woman told him she worked with
11 a man who was an attorney, that attorney provided such services to consumers, and that she would
12 have the attorney contact Defendant-Debtor. Though the “attorney” was not identified by the
13 woman, Defendant-Debtor concludes that the “attorney” was and is the Plaintiff-Trustee. This
14 contention is hotly disputed by the Plaintiff-Trustee. There was not sufficient evidence for the court
15 to conclude that Plaintiff-Trustee was the person referred to by the woman. The determination of
16 such fact/contention is not material to the Decision in this Adversary Proceeding.

17 On October 5, 2019, subsequent to the woman having appeared at Defendant-Debtor’s door,
18 Plaintiff-Trustee contacted Defendant-Debtor at the Residence about the default on the Freedom
19 Mortgage Loan and the outstanding arrearage to be cured.

20 In the Fall of 2019, a series of Chapter 13 bankruptcy cases were filed by or for the
21 Defendant-Debtor, all of which were quickly dismissed by the court for failure to prosecute. The
22 first is Chapter 13 Case 19-24413, which was filed on July 15, 2019, and dismissed on July 26,
23 2019. The second is Chapter 13 Case 19-25933, which was filed on September 23, 2019, and
24 dismissed on October 4, 2019. The third is Chapter 13 Case 19-27457, which was filed on
25 December 2, 2019, and dismissed on December 20, 2019.

26 All three of these bankruptcy cases were filed in *pro se*, with no attorney purporting to be
27 representing the Defendant-Debtor. All three were dismissed due to the failure to file the basic
28 documents necessary to proceed with the prosecution of a bankruptcy case, including: the

1 Chapter 13 Plan, Schedules, Statement of Financial Affairs, and Verification and Master Address
2 List. *See*, the Notices of Incomplete Filing and Notice of Intent to Dismiss filed in each of the
3 forgoing three bankruptcy cases.

4 Defendant-Debtor's testimony is that Plaintiff-Trustee was the mastermind behind the filing
5 of the three Chapter 13 Bankruptcy Cases in the Fall of 2019, that Plaintiff-Trustee represented
6 that he was an attorney to Defendant-Debtor, that Plaintiff-Trustee prepared all of the
7 bankruptcy paperwork for the filing of those three bankruptcy cases, that Defendant-Debtor paid
8 \$200.00 to Plaintiff-Trustee for filing fees for each of the three bankruptcy cases, and that it was
9 Plaintiff-Trustee who physically went to the Federal Courthouse to file the bankruptcy petitions
10 for those three bankruptcy cases in the Fall of 2019.

11 Plaintiff-Trustee strongly disputes that he ever represented to the Defendant-Debtor that he
12 was an attorney, and testified that he never did any work, consulting, or advising with respect to the
13 filing of bankruptcy cases by Defendant-Debtor. The court was not presented with sufficient
14 evidence to find that such representations of being an attorney were made or that Plaintiff-Trustee
15 provided the bankruptcy "representation" or worked on the documents or filing of the three
16 bankruptcy cases in the Fall of 2019. This failure of evidence to make such determinations does
17 not affect the ability of the court to issue the Decision in this Adversary Proceeding. However, the
18 court has been presented with substantial testimony and documentary evidence of the substance of
19 the undisputed work done by Plaintiff-Trustee to stop the foreclosure sale and cure the default on
20 the obligation secured by Defendant-Debtor's Residence.

21 **Testimony of Plaintiff-Trustee Re**
22 **Loan Made to Defendant-Debtor and**
23 **Communications with Foreclosing Lender**

24 In addition to the live testimony at Trial, Plaintiff-Trustee provided his Direct Testimony
25 Statement as required by Local Bankruptcy Rule 9017-1, which he adopted and was admitted into
26 evidence for trial. That Direct Testimony Statement, Exhibit A after Exhibit 11 of Plaintiff's
27 Exhibits, includes the following testimony under penalty of perjury with respect to how Plaintiff-
28 Trustee first connected with Defendant-Debtor and his involvement with Defendant-Debtor in
the Fall of 2019 relating to the Notice of Default and possible foreclosure (testimony

1 identified by paragraph number used in the direct testimony statement):

2 3. I [Plaintiff-Trustee] first met Dennis Frazier [Defendant-Debtor] in October 5,
3 2019, at Mr. Frazier’s home located as 2 Odom Court, Sacramento, California [the
4 Residence].

4 5. At the time I met [Defendant-Debtor] he informed me that there was a first deed
5 of trust in the amount of \$155,000 with Freedom Mortgage (with a reinstatement
6 amount of \$37,000.000),

6 At trial, Plaintiff-Trustee provides some more information about dealings with Defendant-
7 Debtor, which testimony included (the court stating the testimony it heard at trial, there not being
8 a transcript to cite to):

9 a. He first met with Defendant-Debtor in October of 2019. Plaintiff-Trustee testified
10 that he was referred to Defendant-Debtor by “someone else,” with that “someone
11 else” never identified by Plaintiff-Trustee.

11 b. During the period of October 2019 through January 2022, he met with the
12 Defendant-Debtor more than one time. Plaintiff-Trustee did not testify as to what
13 he did at these meetings or how many more than “one time” he met with Defendant-
14 Debtor. Plaintiff-Trustee was able to testify that he:

- 14 i. Did not assist with any loan modification, as alleged by Defendant-Debtor;
- 15 ii. Did not take any money for bankruptcy filing fees; and
- 16 iii. Did not take any documents to the Bankruptcy Court.

17 Plaintiff-Trustee was adamant in his testimony that he was not a “Foreclosure Consultant”
18 (as that term is defined and regulated under California Law, which the court addresses below), that
19 he did not provide advice or assistance to Defendant-Debtor with respect to stopping the foreclosure
20 sale or curing the default on Defendant-Debtor’s Residence, but that he and his Trust are just “real
21 estate investors.”

22 Plaintiff-Trustee further testified that in the past ten (10) years he has done more than one
23 hundred-fifty (150) transactions like this one and has used the Foreclosure Cancellation
24 Guaranty presented to this court for more than fifteen (15) years. This was for his business that he
25 states was not that of a Foreclosure Consultant.

26 In his Direct Testimony Statement, Plaintiff-Trustee provides some testimony about what
27 he and the Trust provided under the Foreclosure Cancellation Guaranty. This testimony includes
28 that pursuant to the Foreclosure Cancellation Guaranty, Plaintiff-Trustee made an advance (loan)

1 of \$37,000.00 to stop the Freedom Mortgage foreclosure sale and cure the default on the Freedom
2 Mortgage Loan secured by Defendant-Debtor's Residence. Direct Testimony Statement, ¶¶ 32, 33,
3 37, 38. The other "actions" taken by Plaintiff-Trustee are identified as those to get Defendant-
4 Debtor's Residence quickly sold and use the proceeds to pay back the \$37,000.00 advance, and
5 disburse 50% of the Net Sales Proceeds to Plaintiff-Trustee for having made the \$37,000.00
6 advance. *Id.*, ¶¶ 40, 41, 42, 43, 52.

7 Plaintiff-Trustee testifies to not only electronically transferring the \$37,000.00 advanced
8 (loaned) to cure the default, but also:

9 35. From and after February 11, 2020, I had several discussions with representatives
10 from Freedom Mortgage [the foreclosing lender] wherein I informed them that the
11 \$37,000.00 Wire had been transmitted at 9:18 a.m. which was before the Foreclosure
12 Sale was scheduled at 10:00 a.m.

13 36. Freedom Mortgage never recorded a trustee's deed upon sale from the
14 Foreclosure Sale, and eventually agreed with me that the \$37,000.00 Advance was
15 timely sent prior to the crying of the Foreclosure Sale.

16 37. If [Plaintiff-Trustee] had not sent the \$37,000.00 Advance, Freedom Mortgage
17 would not have rescinded the Foreclosure Sale.

18 38. As a direct result of Plaintiff Delivering the \$37,000.00 Advance to Freedom
19 Mortgage on the day of the Foreclosure sale, the [Residence] was "saved" from
20 being foreclosed upon because had the advance not been made, Freedom Mortgage
21 would have recorded the trustee's deed and "wiped out" any interest that [Defendant-
22 Debtor] had in [his Residence].

23 *Id.*, ¶¶ 35-38.

24 In this Testimony, Plaintiff-Trustee clearly states that he made an advance, a loan to
25 Defendant-Debtor, of \$37,000.00 to stop the pending Freedom Mortgage foreclosure sale on
26 Defendant-Debtor's Residence. Plaintiff-Trustee testifies further, stating that he then engaged in
27 communications (advocacy for Defendant-Debtor) with Freedom Mortgage representative that the
28 default had been cured by the \$37,000.00 Advance (loan) and that the Residence had been saved
from foreclosure. All of the activities testified to by Plaintiff-Trustee relate to:

- Curing the default on the Freedom Mortgage Loan secured by Defendant-Debtor's
Residence,
- Making a loan to cure the default on the Freedom Mortgage Loan secured by
Defendant-Debtor's Residence,

- 1 • Stopping the Freedom Mortgage foreclosure sale from being conducted on
- 2 Defendant-Debtor's Residence,
- 3 • Communicating with Freedom Mortgage representatives for the cure of the default
- 4 and the reinstatement of the loan secured by Defendant-Debtor's Residence, and
- 5 • Saving Defendant-Debtor's Residence from the Freedom Mortgage foreclosure.

6 As discussed below, these fall squarely into what are statutorily defined as "services"
7 provided by a Foreclosure Consultant under California Law.

8 **Findings Regarding the Sophistication and**
9 **Credibility of Testimony of Defendant-Debtor**
10 **and Plaintiff-Trustee**

11 Here, Defendant-Debtor was within less than fourteen hours of losing his Residence through
12 the Freedom Mortgage foreclosure sale. Plaintiff-Trustee had been communicating with Defendant-
13 Debtor for several months (the parties dispute the scope of those discussions) prior to entering into
14 the Foreclosure Cancellation Guaranty. Defendant-Debtor had, through his inaction, put himself
15 in a pit of financial despair, ripe for the plucking for Plaintiff-Trustee (a Foreclosure Consultant
16 whose practices are governed by California consumer protection law) to swoop in with his
17 Foreclosure Cancellation Guaranty and try and take-away 50% of Defendant-Debtor's substantial
18 equity (\$180,000.00, as computed by Plaintiff-Trustee in the Complaint) in the Residence. If
19 Defendant-Debtor is "guilty" of anything, it is avoidance of reality and being a less sophisticated
20 consumer trying to save his residence property from foreclosure.

21 What first arose in review of the Direct Testimony Statements, and then became strikingly
22 apparent at Trial, is that the court was presented with testimony by witnesses, for which the
23 credibility of the witnesses was put at issue. The court addresses this for the Plaintiff-Trustee and
24 Defendant-Debtor.

24 Plaintiff-Trustee

25 While much of Plaintiff-Trustee's testimony is not credible, the court does find Plaintiff-
26 Trustee to be a highly financially sophisticated person, who has used the legal services of his
27 attorney (a different attorney then represented Plaintiff-Trustee in this Adversary Proceeding) to
28 draft the Foreclosure Cancellation Guaranty and now uses it to prey upon consumers whose homes

1 are in foreclosure. Much of Plaintiff-Trustee's testimony were his legal conclusions of what his
2 Foreclosure Cancellation Guaranty was, that the Foreclosure Consultant laws of the State of
3 California did not apply to him, and telling the court to ignore the plain language in the
4 Foreclosure Cancellation Guaranty drafted by Plaintiff-Trustee and his attorney.

5 The court did not find Plaintiff-Trustee's testimony that he was "under stress" in trying to
6 "save" Defendant-Debtor's home (for which Plaintiff-Trustee was to take half of the equity from
7 the Defendant-Debtor, in addition to being repaid for the loan) to be credible. Listening to the
8 testimony and watching Plaintiff-Trustee as he testified, the court concludes that he was not under
9 "stress," but was working hard to take unfair advantage of the less sophisticated consumer
10 Defendant-Debtor by acts that violate California Law.

