

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

June 4, 2015 at 1:30 p.m.

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1. [09-44339-E-13](#) GLEN PADAYACHEE MOTION FOR SUMMARY JUDGMENT
[14-2282](#) PLC-2 5-4-15 [40]
PADAYACHEE V. TERRY, III

Tentative Ruling: The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor's attorney on May 4, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Summary Judgment is granted. The First and Second Causes of Action are dismissed.

On September 30, 2014, the Glen Padaychee ("Plaintiff-Debtor") filed the Complaint in this Adversary Proceeding against Thomas J. Terry, III ("Defendant"). Dckt. 1. The Complaint alleges four causes of action: (1) Declaratory relief; (2) Extinguishment of the second trust deed claim; (3) Violation of California Civil Code § 2941(d); and (4) Attorney's fees. Plaintiff-Debtor filed the instant Motion for Summary Judgment on May 4, 2015.

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Dckt. 40. The court summaries the Complaint and Causes of Action as follows:

- I. General Allegations (including First Cause of Action): FN.1.
 - A. Jurisdiction for this Adversary Proceeding arises pursuant to 28 U.S.C. §§ 1334 and 157 (and the reference of bankruptcy matters to this court by the District Court), and that this is a core matter proceeding. The Complaint seeks to enforce the effect of this court's valuation of a secured claim pursuant to 11 U.S.C. § 506(a), confirmation of a Chapter 13 Plan, provision for that secured claim in the Chapter 13 Plan, the court's confirmation order, and Plaintiff-Debtor's rights under federal and state law arising from and relating to the confirmed Chapter 13 Plan.
 - B. On March 12, 2010, the court determined, as a matter of federal law, that the secured claim on Defendant had a value of \$0.00. This claim is secured by the real property commonly known as 9779 Ametrine Court, Elk Grove, California (the "Property").
 - C. Plaintiff-Debtor has completed the Chapter 13 Plan and been granted a discharge.

FN.1. The court includes in the "General Allegations" the allegations made in what is denominated as the "First Cause of Action" for "Declaratory Relief." That First Cause of Action seeks a declaration as between the parties that the court's March 12, 2010 order is a real, enforceable order, and that it really means that Defendant's secured claim has a value of \$0.00. Further, it seeks a declaration that the court's order granting the Plaintiff-Debtor's discharge really means that the Defendant's debt has been discharged.

First, the court does not enter redundant orders or judgments confirming that a prior order or judgment is "really an order of judgment." The party who obtains such order or judgment just enforces the judgment or order. Second, there are no allegations that there is an actual case or controversy (any dispute among the parties) that the court "really" entered the order valuing the secured claim or that the court "really" granted the Plaintiff-Debtor a discharge. There are no allegations that Defendant has ever disputed that the debt was discharged. If such a dispute existed, Plaintiff-Debtor should be enforcing the orders and obtaining a judgment thereon, not merely seeking a declaration that such orders exist.

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- II. Second Cause of Action - Extinguishment of Second Deed of Trust Claim (which appears to be an action to quiet title and obtain a judgment that the deed of trust is not a lien on the Property)
 - A. All preceding paragraphs are incorporated into the Second Cause of Action.
 - B. Plaintiff-Debtor has completed the Chapter 13 Plan.
 - C. Defendant has not reconveyed the deed of trust securing Defendant's claim.

- D. The deed of trust contains an attorneys' fees and costs provision. FN.2.

FN.2. Though not stated in the allegations to this point, it appears to be implicit in the Complaint that: (1) the confirmed Chapter 13 Plan provided for payment of Defendant's secured claim in the amount determined by the court pursuant to 11 U.S.C. § 506(a) and (2) by completing the Chapter 13 Plan Plaintiff-Debtor has paid in full the amount of the secured claim as determined by the court pursuant to 11 U.S.C. § 506(a).

III. Third Cause of Action - Violation of California Civil Code Section 2941(d)

- A. Plaintiff-Debtor incorporates all of the preceding allegations in the Complaint into the Third Cause of Action.
- B. On May 24 3006, [some unstated person] made and delivered an adjustable rate note in the sum of \$85,000.00.
- C. Plaintiff-Debtor delivered a deed of trust to Defendant, which encumbered the Property.
- D. On May 9, 2014, Plaintiff-Debtor completed his Chapter 13 Plan.
- E. Completion of the Chapter 13 Plan required Defendant to reconvey the deed of trust.
- F. Plaintiff-Debtor was granted a discharge on August 25, 2014.
- G. Defendant failed and refused to reconvey the deed of trust. (Only this general statement is made, without any allegations as to the demands made upon Defendant which were "refused.")
- H. Plaintiff-Debtor has been required, by Defendant's conduct, to file this Adversary Proceeding.
- I. California Civil Code § 2941(b)(1) requires that 30 days after an obligation secured by a deed of trust has been satisfied that the beneficiary or assignee shall execute and deliver a full reconveyance.
- J. More than 30 days have passed since [from an unstated date or event] the time began for Defendant to reconvey the deed of trust.
- K. California Civil Code § 2941(d) provides that the Defendant (not having complied with § 2941) shall be liable for all damages cause by the failure, and a statutory penalty of \$500.00.
- L. Plaintiff-Debtor requests judgment for a \$500.00 statutory penalty.

IV. Fourth Cause of Action - Attorneys' Fees

- A. Plaintiff-Debtor incorporates all of the preceding allegations in the Complaint.
- B. Plaintiff-Debtor is entitled by statute (not identified in this Claim for Relief) and contract to recover attorneys' fees.
- C. The note (upon which Defendant's secured claim is based) and the deed of trust securing the claim contain attorneys' fees and costs provisions. (Citing the court to specific paragraphs in the note and deed of trust, which are exhibits to the Complaint.)
- D. Pursuant to California Civil Code § 1717, the attorneys' fees provisions in the note and deed of trust are reciprocal and a basis for Plaintiff-Debtor recovering such fees and costs in this Adversary Proceeding.
- E. California Civil Code § 2971 (without identifying any specific portion thereof) is a statutory basis for prevailing party attorneys' fees for Plaintiff-Debtor.
- F. Plaintiff-Debtor requests the award of reasonable attorneys' fees and costs against Defendant in this Adversary Proceeding.

MOTION FOR SUMMARY JUDGMENT

Plaintiff-Debtor's Motion for Summary Judgment alleges that no material facts are in dispute and Plaintiff-Debtor is entitled to judgment as a matter of law.

First Cause of Action

As to the Plaintiff-Debtor's First Cause of Action for Declaratory Relief, the Plaintiff-Debtor argues that the Defendant admitted in his Answer that the court issued an order valuing his secured claim as \$0.00 and that such order is final and non-appealable. Answer, Dckt. 8, pg. 2, line 12. As such, the Plaintiff-Debtor withdraws the First Cause of Action as there is no issue requiring declaratory relief.

Second Cause of Action

As to the Plaintiff-Debtor's Second Cause of Action for the extinguishment of the second deed claim, the Plaintiff-Debtor states that the Defendant actually caused to be issued and recorded a reconveyance on December 1, 2014. Therefore, the Plaintiff-Debtor states that the Second Cause of Action is moot as to the extinguishing the lien but leaves open the issue of attorney's fees.

Third Cause of Action

In the Motion for Summary Judgment Plaintiff-Debtor states with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bank. P. 7007) the following grounds requesting summary judgment:

- A. For the reasons stated in the Points and Authorities, Plaintiff-Debtor should be granted summary judgment. (On its face, the motion appears to admit that it fails to state with particularity the grounds upon which the relief is requested, but instead directs the court to mine the Points and Authorities and pick from the various citations, quotations, arguments, speculation, and conjecture what "grounds" the court picks for Plaintiff-Debtor, as what the court believes Plaintiff-Debtor would state if Plaintiff Debtor complied with Federal Rule of Civil Procedure 7(b).) FN.3.
- B. Plaintiff-Debtor requests that the court grant \$500.00 in statutory penalties for violating (in an unstated way) California Civil Code § 2941. FN.4.
- C. Further, Plaintiff-Debtor requests an award of attorneys' fees pursuant to the contract and California Civil Code § 2941(d) for Defendant's failure to comply with California Civil Code § 2941. FN.5.

FN.3.

In the Points and Authorities, Plaintiff-Debtor argues that this court in prior cases has ruled that the duty to reconvey commences upon completion of the Chapter 13 Plan. It further argues that 207 days passed from the completion of the plan and the filing of this Adversary Proceeding.

