

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

March 23, 2023 at 11:00 a.m.

1. [22-22864-E-13](#)
[23-2001](#)

NATHANIEL SOBAYO
Pro Se

**MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
2-2-23 [17]**

**SOBAYO V. THE BANK OF NEW YORK
MELLON ET AL**

1 thru 4

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 on February 2, 2023. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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

March 23, 2023 at 11:00 a.m.

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The Motion to Dismiss Adversary Proceeding filed by Defendants Select Portfolio Servicing, Inc. and Wells Fargo Bank, N.A. is granted, and the Adversary Proceeding is dismissed without prejudice as to all Defendants.

Defendants Select Portfolio Servicing, Inc. and Wells Fargo Bank, N.A. filed the pending Motion to Dismiss the Adversary Proceeding, Case No. 23-02001, Dckt. 17, on the grounds that Nathaniel Basola Sobayo's ("Plaintiff-Debtor") fails to state a claim upon which relief can be granted. The court notes, four other defendants have concurrently filed motions to dismiss based on substantially the same grounds and legal bases. The court will issue one joint ruling, below, and separate orders for each motion.

JOINT RULING GRANTING DEFENDANTS SELECT PORTFOLIO SERVICING INC., WELLS FARGO BANK, N.A., CARRINGTON MORTGAGE SERVICES, LLC, THE BANK OF NEW YORK MELLON, ALDRIDGE PITE, LLP, AND THE INTERNAL REVENUE SERVICE'S MOTIONS TO DISMISS

Defendants Select Portfolio Servicing, Inc., Wells Fargo Bank, N.A., Carrington Mortgage Services, LLC, The Bank of New York Mellon, Aldridge Pite, LLP, and the Internal Revenue Service (collectively, "Defendants") have all filed Motions to Dismiss the pending adversary proceeding.

The separate motions and supporting documents filed in this Adversary Proceeding are:

1. **Defendants Select Portfolio Servicing, Inc. (hereinafter, "Select Portfolio") and Wells Fargo Bank, N.A. (hereinafter, "Wells Fargo")**
 - a. **No Docket Control Number** - Defendants are reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).
 - b. Motion - Dckt. 17
 - c. Notice of Hearing - Dckt. 18
 - d. Certificate of Service - Dckt. 33
 - e. Memorandum of Points and Authorities - Dckt. 19
 - f. Debtor-Plaintiff's Opposition - Dckt. 50

- g. Defendant's Reply - Dckt. 51
- 2. **Defendants Carrington Mortgage Services, LLC (hereinafter, "Carrington") and The Bank of New York Mellon (hereinafter, "New York Mellon")**
 - a. Docket Control Number - JBC-1
 - b. Motion - Dckt. 21
 - c. Notice of Hearing - Dckt. 22
 - d. Memorandum of Points and Authorities - Dckt. 25
 - e. Exhibits - Dckt. 26
 - f. Certificate of Service - Dckt. 27
 - g. Supplement to the Motion - Dckt. 56
- 3. **Defendant Aldridge Pite, LLP (hereinafter, "Aldridge Pite")**
 - a. Docket Control Number - AP-1
 - b. Motion - Dckt. 37
 - c. Notice of Hearing - Dckt. 38
 - d. Memorandum of Points and Authorities - Dckt. 39
 - e. Certificate of Service - Dckt. 41
 - f. Plaintiff-Debtor's Opposition - Dckt. 50
 - g. Defendant's Reply - Dckt. 52
- 4. **Defendant Internal Revenue Service (hereinafter, "IRS")**
 - a. Docket Control Number - USA-1
 - b. Motion - Dckt. 42
 - c. Notice of Hearing - Dckt. 43
 - d. Certificate of Service - Dckt. 44
 - e. Plaintiff-Debtor's Opposition - Dckt. 50

All six defendants move for the court to dismiss all claims against them in Nathaniel Basola Sobayo's ("Plaintiff-Debtor") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

Review of Minimum Pleading Requirements for a Motion

Upon review of the motions set forth by Defendants Select Portfolio and Wells Fargo, Dckt. 17, Defendants Carrington and New York Mellon, Dckt. 21, and Defendant Aldridge Pite, Dckt. 37, all three motions fail to meet the required particularity standards under the Federal Rules of Civil Procedure 7(b), as incorporated into Federal Rules of Bankruptcy Procedure 7007, Federal Rule of Bankruptcy Procedure 9013, and Local Bankruptcy Rule 9014-1(d).

The court has already addressed the pleading shortcomings of Defendants Carrington and New York Mellon's Motion, as set forth in the Order Continuing Hearing. Order, Dckt. 47. Defendants Carrington and New York Mellon have provided the court with a "Supplement to Motion," as requested by the court. The Supplement adequately pleads sufficient facts and legal grounds for the relief requested.

The court inadvertently omitted Defendants Select Portfolio, Wells Fargo, and Aldridge Pite in the order requesting supplemental pleadings.

For grounds entitling these defendants to relief, Defendants Select Portfolio and Wells Fargo state "each and every cause of action alleged in Plaintiff's Complaint fails as a matter of law for failure to state a claim upon which relief can be granted the they fail to state with particularity the grounds that form the basis of their request." Dckt. 17 at 3:12-14. Defendant Aldridge Pite states Plaintiff-Debtor "fails to state a claim upon which relief can be granted in his Complaint Seeking Contempt for Willful Violation of the Automatic Stay and Other Illegal Acts." Dckt. 37 at 2:16-17.

