UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 18, 2021 at 11:00 a.m.

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1. **15-28536-E-13** **MATTHEW MCCANDLESS** **MOTION FOR SUMMARY JUDGMENT**
20-2121 **CLH-1** **2-4-21 [23]**
CLEVENGER V. MCCANDLESS

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 Debtor's Attorney on February 1, 2021. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. Local Bankruptcy Rule 7056-1(a).

The Motion for Summary 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Summary Judgment is granted.

Brittney Clevenger ("Plaintiff ") filed the instant adversary proceeding on June 23, 2020, against Matthew McCandless ("Defendant-Debtor").

Before the court is Plaintiff's Motion for Summary Judgment requesting a determination that Plaintiff is the owner of a one-half undivided interest in the property commonly known as 15 Loorz Court, Sacramento, California ("Property").

Overview of the Complaint and Answer

Plaintiff seeks a judicial determination that Plaintiff holds a one-half undivided interest in the Property. On August 20, 2008, Plaintiff and Defendant-Debtor purchased the Property as joint tenants but Debtor failed to list Plaintiff as a joint owner in his bankruptcy petition (implying that he was the sole owner of the Property) and also failed to list Plaintiff as a creditor. Dckt. 1.

In the prayer for relief, Plaintiff requests a judicial determination and declaration that Plaintiff is the owner of an undivided one-half interest in the Property and that her interest in the Property is not property of the Defendant-Debtor's bankruptcy estate.

Defendant-Debtor filed an Answer to the Complaint on July 22, 2020 denying and admitting allegations in the Complaint. Dckt. 6.

REVIEW OF THE MOTION FOR SUMMARY JUDGMENT

On February 4, 2021, Plaintiff filed the instant Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056. Dckt. 23. Plaintiff asserts that a judicial determination that Plaintiff is the owner of one-half undivided interest in the Property is warranted because Defendant-Debtor does not dispute that Plaintiff owns a one-half interest and the facts show that Plaintiff and Defendant-Debtor took title as joint tenants.

Moreover, Plaintiff argues that Defendant-Debtor is not entitled to be reimbursed for mortgage payments, taxes, and insurance or compensation for services as they relate to the Property.

Summary of Grounds for Declaratory Relief

Plaintiff asserts that:

A. Defendant-Debtor acknowledged in his deposition that Plaintiff does in fact own a one-half interest in the Property.

B. Plaintiff and Defendant-Debtor were conveyed title to the Property as Joint Tenants as referenced in the Grant Deed to the Property. Exhibit A, Dckt. 29.

C. California Civil Code § 683(a) provides "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, ... when expressly declared in the transfer to be a joint tenancy, ..."

D. California Civil Code § 683(a) does not abrogate the common law rule that four unities are essential to an estate in joint tenancy. Equal ownership is one of the four unities. *Tenhet v. Boswell*, 18 Cal. 3d 150 (1976). [Fn.1.]

FN. 1. In *Tenhet*, the joint tenant, without the other joint tenant's knowledge, leased the joint tenancy property for 10 years, with a provision granting lessee an option to purchase. Lessor joint tenant died three months later. The surviving joint tenant sought to establish sole possession of property free and clear. California Supreme Court reviewed elements of joint tenancy and held that the joint tenancy was not severed by lease, the lease expired when the lessor joint tenant died, and the lease was no longer valid.

F. Plaintiff and Defendant-Debtor were living in the property at the time they purchased the Property. Plaintiff and Defendant-Debtor each received a one-half interest in the Property, both parties were conveyed title at the same time as evidenced by the Grant Deed, each took possession in their own respective names, and each took possession of the Property at the same time as they were residing in it.

G. Defendant-Debtor is not entitled to compensation for repairs and maintenance because "in the absence of an agreement, express or implied, a cotenant is not entitled to compensation for services rendered in the care and management of the property." *Combs v. Ritter*, 100 Cal. App 2d 315 (1950). [Fn.2.]

FN. 2. In *Combs*, the plaintiff ex-husband brought action against defendant ex-wife for equal share of profit from joint tenancy property. Defendant ex-wife appealed asking for compensation for acting as manager of property. The Court of Appeal held that a cotenant is not ordinarily entitled to compensation for services rendered in managing, operating, or taking care of the common property in the absence of an express agreement or mutual understanding that the services should be paid for. Exception exists where one cotenant performs services which neither the law nor the relation of co-tenancy imposes upon him. But leasing, rent, and looking after repairs do not fall within exception.