11 Plaintiff-Trustee is a very sophisticated business person in the areas relating to mortgages,
12 foreclosures, curing defaults, repairing residential properties, and selling residential properties,
13 including a quick turnaround or "flipping" of a residence after making an advance (loan to a
14 consumer owner of a residence in foreclosure) to cure a default. Plaintiff-Trustee does not merely
15 get repaid the monies advanced and some reasonable interest, but also seeks to take a large cut (here
16 50%) of the consumer's equity in the residence which has to be immediately listed for sale (within
17 60 days from the February 11, 2020 contract date) and sold under the Plaintiff-Trustee's Foreclosure
18 Cancellation Guaranty. Additionally, as the court addresses herein, Plaintiff-Trustee shows a high
19 level of sophistication in now trying to interpret the Foreclosure Cancellation Guaranty and argue
20 that it: (1) does not relate to foreclosures of a consumer's residence, (2) does not relate to cancelling
21 foreclosures and reinstating loans secured by a consumer's residence, and (3) does not relate to a
22 consumer's residence in foreclosure, all in a blatant attempt to circumvent California consumer
23 protection laws.

24 The court does not find credible that Plaintiff-Trustee cannot "remember" who the person
25 was who referred him to Defendant-Debtor. The court further does not find it credible that Plaintiff-
26 Trustee could not present the court with documentation, evidence, or testimony of any actual, *bona*
27 *fide* joint venture. Given Plaintiff-Trustee's level of sophistication, if he intended to create a joint
28 venture, it would have been sufficiently documented and not merely two words thrown into the

1 Foreclosure Cancellation Guaranty to justify additional compensation equal to 339% interest per
2 annum on the monies loaned. (Interest computation addressed in the court's Decision below.)

3 The court also does not find credible Plaintiff-Trustee's assertion and his counsel's closing
4 argument that the Plaintiff-Trustee was at great risk and would only be repaid if the deal worked.
5 Such is contrary to the clear evidence presented to the court. Plaintiff-Trustee had the Deed of Trust
6 securing his position. Plaintiff-Trustee's Deed of Trust on Defendant-Debtor's Residence was
7 second in priority to the deed of trust securing the loan that was in default and for which Plaintiff-
8 Trustee would advance (loan) the monies to cure the default.

9 Though Plaintiff-Trustee's Deed of Trust was in a junior priority position to the Freedom
10 Mortgage deed of trust, Plaintiff-Trustee clearly had access to funds to protect his position under his
11 Deed of Trust. As shown to the court at trial, there was \$180,000.00+ of equity in the Residence
12 in excess of the obligation secured by the Freedom Mortgage senior deed of trust and repayment of
13 the monies advanced (loaned) by Plaintiff-Trustee. Given Plaintiff-Trustee's great financial
14 sophistication, the court can find no credible evidence that Plaintiff-Trustee was lending the original
15 \$37,000.00 on a last minute speculative venture in which he stood a high probability of losing
16 everything. The Plaintiff-Trustee was not under great stress or financial risk, having clearly
17 protected himself with the Deed of Trust and ability to foreclose on the Residence as provided in
18 the Foreclosure Cancellation Guaranty.

19 Further, if Freedom Mortgage did not accept the \$37,000.00 cure payment advanced (loaned)
20 by Plaintiff-Trustee, then it would have been paid back to Plaintiff-Trustee by Freedom Mortgage.
21 The risk to Plaintiff-Trustee was minimal, if any.

22 The court further concludes from Plaintiff-Trustee's testimony that Plaintiff-Trustee found
23 the less sophisticated consumer Defendant-Debtor ripe for the picking and jumped on the
24 opportunity to take from Defendant-Debtor 50% of the substantial equity for making only a
25 \$37,000.00 advance (loan), which advance (loan) was secured by substantial equity in the Residence
26 and would be repaid. Further, that Plaintiff-Trustee knowingly has chosen to turn a blind eye to the
27 California consumer protection laws governing his business of being a Foreclosure Consultant
28 making loans to consumers whose homes are in foreclosure to cure the defaults and reinstate such

1 loans. This may be a situation where Plaintiff-Trustee “knows” he is smarter than his attorneys
2 who drafted the Foreclosure Cancellation Guaranty and can act based on what he states the law to
3 be so he can make big profits, and ignore what California Law and the plain language of the
4 Foreclosure Cancellation Guaranty (drafted by Plaintiff-Trustee and his attorney) actually state.

5 The court finds Plaintiff-Trustee’s testimony that the services he provided were not those of
6 a Foreclosure Consultant, that he and First Trust were merely real estate investors, and that Plaintiff-
7 Trustee did not provide any consulting or other services to Defendant-Debtor to stop the foreclosure
8 on his residence by Freedom Mortgage: (1) to cure the default upon which the foreclosure was
9 based, (2) have the foreclosing lender waive the acceleration of the obligation that was the subject
10 of the foreclosure, or (3) to save Defendant-Debtor’s residence from foreclosure to each not be
11 credible, contrary to the evidence presented, and without merit.

12 Defendant-Debtor

13 For Defendant-Debtor, he appears to be the average consumer, less sophisticated, and given
14 to deferring making hard decisions and owning up to one’s financial straits. While not necessarily
15 gullible, he is the type of consumer who will take the easier answer at the eleventh hour rather than
16 planning ahead and address the actual, reasonable financial situation and put a viable game plan in
17 action. The fact that this less sophisticated consumer stumbled and fumbled until the eleventh hour
18 does not grant license for Plaintiff-Trustee to violate California law and take away 50% of
19 Defendant-Debtor’s equity in his residence.

20 As the court notes above, while less sophisticated, the Defendant-Debtor signed the Deed
21 of Trust to secure the enforceable financial obligation under the Foreclosure Cancellation Guaranty -
22 even though it was not presented by Plaintiff-Trustee until two months after the Contract was
23 executed and the loan made. This demonstrates a level of good faith on behalf of Defendant-Debtor.

24 However, Defendant-Debtor’s testimony raised some questions of credibility. He testifies
25 that multiple bankruptcy cases were choreographed by Plaintiff-Trustee and monies were paid, but
26 did not provide any documentation of the payments. Also, in looking at his own signature on the
27 bankruptcy documents, Defendant-Debtor waffled, saying a signature was his, and then saying it
28 was not.

1 At the end of the day, the less sophisticated consumer Defendant-Debtor is the party who
2 California Law has chosen to provide statutory protections for when such consumer is dealing with
3 someone who is purporting to help save their residence from foreclosure – such as Plaintiff-Trustee
4 in this Adversary Proceeding.

5
6 **EVE OF FORECLOSURE SALE PANIC,
7 MONIES ADVANCED BY PLAINTIFF-TRUSTEE,
8 FORECLOSURE RESCINDED, DEFAULT CURED
9 AND FREEDOM MORTGAGE LOAN REINSTATED**

8 Though Plaintiff-Trustee’s and Defendant-Debtor’s testimonies as to what occurred in the
9 Fall of 2019 differ greatly, they do substantially agree on what occurred after February 1, 2020
10 (though they disagree on the legal conclusions as to what they did and the legal consequences
11 thereof).

12 On February 10, 2020, Defendant-Debtor contacted Plaintiff-Trustee, seeking assistance as
13 the nonjudicial foreclosure sale set for the Freedom Mortgage Loan was scheduled to be conducted
14 at 10:00 a.m. on February 11, 2020. As Plaintiff-Trustee recounts those events, he met with
15 Defendant-Debtor on the evening of February 10, 2020. Defendant-Debtor's testimony
16 corroborates that this meeting took place around 8:00 p.m. on February 10, 2020, a mere fourteen
17 hours before the scheduled nonjudicial foreclosure sale.

18 Plaintiff-Trustee prepared the Foreclosure Cancellation Guaranty which provided for
19 Plaintiff-Trustee advancing \$37,000.00 to cure the default that led to the scheduled nonjudicial
20 foreclosure sale. The Foreclosure Cancellation Guaranty (Exhibit 2) was signed on February 10,
21 2020, and on the morning of February 11, 2020, Plaintiff-Trustee advanced and wired \$37,000.00
22 to Freedom Mortgage to cure the default and for whom the nonjudicial foreclosure sale was set to
23 be conducted on February 11, 2020.

24 Exhibit 3 of Plaintiff-Trustee is the Wire Application and Agreement he signed for Banner
25 Bank to wire the \$37,000.00 to Freedom Mortgage Corporation. The Date/Time Entered on Wire
26 Application and Agreement is “2/11/2020 9:18 a.m.”³

27 ³ In looking at the Wire Application and Agreement, the name of the Account Holder is
28 identified as “Carl L. Dexter.” It is not First Trust or Carl L. Dexter, Trustee of First Trust. From the
evidence provided it is not clear whether First Trust made the advance pursuant to Foreclosure

1 With the cure payment money being wired by Plaintiff-Trustee less than an hour before the
2 scheduled nonjudicial foreclosure sale, the trustee under the deed of trust conducted the sale on
3 February 10, 2020. After about a month of communications, Freedom Mortgage agreed to rescind
4 the sale, have the default cured, the Freedom Mortgage Loan reinstated, and Defendant-Debtor move
5 forward with a clean loan slate.

6 At this juncture one would think that Plaintiff-Trustee and Defendant-Debtor having
7 achieved the Foreclosure Cancellation Guarantee Contract goals of Plaintiff-Trustee advancing
8 (lending) the \$37,000.00 to cure the default, actually curing the default, stopping the foreclosure
9 sale, reinstating the obligation secured by Defendant-Debtor's Residence, and saving Defendant-
10 Debtor's Residence from foreclosure, the Parties could celebrate. Alas, that was not the case, in
11 large part because of the terms of the Foreclosure Cancellation Agreement (drafted by Plaintiff-
12 Trustee and his attorney) which was signed during the exigencies of the evening of February 10,
13 2020, a mere fourteen hours before the scheduled foreclosure sale.

14 By the terms of the Foreclosure Cancellation Guaranty, Plaintiff-Trustee sought the
15 liquidation of Defendant-Debtor's Residence from which the \$37,000.00 advance (loan) made by
16 Plaintiff-Trustee to cure the default, stop the foreclosure sale, and reinstate the Freedom Mortgage
17 Loan, and Plaintiff-Trustee would additionally get 50% of the Net Sales Proceeds of the Residence
18 (which 50% of the equity constitutes an amount equal to a 339% per annum interest for the
19 \$37,000.00 loaned by Plaintiff-Trustee to cure the default and stop the foreclosure sale).

20 The court now reviews the Foreclosure Cancellation Guaranty, which was drafted by
21 Plaintiff-Trustee and his counsel, and the various terms and rights argued by the Parties.

22 **Review of Foreclosure Cancellation Guaranty**
23 **and Related Documents**

24 A copy of the Foreclosure Cancellation Guaranty is provided as Plaintiff-Trustee's Exhibit 2.
25 From the title, one would initially believe that Plaintiff-Trustee was guarantying that he and First
26 Trust would prevent any foreclosure sale from occurring. Such an interpretation would be far from

27 _____
28 Cancellation Guaranty or whether Carl L. Dexter, personally, made the advance.

1 how Plaintiff-Trustee describes the Contract as a mere real estate investment, which Plaintiff-Trustee
2 and his attorney prepared, and was presented to Defendant-Debtor to be signed on the evening of
3 February 10, 2020, hours before the scheduled nonjudicial foreclosure sale.

4 On page 1 of the Foreclosure Cancellation Guaranty, “First Trust, Carl Dexter, Trustee” is
5 identified as the “Guarantor” and Defendant-Debtor is identified as the “Home Owner.” For
6 consistency in identification in discussing the Foreclosure Cancellation Guaranty and its terms, the
7 court continues referencing the parties as Plaintiff-Trustee and Defendant-Debtor, who are
8 respectively identified as “Guarantor” and “Home Owner” in the Foreclosure Cancellation
9 Guaranty.

10 After identify the parties, the Foreclosure Cancellation Guaranty states that it is being entered
11 into:

12 [f]or the express purpose of **curing the default of a note secured by deed of trust**
13 **on the residence** of [Defendant-Debtor].

14 Foreclosure Cancellation Guaranty, first full paragraph commencing with **THIS Guaranty is made**
15 **between . . .**; Exhibit 2 (emphasis in original).

