UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 10, 2018, at 11:00 a.m.

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1. **10-21200-E-7** **ROBERT CLOSE** **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
18-02004 **Jeffrey Ogilvie**
JSO-1 **3-26-18 [13]**

CLOSE V. BEN'S TRUCK & EQUIPMENT, INC.

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 on March 26, 2018. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Robert Close ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on March 26, 2018. Dckt. 13. Plaintiff-Debtor seeks an entry of default judgment against Ben's Truck & Equipment, Inc. ("Defendant") in the instant Adversary Proceeding No. 18-02004.

The instant Adversary Proceeding was commenced on January 12, 2018. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on January 12, 2018. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 6, 7.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on March 7, 2018. Dckt. 9.

REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint for declaratory relief against Defendant. The Complaint sets forth one cause of action that Defendant's claim is not non-dischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) and asserts the following allegations as summarized by the court:

A. Plaintiff-Debtor filed a Chapter 13 case on January 19, 2010;

B. Plaintiff-Debtor voluntarily converted the case to Chapter 7 on March 31, 2010;

C. Plaintiff-Debtor's pre-petition debt included a state court judgment in favor of Defendant filed on November 23, 2009, and recorded on December 18, 2009;

D. Plaintiff-Debtor did not list Defendant properly in the bankruptcy case;

E. Plaintiff-Debtor received a discharge on August 12, 2010;

F. This case was re-opened on November 7, 2017, to list Defendant's pre-petition judgment lien; and

G. Defendant's judgment is void pursuant to 11 U.S.C. § 524(a) because of the entry of discharge.

Prayer

Plaintiff-Debtor requests the following relief in the Complaint's prayer:

A. A judgment that Defendant's claim—based upon a Superior Court of California, County of Shasta, ruling—is not nondischargeable; and

B. For such other relief as the court deems fair, just, and equitable.

DEFENDANT'S OPPOSITION

Defendant filed an Opposition on April 26, 2018. Dckt. 17. Defendant argues that Plaintiff-Debtor filed his bankruptcy case and deliberately did not list Defendant's claim of $51,177.84. Defendant alleges that no notice was received because Defendant was not listed as a creditor in the bankruptcy case.

Defendant argues that no notice was received until Plaintiff-Debtor filed a motion to avoid Defendant's lien and then filed this Adversary Proceeding was filed after the motion. Defendant argues that it wants to participate in this Adversary Proceeding and intends to file a motion soon to allow it to file a late answer.

Defendant states that it was contacted by an escrow officer who inquired about the lien because it arose during purchase of real property. Defendant states that with the help of an attorney, it learned that its lien was valid still and that there was a chance it could recover money against its claim.

APPLICABLE LAW

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

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

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

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

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a

claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

It is well established that, pursuant to 11 U.S.C. § 524(a), the entry of a discharge operates to void a judgment as to personal liability for future enforcement against exempt property of a debtor or future acquired property of a debtor. Discharge does not void the judgment or judgment lien to the extent that the lien has attached to the debtor's property as of the commencement of the bankruptcy case, however. Other provisions, such as 11 U.S.C. § 522(f) afford the court power to avoid an otherwise valid, enforceable judgment lien.

Here, Plaintiff-Debtor's dilemma is that Defendant was not given notice of the bankruptcy case when it was filed in 2010 and was not given notice of the opportunity to file a complaint objecting to Plaintiff-Debtor's discharge or the nondischargeability of the debt owed to Defendant. Case No. 10-21200, Verification of Master Address List, Dckt. 4; Notice of Chapter 13 Bankruptcy Case and Certificate of Service, Dckt. 12; and Notice of Conversion to Chapter 7 and Certificate of Service, Dckt. 28.

The problem for Plaintiff-Debtor is that 11 U.S.C. § 523(a)(3) provides that a creditor's debt is not discharged if the claim was neither listed nor scheduled under section 521(a)(1) in time to permit the creditor to file a complaint for the nondischargeability of its debt. Plaintiff-Debtor did not schedule Defendant's claim and did not give Defendant notice of the bankruptcy case.

