

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 13, 2021 at 11:00 a.m.

<p>1. <u>11-44540-E-13</u> MERCEDES PEREZ <u>20-2178</u> PLC-1 Peter Cianchetta PEREZ V. WILLIAM CAMP TRUST, THE SUCCESSOR TRUSTEE OF THE W 1 thru 3</p>	<p>MOTION FOR ENTRY OF DEFAULT JUDGMENT 4-16-21 [18]</p>
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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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2021. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

Plaintiff did not provide the notice required by the Bankruptcy Code and the local rules. At the hearing **xxxxxxx**

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

The Motion for Entry of Default Judgment is granted.

Mercedes Perez (“Plaintiff-Debtor”) filed the instant Motion for Default Judgment on April 16, 2021. Dckt. 18. Plaintiff-Debtor seeks an entry of default judgment against William Camp, The Successor Trustee of the William Camp Trust, The Estate of William Camp, William Camp's successors and assigns (“Defendant”) in the instant Adversary Proceeding No. 20-02178.

The instant Adversary Proceeding was commenced on November 23, 2020. Dckt. 1. The reissued summons was issued by the Clerk of the United States Bankruptcy Court on January 28, 2021. Dckt. 10. The complaint and summons were properly served on Defendant. Dckt. 14.

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 17, 2021. Dckts. 15.

REVIEW OF COMPLAINT

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

- A. Plaintiff-Debtor owns real property commonly known as 6 Fourth Ave. Isleton, California (“Property”). Plaintiff-Debtor resides there as a primary residence.
- B. As of October 14, 2011, the date of the filing of the Chapter 13 bankruptcy case, the Property had a fair market value of approximately \$150,000.
- C. As of October 14, 2011, the following liens encumbered the property: a first deed of trust in favor of Beneficial, and a SECOND DOT in favor of WILLIAM H. CAMP TRUST.
- D. Plaintiff-Debtor filed a Motion to Value Secured Claim regarding the Property, which was granted on October 26, 2020, and the secured claim was determined to be in the amount of \$0.00 and wholly unsecured.
- E. Plaintiff completed the Plan on May 11, 2016.

First Claim for Relief— Declaratory Relief Voiding of the Second Trust Deed Claim

Plaintiff-Debtor alleges the following for the First Cause of Action:

- A. An actual controversy exists between Plaintiff and the Defendants with respect to the validity, priority, and extent of liens or other interest in the real property of the Plaintiff.
- B. Plaintiff seeks a Declaratory Judgment pursuant to FRBP §7001(9) as the relief requested requires the voiding and subsequent release of lien of Defendant thereby invoking FRBP §7001(2) and FRBP §7001(6) to quiet the title of the Plaintiff.

- C. The SECOND DOT is completely unsecured and under applicable law has been determined to be a general unsecured claim.
- D. Under applicable law, upon completion of Debtor's chapter 13 plan, the Court has the authority to void the SECOND DOT and THIRD DOT if the creditor does not remove the lien as required by state law and to quiet the title of the Plaintiff.
- E. Debtor completed their Chapter 13 Plan which required the Defendant to reconvey their loan.
- F. Defendant has not reconveyed via a Deed of Reconveyance, a process required under California law, the SECOND DOT and THIRD DOT .
- G. The Plaintiff-Debtor requests judgment from the court to void the SECOND DOT and THIRD DOT, thereby quieting title, recorded in Sacramento County on August 9, 1996 as Book 19960809 Page 1210, and on July 21, 1997, as Book 19970721 Page 1886, in a form allowing for recording with the Sacramento County Recorder.
- H. Plaintiff requests that contained in any judgment is language equivalent to a Deed of Reconveyance specified under California law that directs that title be reconveyed (returned) to the Plaintiff which includes "all right, title and interest" acquired by said Deed of Trust to Defendant related to the SECOND DOT and THIRD DOT they hold. This would, in effect, "quiet the title" of the Plaintiff.
- I. The SECOND DOT and THIRD DOT both reference the fictitious DOT recorded in Sacramento County on October 23, 1961 Book 4331 Page 62. It is asserted that said fictitious DOT contains an attorney's fees and cost provision at paragraph 3.
- J. Thus, Plaintiff-Debtor is entitled to attorneys' fees and costs under California Civil Code § 1717.
- K. Pleading alternative theories, that if Defendant contends that only the in personam liability has been discharged, Plaintiff seeks, pursuant to FRBP §4007(a)-(b), a determination that both the in personam and in rem liability of the debt has been fully discharged and any security interest voided.

Second Claim for Relief—Violation of California Civil Code § 2941(d)

Plaintiff-Debtor alleges the following for the Second Cause of Action:

- A. On July 30, 1996 for a valuable consideration, Carlos and Jennifer Vega made and delivered a Note in the sum of \$26,202.32.00.

