



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, February 1, 2024  
Department A – Courtroom #11  
Fresno, California**

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [23-10102](#)-A-13     **IN RE: KERRIE GRAY**  
[FW-5](#)

CONTINUED RE: MOTION TO MODIFY PLAN  
11-3-2023    [\[94\]](#)

KERRIE GRAY/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
PLAN WITHDRAWN

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Dropped as moot.

ORDER:                The court will issue an order.

This motion is DROPPED AS MOOT. The debtor withdrew the third modified plan on January 11, 2024. Doc. #111.

2. [23-12709](#)-A-13     **IN RE: FRANCISCO ZUNIGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-9-2024    [\[40\]](#)

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        The minutes of the hearing will be the court's findings  
and conclusions.

ORDER:                The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the order to show cause.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

3. [23-12323](#)-A-13     **IN RE: GUADALUPE SIERRA-OSORIO AND ANTONIOETTE SIERRA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-26-2023    [\[26\]](#)

MICHAEL MEYER/MV  
DAVID BOONE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to February 29, 2024, at 9:30 a.m.

ORDER:                        The minutes of the hearing will be the court's findings  
and conclusions. The court will issue an order after the  
hearing.

The debtors timely filed written opposition on January 18, 2024. Doc. #39. The court is inclined to continue the trustee's motion to dismiss to February 29, 2024, at 9:30 a.m., to be heard in connection with the debtors' motion to confirm first amended plan (DAB-01) also set for hearing on that date and time. Doc. ##36, 41-44.

4. [23-11539](#)-A-13     **IN RE: MARSHA MENDOZA**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
9-8-2023    [\[26\]](#)

MICHAEL MEYER/MV  
RESPONSIVE PLEADING

FINAL RULING:                There will be no hearing on this matter.

DISPOSITION:                Dropped from calendar.

NO ORDER REQUIRED.

The movant withdrew the motion to dismiss the case on January 30, 2024. Doc. #94.

MOTION TO DISMISS CASE  
12-20-2023    [\[21\]](#)

JOEL WINTER/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #21. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) provide Trustee with certain requested documents; (2) cooperate with Trustee as required in 11 U.S.C. § 521(a)(3) and (4); and (3) file the Statement of Monthly Income required by Schedule I. Doc. #21. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor has failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4) and has failed to file all required documents.

A review of the debtor's Schedules A/B, C and D shows that the debtor claims a homestead exemption in the real property and has some non-exempt equity in two checking accounts and hand tools. Based on the potential liquidation value of those items, there appears to be a minimal amount of non-exempt equity in the debtor's assets to be realized for the benefit of the estate if the debtor's bankruptcy case is converted to chapter 7 instead of being dismissed. Thus, the

court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

6. [23-12543](#)-A-13     **IN RE: HERNAN CORTEZ**  
[RAS-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY  
12-29-2023    [\[25\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
JOEL WINTER/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

This bankruptcy case is being dismissed by final ruling pursuant to calendar matter #5 above. Therefore, this motion will be DENIED AS MOOT.

7. [23-10344](#)-A-13     **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**  
[BDB-2](#)

MOTION TO MODIFY PLAN  
12-9-2023    [\[60\]](#)

LOARINA DOMENA-QUINVILLE/MV  
BENNY BARCO/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued to February 29, 2024 at 9:30 a.m.

ORDER:             The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #69. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than February 15, 2024. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by February 22, 2024.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 22, 2024. If the debtors do not timely

file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

8. [23-12348](#)-A-13     **IN RE: ABRAHAM URESTI AND CATHERINE BARAJAS**  
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF CALIFORNIA DEPARTMENT OF TAX AND FEE  
ADMINISTRATION  
12-28-2023    [\[42\]](#)

CATHERINE BARAJAS/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Abraham Barajas Uresti and Catherine Ann Barajas (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' personal property ("Collateral"), which is the collateral of the California Department of Tax and Fee Administration ("Creditor"). Motion, Doc. #42; Decl. of Abraham Barajas Uresti, Doc. #44.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Creditor has a perfected security interest in all of Debtors' personal property pursuant to a tax lien. Motion, Doc. #42. Debtors assert the value of Creditor's interest in the Collateral is \$14,866.67 and asks the court for an order valuing the Collateral at \$14,866.67. Uresti Decl., Doc. #44; Ex. B, Doc. #45. Debtors are competent to testify as to the value of the Collateral. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$14,866.67. The proposed order shall specifically identify the Collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

9. [23-12348](#)-A-13     **IN RE: ABRAHAM URESTI AND CATHERINE BARAJAS**  
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF DEPARTMENT OF THE TREASURY-INTERNAL  
REVENUE SERVICE  
12-28-2023    [\[51\]](#)

CATHERINE BARAJAS/MV  
PETER BUNTING/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Abraham Barajas Uresti and Catherine Ann Barajas (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing Debtors' personal property ("Collateral"), which is the collateral of the Internal Revenue Service ("Creditor"). Motion, Doc. #51; Decl. of Abraham Barajas Uresti, Doc. #53.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Creditor has a perfected security interest in all of Debtors' personal property pursuant to a junior tax lien. Motion, Doc. #51. Because the value of Debtors' personal property is fully encumbered by a senior tax lien, Debtors assert the value of Creditor's interest in the Collateral is \$0.00 and asks the court for an order valuing the Collateral at \$0.00. Uresti Decl., Doc. #53; Ex. B, Doc. #54. Debtors are competent to testify as to the value of the Collateral. Given the absence of contrary evidence, Debtors' opinion of value



may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$0.00. The proposed order shall specifically identify the Collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

10. [23-12360](#)-A-13     **IN RE: LAWRENCE GOWIN**  
[AAM-1](#)

MOTION TO CONFIRM PLAN  
12-14-2023    [\[18\]](#)

LAWRENCE GOWIN/MV  
ANDREW MOHER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on January 17, 2024 (Doc. #31), with a motion to confirm the modified plan (AAM-2) set for hearing on February 29, 2024 at 9:30 a.m. Doc. ##34-37.

11. [23-10691](#)-A-13     **IN RE: KAYE KIM**  
[DNL-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CALVIN KIM  
1-9-2024    [\[112\]](#)

CALVIN KIM/MV  
LEONARD WELSH/ATTY. FOR DBT.  
BENJAMIN TAGERT/ATTY. FOR MV.