Both motions ask the court to review all supporting documents filed with the Motion and further evidence presented at the hearing to rule on their motion.

It may be that these defendants believe the Points and Authorities are "really" motions and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

Defendants are required to comply with the Federal and Local Rules. However, in light of the court inadvertently omitting Defendants Select Portfolio, Wells Fargo, and Aldridge Pite from the Carrington and New York Mellon Order, and in order to prevent further delay of the ruling, the court will consider the grounds stated in these defendants' Memorandum of Points and Authorities, Dckts. 19 and 39, as the factual and legal grounds for their respective motions.

REVIEW OF COMPLAINT

The Complaint names eighteen Defendants, and makes reference to Doe Defendants 1-100 (naming of "Doe Defendant" a procedure under California law but not under Federal law).

The facts surrounding the dispute include Plaintiff-Debtor agreeing to purchase the real property commonly known as 329 HawkrIDGE Drive, Richmond, California (“Property”). Complaint, Dckt. 1 ¶ 12. Plaintiff-Debtor states all Defendants agreed to work with Plaintiff-Debtor, but then “suddenly refused to keep the mutual agreement” and foreclosed on the Property, in violation of California and United States laws. *Id.* ¶ 13.

The Complaint identifies fourteen (14) Causes of Action which are stated by Plaintiff-Debtor as follows. In reviewing the Complaint and the Motion to Dismiss, the court finds it appropriate to include some direct quotes from the thirty-two (32) page Complaint in light of what is asserted in the Motion to Dismiss.

General Allegations

The Plaintiff-Debtor states that he purchased the 519 Granite Way Property “in an innovative transaction from the original owner, with the name of Julia Fortune many years back with a huge down payment amount and have been making payments of the mortgage, upkeep payments and maintenance and taxes payments hitherto.” Complaint, p. 3:7-10; Dckt. 1. What made it “innovative” is not stated.

Carrington Mortgage Services, LLC, as the servicer for Bank of New York Mellon is demanding monthly payments in the amount of \$1,700, while when Bank of America was identified as the creditor, the monthly payments were “\$1,400 plus” on a monthly basis. *Id.*, p. 3:15-20.

Poplar Plaza Apartments sent an email offering \$10,000 to Plaintiff-Debtor if he gave up possession of the 1608 Hollenbeck Ave apartment. Plaintiff-Debtor states he accepted the offer, but that Poplar Plaza Apartments refused to pay the \$10,000. Further, there was an additional agreement for Poplar Plaza Apartments to pay or give rent credits to Plaintiff-Debtor at a 40% discount of the rent owed by Plaintiff-Debtor. None of these amounts were paid, and Poplar Plaza Apartments have not accounted for Pandemic Relief Monies paid directly to them for Plaintiff-Debtor’s rent obligation. *Id.*, p. 4:10-23.

Plaintiff-Debtor is uncertain why Gordon Property Management San Francisco, Aldridge Pite, LLC, Internal Revenue Service, Wells Fargo Bank, N.A., as Trustee, and Select Portfolio Servicing, Inc., assert to be creditors of Plaintiff-Debtor. *Id.*, ¶¶ 5 - 9.

Plaintiff-Debtor states that on November 3, 2022, Plaintiff-Debtor commenced his “Incomplete Chapter 13” case. Plaintiff Debtor states that he disputes all objections to confirmation and motions for relief from the stay. *Id.*, ¶ 22(2), p. 9.

Plaintiff-Debtor paid more than \$22,000 to Tax Relief USA to research, prepare, and file tax returns for Plaintiff-Debtor and his business. Plaintiff-Debtor asserts that Tax Relief USA “Refused to properly perform the tasks as agreed. . . ,” with Plaintiff-Debtor seeking to recover the \$22,000 and \$500,000 in punitive damages. *Id.*, ¶ 10.

Plaintiff-Debtor states that Five Star Escrow Company was retained to provide escrow services for an unidentified transaction between Plaintiff-Debtor and all of the Defendants, but that Five Start Escrow company had failed to “[d]eliver the possession of the Property to This Debtor as the Buyer.” Plaintiff -Debtor has been for “12 to 15 years struggling to secure the property on a short sale basis, on the grounds . . . that amounts owed by the owner and seller far exceed the current appraised

value of the same related property.” Further, “The seller illegally gained saved at least the sum of \$4,400.00 monthly for about 13 year . . . after the close of escrow.” *Id.*, ¶ 19.

Plaintiff-Debtor asserts that Martin Musonge and his wife sold property to Plaintiff-Debtor when Plaintiff-Debtor was doing business as “Capital Partners, LLC.” Though the escrow closed, possession of the property was not delivered to Capital Partners, LLC. *Id.*, ¶ 4 on p. 9.

The Complaint then alleges that in 2007 Plaintiff-Debtor was “approved” to purchase the 2112 Lincoln Street property subject to the loans or pursuant a short sale. It does not allege whether the purchase was made, but does state that Plaintiff-Debtor asserts having made mortgage payments, insurance and other expenses. That transaction occurred sixteen (16) years before the Complaint was filed. *Id.*, ¶ 11 on p. 14.