- B. On the same day, Carlos and Jennifer Vega executed and delivered to Defendant, a certain deed of trust recorded in Sacramento, California covering the property.
- D. On the March 26, 1997, Carlos and Jennifer Vega executed and delivered, a certain deed of trust recorded in Sacramento, California covering the property, the THIRD DEED OF TRUST (not a subject of this adversary complaint).
- C. On April 17, 1997 for a valuable consideration, Carlos and Jennifer Vega made and delivered another Note to Stockton Mortgage.
- E. On July 21, 1997 for a valuable consideration, Carlos and Jennifer Vega made and delivered a Note in the sum of or about \$101,000.
- G. Plaintiff became owner of the property subject to the encumbrances made by Carlos and Jennifer Vega.
- H. On May 11, 2016, Debtor completed her Chapter 13 plan which required the Defendants to reconvey the Deed of Trust on said property.
- I. In spite of Plaintiff's full compliance with the court approved Chapter 13 plan, Defendants have failed and continue to fail and refuse, to reconvey the deed of trust.
- J. As a proximate result of this failure and refusal of Defendants to reconvey, Plaintiff has been required to file an adversary proceeding, at substantial cost, which is a direct breach of Defendants statutory duty and has damaged Plaintiff by this cost.
- K. Pursuant to California Civil Code § 2941(a), thirty days having passed after the satisfaction of the mortgage by discharge in Case No. 11-44540, Defendant has failed to reconvey the Second Deed of Trust.
- L. As a direct result of Defendant's conduct, Plaintiff-Debtor has sustained and continues to sustain damages including but not limited to updated appraisals and costs and attorneys' fees and costs. Defendant is further liable for \$500.00 pursuant to California Civil Code § 2941(d).

Prayer

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

- A. Voiding the Second Deed of Trust and quieting title of the Plaintiff;
- B. Award attorneys' fees and costs as allowed for in the contract between Plaintiff and Defendant and pursuant to California Civil Code §2941;

C. For such other relief as the court deems just and proper.

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

Reconveyance

The First Cause of Action seeks a declaration as between the parties that the court's October 28, 2020 order is a real, enforceable order and that it really means that Defendant's secured claim has a value of \$0.00 (now that the Plan has been completed), and therefore, there is no debt for the Deed of Trust to secure.

Plaintiff-Debtor states that on October 14, 2011, she filed a Chapter 13 bankruptcy case. As of that date, the Property had four liens encumbering it: (1) First Deed of Trust in favor of Beneficial, (2) Second Deed of Trust in favor of William Camp as Trustee of The William H. Camp, (3) Third Deed of

Trust in favor of JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST, and (4) Fourth Deed of Trust in favor of William Camp.

Plaintiff-Debtor states that Chapter 13 plan payments were completed, which required Defendant to reconvey the Second Deed of Trust on the Property. Plaintiff-Debtor was discharged on September 6, 2016. Case No. 11-44540, Dckt. 208.

According to the Trustee's Final Report and Account in Plaintiff-Debtor's bankruptcy case, Case No. 11-44540, Debtor's Plan was confirmed on February 11, 2015, and completed on April 26, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 200, July 15, 2016. The discharge of Plaintiff-Debtor was entered on September 6, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 208. Plaintiff-Debtor states that more than thirty days have passed and that Defendant has not reconveyed, requiring Plaintiff-Debtor to file an adversary proceeding.

Here, it appears that Plaintiff-Debtor was entitled to full reconveyance of the Second Deed of Trust on the Property. This court has addressed—in detail—California state law, the standard note and deed of trust contractual basis, and possible 11 U.S.C. § 506(d) basis for a creditor being obligated to reconvey a deed of trust upon a debtor successfully completing a Chapter 13 plan that provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *Martin v. CitiFinancial Servs., Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012) (discussing "lien striping" in Chapter 13 case).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between Plaintiff-Debtor, Defendant, and creditors, there remains no obligation that is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *In re Martin*, 491 B.R. at 127–30.

FN.1. 4 B.E. WITKIN ET AL., WITKIN SUMMARY OF CALIFORNIA LAW § 117 (10th ed. 2005) (citing CAL. CIV. CODE § 2939 et seq.; RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 6.4; 4 POWELL § 37.33; 2 C.E.B., MORTGAGE AND DEED OF TRUST PRACTICE § 8.84 (3d ed.); 13 AM.JUR. LEGAL FORMS § 179:511 (2d ed.)).

In addition, California Civil Code § 2941(b)(1) imposes a statutory obligation on the beneficiary under the deed of trust (Defendant in this Adversary Proceeding) to reconvey the deed of trust when the obligation secured has been satisfied. The Chapter 13 Plan having been completed, and Defendant having been paid the full amount of the secured claim as finally determined pursuant to 11 U.S.C. § 506(a), and the confirmed plan having been completed, that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within thirty days of the obligation secured by a deed of trust having been satisfied, the beneficiary shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has twenty-one days from receipt of the request for reconveyance to reconvey the deed of trust.

CAL. CIV. CODE § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here, Plaintiff-Debtor. CAL. CIV. CODE § 2941(b)(1)(B)(ii).

Here, Plaintiff-Debtor completed the plan on April 26, 2016. To date, Defendant has not reconveyed the Second Deed of Trust as required by § 2941 within thirty days after the obligation has been satisfied (here being after the completion of the Plan).

Statutory Penalty

The California Legislature has provided for a statutory forfeiture of \$500.00 (expressly stated as a forfeiture in the statute) in connection with the reconveyance of a deed of trust, as follows:

The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

CAL. CIV. CODE § 2941(d). The grounds for the possible violations of California Civil Code § 2941 in connection with this Adversary Proceeding are (as summarized by the court):

- (b)(1) Within thirty calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - (A) execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - (B) The trustee shall execute and record the reconveyance within twenty-one calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and fees as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - (C) The trustee shall deliver a copy of the reconveyance to the beneficiary or its servicing agent, if known.
- (2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within sixty calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

CAL. CIV. CODE § 2941(b).

