UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 22, 2018, at 11:00 a.m.

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1. **17-27740-E-13** **RANDY KEMP** **MOTION TO DISMISS ADVERSARY PROCEEDING**
17-2227 **CRB-1** **1-9-18 [8]**
KEMP V. TIDALWAVE FINANCE CORP.

Final Ruling: No appearance at the March 22, 2018 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 Plaintiff-Debtor on January 9, 2018. FN.1. By the court's calculation, 72 days' notice was provided. 28 days' notice is required.

FN.1. Defendant filed the Notice of Hearing and Proof of Service in this matter as one document. Defendant also filed the Mothorities and Proof of Service as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 hearing on the Motion to Dismiss Adversary Proceeding is continued to 11:00 a.m. on April 19, 2018.

Tidalwave Finance Corporation ("Defendant") moves for the court to dismiss all claims against it in Randy Kemp's ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.").

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court "required

to"accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

REVIEW OF MOTHORITIES

The Mothorities (portmanteau of Motion and Memorandum of Points & Authorities) responds to the Complaint's claims with the following grounds:

A. Plaintiff-Debtor does not allege any facts that support a finding that Defendant violated the automatic stay; and

B. Plaintiff-Debtor has no private right of action under 18 U.S.C. § 242.

REVIEW OF COMPLAINT

The Complaint in this Adversary Proceeding was filed on December 4, 2017. Dckt. 1. The handwritten Complaint states in its entirety:

Cause of Actions

I. 11 U.S. Code § 362 - Automatic Stay, by way of collect fees or/and demand of cancelled protection (auto).
Defendants dates of contact or/and mailing, happened Nov, 30th 2017 - Dec 1st 2017.

II. 18 U.S. Code § 242
Defendants [*illegible*] behavior towards plaintiff request and/or [*illegible*] property return back to plaintiff which defendants failure to comply § 542.

Nature Suit

III. § 542 Recovery of money/property
Plaintiff property Chevy Camaro SS 2010

Relief Sought

Plaintiff request defendants to return vehicle Chevy Camaro SS 2010 as of 12/5/2017. Additional demand $20,000 due to defendants violated 18 U.S. Code § 242 and 11 U.S. Code § 362 automatic stay on and/or date plaintiff filed Chapter 13 petition

Dckt. 1. On its face, the Complaint appears to allege that Defendant violated the automatic stay by seizing a vehicle post-petition.

DEFENDANT'S REQUEST FOR CONTINUANCE

On March 19, 2018, Defendant filed a request to continue this hearing to 11:00 a.m. on April 19, 2018. Dckt. 15. Defendant states that it seeks a continuance because it needs to revise the Motion to be in line with the court's comments, which were from the February 21, 2018 Status Conference.

Defendant states that there have been unforeseen circumstances (not disclosed), however, that have prevented Defendant from revising the Motion. Defendant expects to have the revised motion filed by March 23, 2018, one day after the scheduled hearing.

DISCUSSION

At the February 21, 2018 Status Conference, the court provided Defendant with a detailed discussion in the minutes of how this Motion is defective because it merely states the rule of law for a motion to dismiss based upon Plaintiff not stating a claim upon which relief could be granted. Dckt. 13. Defendant failed in the Motion to provide actual grounds, and instead, chose to place them in the Memorandum of Points and Authorities only.

Following that status conference, Defendant filed a request to continue this hearing so that it could correct the deficient Motion and present actual grounds upon which the court could rule. *See* Dckt.15. The court appreciates counsel attempting to address the problem with this Motion, and in the interest of avoiding what would surely be a near-immediate refiling of this Motion (but with actual grounds), the court continues the hearing to allow Defendant to correct the Motion and to avoid having to notice a new hearing date.

The hearing on the Motion to Dismiss Adversary Proceeding is continued to 11:00 a.m. on April 19, 2018, to allow Defendant time to revise and file a proper motion with the court.

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 to Dismiss Adversary Proceeding filed by Tidalwave Finance Corporation ("Defendant") 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 hearing on the Motion to Dismiss is continued to 11:00 a.m. on April 19, 2018.
>
> **IT IS FURTHER ORDERED** that Defendant shall file and serve its Amended Motion, with a separate Memorandum of Points and Authorities and any

other supporting pleadings, on or before March 28, 2018. Any opposition to the Amended Motion shall be filed and served on or before April 11, 2018.