16 Starting with this plain language, the purpose of the Foreclosure Cancellation Guaranty is
17 expressly stated to be for the purpose of curing the default on the Freedom Mortgage Loan secured
18 by a deed of trust encumbering the consumer Defendant-Debtor’s residence. Though Plaintiff-
19 Trustee now testifies that he was not providing services to assist Defendant-Debtor in curing the
20 default on the Freedom Mortgage Loan secured by Defendant-Debtor’s Residence and stopping the
21 nonjudicial foreclosure sale, the Contract prepared by Plaintiff-Trustee and his attorney expressly
22 states to the contrary that the Plaintiff-Trustee’s obligations are to advance (loan) the monies to cure
23 the default and reinstate the Freedom Mortgage Loan that is secured by Defendant-Debtor’s
24 Residence.

25 The Foreclosure Cancellation Guaranty then continues at the middle of page 1 and running
26 through the top half of page 2, has the following “Whereas” statements (court bolded **emphasis**
27 **added**):

28 “WHEREAS, the real property [the Residence] is the **single family residence**

1 occupied by the [Defendant-Debtor]; and

2 WHEREAS, the real property [Residence] is now in foreclosure . . .’ and

3 WHEREAS ON THE TERMS AND CONDITIONS SET FORTH IN THIS
4 Guaranty [Plaintiff-Trustee] is willing to cure the below-described
5 defaults and reinstate the loans;⁴

6 First Deed of Trust with FREEDOM MORTGAGE #XXXXXXXXXX
7 in the amount of \$37,000.00 [Plaintiff-Trustee] will pay directly to
8 FREEDOM MORTGAGE

9 WHEREAS, the [Plaintiff-Trustee] is a real estate investor (foreclosure
10 consultant); and

11 WHEREAS [Plaintiff-Trustee] does not have any representative working for them
12 and is meeting directly with [Defendant-Debtor] and is directly negotiating the terms
13 and conditions for the implementation of this Guaranty.

14 Beginning in the middle of page 2 and continuing to the middle of page 7, the agreed terms
15 of Plaintiff-Trustee and Defendant-Debtor are stated. As the court noted at trial, and which seemed
16 to surprise Plaintiff-Trustee, the very first term agreed to is as follows (court bolded **emphasis**
17 **added**):

- 18 1. Each of the prefatory paragraphs commencing with the word *WHEREAS*,
19 contains a **true and correct statement of fact**, and the parties
20 hereafter **shall be estopped to deny the truth thereof**.

21 Thus, on its face, the Plaintiff-Trustee and the Defendant-Debtor have agreed that all of the
22 *WHEREAS* statements are true and cannot be contradicted by either of them.⁵ This includes the
23 statement above that Plaintiff-Trustee is a “Foreclosure Consultant,” which term modifies the
24 reference to Plaintiff-Trustee being a “real estate investor.”

25 So, in reading the WHEREAS paragraphs, the facts which Plaintiff-Trustee and Defendant-
26 Debtor state are true and unassailable include:

27 ///

28 _____
⁴ Mortgage number redacted by the court.

⁵ The term “prefatory” does not limit the agreed truthfulness of the statements, but is merely
referencing that they are part of the introductory statements of the Guaranty. Merriam-Webster
Dictionary.

- 1 1. The Residence is the Defendant-Debtor’s residence.
- 2 2. The Defendant-Debtor’s residence is in foreclosure.
- 3 3. Plaintiff-Trustee is willing to cure the described defaults and reinstate the
- 4 loan with Freedom Mortgage that is secured by the Defendant-Debtor’s
- 5 residence.
- 6 4. **Plaintiff-Trustee** is not merely a “real estate investor” but **expressly**
- 7 **identifies himself** in the Foreclosure Cancellation Guaranty drafted by
- 8 Plaintiff-Trustee and his attorney **as a “foreclosure consultant.”**

9 At the trial, Plaintiff-Trustee attempted to disavow this statement (which the Foreclosure
10 Cancellation Guaranty expressly states he is estopped from denying), saying he was “merely” a real
11 estate investor and that the language stating that he is a “foreclosure consultant” dates back to earlier
12 law in California governing foreclosure consultants, and that the statement which the first agreement
13 term in the Foreclosure Cancellation Guaranty cannot be denied should just be ignored.

14 As will develop below, this reference to a “foreclosure consultant” is not a merely typo from
15 law long ago amended, but is consistent with other provisions of the Foreclosure Cancellation
16 Guaranty and the California Law expressly included in the Foreclosure Cancellation Guaranty which
17 was drafted by Plaintiff-Trustee and his attorney.

18 **Financial Terms of the**
19 **Foreclosure Cancellation Guaranty**
20 **and Security for Monies Advanced (Loaned)**

21 The Foreclosure Cancellation Guaranty provides that if it is not cancelled by the Defendant-
22 Debtor before 11:59 p.m. 10 February 2020, or as soon thereafter as is possible, then:

- 23 a. Plaintiff-Trustee **“shall cure the defaults”** on the obligation owed to Freedom
24 Mortgage secured by the Deed of Trust against Defendant-Debtor’s residence.
- 25 b. The **initial “sum** (estimated) to be so **provided by” Plaintiff-Trustee is \$37,000.**
- 26 c. **“The cure money** shall be paid by/on behalf of [Plaintiff-Trustee] directly to the
27 foreclosing creditor and not to [Defendant-Debtor].”

28 ///

Exhibit 2; Foreclosure Cancellation Guaranty, ¶ 2, p. 2. (Emphasis added.)
Deed of Trust

The terms continue, in paragraph 3 (*Id.*), stating that the Foreclosure Cancellation Guaranty shall be secured by a Deed of Trust on the Residence, and a copy is attached to the Foreclosure Cancellation Guaranty. No copy of a deed of trust is attached to the Foreclosure Cancellation

1 Guaranty. The Plaintiff-Trustee testified that due to the rush in putting together the
2 Foreclosure Cancellation Guaranty and getting the \$37,000.00 wired so the foreclosure would be
3 cancelled, the Deed of Trust to secure the advance (loan) was prepared later. The Deed of Trust
4 was drafted a month later after the parties confirmed that the foreclosing creditor accepted
5 the \$37,000.00 transmitted by Plaintiff-Trustee as the cure payment and Defendant-Debtor's
6 Obligation was no longer in default.

7 The Foreclosure Cancellation Guaranty continues (*Id.*, p. 3) stating in paragraph 5 that in
8 consideration for the cure of the default (the \$37,000.00 monies advanced to pay to stop the
9 foreclosure sale), the Defendant-Debtor shall do the following (paraphrased by the court and
10 identified by the paragraph number used in the Foreclosure Cancellation Guaranty, with emphasis
11 as in the original):

12 (5)(a) Execute the Deed of Trust.

13 (5)(b) "Comply with [Plaintiff-Trustee] to complete renovation and place said property
14 on the market for sale within 60 days from February 11, 2020."

15 (5)(c) "Said property is to be listed for sale with a TO BE DETERMINED
16 BY [PLAINTIFF-TRUSTEE] a licensed California real estate broker."

17 (5)(d) "Said escrow to be placed with TO BE DETERMINED BY
18 [PLAINTIFF-TRUSTEE]."

19 (5)(e) This paragraph specifies how the sales proceeds will be disbursed. The court has
20 broken up the one long block paragraph into the parts below to make the review
21 thereof easier and more readable.

22 Paragraph 5(e) contractually sets the interest rate for monies advanced (loaned) by Plaintiff-
23 Trustee, which were to be repaid when Defendant-Debtor's Residence was sold, stating:

24 From the sales proceeds at close of escrow, pay to [Plaintiff-Trustee] the
25 amount actually paid out by the Guarantor pursuant to this Guaranty, interest
26 on the amount actually paid out at the rate of **ZERO** percent (0.00) per
27 annum from date said monies are paid out by [Plaintiff-Trustee] are actually
28 returned to the [Plaintiff-Trustee];

Id., ¶ 5(e) (emphasis in original).

Then, Paragraph 5(e) further provides that in addition to being repaid for the monies
advanced (loaned) to cure the default, stop the foreclosure sale, and reinstate the Freedom Mortgage
Loan, Plaintiff-Trustee is to be paid 50% of the net sales proceeds from the immediate sale of

1 Defendant-Debtor’s Residence, stating:

2 [f]or this Guaranty, the Home Owner [Defendant-Debtor] and Guarantor
3 [Plaintiff-Trustee] enters into a **JOINT VENTURE WITH A 50/50 SPLIT
OF NET PROCEEDS.**

4 *Id.* [triple emphasis in original]. The Foreclosure Cancellation Guaranty, Paragraph 5(e), then
5 provides a mechanism for Plaintiff-Trustee to make his demand for payment directly from escrow
6 without instructions from Defendant-Debtor, stating:

7 The Guarantor [Plaintiff-Trustee] may present a copy of this Guaranty to the
8 escrow established to handle sale of the real property [the Residence] . . . [it]
9 shall serve as non-cancelable escrow instructions of the Home Owner
[Defendant-Debtor] to pay such sum to Guarantor [Plaintiff-Trustee] before
any portion of the escrow is paid out to Home Owner [Defendant-Debtor].

10 *Id.*

11 Paragraph 6 of the Foreclosure Cancellation Guaranty provides that if the Defendant-Debtor
12 fails to comply with the obligation to market the Residence for sale within sixty (60) days, then
13 Plaintiff-Trustee can foreclose on his Deed of Trust.

14 Paragraph 9 of the Foreclosure Cancellation Guaranty includes a contractual attorney’s fee
15 provision for the prevailing party for any litigation concerning the Foreclosure Cancellation
16 Guaranty.

17 Paragraph 10 expressly provides that the Foreclosure Cancellation Guaranty, which was
18 drafted by Plaintiff-Trustee and his attorney, is governed by the laws of the State of California.

19 As discussed below, the plain language of the Foreclosure Cancellation Guaranty states that
20 Plaintiff-Trustee’s obligations are the curing of the default and reinstatement of the Freedom
21 Mortgage Loan that was in default. *See*, Fourth WHEREAS Paragraph, p. 2 of Foreclosure
22 Cancellation Guaranty. For curing the default and reinstating the loan secured by the Residence,
23 Defendant-Debtor’s obligation is stated to be to repay Plaintiff-Trustee the monies advanced (the
24 \$39,705.53) and disburse half the equity in the property (50% of \$180,000+) from the required
25 immediate sale thereof. Foreclosure Cancellation Guaranty ¶ 5(e). The Foreclosure Cancellation
26 Guaranty itself states in its plain language that Plaintiff-Trustee will be paid half the equity in the
27 Property (in addition to repaying the monies advanced by Plaintiff-Trustee) for making the
28 Foreclosure Cancellation Guaranty advance (loan) to cure the default and stop the foreclosure sale

1 of Defendant-Debtor's Residence.

2 **REVIEW OF CALIFORNIA CONSTRUCTION OF CONTRACTS LAW**
3 **AND**
4 **CONSUMER PROTECTION LAW RE FORECLOSURE CONSULTANTS**

5 This Adversary Proceeding, as many do, presents the federal Bankruptcy Court with
6 nonbankruptcy, State Law legal issues to address. This is a common occurrence not only for
7 bankruptcy judges, but also bankruptcy attorneys.

8 **Interpretation of the Contract**

9 Here, the court is presented with a contract, the Foreclosure Cancellation Guaranty, which
10 was drafted by Plaintiff-Trustee and his attorney. This was presented to the Defendant-Debtor on
11 the evening of February 10, 2020, less than fourteen hours before the pending foreclosure sale the
12 next morning.⁶

13 When the court is presented with a contract that a party seeks to enforce, the rules governing
14 the interpretation of that contract are well established. One begins with California Civil Code,
15 which provisions governing the interpretations of contracts include:

16 Cal. Civ. § 1638. Ascertainment of intention; language

17 The language of a contract is to govern its interpretation, if the language is
18 clear and explicit, and does not involve an absurdity.

19 Cal. Civ. § 1639. Ascertainment of intention; written contracts

20 When a contract is reduced to writing, the intention of the parties is to be
21 ascertained from the writing alone, if possible; subject, however, to the other
22 provisions of this Title.

23 § 1641. Whole contract, effect to be given

24 The whole of a contract is to be taken together, so as to give effect to every
25 part, if reasonably practicable, each clause helping to interpret the other.