Plaintiff-Debtor asserts that ten (10) to sixteen (16) years prior to filing the Complaint there were agreements to purchase the 519 Granite Way and 329 Hawkrige Drive properties. The general allegations do not state what occurred with respect to these ten to sixteen year old transactions. *Id.*, ¶¶ B, C, p. 14-15. It does assert that Defendants moved to foreclose on the properties and not modify the loans.

First Cause of Action - Negligence - Against All Defendants

Defendants were Real Estate Brokers’ licensed to practice in California. Defendants negligently failed to exercise the proper degree of knowledge and skill in participating in a real estate transaction in East Palo Alto resulting in injuries to Plaintiff-Debtor. *Id.* at 18.

While using the word “negligence” in the First Cause of Action, Plaintiff-Debtor does not state what is alleged to be the negligence.

Second Cause of Action - Breach of Fiduciary Duty - Against All Defendants

Defendants breached their fiduciary duty as professionals by entering into a real estate transaction with Plaintiff-Debtor by failing to disclose that defendants were dual agents, representing defendants and the buyers, resulting in injuries to Plaintiff-Debtor. *Id.* at 19.

In this Second Cause of Action, it is alleged that Plaintiff-Debtor “employed” the Defendants in 2007. This is fifteen (15) years prior to the filing of the Complaint. It is further alleged that Defendants “refused to issue a payoff amount and who subsequently blocked the legal transaction by attaching opposition to the process of confirmation [of Plaintiff-Debtor’s [bankruptcy plan(s)].” *Id.*, ¶ 26, p. 19.

No contracts are identified, no terms of such contracts are alleged, and no allegations are made as to how and who the Defendants were the “dual agents for” in Plaintiff-Debtor’s transactions with the Defendants.

Third Cause of Action - Fraud - Against All Defendants

Again, the events relating to this cause of action date back to 2007. It is alleged that Defendants knew the real estate agent acted as the real estate brokers to the buyers and sellers and that

defendants would solicit funds to close escrow. Defendants knew these details were beyond reach of Plaintiff and they materially affected the transaction. This fraud caused Plaintiff-Debtor to complete the purchase and has been damaged in the amount of Plaintiff-Debtor's labor, deposit, and profit to be made. *Id.* at 20-21.

No specifics of the alleged fraud is stated in the Complaint. The 2007 transaction is stated to related to an unidentified agreement to enter into an unidentified venture with an unidentified "current borrower of record." Plaintiff-Debtor expressly states, "The escrow closed on this transaction many years back." Plaintiff-Debtor makes reference to "defendant's fraudulent failure to disclose these defects to Plaintiff," and that Plaintiff-Debtor completed the purchase of the property, suffering damages equal to "the amount of Plaintiff's labor, deposit, and profit to be made later." *Id.*, ¶ 29-34.

No defects are identified. While referring to Defendants as the "trustee of the transaction," no allegations are made to the existence of a trust.

Fourth Cause of Action - Breach of Duty to be Honest and Trustful - Against All Defendants

Defendants breached their duty to be honest and truthful when they failed to disclose to Plaintiff the existence of relationships above, causing Plaintiff-Debtor to suffer damages. *Id.* at 21. No "relationships" are identified, as noted above, but there Plaintiff-Debtor just makes statements that unidentified relationships exist.

Fifth Cause of Action - Breach of Contract - Against All Defendants

Plaintiff-Debtor alleges that in 2007 Plaintiff-Debtor and all of the Defendants entered into "Venture Agreement," with such Agreement being oral. This was sixteen (16) years before the filing of this Complaint. Defendants breached the contract by failing to accept a final payoff amount after receiving a request for a payoff demand from Plaintiff-Debtor. Also, they breached the 2007 oral venture by opposing confirmation of Plaintiff-Debtor's bankruptcy plan. *Id.* at 22.

Sixth Cause of Action - Cancellation of Voidable Contract - Against All Defendants

It is alleged that Defendants "deceitfully induced Plaintiff-Debtor into signing the contract" in 2007. The alleged information that was withheld from Plaintiff-Debtor was that Defendants "failed to disclose to Plaintiff that they solicited funds from hitherto undisclosed sources." There are no allegations as to why this constitutes a "misrepresentation," why it would be material, and what the contract was that is the subject of this Cause of Action. *Id.* at 23.

Seventh Cause of Action - Slander of Title - Against All Defendants

Plaintiff-Debtor alleges that in 2007, sixteen years before this Complaint was filed, that Defendant recorded a Notice of Trustee's Sale with respect to an unidentified property. Plaintiff-Debtor disputes that the recording and publication of the Notice of Trustee's sale was proper, but states no grounds why it was improper.

Plaintiff-Debtor asserts that in 2007 and forward this effected the marketability of the Property, and that in 2023, sixteen years later, it necessitated the filing of this Complaint. No simple statement showing the basis for this claim is stated. *Id.* at 24.

Eighth Cause of Action - Cancellation of Assignment of Deed of Trust -
Against All Defendants

Plaintiff-Debtor asserts that all the Defendants assert an interest in property located in San Mateo County based on the Notice of Trustee's Sale. The statement is made that the Notice of Sale is invalid and void "because it is based on fraudulent conduct of defendants who knowingly record the false document." No statement of what was the "fraudulent conduct" (no elements of fraud are alleged), the basis for why the Notice of Trustee's Sale is invalid, and now a Notice of Trustee's Sale is an interest in the property. *Id.* at 24 - 25.