H. No agreement existed that would entitle Defendant-Debtor to any form of compensation for services that might have been rendered for the Property.

I. Defendant-Debtor is not entitled to be reimbursed for mortgage payments, taxes, and insurance payments because the reasonable value of the Defendant-Debtor's use is subject to offset and exceeds Defendant-Debtor's claim. "In a ... proceeding between co-tenants in equity ... a cotenant who has been in possession or use of the premises seeks to obtain contribution respecting improvements made, or amounts expended in protection or preservation of the property, the court, as incidental to the granting of such relief and by way of adjusting the rights of the parties, may charge the claimant, defensively, with at least a part of the reasonable value of his occupancy or use, and in some cases may hold him accountable for profits realized from the premises, even though he could not otherwise be required to account or be held liable respecting any of such benefits." *Hunter v. Schultz*, 240 Cal. App. 2d 24 (1966). [Fn.3.]

FN. 3. In *Hunter*, the Court of Appeal again dealt with ex-spouses seeking recovery against the other.

Plaintiff-ex and defendant-ex acquired home, as tenants in common, while married. Plaintiff-ex subsequently moved out during separation and paid no mortgage, tax, insurance, repairs, improvements. Defendant-ex continued to live in property. Plaintiff-ex brought action to partition property. In determining the reimbursements after the partition sale, the court gave defendant-ex credit for the mortgage, tax, insurance, but offset this credited amount by the reasonable value of the use of Plaintiff-ex's interest in property.

REVIEW OF THE OPPOSITION

The Defendant-Debtor's Opposition to the Motion is stated in the Memorandum of Points and Authorities in Support of the Opposition. Dckt. 35. Defendant-Debtor in general terms argues that although Plaintiff holds a one-half interest ownership, such ownership is subject to reimbursement and compensation on the basis that Plaintiff did not make any payments related to the Property for the last eleven years. Defendant-Debtor alleges the following:

A. Plaintiff voluntarily breached the unity of possession by abandoning the Property, and thus possibly severing the joint tenancy by this voluntary act. An estate in joint tenancy may be severed by destroying one or more of the necessary unties. *Swartzbaugh v. Sampson*, 11 Cal. App. 2d 451 (1936). [Fn.4.]

FN. 4. In *Swartzbaugh*, the Court of Appeal addressed a husband and wife situation where one spouse leased the land. The court concluded that leasing the land did not destroy the unity of possession, possession by one is possession by all.

B. Plaintiff maintains rights as a Tenant-in-Common because of the recording of the Quitclaim Deed filed by Plaintiff in 2020.

C. Plaintiff admits that for eleven years she did not contribute any payments towards sustaining the Property, while she orally promised to do so and later in writing when signed the loan modification in 2010.

D. Defendant-Debtor is entitled to compensation for the preservation of the Property. When one tenant in common occupies the property, the out-of-possession cotenant is generally not entitled to recover the imputed rental value of the property from the cotenant in possession. *Brunscher v. Reagh*, 164 Cal. App. 2d 174 (1958). [Fn.5.]

FN. 5. In *Brunscher*, the Court of Appeal addressed an action for partition and accounting of property. When one cotenant wrongfully ousts the other and prevents enjoying joint possession, the "victim" wrongfully ousted cotenant is allowed to recover damages equal to his share of the value of the use or of the rental value during the period of the ouster.

E. While admitting that the exceptions to the above rule under California law are not applicable, Defendant-Debtor is entitled to compensation because Plaintiff breached

the agreement where the parties had agreed to split the costs associated with the Property 50-50 and Plaintiff had promised to continue paying her half after she left. [Fn.6.]

FN. 6. Three exceptions to the above mentioned rule were identified as: (1) Where there is an agreement between cotenants to share the rents and profit, *Black v. Black*, 91 Cal. App. 2d 328; (2) when one cotenant has been ousted, *Estate of Hughes*, 5 Cal. App. 4th 1607; or (3) in a partition action when recovery of the imputed rental value by the cotenant out of possession would be "just and consistent with equitable principles," *Hunter v. Schultz*, 240 Cal. App. 2d 24.

E. There is no evidence that Plaintiff had an implied or oral agreement that she would not perform a service that would constitute her upkeep of the property. *Milian v. De Leon*, 181 Cal. App. 3d 118 (1986). [Fn.7.]