26 ///

27 ///

28 ///

⁶ The court acknowledges that this last minute presentation of the contract was significantly caused by the conduct of the Defendant-Debtor by waiting until the evening of February 10, 2020, to call Plaintiff-Trustee and ask him to come and “save the day” based on some of the earlier representations of Plaintiff-Trustee of what he could do to stop the foreclosure sale.

1 § 1644. Sense of words

2 The words of a contract are to be understood in their ordinary and popular
3 sense, rather than according to their strict legal meaning; unless used by the
4 parties in a technical sense, or unless a special meaning is given to them by
5 usage, in which case the latter must be followed.

6 § 1645. Sense of words; technical words

7 Technical words are to be interpreted as usually understood by persons in the
8 profession or business to which they relate, unless clearly used in a different
9 sense.

10 § 1654. Language interpreted against party who caused uncertainty

11 In cases of uncertainty not removed by the preceding rules, the language of
12 a contract should be interpreted most strongly against the party who caused
13 the uncertainty to exist.

14 As discussed by the California Supreme Court:

15 Finally, ambiguities in standard form contracts are to be construed against the
16 drafter. (*Baker v. Sadick* (1984) 162 Cal.App.3d 618, 625, 208 Cal.Rptr. 676; *Player*
17 *v. Geo. M. Brewster & Son, Inc.* (1971) 18 Cal.App.3d 526, 533, 96 Cal.Rptr. 149;
18 Civ.Code, § 1654.) This court must apply these basic principles to determine whether
19 the petitioner's causes of action fall within the scope of the arbitration clause.

20 *Victoria v. Superior Court*, 40 Cal. 3d 734,739 (1985).

21 **Foreclosure Consultant**
22 **Consumer Protection Law**

23 In 1979, the California Legislature created statutory protections for consumers who were
24 facing the loss of their homes due to foreclosures. These laws place limitations on third-parties
25 who came forward to “assist” the consumer in preventing the foreclosure from occurring or
26 recovering any proceeds remaining after a foreclosure sale which was in excess of the secured
27 obligation. These are found in Title 14, Article 1.5 of the California Civil Code, §§ 2945 - 2945.11.

28 The California Legislature provides statutory “Legislative findings and declarations; Intent
and purposes of article [1.5]; Liberal construction” of these provisions, stating in California Civil
Code § 2945 [**emphasis added**]:

§ 2945. Legislative findings and declarations; Intent and purposes of article; Liberal
construction

(a) The Legislature finds and declares that **homeowners whose residences are in
foreclosure are subject to** fraud, deception, harassment, and **unfair dealing by**

1 **foreclosure consultants from the time a Notice of Default is recorded** pursuant
2 to Section 2924 until the time surplus funds from any foreclosure sale are distributed
3 to the homeowner or his or her successor. **Foreclosure consultants represent that**
4 **they can assist homeowners who have defaulted on obligations secured by their**
5 **residences.** These **foreclosure consultants, however, often charge high fees,** the
6 payment of which is **often secured by a deed of trust on the residence to be saved,**
7 and perform no service or essentially a worthless service. Homeowners, relying on
8 the foreclosure consultants' promises of help, take no other action, are diverted from
9 lawful businesses which could render beneficial services, and often lose their homes,
10 sometimes to the foreclosure consultants who purchase homes at a fraction of their
11 value before the sale. Vulnerable homeowners are increasingly relying on the
12 services of foreclosure consultants who advise the homeowner that the foreclosure
13 consultant can obtain the remaining funds from the foreclosure sale if the
14 homeowner executes an assignment of the surplus, a deed, or a power of attorney in
15 favor of the foreclosure consultant. This results in the homeowner paying an
16 exorbitant fee for a service when the homeowner could have obtained the remaining
17 funds from the trustee's sale from the trustee directly for minimal cost if the
18 homeowner had consulted legal counsel or had sufficient time to receive notices
19 from the trustee pursuant to Section 2924j regarding how and where to make a claim
20 for excess proceeds.

11 (b) The Legislature further finds and declares that **foreclosure consultants have a**
12 **significant impact on the economy of this state and on the welfare of its citizens.**

13 (c) The **intent and purposes** of this article are the following:

14 (1) To require that foreclosure consultant service agreements be expressed
15 in writing; to **safeguard the public against** deceit and **financial hardship;**
16 to permit rescission of foreclosure consultation contracts; to prohibit
17 representations that tend to mislead; and to **encourage fair dealing in the**
18 **rendition of foreclosure services.**

17 (2) **The provisions of this article shall be liberally construed to effectuate**
18 **this intent and to achieve these purposes.**

19 This section was amended in 2004 to add the provisions relating to recovering surplus monies after
20 a foreclosure sale had occurred. 2004 Cal SB 1277

21 California law then lays out specific provisions identifying the protections provided, the
22 services covered, and the requirements placed on a "Foreclosure Consultant."

23 Statutory Definitions

24 California Civil Code § 2945.1 provides statutory definitions for application of Civil Code
25 Title 14, Article 1.5 relating to Foreclosure Consultants and the services they provide. Civil Code
26 § 2945.1(a) provides the statutory definition of a "Foreclosure consultant" [**emphasis added**]:

27 (a) "**Foreclosure consultant**" means any person who makes **any solicitation,**
28 **representation, or offer** to any owner **to perform for compensation** or **who, for**
compensation, performs any service which the person in any manner represents

1 will in any manner do **any of the following**:

2 **(1) Stop or postpone the foreclosure sale.**

3 (2) Obtain any forbearance from any beneficiary or mortgagee.

4 **(3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.**

5 (4) Obtain any extension of the period within which the owner may reinstate
6 his or her obligation.

7 **(5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained that deed of trust or mortgage.**

8 **(6) Assist the owner to obtain a loan or advance of funds.**

9 (7) Avoid or ameliorate the impairment of the owner’s credit resulting from
10 the recording of a notice of default or the conduct of a foreclosure sale.

11 **(8) Save the owner’s residence from foreclosure.**

12 (9) Assist the owner in obtaining from the beneficiary, mortgagee, trustee
13 under a power of sale, or counsel for the beneficiary, mortgagee, or trustee,
14 the remaining proceeds from the foreclosure sale of the owner’s residence.

15 As the undisputed evidence shows, Plaintiff-Trustee’s Contract was to provide services to
16 (identified by the paragraph numbers in the forgoing statute): (1) Stop the foreclosure sale from
17 occurring, (5) Reinstate the loan and have the acceleration of the defaulted debt reversed and
18 Defendant-Debtor’s loan not to be in default, (6) Assist Defendant-Debtor in obtaining the advance
19 of funds to cure the default [with those monies advanced by Plaintiff-Trustee himself], and (8) Save
20 Defendant-Debtor’s Residence from foreclosure, which was scheduled to be conducted less than
21 fourteen hours after Defendant-Debtor signed Plaintiff-Trustee’s contract for such services.

22 California Civil Code § 2945.1(b) provides a list of statutory exclusions from the definition
23 of a “Foreclosure Consultant.” Plaintiff-Trustee did not assert that he qualified for any of the
24 statutory exclusions and the evidence did not show that Plaintiff-Trustee qualified for any of the
25 statutory exclusions.

26 California Civil Code § 2945.1(e) provides a nonexclusive definition of the term “Service”
27 provided by a Foreclosure Consultant [emphasis added]:

28 ///

1 (e) “Service” means and includes, but is not limited to, any of the following:

2 (1) Debt, budget, or financial counseling of any type.

3 (2) Receiving money for the purpose of distributing it to creditors in payment
4 or partial payment of any obligation secured by a lien on a residence in
foreclosure.

5 (3) **Contacting creditors on behalf of an owner of a residence in
6 foreclosure.**

7 (4) **Arranging or attempting to arrange for an extension of the period
8 within which the owner of a residence in foreclosure may cure his or her
9 default and reinstate his or her obligation pursuant to Section 2924c.**

10 (5) **Arranging or attempting to arrange for any delay or postponement
11 of the time of sale of the residence in foreclosure.**

12 (6) Advising the filing of any document or assisting in any manner in the
13 preparation of any document for filing with any bankruptcy court.

14 (7) **Giving any advice, explanation, or instruction to an owner of a
15 residence in foreclosure which in any manner relates to the cure of a
16 default in or the reinstatement of an obligation secured by a lien on the
17 residence in foreclosure, the full satisfaction of that obligation, or the
18 postponement or avoidance of a sale of a residence in foreclosure pursuant
19 to a power of sale contained in any deed of trust.**

20 (8) Arranging or attempting to arrange for the payment by the beneficiary,
21 mortgagee, trustee under a power of sale, or counsel for the beneficiary,
22 mortgagee, or trustee, of the remaining proceeds to which the owner is
23 entitled from a foreclosure sale of the owner’s residence in foreclosure.
24 Arranging or attempting to arrange for the payment shall include any
25 arrangement where the owner transfers or assigns the right to the remaining
26 proceeds of a foreclosure sale to the foreclosure consultant or any person
27 designated by the foreclosure consultant, whether that transfer is effected by
28 agreement, assignment, deed, power of attorney, or assignment of claim.

(9) Arranging or attempting to arrange an audit of any obligation secured by
a lien on a residence in foreclosure.

Continuing, California Civil Code § 2945.1(h) defines the term “Contract” with a
Foreclosure Consultant to be, “any agreement, or any term thereof, between a foreclosure
consultant and an owner [consumer whose residence is in foreclosure] for the rendition of any
service” of a Foreclosure Consultant.

Right to Cancellation

California Civil Code § 2045.2 provides that the home owner has a right to cancel the
contract with a Foreclosure Consultant, which may be exercised by midnight of the fifth business

1 day after such contract is signed. In 2008, this provision was amended to increase the period in
2 which the home owner had the right to cancel the contract with the Foreclosure Consultant from
3 three (3) business days after signing the contract to five (5) business days after signing the contract
4 with the Foreclosure Consultant.

5 Form and Content of Contract
6 With a Foreclosure Consultant

7 California Civil Code § 2945.3 provides that the contract with the Foreclosure Consultant
8 must be in writing, fully disclose the services to be provided and compensation paid to the
9 Foreclosure Consultant, and provide and include (identified by paragraph number in Cal. Civ.
10 2945.3):

11 (b) An at least 14-point boldface type notice that the Foreclosure Consultant cannot
12 be paid until completely finishing the everything provided in the contract.

13 (d) contact the statement, “You, the owner, may cancel this transaction at any time
14 prior to midnight of the fifth business day after the date of this transaction. See the
attached notice of cancellation form for an explanation of this right.”

15 (e) Contain on the first page the following information:

16 (1) The name, mailing address, electronic mail address, and facsimile number
17 of the foreclosure consultant to which the notice of cancellation is to be
mailed.

18 (2) The date the owner signed the contract.

19 (f) The contract with the Foreclosure Consultant be accompanied by a completed
form, in duplicate, providing the statutory specified “Notice of Cancellation” form.

20 Violations of Title14, Article 1.5

21 California Civil Code § 2045.4 provides when a Foreclosure Consultant is in violation of
22 California law, with those statutory violations including (emphasis added):

23 § 2945.4. Violations

24 It shall be a violation for a foreclosure consultant to:

25 (b) Claim, demand, charge, collect, or **receive any fee, interest, or any other**
26 **compensation for any reason which exceeds 10 percent per annum of the amount**
of any loan which the foreclosure consultant may make to the owner.

27 (c) **Take any wage assignment, any lien of any type on real or personal property,**
28 **or other security to secure the payment of compensation. That security shall be**
void and unenforceable.

1 ...

2 (e) **Acquire any interest in a residence in foreclosure from an owner with whom**
3 **the foreclosure consultant has contracted.** Any interest acquired in violation of
4 this subdivision shall be voidable, provided that nothing herein shall affect or defeat
5 the title of a *bona fide* purchaser or encumbrancer for value and without notice of a
6 violation of this article. Knowledge that the property was “residential real property
in foreclosure,” does not constitute notice of a violation of this article. This
subdivision may not be deemed to abrogate any duty of inquiry which exists as to
rights or interests of persons in possession of residential real property in foreclosure.