The thirty-day period at issue is for the beneficiary to execute and deliver the original note, deed of trust, and request for reconveyance to the trustee under the deed of trust. Plaintiff-Debtor presents evidence, which is uncontradicted, that as of July 15, 2016, Defendant knew of the bankruptcy plan being completed (Trustee's Final Report and Account having been mailed to Defendant) and that the deed of trust had to be reconveyed.

CONCLUSION

Applying these factors, the court finds that the Second Deed of Trust is void, Debtor having completed the Chapter 13 Plan and Defendant having been paid the amount, \$0.00, determined by the court to be the value of Defendant's secured claim, and the Property is held free of such purported interests thereunder. The continued existence of record of the Second Deed of Trust will cloud title and restrict Plaintiff-Debtor's full and unfettered use of the real property and any interests therein. The court discussed the effect of a completed Chapter 13 Plan recently and the effect on a secured claim determined by the court pursuant to 11 U.S.C. § 506(a). *See In re Martin*, 491 B.R. 122.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are 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 value Defendant's secured claim to have a value of \$0.00 or regarding confirmation of the Chapter 13 Plan.

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. 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.

CALIFORNIA CIVIL CODE § 2941

Plaintiff-Debtor also seeks an award of \$500.00 pursuant to California Civil Code § 2941, which requires lenders to reconvey deeds of trust when the debt is satisfied.

California Civil Code § 2941(b)(1) imposes an affirmative obligation on the beneficiary (creditor) when the obligation secured by the deed of trust has been satisfied. When no obligation remains, the beneficiary must instruct the trustee under the deed of trust to issue a full reconveyance of the deed of trust. Once the obligation no longer exists, resulting in the lien being extinguished by operation of law, the trustor or mortgagor (debtor) is entitled to a certificate of discharge, the mortgage cancelled or satisfied as of record, and the deed of trust reconveyed.

Here, Defendant failed to have the deed of trust reconveyed after the obligation secured had been satisfied, as required by California Civil Code § 2941(b)(1). Therefore, the violation of that section allows Plaintiff-Debtor to seek the penalty of \$500.00 pursuant to California Civil Code § 2941(d).

RULING

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendant William H. Camp and holds that the deed of trust is void, and awards Plaintiff \$500.00 in statutory damages pursuant to California Civil Code § 2941(d).

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 Mercedes Perez (“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 second deed of trust, and any interest, lien or encumbrance pursuant thereto, held by William Camp, The Successor Trustee of the William Camp Trust, The Estate of William Camp, William Camp’s successors and assigns (“Defendant”) against the real property commonly known as 6 Fourth Ave., Isleton, California, APN 157-0073-010, with the County Recorder for Sacramento County, California, is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant has no interest in the real property pursuant to the Second Deed of Trust.

IT IS FURTHER ORDERED that the debt associated with the second deed of trust has been satisfied and fully discharged pursuant to Federal Rules of Bankruptcy Procedure § 4007(a) and (b).

IT IS FURTHER ORDERED that Plaintiff-Debtor is awarded \$500.00 pursuant to California Code § 2941(d).

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney’s fees and costs, if any, allowed by the court shall be enforced as part of the judgment.

Plaintiff-Debtor may seek attorney’s fees and costs as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2021. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

Plaintiff did not provide the notice required by the Bankruptcy Code and the local rules. At the hearing **xxxxxxx**

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

The Motion for Entry of Default Judgment is granted.

Mercedes Perez ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on April 16, 2021. Dckt. 26. Plaintiff-Debtor seeks an entry of default judgment against JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST ("Defendant") in the instant Adversary Proceeding No. 20-02176.

The instant Adversary Proceeding was commenced on November 23, 2020. Dckt. 1. The reissued summons was issued by the Clerk of the United States Bankruptcy Court on January 28, 2021. Dckt. 10. The complaint and summons were properly served on Defendant. Dckt. 16.

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 17, 2021. Dckts. 17, 19, 21.

REVIEW OF COMPLAINT

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

- A. Plaintiff-Debtor owns real property commonly known as 6 Fourth Ave. Isleton, California (“Property”). Plaintiff-Debtor resides there as a primary residence.
- B. As of October 14, 2011, the date of the filing of the Chapter 13 bankruptcy case, the Property had a fair market value of approximately \$150,000.
- C. Plaintiff-Debtor’s Chapter 13 Plan was confirmed on February 11, 2015; Plaintiff-Debtor completed the Plan, and an order of discharge was signed on September 2016.
- D. Plaintiff-Debtor owned the Property at the time of filing for bankruptcy, and the Property was encumbered by the following liens: secured by two loans: a first deed of trust in favor of Beneficial and a third deed of trust in favor of Defendant.
- E. Plaintiff-Debtor filed a Motion to Value Secured Claim regarding the Property, which was granted on October 28, 2020, and the secured claim was determined to be in the amount of \$0.00 and wholly unsecured.