FINAL RULING:        There will be no hearing on this matter.

DISPOSITION:        Continued to April 11, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

This matter was previously continued to April 11, 2024 at 9:30 a.m. by order entered on January 24, 2024. Doc. #125.

12. [23-11198](#)-A-13     **IN RE: JOHN/NANCY ALVA**  
[MHM-2](#)

MOTION TO DISMISS CASE  
12-26-2023    [[51](#)]

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

13. [23-12398](#)-A-13     **IN RE: BRANDEE LEONARD**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
12-12-2023    [[24](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

FINAL RULING:                    There will be no hearing on this matter.

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Trustee withdrew the objection to confirmation on January 29, 2024. Doc. #50.

1. [23-11803](#)-A-7     **IN RE: VALERIE RODRIGUEZ**  
[23-1051](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
11-20-2023     [[1](#)]

RODRIGUEZ V. DEPT OF ED FINANCIAL ET AL  
VALERIE RODRIGUEZ/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

2. [22-10113](#)-A-7     **IN RE: ANTHONY LOPEZ**  
[22-1013](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT  
5-6-2022     [[1](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ  
KAREL ROCHA/ATTY. FOR PL.  
CLOSED 11/16/23

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on October 26, 2023. Doc. #81.  
Therefore, this pre-trial conference will be dropped as moot.

3. [14-13417](#)-A-12     **IN RE: DIMAS/ROSA COELHO**  
[23-1022](#)     [TP-3](#)

MOTION FOR SUMMARY JUDGMENT  
12-13-2023     [[71](#)]

COELHO ET AL V. NATIONSTAR MORTGAGE, LLC  
JARED BISSELL/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Recommend to district court that motion be granted.

ORDER:     The minutes of the hearing will be the court's findings  
and conclusions. After the hearing, the court will submit  
a report and recommendation to the district court  
consistent with the court's findings and conclusions.

This motion was set for hearing on at least 42 days' notice pursuant to Local Rule of Practice ("LBR") 7056-1(a). The responding party filed written opposition after the deadline. The moving party filed a timely reply. This matter will proceed as scheduled.

## **INITIAL PROCEDURAL MATTERS**

There are several procedural matters that need to be addressed before the court rules on the motion for summary judgment.

### **I. Pending Motion to Withdraw the Reference**

On August 16, 2023, the moving party, defendant Nationstar Mortgage, LLC ("Defendant"), filed a motion to withdraw the reference from this adversary proceeding to the district court. Doc. #44. To this court's knowledge, the district court has not yet ruled on Defendant's motion to withdraw the reference.

Due to the pending motion to withdraw the reference, it is unclear to this court whether Defendant consents to entry of a final judgment by this court in this adversary proceeding (as implied by the filing of its motion for summary judgment) or does not so consent (as implied by the pending motion to withdraw the reference). Defendant's motion for summary judgment fails to address this issue. Accordingly, this court will treat Defendant as having not consented to the entry of a final judgment by this court in this adversary proceeding. Because the court is inclined to grant the motion on the merits, which is a final adjudication of this adversary proceeding, this court will submit a report and recommendation to the district court with respect to this motion for summary judgment consistent with the analysis below.

### **II. Untimely Opposition**

Dimas Coelho and Rosa Coelho (together, "Plaintiffs") filed an untimely opposition to this motion for summary judgment notwithstanding the fact that the notice of hearing provided the proper opposition deadline as required by LBR 7056-1(b). Doc. #88. Plaintiffs also filed an ex parte request to permit the untimely opposition that Defendant opposes. Doc. ##91-92, 94.

After reviewing Plaintiffs' application to permit the untimely opposition and Defendant's response, the court is inclined to permit the untimely opposition for the following reasons. First, the court recognizes that there is a different opposition deadline for motions for summary judgment than for other motions filed before this court. The court is inclined to permit the untimely opposition in this one instance based on the declaration of counsel for Plaintiffs. Doc. #92. Second, the opposition does not provide sufficient evidence that would persuade this court to deny the motion for summary judgment. Third, the court does not believe that the opposition is prejudicial to Defendant.

### **III. Combining Motion and Notice of Hearing**

As a further procedural matter, the motion and notice of hearing do not comply with LBR 9014-1(d)(4), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document. Here, the motion filed by Defendant includes the notice of hearing. Doc. #71. Pursuant to LBR 9014-1(d)(4), Defendant should have filed the motion for summary judgment and the notice of hearing as separate documents.

Plaintiffs request that this court deny the motion for summary judgment without prejudice on the basis that the court previously informed counsel for Defendant of the need to comply with this court's Local Rules of Practice. However, the pre-hearing disposition in which the court informed counsel for Defendant of the possibility that future motions may be denied for failure to comply with the court's Local Rules of Practice was issued around the same time the motion for summary judgment was filed and served, so it is not clear to the court whether Defendant was aware of that possible sanction when this motion was filed and served. Accordingly, the court will not deny the motion on this procedural ground as requested by Plaintiffs.

#### **IV. Other Procedural and Informative Matters**

As a further procedural matter, the certificate of service filed with the motion (Doc. #80) does not comply with LBR 9014-1(c) because the certificate of service does not list DCN TP-03 as it is listed on the motion and supporting documents. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

As a further procedural matter, the opposition does not comply with LBR 7056-1(b), which requires that "[a]ny party opposing a motion for summary judgment or partial judgment shall reproduce the itemized facts in the Statement of Undisputed Facts and admit those facts which are undisputed and deny those which are disputed, including with each denial a citation to the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon in support of that denial." Here, the opposition filed by Plaintiffs did not include the required itemized Statement of Undisputed Facts with the requisite admissions or denials, including the citations required for each denial.

As an informative matter, Defendant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. The declarant marked that electronic service was made on registered users of the court's electronic filing system under Rule 5 and Rules 7005, 9036 and checked the Rule 5 Service § 6B(1): Elec. Service on Registered e-filers box in Section 7 of the Certificate of Service form. Nevertheless, the declarant did not attach a list under § 6B(1) of those who have registered to be served via the court's electronic filing system applicable to this case with the court's mandatory Certificate of Service form (Doc. #81). The court cannot determine from the certificate of service filed whether parties who are registered users of the court's electronic filing system were electronically served with the notice of the motion and supporting documents. In the future, the declarant should attach a list of those who have registered to be served via the court's electronic filing system.