Additionally, the title to this Eight Cause of Action is cancellation of an Assignment of Deed of Trust. No deed of trust is identified in this Cause of Action.

Ninth Cause of Action - Quiet Title - Against All Defendants

Plaintiff-Debtor alleges that all of the Defendants assert an interest in some "above-described property" which is based on the Notice of Trustee's Sale. Further, that the claims of Defendants to the property are without any value. *Id.* at 25.

No interests of Defendants are identified. Further, no basis is stated why the unidentified interests are invalid. The Cause of Action does state, what interest the various Defendants assert, and why such interests do not exist. Plaintiff-Debtor states that Defendants have interests pursuant to an unidentified Deed of Trust, but Defendants refuse to accept payoff of an unidentified obligation secured by the unidentified Deed of Trust.

Tenth Cause of Action - Violation of Civil Code Section 2924 - Against All Defendants

Plaintiff-Debtor asserts that the breach of an obligation secured by the deed of trust is excusable because all of the Defendants have failed to comply with the requirements of California Civil Code § 2924.11. That section relates to a "foreclosure prevention alternative" that is approved in writing prior to the recording of the notice of default. No allegations are made of any identified foreclosure prevention alternative, there being an identified written alternative, and that if there was, it was entered into prior to the recording of a notice of default.

Plaintiff-Debtor requests the court issue a preliminary injunction with respect to any action with respect to the unidentified "Subject Property" for nonjudicial foreclosure sale, and a permanent injunction to prevent such violations in the future. *Id.* at 26-27.

Eleventh Cause of Action - Violation of California Business * Professions
Codes Section 17200 Et. Seq. - Against All Defendants

Plaintiff-Debtor asserts that the non-specific statements of claims in the prior causes of action and the general allegations is the basis for a claim pursuant to California Business and Professional Code

Sections 17200 et seq. This includes it being alleged that being a violation of California Civil Code § 2924.11, without Plaintiff-Debtor having identified in a simple clear statement the existence of a foreclosure prevention alternative. It is also asserted that the filing of a Notice of Trustee's Sale during the period Plaintiff-Debtor was filing, and having dismissed, a series of bankruptcy cases was an unfair practice. Further, that Defendants opposing Chapter 13 plans filed in Plaintiff-Debtor's bankruptcy cases was an unfair practice. *Id.* at 27-28.

Defendants violations of unlawful business practices has damaged Plaintiff-Debtor's creditworthiness. *Id.* at 28.

Twelfth Cause of Action - Specific Performance - Against All Defendants

Plaintiff-Debtor seeks to have the court order specific performance in the form of requiring all of the Defendants to accept final payment in full, in unstated amounts, for unstated obligations, secured by unstated deeds of trust. This specific performance is demanded without respect to a 2007 transaction in which "plaintiff and defendants entered into agreement via current borrower records." *Id.* at 28-29.

Thirteenth Cause of Action - Declaratory Relief - Against All Defendants

Plaintiff requests declaratory relief of their rights and duties, and the legal effect of the Notice of Trustee's Sale. *Id.* at 30. This does not seek a declaration of disputed rights as it relates to future conduct for which the bell has not yet rung, but duplicates the quiet title and other damages claim for which the bell rung long ago (up to sixteen years).

Fourteenth Cause of Action - Preliminary and Permanent Injunction - Against All Defendants.

Finally, Plaintiff-Debtor seeks an injunction to enjoin all Defendants from selling Plaintiff-Debtor's unidentified Property. *Id.* at 31.

PRAYER FOR RELIEF

In the prayer, Plaintiff-Debtor requests that the court declare the unidentified contract void, the unidentified Notice of Sale void, and that there are no breaches by Plaintiff-Debtor on the unidentified obligation secured by the unidentified deed of trust.

Plaintiff-Debtor then wants the court to issue an injunction for all Defendants to no oppose Chapter 13 plans proposed by Plaintiff-Debtor.

Plaintiff-Debtor further wants the court to order all Defendants to rescind Notices of Trustee's Sale for the 519 Granite Way and the 329 Hawkrigde Drive Properties.

Plaintiff-Debtor requests \$10,500,000 in damages be awarded.

In the prayer Plaintiff-Debtor requests that the court find all the Defendants in contempt for violations of the automatic stay and for damages for violation of the automatic stay. No cause of action

is stated for such relief and no mention of the automatic stay, or any violation thereof, is stated in the Complaint, other in the last two lines of the Prayer. *Id.* at 31-32.

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 MOTIONS

The Motions, and supporting documents, respond to Plaintiff-Debtor’s causes of actions.

Defendants Select Portfolio Servicing and Wells Fargo Bank,

Carrington and New York Mellon, and Aldridge Pite's Motions to Dismiss

Defendants Select Portfolio Servicing and Wells Fargo Bank, Defendants Carrington and New York Mellon, and Defendant Aldridge Pite respond to each of Plaintiff-Debtor's causes of action. Dckts. 19, 39, and 56. These responses are similar, and are summarized as follows:

Pleading Standard

Plaintiff-Debtor fails to satisfy minimal pleading requirements of Federal Rules of Civil Procedure 8 by failing to state enough facts to establish a plausible claim for relief.

