

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California

**January 8, 2020 at 2:00 a.m.**

1. [18-27720-E-13](#) **DAVID RYNDA**  
[19-2023](#)  
**RYNDA V. MACHADO ET AL**

**STATUS CONFERENCE RE: AMENDED  
COMPLAINT**  
**10-16-19 [72]**

**Final Ruling: No appearance at the January 8, 2020 Status Conference is required.**  
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Plaintiff's Atty: Tracy L. Wood

Defendant's Atty:

Armando S. Mendez [Elina Machado]

Unknown [Gabriel Machado]

3<sup>rd</sup> Amd. Cmplt. Filed: 10/16/19

Answer: Elina M. Machado 11/16/19

Counterclaim Filed: 11/16/19

Answer: none

Notes:

[TLW-4] Motion for Judgment on the Pleadings filed 11/18/19 [Dckt. 85], set for hearing 1/30/20 at 11:00 a.m.

Request for Entry of Default by Plaintiff filed 11/19/19 [Dckt 89]; Memorandum Re: Default Papers filed 11/22/19 [Dckt 90]; Memorandum Re: Default Papers filed 11/25/19 [Dckt 91]; Declaration of Tracy L. Wood in Support of Motion for Entry of Default by Clerk filed 11/30/19 [Dckt 92]

**The Status Conference is continued to 11 a.m. on January 30, 2019, to be conducted in conjunction with the hearing on the Plaintiff-Debtor's Objection, Motion to Strike, and Motion for Judgment on the Pleadings.**

## **JANUARY 8, 2020 STATUS CONFERENCE**

### **Plaintiff-Debtor's Objection to Demand for Jury Trial, Motion to Strike Affirmative Defenses and Counter-Claims; and Motion for Judgment on the Pleadings (January 30, 2019 Hearing Date)**

On November 18, 2019, Plaintiff-Debtor David Rynda filed an Objection to Trial by Jury Demand and to Strike the Affirmative Defenses and Counter-Claims. The Motion begins with Federal Rules of Civil Procedure 8 and 12, which is incorporated into Federal Rules of Bankruptcy Procedure 7008 and 7012. It is asserted that the Affirmative Defenses do not meet the basic pleading requirements of Rule 8 and may be stricken pursuant to Rule 12. It is asserted that the Affirmative Defenses stated consist of state the specific legal affirmative defense, but does not plead the basis for each Affirmative Defense.

It is further asserted that Defendant-Elina/Counter-Claimant Elina does not have a right to jury trial in the bankruptcy court. The Motion addresses the jury trial rules, but states that Defendant-Elina has no right to a jury trial because "this is bankruptcy court." Further, that Plaintiff-Debtor does not consent to such a jury trial. 28 U.S.C. § 157(e).

Plaintiff-Debtor has also filed a Motion for Judgment on the Pleadings. The grounds stated with particularity in the Motion (Fed. R. Civ. P. 7(c) and Fed. R. Bankr. P. 7007) are that Plaintiff-Debtor requests that judgment be granted on the Pleadings.

Attached after the Motion, in the same pleading, is a section titled Memorandum of Points and Authorities. Dckt. 85 at 2. It is asserted that the Counter-Claim fails to plead sufficient allegations to support claims for waste and cancellation of the Quitclaim. Citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) for U.S. Supreme Court decision adequacy of pleadings.

### **SUMMARY OF COMPLAINTS AND ANSWERS**

The Third Amended Verified Complaint to Quiet Title was filed by the David Rynda, the Plaintiff-Debtor on October 16, 2019. Dckt. 72. The Third Amended Complaint is summarized as follows:

- A. The Plaintiff-Debtor is the Chapter 13 debtor in his bankruptcy case (No. 18-2770).
- B. The First Cause of Action is to quiet title to the real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property").
- C. The Defendants are Elina Machado and Gabriel Machado (collectively "Defendants")
- D. Plaintiff-Debtor asserts that on November 22, 2014, Defendants executed and had notarized a quitclaim for the Property to Plaintiff-Debtor.
- E. The Quitclaim provisions include:

For and in consideration of the sum of Ten Dollars (\$10,00) and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leandro, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA

- F. Plaintiff-Debtor asserts that he, pursuant to the Quitclaim, is the owner of the Property.
- G. Defendants claim an interest adverse to that of Debtor.
- H. Plaintiff-Debtor seeks a determination that he is the owner of the Property, and that Defendants, and each of them, have no interest in the Property.
- I. The Second Cause of Action is to quiet title against Defendants, asserting such right pursuant to the doctrine of adversary possession.
- J. Plaintiff-Debtor asserts that he has been in actual, open, hostile, continuous, and exclusive possession of the Property since November 22, 2014. Further, that there has been more than five years of such possession.
- K. Plaintiff-Debtor has been in such possession by virtue of the Quitclaim executed on November 22, 2014, which was recorded by Plaintiff-Debtor on November 27, 2018.
- L. Plaintiff-Debtor's possession of the Property for more than five years, being adverse to all other persons, is curative of any defects in the Quitclaim.
- M. Plaintiff-Debtor asserts that he has paid all taxes and assessments that have been levied or assessed against the Property during the five years of possession.

### **Summary of Answer**

On November 16, 2019, Defendant Elina Machado ("Defendant-Elina") filed an Answer to the Third Amended Complaint. Dckt. 76. Defendant-Elina's Answer is summarized as follows:

1. Defendant-Elina admits and denies specific allegations in the Complaint.
2. With respect to the Quitclaim, she alleges "the document was signed with conditions and agreements made between the parties that were never performed and the document was not delivered or signed with any intent to transfer the Property.
3. The Answer states twenty five (25) affirmative defenses.

**Counter-Claim Filed by Defendant-Elina** (identified as Counter-Claimant Elina for purposes of the Counter-Claim)

4. The First Counter-Claim filed by Counter-Claimant Elina alleges that Defendant-Debtor (as Plaintiff-Debtor is reference for the Counter-Claim) has created waste and destruction of the Property while in his possession.

5. Counter-Claimant has suffered financial damages cause by Defendant-Debtor's possession and waste on the Property.

6. The Second Counter-Claim is for cancellation of the Quitclaim.

7. Counter-Claimant asserts that the Quitclaim and other documents have been recorded against the Property without Counter-Claimant's permission.

8. In addition to the Quitclaim, Counter-Claimant asserts that a deed of trust against the Property given to the Defendant-Debtor's brother is for no valid obligation and has been recorded solely to cloud Counter-Claimant's title to the Property.

9. Counter-Claimant seeks a determination that the various instruments recorded against the Property by Defendant-Debtor or with his permission are void.

10. The Third Counter-Claim is for declaratory relief. This relates to liens asserted by third-parties, some of which pre-date Defendant-Debtor's asserted interest in the Property, and some after that time.

It is not clear from the Counter-Claim whether this seeks just a determination as to between Counter-Claimant and Defendant-Debtor, or attempts to obtain an enforceable determination against the third-parties who are not included in the Counter-Claim.

11. For the Fourth Counter-Claim, Counter-Claimant seeks to quiet title to the Property, with a determination that Defendant-Debtor has no interest therein.

Defendant/Counter-Claimant Elina makes a demand for a jury trial at the end of the Counter-Claim for this action.

**Defendant Gabriel Machado Response**

Defendant Gabriel Machado has not filed an answer or other responsive pleading to the Complaint.

2. [17-26125-E-7](#) **FIRST CAPITAL RETAIL,**  
[19-2116](#) **LLC**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**9-11-19 [1]**

**HUSTED V. IAC FUNDING CAPITAL  
SOURCE, LLC ET AL**

Plaintiff's Atty: Aaron A. Avery  
Defendant's Atty: unknown

Adv. Filed: 9/11/19  
Answer: none  
Reissued Summons: 10/28/19

Nature of Action:  
Recovery of money/property - preference  
Recovery of money/property - fraudulent transfer  
Recovery of money/property - other

Notes:

**SUMMARY OF COMPLAINT**

Kimberly J. Husted, the Chapter 7 Trustee in the First Capital Retail, LLC case, ("Plaintiff-Trustee") has filed a Complaint to recover transfers as provided under 11 U.S.C. § 547 and § 548.

Though the Complaint and Reissued Summons were served on November 1, 2019, (Cert. of Serv., Dckt. 7), no answer or other responsive pleading has been filed, nor has the Plaintiff- Trustee requested entry of a default and file a motion for entry of a default judgment.