2.	**13-24657-E-13** **17-2040**	**MICHAEL FARRACE** **EMM-1**	**CONTINUED MOTION FOR SUMMARY JUDGMENT** **1-8-18 [15]**
	FARRACE V. NEW PENN FINANCIAL, LLC		

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 Plaintiff-Debtor, Plaintiff-Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 8, 2018. By the court's calculation, 73 days' notice was provided. 42 days' notice is required. LOCAL BANKR. R. 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 denied without prejudice.

SUMMARY OF COMPLAINT

Michael Farrace ("Plaintiff-Debtor") alleges that in his Chapter 13 bankruptcy case his Chapter 13 Plan was confirmed. A dispute has arisen concerning the amount of Defendant's claim in the bankruptcy case, it now being stated higher than that computed by Plaintiff-Debtor based on the proof of claim filed in the bankruptcy case. It is asserted that Defendant violated the automatic stay by misapplying the Chapter 13 Plan payments.

The second claim for relief is an "objection to proof of claim."

The third claim for relief seeks a *declaration* of whether Plaintiff-Debtor is current on all payments due Defendant under the Chapter 13 Plan. (It does not appear that this is actually a request for

"declaratory relief" to guide future conduct, but for a determination of the obligations existing for the past conduct of the parties).

The fourth claim for relief is for "conversion," the misapplication of the plan payments by Defendant.

The fifth claim for relief is stated to be for violation of California Business and Professions Code §§ 17200 et seq. Contractual and statutory attorney's fees are requested by Plaintiff-Debtor as the sixth cause of action.

SUMMARY OF ANSWER

New Penn Financial, LLC, dba Shellpoint Mortgage Servicing ("Defendant") filed an answer admitting and denying specific allegations in the Complaint.

MOTION FOR SUMMARY JUDGMENT

Defendant filed a Motion for Summary Judgment on January 8, 2018. Dckt. 15. FN.1. Defendant argues in the Motion that the "Complaint fails to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6)." *Id.* at 2:6–7. That is not the correct standard for summary judgment; it is the rule statement for a ground for dismissal.

FN.1. Defendant filed the Motion and Memorandum of Points & Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1).

Local Bankruptcy Rule 9014-1(d)(4) requires a Memorandum of Points & Authorities to be filed separate from a Motion when together they exceed six pages in length. That rule applies to contested matters and to adversary proceedings. Defendant's Mothorities totals more than twenty pages and should have been split into separate documents.

Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Counsel for Defendant is well aware of the basic pleading rules under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, as well as this court fairly and evenly applying the Rules and law to parties and their counsel. The first named partner in Defendant's counsel's law firm was one of the first attorneys having this discussion with the court more than eight years ago. The Federal Rules and federal law are no surprise to Defendant's law firm.

REVIEW OF MOTHORITIES

The Motion does not state any grounds with particularity. All that the actual motion part of Defendant's filing states is the standard for Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. As already mentioned by the court, that standard is inapplicable for this Motion, and the court could end its analysis of this Motion there because Defendant has not alleged any other grounds in the Motion itself for summary judgment.

However, the court has decided to review the full Mothorities for grounds that may be applicable to Defendant's motion, despite the facial pleading deficiencies. Counsel for Defendant is reminded that not complying with governing rules (whether they be the local, bankruptcy, or federal rules) is a ground on its own to deny a motion without prejudice.

Points and Authorities

The Memorandum of Points and Authorities is twenty pages in length, beginning with a complex-looking two-page table of contents, followed by a three-page points and authorities. It appears that Defendant seeks to advance very complex legal and factual issues, for which any type of summary adjudication, much less summary judgment would be likely.

The Memorandum of Points and Authorities continues, opening with a statement making passing reference to Federal Rule of Civil Procedure 56(c) and Federal Rule of Bankruptcy Procedure 7058. Dckt. 15 at 1. However, throughout the Points and Authorities Defendant repeatedly cites the court to California State law procedure. Examples of these include the following assertions:

A. This **federal court "must"** grant summary judgment "if all of the papers submitted show that there is no triable issue of material fact. . . ."

Cited Federal Authority - California Code of Civil Procedure § 473c(a).

B. There is only a triable issue of material fact **in federal court** if the evidence "would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof."

Cited Federal Authority - *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 850, *as modified* (July 11, 2011).

C. To be material in **federal court** on a motion for summary judgment," the fact must be essential to the judgment (i.e., if proved, it could change the outcome of the case)."