First Claim for Relief— Declaratory Relief Voiding of the Third Trust Deed Claim

Plaintiff-Debtor alleges the following for the First Cause of Action:

- A. An actual controversy exists between Plaintiff and the Defendants with respect to the validity, priority, and extent of liens or other interest in the real property of the Plaintiff.
- B. Plaintiff seeks a Declaratory Judgment pursuant to FRBP §7001(9) as the relief requested requires the voiding and subsequent release of lien of Defendant thereby invoking FRBP §7001(2) and FRBP §7001(6) to quiet the title of the Plaintiff.
- C. Plaintiff is informed and believes that the THIRD DOT is completely unsecured and under applicable law has been determined to be a general unsecured claim.
- D. Under applicable law, upon completion of Debtor’s chapter 13 plan, the

Court has the authority to void the THIRD DOT if the creditor does not remove the lien as required by State law and to quiet the title of the Plaintiff.

- E. The Debtor has completed their Chapter 13 Plan which required the Defendant to reconvey their loan.
- F. Defendant has not reconveyed via a Deed of Reconveyance, a process required under California law, the THIRD DOT .
- G. The Plaintiff-Debtor requests judgment from the Court to void the THIRD DOT, thereby quieting title, recorded in Sacramento County on April 17, 1997 as Book 19970417 Page 0949, in a form allowing for recording with the Sacramento County Recorder.
- H. Plaintiff requests that contained in any judgment is language equivalent to a Deed of Reconveyance specified under California law that directs that title be reconveyed (returned) to the Plaintiff which includes “all right, title and interest” acquired by said Deed of Trust to Defendant related to the THIRD DOT they hold. This would, in effect, “quiet the title” of the Plaintiff.
- I. The THIRD DOT both reference the fictitious DOT recorded in Sacramento County on October 23, 1961 Book 4331 Page 62. Said fictitious DOT contains an attorney’s fees and cost provision at paragraph 3.
- J. Thus, Plaintiff-Debtor is entitled to attorneys’ fees and costs under California Civil Code § 1717.
- K. Pleading alternative theories, that if Defendant contends that only the in personam liability has been discharged, Plaintiff seeks, pursuant to FRBP §4007(a)-(b), a determination that both the in personam and in rem liability of the debt has been fully discharged and any security interest voided.

Second Claim for Relief—Violation of California Civil Code § 2941(d)

Plaintiff-Debtor alleges the following for the Second Cause of Action:

- A. On July 30, 1996 for a valuable consideration, Carlos and Jennifer Vega made and delivered a Note in the sum of \$26,202.32.00.
- B. On the same day, Carlos and Jennifer Vega executed and delivered to defendant, a certain deed of trust recorded in Sacramento, California covering the property.
- C. On or about April 17, 1997 for a valuable consideration, Carlos and

Jennifer Vega made and delivered another Note to Stockton Mortgage.

- D. On the same day, plaintiff executed and delivered to defendant, a certain deed of trust recorded in Sacramento, California covering the property, the THIRD DOT.
- E. Plaintiff became owner of the property subject to the encumbrances made by Carlos and Jennifer Vega.
- F. On May 11, 2016, Debtor completed her Chapter 13 plan which required the Defendants to reconvey the Deed of Trust on said property.
- G. In spite of Plaintiff's full compliance with the court approved Chapter 13 plan, Defendants have failed and continue to fail and refuse, to reconvey the deed of trust.
- H. As a proximate result of this failure and refusal of Defendants to reconvey, Plaintiff has been required to file an adversary proceeding, at substantial cost, which is a direct breach of Defendants statutory duty and has damaged Plaintiff by this cost.
- I. Pursuant to California Civil Code § 2941(a), thirty days having passed after the satisfaction of the mortgage by discharge in Case No. 11-44540, Defendant has failed to reconvey the Second Deed of Trust.
- J. As a direct result of Defendant's conduct, Plaintiff-Debtor has sustained damages including but not limited to attorneys' fees and costs. Defendant is further liable for \$500.00 pursuant to California Civil Code § 2941(d).

Third Claim for Relief—Attorney's Fees

Plaintiff-Debtor alleges the following for the Third Cause of Action:

- A. Effective December 1, 2014, Plaintiff is no longer required to plead attorney's fees as a separate claim for relief but Plaintiff pleads attorney's fees as a separate claim for relief for clarity.
- B. Plaintiff is entitled to attorney's fees pursuant to the terms of the contract (the Third DOT) between the parties.
- C. As such, under California Civil Code §1717, a reciprocal contractual attorneys' fees statute, the Plaintiff is entitled to reimbursement of attorney's fees. By statute, pursuant to California Civil Code §2941, Plaintiff is entitled to attorneys fees as the prevailing party in this action.
- D. Plaintiff requests an award of attorney's fees, in an amount the court determines to be reasonable, as authorized by the provisions of the

contract between Plaintiff and Defendant and pursuant to the California statutes cited herein.

Prayer

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

- A. Voiding the Third Deed of Trust and quieting title of the Plaintiff;
- B. Award attorneys' fees and costs as allowed for in the contract between Plaintiff and Defendant and pursuant to California Civil Code §2941;
- C. A statutory penalty of \$500.00 pursuant to California Civil Code §2941; and
- D. For such other relief as the court deems just and proper.

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,
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DISCUSSION

Reconveyance

The First Cause of Action seeks a declaration as between the parties that the court's October 28, 2020 order is a real, enforceable order and that it really means that Defendant's secured claim has a value of \$0.00 (now that the Plan has been completed), and therefore, there is no debt for the Deed of Trust to secure.