It appears that the Plaintiff-Trustee and other parties may this matter resolved, but not have that resolution reflected in the court's files.

At the Status Conference, counsel for the Plaintiff-Trustee reported **xxxxxxxxxx**.

Debtor's Atty: Stephan M. Brown

Notes:

[TBG-1] *Ex Parte* Application of Debtor in Possession for Order Authorizing the Employment of the Bankruptcy Group, P.C. as Counsel for Debtor in Possession filed 11/13/19 [Dckt 10]; Order granting filed 11/15/19 [Dckt 14]

Preliminary Status Report filed 11/22/19 [Dckt 17]

[TBG-2] Amended *Ex Parte* Application of Debtor in Possession for Order Authorizing the Employment of the Bankruptcy Group, P.C. as Counsel for Debtor in Possession filed 11/27/19 [Dckt 20]; Order granting filed 11/29/19 [Dckt 23]

U.S. Trustee Report at 341 Meeting lodged 12/5/19

**The Status Conference is continued to 2:00 p.m. on [xxxxxx, 2020](#).**

### **JANUARY 8, 2020 STATUS CONFERENCE**

#### **STATUS CONFERENCE SUMMARY**

This voluntary Chapter 11 case was commenced October 29, 2019. The Status Report filed on November 22, 2019 (Dckt. 17), explains that the Debtor is "generally retired," but provides some services as a personal trainer. Debtor holds a majority interest in a small workout studio in Roseville, California.

The Report discusses that Debtor purchased her current residence for \$6,900,000. Debtor liquidated her retirement and investment accounts, made a down payment of approximately 50% and the sellers are the payees on a note for the balance of the purchase price in the amount of (\$3,750,000) that is secured by the residence.

Debtor was unable to generate the monies to pay off the (\$3,750,000) note, has unpaid tax liabilities from liquidating her retirement and investment accounts, and has credit card liabilities.

For a bankruptcy plan, Debtor intends to have the home sold and creditors paid in full.

This bankruptcy case was filed on October 29, 2019. A review of the Docket indicates that in the past two months the Debtor in Possession has not sought authorization for the employment of a Realtor to market and sell the \$7,000,000 home.

The Monthly Operating Report for November 2019 was filed on December 31, 2019. Dckt. 24. For income, the Debtor in Possession reports \$0.00. For expenses, Debtor reports having paid (\$4,310)

in expenses.

## Review of Schedules

On Schedule A/B Debtor lists her Granite Bay residence with a value of \$7,960,000, and a second property in which she claims a 50% interest having a value of \$500,00. For personal property, Debtor's household goods are listed as having a value of \$295,600. Debtor also lists a \$25,000 "Crystal Singing Bowl Collection."

Debtor lists having \$8,000 in cash and \$1,700 deposited at banks.

On Schedule D, Debtor lists approximately (\$5,400,000) in claims secured by the real property, which includes state and federal tax claims totaling approximately (\$1,600,000) that are also secured by other assets.

For Debtor's residence, there are (\$71,924) in secured property taxes listed as a claim of Placer County.

On Schedule E/F Debtor lists (\$126,178) in unsecured credit card claims.

On Schedule I, Debtor states she has no income, but is given a "contribution" of \$12,000 a month "from a friend. Such \$12,000 amount is not reflected on the Monthly Operating Report for November 2019. The friend is not identified.

For expenses, Debtor lists (\$11,851) on Schedule J. These include:

- A. Monthly Real Estate Taxes.....(\$4,481)
- B. Property Insurance.....(\$1,000)
- C. Home Maintenance and Repair.....(\$1,600)
- D. Electricity/Heat.....(\$3,000)
- E. Water/Sewer.....(\$ 450)

At the Status Conference **XXXXXXXXXX**.