7 **DECISION**

8 While the legal conclusions drawn by the respective Parties from the facts presented to the
9 court relating to the Foreclosure Cancellation Guaranty, the “Contract” between Plaintiff-Trustee
10 and Defendant-Debtor, are in dispute, the basic facts are not. The court begins with the
11 written Foreclosure Cancellation Guaranty (Exhibit 2) prepared by Plaintiff-Trustee and his
12 attorney (that attorney did not appear at trial to testify) that was given to Defendant-Debtor to sign
13 less than fourteen (14) hours before the scheduled nonjudicial foreclosure sale on Defendant-
14 Debtor’s residence (Defendant-Debtor waiting until 8:00 p.m. on February 10, 2022 to contact
15 Plaintiff-Trustee to save the residence from foreclosure) due to defaults on the Freedom Mortgage
16 Loan.

17 As reviewed above, the Foreclosure Cancellation Guaranty expressly provides that the
18 following facts stated in the unnumbered Whereas Paragraphs on pages 1 and 2 of the Foreclosure
19 Cancellation Guaranty cannot be disputed or denied by Plaintiff-Trustee or Defendant-Debtor
20 include, but are not limited to:

- 21 a. Defendant-Debtor’s residence was in foreclosure.
- 22 b. Plaintiff-Trustee shall advance the monies to cure the defaults on the Freedom
- 23 Mortgage Loan for which the nonjudicial foreclosure sale is occurring.
- 24 c. The Plaintiff-Trustee identifies himself and First Trust (in the Contract prepared by
- 25 Plaintiff-Trustee and his attorney) as a “real estate investor” and a “foreclosure
- 26 consultant.”
- 27 d. In the Fourth WHEREAS Paragraph (p. 2 of the Foreclosure Cancellation
- 28 Guaranty), Plaintiff-Trustee states the obligations of Plaintiff-Trustee to be that
“Plaintiff-Trustee is willing to cure the below-described defaults and reinstate the
loans: [description of Freedom Mortgage Loan in default secured by Debtor’s
Residence set for foreclosure sale of February 11, 2020]; . . .”

1 These are the obligations of Plaintiff-Trustee and services to be provided by Plaintiff-
2 Trustee. These are then repeated in Paragraph 2 of the Foreclosure Cancellation Guaranty stating
3 Plaintiff-Trustee’s obligation is: that “from funds provided solely by/through [Plaintiff-Trustee],
4 [Plaintiff-Trustee] shall cure the default(s) identified above [the Freedom Mortgage Loan for which
5 the February 11, 2020 foreclosure sale was set].”

6 The express terms of the Foreclosure Cancellation Guaranty, as drafted by Plaintiff-Trustee
7 and his attorney, state that the only services provided by Plaintiff-Trustee are to loan the money to
8 cure the default and reinstate the Freedom Mortgage Loan secured by Defendant-Debtor’s
9 Residence. Thus, the sum total of what the Foreclosure Cancellation Guaranty states are Plaintiff-
10 Trustee’s contractual obligations are to advance (loan) the money to cure the default on the Freedom
11 Mortgage Loan and then reinstate such obligation secured by Defendant-Debtor’s Residence.

12 Then, on pages 2 and 3 of the Foreclosure Cancellation Guaranty, Plaintiff-Trustee and
13 Defendant-Debtor agree that for the services provided by Plaintiff-Trustee to cure the default and
14 have the loan secured by Debtor’s Residence reinstated (identified by paragraph number in the
15 Contract):

- 16 3. The Foreclosure Cancellation Guaranty obligations of Defendant-Debtor are secured
17 by a Deed of Trust given to Plaintiff-Trustee to be recorded against the Defendant-
18 Debtor’s residence that is the subject of the Freedom Mortgage foreclosure sale for
 which Plaintiff-Trustee will cure the default and reinstate the Freedom Mortgage
 Loan.
- 19 5.b. In consideration for the monies advance and Plaintiff-Trustee curing the default and
20 reinstating the Freedom Mortgage Loan secured by Defendant-Debtor’s residence,
21 Defendant-Debtor agrees to place the residence on the market for sale within sixty
 (60) days after February 11, 2020 (the foreclosure date for which Plaintiff-Trustee
 will cure the default and have Defendant-Debtor’s loan reinstated as being current).
- 22 5.e In consideration of the monies advanced, Plaintiff-Trustee will be repaid the monies
23 advanced (here the evidence shows it was \$39,705.53), with no interest, and also
24 50% of the sales proceeds with the Contract also providing for there being a joint
 venture to split the sales proceeds.
- 25 6. If Defendant-Debtor refuses to timely proceed with the sale of the residence,
26 Plaintiff-Trustee may foreclose on his deed of trust which secures the obligation to
 pay the monies advance and 50% of the sale proceeds which are consideration for
 having advanced the monies to cure the default and stop the foreclosure sale.

27 Plaintiff-Trustee did just what the Foreclosure Cancellation Guaranty required, he advanced
28 \$37,000.00 to cure the default, stopped the foreclosure sale, and reinstated the Freedom Mortgage

1 Loan. Plaintiff-Trustee advanced an additional \$2,705.53 for some work on the Residence in
2 preparation of the prompt sale of the Residence (Exhibit A; Direct Testimony Statement ¶ 68) so that
3 Plaintiff-Trustee could get paid back the \$37,000.00 advanced (loaned), the \$2,705.53 for repairs,
4 and 50% of the Net Proceeds from the sale of Defendant-Debtor's Residence.

5 The services to be provided by Plaintiff-Trustee hit the mark of Plaintiff-Trustee and First
6 Trust being a Foreclosure Consultant subject to California Civil Code §§ 2945 et. seq. in several
7 different ways. These include:

- 8 ♦ Expressly identifying Plaintiff-Trustee and First Trust as a "foreclosure consultant"
9 in a statement that the Contract expressly states that Plaintiff-Trustee cannot dispute.
- 10 ♦ Contacting Freedom Mortgage, the foreclosing mortgage creditor, on behalf of
11 Defendant-Debtor as the owner of the Residence in foreclosure.
- 12 ♦ Plaintiff-Trustee services were to stop or postpone the Freedom Mortgage
13 foreclosure sale - which Plaintiff-Trustee succeeded in stopping, having the default
14 cured, and the Freedom Mortgage Loan reinstated.
- 15 ♦ Plaintiff-Trustee obtained forbearance from Freedom Mortgage (the foreclosing
16 lender) in enforcing the trustee's sale conducted on February 11, 2020, and then
17 convinced Freedom Mortgage to cancel the nonjudicial foreclosure sale which
18 occurred and foreclosure trustee's deed issued pursuant thereto.
- 19 ♦ Though the time for enforcing reinstatement rights under California Civil Code
20 § 2924c had expired (Plaintiff-Trustee making the cure payment the day of the
21 scheduled foreclosure sale), Plaintiff-Trustee's services under the Foreclosure
22 Cancellation Guaranty included Plaintiff-Trustee convincing Freedom Mortgage to
23 reinstate its loan.
- 24 ♦ Even though the California Civil Code § 2924c cure and reinstatement of the loan
25 as a matter of right had expired, Plaintiff-Trustee was able to successfully convince
26 Freedom Mortgage to extend the time to allow the cure to be made and reinstate the
27 Freedom Mortgage Loan.
- 28 ♦ Though the acceleration clause could be enforced and the "mere" \$37,000 cure
amount rejected, Plaintiff-Trustee's services were to obtain a waiver of that
acceleration and have Freedom Mortgage, as the foreclosing lender, accept the
"mere" cure amount, waive the acceleration and right to demand payment of the full
amount of the secured debt, and reinstate the Freedom Mortgage Loan.
- ♦ Plaintiff-Trustee assisted Defendant-Debtor to obtain a loan or advance of the monies
necessary to cure the default and stop the Freedom Mortgage foreclosure sale, with
Plaintiff-Trustee making the advance to cure the default and reinstatement of the
Freedom Mortgage Loan (for which sought to recover not only repayment of the
advance, but also 50% of the sales proceeds based on the consideration for having
advanced the monies).
- ♦ Plaintiff-Trustee provided advice and instructions to Defendant-Debtor how to cure
the default (using Plaintiff-Trustee's advance) and then how to get the Freedom

1 Mortgage Loan that was the subject of the foreclosure reinstated, as well as Plaintiff-
2 Trustee providing the services to have the Freedom Mortgage Loan actually
reinstated.

3 ♦ The Foreclosure Cancellation Guaranty states the substance of the services being
4 provided by Plaintiff-Trustee, consistent with the name of the Contract itself (a
5 Foreclosure Cancellation Guaranty) which was created by Plaintiff-Trustee and his
attorney, are those of a Foreclosure Consultant to:

- 6 ● “stop or postpone the foreclosure sale,”
- 7 ● “obtain any forbearance from any beneficiary or mortgagee,”
- 8 ● obtain any extension of time for Defendant-Debtor to reinstate the loan by curing
the default,
- 9 ● “obtain [a] waiver of an acceleration clause,”
- 10 ● “assist [Defendant-Debtor] to obtain a loan or advance of funds,” and
- 11 ● “save the [Defendant-Debtor’s] Residence from foreclosure.”

12 *See*, Cal. Civ. § 2945.1(a)(1), (2), (4), (5), (6), and (8).

13 In multiple ways these each hit squarely within the services of a Foreclosure Consultant as
14 defined under California Law and subject to the provisions of California Civil Code § 2945 -
15 2945.11.

16 **Statutory Disclosures of a Foreclosure Consultant**
17 **Made by Plaintiff-Trustee in the Contract**

18 In addition to the plain language in the Foreclosure Cancellation Guaranty and the irrefutable
19 statement by Plaintiff-Trustee in the Contract that he is a “foreclosure consultant” (the Foreclosure
20 Cancellation Terms expressly estopping denial of that express statement therein), the Foreclosure
21 Cancellation Guaranty itself includes notifications and cancellation forms required only of a
22 Foreclosure Consultant. These notices in the Foreclosure Cancellation Guaranty expressly reference
23 the California Civil Code Sections which required foreclosure consultants to make such disclosures
24 or provide specified forms to consumers whose residences are in foreclosure.

25 The first is on Page 1 of the Contract in a box right under the title “**FORECLOSURE**
26 **CANCELLATION GUARANTY**” (emphasis in original), which states:

27 ///

28 ///

1 Name and address of the [Plaintiff-Trustee] to which Cancellation notice may be mailed is
 2 FIRST TRUST, Carl Dexter, Trustee P.O. Box XXXX, Sacramento, CA 95851
 3 The date the owner signed the contract is 10 February 2020.

CC § 2945.3(d)

4
5 Contract, Page 1; Exhibit 2 (P.O. Box number redacted by the court).

6 California Civil Code § 2945.3(e), which prior to 2008 was California Civil Code § 2945(d),⁷
 7 expressly requires the Foreclosure Consultant to put this exact notice specifying the name and
 8 address of the Foreclosure Consultant on the first page of the contract between the Foreclosure
 9 Consultant and the consumer homeowner. As discussed herein, Plaintiff-Trustee could provide no
 10 credible explanation as to why this statutory disclosure by a Foreclosure Consultant was
 11 made by Plaintiff-Trustee in the Foreclosure Cancellation Guaranty if Plaintiff-Trustee was
 12 not a Foreclosure Consultant.

13 Next, on Page 7 of the Foreclosure Cancellation Guaranty Plaintiff-Trustee provides the
 14 following notices:

15 **NOTICE REQUIRED BY CALIFORNIA LAW**

16 First Trust, Carl Dexter, Trustee, or anyone working for them CANNOT
 17 (1) Take any money from you or ask you for money until First Trust, Carl
 18 Dexter, Trustee [Plaintiff-Trustee] has completely finished doing everything they said they
 19 would do; and
 (2) Ask you to sign or have you sign any lien, deed of trust, or deed.

CC § 2945(3)(b)

20 You, the owner, may cancel this transaction at any time prior to midnight of the
 21 third business day after the date of this transaction. See the attached notice of
 22 cancellation form for an explanation of this right.