Cited Federal Authority - *Kelly v. First Astri Corp*., 72 Cal. App. 4th 95 (2000).

D. The Points and Authorities continue citing as the proper legal grounds for granting relief for a summary judgment motion in **federal court** the following **federal law authorities**:

1. *Government Employees Ins. Co. v. Sup.Ct. (Sims)*, 79 Cal.App.4th 95 (2000)

2. *Leek v. Cooper*, 194 Cal. App. 4th 399, 412 (2014)

3. California Code of Civil Procedure § 437c (o)

4. California Code of Civil Procedure § 437c(p)(2)

5. *Regents of Univ. of Calif. v. Sup.Ct.*, 41 Cal. App.4th 1040 (1996)

6. *Valerio v. Andrew Youngquist Construction*, 103 Cal. App.4th 1264, 1271 (2002)

7. *Visueta v. Gen. Motors Corp.*, 234 Cal. App.3d 1609, 1613 (1991)

8. California Code of Civil Procedure § 437c(f)(1)

9. California Code of Civil Procedure § 437c(f)(2)

10. *Law Offices of Dixon R. Howell v. Valley*, 129 Cal. App.4th 1076, 1092 (2005)

11. California Code of Civil Procedure § 437c (b)(1)

In the portion of the Points and Authorities addressing the proper exercise of federal judicial power under Federal Rule of Civil Procedure 56, no reference is made to the actual Federal Rule of Civil Procedure that applies. Nor are there any legal authorities from any federal appellate court on the proper application of Federal Rule of Civil Procedure 56. Rather, Defendant has stricken Federal Rule of Civil Procedure 56 as adopted by the United States Supreme Court and dictated that its Motion for Summary Judgment in federal court will be instead a motion for summary judgment in the California Superior Court. It appears that counsel for Defendant had a pre-drafted state court summary judgment points and authorities that was merely cut and pasted into this brief for a federal court proceeding.

The court has in other bankruptcy cases and adversary proceedings not accepted assignments from parties to perform services of a law clerk or junior associate to conduct the basic federal law research. Additionally, the court has also chosen not to accept the assignments from parties and their attorneys to draft their pleadings (including legal arguments) for them in advocating against that party's opponent. In addition to not expending taxpayer money to assist a private party, it is not the court's role to advocate for one party over another. FN.2.

FN.2. As discussed below, Plaintiff argues that due to the illness of Plaintiff's counsel, excuse exists for the failure to serve responses to requests for admissions. In an ironic twist (in light of Defendant citing

only California State law and procedure statutes in support of the request for summary judgment in **federal court**, Defendant in a dismissive response sweeps away the state law authorities cited by Plaintiff. Defendant rightly asserts that "Where the issue involved is directly covered by the Federal Rules of Civil Procedure, the Federal Rules control." Response, Dckt. 30 at 3:26–28. In responding to the Opposition, Defendant states with authority:

> The issue of whether such admissions may be the basis for summary judgment is also directly covered by Federal Rule of Civil Procedure 56, made applicable to bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 7056. As in *Hanna v. Plumer*, because there is a Federal Rule on point, the federal law controls. **Therefore, the Court should apply federal law to grant Defendant's Motion.**

Id., at 4:26–5:2 (emphasis added).

Defendant's demands are correct, it is federal law that governs. However, while providing an extensive points and authorities for summary judgment under California law, Defendant has failed to provide the court with **federal law** authority for the granting of summary judgment. The court accepts Defendant's contention that failure to provide federal authority renders such demands for relief to be grounds for denying such request for relief.

There is an additional ironic twist as Defendant further argues that Plaintiff's Opposition should not be considered because Plaintiff did not follow the requirements of Local Bankruptcy Rule 7056-1 dealing with motions for summary judgment—Plaintiff failing to specifically identify the disputed facts and providing the court with evidence countering that offered by Defendant. Response, Dckt. 30 at 6:25–7:3. In casting aspersions concerning the failure to follow the Rules, Defendant has on multiple occasions, for just this Motion, failed to comply with the basic Local Bankruptcy Rules for the organization and filing of motions and supporting pleadings.

Citation to Federal Authorities

Defendant does cite to federal authorities in connection with discovery and the effect of failing to respond to requests for admissions. Defendant cites to Federal Rule of Civil Procedure 36 and federal cases on the question of whether an unanswered request for admission may be deemed admitted.