The argument continues to state that the Bankruptcy Noticing Center did not notice Defendant of the completion of the Plan, but did send a notice of the Trustee's Final Report, which included notice that the Chapter 13 Plan had been completed. Plaintiff-Debtor asserts that there was 117 days from the sending the Trustee's Final Report and the commencement of this Adversary Proceeding. Plaintiff-Debtor asserts that June 5, 2014, is a later date from which Defendant had 30 days to reconvey the deed of trust. If this later date is used, 36 days passed from the sending of the Trustee's Final Report and the commencement of this Adversary Proceeding.

Buried in a footnote is a further contention, by which it is asserted that even if the court were to conclude that the Plaintiff-Debtor should have reasonably made a simple demand for the reconveyance, Defendant did not reconvey the deed of trust until 62 days after the commencement of this Adversary Proceeding. Points and Authorities, Footnote 2; Dckt. 44.

FN.4.

Because at least 30 days has lapsed from the time (even using from the commencement of the Adversary Proceeding) the duty to reconvey the deed of trust arose and when it was reconveyed, Plaintiff-Debtor is entitled to recover the \$500.00 statutory penalty. *Id.* p. 6:19 - 7:4.

FN.5.

Plaintiff-Debtor cites the court to California Civil Code § 1717 and the contractual attorneys' fees provisions in the note and deed of trust as one basis for the award of prevailing party attorneys' fees. Plaintiff-Debtor

asserts that he is the prevailing party in that it was only after the filing of the Complaint and the passage of 62 days thereafter that Defendant reconveyed the deed of trust and cleared title to the Property from the lien.

Fourth Cause of Action - Attorneys' Fees

The request for attorneys' fees was based on the then existing provisions of Federal Rule of Bankruptcy Procedure 7008(b) which required the pleading of such request as a separate claim. The Third and Fourth Causes of Action constitute one claim for the recovery of attorneys' fees and costs.

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Defendant filed an opposition to the instant Motion on May 20, 2015. Dckt. 48. The Defendant opposes summary judgment on the grounds that Plaintiff-Debtor has failed to carry his burden of proof in showing that notice of discharge or request to convey was properly provided to Defendant. The Defendant argues that the Plaintiff-Debtor offers no proof that Defendant received notice of the discharge until he filed his answer on October 31, 2015. The Defendant alleges that on November 26, 2014, fewer than 30 days after filing the answer to the complaint, the Defendant released the lien.

Furthermore, the Defendant alleges that Plaintiff-Debtor failed to provide any proof of notice to Defendant instructing him to release the lien prior to the instant Adversary Proceeding being filed. The Defendant argues that this is required by California Civil Code § 2941(b)(1).

Defendant alleges that the following facts remain in dispute:

1. Whether Defendant has violated California Civil Code § 2941(b); FN.6.
2. Which party is the prevailing party; and
3. Whether an award of attorney fees is applicable in this case for either party.

FN.6. The Defendant cites to § 2941(a). This appears to be an error on behalf of the Defendant and therefore the court corrects it to the proper section.

The Defendant argues that Plaintiff-Debtor failed to provide actual notice to the Defendant. The Bankruptcy Notice Center sent notice to PLM Lender Services. The Defendant asserts that they are no longer in a relationship with PLM Lender Services and, therefore, the Defendant did not receive notice of the plan completion until the Plaintiff-Debtor filed the instant Adversary Proceeding. Defendant in his declaration states that when Plaintiff-Debtor served the complaint to PLM Lender Services on October 1, 2014, they contacted the Plaintiff-Debtor to advise him of Defendant's proper address. Dckt. 51. Defendant asserts that PLM Lender Services did not forward the complaint to Defendant. The Defendant states he received the notice of discharge and plan

completion at the same time he received the complaint.

The Defendant asserts that if Plaintiff-Debtor either sent a letter or made a phone call to Defendant concerning the reconveyance, there would have been no need for the instant Adversary Proceeding. The Defendant states that the Plaintiff-Debtor made no effort outside of filing the instant Adversary Proceeding. Defendant asserts that he reconveyed the deed of trust within 30 days of receiving the complaint. Defendant asserts that on November 26, 2014, Defendant submitted the Substitution of Trustee and Full Reconveyance to be recorded with the Sacramento County Recorder. On December 1, 2014, this document was recorded in Book 20141201, Page 0046.

PLAINTIFF-DEBTOR'S REPLY

Plaintiff-Debtor filed a reply on May 27, 2015. Dckt. 53. The Plaintiff-Debtor asserts that there is no "safe harbor" statement requirement that the Plaintiff-Debtor must send to the Defendant for reconveyance.

Plaintiff-Debtor next asserts that Defendant was served on October 6, 2014 and must have received the complaint by October 11, 2014. The Plaintiff-Debtor argues that Defendant never notified the court that he terminated his relationship with PLM Lender Services nor informed the court on how to notify the Defendant. Furthermore, the Plaintiff-Debtor states that in his answer, Defendant admitted that "Thomas J. Terry, III, is a person who regularly conducts business at PLM Lender Services, Inc., 46 North Second Street, Campbell, CA 95008." Dckt. 1, paragraph 14; Dckt. 8, paragraph 14. The Plaintiff-Debtor argues that the statement in Defendant's declaration contradicts his answer. Regardless though, the Plaintiff-Debtor asserts that the Defendant never gave notice on where to properly serve the Defendant following the termination of his relationship with PLM Lender Services.

APPLICABLE LAW

In an adversary proceeding, summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), *incorporated by* Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); 11 James Wm. Moore et al., *Moore's Federal Practice* § 56.11[1][b] (3d ed. 2000) ("Moore").

"[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

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

answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), *incorporated by Fed. R. Bankr. P. 7056.*

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

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

ANALYSIS

First Cause of Action - Declaratory Relief

Pursuant to the Motion and Opposition, the Plaintiff-Debtor argues that the First Cause of Action should be dismissed as the parties are not in dispute requiring declaratory relief. Namely, the Defendant admitted to the court's order valuing the secured claim of Defendant at \$0.00 being a final determination and that the Plaintiff-Debtor completed his plan and has been granted discharge. Therefore, there is no need for declaratory relief.

As such, the court dismisses without prejudice the First Cause of Action.

Second Cause of Action - Extinguishment of the Second Deed of Trust

The Plaintiff-Debtor asserts that the Second Cause of Action should be dismissed because the deed of trust was reconveyed and recorded on December 1, 2014. The Plaintiff-Debtor asserts that the remaining issue is whether attorney's fees are to be awarded and is addressed in the Fourth Cause of Action.

Therefore, the court dismisses without prejudice the Second Cause of Action.

Third Cause of Action - Violation of California Civil Code § 2941(d) and Fourth Cause of Action - Attorney's Fees

Plaintiff-Debtor states that on November 6, 2009 he filed a Chapter 13 bankruptcy case. As of that date, his real property commonly known as 9779 Ametrine Court, Elk Grove, California had two liens encumbering the property:

(1) U.S. Bank's first deed of trust in the amount of \$405,235.61 and (2) Defendant's second deed of trust in the amount of \$85,000.00.

Plaintiff-Debtor states that on or about March 7, 2014, the Plaintiff-Debtor completed his Chapter 13 plan which required the Defendant to reconvey the Deed of Trust on the Property. Plaintiff-Debtor was discharged on August 25, 2014.

According to the Trustee's Final Report and Account in the Plaintiff's bankruptcy case, Case Number: 2009-44339, Debtor's Plan was confirmed on April 20, 2010, and completed on March 7, 2014. Bankr. E.D. Cal. No. 09-44339, Dckt. 191, June 5, 2014. The discharge of Debtor was entered on August 25, 2014. Bankr. E.D. Cal. No. 09-44339, Dckt. 205. Plaintiff states that more than 30 days have passed and Defendants have not reconveyed, and that Plaintiff has been required to file an adversary proceeding.

Here, it appears that Plaintiff-Debtor was entitled to the full reconveyance of the Deed of Trust on the Property. This court has addressed, in detail, the California state law, standard note and deed of trust contractual basis, and possible 11 U.S.C. § 506(d) basis for a creditor having the obligation to reconvey a deed of trust upon a debtor has successfully completed the Chapter 13 Plan which provides for the payment of the secured claim in the 11 U.S.C. § 506(a) determined amount. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case); *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between the Debtor, Defendant, and creditors, there remains no obligation which is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.7. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

FN.7. 4 WITKIN SUMMARY OF CALIFORNIA 9 LAW, TENTH EDITION, § 117, citing California Civil Code § 2939 et seq.; Rest.3d, Property (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d, § 179:511.

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 determined pursuant to 11 U.S.C. § 506(a), that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within 30 days of the obligation secured by a deed of trust having been satisfied, the beneficiary [Defendant] 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 21 days from receipt of the request for reconveyance to

reconvey the deed of trust. Cal. Civ. § 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 the Plaintiff. Cal. Civ. § 2941(b)(1)(B)(ii).

