

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

**Chief Bankruptcy Judge**

**Sacramento, California**

**March 17, 2022 at 11:00 a.m.**

---

1.	<a href="#"><u>20-20715</u></a> -E-13 <b>FOUAD MIZYED</b> <a href="#"><u>20-2016</u></a> <b>CAE-1 Arasto Farsad</b> <b>MIZYED V. FAY SERVICING, LLC</b> <b>ET AL</b>	<b>CONTINUED STATUS CONFERENCE</b> <b>RE: AMENDED COMPLAINT</b> <b>9-14-20 <a href="#">[49]</a></b>
----	---	---

Plaintiff's Atty: Arasto Farsad; Nancy W. Weng  
Defendant's Atty: Jana Logan

Adv. Filed: 2/14/20  
Answer: none  
First Amd. Cmplt Filed: 6/8/20  
Answer: none  
Second Amd. Cmplt Filed: 9/14/20  
Answer: none

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

Notes:  
Continued from 1/5/22. The deadline for Plaintiff filing a third-amended complaint extended, with the deadline being set, if necessary, at the continued Status Conference.

[AF-5] Order Granting Stipulation to Stay Proceedings 90 Days filed 1/10/22 [Dckt 103]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
--

**MARCH 17, 2022 STATUS CONFERENCE**

On March 11, 2022, Plaintiff-Debtor filed an updated Status Report. Dckt. 105. The Report

provides updates concerning settlement efforts and that to date the parties have not been able to resolve the matter. It reports that there is an outstanding settlement offer recently communicated to Defendant and Plaintiff-Debtor is waiting a response.

At the Status Conference, **XXXXXXX**

2. **15-20352-E-13      GREGORY/CLARICE BRIDGES      CONTINUED STATUS CONFERENCE**  
**21-2023              CAE-1   Peter Macaluso      RE: AMENDED COMPLAINT**  
**BRIDGES ET AL V. LONG BEACH      11-12-21 [22]**  
**MORTGAGE CO. ET AL**

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: Arnold L. Graff

Adv. Filed: 4/19/21  
Answer: none  
Reissued Summons: 5/10/21  
Amd Cmplt. Filed: 11/12/21  
Answer: 3/3/22

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

Notes:  
Continued from 1/25/22 by stipulation of the Parties. Defendant to file its Answer to the Complaint by 3/3/22.

PHM Mortgage Corporation's Answer to Amended Adversary Complaint filed 3/3/22 [Dckt 36]

<b>The Status Conference is <b>XXXXXXX</b></b>
--

### **MARCH 17, 2022 STATUS CONFERENCE**

#### **SUMMARY OF COMPLAINT**

The Amended Complaint filed by Gregory and Clarice Bridges ("Plaintiff-Debtor"), Dckt. 22, asserts the following basis for claims:

- A. Defendant Long Beach Mortgage Company was the holder of a note secured by a second deed of trust on the Subject Property,
- B. Washington Mutual Bank was the successor in interest to the note and deed of trust

from Long Beach Mortgage.

- C. Washington Mutual Bank then assigned the note and deed of trust to Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2005-WL2.
- D. JP Morgan Chase Bank, N.A., as successor to Washington Mutual Bank, assigned the deed of trust to Deutsche Bank National Trust Company.
- E. Plaintiff-Debtor filed a Chapter 13 bankruptcy petition on January 18, 2015.
- F. Plaintiff-Debtor's confirmed Chapter 13 Plan provides that the second deed of trust will be void on completion of the Plan, having obtained an 11 U.S.C. § 506(a) valuation of the secured claim (the allegations indicating that the valuation was \$0.00 secured).
- G. Plaintiff-Debtor completed their Chapter 13 Plan and received their discharge (on August 20, 2020). Counsel for Plaintiff-Debtor sent to Defendant a request for reconveyance of the second deed of trust.
- H. Plaintiff-Debtor's counsel sent Defendant on December 12, 2022, a reminder notice requesting a reconveyance of the second deed of trust.
- I. Plaintiff-Debtor has been attempting to obtain a refinance of the obligation secured by the senior deed of trust on the Subject Property, but has been prevented by the existence of the second deed of trust appearing in the chain of title with the county recorder.
- J. The First Cause of Action seeks "mere" Declaratory Relief to state prospectively:
  - 1. That Defendant(s) have an obligation to reconvey the second deed of trust.
  - 2. That Defendant(s) are in violation of the court's order that the second deed of trust has been satisfied. (No order is referenced in the pleadings, nor is a copy attached as an exhibit.)
  - 3. That a deed of reconveyance should have been recorded.
  - 4. It further states:

30. As Defendants have finally taken action in November of 2021 to remove the Second Deed of Trust, it calls into question whether, after the Second Deed of Trust has been satisfied and discharged, the Defendants believe they have a duty to release the lien without post-petition litigation by the Debtor. Therefore, Plaintiffs seek a determination, pursuant to rule 4007 of the Federal Rules of Bankruptcy Procedure (28 U.S.C.) subdivisions (a) and (b), that the debt has been fully discharged and any

security interest voided.