4. [18-27755-E-7](#)      **MARK/RENEE EVANS**  
[19-2042](#)  
**SCHREIBER V. EVANS ET AL**

**PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR FRAUD AND  
DISCHARGABILITY**  
3-22-19 [\[1\]](#)

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 3/22/19  
Answer: 4/17/19

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

<p><b>The Court had not prepared the outline for the Pre-Trial Conference as of the posting of the Tentative Rulings.</b></p>
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Notes:  
Scheduling Order -  
Initial disclosures by 7/19/19  
Close of discovery 10/9/19  
Dispositive motions heard by 11/15/19

[PLC-4] Stipulation to Amend Pretrial Scheduling Order filed 10/9/19 [Dckt 19]

Defendants' Pretrial Statement filed 12/19/19 [Dckt 20]

Defendants' Amended Pretrial Statement filed 12/19/19 [Dckt 22]

Plaintiff's Pretrial Conference Statement filed 12/27/19 [Dckt 24]

5. [19-24755-E-13](#)      **HOWARD REDMOND**  
[19-2111](#)

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
**9-11-19 [1]**

**REDMOND V. ACCREDITED HOME  
LENDERS INC. ET AL**

Plaintiff's Atty: Pro Se  
Defendant's Atty: unknown

Adv. Filed: 9/11/19  
Answer: none

Nature of Action:  
Recovery of money/property - turnover of property

Notes:  
Continued from 11/20/19 - No appearances made at the 11/20/19 status conference.

**The Status Conference is continued to xxxxxx, 2020, to be conducted in conjunction with the hearing on the court's Order to Show Cause re Dismissal of this Adversary Proceeding**

#### **JANUARY 8, 2020 STATUS CONFERENCE**

A review of the Docket indicates that the Plaintiff is not taking any action to prosecute this Adversary Proceeding. The Bankruptcy Case to which it relates was dismissed on September 27, 2019. Chapter 13 Case No. 19-24755; Order, Dckt. 30. The court's findings and conclusions concerning the dismissal of the Chapter 13 case are stated in the Civil Minutes from the hearing on the Motion to Dismiss. *Id.*; Dckt. 29.

The court shall issue an Order to Show Cause why this Adversary Proceeding should not be dismissed without prejudice due to lack of prosecution.

#### **NOVEMBER 20, 2019 STATUS CONFERENCE**

The Complaint Adversary Proceeding was filed on September 11, 2019, with the Plaintiff identified in the caption as "Kai'la Cynthia Redmond: Family of Redmond as Heir apparent for Howard James Redmond Sr, Plaintiff/Debtor." Dckt. 1 at 1. The Complaint states that it is an action to avoid a preferential transfer as provided in 11 U.S.C. § 547(a)(b). *Id.*

The bankruptcy case to which this Adversary Proceeding relates is Case No. 19-24755, for which Howard James Redmond, Sr. is the named Debtor, with the bankruptcy case filed in pro se. The Bankruptcy Petition is not signed by Mr. Redmond, but by "Kaila Cynthia Redmond, Heir-Apparent."

The Chapter 13 bankruptcy case filed in the name of Howard James Redmond, Sr. was dismissed on September 27, 2019. Id. at 30.

The bankruptcy case for Mr. Redmond was dismissed on September 27, 2019. Id.; Order, Dckt. 30. In the court's Civil Minutes for the hearing on the dismissal, the court addresses the estate of a decedent not being a proper bankruptcy estate debtor, there being no plan advanced, reviews the Complaint in this Adversary Proceeding, and a related District Court action that has been dismissed. Id.; Dckt. 29. A copy of the Docket in the District Court Action is attached as an exhibit to the Complaint.

The related District Court Action is titled Hakeim El By v. Accredited Home Lenders, Inc. and Wells Fargo Bank. E.D. Cal. 17-02237. Judgment was entered for the defendants in the District Court Action. Orders and Findings, E.D. Cal. 17-02237; Dckts. 44, 43, 42. The findings include:

- A. Plaintiff Hakeim El Bey was dead. The family members who appeared at the Status Conference were Kalia El Bey and Brian El Bey. Id.; Dckt. 21 Minutes.
- B. The family members were given thirty days to obtain counsel and seek an order substituting in as a personal representative as permitted under L.R. 230 and the Federal Rules of Civil Procedure. The court addressed that an executor or representative of an estate of a decedent cannot appear in pro se.
- C. The thirty days expired and no substitution was sought.
- D. The judgment was to dismiss the District Court Action without prejudice.