Borrow-Lender Relationship

Plaintiff-Debtor admits they are not in a borrower-lender relationship with any defendant.

First Cause of Action - Negligence

Defendants are not Real Estate Brokers. Even if they were, Defendants had no duty to disclose to Plaintiff-Debtor because he was not the purchaser-borrower. Plaintiff-Debtor is not the real party in interest with respect to the claim. Additionally, Plaintiff-Debtor is barred by the applicable statute of limitations under California Civil Code § 2079.4.

Second Cause of Action - Breach of Fiduciary Duty

Plaintiff-Debtor was not the buyer, therefore, Defendants did not breach a fiduciary duty. Plaintiff-Debtor fails to state the elements for a claim for fiduciary duty. Plaintiff-Debtor's claim is time-barred under California Civil Code § 2079.17.

Third Cause of Action - Fraud

Plaintiff-Debtor's fraud claim fails to satisfy the requirements of Federal Rules of Civil Procedure 9(b), which requires more specificity than the general pleading requirements. Additionally, under California Civil Code § 338(d), the cause of action is time-barred.

Fourth Cause of Action - Breach of Duty to be Honest and Trustful

Defendants are not aware of the existence of any such duty, and such duty appears to be a reiteration of the third cause of action. For the same reasons, it should be dismissed.

Fifth Cause of Action - Breach of Contract

Plaintiff-Debtor has failed to identify any contract or breach against any of the Defendants.

Sixth Cause of Action - Cancellation of Voidable Contract

Plaintiff-Debtor has failed to identify any contract that Plaintiff-Debtor has entered with the Defendants.

Seventh Cause of Action - Slander of Title

Recording a Notice of Trustee Sale is a privileged act, and constitutes privileged communications. Therefore, this cause of action fails. Additionally, Defendants Carrington and New York Mellon claim the Notice of Trustee Sale is not related to the them.

Eighth Cause of Action - Cancellation of Assignment of Deed of Trust

Plaintiff-Debtor fails to identify the Assignment of Deed of Trust nor are they a party to the Deed of Trust in question. Additionally, Defendants Carrington and New York Mellon state the property referenced in said claim is located in San Mateo County while the Property relating to Defendants' loan is located in Solano County.

Ninth Cause of Action - Quiet Title

Refusing to accepted a payoff offer is not grounds for quiet title. In addition, a Chapter 13 Plan is not a payoff. Also, Plaintiff-Debtor's complaint fails to satisfy the elements required in a quiet title action. Additionally, Defendants Carrington and New York Mellon state the property referenced in said claim is located in San Mateo County while the Property relating to Defendants' loan is located in Solano County.

Tenth Cause of Action - Violation of Civil Code Section 2924

California Civil Code § 2924 of the California Homeowner Bill of Rights is not applicable because Plaintiff-Debtor is not a borrower.

Eleventh Cause of Action - Violation of California Business * Professions Codes Section 17200 Et. Seq.

Plaintiff-Debtor lacks standing under the Business and Professions Code § 17200 and has failed to allege any unlawful conduct.

Twelfth Cause of Action - Specific Performance

Specific performance is a remedy, not a cause of action. Because Plaintiff-Debtor's causes of actions fail, the request for specific performance fails. Additionally, Defendants Carrington and New York Mellon state the property referenced in said claim is located in San Mateo County while the Property relating to Defendants' loan is located in Solano County.

Thirteenth Cause of Action - Declaratory Relief

Plaintiff-Debtor has failed to address any allegations of wrongdoing in which a judicial determination of rights would be necessary. Additionally, Defendants Carrington and New York Mellon state the property referenced in said claim is located in San Mateo County while the Property relating to Defendants' loan is located in Solano County.

Fourteenth Cause of Action - Preliminary and Permanent Injunction

Injunctive relief is a remedy, not a cause of action. Therefore, it fails procedurally.

Defendant IRS's Motion to Dismiss

Defendant IRS's Motion to Dismiss states, more generally, that Plaintiff-Debtor's Complaint fails to show any plausible claim for relief against the IRS. Motion, Dckt. 42. Defendant IRS states there are no specific allegations involving the IRS to support any relief. The Complaint does not provide any basis to link the allegations against the other defendants with Defendant IRS.

PLAINTIFF-DEBTOR'S OPPOSITION

Plaintiff-Debtor filed an Opposition to Defendants Select Portfolio and Wells Fargo, Defendant Aldridge Pite, and Defendant IRS's Motions to Dismiss on March 10, 2023. Dckt. 50. The Opposition is stated to be as follows:

The reason for the opposition is that, debtor's series of motions seeking adequate time to find and hire a lawyer for legal representation were previously denied, debtor is, was, and continue to be not competent to handle such oppositions., therefore debtor moves the Court to order all related defendants to voluntarily attend a mandatory settlement conference, because the causes of actions in this case are core proceedings and cannot be dismissed as moved, in the alternative the court should order all defendants to answer the complaint.

As this court addressed in ruling on a Motion for Reconsideration of an Order Granting Relief From the Automatic Stay in Plaintiff-Debtor's Current Chapter 13 Case to which this Adversary Proceeding relates, Plaintiff-Debtor has filed a series of bankruptcy cases beginning with a Chapter 13 case filed in the Northern District of California on December 5, 2018, though his Current Case in this court filed on November 3, 2022. 22-22864; Civil Minutes, Dckt. 131. This is a series of four cases, all of which have been dismissed, and in which Plaintiff-Debtor could not confirm a Chapter 13 plan.