#### **MOTION FOR SUMMARY JUDGMENT**

Plaintiffs filed this adversary proceeding on April 24, 2023 against Defendant asserting claims for relief for breach of contract, breach of the covenant of good faith and fair dealing, violation of the discharge injunction, and negligence arising out of a stipulation reached between the parties regarding a prior motion for contempt filed by Plaintiffs ("Complaint"). Complaint, Doc. #1. Defendant moves for summary judgment on all claims for relief pursuant

to Federal Rule of Civil Procedure 56, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056. Doc. #71.

## **FACTUAL BACKGROUND**

### **I. The Loan**

Plaintiffs obtained a mortgage loan in the amount of \$275,200.00 from JPMorgan Chase Bank, N.A. ("Chase") and executed a Promissory Note (the "Note") on March 8, 2005. Ex. 1, Doc. #74. The \$275,200.00 mortgage loan was secured by a deed of trust against Plaintiffs' real property recorded in the official records of the Kings County Recorder's Office on March 17, 2005, as document number 0508209 ("Deed of Trust"). Ex. 2, Doc. #74.

On January 24, 2011, Chase recorded a Corporate Assignment of Deed of Trust in the Official Records as document number 1101333, whereby the beneficial interest under the Deed of Trust was transferred and assigned to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Federal National Mortgage Association ("FNMA"). Ex. 3, Doc. #74. On January 7, 2013, MERS, as nominee for FNMA, recorded a Corporate Assignment of Deed of Trust in the Official Records as document number 1300326, whereby the beneficial interest under the Deed of Trust was transferred and assigned to FNMA. Ex. 4, Doc. #74

On March 1, 2019, Defendant began servicing the Loan. Ex. 5, Doc. #74. On February 4, 2020, FNMA recorded a Corporate Assignment of Deed of Trust in the Official Records as document number 2002314 whereby the beneficial interest under the Deed of Trust was transferred and assigned to Defendant. Ex. 6, Doc. #74.

### **II. Plaintiffs' Prior Bankruptcies and Motions for Sanctions**

Plaintiffs filed for a chapter 12 bankruptcy case on November 1, 2012 (the "2012 Chapter 12 Case"). Case No. 12-19290, Doc. #1. The 2012 Chapter 12 Case was dismissed after Plaintiffs failed to confirm their chapter 12 plan. Case No. 12-19290, Doc. ##168, 198.

Plaintiffs filed another chapter 12 bankruptcy case on July 6, 2014 (the "2014 Chapter 12 Case"), from which this adversary proceeding arises. Case No. 14-13417, Doc. #1. Plaintiffs' chapter 12 plan in the 2014 Chapter 12 Case was confirmed on March 13, 2015. Case No. 14-13417, Doc. #129. On March 20, 2018, Plaintiffs received a discharge in the 2014 Chapter 12 Case and the 2014 Chapter 12 Case closed. Case No. 14-13417, Doc. ##151, 153.

On May 30, 2018, plaintiff Dimas Coelho ("Debtor") filed a chapter 13 bankruptcy case that was dismissed on June 28, 2018. Case No. 18-12166, Doc. ##1, 15, 20.

Debtor filed another chapter 13 bankruptcy case on August 31, 2018 and confirmed his chapter 13 plan on January 22, 2019. Case No. 18-13595, Doc. ##1, 53. The plan did not affect any post-petition arrears owed on the Loan, and the chapter 13 plan specifically provided for Debtor to pay Defendant's secured claim directly. Case No. 18-13595, Doc. #53. Debtor subsequently sought to modify his chapter 13 plan to reduce the amount that Debtor's unsecured creditors would receive under the chapter 13 plan, which the court granted on December 23, 2020. Case No. 18-13595, Doc. ##89, 104. The modified plan also did not affect any post-petition arrears owed on the Loan, and the chapter 13 plan specifically provided for Debtor to pay Defendant's secured claim directly. Id. Debtor received a chapter 13 discharge on

December 3, 2021, and Debtor's case was terminated on January 3, 2023. Case No. 18-13595, Doc. #124, 127.

On June 19, 2019, Plaintiffs' 2014 Chapter 12 Case was reopened, and Plaintiffs filed a motion for contempt that sought punitive and emotional distress damages for alleged violations of the discharge injunction pursuant to 11 U.S.C. § 524. Case No. 14-13417, Doc. #158, 159. On August 15, 2019, Plaintiffs and Defendant entered into a settlement agreement and release related to the application of Plaintiffs' ongoing payments under the Loan (the "Agreement"). Ex. 9, Doc. #74. The Agreement resolved Plaintiffs' motion for contempt, and Plaintiffs withdrew that motion on August 23, 2019. Case No. 14-13417, Doc. #169. Plaintiffs' 2014 Chapter 12 Case was reclosed on October 2, 2019. Case No. 14-13417, Doc. #171.

Plaintiffs' 2014 Chapter 12 Case was reopened again on May 4, 2020 when Plaintiffs filed another motion for contempt against Defendant that sought punitive and emotional distress damages for violations of the discharge injunction pursuant to 11 U.S.C. § 524. Case No. 14-13417, Doc. #173, 174. On July 2, 2020, Defendant filed an opposition to the motion for contempt claiming Plaintiffs' June 2020 mortgage statement reflected an erroneous amount due to Debtor's second chapter 13 case (Case No. 18-13595), although the system error was to be corrected and Defendant had not attempted to collect any amounts over and above the payments due under the terms of the Agreement. Case No. 14-13417, Doc. 189; Ex. 22, Doc. #79. The court denied Plaintiffs' motion for contempt, clarifying that Defendant's ongoing mortgage statements were not an attempt to collect a discharged debt and finding that Defendant had not made any attempt to collect any pre-petition arrearage that was reflected in the erroneous statement. Case No. 14-13417, Doc. #197. The 2014 Chapter 12 Case was reclosed on August 6, 2020. Case No. 14-13417, Doc. #201.

The 2014 Chapter 12 Case was reopened again on October 6, 2020 for Plaintiffs to file yet another motion for contempt. Case No. 14-13417, Doc. #203, 204. Plaintiffs withdrew that motion for contempt, and the 2014 Chapter 12 Case was reclosed on December 29, 2020. Case No. 14-13417, Doc. #211, 212. Plaintiffs reopened their 2014 Chapter 12 Case again on April 20, 2023 to file this adversary proceeding. Case No. 14-13417, Doc. #214, 216.