FN. 7 In *Milian*, the court determined that even if a finding of implied contract was supported by sufficient evidence, the court was not required to order reimbursement after partition between joint tenants, and parties separation was not relevant to division of property except as to ouster.

F. Defendant-Debtor is entitled to contributions from Plaintiff or surrender claim to the increased value of the Property where Defendant-Debtor has made improvements and repairs such as landscaping and has incurred expenses in the maintenance of the Property.

G. When a cotenant makes advances to preserve the common estate, the investment in the property increases by the entire amount advanced and upon the sale of the estate they are entitled to be reimbursed their entire advancement before the balance is equally divided. *Southern Adjustment Bureau, Inc. V. Nelson,* 230 Cal. App. 2d 539 (1964). [Fn.8.]

FN. 8. In *Southern Adjustment Bureau*, the plaintiff tenant-in-common had advanced funds to pay taxes, insurance, and trust deed payments to preserve the common property. In the quiet title and partition action, the Court of Appeal noted that when a cotenant made advances from his own pocket to preserve the common estate, his investment in the property increased by the entire amount advanced. Upon sale of the estate, he was entitled to be reimbursed his entire advancement before the balance was equally divided.

H. There is an implied agreement between the parties that was initially formed when Plaintiff promised to make her share of the payments, which was furthered documented she signed the loan modification in 2010.

I. Based on the equitable doctrine of laches, eleven years of non-payment and failure

to assert her interest is an unreasonable delay, which has caused Defendant-Debtor to be damaged as Plaintiff waited to see if Defendant-Debtor would be successful in making his Chapter 13 payments, thereby saving the Property, and after Defendant-Debtor paid for attorneys and the trustee's fees and costs.

APPLICABLE LAW FOR A MOTION FOR SUMMARY JUDGMENT

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. *See* Declaratory Relief Act, 28 U.S.C. § 2201. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*,

655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

As explained in 15 Moore's Federal Practice,

> In enacting the Declaratory Judgment Act, Congress allowed parties to ascertain the potential legal consequences of their actions before taking those actions. In this sense, a declaratory judgment action enables parties to avoid potentially harmful legal results. In essence, a request for declaratory relief is a request that the court delineate the rights, obligations, or relations of the parties so that any future action undertaken by the parties, in respect of the subject dispute, will be pre-approved by the court and will not subject the parties to additional liability.

15 Moore's Federal Practice - Civil § 101.80 (2020)

28 U.S.C. §2201 provides:

> § 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
>
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

Declaratory Relief As To Ownership
Of One-Half Undivided Interest

In the Complaint Plaintiff asserts having a one-half undivided interest ownership in the Property. The relief requested is that this court make a declaration that Plaintiff is owner of this half interest. Defendant, on the other hand, has responded that while Plaintiff holds such one-half undivided interest ownership, Defendant is entitled to compensation and reimbursement.

The court is presented with the original deed dated August 20, 2008, which shows that

Plaintiff and Defendant-Debtor held ownership of the Property as joint tenants. Exhibit A, Dckt. 29. Record title shows a 50/50 ownership between Plaintiff and Defendant-Debtor. The Schedules filed by Defendant-Debtor in the underlying bankruptcy case, where he failed to list Plaintiff as a co-owner, do not change the deed. Thus, Plaintiff holds those rights as appropriate.

As to Defendant-Debtor's assertions that he is entitled to offset, Defendant-Debtor has failed to seek such affirmative relief by way of counterclaim. Therefore, the court is unable to assess the merits of such allegations.

The court is presented with a "simple" claim for relief - a declaration that Debtor asserting in his bankruptcy schedules that he owns the property did not limit, terminate, or alter Plaintiff's interest in the Property. That is correct.

Though no counterclaim has been filed asserting any recovery, Defendant proceeds down that rabbit hole. Plaintiff then jumps in, asking the court to adjudicate theoretical, hypothetical possible claims, and interests based upon past conduct – not the subject of a "declaratory relief" action.

If Defendant has claims for reimbursement Defendant wishes to prosecute, Defendant may do so in the appropriate action. But Defendant has not done so here.

It appears that the dispute, if one exists, is not merely a dispute as to future rights and interests, but affirmative claims or controversies for which damages would be due - and possibly the statute of limitations racing.

The court rules on what is asserted in the Complaint and grants such declaratory relief that whatever rights and interests Plaintiff had in the Property as of the commencement of the Defendant-Debtor's bankruptcy case has not been altered by Defendant-Debtor not stating in his Schedules or asserting that Defendant-Debtor may have some possible claims that Defendant-Debtor may decided to affirmatively prosecute at some later date.