California Civil Code § 2941(d) provides that a violation of Civil Code 2941 shall make the violator liable to the Plaintiff-Debtor for all damages sustained by the Plaintiff-Debtor. As a result, Plaintiff-Debtor requests damages equal to all attorneys fees sustained as a result of bringing an action to enforce California Civil Code § 2941, in addition to a statutory penalty of \$500.00.

Demand and Reconveyance of Deed of Trust

The plain language of California Civil Code § 2941(b) does not require that a "demand" be made or notice given of the beneficiary's and trustee's duties to reconvey the deed of trust. Most likely the California Legislature did not include such a provision because the trustees under deeds of trust are generally commercial companies, each with a phalanx of attorneys to make sure they comply with the law. Such trustee's under the deed of trust have duties they owe to the beneficiary.

While not included as a condition for the obligation to reconvey, whether a notice was given or demand made could well be relevant for what constitutes "reasonable" or "necessary attorneys" fees. This court is confident that the California Legislature did not create this provision as a trap for beneficiaries and trustees when the Bankruptcy Code inserts itself in the process and redetermines that debt secured by the deed of trust to be \$0.00 or some other less than full obligation amount pursuant to 11 U.S.C. § 506(a). The Bankruptcy Code, and the somewhat unique (in the eyes of a state law transactional attorney or lay person) method by which state law rights are modified, destroyed, or turned on their head is not an opportunity for a debtor and debtor's counsel to lie in the weeds, not reasonably and rationally acting to assert rights, and to manufacture otherwise unnecessary legal fees.

Here, Defendant provides the following testimony under penalty of perjury:

- a. Defendant is an individual who conducted business as PLM Lender Services, Inc. until April of 2010.
- b. PLM Lender Services, located at 46 North Second Street, Campbell, California, was not Defendant's address for service of process in October 2014.
- c. Plaintiff-Debtor served the Complaint on PLM Lender Services on October 1, 2014, at which time PLM Lender Services advised Plaintiff-Debtor of Defendant's address. PLM Lender services did not forward the Complaint to Defendant.
- d. Defendant's attorney of record in the bankruptcy case was not served with the Complaint. (No declaration of the attorney is provided.)
- e. Defendant testifies that he received notice that the plan had

been completed and the discharge when he was served with the Complaint, and he filed an Answer in pro se on October 31, 2014.

- f. Fewer than 30 days lapsed from being served with the Complaint and Defendant submitting the reconveyance of the deed of trust.

Declaration, Dckt. 51.

The Plaintiff-Debtor argues that the Defendant, at the earliest, was noticed through PLM Lender Services of the plan completion on March 7, 2014. The Plaintiff-Debtor argues that the Defendant never gave the court or Plaintiff-Debtor notice that PLM Lender Services was no longer an agent of Defendant. The latest the Plaintiff-Debtor states Defendant was given notice of the plan completion was October 11, 2014 after service of the complaint on October 6, 2014, allowing 5 days for mail. The Plaintiff-Debtor argues that he had no affirmative duty to request the reconveyance and that the notice from the Bankruptcy Notice Center should have been sufficient to trigger the Defendant's obligation to reconvey the deed of trust.

The Defendant argues that he was never noticed of the plan completion until service of the complaint on him. The Defendant states that his relationship with PLM Lender Services ended as of April 2010. Once the Defendant received notice, the Defendant asserts that he reconveyed the deed of trust within 30 days of filing his answer.

The undisputed evidence presented to the court is that at the latest Defendant had notice of the plan being completed and a demand to reconvey when he was served with the Complaint, which was mailed on October 6, 2014. Defendant has chosen not to provide any testimony as to when he received the Complaint or contended that delivery of it was unusually delayed from what is the normal United States Postal Service prompt deliver of the mail.

The Certificate of Service of the Complaint on Defendant at what he asserts is his correct address was made on October 6, 2014 by depositing in the mail. Certificate of Service, Dckt. 7. October 6, 2014 was a Monday. Fed. R. Bankr. P. 9006(e). When there is a requirement to act within a prescribed period when notice is provided by mail, then three days are added after the prescribed period. *Id.*, 9006(f).

Rule 9006(e) does not stand as an aberration or a unique Bankruptcy Rule concept. It is found under the interpretation and application of the common law Mailbox Rule applied in federal court.

The three-day delivery period is one also commonly used in Federal Court for application of the Mailbox Rule. As discussed by the Ninth Circuit Court of Appeals in *Dandino, Inc. V. United States DOT*, 729 F.3d 917, 921-922 (9th Cir. 2013):

Generally, "[u]nder the common law Mailbox Rule, proper and timely mailing of a document raises a rebuttable presumption that it is received by the addressee." *Mahon v. Credit Bureau of Placer Cnty. Inc.*, 171 F.3d 1197, 1202 (9th Cir. 1999) (internal quotation marks and citations omitted). But even if we presume that a posted document ultimately

arrived, that does not tell us when we presume it to have arrived. Since posted materials almost never arrive at their intended destination on the day they are mailed, we must consider relevant authorities to determine what presumptions may apply regarding when a posted document is presumed to have been received.

The United States Postal Service's regulations state that first class mail sent within the contiguous United States will arrive within three days. 39 C.F.R. § 121, App. A. We and other circuits have relied on this assumption in our case law. See, e.g., *Mendez v. Knowles*, 556 F.3d 757, 765 (9th Cir. 2009) ("[T]he Postal Service advises its customers that first-class mail takes one to three days for delivery"); *Lindemood v. Comm'r of Internal Revenue*, 566 F.2d 646, 647 (9th Cir. 1977) ("[T]he normal delivery time for first-class mail sent from San Francisco to Washington, D. C., is three days"); see also *Cook v. Comm'r of Soc. Sec.*, 480 F.3d 432, 436 (6th Cir. 2007) ("[T]he usual delivery time for first-class mail is one to three days[.]"). Moreover, the United States Supreme Court has also assumed that a right-to-sue letter from the Equal Employment Opportunity Commission (EEOC) was received three days after mailing. *Baldwin Cnty. Welcome Ctr. v. Brown*, 466 U.S. 147, 148 n.1, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984).

Similarly, the rules of the respective federal courts all assume that mail will take three days to arrive at its destination. Those rules provide that when a party must act within a certain number of days of service of a document, and that document is served by mail, the deadline is extended by three days. Fed. R. App. P. 26(c); Fed. R. Civ. P. 6(d); Fed. R. Crim. P. 45(c); Fed. R. Bankr. P. 9006(f). Just as we conclude that it was Congress's intent that a party have a full 30 days to petition for review upon actual notice of a final Agency order, the rules of procedure are written to allow responding parties the full benefit of the applicable time limits after receiving the document being served.

Applying this Rule, the court determines that no later than October 9, 2014, Defendant clearly had notice that the bankruptcy plan had been completed and that Plaintiff-Debtor was demanding that the deed of trust be reconveyed. Defendant also had the name of Plaintiff-Debtor's counsel and was aware that Plaintiff-Debtor was seeking to enforce his rights through the Adversary Proceeding, contending that Defendant had not fulfilled his contractual and statutory obligations.

Defendant further testifies that he filed his Answer to the Complaint on October 31, 2015. The Answer, in pro se, prays that the court dismiss the Complaint and allow Defendant to complete a reconveyance of the deed of trust upon verification that the Plaintiff-Debtor received a discharge. Alternatively, Defendant requests that the court enter a judgment doing Defendant's work and issue a judgment clearing title to the Property, but deny attorneys' fees, costs, or statutory penalty. Dckt. 8.

Defendant does not dispute that on November 26, 2014, he submitted a substitution of trustee and full reconveyance to the Sacramento County Recorder to reconvey the deed of trust. Defendant's Statement of Undisputed Fact No. 4; Dckt. 49. This was 47 days after undisputably having notice of the bankruptcy plan being completed and a demand for reconveyance from Plaintiff-Debtor (service of the Complaint).

Statutory Penalty Pursuant to California Civil Code § 2941(d)

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:

(d) The violation of this section shall make the violator 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. § 2941(d). The grounds for the possible violations of California Civil Code § 2914 in connection with this Adversary Proceeding are (as summarized by the court):

- I. Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - 1. 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 21 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.
- II. If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 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. § 2924(b)

The 30-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 October 9, 2014, Defendant knew of the bankruptcy plan being completed and a "demand" by Plaintiff-Debtor that the deed of trust

had to be reconveyed.