Plaintiff-Debtor was discharged in his case after John Reger ("the Chapter 7 Trustee") administered the case as a no-asset-distribution case. *See* Case No. 10-21200, Dckt. 79. The Ninth Circuit Court of Appeals has reviewed the scenario of when a debtor wishes to reopen a case to schedule a claim and have it discharged in a no-asset case. *Beezley v. California Land Title Co.*, 994 F.2d 1433 (9th Cir. 1992). The Ninth Circuit concluded that merely because a claim was not listed on a debtor's schedules, such was not determinative of whether the debt was discharged. The court concluded that whether the debt was discharged in a no-asset case turned on whether the debt was the type barred from discharge under 11 U.S.C. § 523(a)(3)(B), and if so, as a matter of law the debt was not discharged.

Judge O'Scannlain wrote an extensive concurrence explaining the legal underpinnings of the majority's one-paragraph ruling. Judge O'Scannlain's analysis concludes:

> The analysis the Code requires is, I submit, as follows: Because Beezley's was a no-asset, no-bar-date case, section 523(a)(3)(A) [failure to give notice to creditor in time to file a proof of claim] does not bar the discharge of his debt to Cal Land under section 727(b). Cal Land has alleged, however, that Beezley committed fraud in connection with the transaction that was the subject of its lawsuit against him, and that the debt evidenced by the default judgment it obtained against Beezley is therefore nondischargeable under section 523(a)(3)(B). Had Beezley listed this debt in his bankruptcy schedules, Cal Land would have been required under Bankruptcy Rule 4007(c) to litigate this nondischargeability question "within 60 days following the first date set for the meeting of creditors," which had long since passed when this

> litigation commenced. **However, because Beezley failed to schedule the debt, Bankruptcy Rule 4007(b) affords Cal Land the right to litigate dischargeability outside the normal time limits, again in accordance with section 523(a)(3)(B).** *See American Standard*, 147 Bankr. at 484 ("In effect, a debtor who fails to list a creditor loses the jurisdictional and time limit protections of Section 523(c) and Rule 4007(c)."). *See also In re Lochrie*, 78 Bankr. 257, 259–60 (9th Cir. BAP 1987).
>
> This is the only right Cal Land can claim by virtue of its omission from Beezley's schedules. In particular, Cal Land cannot escape the need to prove nondischargeability merely because Beezley's failure to list his debt to Cal Land may have been intentional or may have prejudiced its ability to show that Beezley committed fraud years ago, as the holding in *Stark* would suggest. *Stark* has no place in the analysis of the matter at hand.

Id. at 1440–41 (emphasis added).

Thus, until a creditor is afforded an opportunity to assert grounds for nondischargeability, the court cannot determine that a debt has been discharged.

The Ninth Circuit followed up its analysis in *White v. Nielsen (In re Nielsen)*, 383 F.3d 992 (9th Cir. 2004). There, the Ninth Circuit held that the mere failure to list an asset on the schedules (or to give a creditor notice) does not render a debt nondischargeable in a no-asset case. Instead, if the debt was nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(B), then it is nondischargeable. *Id.* at 926–27.

The question turns on whether the debt, here a judgment, is one that is nondischargeable under 11 U.S.C. § 523(a)(2) [fraud], (a)(4) [defalcation, embezzlement, larceny], or (a)(6) [willful and malicious injury], all of which are grounds that must affirmatively be prosecuted by Defendant. As determined by the Ninth Circuit in *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914 (9th Cir. 2002), a creditor whose claim was not scheduled and did not have actual notice of the bankruptcy case is not given an unlimited amount of time in which to assert such nondischargeability rights, but must act reasonably or face having the ability to assert such nondischargeability rights cut off by the doctrine of laches. In stating that legal principle, the Ninth Circuit panel stated:

> On balance, we believe that the best reading of § 523(a)(3)(B) and Rule 4007(b) is that laches is available as a defense. At the same time, **we read those provisions as directing bankruptcy courts to be especially solicitous to § 523(a)(3)(B) claimants when laches is invoked, and to refuse to bar an action without a particularized showing of demonstrable prejudicial delay.** Just as there is a strong presumption that a delay is reasonable for purposes of laches when a specified statutory limitations period has not yet lapsed, there should be a similar presumption in § 523(a)(3)(B) cases. **A party asserting laches as a defense to a complaint filed under § 523(a)(3)(B) must make a heightened showing of extraordinary circumstances and set forth a compelling reason why the action should be barred.** *See Jarrow Formulas*, 304 F.3d 829, 2002 WL 1163624 at *5 ("If the plaintiff filed suit within the analogous limitations period, the strong presumption