Plaintiff-Debtor states that on October 14, 2011, she filed a Chapter 13 bankruptcy case. As of that date, the Property had four liens encumbering it: (1) First Deed of Trust in favor of Beneficial, (2) Second Deed of Trust in favor of William Camp as Trustee of The William H. Camp, (3) Third Deed of Trust in favor of JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST, and (4) Fourth Deed of Trust in favor of William Camp.

Plaintiff-Debtor states that Chapter 13 plan payments were completed, which required Defendant to reconvey the Third Deed of Trust on the Property. Plaintiff-Debtor was discharged on September 6, 2016. Case No. 11-44540, Dckt. 208.

According to the Trustee's Final Report and Account in Plaintiff-Debtor's bankruptcy case, Case No. 11-44540, Debtor's Plan was confirmed on February 11, 2015, and completed on April 26, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 200, July 15, 2016. The discharge of Plaintiff-Debtor was entered on September 6, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 208. Plaintiff-Debtor states that more than thirty days have passed and that Defendant has not reconveyed, requiring Plaintiff-Debtor to file an adversary proceeding.

Here, it appears that Plaintiff-Debtor was entitled to full reconveyance of the Third Deed of Trust on the Property. This court has addressed—in detail—California state law, the standard note and deed of trust contractual basis, and possible 11 U.S.C. § 506(d) basis for a creditor being obligated to reconvey a deed of trust upon a debtor successfully completing a Chapter 13 plan that provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *Martin v. CitiFinancial Servs., Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012) (discussing "lien striping" in Chapter 13 case).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between Plaintiff-Debtor, Defendant, and creditors, there remains no obligation that is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *In re Martin*, 491 B.R. at 127–30.

FN.1. 4 B.E. WITKIN ET AL., WITKIN SUMMARY OF CALIFORNIA LAW § 117 (10th ed. 2005) (citing CAL. CIV. CODE § 2939 et seq.; RESTATEMENT (THIRD) OF PROP.: MORTGAGES § 6.4; 4 POWELL § 37.33;

In addition, California Civil Code § 2941(b)(1) imposes a statutory obligation on the beneficiary under the deed of trust (Defendant in this Adversary Proceeding) to reconvey the deed of trust when the obligation secured has been satisfied. The Chapter 13 Plan having been completed, and Defendant having been paid the full amount of the secured claim as finally determined pursuant to 11 U.S.C. § 506(a), and the confirmed plan having been completed, that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within thirty days of the obligation secured by a deed of trust having been satisfied, the beneficiary shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has twenty-one days from receipt of the request for reconveyance to reconvey the deed of trust. CAL. CIV. CODE § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here, Plaintiff-Debtor. CAL. CIV. CODE § 2941(b)(1)(B)(ii).

Here, Plaintiff-Debtor completed the plan on April 26, 2016. To date, Defendant has not reconveyed the Third Deed of Trust as required by § 2941 within thirty days after the obligation has been satisfied (here being after the completion of the Plan).

Statutory Penalty

The California Legislature has provided for a statutory forfeiture of \$500.00 (expressly stated as a forfeiture in the statute) in connection with the reconveyance of a deed of trust, as follows:

The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

CAL. CIV. CODE § 2941(d). The grounds for the possible violations of California Civil Code § 2941 in connection with this Adversary Proceeding are (as summarized by the court):

- (b)(1) Within thirty calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - (A) execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - (B) The trustee shall execute and record the reconveyance within twenty-one calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and

fees as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.

(C) The trustee shall deliver a copy of the reconveyance to the beneficiary or its servicing agent, if known.

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within sixty calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

CAL. CIV. CODE § 2941(b).

The thirty-day period at issue is for the beneficiary to execute and deliver the original note, deed of trust, and request for reconveyance to the trustee under the deed of trust. Plaintiff-Debtor presents evidence, which is uncontradicted, that as of July 15, 2016, Defendant knew of the bankruptcy plan being completed (Trustee's Final Report and Account having been mailed to Defendant) and that the deed of trust had to be reconveyed.

Defendant failed to answer and offers no evidence that it took any action to provide the documents or demand the reconveyance within the thirty-day period.

CONCLUSION

Applying these factors, the court finds that the Third Deed of Trust is void, Debtor having completed the Chapter 13 Plan and Defendant having been paid the amount, \$0.00, determined by the court to be the value of Defendant's secured claim, and the Property is held free of such purported interests thereunder. The continued existence of record of the Third Deed of Trust will cloud title and restrict Plaintiff-Debtor's full and unfettered use of the real property and any interests therein. The court discussed the effect of a completed Chapter 13 Plan recently and the effect on a secured claim determined by the court pursuant to 11 U.S.C. § 506(a). *See In re Martin*, 491 B.R. 122.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are 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 value Defendant's secured claim to have a value of \$0.00 or regarding confirmation of the Chapter 13 Plan. 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. 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.

CALIFORNIA CIVIL CODE § 2941

Plaintiff-Debtor also seeks an award of \$500.00 pursuant to California Civil Code § 2941, which requires lenders to reconvey deeds of trust when the debt is satisfied.

California Civil Code § 2941(b)(1) imposes an affirmative obligation on the beneficiary (creditor) when the obligation secured by the deed of trust has been satisfied. When no obligation remains, the beneficiary must instruct the trustee under the deed of trust to issue a full reconveyance of the deed of trust. Once the obligation no longer exists, resulting in the lien being extinguished by operation of law, the trustor or mortgagor (debtor) is entitled to a certificate of discharge, the mortgage cancelled or satisfied as of record, and the deed of trust reconveyed.