Defendant offers no evidence that he took any action to provide the documents or demand the reconveyance within the 30-day period. His testimony that "only thirty (30) days elapsed between the time of my receipt of the complaint and until the date I submitted the reconveyance of the lien" is not supported by the evidence presented. The Answer to the Complaint was filed 21 days after receipt of the Complaint. This 21 day period is consistent with the 30 day deadline to respond to the Complaint which runs from the September 30, 2014 issuance of the Summons in this Adversary Proceeding. Summons, Dckt. 3. Filing the Answer on October 31, 2014 is the thirty-first day after the issuance of the Summons. The evidence provided by Defendant shows that the 30-day period referenced is from the filing of the Answer, not receipt of the Complaint. FN.8.

FN.8.

Defendant provides evidence that when he received the Complaint he prepared and filed an Answer. Declaration ¶ 5, Dckt. 51. He then testifies that "[f]ewer than thirty (30) days elapsed between the time of my receipt of the complaint [for which no testimony is provided by Defendant as to such date of receipt] and until I submitted the reconveyance of the lien." *Id.*, ¶ 6. However, it is undisputed that reconveyance was not "submitted" until November 26, 2014. Defendant's Undisputed Fact No. 4, Dckt. 49. That is 26-days after the Defendant filed his answer and 47-days after the court computes Defendant having received the Complaint. The undisputed evidence establishes that Defendant did not "submit" the reconveyance, or any other document or demand, within 30-days of having knowledge that the obligation secured by the deed of trust had been satisfied.

Thirty days prior to November 26, 2014, was Monday October 27, 2014. Defendant does not testify that he received the Summons and Complaint on October 24, 2014. In fact, he provides no testimony as to when he received it or provide the court with any basis for not accepting the presumption that service by mail is completed within three days. October 6, 2014, was a Monday, so three days equates to three business days during which the United States Postal Service was delivering mail.

Therefore, based on the foregoing, Plaintiff-Debtor is entitled to and is granted summary judgment against Defendant-Debtor in the amount of \$500.00 for the statutory forfeiture mandated by California Civil Code § 2941(d). Plaintiff-Debtor has not provided evidence of, nor has sought, the award of any actual damages, and the court awards \$0.00 of actual damages pursuant to Plaintiff's motion for summary judgment.

As to the request for attorney's fees, Plaintiff-Debtor has provided a contractual basis for the award of "reasonable" and "necessary" attorneys' fees and costs. The Plaintiff-Debtor shall file a costs bill and motion for attorneys' fees and costs, if any, on or before June 22, 2015. Any motion for attorneys' fees shall be in a format similar to that use when professionals seek fees in a bankruptcy case, including providing the court with a task billing analysis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Therefore, based on the discussion *supra*, the court makes the following findings of fact from the evidence presented for which there is no genuine issue of material fact and the conclusions of law drawn therefrom:

1. Plaintiff-Debtor commenced his Chapter 13 bankruptcy case, No. 09-44339 ("Bankruptcy Case"), on November 6, 2009.
2. On March 12, 2010, the court issued an order pursuant to 11 U.S.C. § 506(a) determining that Defendant's secured claim, for which the collateral was the Property, had a value of \$0.00, and the balance of Defendant's claim was a general unsecured claim. Exhibit 1 to Complaint, Dckt. 1; Order, Dckt. 42, Case No. 09-44339;
3. Plaintiff-Debtor confirmed his Chapter 13 Plan on April 20, 2010. Confirmation Order, Dckt. 57 in the Bankruptcy Case.
4. Plaintiff-Debtor completed all payments to his confirmed Chapter 13 Plan on March 7, 2014. Defendant's Undisputed Fact No. 2, Dckt. 49; Plaintiff's Undisputed Fact No. 9; and Trustee's Final Report, Dckt. 191 in Bankruptcy Case, with no objection to Final Report having been filed.
5. Plaintiff-Debtor received his Chapter 13 discharge on August 25, 2014. Case No. 09-44339, Dckt. 205.
6. At the latest, Defendant had notice and knowledge that Plaintiff-Debtor had completed his Chapter 13 Plan and was demanding reconveyance of Defendant's deed of trust recorded against the Property as of October 9, 2014. Certificate of Service filed on October 6, 2014, Dckt. 7; Fed. R. Bankr. P. 9006(f); application of Mailbox Rule; Defendant's Answer having been filed on October 31, 2014, Dckt. 9; Defendant's Declaration ¶ 5, Dckt. 51; and Defendant's failure to provide any testimony of receipt of the Complaint on any other or later date.
7. As of October 9, 2014, Defendant was on notice that the obligation secured by the deed of trust was satisfied and that Plaintiff-Debtor was demanding reconveyance of the deed of trust.
8. Defendant reconveyed the deed of trust by delivering it to the Sacramento County Recorder's Office on November 26, 2014, which reconveyance was recorded on December 1, 2014. Reconveyance (dated November 26, 2014), Exhibit 1, Dckt. 42; Defendant's Undisputed Fact No.4, Dckt. 49; and Plaintiff's Undisputed Fact No. 10, Dckt. 43.
9. No evidence has been provided that Defendant took any other act or action with respect to the reconveyance of the deed of trust prior to the Reconveyance dated November 26, 2014. Plaintiff-Debtor's Declaration, Exhibits, and Statement of Undisputed Facts, Dckts. 46, 42, 43, 45, and ; Defendant's Declaration and Statement of Undisputed Facts, Dckts. 51 and 49.
10. Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Adversary Proceeding is a core matter arising under Title 11, including

11 U.S.C. §§ 506(a) and 1325. 28 U.S.C. § 157(b)(2)(K), (L), and (O), and as consented to by the parties in the Complaint and Answer.

11. Defendant's testimony that "Fewer than thirty (30) days elapsed between the [unstated date] time of my receipt of the complaint and until the date I submitted the reconveyance of the lien" does not rebut the presumption of delivery under the Mailbox Rule. Fed. R. Evid. 301.

12. The court's valuation of Defendant's secured claim having a value of \$0.00 is a final order and upon the completion of Plaintiff-Debtor's plan is a final and binding determination between the parties.

13. Upon completion of the Chapter 13 Plan and the determination that the obligation secured by the deed of trust has a value of \$0.00 being final and binding, the deed of trust securing the obligation was void as a matter of California law.

14. There being \$0.00 to be secured by the deed of trust, the obligation secured thereunder was "satisfied" as that term is used in California Civil Code § 2941.

15. As of October 9, 2014, Defendant's obligation to reconvey the deed of trust encumbering the Property pursuant to California Civil Code § 2941(b) was known by Defendant, or Defendant had sufficient notice of his obligations to act in a prompt and responsible manner consistent with the statutory obligations created by the California Legislature.

16. Defendant failed to execute and deliver to the trustee under the deed of trust, the deed of trust, the request for reconveyance, and other documents necessary to reconvey the deed of trust.

17. Defendant acted to reconvey the deed of trust on March 26, 2014, which was 47 days after having notice that the obligation secured by the deed of trust had been satisfied.

18. The provisions of California Civil Code § 2941(d) for a \$500.00 forfeiture by a beneficiary who fails to act to reconvey a deed of trust after having knowing that the obligation has been satisfied is a mandatory award of statutory damages, the California Legislature stating in the statute, "The violation of this section shall make the violator liable to the person affected by the violation . . . and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

19. Plaintiff is entitled to and is granted summary judgment against Defendant-Debtor in the amount of \$500.00 for the statutory forfeiture mandated by California Civil Code § 2941(d).

20. Plaintiff has not provided evidence of, nor has sought, the award of any actual damages, and the court awards \$0.00 of actual damages pursuant to Plaintiff's motion for summary judgment.

21. Plaintiff has provided both a contractual basis for the award of "reasonable" and "necessary" attorneys' fees and costs. The Plaintiff shall file a costs bill and motion for attorneys' fees and costs, if any, on or before June 22, 2015. Any motion for attorneys' fees shall be in a format

similar to that use when professionals seek fees in a bankruptcy case, including providing the court with a task billing analysis. FN.9.

FN.9.

The provision that Plaintiff-Debtor references in the Second Deed of Trust states the following, in relevant part:

18. Borrower's Right to Reinstate. . . (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, includin, but not limited to, reasonable attorneys' fees. . .

Dckt. 1, Exhibit B.

In addition, the Promissory Note evidencing the obligation secured by the Second Deed of Trust provides an additional contractual attorneys' fees provision. In the event of a default, under the Note or Second Deed of Trust, Plaintiff is obligated to pay reasonable costs, including attorneys' fees and expenses relating to any bankruptcy or civil proceeding.

22. The court incorporates into this section entitled Findings of Fact and Conclusions of Law all such other additional finds and conclusions stated by the court in this ruling.