A continuing theme in the Debtor's bankruptcy cases is requesting continuances, that proceedings be stayed, and that Debtor cannot obtain competent legal counsel who will zealously represent his interests and claims. *Id.*, p. 14:6-14. As of the court's February 2, 2023 ruling, this request for continuances, postponements, and time for Plaintiff-Debtor to find competent, zealous counsel had been going on for forty (40) months.

Here, as part of the continuance, Plaintiff-Debtor requests the court to order a mandatory settlement conference. Plaintiff-Debtor asserts that the claims asserted in this Complaint are core proceedings and cannot be dismissed.

First, even if core proceedings, the claims can be dismissed as provided in the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. Plaintiff-Debtor must comply with all of the requirements for a sufficient complaint, as well as the other Rules, including dismissal of a complaint or entry of judgment without trial as provided in Federal Rule of Civil Procedure 12, 56 and Federal Rule of Bankruptcy Procedure 7012 and 7056.

Looking at the Complaint the Claims and Causes of Action being asserted by Plaintiff-Debtor are not core proceeding matters. Congress defines (subject to the Supreme Court ruling that the definition of core matter does not over-rule a constitutional right to adjudication in the District Court for specific matters) core matter proceedings in 28 U.S.C. § 157(b). These matters relate to proceedings that arise under the Bankruptcy Code or relate to the administration of property in the bankruptcy estate as provided by the Bankruptcy Code.

In this Complaint, none of the Causes of Action arise under the Bankruptcy Code and do not relate to the administration of property in the bankruptcy estate. The Complaint seeks affirmative relief by Plaintiff-Debtor against multiple non-debtor third-parties. With respect to extent that the Complaint were to seek a determination of the validity, extent, or priority of liens, that would be a core matter proceeding. But asserting claims for monetary relief for negligence, fraud, breach of fiduciary duty, breach of duty to be honest, breach of contract, cancellation of contract, violation of California Civil Code § 2924, violation of California Business & Profession Code §§ 17200 et seq., and specific performance, they do not sound as core matters (again, except to the extent that the claim seeks to determine the extent, validity, and priority of an interest in property of the Bankruptcy Estate, as opposed to seeking \$10,500,000 in economic damages).

DEFENDANTS' REPLIES

Defendants Select Portfolio and Wells Fargo, Defendant Aldridge Pite, and Defendant IRS all filed replies to Plaintiff-Debtor's Opposition. Dckts. 51, 52, and 54.

Defendants Select Portfolio and Wells Fargo's Reply, Dckt. 51

Defendants states Plaintiff-Debtor's opposition does not state any of the legal arguments made in the Motion. By failing to address Defendant's arguments, Plaintiff-Debtor concedes to each claim. Defendants requests the court grant to Motion.

Defendant Aldridge Pite's Reply, Dckt. 52

Defendant states:

1. Pursuant to Local Bankruptcy Rule 9014(f), Plaintiff-Debtor's Opposition is untimely because it was filed on March 10, 2023, thirteen days prior to the hearing, when the rules require opposition to be filed fourteen days before.
2. Plaintiff-Debtor has failed to address the valid arguments set forth in Defendant's Motion, which should be deemed consent to the granting of the Motion.

Defendant IRS's Reply

Defendant states Plaintiff-Debtor's nominal opposition fails to state any claims to relief entitling him to relief. Defendant requests the Complaint be dismissed.

DISCUSSION

Congress provides in 28 U.S.C. § 1334 and § 157 for federal court jurisdiction for bankruptcy cases and matters related to a bankruptcy case. The relevant jurisdictional provisions in these statutes are (emphasis added):

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the **district courts shall have original and exclusive jurisdiction of all cases under title 11.**

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, **the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.**

28 U.S.C. § 1334(a), (b).

§ 157. Procedures

(a) Each district court may provide that **any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.**

(b)

(1) **Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11**, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings **include, but are not limited to**—

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

...

(c)

(1) A **bankruptcy judge may hear a proceeding that is not a core proceeding** but that is otherwise **related to a case under title 11**. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the **consent of all the parties** to the proceeding, may refer a proceeding related to a case under title 11 to a **bankruptcy judge to hear and determine and to enter appropriate orders and judgments**, subject to review under section 158 of this title.

28 U.S.C. § 157,

Even when related to federal court jurisdiction exists, Congress provides for discretionary abstention by the federal judge, providing in 28 U.S.C. § 1334(c):

(c)

(1) Except with respect to a case under chapter 15 of title 11, **nothing in this section prevents** a district court in the interest of justice, **or in the interest of comity with State courts or respect for State law**, from **abstaining from hearing a particular proceeding** arising under title 11 or arising in or **related to a case under title 11**.

As provided in 11 U.S.C. § 105(a), the court may *sua sponte* take action or make a necessary or appropriate order notwithstanding the failure of a party raising such issue.