> is that laches is inapplicable."); *Shouse v. Pierce County*, 559 F.2d 1142, 1147 (9th Cir. 1977) ("It is extremely rare for laches to be effectively invoked when a plaintiff has filed his action before limitations in an analogous action at law has *run."); see also Patton v. Bearden*, 8 F.3d 343, 348 (6th Cir. 1993) (noting the "strong presumption that laches will not apply when the analogous statute of limitations has not run, absent compelling reason," and requiring a showing of "gross laches in the prosecution of the claim" (internal citation and quotation omitted)); *Reconstr. Fin. Corp. v. Harrisons & Crosfield*, 204 F.2d 366, 370 (2d Cir. 1953) (noting that "a heavy burden rests on . . . the party setting up laches as a defense" when the limitations period has not yet expired); *In re Marriage of Hahn & Cladouhos*, 263 Mont. 315, 868 P.2d 599, 601 (Mont. 1994) ("When a claim is filed within the time limit set by the analogous statute, the defendant bears the burden to show that extraordinary circumstances exist which require the application of laches"); *Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 836 P.2d 633, 637 (Nev. 1992) ("Especially strong circumstances must exist . . . to sustain a defense of laches when the statute of limitations has not run."); *Williams v. Mertz*, 549 So. 2d 87, 88 (Ala. 1989) (when limitations period has not expired, "special facts must appear which make the delay culpable") (internal citation and quotation omitted).

Id. at 926 (emphasis added).

Merely because a debtor requests that the court "declare" that an unscheduled debt has been discharged does not appear to result in the unscheduled debt actually being discharged. Clearly, if the debt is one subject to 11 U.S.C. § 523(a)(2), (4), or (6), then it is not discharged. Such has to be determined. If the debt is discharged, then the judgment lien is void.

Defendant's claim is based on a state court judgment entered on November 23, 2009. Case No. 10-21200, Abstract of Judgment, Exhibit A, Dckt. 92. That judgment remains in force and effect for ten years, unless renewed.

At the December 21, 2017 hearing in Plaintiff-Debtor's case, the court noted that the determination that Plaintiff-Debtor seeks could not be done as part of the regular law and motion practice. Case No. 10-21200, Dckt. 100. The court noted that an adversary proceeding could be filed and that Defendant could delay prosecuting any right it might have to repayment under the judgment lien. *Id.*

Instead of presenting arguments in this case adversary proceeding, Defendant has remained largely silent, only filing an Opposition to this Motion asserting that it wants to participate in this case now. Defendant has not presented any evidence or argument, however, that its debt is one that would be nondischargeable through bankruptcy.

RULING

The court finds that the Complaint is sufficient, and the request for relief requested therein is meritorious. The court has not been shown that there is or may be any dispute concerning material facts.

Defendant has not contested any facts in this Adversary Proceeding, nor did it dispute facts presented in the Plaintiff-Debtor's bankruptcy case regarding the motion to avoid Defendant's judgment lien. Further, there is no evidence of excusable neglect by Defendant.

Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant has been given several opportunities to respond, and there is no indication that Defendant has a meritorious defense or disputes Plaintiff-Debtor's right to judgment in this Adversary Proceeding. Nothing in Defendant's Opposition actually states that Plaintiff-Debtor does not have a right to judgment or could not have had the lien avoided in the bankruptcy case if Defendant had been included in the proceedings. Failing to fulfill one's contractual and statutory obligations, and then failing to respond to judicial process, is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against Defendant.