OUTLINE OF DEFENDANT'S ARGUMENTS

Defendant's first and primary argument is that Plaintiff-Debtor failed to respond timely to requests for admissions, triggering automatic admissions that may be relied upon for summary judgment. *Id.* at 8:12–13. The Requests for Admissions at issue are listed later portions of the Points and Authorities, found across 7:27–13:16. (citations omitted) (citing *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007) ("Unanswered requests for admissions may be relied on as the basis for granting summary judgment.")).

Defendant alleges that Plaintiff-Debtor's failure to respond to admissions led to automatic admission of the following twelve points:

1. Defendant did not commit the alleged acts in violation of the automatic stay;

2. Defendant applied payments correctly;

3. Defendant has not collected more money than it was legally entitled to collect;

4. The filed Proof of Claim is accurate;

5. Defendant did not misreport Form 1098 to the Internal Revenue Service;

6. Defendant did not make any excessive interest rate payments;

7. Defendant did not misapply payments to the escrow account;

8. Defendant did not over- or under-report the principal balance on the loan;

9. Defendant did not engage in any unlawful taking;

10. Defendant has not charged undisclosed fees;

11. Defendant has not engaged in skimming additional funds from the payments for its own benefit; and

12. Plaintiff-Debtor has no financial, physical, or emotional damages due to Defendant's actions.

Id. at 8:12–23. All of Defendant's remaining arguments for each cause of action rest upon the sole premise that Plaintiff-Debtor's failure to respond timely to requests for admissions has deemed those requests admitted. For causes of action one through five, Defendant presents its argumentative legal conclusion and provides as support only the requests for admissions. Defendant does not present any independent evidence to support its arguments. For the sixth cause of action, Defendant argues that an award of attorney's fees is not warranted because the preceding causes of action fail to present any recoverable claim.

DEFENDANT'S STATEMENT OF UNDISPUTED FACTS

Defendant filed its Statement of Undisputed Facts with the Mothorities. Dckt. 19. The Statement contains a number of legal conclusions presented as facts, and the court's summary does not include those conclusions. Additionally, the Statement asserts more than one hundred "facts," but the court's review shows that a majority of them are literal repeated statements applied by subsection to the six causes of action. The court does not duplicate the asserted facts in its summary. The asserted undisputed facts are:

FACT	EVIDENCE
1. Plaintiff-Debtor obtained a loan in the principal amount of $277,000.00 by signing a note.	Declaration of Daniella Banks, Dckt. 18 at ¶ 3 & Exhibit 1 (FN. 3); Exhibit A, Dckt. 20
2. The note is secured by a deed of trust recorded in the official records of Sacramento County on May 9, 2003, as instrument number 20030509, and the deed of trust encumbers real property located at 3670 Fair Oaks, Sacramento, California.	Banks Declaration, Dckt. 18 at ¶ 6 & Exhibit 2; Exhibit A, Dckt. 20
3. The deed of trust includes an escrow provision, requiring the borrower to pay the lender for yearly taxes and insurance premiums as allowed under RESPA.	Bank Declaration, Dckt. 18 at ¶¶ 6–7 & Exhibit 2; Exhibit A at ¶ 3, Dckt. 20
4. On February 25, 2016, CitiMortgage, Inc. Successor by Merger to ABN AMRO Mortgage Group, Inc. executed an Assignment of Deed of Trust, transferring the beneficial interest of the deed of trust to MTGLQ Investors, L.P., which assignment was recorded in the official records of the Sacramento County Recorder's Office on February 25, 2016, as instrument number 20160225.	Exhibit B, Dckt. 20
5. Shellpoint Mortgage Servicing services the loan for MTGLQ Investors, L.P.	Exhibit C, Dckt. 20; Bank Declaration, Dckt. 18 at ¶ 11 & Exhibit 4
6. Plaintiff-Debtor filed a voluntary Chapter 13 petition on April 4, 2013.	Complaint, Dckt. 1 at ¶ 8
7. At the time of filing the Chapter 13 petition, Plaintiff-Debtor owed Defendant $50,233.27 in arrears, as reflected by the proof of claim filed on May 23, 2013.	Exhibit D, Dckt. 20; Banks Declaration, Dckt. 18 at ¶ 9 & Exhibit 3
8. Plaintiff-Debtor filed a Chapter 13 plan on April 4, 2013.	Exhibit E, Dckt. 20
9. Plaintiff-Debtor's Chapter 13 plan was confirmed on June 11, 2013.	Exhibit F, Dckt. 20