Non-Core Relief Requested

Plaintiff commenced his Chapter 13 Bankruptcy Case, 22-22864, on November 3, 2022. That Bankruptcy Case was dismissed on March 21, 2023, due to a failure to make plan payments and a failure to provide the Trustee with documents. A Plan was filed, however, was never confirmed. Case No. 22-22864, Order Sustaining Trustee's and Creditors' Objections to Confirmation, Dckts. 118, 120, 122, and 124. There were no acts of Plaintiff-Debtor, as the Chapter 13 debtor fiduciary for the Bankruptcy Estate, to administer any property of the Bankruptcy Estate.

The vast majority of Causes of Action do not seek relief under the Bankruptcy Code or in the Bankruptcy Case. They are all claims arising under the laws of the State of California and are unrelated to any administration of the former Bankruptcy Case. These are not what would be “Core Proceedings” for a bankruptcy judge.

Additionally, the bankruptcy case having been dismissed, the determination of these claims will not affect the administration of the estate. Thus, there will be no basis for the court to determine the extent, validity, and priority of any interest in property of the Bankruptcy Estate. With the dismissal to be entered shortly, all disclosed property of the Bankruptcy Estate will be abandoned back to the Plaintiff-Debtor by operation of law. 11 U.S.C. § 349(c).

Abstention of Exercising Bankruptcy Federal Court Jurisdiction

Recognizing the broad reach of the federal court jurisdiction for all bankruptcy cases, all civil proceedings arising in cases arising under the Bankruptcy Code, and all civil proceedings arising in or related to bankruptcy cases, Congress provides in 28 U.S.C. § 1334(c)(1) that:

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

As addressed in *Collier on Bankruptcy*, this abstention decision can be raised by the court *sua sponte*.

[1] Permissive Abstention; 28 U.S.C. § 1334(c)(1)

Section 1334(c)(1) is not unlike the philosophy that governed abstention under the 1898 Bankruptcy Act. Under that statute, a bankruptcy judge (then a “referee”) could abstain from hearing a matter even if the court had jurisdiction over the controversy. In either case, the matter may be raised by the judge *sua sponte*. In some instances, the court was under a duty to allow the litigation of a particular question or controversy to go forward in a nonbankruptcy forum. In *Thompson v. Magnolia Petroleum Co.*, Justice Black, while reaffirming the principle that the bankruptcy or reorganization court had “an exclusive and nondelegable control over the administration of an estate in its possession,” said:

But the proper exercise of that control may, where the interests of the estate and the parties will best be served, lead the bankruptcy court to consent to submission to state courts of particular controversies involving unsettled questions of state property law and arising in the course of bankruptcy administration. And, under the circumstances of this case, we conclude that it is desirable to have the litigation proceed in the state courts of Illinois. An order to the trustee to proceed in the

Illinois courts for a decision on the ownership of the fee to the right of way lands will be comparable to one in which the bankruptcy court, preserving the status quo the while, orders a trustee to determine in a plenary state court suit the legal right to property alleged by the trustee to have been fraudulently transferred by the bankrupt. Decision with which the federal court of bankruptcy is here faced calls for interpretation of instruments of conveyance in accordance with Illinois law. Neither statutes nor decisions of Illinois have been pointed to which are clearly applicable. And the difficulties of determining just what should be the decision under the law of that state are persuasively indicated by different results reached by the two Circuit Courts of Appeal that have attempted the determination. Unless the matter is referred to the state courts, upon subsequent decision by the Supreme Court of Illinois it may appear that rights in local property of parties to this proceeding have—by the accident of federal jurisdiction—been determined contrary to the law of the state which in such matters is supreme.

1 Collier on Bankruptcy P 3.05.

As addressed above, there is no property of the bankruptcy estate to be administered. There is no bankruptcy case being prosecuted by Plaintiff-Debtor. While this court makes ruling on State Law every day and does not shy away from it, as this court notes (tongue in cheek) notes, “that for this court to bring down the hobbled nailed boot of the federal judiciary to determine matters for which jurisdiction exists in the court of the Sovereign State of California, there will be some bankruptcy purpose for exercising the extraordinary jurisdiction granted by Congress in 28 U.S.C. § 1334.”

Here, there is no bankruptcy purpose. With these Motions to Dismiss pending through which this court can “cleanup” the mess of State Law claims and causes of action so that they could be brought, if Plaintiff-Debtor sought to litigate (or could obtain counsel to effectively litigate) the causes of action can be adjudicated in the courts of the Sovereign State of California.

Here, the only reason these State Law Claims are in this court is the Plaintiff-Debtor having filed a fourth non-productive Chapter 13 case that was not prosecuted. For this court to adjudicate these State Law Claims would create the impression that federal court forum shopping is given a green light, and all one has to do is file a bankruptcy case, file a complaint, and then let the bankruptcy case be dismissed, with such conduct being sufficient to rip the claims which should properly be adjudicated in the courts of the Sovereign State of California. The Federal Courts do not “reward” such conduct by creating a side, Article I door into federal court.

At this juncture, the court is not issuing an order stating it is abstaining. If it were to proceed on that route, it would then issue an order to show cause why the court should not abstain. The various Defendants and the Plaintiff-Debtor would expend further time, money, and other resources on that question.

Granting of Motion to Dismiss

The court grants each of the Motion to Dismiss, and dismisses the Adversary Proceeding in its entirety and as to all Defendants, without prejudice. Just as the Plaintiff-Debtor could not seek to continue to prosecute the State Law Claims in this court, the court does not adjudicate the Causes of Action in favor of the Defendants as would happen if the court were to dismiss the Complaint with prejudice.