6. [19-24755](#)-E-13      HOWARD REDMOND

CONTINUED STATUS CONFERENCE  
RE: VOLUNTARY PETITION  
7-29-19 [\[1\]](#)

DEBTOR DISMISSED: 09/27/2019

**Final Ruling: No appearance at the January 8, 2020 Status Conference is required.**  
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<p><b>The Bankruptcy Case having been dismissed, the Status Conference is concluded and removed from the Calendar.</b></p>
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Debtor's Atty: Pro Se

Notes:

Continued from 11/20/19 - No appearances made at the 11/20/19 status conference.

Debtor was dismissed 9/27/19 [Dckt 31]

7. [17-22887](#)-E-7 SEAN STODDARD  
19-2119

STATUS CONFERENCE RE:  
COMPLAINT  
9-20-19 [\[1\]](#)

CARTER ET AL V. STODDARD

**Final Ruling: No appearance at the January 8, 2020 Status Conference is required.**  
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Plaintiff's Atty: Steven H. Schultz  
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 9/20/19  
Answer: none

Nature of Action:  
Dischargeability - other

<p><b>The Status Conference is continued to 11:00 a.m. on January 30, 2020, to be conducted in conjunction with the hearing on the Motion to Dismiss this Adversary Proceeding.</b></p>
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Notes:

[DBJ-5] Motion to Dismiss Adversary Complaint filed 10/14/19 [Dckt 9]; heard 12/12/19 and continued to 1/30/20 at 11:00 a.m.

Recusal Order filed 10/17/19 [Dckt 17]

Joint Discovery Plan filed 11/4/19 [Dckt 24]

Request for Permission to Appear Telephonically at the Status Conference filed 11/8/19 [Dckt 25]

Status Conference Statement [Defendant-Debtor] filed 12/30/19 [Dckt 35]

8. [13-23599-E-13](#) IVAN MONTELONGO  
[19-2070](#)

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
6-3-19 [1](#)

MONTELONGO V. ABINANTI

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: unknown

Adv. Filed: 6/3/19  
Answer: none

Nature of Action:  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 11/20/19 by request of the Parties in order for them to continue their settlement discussions.

Plaintiff's Third Status Statement filed 12/30/19 [Dckt 16]

<b>The Status Conference is <span style="color: red;">XXXXXXXX</span></b>
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### **JANUARY 8, 2020 STATUS CONFERENCE**

This Adversary Proceeding was commenced with the filing of the Complaint on June 3, 2019. As discussed in the Minutes restated below from the prior Status Conferences, Plaintiff-Debtor has repeatedly requested that the Status Conference be continued because he was "talking" with the named Defendant. No answer has been filed.

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004, the Defendant must be served with the complaint within 90 days after the Complaint was filed. If not, then the action must be dismissed.

The Certificate of Service filed by Plaintiff-Debtor states that the Complaint was served on August 14, 2014, on a James R. Felton, an attorney in Southern California, not the named Defendant. It is not clear that the Complaint has been served as required by Federal Rule of Civil Procedure 4(m).

More significantly, it appears that the summons served on August 14, 2019, was the summons issued on June 3, 2019. The Order to Confer on Initial Disclosures and Setting Deadlines requires that the summons, complaint, and Order to Confer shall be served within 7 days of the issuance of the summons - the summons deadline expired on June 10, 2019, well before the August 14, 2019 mailing by Plaintiff-Debtor's counsel.

The Summons permits the Plaintiff-Debtor to agree to only one extension of not more than 30 days from the deadline to respond to the summons, which was July 3, 2019 (30 days from the June 3, 2019 issuance of the summons). Dckt. 3.

This requirement is consistent with the provisions of Federal Rule of Bankruptcy Procedure 7004(e) which expressly provides that a summons expires 7 days after it was issued.

The Plaintiff-Debtor has demonstrated that he is not prosecuting this Adversary Proceeding. An effective, enforceable summons has not been served. Plaintiff-Debtor has not complied with the orders of this court for such service.

The Plaintiff-Debtor not prosecuting this Adversary Proceeding, the court shall issue an order to show cause why this Adversary Proceeding should not be dismissed without prejudice.

It appears that this is a “simple” adversary proceeding to obtain a judgment declaring that a deed of trust is void, there being no obligation remaining to be secured by it after completion of the Plaintiff-Debtor’s Chapter 13 Plan. If that is the case, Plaintiff-Debtor and his counsel can commence a new Adversary Proceeding, diligently prosecute it, and clear a void deed of trust from Plaintiff-Debtor’s property.