CONCLUSION

Dismissal without prejudice of the First and Second Causes of Action, granting summary judgment for the Plaintiff-Debtor on the Third Cause of Action, all claims asserted in the Complaint are resolved by this Motion. The Fourth Cause of Action is a claim for attorneys' fees, which shall be the subject of a further post-judgment motion for allowance of fees and costs, which shall be filed and served on or before June 22, 2015.

The Motion is granted and judgment shall be entered for Plaintiff as provided in the forgoing paragraph.

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

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

The Motion for Summary Judgment filed by Glen Padaychee, Plaintiff-Debtor, against Thomas J. Terry, III, the Defendant, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and judgment shall be entered for Glen Padaychee, Plaintiff-Debtor, and

against Thomas, J. Terry, III, Defendant, on the Third Cause of Action in the amount of \$500.00 for the statutory forfeiture pursuant to California Civil Code § 2941(d).

IT IS FURTHER ORDERED that the First and Second cause of action are dismissed without prejudice, as causes of action, but continue as allegations in the Complaint incorporated into the Third and Fourth Causes of Action.

IT IS FURTHER ORDERED that the Fourth Cause of Action is one for attorneys' fees, pleaded pursuant to former Federal Rule of Bankruptcy Procedure 9008(b) which required a separate claim in the Complaint for attorneys' fees. This claim for attorneys's fees and costs shall be addressed pursuant to a post-judgment motion, filed and served on or before June 22, 2015, requesting attorneys' fees, if any, as provided in Federal Rule of Bankruptcy Procedure 5054(b)(2).

IT IS FURTHER ORDERED that the First and Second Causes of Action are dismissed.

Counsel for Plaintiff-Debtor shall lodge with the court a proposed judgment consistent with this ruling on or before June 12, 2015. The proposed judgment shall expressly state that any attorneys' fees and costs awarded by the court shall be enforced as part of this judgment.

2. [09-40854-E-13](#) RALPH SNODGRASS
[15-2061](#) JMW-1
SNODGRASS V. GOLDEN 1 CREDIT
UNION

MOTION TO DISMISS ADVERSARY
PROCEEDING
4-13-15 [7]

Tentative Ruling: The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 13, 2015. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is granted as to the First and Second Causes of Action. The Motion to Dismiss Adversary Proceeding is denied as to the Third and Fourth Cause of Action.

Golden 1 Credit Union ("Defendant") filed the instant Motion to Dismiss the Complaint on April 13, 2015. Dckt. 7. The court set the Motion for hearing at 1:30 p.m. on June 4, 2015 because the Defendant failed to properly notice and set the hearing. Dckt. 15.

On March 19, 2015, the Ralph Anthony Snodgrass ("Plaintiff-Debtor") filed the instant Complaint against Defendant. Dckt. 1. The Complaint alleges four causes of action: (1) Declaratory relief; (2) Extinguishment of the second

trust deed claim; (3) Violation of California Civil Code § 2941(d); and (4) Attorney's fees.

MOTION TO DISMISS

The Defendant begins by alleging that the Plaintiff-Debtor filed the instant complaint just six days after the Plaintiff-Debtor received his discharge. The Complaint alleges that Defendant failed to timely reconvey title to Plaintiff-Debtor within 30 days of October 15, 2014, which was the date that the Chapter 13 Trustee filed a "Notice to Debtor of Completed Plan Payments and of Obligation to File Documents." FN.1.

FN.1.

The court notes that this Notice to Debtor of Completed Plan states:

- A. Subject to filing a final report and account, the Trustee has determined that Debtor has completed the Plan payments. (This appears to state that this Notice is a "preliminary notice" and that the Trustee will only make a final statement that the plan has been completed upon issuance of a final report.)
- B. The notice is given by the Trustee to begin the court's review of whether debtor is entitled to a Chapter 13 discharge.
- C. The Chapter 13 Trustee's final report and account will be filed only after all disbursements made to creditors have been negotiated.
- D. Creditors will have an opportunity to object to the final report.

Case No. 09-40854, Dckt. 50.

On January 14, 2015, the Bankruptcy Noticing Center sent the Notice of Trustee's Final Report and Account, and Order Fixing Deadline for Objection Thereto. Dckt. 64. This Notice advises creditors that they have 33 days from the January 14, 2015 date of the notice to file an objection to the Trustee's final report and account, which includes the Trustee's final determination that the plan has been completed.

While Plaintiff-Debtor is fixated on the what appears to be a preliminary determination by the Trustee that the plan has been completed, it appears that at the earliest a conclusion that the plan has been completed would be February 16, 2015, the thirty-third day after the January 14, 2015 Final Report.

The Defendant states in the Motion the following grounds upon which the dismissal is requested: FN.2.

- 1. Plaintiff-Debtor filed the Complaint just six days after receiving his discharge. [Defendant does not provide the court with the date of the discharge in making this allegation or provide the court with information to put this in context of

the alleged violation]. The court notes that this Complaint was filed on March 19, 2015, so presumably Defendant is asserting that the discharge was entered on March 13, 2015.

2. On November 11, 2014, nearly a month after the Trustee's Notice, Plaintiff-Debtor conducted a "due diligence review" and realized that Defendant was never properly served with the Plaintiff-Debtor's Motion to Value Defendant's Collateral back in 2009.
3. The Plaintiff-Debtor filed a new motion [Defendant not stating the date in this allegation] to ensure the Defendant was served.
4. The Defendant argues that Plaintiff-Debtor never said anything about Defendant's alleged deadline to reconvey title to property which the Plaintiff-Debtor asserts would have been required at the same time Defendant received the November 2014 motion to value Defendant's secured claim.
5. On December 12, 2014, the court granted Plaintiff-Debtor's Motion to Value Defendant's secured claim.
6. Plaintiff-Debtor failed to timely file the documents specified in the Trustee's October 15, 2014 Notice to Debtor of Completed Plan Payments and Obligation to File Documents (Dckt. 50, 09-40854).
7. The bankruptcy case was closed without the entry of a discharge on February 18, 2014.
8. The court reopened Plaintiff-Debtor's bankruptcy case and a Notice of Intent to Enter Chapter 13 Discharge was electronically sent to Defendant on February 24, 2015. Though not stated in the Motion, the court notes that,
 - a. The motion to reopen bankruptcy case was filed on February 21, 2015. Case No. 09-40854, Dckt. 72 and 74.
 - b. The order reopening the case was entered on February 23, 2015. *Id.*, Dckt. 74.
9. Plaintiff-Debtor's counsel has repeatedly confirmed in other adversary proceedings that the requirement to reconvey the deed of trust does not begin to run until both the completion of a Chapter 13 Plan and entry of a discharge. [For this proposition of repeated representations, Defendant cites the court to paragraphs 16 and 51 of the Complaint in this Adversary Proceeding.] FN.3
10. Defendant internally initialized the reconveyance deed before the Complaint was filed, and then finalized, notarized, and sent it for recording on March 25, 2015, which is within 30 days of the Court's Notice of Intent to Enter Discharge and 12 days of the entry of Plaintiff-Debtor's discharge.

FN.2. The court makes several observations about the "Motion." First, the Motion must comply with Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 9013 and state the grounds with particularity in the Motion itself. Further, under Local Bankruptcy Rule 9013-1 and the Revised Guidelines for Preparation of Documents, the motion is a separate pleading, from the points and authorities, which is a separate pleading from each declaration, which is a separate pleading from the exhibits document. Here, Defendant has created a "Mothorities," in which such grounds may well be hidden between extensive citations, quotations, arguments, speculation, and conjecture. The court accepts as the Rule 7(b) grounds stated with particularity those stated on pages 1, 2, and through line 10 on page 3 of the Motion. The balance appears to be the extensive citations, quotations, arguments, speculation, and conjecture of Defendant.

The court also notes that Defendant makes *liberal use of various highlights and font changes*, apparently for emphasis in focusing the court on critical points. Such techniques have the opposite effect, making the pleading more difficult to read and creating the impression that the pleading is of little merit and an effort is being made to distract the court from the substance of the arguments.

FN.3. For the contention that Plaintiff-Debtor's counsel has repeatedly stated that the reconveyance need not occur until the debtor has *both* [emphasis in original] the Chapter 13 Plan has been completed *and received a discharge* [emphasis in original], Defendant cites the court to Exhibit 9, ¶¶ 16 and 51 of the Request for Judicial Notice. Defendant filed its Request for Judicial Notice on April 13, 2015. Dckt. 8. The Exhibit 9 to the Request for Judicial Notice is a copy of the Complaint in this Adversary Proceeding. Paragraph 16 of the Complaint states, "16. Plaintiff alleges that the real Property became property of the bankruptcy estate upon the filing of the petition which commenced the underlying chapter 13 case." *Id.*, p. 41. There is no paragraph 51 in Exhibit 9.