CC § 2945.3(c)

23
 24 The first notice above, for which California Civil Code § 2945(3)(b) is referenced by
 25 Plaintiff-Trustee in the Foreclosure Cancellation Guaranty prepared by Plaintiff-Trustee and his
 26

27
 28 ⁷ Cal. Civ. § 2945.3 amended in 2008 to add a new paragraph (d) and renumber prior existing
 paragraph (d) as current paragraph § 2945.3(e). 2008 Cal Stats. ch. 278, AB 180.

1 attorney, is word for word the Notice required to be given by a Foreclosure Consultant. It is also
2 placed immediately before the second notice, for which California Civil Code § 2945.3(c) is cited,⁸
3 that must be given by a Foreclosure Consultant. The second notice is the word for word exact notice
4 **required by statute**, currently California Civil Code § 2945.3(d), **to be given by a Foreclosure**
5 **Consultant.**

6 On Pages 8 and 9 of the Foreclosure Cancellation Guaranty, in duplicate, are Notice of
7 Cancellation Forms. This is the statutory Notice of Cancellation Form, **which must be provided**
8 in duplicate **by a Foreclosure Consultant** as required by California Civil Code § 2945.3(f). The
9 only difference is that it states that the cancellation must be made in three business days, while
10 § 2945.3(f) states that the consumer homeowner has five business days. The three business days
11 notice was changed to five business days and this section, formerly § 2945.3(e) was renumber
12 § 2945.3(f) with the 2008 amendments to California Civil Code § 2945.3. 2008 Cal Stats. ch. 278,
13 AB 180.

14 The Foreclosure Cancellation Guaranty prepared by Plaintiff-Trustee and Plaintiff-Trustee's
15 attorney provides the required notices and cancellation forms required only of a Foreclosure
16 Consultant, not a "mere" real estate investor.

17 Plaintiff-Trustee's testimony that he and First Trust are merely real estate investors is not
18 supported by the evidence presented by Plaintiff-Trustee, as well as the evidence presented by
19 Defendant-Debtor. From the evidence presented, Plaintiff-Trustee and an attorney set up the
20 Foreclosure Cancellation Guaranty for Plaintiff-Trustee to engage in the business of a Foreclosure
21 Consultant as regulated by California Law. At some point, Plaintiff-Trustee concluded that it would
22 be more lucrative to assert that he was not a Foreclosure Consultant and extract more than the 10%
23 interest on monies advanced consumers who were facing foreclosure on their residences.

24 Plaintiff-Trustee and First Trust are Foreclosure Consultants as provided for in California
25 Law, subject to the restrictions, limitations, and obligations provided in Title 14, Article 1.5 of the
26

27
28 ⁸ As part of the 2008 amendments, paragraph (c) of § 2945.3 was renumbered as § 2945.3(d).
2008 Cal Stats. ch. 278, AB 180.

1 California Civil Code. On its face, the plain language of the title of the Contract,
 2 “Foreclosure Cancellation Guaranty” states that it relates to services being provided to cancel a
 3 foreclosure sale. It goes even further, stating that the “Cancellation” is a “Guaranty.” For desperate
 4 consumer homeowners facing the loss of their home, they clearly would read this as an expert
 5 Foreclosure Consultant riding in to save the day and the loss of their home, or equity in their
 6 home, to foreclosure.

7 The Foreclosure Cancellation Guaranty, to the extent that it purports to extract 50% of the
 8 equity of the property from Defendant-Debtor, along with the \$39,705.53 advanced, in consideration
 9 for Plaintiff-Trustee making the \$39,705.53 violates California law and is not enforceable as it seeks
 10 to extract compensation in excess of that allowed pursuant to California Civil Code § 2945.4 –
 11 which precludes a Foreclosure Consultant receiving any “fee, interest, or any other compensation
 12 for any reason” in excess of 10% per annum of any loan which the Foreclosure Consultant may
 13 make to Defendant-Debtor.

14 **DETERMINATION OF RIGHTS, INTERESTS,
 15 AND OBLIGATIONS OWING
 16 BY THE PARTIES TO THE OTHER**

17 Plaintiff-Trustee first seeks the court determine the rights of the parties under the Foreclosure
 18 Cancellation Guaranty (Declaratory Relief) and to determine that any obligation owed Plaintiff-
 19 Trustee by Defendant-Debtor is nondischargeable based on fraud as provided in 11 U.S.C.
 20 § 523(a)(2)(A).

21 Plaintiff-Trustee expressly requests that the court declare that Plaintiff-Trustee owns 50%
 22 of the Net Proceeds from the sale of Defendant-Debtor’s Residence as part of the compensation for
 23 the services provided by Plaintiff-Trustee under the Foreclosure Cancellation Guaranty.

24 **Determination of Claims For:**

- 25 **(1) The Amount of Obligation and Right to 50%
of the Net Sales Proceeds from Defendant-Debtor’s Residence,**
- 26 **(2) Validity of Deed of Trust Securing the Obligation for Loan.**

27 The evidence presented is that Plaintiff-Trustee has advanced \$39,705.53 pursuant to the
 28 Foreclosure Cancellation Guaranty. \$37,000.00 was advanced to stop the foreclosure sale, cure the

1 default, extend the period that Defendant-Debtor had to cure the default, obtain a waiver of the
2 acceleration of the obligation secured by Defendant-Debtor's residence, and the advance of funds
3 were to save the Defendant-Debtor's residence from foreclosure. The additional \$2,705.53 were for
4 inspections, fencing, and miscellaneous items for what Plaintiff-Trustee believed to be the sale of
5 the Defendant-Debtor's Residence pursuant to the terms of the Foreclosure Cancellation Guaranty.

6 Plaintiff-Trustee has established that Defendant-Debtor owes Plaintiff-Trustee \$39,705.53
7 for monies loaned, with prejudgement contractual interest of Zero Percent (0.00%). Plaintiff-Trustee
8 has not requested prejudgement interest in the Complaint or as presented at Trial. Plaintiff-Trustee
9 has not provided the court with any contractual or statutory basis for prejudgement interest.

10 Plaintiff-Trustee is granted judgment determining that the amount of \$39,705.53 is owed by
11 Defendant-Debtor for the monies advance (loaned) for and to Defendant-Debtor pursuant to the
12 Foreclosure Cancellation Guaranty and that the contractual interest rate for such monies advanced
13 (loaned) is 0.00% per annum. As stated below, this obligation is secured by the Deed of Trust
14 granted by Defendant-Debtor pursuant to the Foreclosure Cancellation Guaranty.⁹

15 **Amount of Obligation - Plaintiff-Trustee Has No Right**
16 **to Recover Any Amounts in Excess of the \$39,705.53 Loan, and**
17 **No Right to 50% of the Equity in the Residence**

18 As discussed above, the sum total of consideration/services to be provided by Plaintiff-
19 Trustee was contractually limited to loaning the monies to cure the default in the loan secured by
20 Defendant-Debtor's Residence and then additional amount for necessary repairs for Defendant-
21 Debtor's Residence to be promptly sold

22 For the \$39,705.53 (which includes repair amounts) loaned, Plaintiff-Trustee asserts not only
23 the right to be repaid the \$39,705.53, but also asserts the right to additional compensation/payment
24 of \$90,220.47 for having made the loan to stop the foreclosure sale.

25 For the sale of Defendant-Debtor's Residence, the Foreclosure Cancellation Guaranty,
26

27 ⁹ The Complaint as drafted requests the court to resolve the dispute of the amount that is owed
28 and that the Deed of Trust is valid and enforceable. The Plaintiff-Trustee has not sought to have a
monetary judgment entered which would replace the Foreclosure Cancellation Guaranty and Deed of
Trust.

1 paragraph 5(b), provides that the Residence is to be listed for sale within sixty (60) days of
2 February 11, 2020. For the residential real estate market in 2020, it is not unreasonable to project
3 that such a sale would be completed in four months.

4 To be conservative, the court will use six months for closing, which includes the two months
5 prior to the listing date that the advance (loan) was actually made. Plaintiff-Trustee getting paid the
6 additional \$90,220.47 for the \$39,705.53 of monies loaned by Plaintiff-Trustee for a period of eight
7 (8) months results in Plaintiff-Trustee receiving “any fee, interest or other compensation” which
8 exceeds ten (10)% per annum of the amount of the loan. Cal. Civ. § 2045.4(b). Claiming the right
9 to an additional \$90,220.47, in addition to the principal of \$39,705.53 loaned for eight (8) months,
10 would be an additional 339% per annum “charge, . . . fee, interest, or any other compensation for
11 any reason” monies sought to be received by Plaintiff-Trustee for the loan and Foreclosure
12 Consultant services provided to/for Defendant-Debtor to cure the default in and reinstate the
13 Freedom Mortgage Loan. This is in violation of California Civil Code § 2945.4(b).¹⁰

14 Plaintiff-Trustee seeking to recover additional compensation for the services as a Foreclosure
15 Consultant in an amount equivalent to a 339% per annum interest in addition to the amounts
16 advanced (loaned) is barred as a matter of California Law.

17 Additionally, trying to claim having acquired by virtue of the Foreclosure Cancellation
18 Guaranty a joint venture interest in Defendant-Debtor’s Residence and the right to 50% of the equity
19 in the Residence is in clear violation of California Civil Code § 2945.4, which states (emphasis
20 added):

21 § 2945.4. Violations

22 It shall be a violation for a foreclosure consultant to:

23 . . .

24 (c) Take any wage assignment, any lien of any type on real or personal
25 property, or other security to secure the payment of compensation. That
security shall be void and unenforceable.

26 ¹⁰ To “show the work” for computation of the per annum interest rate, court computes as follows:
27

28
$$\text{\$39,705 loan} \times 339\% \text{ interest per annum interest for which the interest and principal are}$$

$$\text{paid in full in 8 months (8/12 months} = .67) \times .67 = \text{\$90,181.97.}$$

1 ...

2 (e) Acquire **any interest in a residence** in foreclosure from an owner with
3 whom the foreclosure consultant has contracted. Any interest acquired in
4 violation of this subdivision **shall be voidable**,

5 Thus, pursuant to Plaintiff-Trustee’s request for the court to declare what interests, whether
6 lien or joint venture ownership (legal or equitable), results in the court determining that:

7 (1) any lien on Residence for compensation for amounts in excess of the loan
8 obligation is void and

9 (2) any interest in Defendant-Debtor’s Residence, including claiming a contractual
10 right to 50% of the Net Proceeds from the sale of the Residence, is voidable – the statute
11 expressly stating that such interest shall be voidable, not merely *may be voidable* based on
12 a series of possible factors or equitable issues.

13 Asserting such right to amounts in excess of the loans made and any interests in Defendant-
14 Debtor’s Residence (whether legal or equitable), in the proceeds of the sale of the Defendant-
15 Debtor’s residence, are void (for any lien) and shall be voidable (for an interest in Defendant-
16 Debtors Residence).

17 The court further finds that the terms of the Foreclosure Cancellation Guaranty, and
18 considering all of the testimony and evidence presented, do not grant Plaintiff-Trustee any interest
19 (neither legal nor equitable) in Defendant-Debtor’s Residence or the proceeds from the sale of such
20 Residence.

21 The “joint venture” provisions in the Foreclosure Cancellation Guaranty, consisting of two
22 lines of text in paragraph 5(e), state that in consideration of the Foreclosure Cancellation Guaranty
23 (in addition to repaying the monies advanced) “[Defendant-Debtor] and [Plaintiff-Trustee enters into
24 a **JOINT VENTURE WITH A 50/50 SPLIT OF NET PROCEEDS.**” Exhibit 2 (emphasis in
25 original). No other reference is made to a “joint venture” anywhere in the Foreclosure Cancellation
26 Guaranty.

27 As stated above, with respect to Plaintiff-Trustee’s obligations under the Foreclosure
28 Cancellation Guaranty, they were limited to “cure the below described defaults [stated to be
 (\$37,000) default in the Freedom Mortgage Loan] and reinstate the [Freedom Mortgage Loan].”

1 Foreclosure Cancellation Guaranty fourth WHEREAS paragraph, p. 2; Exhibit 2. There was nothing
2 other than providing the services of a Foreclosure Consultant for any asserted “joint venture” with
3 Defendant-Debtor.