With respect to requesting “Declaratory Relief,” it appears that the bell has rung and what Plaintiff-Debtor would be seeking is to enforce rights relating to confirmation of the Plan and completion of the Plan. Not merely the court telling the parties, for their future use in decision making, what the respective rights and interests are of the parties so that they can be guided accordingly.

It appears that in November 2021 the second deed of trust was reconveyed. This is well after the December 2020 completion of the Plan and Plaintiff-Debtor’s counsel sending the request and reminder request for Defendant to clear the title to the property of the second deed of trust.

Additionally, it is not clear what “order” the court would have entered stating that the second deed of trust was “satisfied.” Obligations can be satisfied (paid), and liens, like a deed of trust, merely secure obligations. As this court has written, published, and affirmed on appeal, when an obligation secured by a lien on property has been determined to have a \$0.00 value as a secured claim pursuant to 11 U.S.C. § 506(a) and the debtor completes the plan, then the value of the secured obligation is locked at zero and the lien is void as a matter of California State Law and Federal Law. The holding of the lien, such as a deed of trust, has a contractual (deed of trust) and State Law statutory obligation to promptly reconvey the void deed of trust once there is no longer an obligation which it secured. The \$0.00 valuation that is locked in upon completion of the Chapter 13 Plan results in the deed of trust no longer securing any obligation (as this court has previously written, published, and been affirmed).

- K. The Second Cause of Action is titled “Extinguishment of the Second Deed of Trust Claim.”
  - 1. It asserts that under “applicable law,” upon completion of the Chapter 13 Plan the court has the “authority to extinguish the Second Deed of Trust.”
  - 2. This appears to assert a claim for the court to quiet title, determining that the asserted void second deed of trust does not encumber the Subject Property, and enter a judgment determining that the second deed of trust is of no legal force or effect.
- L. The Third Cause of Action is for monetary damages pursuant to California Civil Code § 2941(d). These are damages arising when the beneficiary under a deed of trust or the trustee fails to timely reconvey a deed of trust.
- M. The Fourth Cause of Action asserts a claim for breach of contract (the deed of trust) for failing to timely record the reconveyance of the deed of trust.
- N. The Fifth Cause of Action seeks the recovery of statutory and contractual attorney’s fees.

## **SUMMARY OF ANSWER**

On March 3, 2022, PHH Mortgage Corporation (“Defendant-PPH”) filed an Answer, Dckt. 36. No answer has been filed by any other named defendant.

In the Answer, Defendant-PPH, admits and denies specific allegations in the Amended Complaint. Additionally, Defendant-PPH asserts twenty-seven (27) affirmative defenses.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Gregory and Clarice Bridges, Plaintiff-Debtor, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), (K). Complaint ¶¶ 2, 3; Dckt. 22. In the Answer, PHH Mortgage Corporation, Defendant-PPH, admits the allegations of jurisdiction, and “admits” that Plaintiff-Debtor consents to this being a core proceeding. Answer ¶¶ 2; Dckt. 36. At the Status Conference, Defendant-PPH clarified that **XXXXXXX To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

## **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, 3; Dckt. 22. In the Answer, Defendant-PPH admit the allegations of jurisdiction, and “admits” that Plaintiff-Debtor consents to this being a core proceeding. Answer ¶¶ 2; Dckt. 36. At the Status Conference, Defendant-PPH clarified that **XXXXXXX To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court..**
- b. Initial Disclosures shall be made on or before **XXXXXXX, 2021**.
- c. Expert Witnesses shall be disclosed on or before **XXXXXXX, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **XXXXXXX, 2021**.
- d. Discovery closes, including the hearing of all discovery motions, on **XXXXXXX, 2021**.
- e. Dispositive Motions shall be heard before **XXXXXXX, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on XXXXXXX, 2021**.

# FINAL RULINGS

3. [18-25001-E-7](#)      **JOSEPH AKINS**      **MOTION FOR COMPENSATION FOR**  
[18-2187](#)      **RLF-20 Sheila Gropper Nelson**      **SHEILA GROPPER NELSON,**  
**BLACK V. AKINS**      **DEFENDANTS ATTORNEY(S)**  
1-14-22 [[260](#)]

**Final Ruling:** No appearance at the March 17, 2022 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney on January 14, 2022. By the court's calculation, 62 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Prevailing Party Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Prevailing Party Fees has been continued to 11:00 a.m. on April 7, 2022, by prior order of the court.**

**Final Ruling:** No appearance at the March 17, 2022 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney on January 28, 2022. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

However, in reviewing the Notice of hearing, while it states the date and time of the hearing, it includes much other information. The extra information includes: (1) a summary of the trial proceedings, (2) a reservation of the right to amend the Motion if Movant believes that opposing counsel engages in further asserted improper acts, (3) that in addition to the Motion and supporting pleadings the Motion is based on each and every other pleading that is in Defendant's bankruptcy case file.