### **III. The Agreement and Post-Agreement Actions**

The Agreement negotiated and executed by the parties in August 2019 provides the following: (1) Plaintiffs would make monthly principal and escrow payments in the amount of \$1,472.52, although the monthly payment amount was subject to annual adjustments pursuant to an annual escrow analysis to be complete on the Loan and provided to Plaintiffs; (2) Defendant would forgive all outstanding escrow shortage as of July 16, 2019; (3) Defendant would deem Plaintiffs current on the Loan and due for August 1, 2019; and (4) the unpaid principal balance on the Loan would be set at \$188,377.34. Ex. 9, Doc. #74. In exchange for such terms, Plaintiffs withdrew the motion for contempt filed in the 2014 Chapter 12 Case; released Defendant from all claims, known and unknown; and covenanted not to sue Defendant for the subject matter. Id. The Agreement further explicitly "does not apply to any separate and continuing contractual or equitable obligations" that existed between Plaintiffs and Defendant. Id.

On July 18, 2019, Defendant set the unpaid principal balance on the Loan at \$188,377.34. Ex. 12, Doc. #74. Plaintiffs' ongoing monthly mortgage payments on the Loan were set at \$1,472.52, subject to annual adjustments pursuant to an annual escrow analysis to be complete on the Loan and provided to Plaintiffs. Exs. 10-21, Doc. #74; Exs. 22-59, Doc. #79. Defendant further forgave any outstanding escrow shortage as of July 16, 2019. Ex. 10, Doc. #74.

#### **A. 2019 Transaction History**

Plaintiffs remitted a payment to Defendant on August 12, 2019, in the amount of \$1,472.52, which Defendant applied to the August 1, 2019, contractual payment date. Decl. of Edward M. Hyne ¶34, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated September 18, 2019, reflects this payment. Ex. 13, Doc. #74. Plaintiffs failed to remit a payment on the Loan in September 2019. Hyne Decl. ¶35, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated September 18, 2019, shows that two payments are due for the month of October 2019. Ex. 13, Doc. #74.

Plaintiffs then remitted two payments on the Loan to Defendant on October 8, 2019, in the amount of \$1,472.52 each, which Defendant applied to the September 1, 2019, and October 1, 2019, contractual payment dates, respectively. Hyne Decl. ¶¶36-37, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated October 9, 2019, reflects these payments, and shows that one payment is due on November 1, 2019. Ex. 14, Doc. #74. Plaintiffs remitted a payment to Defendant on November 4, 2019, in the amount of \$1,472.52, which Defendant applied to the November 1, 2019, contractual payment date. Hyne Decl. ¶38, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated November 6, 2019, reflects this payment. Ex. 15, Doc. #74. Plaintiffs remitted a payment to Defendant on December 5, 2019, in the amount of \$1,472.52, which Defendant applied to the December 1, 2019, contractual payment date. Hyne Decl. ¶39, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated December 9, 2019, reflects this payment. Ex. 16, Doc. #74.

#### **B. 2020 Transaction History**

Plaintiffs remitted a payment to Defendant on January 6, 2020, in the amount of \$1,472.52, which Defendant applied to the January 1, 2020, contractual payment date. Hyne Decl. ¶40, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated January 8, 2020, reflects this payment. Ex. 17, Doc. #74. Plaintiffs remitted a payment to Defendant on February 4, 2020, in the amount of \$1,472.52, which Defendant applied to the February 1, 2020, contractual payment date. Hyne Decl. ¶41, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated February 6, 2020, reflects this payment. Ex. 18, Doc. #74. Plaintiffs remitted a payment to Defendant on February 28, 2020, in the amount of \$1,472.52, which Defendant applied to the March 1, 2020, contractual payment date. Hyne Decl. ¶42, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated March 3, 2020, reflects this payment. Ex. 19, Doc. #74.

On April 7, 2020, Plaintiffs remitted a payment to Defendant in the amount of \$1,472.52, which Defendant applied to the April 1, 2020, contractual payment date. Hyne Decl. ¶43, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated April 9, 2020, reflects this payment. Ex. 20, Doc. #74. On May 6, 2020, Plaintiffs remitted a payment to Defendant in the amount of \$1,472.52, which Defendant applied to the May 1, 2020, contractual payment date. Hyne Decl. ¶44, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated May 11, 2020, reflects this payment. Ex. 21, Doc. #74.

Plaintiffs remitted a payment to Defendant on June 5, 2020, in the amount of \$1,472.52, which Defendant applied to the June 1, 2020, contractual payment date. Hyne Decl. ¶45, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated June 9, 2020, reflects this payment. Ex. 22, Doc. #79. Plaintiffs remitted a payment to Defendant on July 6, 2020, in the amount of \$1,472.52, which Defendant applied to the July 1, 2020, contractual payment



date. Hyne Decl. ¶46, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated July 8, 2020, reflects this payment. Ex. 23, Doc. #79.

Effective August 1, 2020, Plaintiffs' monthly contractual payment increased from \$1,472.52 per month to \$1,492.23 per month due to an increase detailed in the annual escrow analysis provided to Plaintiffs dated May 31, 2020 (the "2020 Analysis"). Hyne Decl. ¶47, Doc. #73; Ex. 10, Doc. #74; Ex. 24, Doc. #79. The statement from Defendant to Plaintiffs dated May 31, 2020, reflects the 2020 Analysis. Ex. 24, Doc. #79.

Plaintiffs remitted a payment to Defendant on August 7, 2020, in the amount of \$1,492.23, which was reversed due to insufficient funds. Hyne Decl. ¶48, Doc. #73; Ex. 10, Doc. #74. Plaintiffs remitted a payment to Defendant on September 8, 2020, in the amount of \$1,507.23, which Defendant applied to the August 1, 2020, contractual payment date in the amount of \$1,492.23. Hyne Decl. ¶49, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated September 18, 2020, reflects this payment. Ex. 26, Doc. #79. On October 6, 2020, Plaintiffs remitted a payment to Defendant in the amount of \$1,472.52. Hyne Decl. ¶50, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated October 20, 2020, reflects this payment. Ex. 27, Doc. #79. Because this amount was not the correct monthly payment amount pursuant to the 2020 Analysis, Defendant applied Plaintiffs' October 6, 2020 payment to Plaintiffs' suspense account. Hyne Decl. ¶51, Doc. #73; Ex. 24, Doc. #79.