The court shall issue separate orders for each of the Motions.

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 to Dismiss Adversary Proceeding filed Select Portfolio Servicing, Inc. and Wells Fargo Bank, N.A. (“Defendants”) 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 to Dismiss is granted, and the Adversary Proceeding is dismissed in its entirety as to all Defendants, without prejudice.

**SOBAYO V. THE BANK OF NEW YORK
MELLON ET AL**

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, Chapter 13 Trustee, and Office of the United States Trustee on February 6, 2023. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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

The Motion to Dismiss Adversary Proceeding filed by Defendant Aldridge Pite, LLP is granted, and the Adversary Proceeding is dismissed without prejudice as to all Defendants.

Defendant Aldridge Pite, LLP filed the pending Motion to Dismiss the Adversary Proceeding, Case No. 23-02001, Dckt. 37, on the grounds that Nathaniel Basola Sobayo's ("Plaintiff-Debtor") fails to state a claim upon which relief can be granted. The court notes, five other defendants have concurrently filed motions to dismiss based on the same facts and legal bases. The court will issue

one joint ruling, which is filed under the Docket Control Number for the Motion to Dismiss filed by Carrington Mortgage Services, LLC and the Bank of New York Mellon, as Trustee, DCN: JBC-1, which is incorporated in and made the Ruling on this Motion to Dismiss.

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 to Dismiss Adversary Proceeding filed by Aldridge Pite, LLP (“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 to Dismiss is granted, and the Adversary Proceeding is dismissed in its entirety as to all Defendants, without prejudice.

JBC-1

**SOBAYO V. THE BANK OF NEW YORK
MELLON ET AL**

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 and Chapter 13 Trustee on February 2, 2023. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Adversary Proceeding filed by Defendants Carrington Mortgage Services, LLC and The Bank of New York Mellon is granted, and the Adversary Proceeding is dismissed without prejudice as to all Defendants.

Defendants Carrington Mortgage Services, LLC and The Bank of New York Mellon filed the pending Motion to Dismiss the Adversary Proceeding, Case No. 23-02001, Dckt. 21, on the grounds that Nathaniel Basola Sobayo's ("Plaintiff-Debtor") fails to state a claim upon which relief can be granted. The court notes, four other defendants have concurrently filed motions to dismiss based on the same facts and legal bases. The court will issue one joint ruling, which is filed under the Docket Control Number for the Motion to Dismiss filed by Carrington Mortgage Services, LLC and the Bank of New York Mellon, as Trustee, DCN: JBC-1, which is incorporated in and made the Ruling on this Motion to Dismiss.

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 to Dismiss Adversary Proceeding filed by Carrington Mortgage Services, LLC and The Bank of New York Mellon (“Defendants”) 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 to Dismiss is granted, and the Adversary Proceeding is dismissed in its entirety as to all Defendants, without prejudice.

4. <u>22-22864-E-13</u> <u>23-2001</u> USA-1	NATHANIEL SOBAYO Pro Se	MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 2-7-23 [42]
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**SOBAYO V. THE BANK OF NEW YORK
MELLON ET AL**

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, Defendants, Chapter 13 Trustee, and Office of the United States Trustee on February 7, 2023. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss Adversary Proceeding filed by Defendant Internal Revenue Service is granted, and the Adversary Proceeding is dismissed without prejudice as to all Defendants.</p>

Defendant Internal Revenue Service filed the pending Motion to Dismiss the Adversary Proceeding, Case No. 23-02001, Dckt. 42, on the grounds that Nathaniel Basola Sobayo's ("Plaintiff-Debtor") fails to state a claim upon which relief can be granted. The court notes, five other defendants have concurrently filed motions to dismiss based on the same facts and legal bases. The court will issue one joint ruling, which is filed under the Docket Control Number for the Motion to Dismiss filed by Carrington Mortgage Services, LLC and the Bank of New York Mellon, as Trustee, DCN: JBC-1, which is incorporated in and made the Ruling on this Motion to Dismiss.

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

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

The Motion to Dismiss Adversary Proceeding filed by Internal Revenue Service ("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 to Dismiss is granted, and the Adversary Proceeding is dismissed in its entirety as to all Defendants, without prejudice.

RICHARDS V. SPAULDING ET AL

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Jeffrey S. Ogilvie

Adv. Filed: 1/25/22
Reissued Summons: 1/25/22
Answer: 2/18/22
First Amd Cmpl: 1/25/23
Answer: none

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Continued from 3/7/23, the Court having authorized the filing of an Amended Complaint. Plaintiff's counsel reported that Douglas Jacobs, Esq. will be substituting in as counsel for Defendants.

The Status Conference is XXXXXXX

MARCH 23, 2023 STATUS CONFERENCE

The court's review of the Docket on March 22, 2023, disclosed that no substitution of attorney had been filed.

At the Status Conference, XXXXXXX

MARCH 7, 2023 STATUS CONFERENCE

At the Status Conference hearing, counsel for the Plaintiff-Trustee reported that Defendants are obtaining replacement counsel, their current counsel is retiring. Plaintiff's counsel reported that Douglas Jacobs, Esq. will be substituting in as counsel for Defendants.