4 Paragraph 5(e) begins with stating that from the net sales proceeds from the sale of
5 Defendant-Debtor’s Residence that was in foreclosure, Plaintiff-Trustee will be paid the amounts
6 advanced (loaned) with 0% interest and a 50/50 split of the net sales proceeds. This provides for
7 payment of the monetary obligations owed by Defendant-Debtor under the Foreclosure Cancellation
8 Guaranty, which obligations are secured by the Deed of Trust. The words “Joint Venture” do not
9 appear to relate to any actual joint venture. Rather, they appear to be camouflage to create the
10 appearance that California Law governing Plaintiff-Trustee’s activities as a Foreclosure Consultant
11 should not apply to additional compensation (here equal to 339% per annum interest on the monies
12 loaned) that Plaintiff-Trustee seeks for the loan made under the Foreclosure Cancellation Guaranty.

13 As with much of Plaintiff-Trustee’s testimony, no credible testimony or evidence was given
14 of there being any actual joint venture. Rather, using the words “joint venture” was a canard for
15 Plaintiff-Trustee to take additional compensation of \$90,220.47 (50% of the equity in the Residence)
16 for having made a projected eight (8) month \$39,705.53 loan.

17 It is unclear what consideration that Plaintiff-Trustee provided for any joint venture.
18 Plaintiff-Trustee has only made a loan to the Defendant-Debtor to cure the default on the obligation
19 secured by the Residence. For this, the Plaintiff-Trustee asserts not only to be repaid the loan, but
20 an additional amount that equals 339% per annum interest on the monies loaned. It is also unclear
21 what personal liabilities, obligations, and fiduciary duties Plaintiff-Trustee would incur if there was
22 an actual, *bona fide* joint venture.

23 With respect to any asserted joint venture, it is nothing more than Plaintiff-Trustee and his
24 attorney(s) having inserted those two words into one line of the Foreclosure Cancellation Guaranty,
25 as if they provide a magical legal incantation, to allow Plaintiff-Trustee a facade to demand
26 additional payments/compensation/interest from the less sophisticated Defendant-Debtor that equals
27 339% per annum interest on the \$39,705.53 advance (loan) made by Plaintiff-Trustee, which
28 advance (loan) was the only contractual obligation of Plaintiff-Trustee under the Foreclosure

1 Cancellation Guaranty.

2 Defendant-Debtor is granted judgment determining that Plaintiff-Trustee is not entitled to
3 any monetary amounts in excess of the \$39,705.53. Further, that Plaintiff-Trustee does not have a
4 legal basis for asserting a right to 50% of the sales proceeds from a Sale of Defendant-Debtor's
5 Residence. Additionally, that Plaintiff-Trustee does not have any interest, neither legal nor
6 equitable, in Defendant-Debtor's Residence or the proceeds from the sale of such Residence.

7 **Validity of Deed of Trust**

8 Though no deed of trust was included with the Foreclosure Cancellation Guaranty, both
9 Plaintiff-Trustee and Defendant-Debtor testified that the Deed of Trust (Exhibit 4) dated March 16,
10 2020, was executed by Defendant-Debtor as the Deed of Trust to secure the obligation of Defendant-
11 Debtor owning on the Foreclosure Cancellation Guaranty.

12 Though the Deed of Trust states that it is to secure a "promissory note of the same date
13 executed by [Defendant-Debtor], in the sum of \$75,000.00," no such Note was presented to the court
14 by the Plaintiff-Trustee. From the evidence presented the court concludes that the obligation it
15 secures is the \$39,705.53 owed by Defendant-Debtor pursuant to the Foreclosure Cancellation
16 Guaranty and the reference to a \$75,000.00 Note was a mere "drafting error" by Plaintiff-Trustee.

17 At the trial, when Plaintiff-Trustee was questioned about why the Deed of Trust he prepared
18 for Defendant-Debtor to sign referenced a \$75,000.00 promissory note but no such note was entered
19 into evidence, Plaintiff-Trustee seemed surprised. After stumbling a bit, Plaintiff-Trustee
20 stammered that the Foreclosure Cancellation Guaranty was really part promissory note and part joint
21 venture agreement. No legal theory was advanced as to how the Foreclosure Cancellation Guaranty
22 was a "promissory note." This testimony of Plaintiff-Trustee was not credible, sounded in the nature
23 of trying to circumvent the law, and was not supported by any other evidence or legal arguments
24 presented by or for Plaintiff-Trustee.

25 This testimony of Plaintiff-Trustee is consistent with much of his testimony that the court
26 does not find credible. Much of it relates to Plaintiff-Trustee's legal conclusions about why he is
27 entitled to the additional compensation of \$90,220.47, which equals 339% per annum interest for
28 the \$38,705.53 monies loaned. It is testimony "created" to allow Plaintiff-Trustee to try and justify

1 taking away 50% of the Defendant-Debtor’s equity in his Residence that was in foreclosure.

2 The Foreclosure Cancellation Guaranty provides that Defendant-Debtor is to repay the
3 monies advanced when the residence Property is sold. That has not yet occurred.

4 Judgment shall be entered for Plaintiff-Trustee that the deed of trust encumbering the
5 2 Odom Court, Sacramento, California; recorded on March 17, 2020, with the Sacramento County
6 Recorder, Doc # 202003171009; to secure the obligation of \$39,705.53 of Defendant-Debtor to
7 Plaintiff pursuant to the Foreclosure Cancellation Guaranty, which judgment shall expressly state
8 that the contractual interest rate on the obligation is 0.00% interest per annum, and such obligation
9 is valid and enforceable.

10 **No Prejudgment Interest Requested by or**
11 **Legal Basis Shown by Plaintiff-Trustee on the**
12 **\$39,705.53 Obligation Secured by the Deed of Trust**

13 In the Complaint no request is made by Plaintiff-Trustee for any prejudgment interest. In
14 Plaintiff-Trustee’s Trial Brief (Dckt. 47), no request is made for there being interest accruing on any
15 obligation.

16 The Foreclosure Cancellation Guaranty; paragraph 5(e), Exhibit 2; expressly states that the
17 loan made by Plaintiff-Trustee in the amount of \$39,705.53 has an interest rate of “ZERO percent
18 (0.00%) per annum . . . until date said monies are actually returned to the [Plaintiff-Trustee]; . . .”
19 (Emphasis in original.) The contractual interest rate for the \$39,705.53 loan is 0.00% per annum.

20 Plaintiff-Trustee has not provided the court with any other contractual provision or any
21 statutory basis for interest accruing on the obligation for any amount in excess of the contractual
22 0.00% or for the court entering a judgment determining that any interest is owing or accruing on the
23 \$39,705.53 loan.

24 California Civil Code § 3289 expressly addresses the issue of the application of a contractual
25 interest rate and it continuing until a judgment is entered that replaces the underlying contract.

26 § 3289. Rate of interest chargeable after breach of contract

27 (a) Any legal rate of interest stipulated by a contract remains chargeable after a
28 breach thereof, as before, until the contract is superseded by a verdict or other new
obligation.

1 (b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of
2 interest, the obligation shall bear interest at a rate of 10 percent per annum after a
breach.

3 For the purposes of this subdivision, the term contract shall not include a note
4 secured by a deed of trust on real property.

5 Cal. Civ. § 3289.

6 As stated above, the contract rate of interest continues until it is superceded by the verdict
7 (judgment). *See Resolution Trust Corp. V. First American Bank*, 144 F.3d 1126, 1129 (9th Cir.
8 1998, stating, “Further, the statutory rate [Cal. Civ. 3289 amended in 1995 to add paragraph (b) for
9 statutory interest when the contract does not specify an interest rate] does not apply at all to accrued
10 prejudgment interest if a rate was specified in the contract.” Here, the rate of interest set forth in the
11 Foreclosure Cancellation Guaranty of 0.00% is not an illegal rate of interest (*i.e.* it does not violate
12 any statute or the California Constitution to which parties may agree to in a contract). *See Cavalry*
13 *SPV I, LLC v. Watkins*, 36 Cal. App. 5th 1070, 1092-1094 (2019), which discussion by the
14 California Court of Appeal includes:

15 The plain language of section 3289 indicates that subdivision (a) applies when a
16 contract contains a legal rate of interest, and the contractual rate agreed upon by the
17 parties in the contract governs following a breach in such cases. . .Put another way,
if the creditor entered into a contractual agreement containing a legal rate of interest,
it remains bound by the terms of that agreement; . . .

18 . . .
19 Further, this interpretation is also consistent with other California cases
interpreting section 3289 in slightly different contexts. As already discussed, the
20 Ninth Circuit in *Diaz* addressed a case in which the original contract did not include
an interest provision and concluded subdivision (b) was applicable “given the
21 absence of any provision in the contract stipulating to a particular rate of interest.”¹⁴
(*Diaz, supra*, 785 F.3d at p. 1330, italics added.) Similarly, in *Mark McDowell Corp.*
22 *v. LSM I28* (1989) 214 Cal.App.3d 1427, the court decided that a party to a contract
with a usurious interest rate could still collect prejudgment interest at the statutory
23 rate pursuant to section 3289, subdivision (b) because the usurious nature rendered
the contractual interest provision void, such that the contract did not specify a legal
24 rate of interest. (*McDowell*, at pp. 1431–1432, abrogated on other grounds in
Southwest Concrete Products v. Gosh Construction Corp. (1990) 51 Cal.3d 701,
25 704.) Finally, in *Reidy v. Miller* (1927) 85 Cal.App. 764, 768, the court considered
a situation in which the contractual rate of interest was less than the statutory 10
26 percent and concluded the plaintiff was entitled only to the lower contractual rate.
In each of these cases, the presence or absence of a contractual rate of interest
27 controlled whether the creditor could rely on the statutory rate of 10 percent set forth
in section 3289, subdivision (b).

28 ///

1 Judgment shall be entered for Defendant-Debtor and against Plaintiff-Trustee that there is
2 no interest owing on the \$39,705.53 loan obligation, with the contractual interest rate being 0.00%
3 per annum for said obligation.

4 **Obligation is Dischargeable**

5 Plaintiff-Trustee asserts that the obligations owed by Defendant-Debtor are nondischargeable
6 due to Defendant-Debtor's fraud. The fraud asserted is that Defendant-Debtor never intended to
7 perform any of the terms agreed to in the Foreclosure Cancellation Guaranty, including:
8 (1) reimbursing Plaintiff-Trustee for the \$39,705.53 advanced, (2) allowing Plaintiff-Trustee to
9 renovate the Defendant-Debtor's residence for sale so Plaintiff-Trustee could receive 50% of the
10 sales proceeds (after repayment of the \$39,705.53 advanced), (3) list the residence for sale, (4) sell
11 the residence, and (5) give Plaintiff-Trustee 50% of the sales proceeds (after repayment of the
12 \$39,705.53 advanced) as additional compensation for the monies advanced (loaned) pursuant to the
13 Foreclosure Cancellation Guaranty.

14 The basic grounds for nondischargeable fraud are well established and with respect to what
15 is alleged, fairly common to the court.

16 Congress provides in 11 U.S.C. § 523(a)(2)(A) that debts which are based upon fraud will
17 be nondischargeable. For "traditional fraud," the creditor is required to establish the following five
18 elements:

- 19 (1) the debtor made . . . representations;
- 20 (2) that at the time he knew they were false;
- 21 (3) that he made them with the intention and purpose of deceiving the
22 creditor;
- 23 (4) that the creditor justifiably relied on such representations; [and]
- 24 (5) that the creditor sustained the alleged loss and damage as the proximate
25 result of the misrepresentations having been made.

26 *In re Sabban*, 600 F.3d 1219, 1222 (9th Cir. 2010). A creditor must show these elements by a
27 preponderance of evidence. *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000). 11 U.S.C.
28 § 523(a)(2)(A) prevents the discharge of all liability arising from fraud. *Cohen v. de la Cruz*, 523

1 U.S. 213, 215 (1998).

2 The requirement of “justifiable reliance” looks to the qualities and characteristics of the
3 particular plaintiff and the circumstances of the particular case. *Field v. Mans*, 516 U.S. 59, 71
4 (1995); *In re Kirsh*, 973 F.2d 1454, 1458 (9th Cir. Cal. 1992). The standard for determining whether
5 reliance is justifiable “is not that of the average reasonable person. It is a more subjective standard
6 which takes into account the knowledge and relationship of the parties themselves.” *In re Kirsh*, 973
7 F.2d at 1458 (9th Cir. Cal. 1992). “The standard does protect the ignorant, the gullible, and the
8 dimwitted. . . .” *Id.*

9 As addressed herein, Plaintiff-Trustee’s attempt to obtain an interest in Defendant-Debtor’s
10 Residence for the services and monies advanced under the Foreclosure Cancellation Guaranty is
11 illegal and any such interests are void or shall be voidable. Cal. Civ. §§ 2945.4.