Plaintiffs' next payment was remitted to Defendant on November 9, 2020, in the amount of \$1,472.52, and applied to Plaintiffs' suspense account because the payment was not the complete monthly amount due at the time according to the 2020 Analysis. Hyne Decl. ¶52, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated November 18, 2020, reflects this payment. Ex. 28, Doc. #79. On November 10, 2020, Defendant took funds in the amount of \$1,492.23 from Plaintiffs' suspense account and applied those funds to the September 1, 2020, contractual payment date. Hyne Decl. ¶53, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated November 18, 2020, reflects this payment. Ex. 28, Doc. #79.

On December 8, 2020, Plaintiffs remitted a payment to Defendant in the amount of \$1,472.52, but, because this amount was, once again, less than the monthly contractual amount due according to the 2020 Analysis, Defendant applied that payment to Plaintiffs' suspense account. Hyne Decl. ¶54, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated December 18, 2020, reflects this payment. Ex. 29, Doc. #79. Further, the December 8, 2020, payment did not cure the arrearage owed on the Loan at the time. Hyne Decl. ¶54, Doc. #73; Ex. 10, Doc. #74. Plaintiffs had only paid up to the September 1, 2020, contractual payment date by the end of 2020. Id.

### **C. 2021 Transaction History**

On January 11, 2021, Plaintiffs remitted a payment in the amount of \$1,472.52. Hyne Decl. ¶56, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated January 20, 2021, reflects this payment. Ex. 30, Doc. #79. However, as this payment was less than the monthly contractual amount due, the payment was applied to Plaintiffs' suspense account. Hyne Decl. ¶57, Doc. #73; Ex. 10, Doc. #74; Ex. 24, Doc. #79. On January 12, 2021, funds in the amount of \$1,492.23 were taken from Plaintiffs' suspense account and applied to the October 1, 2020, contractual payment date. Hyne Decl. ¶58, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated January 20, 2021, reflects this payment. Ex. 30, Doc. #79. On January 29, 2021, funds in the amount of \$1,492.23 were taken from Plaintiffs' suspense account and applied to

the November 1, 2020, contractual payment date. Hyne Decl. ¶59, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated February 18, 2021, reflects this payment. Ex. 31, Doc. #79.

Plaintiffs remitted two payments on February 9, 2021, and March 4, 2021, both in the amount of \$1,472.52. Hyne Decl. ¶¶60-62, Doc. #73; Ex. 10, Doc. #74. These payments were not the correct monthly contractual payment amount set forth in the 2020 Analysis and were applied to Plaintiffs' suspense account. Id. The statements from Defendant to Plaintiffs dated February 18, 2021 and March 18, 2021, reflect these payment. Exs. 31 & 32, Doc. #79. On March 5, 2021, funds in the amount of \$1,492.23 were taken from Plaintiffs' suspense account and applied to the December 1, 2020, contractual payment date. Hyne Decl. ¶63, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated March 18, 2021, reflects this payment. Ex. 32, Doc. #79. On March 12, 2021, funds were taken from Plaintiffs' suspense account and applied to the January 1, 2021, contractual payment date. Hyne Decl. ¶64, Doc. #73; Ex. 10, Doc. #74.

Defendant received two payments in April 2021, both for \$1,492.23 each: one on April 7, 2021, and one on April 22, 2021. Hyne Decl. ¶65-66, Doc. #73; Ex. 10, Doc. #74. Plaintiffs' April payments were applied to the February 1, 2021, and March 1, 2021, contractual payment dates. Id. The statements from Defendant to Plaintiffs dated April 20, 2021, and May 10, 2021, reflect these payments. Ex. 33 & 34, Doc. #79. On May 4, 2021, Plaintiffs remitted a payment in the amount of \$1,492.23, which was applied to Plaintiffs' April 1, 2021, contractual payment date. Hyne Decl. ¶67, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated May 10, 2021, reflects this payment. Ex. 34, Doc. #79. Funds also were taken from Plaintiffs' suspense account in the amount of \$1,492.23, which was applied to Plaintiffs' May 1, 2021, contractual payment date. Hyne Decl. ¶68, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated May 10, 2021, reflects this payment. Ex. 34, Doc. #79.

Plaintiffs remitted a payment on June 7, 2021. Hyne Decl. ¶69, Doc. #73; Ex. 10, Doc. #74. Plaintiffs returned to remitting payments not in the correct amount according to the 2020 Analysis in that the June 7, 2021, payment was only \$1,472.52 although it was applied to Plaintiffs' June 1, 2021, contractual payment date. Id. The statement from Defendant to Plaintiffs dated June 8, 2021, reflects this payment. Ex. 35, Doc. #79.

Effective July 1, 2021, Plaintiffs' monthly contractual payment increased from \$1,492.23 per month to \$1,696.75 per month due to an increase detailed in the annual escrow analysis provided to Plaintiffs dated May 27, 2021 (the "2021 Analysis"). Hyne Decl. ¶70, Doc. #73; Ex. 36, Doc. #79.

On July 7, 2021, Plaintiffs remitted a payment in the amount of \$1,472.52, which was not the correct contractual payment amount set forth in the 2021 Analysis and was applied to Plaintiffs' suspense account. Hyne Decl. ¶71, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated July 20, 2021, reflects this payment. Ex. 37, Doc. #79. The suspense account balance was \$1,472.52 as of July 7, 2021. Hyne Decl. ¶72, Doc. #73; Ex. 10, Doc. #74.

Plaintiffs' payments between August 2021 through and including January 2022, were applied to Plaintiffs' contractual payment dates in the amount of \$1,696.75 each month, although \$224.23 was taken from Plaintiffs' suspense account for each payment to ensure the amount set forth in the 2021 Analysis was paid because Plaintiffs continued to remit payments in the amount of \$1,472.52. Hyne Decl. ¶¶73-78, Doc. #73; Ex. 10, Doc. #74. The statements from

Defendant to Plaintiffs dated August 18, 2021, September 20, 2021, October 19, 2021, November 18, 2021, December 20, 2021, and January 19, 2022, reflect these payments. Ex. 38-43, Doc. #79.