Here, Defendant failed to have the deed of trust reconveyed after the obligation secured had been satisfied, as required by California Civil Code § 2941(b)(1). Therefore, the violation of that section allows Plaintiff-Debtor to seek the penalty of \$500.00 pursuant to California Civil Code § 2941(d).

RULING

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendant JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST and holds that the deed of trust is void. The court further awards \$500.00 pursuant to California Civil Code § 2941(d).

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 Mercedes Perez (“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 third deed of trust, and any interest, lien or encumbrance pursuant thereto, held by JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST (“Defendant”) against the real property commonly known as 6 Fourth Ave., Isleton, California, APN 157-0073-010, with the County Recorder for Sacramento County, California, is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant has no interest in the real property pursuant to the Second Deed of Trust.

IT IS FURTHER ORDERED that the debt associated with the third

deed of trust has been satisfied and fully discharged pursuant to Federal Rules of Bankruptcy Procedure § 4007(a) and (b).

IT IS FURTHER ORDERED that Plaintiff-Debtor is awarded \$500.00 pursuant to California Code § 2941(d).

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney's fees and costs, if any, allowed by the court shall be enforced as part of the judgment.

Plaintiff-Debtor may seek attorney's fees and costs as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on April 16, 2021. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

Plaintiff did not provide the notice required by the Bankruptcy Code and the local rules. At the hearing **xxxxxxx**

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

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

Mercedes Perez ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on April 16, 2021. Dckt. 18. Plaintiff-Debtor seeks an entry of default judgment against William Camp, The Estate of William Camp, William Camp's successors and assigns ("Defendant") in the instant Adversary Proceeding No. 20-02177.

The instant Adversary Proceeding was commenced on November 23, 2020. Dckt. 1. The reissued summons was issued by the Clerk of the United States Bankruptcy Court on January 28, 2021. Dckt. 10. The complaint and summons were properly served on Defendant. Dckt. 14.

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

REVIEW OF COMPLAINT

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

- A. Plaintiff-Debtor owns real property commonly known as 6 Fourth Ave. Isleton, California (“Property”). Plaintiff-Debtor resides there as a primary residence.
- B. As of October 14, 2011, the date of the filing of the Chapter 13 bankruptcy case, the Property had a fair market value of approximately \$150,000.
- C. Plaintiff-Debtor’s Chapter 13 Plan was confirmed on February 11, 2015; Plaintiff-Debtor completed the Plan, and an order of discharge was signed on September 2016.
- D. Plaintiff-Debtor owned the Property at the time of filing for bankruptcy, and the Property was encumbered by the following liens: a first deed of trust in favor of Beneficial, a second deed of trust in favor of William H. Camp Trust, a third deed of trust in favor of JOHN AND TESIBEL FREY, THE TRUSTEES OF THE FREY FAMILY TRUST; ELIZABETH KREUGER, TRUSTEE OF THE ELIZABETH KREUGER LIVING TRUST; LESLIE & RUTH FREY, TRUSTEES OF THE LESLIE MERL AND RUTH ELIZABETH FREY REVOCABLE TRUST, and a fourth deed of trust in favor of Defendant.
- E. Plaintiff-Debtor filed a Motion to Value Secured Claim regarding the Property, which was granted on October 28, 2020, and the secured claim was determined to be in the amount of \$0.00 and wholly unsecured.

First Claim for Relief— Declaratory Relief Voiding of the Fourth Trust Deed Claim

Plaintiff-Debtor alleges the following for the First Cause of Action:

- A. An actual controversy exists between Plaintiff and the Defendants with respect to the validity, priority, and extent of liens or other interest in the real property of the Plaintiff.
- B. Plaintiff seeks a Declaratory Judgment pursuant to FRBP §7001(9) as the relief requested requires the voiding and subsequent release of lien of Defendant thereby invoking FRBP §7001(2) and FRBP §7001(6) to quiet the title of the Plaintiff.
- C. The FOURTH DOT is completely unsecured and under applicable law has been determined to be a general unsecured claim.

- D. Under applicable law, upon completion of Debtor's chapter 13 plan, the Court has the authority to void the FOURTH DOT if the creditor does not remove the lien as required by State law and to quiet the title of the Plaintiff.
- E. Debtor completed their Chapter 13 Plan which required the Defendant to reconvey their loan.
- F. Defendant has not reconveyed via a Deed of Reconveyance, a process required under California law, the FOURTH DOT .
- G. The Plaintiff-Debtor requests judgment from the Court to void the FOURTH DOT, thereby quieting title, recorded in Sacramento County on July 21, 1997, as Book 19970721 Page 1886, in a form allowing for recording with the Sacramento County Recorder.
- H. Plaintiff requests that contained in any judgment is language equivalent to a Deed of Reconveyance specified under California law that directs that title be reconveyed (returned) to the Plaintiff which includes "all right, title and interest" acquired by said Deed of Trust to Defendant related to the FOURTH DOT they hold. This would, in effect, "quiet the title" of the Plaintiff.
- I. The FOURTH DOT reference the fictitious DOT recorded in Sacramento County on October 23, 1961 Book 4331 Page 62. Said fictitious DOT contains an attorney's fees and cost provision at paragraph 3.
- J. Thus, Plaintiff-Debtor is entitled to attorneys' fees and costs under California Civil Code § 1717.
- K. Pleading alternative theories, that if Defendant contends that only the in personam liability has been discharged, Plaintiff seeks, pursuant to FRBP §4007(a)-(b), a determination that both the in personam and in rem liability of the debt has been fully discharged and any security interest voided.