On May 7, 2015, Defendant filed a Supplemental Request for Judicial Notice. Dckt. 13. This was 24 days after filing the Request for Judicial Notice. The Supplemental Request for Judicial Notice repeats the numbering sequence for the judicial notice documents, creating double Exhibits 1, double Exhibits 2, double Exhibits 3, and double Exhibits 5. Interestingly, buried in very small type at the bottom of page 6 of Defendant's Reply filed on May 7, 2015, is the statement, "Exhibit 4 to the SRJN is the complaint referenced in Golden 1's motion and replaces Exhibit 8 to the RJN." Defendant failed to file an errata or otherwise promptly provide the court with notice that its original Request for Judicial Notice was in error.

**Defendant Asserts that the Federal Court Lacks
Jurisdiction to Determine the Effect of the Confirmed
Plan and Enforcement of Rights Relating Thereto**

Though not stated in the Motion, Defendant's Points and Authorities first argues that the court lacks subject matter jurisdiction to hear the Complaint and determine the effect of the confirmed plan, the court's order

issued pursuant to 11 U.S.C. § 506(a), the treatment of claims and liens under the confirmed plan, and the status of property upon completion of the confirmed plan. Defendant argues that since the court determined Plaintiff-Debtor's bankruptcy case has been fully administered and discharged the Chapter 13 Trustee on February 17, 2015, there is no remaining proceedings "arising under," "arising in," or "related to" the Bankruptcy Code. 28 U.S.C. §§ 151, 157, and 1334(b). The Defendant argues that state court can properly and timely adjudicate these matters so, even if the court finds there is jurisdiction, the court should abstain.

The court will address this contention as to subject matter jurisdiction below.

Defendant Asserts that the Plaintiff-Debtor Failed to State a Claims

The Defendant then argues that the Plaintiff-Debtor failed to state a claim and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

As to the First Cause of Action for Declaratory Relief, the Defendant argues that the Plaintiff-Debtor has no standing and no injury in fact to support a claim for declaratory relief. The Plaintiff-Debtor admits the court's order valuing Defendant's secured claim at \$0.00 is a "final non-appealable order." Since the Defendant reconveyed the deed of trust already, there is no need for declaratory relief.

Furthermore, the Defendant argues that Plaintiff-Debtor's claim for declaratory relief pursuant to Fed. R. Bankr. P. 4007(a)-(b) for "a determination that the debt has been fully discharged and any security interest voided," has no factual allegations to support a dischargeability determination. Defendant argues that Plaintiff-Debtor does not have a private right of action to enforce an alleged discharge violation against Defendant by adversary proceeding. The Defendant states that the proper method would be by motion under the court's contempt powers.

As to the Second Cause of Action to void Defendant's lien, the Defendant argues that since the deed of trust has already been reconveyed, it is moot.

As to the Third Cause of Action for violation of California Civil Code § 2941(d), Defendant argues that the Plaintiff-Debtor prematurely filed the instant Adversary Proceeding because the California Civil Code § 2941 claim was not ripe since it was filed before 30 days ran from the bankruptcy notice or Plaintiff-Debtor's discharge. The Defendant argues that Plaintiff-Debtor's counsel has argued that the requirement to reconvey does not begin to run until Chapter 13 debtor has both completed the plan and received discharge. Lastly, the Defendant argues that the Plaintiff-Debtor offers no evidence to support his factual allegations.

As to the Fourth Cause of Action for attorney's fees, the Defendant argues that the request is contrary to Ninth Circuit law. The Defendant argues that Plaintiff-Debtor cannot factually allege his perceived entitlement to attorneys' fees by statute or contract following Defendant's timely reconveyance and reported full-satisfaction of the debt. The Defendant argues that there is nothing in California Civil Code § 2941 that gives Plaintiff-

Debtor's a statutory right to attorneys' fees.

PLAINTIFF-DEBTOR'S OPPOSITION

The Plaintiff-Debtor filed an opposition to the instant Motion on April 30, 2015. Dckt. 10.

After providing an alleged time frame of events, the Plaintiff-Debtor argues that the court has jurisdiction to hear the case. The Plaintiff-Debtor asserts that the issue in the instant Adversary Proceeding is the treatment of a wholly unsecured creditor with a security interest who has filed a claim in this case, the court's valuation of the creditor's claim, the timing of when the security interest is deemed satisfied, and its removal. The Plaintiff-Debtor argues that this falls within the jurisdiction of the court.

As to the First Cause of Action, the Plaintiff-Debtor asserts that there is an actual controversy over whether or not the deed of trust held by Defendant is void and whether Plaintiff-Debtor is entitled to a release of that lien within 30 days of plan completion. Plaintiff-Debtor argues that he needs an order that the deed of trust is void and that the Plaintiff-Debtor is entitled to a release of that lien.

The Plaintiff-Debtor also argues as an aside that plan confirmation modified the contract between the parties and that the order valuing Defendant's claim is final and that the order confirming the plan bound the parties.

As to the Second Cause of Action, the Plaintiff-Debtor states that Defendant has reconveyed the deed of trust. The Plaintiff-Debtor argues that the relief requested was based on the mechanism that voids the lien is plan completion, not discharge. The Plaintiff-Debtor states the remaining issue is whether attorney's fees are to be awarded. The Note contains an attorney's fees provision.

As to the Third Cause of Action, the Plaintiff-Debtor asserts that completion of the Chapter 13 plan and payment of the value in the collateral securing the claim satisfies the lien. As such, the Plaintiff-Debtor argues that the creditor is required under the terms of the note, deed of trust, and applicable state law to reconvey the deed of trust. The Plaintiff-Debtor argues that the Defendant did not file the reconveyance until 129 days after the plan was completed. The Plaintiff-Debtor states that since the reconveyance has taken place, the only remaining issue is the statutory damages and the attorney's fees.

The Plaintiff-Debtor also clarifies the Plaintiff-Debtor's counsel's prior positions that the reconveyance is triggered at the time of discharge and plan completion. The Plaintiff-Debtor states that the reason the Plaintiff-Debtor's counsel took that position in previous cases is because it was a provision in the plan. Here, the Plaintiff-Debtor argues there was no such provision and so it is the time of plan completion that controls.

Lastly, addressing the Fourth Cause of Action for attorney's fees, the Plaintiff-Debtor argues that the separate cause of action is proper under Fed. R. Bankr. P. 7008(b) as well as the fact that the court has jurisdiction over the cause of action. The Plaintiff-Debtor argues that the Ninth Circuit has

found that even if there is a void contract, such as the deed of trust at issue here, the prevailing party is entitled to attorney's fees when the underlying contract contained an attorney's fees provision pursuant to California Civil Code § 1717.

The Plaintiff-Debtor argues that he is the prevailing party in the instant Adversary Proceeding because the reconveyance was not timely provided.

The Plaintiff-Debtor requests that if the court finds that the complaint is lacking, that he is given the opportunity to amend the complaint.

DEFENDANT'S REPLY

The Defendant filed a reply on May 7, 2015. Dckt. 12.

After providing a time line of events, the Defendant first argues that the court lacks jurisdiction. The Defendant argues that Plaintiff cannot establish standing, arguing the following: (1) Plaintiff's first claim for declaratory relief fails because there is no dispute over the Plaintiff's discharge or Defendant's security interest; (2) Plaintiff admits the second claim for a deed voiding Defendant's second deed of trust is "futile and moot"; (3) Plaintiff's third claim for violation of California law was not ripe when filed, is now moot, and can be properly considered by California courts; and (4) Plaintiff's fourth claim for ancillary attorney's fees is premised entirely upon arguments that are all inapposite to the facts.

The Defendant argues that the complaint does not involve any matters that deal with claims, plan treatment, compliance with the plan, or compliance with the court's orders.

The Defendant next argues that the triggering event for deed reconveyance was the court's notice and not the trustee's notice to the debtor. See *Luchini v. JP Morgan Chase Bank, N.A.*, 511 B.R. 664 (Bankr. E.D. Cal. 2014).

APPLICABLE LAW

28 U.S.C. § 1334 - JURISDICTION

Federal court jurisdiction in bankruptcy cases is established pursuant to 28 U.S.C. § 1334(a), which provides that the United States District Court shall have original and exclusive jurisdiction over all cases under title 11 (the Bankruptcy Code). Congress further provided that the United States District Courts shall have original, but not exclusive, jurisdiction over all civil proceedings arising under title 11 or arising in or related to a case under title 11. 28 U.S.C. § 1334(b). This is a very broad grant of jurisdiction, often needed to address the various matters relating to a bankruptcy case in an expeditious manner to allow for the proper administration of the bankruptcy estate.