#### **D. 2022 Transaction History**

As of January 7, 2022, Plaintiffs' latest payment was applied to the December 1, 2021, contractual payment date. Hyne Decl. ¶79, Doc. #73; Ex. 10, Doc. #74. On February 7, 2022, Plaintiffs remitted a payment in the amount of \$1,472.52 once again and, combined with \$124.23 and \$2.91 taken from Plaintiffs' suspense account, \$1,599.66 was applied to Plaintiffs' January 1, 2022, contractual payment date. Hyne Decl. ¶80, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated February 18, 2022, reflects this payment. Ex. 44, Doc. #79. By February 7, 2022, Plaintiffs' suspense account balance was \$0.00. Hyne Decl. ¶81, Doc. #73; Ex. 10, Doc. #74. On March 7, 2022, Plaintiffs remitted a payment in the amount of \$1,472.52 – not the correct monthly contractual payment amount as set forth in the 2021 Analysis – which was applied to Plaintiffs' suspense account. Hyne Decl. ¶82, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated March 18, 2022, reflects this payment. Ex. 45, Doc. #79. The suspense account balance was \$1,472.52 as of March 4, 2022. Hyne Decl. ¶83, Doc. #73; Ex. 10, Doc. #74.

Plaintiffs continued to remit monthly payments in the amount of \$1,472.52 from April 2022 through October 2022. Hyne Decl. ¶84, Doc. 73; Ex. 10, Doc. #74. In April 2022, \$224.23 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,696.75 to apply to Plaintiffs' February 1, 2022, contractual payment date. Hyne Decl. ¶85, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated April 19, 2022, reflects this payment. Ex. 46, Doc. #79. In May 2022, \$224.23 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,696.75 to apply to Plaintiffs' March 1, 2022, contractual payment date. Hyne Decl. ¶86, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated May 18, 2022, reflects this payment. Ex. 47, Doc. #79.

In June 2022, \$224.23 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,696.75 to apply to Plaintiffs' April 1, 2022, contractual payment date. Hyne Decl. ¶87, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated June 20, 2022, reflects this payment. Ex. 48, Doc. #79. In July 2022, \$224.23 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,696.75 to apply to Plaintiffs' May 1, 2022, contractual payment date. Hyne Decl. ¶88, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated July 19, 2022, reflects this payment. Ex. 49, Doc. #79. In August 2022, \$224.23 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,696.75 to apply to Plaintiffs' June 1, 2022, contractual payment date. Hyne Decl. ¶89, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated August 18, 2022, reflects this payment. Ex. 50, Doc. #79.

Plaintiffs' contractual payment decreased from \$1,696.75 per month to \$1,626.37 per month beginning July 1, 2022, due to a decrease detailed in the annual escrow analysis provided to Plaintiffs dated May 25, 2022 (the "2022 Analysis"). Hyne Decl. ¶90, Doc. #73; Ex. 51, Doc. #79. As a result, in September 2022, \$153.85 was taken from Plaintiffs' suspense account to combine with Plaintiffs' \$1,472.52 payment and allow the full \$1,626.37 to apply to Plaintiffs' July 1, 2022, contractual payment date. Hyne Decl. ¶91, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated September 20, 2022, reflects this payment. Ex. 52, Doc. #79.

On October 3, 2022, Plaintiffs remitted a payment in the amount of \$1,472.52 once again and, combined with \$103.85 and \$21.67 taken from Plaintiffs' suspense account, \$1,598.04 was applied to Plaintiffs' August 1, 2022, contractual payment date. Hyne Decl. ¶92, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated October 18, 2022, reflects this payment. Ex. 53, Doc. #79. By October 3, 2022, Plaintiffs' suspense account balance was \$0.00. Hyne Decl. ¶93, Doc. #73; Ex. 10, Doc. #74.

Plaintiffs failed to remit a payment in November 2022 prior to Defendant preparing a monthly statement. Hyne Decl. ¶94, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated November 18, 2022, reflects this non-payment. Ex. 54, Doc. #79. On November 23, 2022, Plaintiffs remitted a payment in the amount of \$1,626.37, which was applied to Plaintiffs' September 1, 2022, contractual payment date. Hyne Decl. ¶95, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated December 20, 2022, reflects this payment. Ex. 55, Doc. #79. Plaintiffs did not remit another payment to Defendant for the remainder of 2022. Hyne Decl. ¶96, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated January 18, 2022, reflects this non-payment. Ex. 56, Doc. #79.

#### **E. 2023 Transaction History**

Plaintiffs did not remit any payments in January or February 2023. Hyne Decl. ¶97, Doc. #73; Ex. 10, Doc. #74. The statements from Defendant to Plaintiffs dated February 20, 2023 and March 20, 2023, reflects these non-payments. Exs. 57, 58, Doc. #79. On March 13, 2023, Plaintiffs remitted a payment in the amount of \$1,472.52. Hyne Decl. ¶98, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated March 20, 2023, reflects this payment. Ex. 58, Doc. #79. Because this payment was not the proper monthly amount pursuant to the 2022 Analysis, Plaintiffs' March 13, 2023, payment was applied to Plaintiffs' suspense account. Hyne Decl. ¶99, Doc. #73; Ex. 10, Doc. #74. Further, the payment failed to cure the arrearage owed on the Loan at the time. Hyne Decl. ¶100, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated March 13, 2023, reflects this payment. Ex. 58, Doc. #79. Plaintiffs did not remit any payment to Defendant in April 2023. Hyne Decl. ¶101, Doc. #73; Ex. 10, Doc. #74. The statement from Defendant to Plaintiffs dated April 18, 2023, reflects this non-payment. Ex. 59, Doc. #79. At the time this adversary proceeding was filed, Plaintiffs had only paid on the Agreement through their September 1, 2022, contractual payment date. Hyne Decl. ¶102, Doc. #73; Ex. 10, Doc. #74.