Second Claim for Relief—Violation of California Civil Code § 2941(d)

Plaintiff-Debtor alleges the following for the Second Cause of Action:

- A. On July 30, 1996 for a valuable consideration, Carlos and Jennifer Vega made and delivered a Note in the sum of \$26,202.32.00.
- B. On the same day, Carlos and Jennifer Vega executed and delivered to defendant, a certain deed of trust recorded in Sacramento, California covering the property.

- C. On or about April 17, 1997 for a valuable consideration, Carlos and Jennifer Vega made and delivered another Note to Stockton Mortgage.
- D. On the same day, plaintiff executed and delivered to defendant, a certain deed of trust recorded in Sacramento, California covering the property, the THIRD DEED OF TRUST (not a subject of this adversary complaint).
- E. On July 21, 1997 for a valuable consideration, Carlos and Jennifer Vega made and delivered a Note in the sum of or about \$101,000.
- F. On the same day, Carlos and Jennifer Vega executed and delivered to defendant, a certain deed of trust recorded in Sacramento, California covering the property.
- G. Plaintiff became owner of the property subject to the encumbrances made by Carlos and Jennifer Vega.
- H. On May 11, 2016, Debtor completed her Chapter 13 plan which required the Defendants to reconvey the Deed of Trust on said property.
- I. In spite of Plaintiff's full compliance with the court approved Chapter 13 plan, Defendants have failed and continue to fail and refuse, to reconvey the deed of trust.
- J. As a proximate result of this failure and refusal of Defendants to reconvey, Plaintiff has been required to file an adversary proceeding, at substantial cost, which is a direct breach of Defendants statutory duty and has damaged Plaintiff by this cost.
- K. Pursuant to California Civil Code § 2941(a), thirty days having passed after the satisfaction of the mortgage by discharge in Case No. 11-44540, Defendant has failed to reconvey the Second Deed of Trust.
- L. As a direct result of Defendant's conduct, Plaintiff-Debtor has sustained and continues to sustain damages including but not limited to updated appraisals and costs and attorneys' fees and costs. Defendant is further liable for \$500.00 pursuant to California Civil Code § 2941(d).

Prayer

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

- A. Voiding the Fourth Deed of Trust and quieting title of the Plaintiff;
- B. Award attorneys' fees and costs as allowed for in the contract between Plaintiff and Defendant and pursuant to California Civil Code §2941;

- C. A statutory penalty of \$500.00 pursuant to California Civil Code §2941; and
- D. For such other relief as the court deems just and proper.

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.

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DISCUSSION

Reconveyance

The First Cause of Action seeks a declaration as between the parties that the court's October 28, 2020 order is a real, enforceable order and that it really means that Defendant's secured claim has a value of \$0.00 (now that the Plan has been completed), and therefore, there is no debt for the Deed of Trust to secure.

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Plaintiff-Debtor states that Chapter 13 plan payments were completed, which required Defendant to reconvey the Fourth Deed of Trust on the Property. Plaintiff-Debtor was discharged on September 6, 2016. Case No. 11-44540, Dckt. 208.

According to the Trustee's Final Report and Account in Plaintiff-Debtor's bankruptcy case, Case No. 11-44540, Debtor's Plan was confirmed on February 11, 2015, and completed on April 26, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 200, July 15, 2016. The discharge of Plaintiff-Debtor was entered on September 6, 2016. Bankr. E.D. Cal. No. 11-44540, Dckt. 208. Plaintiff-Debtor states that more than thirty days have passed and that Defendant has not reconveyed, requiring Plaintiff-Debtor to file an adversary proceeding.

Here, it appears that Plaintiff-Debtor was entitled to full reconveyance of the Fourth Deed of Trust on the Property. This court has addressed—in detail—California state law, the standard note and deed of trust contractual basis, and possible 11 U.S.C. § 506(d) basis for a creditor being obligated to reconvey a deed of trust upon a debtor successfully completing a Chapter 13 plan that provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *Martin v. CitiFinancial Servs., Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012) (discussing “lien stripping” in Chapter 13 case).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between Plaintiff-Debtor, Defendant, and creditors, there remains no obligation that is secured by the Fourth Deed of Trust. As a matter of California law, the Fourth Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *In re Martin*, 491 B.R. at 127–30.

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In addition, California Civil Code § 2941(b)(1) imposes a statutory obligation on the beneficiary under the deed of trust (Defendant in this Adversary Proceeding) to reconvey the deed of trust when the obligation secured has been satisfied. The Chapter 13 Plan having been completed, and Defendant having been paid the full amount of the secured claim as finally determined pursuant to 11 U.S.C. § 506(a), and the confirmed plan having been completed, that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within thirty days of the obligation secured

by a deed of trust having been satisfied, the beneficiary shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has twenty-one days from receipt of the request for reconveyance to reconvey the deed of trust. CAL. CIV. CODE § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here, Plaintiff-Debtor. CAL. CIV. CODE § 2941(b)(1)(B)(ii).

Here, Plaintiff-Debtor completed the plan on April 26, 2016. To date, Defendant has not reconveyed the Fourth Deed of Trust as required by § 2941 within thirty days after the obligation has been satisfied (here being after the completion of the Plan).