However, what is missing from the Notice is what is required in Local Bankruptcy Rule 9014-1(d)(3)(B), including:

- A. Whether written opposition is required;
- B. Deadline for filing and serving written opposition;
- C. Names and addresses of persons to be served with the written opposition;
- D. That if written opposition is required and not filed, then the court may rule on the motion without a hearing;
- E. That the parties can determine whether a tentative or final ruling on the motion has been made by the court, stating that it may be found on the court's website (giving the website address) the day before the hearing; and
- F. For parties appearing telephonically, they must review the pre-hearing dispositions prior to the hearing.

Though the Notice is deficient, Plaintiff's counsel has filed an Opposition, with supporting declarations and exhibits. Dckts. 308-311. The filing of the Opposition has adequately remedied the Notice shortcomings.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

**The hearing on the Motion for Sanctions has been continued to 11:00 a.m. on April 7, 2022, by prior order of the court.**

5. [18-20964-E-7](#)      **BRADLEY GILBREATH**      **MOTION FOR ENTRY OF DEFAULT**  
[21-2084](#)      **PA-1 Peter Macaluso**      **JUDGMENT**  
**HUSTED V. GILBREATH**      **2-17-22 [27]**

**Final Ruling:** No appearance at the March 17, 2022 hearing is required.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on February 17, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Entry of Default Judgment is granted.**

The Chapter 7 Trustee, Kimberly Husted, (“Plaintiff”) filed the instant Motion for Default Judgment on February 18, 2022. Dckt. 27. Plaintiff-Debtor seeks an entry of default judgment against Cynthia Fegins Gilbreath (“Defendant”) in the instant Adversary Proceeding No. 21-02084.

The instant Adversary Proceeding was commenced on December 2, 2021. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on December 3, 2021. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 8.

Defendant failed to file a timely answer or response or request for an extension of time.



Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on February 1, 2022. Dckt. 17.

## SUMMARY OF COMPLAINT

Plaintiff filed a complaint for injunctive relief against Defendant. The Complaint contains the following general allegations as summarized by the court:

1. In Decedent Debtor's Schedules, Decedent Debtor discloses real property located at 1342 Muscat Cir., Roseville California 95747 ("Property").
2. Decedent Debtor valued the property of \$340,000.00 and claimed a \$13,764.35 exemption pursuant to California Code of Civil Procedure § 703.140(b)(5).
3. Decedent Debtor disclosed a lien of \$326,235.65 held by Freedom Mortgage.
4. A Preliminary Title Report for the Property indicates the Property is vested through deed of trust in Decedent Debtor as his separate property.
5. Plaintiff is informed and believes that the Property is the separate property of Decedent Debtor.
6. Plaintiff has made multiple attempts to communicate with Defendant in the turnover of the Property, however, Defendant has failed to cooperate.

Dckt. 1.

## APPLICABLE LAW

### Default Judgments

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

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

- (1) the possibility of prejudice to the plaintiff,

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

*Id.* at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

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

### **Turnover Action Against a Nondebtor**

A trustee must file an adversary proceeding to bring a turnover action against a nondebtor. 5 Collier on Bankruptcy P 542.02 (16th 2021); Federal Rules of Bankruptcy Procedure 7001(1); 11 U.S.C. § 542. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Plaintiff has initiated this proceeding to compel Defendant to deliver property to Plaintiff. This Complaint for injunctive relief, in the form of a judgment requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

### **DISCUSSION**

The court finds that applying the factors of *Eitel*, Plaintiff will be prejudiced if default judgment for injunctive relief is not entered against Defendant to compel the turnover of the Property. Turnover of property is required under 11 U.S.C. § 542(a) and due to its value to the estate, may be sold by the Trustee under 11 U.S.C. § 363.

The court finds that the Complaint is sufficient, and the request for relief requested therein is meritorious. It has not been shown to the court that there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant has been given several opportunities to respond, and there is no indication that Defendant has a meritorious defense or disputes Plaintiff's right to judgment in this Adversary Proceeding. The court finds it necessary and proper for the entry of a default judgment against Defendant.

Though the court does not anticipate there being any failure by Defendant to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

The court grants default judgment in favor of Plaintiff and against Defendant Cynthia Fegins Gilbreath.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Entry of Default Judgment filed by the United States Trustee ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Entry of Default Judgment is granted. The court shall enter judgment and mandatory injunction determining that Cynthia Fegins Gilbreath ("Defendant") is shall turnover and deliver possession of the Property, commonly known as 1342 Muscat Cir., Roseville California within thirty days after the entry of the judgment.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.