On May 5, 2023, Plaintiffs remitted a payment in the amount of \$1,472.52 that was applied to suspense because Plaintiffs did not pay the monthly amount detailed in the 2022 Analysis nor completely cure the arrearage owed on the Loan at the time. Hyne Decl. ¶103, Doc. #73; Ex. 10, Doc. #74. On June 5, 2023, Plaintiffs remitted a payment in the amount of \$1,472.52, which was applied to suspense because Plaintiffs did not pay the monthly amount detailed in the 2022 Analysis nor completely cure the arrearage owed on the Loan at the time. Hyne Decl. ¶104, Doc. #73; Ex. 10, Doc. #74. On July 5, 2023, Plaintiffs remitted a payment in the amount of \$1,472.52 was applied to suspense because Plaintiffs did not pay the monthly amount detailed in the 2022 Analysis nor completely cure the arrearage owed on the Loan at the time. Hyne Decl. ¶105, Doc. #73; Ex. 10, Doc. #74.

On July 6, 2023, funds in the amount of \$1,626.37 were taken from Plaintiffs' suspense account and applied to the October 1, 2022, contractual payment date. Hyne Decl. ¶106, Doc. #73; Ex. 10, Doc. #74. On August 4, 2023, funds were taken from Plaintiffs' suspense account and applied to the November 1, 2022, and December 1, 2022, contractual payment dates. Hyne Decl. ¶107, Doc. #73;

Ex. 10, Doc. #74. As of August 4, 2023, Plaintiffs had only made payments through their December 1, 2022, contractual payment date. Hyne Decl. ¶108, Doc. #73; Ex. 10, Doc. #74.

#### **F. Defendant's Statements**

Throughout the post-Agreement life of the Loan to date, Defendant's statements explicitly indicate that they are "informational statements," and the statements clearly state that they are "not an attempt to collect a debt against [Plaintiffs]." Exs. 11-21, Doc. #74; Exs. 22-59, Doc. #79. Although Defendant acknowledges the error set forth in the June 9, 2020 statement due to Defendant's system inadvertently picking up information pertaining to Debtor's second chapter 13 case, the system error was remedied and the subsequent July 8, 2020 statement reflected a "total payment amount" of \$1,492.33. Hyne Decl. ¶¶111-112, Doc. #73; Ex. 23, Doc. #79. Per the July 8, 2020 statement, Plaintiffs had no past unpaid amounts due. Ex. 23, Doc. #79.

#### **V. Notice of Default**

On April 14, 2023, Defendant recorded a Substitution of Trustee in the Official Records as document number 2305580. Ex. 7, Doc. #74. The Substitution of Trustee replaced Stewart Title Company with Quality Loan Service Corporation ("QLS") as the trustee under the Deed of Trust. Id. The same day, QLS recorded a Notice of Default and Election to Sell Under Deed of Trust ("Notice of Default") in the Official Records as document number 2305581. Ex. 8, Doc. #74. The Notice of Default reflected that \$9,620.38 was past due and owing under the Loan as of April 12, 2023, and included a declaration of compliance with California Civil Code as it related to pre-Notice of Default contact with Plaintiffs. Id. Nothing in the Notice of Default related to any prepetition arrears or other dischargeable debt nor was there any Notice of Default recorded in November 2022 as alleged in paragraph 101 of the Complaint. Hyne Decl. ¶¶18-20, Doc. #73; Complaint, Doc. #1.

#### **VI. Plaintiffs' Admissions**

On September 29, 2023, Defendant served Plaintiffs with its First Set of Requests for Admission ("RFAs"). Decl. of Jared D. Bissell ¶4, Doc. #75. Plaintiffs' responses were due no later than October 30, 2023. Id. at ¶5. Plaintiffs did not timely respond – or even respond at all – to the RFAs. Id. at ¶6. Plaintiffs' failure to timely respond meant that every RFA propounded on Plaintiffs was deemed admitted. Fed. R. Civ. P. 36. On November 2, 2023, Defendant filed its Notice of Matters Deemed Admitted Pursuant to FRCP 36(a)(3) because "[a] matter is deemed admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36; Doc. #63.

In the RFAs that are deemed admitted, Plaintiffs admit that Plaintiffs cannot state any claims against Defendant as set forth in the Complaint and have no facts to support any of the claims for relief set forth in the Complaint. Ex. 1, Doc. #76. Plaintiffs admit that their August 7, 2020, payment was reversed due to insufficient funds. Id. at RFA No. 9. Plaintiffs admit that they failed to remit payments on the loan multiple times and remitted payments in an incorrect amount for various months. Id. at RFA Nos. 10-14. Plaintiffs admit that Plaintiffs' default on payments made after the Agreement "does not affect any funds discharged in [Plaintiffs'] bankruptcy." Id. at RFA No. 20. Plaintiffs admit that they suffered "no emotional damages" and "no monetary damages" as the result of any acts or omissions by Defendant. Id. at RFA

Nos. 37-40. Plaintiffs also admit that they "cannot show that Defendant's acts were malicious, fraudulent, and oppressive." Id. at RFA No. 36.

## **APPLICABLE LAW**

Federal Rule of Civil Procedure ("Rule") 56 governs summary judgment and is made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056. Under Rule 56, the moving party is entitled to summary judgment only where, drawing all reasonable inferences supported by the evidence in favor of the nonmoving party, no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Rule 56(a).

The moving party who has the evidentiary burden of proof on an issue must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. Anand v. BP West Coast Prods. LLC, 484 F. Supp. 2d 1086, 1092 (C.D. Cal. 2007). "[I]n ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden." Anderson, 477 U.S. at 254.

## **DISCUSSION**

### **I. Plaintiffs Do Not Satisfy Their Initial Burden**

Plaintiffs filed an untimely opposition to this motion for summary judgment. Doc. #88. As discussed above, while this opposition was filed untimely, the court will permit the untimely filing and consider the opposition.

To properly oppose a motion for summary judgment, Plaintiffs must affirmatively demonstrate the absence of any genuine dispute as to material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986) (Brennan, J., dissenting). This may be done by citing to a deposition of Defendant, documents produced, or not produced, by Defendant during discovery, or some other affirmative demonstration of the absence of a genuine dispute. In addition, Plaintiffs bear the burden of proof at trial. As such, Plaintiffs must do more than bolster their own claims in order to prevail on a motion for summary judgment; Plaintiffs also must cite to the record to demonstrate how no reasonable jury could find for Defendant. See Celotex, 477 U.S. 317, 331 (Brennan, J., dissenting); Anderson, 477 U.S. at 254-56.