At the Status Conference, **XXXXXXXXXX**

#### **NOVEMBER 11, 2019 STATUS CONFERENCE**

On November 7, 2019, Plaintiff-Debtor filed a Second Status Report, advising the court that the Parties have ongoing settlement discussions and they request at least a 30 day continuance for the negotiations to be completed.

The court continues the Status Conference to January 2020, which should be sufficient for the parties to have the negotiations completed, the settlement documents, and this adversary proceeding resolved.

#### **AUGUST 21, 2019 STATUS CONFERENCE**

Plaintiff-Debtor filed a Status Report on August 14, 2019. Dckt. 8. Plaintiff-Debtor reports that while no answer has been filed, Defendant has met with Plaintiff-Debtor’s counsel concerning this Adversary Proceeding. Plaintiff-Debtor requests the court continue the Status Conference for thirty days to allow settlement negotiations to continue. Alternative, Plaintiff-Debtor requests that the court set an expedited discovery schedule for this Adversary Proceeding - one in which there is no defendant who has filed an answer.

The court will not set a unilateral discovery schedule. If no answer is filed, Plaintiff-Debtor may request the entry of a default and then seek the entry of a default judgment.

At the Status Conference counsel for Plaintiff stated that Defendant is working to value the

property and determine whether there are any issues to fight about.

## SUMMARY OF COMPLAINT

Ivan Montelongo, the Plaintiff Chapter 13 Debtor (“Plaintiff-Debtor”) has filed a Complaint to address a Second Deed of Trust that has not been reconveyed notwithstanding Plaintiff-Debtor completing his Chapter 13 Plan and the 11 U.S.C. § 506(a) valuation of Defendant’s secured claim.

1. Plaintiff-Debtor owns the real property located on Skyway Drive (“Property”), which is asserted to have had a value of \$170,000 when Plaintiff Debtor commenced his Chapter 13 case.
2. Owen Loan Servicing holds a claim in the amount of \$270,000 secured by the senior deed of trust recorded against the Property.
3. Defendant Joseph Abinanti has a promissory note in the amount of \$80,000 that is secured by a second deed of trust recorded against the Property.
4. Plaintiff-Debtor’s confirmed Chapter 13 Plan provides that the second deed of trust will be void and stripped upon completion of the Chapter 13 Plan. Valuation of the claim was made as provided in 11 U.S.C. § 506(a).

In the First Cause of Action the Plaintiff-Debtor seeks no affirmative relief. Rather, Plaintiff-Debtor merely seeks a declaration that the Second Deed of Trust has been satisfied (though it is unclear how a security interest can be “satisfied”) and that the Second Deed of Trust is of no force and effect. Plaintiff-Debtor also requests an informative declaration that the debt has been discharge and the security interest voided. It is unclear what Plaintiff-Debtor will then do with a declaration between Plaintiff-Debtor and Defendant. <sup>FN. 1</sup>

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FN. 1. It does not appear that mere declaratory relief of what would occur in the future based upon alternative actions that the parties could elect once the court has entered a declaration of their existing rights is proper. Rather, it appears that Plaintiff-Debtor should be seeking to enforce his rights and interests.  
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In the Second Cause of Action Plaintiff-Debtor does seek to enforce his rights and interests in the Property asking this court to “void” the Second Deed of Trust and issue a judgment so providing that may be recorded with the County Recorder.

In the Third Cause of Action Plaintiff-Debtor states his claim for affirmative relief in the form of statutory and actual damages and attorney’s fees pursuant to California Civil Code § 2941(b)(1) based on Defendant’s failure to reconvey the deed of trust which no longer secures any obligation after the completion of the Chapter 13 Plan.

In the Fourth Cause of Action Plaintiff-Debtor asserts a claim for breach of contract (Second Deed of Trust) for Defendant’s failure to reconvey the Second Deed of Trust.

Plaintiff-Debtor also requests statutory and contractual attorney's fees and costs.

## **SUMMARY OF ANSWER**

Joseph Abinanti, the named defendant ("Defendant") has not filed an answer.

## **FINAL BANKRUPTCY COURT JUDGMENT**

The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(K), (L). Complaint, ¶ 3, Dckt. 1.