10. Under the Chapter 13 plan, Plaintiff-Debtor was to pay sixty installments to the Chapter 13 Trustee, who would then distribute the payments to the claimants, and the plan provided for distribution toward the amount required to reinstate the loan and the regular monthly payments under the loan as though they were current.	Exhibit E, Dckt. 20
11. On March 20, 2017, Plaintiff-Debtor filed the Complaint in this Adversary Proceeding.	Exhibit G, Dckt. 20; Complaint, Dckt. 1; Declaration of Mark Krause, Dckt. 17 at ¶ 4 & Exhibit 1
12. Defendant filed an Answer on May 10, 2017.	Exhibit H, Dckt. 20; Krause Declaration, Dckt. 17 at ¶ 6 & Exhibit 3
13. Defendant served its first set of Request for Admission, Interrogatories, and Requests for Production of Documents and Things on October 6, 2017.	Krause Declaration, Dckt. 17 at ¶ 6
14. The deadline to respond to the Request for Admission, Interrogatories, and Requests for Production of Documents and Things was within thirty days after Plaintiff-Debtor was served.	Krause Declaration, Dckt. 17 at ¶ 8–9
15. Plaintiff-Debtor failed to provide timely responses to the Request for Admission, Interrogatories, and Requests for Production of Documents and Things.	Krause Declaration, Dckt. 17 at ¶¶ 8–9
16. Plaintiff-Debtor voluntarily remitted payment to Defendant through the Chapter 13 plan.	Exhibit I, Dckt. 20
17. Defendant accepted Plaintiff-Debtor's payments and applied them under the Deed of Trust and Chapter 13 Plan.	Krause Declaration, Dckt. 17 at ¶ 6 & Exhibit 3

FN.3. Defendant filed the declarations and their exhibits in this matter each as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

PLAINTIFF-DEBTOR'S OPPOSITION

Plaintiff-Debtor filed an Opposition on March 1, 2018. Dckt. 27. Plaintiff-Debtor argues first that there were excusable circumstances that prevented Plaintiff-Debtor's Counsel from responding to the Request for Admissions by Defendant. Plaintiff-Debtor's Counsel argues that he was suffering ill health and was hospitalized for eight days. At the same time, a law clerk and associate attorney were assigned to work on the discovery matters in this Adversary Proceeding. Both of them left for other employment, though, and Plaintiff-Debtor's Counsel was not able to respond.

Second, Plaintiff-Debtor argues that any technical deficiency in the discovery process is not a sufficient legal ground to move for summary judgment. Plaintiff-Debtor argues that the facts alleged in the Complaint and the pleadings are construed as most favorable to the non-moving party, and he argues that the law disfavors tactical manipulation of discovery.

Finally, Plaintiff-Debtor argues that the facts of counsel's illness and hospitalization and abrupt loss of a law clerk and an associate attorney present a scenario that would warrant a motion under Federal Rule of Civil Procedure 60(b) for reconsideration of an order granting summary judgment.

DEFENDANT'S REPLY

Defendant filed a Reply on March 8, 2018. Dckt. 30. Defendant reasserts that Federal Rule of Civil Procedure 36 governs untimely responses to requests for admissions and that those untimely responses are deemed automatic admissions that are sufficient for summary judgment.

Defendant also asserts that Federal Civil Procedure controls this matter, not the California Civil Procedure rules and law cited in Plaintiff-Debtor's Opposition.

Defendant alleges that Plaintiff-Debtor has not provided anything other than what is alleged in the Complaint in opposition to the Motion. Additionally, Defendant argues that Plaintiff-Debtor has failed to comply with Local Bankruptcy Rule 7056-1(b) by not filing a statement of what he considers to be undisputed facts and by not responding to the facts alleged by Defendant.

Defendant argues that any extenuating health circumstances that occurred in December 2017 were already more than one month after a response was due to the Request for Admissions.

SUMMARY JUDGMENT STANDARD

> [Though the court generally states the applicable Federal Rules and case law governing motions for summary judgment in federal court, it does not do so in this Ruling. That will be for Defendant's counsel to research, draft, revise, and then state in a new motion for summary judgment (which motion itself shall state with particularity the grounds upon which the relief is based), for which there will be a separate points and authorities (which states the legal authorities and arguments), for which there will be separate declarations, and for which there will be a separate exhibit pleading filed.]