While Plaintiffs contend in their opposition that Plaintiffs have made every single mortgage payment under the Agreement, that Defendant has lost or returned the payments several times, and that Plaintiffs have records of every check sent to Defendant, see Opposition at 5:3-5, Doc. #88, Plaintiffs filed no evidence with their opposition disputing any of the evidence submitted by Defendant in support of its motion for summary judgment. Accordingly, Plaintiffs make no effort to "demonstrate why the record is so one-sided as to rule out the prospect of a finding in favor of the non-movant on the claim." Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund, 778 F.3d 593, 602 (7th Cir. 2015).

The court finds that Plaintiffs have not supported their assertions in the Complaint, have not shown that the facts relied upon by Defendant cannot be genuinely disputed, and have not demonstrated that the trier of fact could not reasonably find for Defendant.

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## **II. First Claim for Relief for Breach of Stipulation and Second Claim for Relief for Breach of Covenant of Good Faith and Fair Dealing**

To state a claim for breach of contract, Plaintiffs must assert: (1) the existence of the contract; (2) performance by Plaintiffs or excuse for nonperformance; (3) breach by Defendant; and (4) damages. McNeary-Calloway v. JP Morgan Chase Bank, N.A., 863 F. Supp. 2d 928,954 (N.D. Cal. 2012).

Here, the Agreement set the principal amount of the Loan as of a certain date, waived any prior defaults, and allowed for an adjustment to Plaintiffs' ongoing payments pursuant to an annual escrow analysis on the Loan. Defendant has shown through declaration and documentary evidence that all arrears alleged in the informational statements provided to Plaintiffs since the Agreement, other than the one statement in June 2020, only reflect arrears on the Loan after the Agreement was entered into. Ex. 9, Doc. #74.

Further Defendant claims Plaintiffs' breach of contract claim for relief fails because Plaintiffs are attempting to hold Defendant accountable for violating a provision that is not in the Agreement. Specifically, Plaintiffs claim in the Complaint that Defendant's information statements reflecting Plaintiffs' post-petition ongoing mortgage payments violates the Agreement and the discharge injunction. However, the Agreement does not prohibit Defendant from sending ongoing informational statements reflecting the current status of Plaintiffs' payments post-Agreement. Further, Plaintiffs failed to timely send the accurate amounts owed each month as required by the Agreement. Plaintiffs' default amount listed in the post-Agreement statements, with the one exception for the statement sent in June 2020, is caused solely by Plaintiffs' failure to remit the accurate monthly payment as provided for in the Agreement.

Defendant claims that summary judgment should be granted with respect to Plaintiffs' second claim for relief because that claim for relief is a repeat of the first claim for relief and predicated on a willful ignorance of the true facts detailed.

No evidence has been presented to show there was a breach of the Agreement or a breach of the covenant of good faith and fair dealing with respect to the Agreement. Thus, summary judgment in favor of Defendant and against Plaintiffs is warranted for both of these claims for relief.

## **III. Third Claim for Relief for Violation of the Discharge Injunction**

Defendant states Plaintiffs must show, by clear and convincing evidence, that Defendant's communications are prohibited pursuant to 11 U.S.C. §524 and Plaintiffs' Complaint fails to do so.

Plaintiffs do not show how Defendant's ongoing post-Agreement informational statements violate the discharge in the 2014 Chapter 12 Case or provide evidence that Defendant attempted to collect any discharged debt other than the one statement issued in June 2020 showing an erroneous amount due that was promptly corrected.

Based on the testimony and documentary evidence submitted with the motion for summary judgment, the undisputed facts show that any default in the Loan after the Agreement was entered into, other than the June 2020 statement that was corrected the next month and not collected upon by Defendant, related to post-Agreement defaults and were not an attempt by Defendant to collect on any discharged debt. Thus, there can be no violation of the discharge injunction and summary judgment in favor of Defendant and against Plaintiffs is warranted for this claim for relief.

#### IV. Fourth Claim for Relief for Negligence

To state a claim for negligence, Plaintiffs must show: "(1) a legal duty to use reasonable care; (2) breach of that duty; and (3) proximate [or legal] cause between the breach and (4) the plaintiff's injury." Mendoza v. City of Los Angeles, 66 Cal.App.4th 1333, 1339 (1998). Plaintiffs have failed to allege any facts to demonstrate that Defendant owed any legal duty to the Plaintiffs, that Defendant exceeded its conventional role as a lender or loan servicer, or that any specific conduct of Defendant would support such a claim. Thus, summary judgment in favor of Defendant and against Plaintiffs is warranted for this claim for relief.

#### CONCLUSION

For the reasons stated above, the court will submit a report and recommendation to the district court recommending that the district court grant Defendant's motion for summary judgment.

4. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL  
PETER SAUER/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued February 15, 2024 at 11:00 a.m.

NO ORDER REQUIRED.

This matter was previously continued to February 15, 2024 at 11:00 a.m. by order entered on January 29, 2024. Doc. #193.

5. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL  
ELEANOR ROMAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued February 15, 2024 at 11:00 a.m.

ORDER: The court will issue an order.

Because the pre-trial conference in the related adversary proceeding Sihota v. Singh, Adv. Proc. No. 20-1041, has been continued to February 15, 2024 at



11:00 a.m. (see calendar matter #4 above), this status conference will be continued to February 15, 2024 at 11:00 a.m.

6. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[20-1042](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT  
6-26-2020    [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL  
LENDEN WEBB/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued February 15, 2024 at 11:00 a.m.

NO ORDER REQUIRED.

This matter was previously continued to February 15, 2024 at 11:00 a.m. by order entered on January 29, 2024. Doc. #189.

7. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[22-1022](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
10-5-2022    [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL  
ELEANOR ROMAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued February 15, 2024 at 11:00 a.m.

ORDER:             The court will issue an order.

Because the pre-trial conference in the related adversary proceeding Sihota v. Singh, Adv. Proc. No. 20-1042, has been continued to February 15, 2024 at 11:00 a.m. (see calendar matter #6 above), this status conference will be continued to February 15, 2024 at 11:00 a.m.

8. [17-13776](#)-A-7     **IN RE: JESSICA GREER**  
[18-1017](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-23-2018     [[1](#)]

SALVEN V. CALIFORNIA DEPARTMENT OF FOOD & AG  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Continued July 31, 2024 at 11:00 a.m.

ORDER:             The court will issue an order.

Pursuant to the joint status report filed on January 25, 2024 (Doc. #111), the status conference will be continued to July 31, 2024 at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than July 24, 2024.