The court shall issue an 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 Summary Judgment filed by Brittney Clevenger ("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 Summary Judgment is granted and judgment shall be entered:
>
> A. For Plaintiff Brittney Clevenger and against Defendant-Debtor Matthew McCandless that Plaintiff Brittney Clevenger is the owner of an undivided one-half interest in the real property commonly known as 15 Loorz Court, Sacramento, California (the "Real Property"), with Defendant-Debtor Matthew McCandless the owner of the other undivided one-half interest in the Real Property.

B. Defendant-Debtor Matthew McCandless listing ownership of all the interests in the Real Property in his bankruptcy schedules in his bankruptcy does not alter, diminish, or reduce the undivided one-half interest in the Real Property of Plaintiff Brittney Clevenger, and does not result in the one-half interest of Plaintiff Brittney Clevenger being included in the bankruptcy estate in Defendant-Debtor Matthew McCandless' bankruptcy case.

C. The determination that Plaintiff-Brittney Clevenger has an undivided one-half interest in the Real Property is without prejudice to, and does not adjudicate, any claims for contribution, recovery of expenses, or other rights that either undivided interest holder has against the other.

FINAL RULINGS

2. **18-22123-E-13** **ROBERT/KATHRYN PETERSON** **CONTINUED STATUS CONFERENCE**
18-2121 **RE: COMPLAINT**
SHEKELLE V. PETERSON ET AL **7-23-18 [1]**

Final Ruling: No appearance at the March 18, 2021 Status Conference is required.

Plaintiff's Atty: Stephen T. Cammack; Donald S. Burris
Defendant's Atty: David Foyil

Adv. Filed: 7/23/18
Reissued Summons: 10/10/18
Answer: 11/9/18

Nature of Action:
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/3/21 to be held in conjunction with the Motion to Enforce Settlement Agreement filed by Plaintiff.

Pursuant to Order of this court (Dckt. 90), the Status Conference is continued to 2:00 p.m. on March 23, 2021.

3. **18-22123-E-13 ROBERT/KATHRYN PETERSON**
18-2121 STC-1
SHEKELLE V. PETERSON ET AL

MOTION TO ENFORCE SETTLEMENT AGREEMENT FOR JUDGMENT OF NONDISCHARGEABILITY OF DEBT
2-18-21 [73]

Final Ruling: No appearance at the March 18, 2021 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 Debtor-Defendant, Debtor's Attorney, Chapter 13 Trustee, Plaintiff's Attorney, and Office of the United States Trustee on February 18, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Enforce Settlement Agreement for Judgment of Nondischargeability of Debt 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.

Pursuant to Order of this court (Dckt. 90), as stipulated by the parties, the hearing on the Motion to Enforce Settlement Agreement for Judgment of Nondischargeability of Debt is continued to 2:00 p.m. on March 23, 2021.

4. **19-25936-E-7 NUR BANO**
20-2152
CARELLO V. NISHA

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
9-15-20 [1]

Final Ruling: No appearance at the March 18, 2021 Status Conference is required.

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

Adv. Filed: 9/15/20
Answer: none

Nature of Action:
Recovery of money/property - preference

Notes:
Continued from 2/25/21 by request of the Plaintiff-Trustee to allow the final payment to be made and the Adversary Proceeding dismissed.

Notice of Dismissal of Adversary Proceeding filed 3/8/21 [Dckt 46]

The Adversary Proceeding having been dismissed, the Status Conference is concluded and removed from the Calendar.

5. **19-25936-E-7 NUR BANO** **CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT**
20-2152 **11-25-20 [25]**
CARELLO V. NISHA

Final Ruling: No appearance at the March 18, 2021 Status Conference 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 Debtor, Debtor's Attorney, and Defendant on November 25, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgement 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 Adversary Proceeding having been dismissed, the Motion for Entry of Default Judgement is dismissed without prejudice.

The Plaintiff-Trustee having filed a notice of dismissal of this Adversary Proceeding on March 8, 2021, (Dckt. 86) the Motion is dismissed without prejudice as moot.

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 Sheri L. Carello ("Plaintiff") having been presented to the court, Plaintiff having requested that the Adversary Proceeding itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7001, Dckt. 46, 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 dismissed without prejudice as moot, Plaintiff having voluntarily dismissed the Adversary Proceeding.