

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** TUESDAY

**DATE:** FEBRUARY 20, 2018

**CALENDAR:** 2:00 P.M. CHAPTERS 11 AND 9 ADVERSARY PROCEEDINGS

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. 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

**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.

1. [16-10015](#)-A-9     **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**  
[17-1077](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-15-2017    [[1](#)]

SOUTHERN INYO HEALTHCARE  
DISTRICT V. OPTUM BANK, INC.  
MICHAEL DELANEY/ATTY. FOR PL.  
RESPONSIVE PLEADING

**Tentative Ruling**

Counsel for the parties are ordered to meet and confer by telephone not later than 4:00 p.m. on Friday, February 16, 2018, as to whether either party, most likely Southern Inyo Healthcare, intends to argue the tentative ruling on the motion to dismiss, BH-3. If neither party wishes to be heard on that motion or at the status conference, the parties may agree not to appear on either the motion or the status conference. If there is no appearance the court will continue the status conference to March 28, 2018, to allow Southern Inyo Healthcare District to file an answer and will order the parties to file a joint status report 14 days prior to that date.

2. [16-10015](#)-A-9     **IN RE: SOUTHERN INYO HEALTHCARE DISTRICT**  
[17-1077](#)     [BH-3](#)

MOTION TO DISMISS OPTUM BANK COUNTER-CLAIM  
1-23-2018    [[47](#)]

SOUTHERN INYO HEALTHCARE  
DISTRICT V. OPTUM BANK, INC.  
MICHAEL DELANEY/ATTY. FOR MV.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Motion to Dismiss Counter-Claim

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Denied

**Order:** Civil minute order

Southern Inyo Healthcare District moves under Rule 12(b)(6) to dismiss the counterclaim filed by Optum Bank. It does so arguing that California does not recognize a cause of action for restitution. Optum Bank opposes the motion.

## DISCUSSION

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), *incorporated by* Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *accord Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

Southern Inyo Healthcare District argues that restitution is not a stand-alone cause of action and, therefore, the counter-claim must be dismissed. 1 Witkin, *Summary of California Law*, Contracts § 1050 (2017). In such instances, courts have consistently treated pleadings as a cause of action for quasi-contract, which does exist under California law. *Astiana v. Hain Celestial Group, Inc.*, 783 F.3d 753, 762 (9th Cir. 2015); *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016). As a consequence, Optum Bank has stated a cause of action and the motion will be denied.

## CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The counter-defendant Southern Inyo Healthcare District's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure has been presented to the court. Having reviewed the motion and papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied. The counter-defendant's answer shall be served within 21 days after entry of the order on this motion.

IT IS FURTHER ORDERED that the parties shall not enlarge time without order of this court and, if the counter-defendant Southern Inyo Healthcare District fails to respond within the time specified herein, the plaintiff shall forthwith and without delay seek to enter the default of such non-responsive defendant.