Congress then created the bankruptcy courts, which are part of the United States District Courts, 28 U.S.C. § 151, as a specialized court to allow for the sufficient prosecution of bankruptcy and bankruptcy related cases. Each United States District Court is empowered to transfer any and all cases under title 11 and any or all proceedings arising under title 11 or arising in

or related to a case under title 11 to a bankruptcy judge in that district. The United States District Court for the Eastern District of California has so referred all such matters to the bankruptcy judges. E.D. Cal. Gen. Orders 182, 223.

Bankruptcy judges are empowered to determine all cases under title 11 and enter final judgments and orders in all core proceedings arising under title 11 or arising in a case under title 11. 28 U.S.C. § 157(b)(1). Core proceedings are generally defined in 28 U.S.C. § 157(b)(2), and by their nature are matters for which Congress has created rights and remedies under the Bankruptcy Code. Bankruptcy jurisdiction extends to four types of title 11 matters: cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See *Stoe v. Flaherty*, 436 F.3d 209, 216 (3rd Cir. 2006). A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise only in the context of a bankruptcy case.'" *Id.* A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate." *Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.)*, 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988)).

Matters other than a case under title 11, or arising under title 11 or in a case under title 11 are referred to as "related to matters." These matters arise under nonbankruptcy law and are only before the bankruptcy judge (rather than general trial courts such as the United States District Court and California Superior Court) because a bankruptcy case has been filed. A bankruptcy judge hearing and deciding a related-to matter raises Constitutional issues as to the exercise of the federal judicial power which resided in the judiciary under Article III of the United States Constitution. See *Stern v. Marshall*, 131 S. Ct. 2594 (2011), for a discussion of the exercise of federal court powers and the scope of an Article I judge's ability (such as a bankruptcy judge) to enter final judgments and orders on related to matters.

Congress has addressed the Constitutional issue of an Article I judge exercising federal-court power for related to matters in 28 U.S.C. § 157(c)(1) and (2). This provides that for related to matters the bankruptcy judge shall either (1) hear the matter and make proposed findings of fact and conclusion of law to the district court judge, who shall review them *de novo*, or (2) if the parties consent, the bankruptcy judge shall issue the final judgment and orders in the related to matter. See *Executive Benefits Insurance Agency v. Arkison*, ___ U.S. ___, 189 L.Ed. 2d 83, 2014 U.S. LEXIS 3993 (2014), affirming the *de novo* review procedure provided in 28 U.S.C. § 157(c)(1).

With respect to post-confirmation jurisdiction of the federal courts, the Ninth Circuit Court of Appeals addressed the issue in *Wilshire Courtyard et al v. California Franchise Tax Board (In re Wilshire Courtyard)*, 729 F.3d 1279, (9th Cir. 2013). In *Wilshire*, the Ninth Circuit Panel concluded that the bankruptcy judge had post-confirmation, federal court jurisdiction to determine the effect of a confirmed Chapter 11 plan on the tax consequences of the debtor partnership and the tax consequences to the individual partners and the State of California. The Ninth Circuit Court of Appeals stated,

"A bankruptcy court's 'related to' jurisdiction is very broad, including nearly every matter directly or indirectly related to the bankruptcy." *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 868 (9th Cir. 2005) (internal quotation marks omitted).

... The "close nexus" test determines the scope of bankruptcy court's post-confirmation "related to" jurisdiction. *Pegasus Gold Corp.*, 394 F.3d at 1194. As adopted from the Third Circuit, the test encompasses matters "affecting the 'interpretation, implementation, consummation, execution, or administration of the confirmed plan.'" *Id.* (quoting *Binder v. Price Waterhouse & Co. (In re Resorts Int'l, Inc.)*, 372 F.3d 154, 166-67 (3d Cir. 2004)). The close nexus test "recognizes the limited nature of post-confirmation jurisdiction but retains a certain flexibility." *Id.*

Applying the close nexus test in *Pegasus Gold*, we held that "related to" jurisdiction existed because some claims concerning post-confirmation conduct—specifically, alleged breach of the liquidation/reorganization plan and related settlement agreement as well as alleged fraud in the inducement at the time of the plan and agreement—would "likely require interpretation of the [settlement agreement and plan]." *Id.* The claims and remedies could also "affect the implementation and execution" of the as-yet-unconsummated plan itself. *Id.*

In contrast, the close nexus test was not satisfied in *Sea Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Development Association, Inc.)*, 439 F.3d 545, 548 (9th Cir. 2006). The bankruptcy court there had reopened a dismissed chapter 11 case—in which no plan had ever been confirmed—to determine whether a settlement agreement between a creditor (a seafood processing plant) and former debtor (a fisheries development association) also protected the State of Alaska from the creditor processing plant's fraudulent conveyance claim, where the State was also a creditor but not a party to the settlement agreement. *Id.* at 546-47. The district court affirmed the bankruptcy court's reopening of the case. We reversed because "there was no confirmed plan and there is no claim that the dispute between two creditors, [the processing plant and the State], would have any effect on the now-closed bankruptcy estate." *Id.* at 548. The creditors' dispute was outside the scope of bankruptcy court post-confirmation jurisdiction because the dispute "implicate[d] the term of a settlement agreement approved by the court as a precondition of the dismissal of [debtor's] bankruptcy. But that agreement has been fully implemented with respect to [the debtor]." *Id.*

... We reaffirm that a close nexus exists between a post-confirmation matter and a closed bankruptcy proceeding sufficient to support jurisdiction when the matter "affect[s] the interpretation, implementation, consummation, execution,

or administration of the confirmed plan." *Pegasus Gold Corp.*, 394 F.3d at 1194 (internal citation and quotation marks omitted).

Wilshire Courtyard et al v. California Franchise Tax Board (In re Whilshire Courtyard), 729 F.3d 1279, 1287-88 (9th Cir. 2013),

Fed. R. Civ. P. 12(b)(6)

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

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

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 129 S.Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

DISCUSSION

The Court has Jurisdiction

The Defendant seeks dismissal of the Adversary Proceeding, in part, because the court lacks jurisdiction. The court disagrees. As discussed *supra*, the court has been granted jurisdiction to hear matters that arise under, arise in, or related to the Bankruptcy Code. The Defendant bases the argument on the fact that the court issued a discharge for the Plaintiff-Debtor on February 17, 2015. However, while the bankruptcy estate may have been administered, there could be matters, such as the instant Adversary Proceeding, that remain which still fall under the grant of jurisdiction Congress granted to the bankruptcy courts.

The issues presented, the effect of the confirmed plan, the § 506(a) order, effect of the completed plan, the possible application of 11 U.S.C. § 506(d) to voiding the lien as a matter of federal law, and the effect of this court's confirmation order all directly relate not only to the case, not only to property which was property of the bankruptcy estate, but also claims and liens expressly provided for, effected by, and subject to the confirmed plan and order of this court.

This court does not abdicate its post-confirmation, federal jurisdiction to the state court judges (who have more than enough cases of their own) to determine the effect of federal law, confirmation of a bankruptcy plan, valuation of a bankruptcy case pursuant to 11 U.S.C. § 506(a), completion of a plan, and the rights arising under the valuation and effect of confirmation.

The Defendant asserts that there is no case or controversy or injury in fact because the Defendant has reconveyed the loan. However, based on the California Civil Code § 2941, there are potential damages which the Plaintiff-Debtor may or may not be entitled to. These claims and damages turn on the application of federal law, the bankruptcy plan, effect of confirmation of a plan, and effect of completion of a plan, and effect of a discharge. While the court does not doubt that state court judges could, and would properly, determine these matters, it makes no more sense to hand off federal bankruptcy law issue to state court judges than it does to have state court judges turn over family law matters to federal judges. The fact remains that the underlying bankruptcy case, the court's order valuing the Defendant's secured claim, and the question of plan completion and discharge fall squarely within the jurisdictional grant of the court.

Therefore, the Defendant's Motion to Dismiss for lack of jurisdiction is denied.

First Cause of Action

The Defendant argues that the First Cause of Action fails to state a claim because the Plaintiff-Debtor has not alleged an actual case or controversy since the Plaintiff-Debtor has no standing or injury in fact. In support, the Defendant asserts that there is no factual allegations which requires declaratory relief as to the voiding and subsequent release of Defendant's lien or the determination that the order valuing is final and non-appealable.

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C.