DISCUSSION

As framed by Defendant, the dispute surrounding this Motion relies upon the court's interpretation and application of Federal Rule of Civil Procedure 36. Plaintiff-Debtor's reliance on California Civil Procedure is incorrect.

According to the exhibits filed by Defendant, the Request for Admission, Interrogatories, and Requests for Production of Documents and Things were executed on October 6, 2017. Exhibits 3–5, Dckt. 17 at 119–38.

Federal Rule of Civil Procedure 36(a)(3) states that a matter from a request for admission "is 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." Then, Federal Rule of Civil Procedure 36(b) states that "[a] matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended."

Defendant's Certificate of Service for the Requests is dated October 6, 2017, and shows that Plaintiff-Debtor's Counsel was the party served. Exhibit 6, Dckt. 17 at 139–40. Thirty days after the Request was served was November 5, 2017. In the Opposition, Plaintiff-Debtor's Counsel does not address why he did not respond prior to the deadline. He appears to rely upon the argument that he had medical issues, but the only firm dates he provides are in January 2018. *See* Dckt. 27 at 10. The closest that Plaintiff-Debtor's counsel comes to referencing prior dates is to say that his "health had been declining even prior to January 5, 2018." *Id.* at 10:8–9.

Additionally, no motion has been filed to withdraw or amend the admissions that were made by failure to respond timely.

Not only is relying upon a deemed admission allowed for a summary judgment motion, but it is also not deemed to be prejudicial against the non-moving party. *Conlon*, 474 F.3d at 621, 624 (citations omitted).

To summarize, here, there was a request for admissions that was not responded to timely. That untimeliness led to the admissions being deemed admitted pursuant to the Federal Rules of Civil Procedure. Those deemed admissions may be relied upon for a summary judgment motion. Plaintiff-Debtor has not

sought to amend or withdraw those admissions; nor has Plaintiff-Debtor presented disputed facts for this Motion.

Here, there has clearly been a health impairment to counsel for Plaintiff. This impairment has continued to Plaintiff not seeking relief from the failure to reply to the requests for admissions. Not giving Plaintiff and either her current counsel or replacement counsel the clear opportunity to address the issue would be grounds for a quick reversal on appeal. As in Moore's Federal Practice, Civil § 36.03[1] (emphasis added):

> The principle that if no response to a request for admission is timely submitted the request is deemed admitted is not as harsh as it may appear, **because this aspect of the rule is not mandatory**. **The court** or the parties **may decide a different period of time within which the response to the request for admissions must be submitted, and thus there is room for the court to exercise its discretion on this question**. Courts have granted extensions of time to respond to requests for admission after the expiration of 30 days. If a party fails to respond within 30 days or within any other period ordered by the court or stipulated to under Rule 29 by the parties, **the court may, considering the circumstances, determine the late response or absence of response to be merely an evidentiary admission, rather than a conclusive admission** (see [2], below). Unless a matter has been expressly admitted in the response, in order to have a matter deemed admitted, the requesting party must establish that the request was properly served, and that the responding party failed to respond. In addition, only "proper" requests are deemed admitted, meaning, for example, that a request seeking conclusions of law would not be deemed admitted. Furthermore, a request for admission is not deemed admitted under Rule 36 before any motion to stay application of the rule is decided.
>
> . . .
>
> The appellate courts review a denial of a motion to treat a request for admission as admitted under the abuse of discretion standard. In determining whether the lower court abused its discretion, the appellate court considers the effect on the litigation (whether it promotes ascertainment of the truth) and the prejudice to the party seeking to enforce the admission. In such a case, "prejudice" means the difficulty a party may face in proving its case because of the sudden need to obtain evidence.

This court has no problem in applying the Federal Rules of Civil Procedure to treat "deemed admitted" matters as admitted for an intentional failure to respond. But it is going to be after Plaintiff and the hospitalized Plaintiff's counsel have been afforded a reasonable time to respond, or for Plaintiff to obtain counsel whose health allows him or her to actively prosecute this Adversary Proceeding.

Defendant has provided the court the additional basis for denying, without prejudice, the current Motion. While pounding the table that Plaintiff's Opposition should be swept aside because it is based on California State law and because Plaintiff has failed to comply with the Local Bankruptcy Rules, Plaintiff has eschewed basing its request for relief on federal law, choosing to cite the court to California Code of Civil Procedure provisions and case law governing summary judgment motions. Additionally, Defendant

has repeatedly failed to comply with the simple Local Bankruptcy Rule provision dealing with preparing documents to be filed in this District. FN.4.