12 As noted by the Supreme Court in *Husky Int’l Elecs., Inc. v. Ritz*, 136 S. Ct. 1581 (2016), the
13 term “actual fraud” as used in 11 U.S.C. § 523(a)(2) includes fraudulent conveyance schemes that
14 would not include a “representation,” but are fraudulent under applicable nonbankruptcy law. No
15 such statutory fraud basis has been asserted by Plaintiff-Trustee.

16 As shown at trial, the Parties contractual relations were a “mess,” and the rights, amounts
17 and interests demanded/imposed by Plaintiff-Trustee in the Foreclosure Cancellation Guaranty
18 drafted by Plaintiff-Trustee and his attorney are in large part barred by California Law. Though
19 Defendant-Debtor’s conduct in addressing his financial obligations on the Freedom Mortgage Loan
20 has been less than financially planning stellar, it does not rise to actionable fraud for the
21 nondischargeability of debt.

22 The Defendant-Debtor did what he legally promised to do under the Foreclosure
23 Cancellation Guaranty - give Plaintiff-Trustee the Deed of Trust to secure the monetary obligation
24 owed pursuant to the Foreclosure Cancellation Guaranty.

25 The court also notes that the Foreclosure Cancellation Guaranty, which was drafted by
26 Plaintiff-Trustee and his attorney, expressly states that Defendant-Debtor can enforce his right of
27 foreclosure if this less sophisticated consumer Defendant-Debtor should hesitate with the sale of the
28 Residence starting two months after February 10, 2023. Plaintiff-Trustee was not relying on any

1 “promised performance” under the Foreclosure Cancellation Guaranty.

2 With respect to the alleged misrepresentation, the court first notes that Plaintiff-Trustee was
3 demanding that Defendant-Debtor pay Plaintiff-Trustee amounts well in excess of that permitted
4 under California Law for services provided by Plaintiff-Trustee as a Foreclosure Consultant under
5 the Foreclosure Cancellation Guaranty. Defendant-Debtor’s refusal to move forward with a sale of
6 the residence property and turn over 50% of the net proceeds to Plaintiff-Trustee was warranted.
7 Defendant-Debtor had *bona fide*, good faith reasons based on California law for rejecting Plaintiff-
8 Trustee’s demands for the immediate sale of the Residence and Plaintiff-Trustee taking 50% of the
9 net proceeds.

10 Second, the evidence clearly shows that Plaintiff-Trustee was not relying on any
11 representations made by Defendant-Debtor. On the eve of the foreclosure sale, Plaintiff-Trustee
12 gave his “take it or leave it” Foreclosure Cancellation Guaranty to Defendant-Debtor to sign. The
13 terms are very harsh, some now determined to be unenforceable as a matter of California Law, and
14 clearly drawn to give the appearance that Plaintiff-Trustee has the power to enforce a sale of
15 Defendant-Debtor’s Residence, with or without the cooperation of Defendant-Debtor, so Plaintiff-
16 Trustee can take half of the Net Proceeds from the sale of the Residence.

17 Plaintiff-Trustee was not relying on any “representations” made by Plaintiff-Trustee, but had
18 the Foreclosure Cancellation Guaranty drafted by his attorney to allow Plaintiff-Trustee to dictate
19 and control the terms for the liquidation of Defendant-Debtor’s Residence.

20 Though the less sophisticated consumer Defendant-Debtor waited until the last minute before
21 seeking the assistance of Plaintiff-Trustee, that does not give Plaintiff-Trustee the license to violate
22 California Law, have a contract written that states unenforceable and void provisions, and then
23 complain that the less financially sophisticated consumer Defendant-Debtor somehow has
24 committed fraud when Defendant-Debtor fails to capitulate to void any illegal provisions written
25 into the Foreclosure Cancellation Guaranty by Plaintiff-Trustee and his attorney.

26 The court notes that a month after the Foreclosure Cancellation Guaranty was signed,
27 Defendant-Debtor executed the Deed of Trust securing the obligations owed to Plaintiff-Trustee.
28 Defendant-Debtor continued to perform under the Foreclosure Cancellation Guaranty giving the lien

1 on the Residence Property for which there is substantial equity well in excess of even the excessive,
2 improper, not legally allowed amounts that Plaintiff-Trustee claimed. Defendant-Debtor, as shown
3 by the evidence, did work to fulfill his legally enforceable obligations under the Foreclosure
4 Cancellation Guaranty.

5 The court finds that:

- 6 (1) Defendant-Debtor did not make any false representations;
- 7 (2) There were no representations made by Defendant-Debtor that were made with
8 any intention or purpose to deceive Plaintiff-Trustee;
- 9 (3) There were no representations that were false upon which Plaintiff-Trustee
10 justifiably relied; and
- 11 (4) There have been no damages sustained by Plaintiff-Trustee for any
12 misrepresentation by Defendant-Debtor.

12 The court determines that there were no representations relied upon by Plaintiff-Trustee
13 relating to any legally enforceable rights or interests of Plaintiff-Trustee.

14 The one representation justifiably relied upon by Plaintiff-Trustee for which relief is
15 requested is that Defendant-Debtor would grant the Deed of Trust. The Defendant-Debtor fulfilled
16 this representation with the Deed of Trust executed on March 16, 2020 – notwithstanding that
17 Plaintiff-Trustee did not provide the Deed of Trust to Defendant-Debtor until two full months after
18 the Foreclosure Cancellation Guaranty was executed and the monies advanced (loaned) to cure the
19 default in the obligation secured by Defendant-Debtor's residence. Contrary to Plaintiff-Trustee's
20 assertion of misrepresentation, Defendant-Debtor fulfilled the promised obligation by promptly
21 executing the Deed of Trust, even though it was presented one month after the monies had been
22 loaned by Plaintiff-Trustee and the benefit thereof was already received by Defendant-Debtor.

23 Thus, there are no damages that Plaintiff-Trustee has suffered due to any asserted "fraud."
24 Rather, Plaintiff-Trustee was given the "keys to the financial kingdom" to enforce his rights as
25 Defendant-Debtor agreed to do in the Foreclosure Cancellation Guaranty.

26 Based on the evidence provided, the court concludes that when the Foreclosure Cancellation
27 Guaranty was signed, Defendant Debtor did not make any representations he knew to be false
28 and did not make any representations with the intention of deceiving Plaintiff-Trustee.

1 The court shall enter judgment for Defendant-Debtor and against Plaintiff-Trustee for the
2 determination that the obligations arising under the Foreclosure Cancellation Guaranty are not
3 nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

4 **JUDGMENT TO BE ENTERED**

5 The court shall enter a judgment granting the following relief:

6 A. Judgment is granted for Plaintiff-Trustee and against Defendant-Debtor
7 determining that the amount of \$39,705.53 is owed by Defendant-Debtor for the
8 financial obligations of Defendant-Debtor to Plaintiff-Trustee pursuant to the
9 Foreclosure Cancellation Guaranty as of the entry of the Judgment.

10 B. Judgment is granted for Defendant-Debtor and against Plaintiff-Trustee
11 determining that Plaintiff-Trustee is not entitled to any monetary amounts in excess
12 of \$39,705.53 pursuant to the Foreclosure Cancellation Guaranty. The court is not
13 now making a determination of any fees, costs, expenses, or additional
14 recoverable amounts pursuant to the Foreclosure Cancellation Guaranty and
15 applicable California Law that either Plaintiff-Trustee or Defendant-Debtor may
16 seek by post-judgment motion or further proceeding.

17 C. Judgment is granted for Defendant-Debtor and against Plaintiff-Trustee
18 determinating that Plaintiff-Trustee does not have a legal basis for asserting any
19 interest in or a right to 50% (or any portion) of the sales proceeds from a sale of
20 Defendant-Debtor’s Residence. Additionally, that Plaintiff-Trustee does not have
21 any interest, neither legal nor equitable, in Defendant-Debtor’s Residence or the
22 proceeds from the sale of such Residence.

23 D. Judgment is granted for Plaintiff-Trustee and against Defendant-Debtor
24 determining that the Deed of Trust encumbering 2 Odom Court, Sacramento,
25 California; recorded on March 17, 2020, with the Sacramento County Recorder, Doc
26 # 202003171009; which secures the obligation determined by the judgment of
27 \$39,705.53, and any fees, costs, expenses, and additional recoverable amounts
28 pursuant to the Foreclosure Cancellation Guaranty and applicable California Law

1 Plaintiff-Trustee may seek by post-judgment motion, owed by Defendant-Debtor to
2 Plaintiff-Trustee pursuant to the Foreclosure Cancellation Guaranty, is valid and
3 enforceable.

4 E. Judgment is granted for Defendant-Debtor and against Plaintiff-Trustee
5 determining that pursuant to the express language of the Foreclosure Cancellation
6 Guaranty, ¶ (5)(e), the rate of interest for monies advanced or loaned pursuant
7 thereto is 0.00% per annum, with the Foreclosure Cancellation Guaranty expressly
8 stating that the 0.00% interest rate is for that obligation for the period “from the date
9 said monies are paid out by the [Plaintiff-Trustee] and until date said monies are
10 actually returned to the [Plaintiff-Trustee]. . . .”

11 F. Judgment is granted for Defendant-Debtor and against Plaintiff-Trustee
12 determining that the obligations of Defendant-Debtor arising under the Foreclosure
13 Cancellation Guaranty are dischargeable, and denying Plaintiff-Trustee’s request for
14 a determination of nondischargeability pursuant to 11 U.S.C. § 523(a)(2)(A).

15 The court does not enter any monetary judgment for Plaintiff-Trustee replacing the
16 Foreclosure Cancellation Guaranty, the obligation owing thereunder, and the Deed of Trust. The
17 Complaint clearly requests that the court declare the amount of the obligation owing to Plaintiff-
18 Trustee and that such obligation is secured by the Deed of Trust. This is a proper request for
19 Declaratory Relief as provided for in 28 U.S.C. § 2201, for the court to determine the actual
20 controversy between Plaintiff-Trustee over the existence and enforceability of the Deed of Trust and
21 the amount of the obligation secured by the Deed of Trust. See *Calderon v. Ashmus*, 523 U.S. 740,
22 745 (1998); *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981).

23 Attorney’s fees, costs, and expenses as may be awarded to a prevailing party may be
24 requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy
25 Procedure 7054 post-judgment.

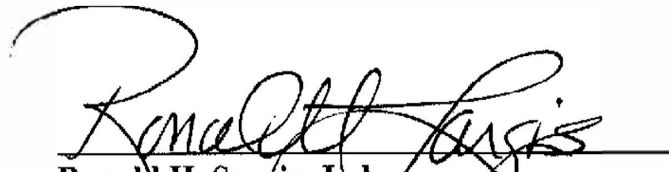
26 The court expressly reserves, without limitation, as part of the post-judgment jurisdiction of
27 this court, determination of any disputes concerning asserted interest, costs, and expenses added to
28 or sought to be added to the \$39,705.53 obligation, for which the court has determined that there is

1 0.00% interest accruing, and the amount of the obligation of Defendant-Debtor under the
2 Foreclosure Cancellation Guaranty as of the entry of the Judgment in this Adversary Proceeding,
3 as well as determining Plaintiff-Trustee's Claim in Defendant-Debtor's Bankruptcy Case.

4 The court shall prepare and enter the judgment pursuant to this Decision.

5 **Dated:** October 11, 2023

By the Court

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9 **Ronald H. Sargis, Judge**
United States Bankruptcy Court

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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 , via the U.S. mail.

Debtor(s) / Defendant-Debtor(s)	Attorney for the Debtor(s) / Defendant-Debtor(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
Attorney(s) for the Trustee (if any)	Kirk Steven Rimmer, Esq. 112 J Street, Ste. 300 Sacramento, CA 95814