This Adversary Proceeding was filed on January 12, 2018. The Certificate of Service documents that service was made on Defendant on January 12, 2018 (within three days thereafter by mail). Dckt. 6. On April 26, 2018—one hundred and four (104) days later—Defendant filed the Opposition to this Motion. Dckt. 17. Defendant is represented by knowledgeable bankruptcy counsel. Conspicuously missing from the Opposition is: (1) any assertion that the debt is nondischargeable and (2) that Defendant is/has filed the necessary adversary proceeding asserting a claim for nondischargeability of this debt. In making the Opposition, Defendant has failed (or refused) to provide any testimony under penalty of perjury.

Defendant has filed a pleading titled "Motion in Opposition For Request For Declaratory Relief as to Dischargeability." Dckt. 20. In that "Motion," Defendant essentially argues that it is Plaintiff-Debtor's burden to prove the debt is dischargeable. While the Motion winds through eight pages, it never asserts that Defendant has any grounds for the nondischargeability of the debt. It states that is for the "bad Plaintiff-Debtor" who did not list the claim and did not give notice of the original bankruptcy—thus, the debt should be nondischargeable.

Unfortunately for Defendant, the Ninth Circuit Court of Appeals has addressed such contentions in the *Beezley* decision. If the bankruptcy case were one in which there was a distribution that the non-notice creditor could have participated in, the nondischargeability guillotine would come down on the debtor's financial neck and the debt would be nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(A).

However, if the bankruptcy case was a no-asset case and the creditor was not prejudiced in not being able to submit a claim, there is no guillotine. The creditor is given a reasonable time in which to file a complaint for nondischargeability of the debt, and if the creditor fails to reasonably act, the debt is discharged.

As Defendant notes (and has read), the court in denying without prejudice a "Motion to Avoid the Judicial Lien," discussed in detail those issues. 10-21200, Dckt. 100. One possible solution to the Plaintiff-Debtor's dilemma stated in the Civil Minutes was to file an adversary proceeding for determination of the issue. In effect, the adversary proceeding summons and complaint would create the "reasonable deadline" for the Defendant to take whatever action, in good faith, could be taken to have the debt determined nondischargeable.

Significantly, Defendant offers no grounds upon which the debt would be determined nondischargeable. Defendant does not purport to state there was fraud, breach of fiduciary duty, embezzlement, theft, or willful and malicious conduct.

In support of the "Motion in Opposition For Request for Declaratory Relief as to Dischargeability," the Declaration of Ben Sale (principal of the creditor) is offered. FN.1. While filed in connection with this other "Motion," it provides some evidence directly on point with respect to the appropriateness of this matter.

FN.1 The court is somewhat confused as to what a "Motion in Opposition" is to the Motion for Entry of Default Judgment. Defendant has filed the Opposition that it believes it can best mount. Dckt. 17. As discussed above, that Opposition is not persuasive. The "Motion in Opposition" appears to be a "piling on of nonproductive pleadings" that work to delay and divert the court from properly adjudicating the issues before it.

Mr. Sale testifies that when his attorney, Mr. Garbutt, filed the state court complaint in 2009 and served Plaintiff-Debtor,

> 12. The Debtor responded by telling the creditor and his attorney that he had filed a bankruptcy. No notice of bankruptcy filing was ever received by either myself or my attorney.

Declaration, Dckt. 22. In the fall of 2009, Defendant and, more significantly, his licensed attorney were on notice that Plaintiff-Debtor was intending to file bankruptcy. As attorneys well know, the federal Pacer system makes checking on whether someone has filed bankruptcy quick, efficient, and inexpensive. More significantly, as attorneys know, when given notice of a possible bankruptcy, investigation is warranted. *See DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 747 F.3d 145, 150 (2d Cir. 2014) (citing *Chemetron Corp. v. Jones*, 72 F.3d 341, 345–46 (3d Cir. 1995)) (describing notice as a flexible standard about what was known, or with reasonable diligence, what should have been known); *Am. Bank & Trust Co. V. Jardine Ins. Servs. Tex., Inc. (In re Barton Indus., Inc.)*, 104 F.3d 1241, 1246 (10th Cir. 1997) ("[C]reditors have a responsibility to take an active role in protecting their claims . . . ."). If the attorney is not knowledgeable in bankruptcy law, then such a specialist is consulted or engaged (much in the same way when there is a family law, tax, trust, probate, or other specialized area of law involved). MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. (AM. BAR ASS'N 1983) (duty of competence).