Statutory Penalty

The California Legislature has provided for a statutory forfeiture of \$500.00 (expressly stated as a forfeiture in the statute) in connection with the reconveyance of a deed of trust, as follows:

The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

CAL. CIV. CODE § 2941(d). The grounds for the possible violations of California Civil Code § 2941 in connection with this Adversary Proceeding are (as summarized by the court):

- (b)(1) Within thirty calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - (A) execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - (B) The trustee shall execute and record the reconveyance within twenty-one calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and fees as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - (C) The trustee shall deliver a copy of the reconveyance to the beneficiary or its servicing agent, if known.
- (2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within sixty calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

The thirty-day period at issue is for the beneficiary to execute and deliver the original note, deed of trust, and request for reconveyance to the trustee under the deed of trust. Plaintiff-Debtor presents evidence, which is uncontradicted, that as of July 15, 2016, Defendant knew of the bankruptcy plan being completed (Trustee's Final Report and Account having been mailed to Defendant) and that the deed of trust had to be reconveyed.

CONCLUSION

Applying these factors, the court finds that the Fourth Deed of Trust is void, Debtor having completed the Chapter 13 Plan and Defendant having been paid the amount, \$0.00, determined by the court to be the value of Defendant's secured claim, and the Property is held free of such purported interests thereunder. The continued existence of record of the Fourth Deed of Trust will cloud title and restrict Plaintiff-Debtor's full and unfettered use of the real property and any interests therein. The court discussed the effect of a completed Chapter 13 Plan recently and the effect on a secured claim determined by the court pursuant to 11 U.S.C. § 506(a). *See In re Martin*, 491 B.R. 122.

The court finds that the Complaint is sufficient, and the requests for relief requested therein are 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 value Defendant's secured claim to have a value of \$0.00 or regarding confirmation of the Chapter 13 Plan. 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. 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.

CALIFORNIA CIVIL CODE § 2941

Plaintiff-Debtor also seeks an award of \$500.00 pursuant to California Civil Code § 2941, which requires lenders to reconvey deeds of trust when the debt is satisfied.

California Civil Code § 2941(b)(1) imposes an affirmative obligation on the beneficiary (creditor) when the obligation secured by the deed of trust has been satisfied. When no obligation remains, the beneficiary must instruct the trustee under the deed of trust to issue a full reconveyance of the deed of trust. Once the obligation no longer exists, resulting in the lien being extinguished by operation of law, the trustor or mortgagor (debtor) is entitled to a certificate of discharge, the mortgage cancelled or satisfied as of record, and the deed of trust reconveyed.

Here, Defendant failed to have the deed of trust reconveyed after the obligation secured had been satisfied, as required by California Civil Code § 2941(b)(1). Therefore, the violation of that section allows Plaintiff-Debtor to seek the penalty of \$500.00 pursuant to California Civil Code § 2941(d).

RULING

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendant William H. Camp and holds that the deed of trust is void. The court further awards \$500.00 pursuant to California Civil Code § 2941(d).

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 Mercedes Perez (“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 fourth deed of trust, and any interest, lien or encumbrance pursuant thereto, held by William Camp, The Estate of William Camp, William Camp's successors and assigns (“Defendant”) against the real property commonly known as 6 Fourth Ave., Isleton, California, APN 157-0073-010, with the County Recorder for Sacramento County, California, is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant has no interest in the real property pursuant to the Second Deed of Trust.

IT IS FURTHER ORDERED that the debt associated with the fourth deed of trust has been satisfied and fully discharged pursuant to Federal Rules of Bankruptcy Procedure § 4007(a) and (b).

IT IS FURTHER ORDERED that Plaintiff-Debtor is awarded \$500.00 pursuant to California Code § 2941(d).

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney’s fees and costs, if any, allowed by the court shall be enforced as part of the judgment.

Plaintiff-Debtor may seek attorney’s fees and costs as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

FINAL RULINGS

4. [20-20715](#)-E-13 FOUAD MIZYED
[20-2016](#) JL-3 Arasto Farsad
MIZYED V. FAY SERVICING, LLC
ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
3-30-21 [[73](#)]

Final Ruling: No appearance at the May 13, 2021 hearing is required.

**The hearing on the Motion to Dismiss Adversary Proceeding is continued to
11:00 a.m. on Thursday, May 27, 2021.**

5. [15-28536-E-13](#) MATTHEW MCCANDLESS
[20-2121](#) Charles Hastings
CLEVINGER V. MCCANDLESS

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR DECLARATORY
RELIEF FOR CONFIRMATION OF
PLAINTIFF'S INTEREST IN REAL
PROPERTY
6-23-20 [\[1\]](#)

ADVERSARY PROCEEDING CLOSED:
4/19/2021

Final Ruling: No appearance at the May 13, 2021 Pre-Trial Conference is required.

Plaintiff's Atty: Charles L. Hastings
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 6/23/20
Answer: 7/22/20

Nature of Action:
Declaratory judgment

Notes:
[CLH-1] Order Granting Motion for Summary Judgment filed 3/22/21 [Dckt 41]

Judgment for Declaratory Relief Title to Real Property filed 3/31/21 [Dckt 44]

<p>Judgment having been entered on March 31, 2021 (Dckt. 44), the Pre-Trial Conference is concluded and removed from the calendar.</p>