FN.4. On this point, the court notes that these are the Local Bankruptcy Rules applicable in every Division, in every Department of the Bankruptcy Court in this District. The Departments in this District do not have "special" department rules. Defendant's counsel is well aware of these Local Bankruptcy Rules and the document requirements in this District.

The Motion is denied without prejudice.

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 Summary Judgment filed by New Penn Financial, LLC, dba Shellpoint Mortgage Servicing ("Defendant"), 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 denied without prejudice.

3. **14-29361-E-7** **WALTER SCHAEFER** **MOTION FOR CONTEMPT**
17-2178 **DNL-2** **2-22-18 [31]**
HUSTED V. PECHBRENNER

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant and Chapter 7 Trustee on February 22, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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 Contempt is granted.

Kimberly Husted, the Chapter 7 Trustee ("Plaintiff") for the Estate in Walter Schaefer's Chapter 7 case moves the court for an order holding Michael Pechbrenner ("Defendant") in contempt for violating the court's Judgment in this Adversary Proceeding, filed on January 31, 2018. *See* Dckt. 26. Plaintiff also seeks compensatory and corrective sanctions in an amount to be determined by the court.

Plaintiff argues that despite demands, Defendant refuses to turn over possession of real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Property"), and he continues to reside in the Property. Additionally, Defendant has filed a lawsuit in Costa Rica against the Chapter 7 Estate asserting claims for the value of repairs and improvements to the Property.

Plaintiff states that Defendant's refusal to comply with the court's Judgment has caused Plaintiff to incur additional attorney's fees as well as being deprived of an opportunity to market and sell the Property for the benefit of the Chapter 7 Estate.

Plaintiff notes that Defendant has received copies of the court's order granting default judgment to Plaintiff in this Adversary Proceeding and the Judgment.

APPLICABLE LAW

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506–07.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 361 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

A contempt proceeding by the United States Trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.*

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

Defendant has not filed opposition to the Motion.

Here, the court's Judgment was explicit:

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is granted for Kimberly Husted, the Plaintiff Chapter 7 Trustee, and against Michael Pechbrenner, the Defendant; determining that Kimberly Husted, the Plaintiff Chapter 7 Trustee, through ABC Trustee of California Sociedad Anonima, a Costa Rican Entity, by which Plaintiff Chapter 7 Trustee holds title to property commonly known as 184 Los Delfines, Tambor, Costa Rica, has all the right, title, and interest to said property, and that Michael Pechbrenner, the Defendant, has no right, title, or interest to said property, and that Defendant does not have any lien against said property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives' failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction).

Additionally, the court reserves for post-judgment determination of the referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant Michael Pechbrenner, or his agents or representatives, fail to comply with the mandatory injunction after the issuance of this court's order for compensatory and corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no claims for damages arising from the violation of the automatic stay are presented in the Complaint before the court, and any such claims shall properly be brought pursuant to a motion for contempt in the Bankruptcy Case, No. 14-29361, or as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, in an adversary proceeding if jointed with other claims for which such adversary proceeding is required.

> Kimberly Husted, the Plaintiff Chapter 7 Trustee, as the prevailing party shall file and set for hearing as appropriate a costs bill and a post-judgment motion for attorney's fees as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure7054. Any award of costs or attorney's fees shall be enforced as part of this judgment.

Dckt. 26. Not only has Defendant failed to comply with the court's judgment, but apparently he has filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Plaintiff has shown by clear and convincing evidence that Defendant continues to act against this court's orders, and further corrective sanctions are necessary to compel Defendant to comply.

Plaintiff has alleged that she has incurred additional attorney's fees as well as not being able to market the Property during peak selling season.

The Motion is granted, and the court shall order additional sanctions against Defendant to compel him to comply with the court's January 31, 2018 Judgment.