The Declaration continues (indicating that Defendant would not have acted even if notice was received), with Mr. Sale providing his testimony that, as a businessman, he concludes:

> 13. As a businessman and creditor I have been involved as a creditor in a fair number of bankruptcies. Based on those experiences I was of the opinion that creditors had very little chance to recover legitimate debts in the bankruptcy system.

Id. It appears that Defendant and Mr. Sale have determined that his time and Defendant's money is spent best on new business, not pursuing its bankruptcy claims. FN.2.

FN.2. The court can appreciate the frustration of a businessman who extends credit and then shakes his head in disbelief when a borrower (one who obtains goods or services on a promise of future payment) fails to pay the debt. He may believe that bankruptcy (which he appears to be well-versed) is just wrong and once a debt is owed, the debt should always be owed until paid. However, as Mr. Sale well knows from his experience, that is not true.

In reading the court's disposition, Defendant and Mr. Sale may believe that the judge to whom this Adversary Proceeding is assigned had a long and distinguished career as a debtor's attorney, getting clients out of paying *bona fide* debts. As Defendant's experienced bankruptcy counsel can recount to Defendant, the judge to whom the case is assigned had a practice that focused on creditor's rights and enforcement of obligations, within bankruptcy and throughout the district and state courts. That career included representing the California Association of Collectors (debt collectors) and working for decades on enacting legislation to allow creditors to enforce obligations against debtors who had an ability to pay the obligation. While the court understands Mr. Sale's frustration, that frustration is not grounds to determine the debt nondischargeable.

In his testimony, Mr. Sale also deflects the consideration from his obligation to prosecute an action to have the debt determined nondischargeable to him being "ignorant." He testifies:

> 21. I then received another document from my attorney indicating that the debtor was then trying to have a judge determined the dischargeability of my debt. I had no idea what that meant either. My attorney, Mr. Garbutt, requested a more legible copy of the complaint filed by the debtor and it was only at that time that I was finally made aware of the entire timeline of this matter. It was at this point that I sought advice from an attorney who works in the bankruptcy field. I was informed that there was still a chance that my lien could be acted upon if I was able to file an answer to the complaint on the dischargeability issue. The main hurdle was that I had not responded with in a time limit provided for in the bankruptcy code.

Id. That testimony indicates that Defendant does not intend to pursue the nondischargeability of the debt but just file an answer. No answer has been filed, and no motion to vacate the default has been filed. While Mr. Sale explains that he does not appreciate the "finer points of bankruptcy," he was and is represented by attorneys.

The court also notes that Defendant actually had notice of the bankruptcy well earlier, with the service of the Motion to Avoid the Judgment Lien that was filed in November 2017. The Certificate of Service attests to service on Defendant on November 13, 2017. 10-21200, Dckt. 94. Now after one hundred seventy-eight (178) days (as of the May 10, 2018 hearing date), Defendant still has failed to articulate any basis for nondischargeability of this debt as required by the Ninth Circuit Court of Appeals in *Beezley*. Defendant offers the court no basis, not even the slimmest reed, for denying the present motion. Rather, Defendant merely argues that it wants to argue that it is "unfair" that the Ninth Circuit Court of Appeals has concluded that in a no asset case, the debt will be discharged even if the creditor did not have notice of the bankruptcy case, unless the creditor commences a determination that the debt is otherwise nondischargeable

as provided in 11 U.S.C. § 523 or other applicable federal law (some nondischargeability provisions exist outside of the Bankruptcy Code).

The court grants default judgment in favor of Plaintiff-Debtor and against Defendant Ben's Truck & Equipment, Inc., and holds that the judgment is not nondischargeable and is therefore the obligation thereunder has been discharged.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Default Judgment filed by Robert Close ("Plaintiff-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Entry of Default Judgment is granted. The court shall enter judgment determining that the judgment held by Ben's Truck & Equipment, Inc., ("Defendant"), Superior Court of California, County of Shasta, Case No. 166038, recorded with the County Recorder for Shasta County, California, is discharged, there being no timely complaint for a determination otherwise pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) having been asserted by Defendant.
>
> Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order.