§ 2201. FN.4. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.4. 28 U.S.C. §2201 provides:

§ 2201. Creation of remedy

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

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

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

The First Cause of Action requests for a declaratory judgment finding that: (1) the order on December 9, 2014 was a final non-appealable order in determining the secured status of Defendant's lien as zero and (2) that the Plaintiff-Debtor has completed their confirmed plan and granted a discharge, thereby render that the debt has been fully discharged and security interest therein has been rendered void.

The court reads the portion of the Complaint denominated as the "First Cause of Action" to be part of the "General Allegations" of the Complaint. That "First Cause of Action" seeks a declaration as between the parties that the court's December 9, 2014 order is a real, enforceable order, and that it really means that Defendant's secured claim has a value of \$0.00. Further, it seeks a declaration that the court's order granting the Plaintiff-Debtor's discharge really means that the Defendant's debt has been discharged.

First, the court does not enter redundant orders or judgments confirming that a prior order or judgment is "really an order or judgment." The party who obtains such order or judgment just enforces the judgment or order. Second, there are no allegations that there is an actual case or controversy (any dispute among the parties) that the court "really" entered the order valuing the secured claim or that the court "really" granted the Plaintiff-Debtor a discharge. There are no allegations that Defendant has ever disputed that the debt was discharged. If such a disputed existed, Plaintiff-Debtor should be enforcing the orders and obtaining a judgment thereon, not merely seeking a declaration that such orders exist.

Therefore, the court grants the request to dismiss the First Cause of Action, without prejudice, realigning the allegations therein as general allegations of the Complaint.

Second Cause of Action

The Defendant seeks dismissal of the second cause of action because the Defendant has reconveyed the deed of trust and the order valuing the secured claim has rendered the issue decided and moot.

The Plaintiff-Debtor in his opposition states that there is no question that there has been actual reconveyance.

As such, the Second Cause of Action is now moot seeing that the reconveyance of the deed of trust, in fact, rendered the Defendant's deed of trust void.

Therefore, the court grants the Motion as to the Second Cause of Action and is dismissed without prejudice, with the allegations therein realigned as general allegations in the Complaint.

Third Cause of Action

The Defendant argues that dismissal of the Third Cause of Action is proper because the Defendant reconveyed the deed of trust within 230 days of the court's notice and Plaintiff-Debtor's discharge. The Defendant argues that the Plaintiff-Debtor's counsel is estopped from arguing that the triggering event for reconveyance is the date of plan completion rather than discharge since the Plaintiff-Debtor's counsel previously argued that it was from the date of discharge.

Upon completion of the Chapter 13 Plan and its terms becoming the final, under the then finally modified contract between the Debtor, Defendant, and creditors, there remains no obligation which is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.5. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

FN.5. 4 WITKIN SUMMARY OF CALIFORNIA 9 LAW, TENTH EDITION, § 117, citing California Civil Code § 2939 et seq.; Rest.3d, Property (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d, § 179:511.

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 determined pursuant to 11 U.S.C. § 506(a), that secured obligation has been satisfied.

California Civil Code § 2941(b)(1) requires that within 30 days of the obligation secured by a deed of trust having been satisfied, the beneficiary [Defendant] 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 21 days from receipt of the request for reconveyance to reconvey the deed of trust. Cal. Civ. § 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 the Plaintiff. Cal. Civ. § 2941(b)(1)(B)(ii).

California Civil Code § 2941(d) provides that a violation of Civil Code 2941 shall make the violator liable to the Plaintiff for all damages sustained by the Plaintiff. As a result, Plaintiff requests damages equal to all attorneys fees sustained as a result of bringing an action to enforce California Civil Code § 2941, in addition to a statutory penalty of \$500.00.

The Defendant offers no case law or precedent which states that it is from the completion of the plan and discharge which triggers the requirement to reconvey. Instead, the Defendant relies on the fact that the Plaintiff-Debtor's counsel is asserted to have argued at some prior time and is estopped from arguing otherwise in the instant Adversary Proceeding. The court cannot determine the issue of estoppel, as framed by Defendant, at this pleading stage. If necessary, Defendant will have the opportunity to present the court with evidence which it believes makes a case for estoppel.

Unfortunately, at the Fed. R. Civ. P. 12(b)(6) stage, this is not a persuasive argument. Based on the complaint, there are sufficient factual allegations that rise to a viable cause of action, especially in light of the fact that the triggering date is in contention.

Complexities of Third Cause of Action

The court takes this opportunity to address what may be several "obvious" issues, but in the smoke and haze of battle appear to be lost between the parties. First, if this court and the appellate courts which have addressed the issue are correct and it is the completion of the plan which renders the deed of trust void, there must be a determination that the secured claim has been paid through the plan. In this case, for there to be such a determination there must be a valid, enforceable order pursuant to 11 U.S.C. § 506(a). Plaintiff-Debtor relies on the order valuing the secured claim of Defendant which was entered on December 12, 2014. Dckt. 62, 09-40854. It appears that Plaintiff-Debtor contends that this order be given retroactive effect and make the Trustee's Notice of Plan Completion constitute payment in full of a claim, the value of which was subsequently determined 48 days later. It could well appear that as of the October 15, 2014 notice, Defendant still held a claim for the full amount of the debt, not the December 12, 2014 subsequently-determined \$0.00 amount.

Next, the parties focus on two different dates. Plaintiff-Debtor fixes on the October 15, 2014 date of the Notice of Plan Completion, which was subject to the Trustee making a final report and creditors having the opportunity to object. Defendant states, without authority, that entry of the discharge is necessary of the plan terms to be effective with respect to its secured claim. Neither appear correct (though the court has not yet had the benefit of the parties clearly briefing the issue).

What is known from the facts of the Plaintiff-Debtor's bankruptcy case is that the Trustee's Final Report, by which he was making the final representation that the plan was completed and plan monies disbursed, was not filed until January 14, 2015. Case No. 09-40854, Dckt. 63. On February 17, 2015, the Trustee requested the entry of the order approving the Final Report, no objections thereto having been filed. *Id.*, Dckt. 67. The court's order approving the Final Report was filed on February 17, 2015. *Id.*, Dckt. 68. At that point the record appears to be clear that the plan has been completed.

On March 19, 2015, exactly thirty days after the entry of the court's order approving the final report, this Adversary Proceeding was filed. It is premised on Defendant not having reconveyed the deed of trust within 30 days of the date that it was required to so do. While the court may not concur, at this time, that October 15, 2014, is the date from which the 30 days run, the Third Cause of Action pleads a claim for statutory damages arising under California Civil Code § 2941(d).

Therefore, because the Plaintiff-Debtor has raised sufficient factual allegations for a viable cause of action, the request to dismiss the Third Cause of Action is denied.

Fourth Cause of Action

The Defendant argues that the complaint fails to state a claim for attorney's fees because there is no statute or contract based on the reconveyance that justifies attorney's fees.

Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827

F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

Here, the reconveyance of the deed of trust does not void the contract securing the note. The Complaint provides for the basis of attorney's fees under the terms of the note and under California Civil Code § 1717. Additionally, the Plaintiff-Debtor argues that California Civil Code § 2941 also provides a basis for attorney's fees as a prevailing party.

The claim for attorneys' fees was pleaded as required by former Bankruptcy Rule 7008(b) which required the complaint to state the claim for attorneys. That Rule was amended in December 2014, and fees are sought pursuant to Federal Rule of Bankruptcy Procedure 54(b) in the same manner as a proceeding in District Court.

Complexities of Fourth Cause of Action

As all the attorneys' know, having a right to attorneys' fees does not mean a right to whatever attorneys' fees the party demands. They have to be reasonable and necessary. From the pleadings as presented, it appears that no demand was made on Defendant for the reconveyance. Rather, Plaintiff-Debtor seeks to rely solely on the Bankruptcy Notice Center's notice to Defendant as to both the plan completion and discharge. No allegation is stated that Plaintiff-Debtor sent a simple written request to the Defendant for reconveyance or make a simple phone call.

The Fourth Cause of Action merely states a demand for attorneys' fees if Plaintiff-Debtor is the prevailing party on the Third-Cause of Action. That is sufficiently pleading, in light of such request being allowed to merely be stated in the prayer with the amendment to Federal Rule of Bankruptcy Procedure 7008, the request for dismissal of the Fourth Cause of Action is denied.

CONCLUSION

As discussed *supra*, the Motion to Dismiss is granted as to the First and Second Causes of Action and are dismissed without prejudice.

The Motion to Dismiss is denied without prejudice as to the Third and Fourth Causes of Action.

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

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

The Motion to Dismiss filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted as to the First and Second Causes of Action and are dismissed without prejudice, the allegations therein realigned as general allegations of the Complaint.

IT IS FURTHER ORDERED that the Motion is denied without prejudice as to the Third and Fourth Causes of Action.