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

> The Motion for Contempt filed by Kimberly Husted, the Chapter 7 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 is granted, and Michael Pechbrenner ("Defendant") is held in contempt of this court's judgment of January 31, 2018.
>
> **IT IS FURTHER ORDERED** that Defendant Michael Pechbrenner shall deliver by 12:30 p.m. on April 10, 2018, (local time in Costa Rica) possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, ("Property") to Plaintiff Kimberly Husted or her designee.
>
> **IT IS FURTHER ORDERED** that if Defendant fails to timely deliver possession of the Property, an Order (judgment) in the amount of $15,000.00 shall be entered against Defendant and in favor of Plaintiff, and Defendant shall pay Plaintiff, for corrective sanctions due to Defendant's failure to comply with this Order.
>
> **IT IS FURTHER ORDERED** that any additional noncompliance with the court's January 31, 2018 judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant, or his agents or representatives, fails further to comply with the mandatory injunction after the issuance of this court's order for corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.

4. 17-26898-E-13 ANA HENRIQUEZ
17-2232
HENRIQUEZ V. LINDEN RIVER FINANCIAL, LLC ET AL

ORDER TO SHOW CAUSE
2-27-18 [9]

NO APPEARANCES BY ANY COUNSEL ARE REQUIRED FOR THIS HEARING IF SUCH PARTY DOES NOT OPPOSE DISMISSAL WITHOUT PREJUDICE OF THIS ADVERSARY PROCEEDING

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 2, 2018. By the court's calculation, 20 days' notice was provided. The court set the hearing for March 22, 2018. Dckt. 9.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed without prejudice.

This Adversary Proceeding was commenced on December 6, 2017. The Summons was issued on December 7, 2017. Dckt. 3. The Certificate of Service, Dckt. 6, states that the Summons and Complaint were served on December 21, 2018, fourteen days after the issuance of the Summons. On February 9, 2018, named Defendant Special Default Services, Inc., filed a Status Report advising the court that it had not been served as required by Federal Rule of Bankruptcy Procedure 7004(e), within seven days of the issuance of the Summons, and counsel for said Defendant appeared for that limited purpose as allowed by Federal Rule of Civil Procedure 12 and Federal Rule of Bankruptcy Procedure 7012.

The court also notes that the underlying Chapter 13 Bankruptcy Case filed by Ana Henriquez, the Plaintiff-Debtor was dismissed on January 22, 2018. 17-26898, Dckt. 65.

The Complaint identifies the following claims being asserted: (1) Fraud; (2) Specific performance of the identified Forbearance/Modification Change of Terms of Agreement; (3) Breach of contract (the Agreement); (4) Promissory estoppel, the asserted represented terms of an agreement; (5) Violation of the automatic stay, asserting that the purported foreclosure sale occurred after the commencement of the bankruptcy case; (6) Unjust Enrichment; (7) Equitable Subordination; (8) Equitable Disallowance; (9) Disallowance of Claim; (10) Fair Debt Collection Practices (California) violation; (11) Unfair Business Practices (California); and (12) Declaratory Relief (that the prior exercise of the power of sale purported to have previously effectuated the purported nonjudicial foreclosure sale was of no force and effect in the past). Most of those claims sound in non-bankruptcy law and would constitute "related to" matters, not core bankruptcy law or actions in bankruptcy case proceedings. With respect to the alleged violation of the automatic stay, such relief may properly be requested by motion and does not appear to be intertwined with the other related to matters.

Congress in 28 U.S.C. § 1334(c)(1) empowers the court to *sua sponte* determining that it should abstain from exercising the jurisdiction granted for core and related to non-core matters. Here, it appears that with the dismissal of the underlying bankruptcy case, there is no connection to the bankruptcy case or the proceedings in the case warranting the exercise of federal court related to jurisdiction under 28 U.S.C. § 1334(b).

With the dismissal of the underlying bankruptcy case, it appears that Plaintiff-Debtor has elected to assert her rights outside of the confines of the Bankruptcy Code and the exercise of federal court jurisdiction relating thereto.

The court issued an Order to Show Cause why it should not dismiss this Adversary Proceeding without prejudice, the Summons and Complaint not having been served within the time period specified in Federal Rule of Bankruptcy Procedure 7004(e); and dismiss this Adversary Proceeding without prejudice and abstain from exercising federal court jurisdiction arising under 28 U.S.C. § 1334(b) over the claims in the Complaint, all of which except one appear to be related to matters, given that the "related to" bankruptcy case has been dismissed.

Pleadings for this Order were due by March 6, 2018. No attendance at the hearing or filing of pleadings was required if the parties do not oppose dismissal without prejudice.

No pleadings were filed by March 6, 2018. The court treats the silence as agreement that this Adversary Proceeding should be dismissed without prejudice.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and Adversary Proceeding 17-02232 is dismissed without prejudice.