

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**June 24, 2015 at 2:30 p.m.**

1. [09-39501](#)-E-13 ANGELA BOOKEY  
[15-2044](#)  
BOOKEY V. SUNTRUST MORTGAGE,  
INC.

STATUS CONFERENCE RE: COMPLAINT  
2-24-15 [[1](#)]

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Joely K.L. Bui

Adv. Filed: 2/24/15  
Answer: 3/26/15

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

**The Status Conference is continued to 2:30 p.m. on  
September 9, 2015.**

Notes:

Plaintiff's Status Conference Statement filed 6/9/15 [Dckt 15]

**JUNE 24, 2015 STATUS CONFERENCE**

The parties report that this Adversary Proceeding to quite title to Plaintiff-Debtor's property upon completion of Plaintiff-Debtor's Chapter 13 Plan. Counsel for Plaintiff-Debtor has resolved similar adversary proceedings for other clients by such stipulations.

Based on the Status Conference Statement and representations of the parties, the court continues the Status Conference.

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.

**June 24, 2015 at 2:30 p.m.**

**- Page 1 of 40 -**

The Initial Status Conference in this Adversary Proceeding having been conducted by the court, the parties representing that this Adversary Proceeding has been settled and the documentation is being completed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:30 p.m. on September 9, 2015.

2. [14-31202-E-13](#) **DANILO/BRANKA POLJAK**  
[14-2332](#)  
**U.S. TRUSTEE V. POLJAK ET AL**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**12-2-14 [[1](#)]**

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Judith C. Hotze  
Defendant's Atty: unknown

Adv. Filed: 12/2/14  
Answer: none

Nature of Action:  
Injunctive relief - other

<b>Judgment having been entered for Plaintiff and all claims in the Complaint having been resolved, the Status Conference is removed from the Calendar.</b>
---

Notes:

Continued from 4/1/15 to allow for a hearing on the motion for entry of default judgment.

[UST-1] Order granting Motion for Entry of Default Judgment filed 4/14/15 [Dckt 27]

Default Judgment against Danilo Poljak filed 4/14/15 [Dckt 28]  
Default Judgment against Branka Poljak filed 4/14/15 [Dckt 29]

3. [13-33903-E-7](#) JAMES/GINA MOORE  
[14-2086](#)  
COUNTY OF SACRAMENTO V. MOORE  
ET AL

STATUS CONFERENCE RE: COMPLAINT  
3-24-14 [[1](#)]

**APPEARANCES OF COUNSEL FOR PLAINTIFF AND COUNSEL FOR  
DEFENDANTS REQUIRED FOR STATUS CONFERENCE  
NO TELEPHONIC APPEARANCES PERMITTED**

Plaintiff's Atty: Robert P. Parrish  
Defendant's Atty: Peter L. Cianchetta

Adv. Filed: 3/24/14  
Answer: 6/11/15

Nature of Action:  
Dischargeability - other

<b>The Pretrial Conference</b> <b>XXXXXXXXXXXXXXXXXXXXXX.</b>
---

Notes:

Pre-trial conference held 4/1/15. Parties reported that the matter was settled. Court continued as status conference.

Stipulation for Entry of Judgment and Settlement Agreement filed 4/14/15 [Dckt 36]; no order

**JUNE 24, 2015 STATUS CONFERENCE**

**SUMMARY OF COMPLAINT**

The County of Sacramento has filed the present Complaint seeks to have fines and penalties determined non-dischargeable pursuant to 11 U.S.C. § 523(a)(7). The amount at issue is \$17,920.00, for which the court obtained a civil judgment.

**SUMMARY OF ANSWER**

Defendants admit and deny specific allegations in the Complaint. Defendants assert seventeen affirmative defenses.

**FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint 1, Dckt. 1. In their Answer, James Moore and Gina Moore admits the allegations of jurisdiction and core proceedings. Answer 1, Dckt. 24. To the extent that any issues in this Adversary Proceeding are related to matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

In preparing for this Status Conference the court notes that neither party has filed a Status Conference Statement. The court has found a document titled "Stipulation" filed on April 14, 2015. Dckt. 36. The title of the Document is "Stipulation for Entry of Judgment and Settlement Agreement."

In the seventy-one (71) days since the filing of the Stipulation neither of the parties has sought any relief from the court pursuant thereto. Request for entry of a judgment shall be made by motion. Fed. R. Civ. P. 58(d); Fed. R. Bankr. P. 7058; and Moore's Federal Practice - Civil, Vol. 12, § 58.05.

4. [12-28312-E-7](#) MARIANNE GULLINGSRUD  
[14-2214](#)  
GULLINGSRUD V. AURORA LOAN  
SERVICES, LLC ET AL

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
3-13-15 [[34](#)]

**APPEARANCES OF COUNSEL FOR PLAINTIFF AND  
COUNSEL FOR DEFENDANTS REQUIRED FOR STATUS CONFERENCE**

**TELEPHONIC APPEARANCES PERMITTED**

Plaintiff's Atty: Scott D. Shumaker  
Defendant's Atty: Jennifer Wong

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Adv. Filed: 7/23/14  
Answer: none

Amd Cmplt Filed: 10/20/14  
Reissued Summons: 12/15/14  
Answer: none

2<sup>nd</sup> Amd Cmplt Filed: 3/13/15

Nature of Action:  
Recovery of money/property - other

Notes:

Continued from 4/1/15. Parties trying to resolve the dispute and complete the foreclosure. The time to answer is to be extended approximately 60 days.

Order re Stipulation for Extension of Time to File Responsive Pleading filed 4/7/15 [Dckt 40]

Joint Status Conference Report filed 6/10/15 [Dckt 41]

**JUNE 24, 2015 STATUS CONFERENCE**

This Adversary Proceeding was commenced on July 23, 2014, 336 days prior to the June 24, 2015 continued status conference. The First Amended Complaint was filed on October 20, 2014. On March 3, 2015, the court denied Defendant's motion to dismiss the First Amended Complaint. Dckt. 31.

On March 13, 2015, Plaintiff filed a Second Amended Complaint. Dckt. 34. On April 1, 2015, Plaintiff and Defendant filed a stipulation for the court to extend the time to file a responsive pleading to the Second Amended Complaint. Dckt. 36. The court, pursuant to the stipulation, granted Defendant until June

2, 2015, to file a responsive pleading to the Second Amended Complaint. Dckt. 40.

Defendant has not filed a responsive pleading to the Second Amended Complaint. Plaintiff has not requested entry of Defendant's default. On June 10, 2015, the Parties filed a Joint Status Conference Report. Dckt. 41. The Report consists of the following:

"The property subject to Plaintiff's Amended Complaint, located at 4880 Silver Oak Blvd, Palm Shores FL 32935 was foreclosed upon on 5/6/2015. The parties are now working on resolving the remaining issues set forth in Plaintiffs amended complaint through a settlement agreement.

Accordingly, the parties request a minimum 60-day continuance to allow the parties sufficient time to negotiate a settlement."

The Second Amended Complaint asserts that Defendant is deemed under Florida law to be the owner of the real property which secures its claim. As set forth in the Joint Status Report, Defendant admits that it has foreclosed on the Florida Property (which indicates to the court that there is no dispute that Defendant is the owner of the Florida Property). The Complaint also seeks a declaration of the responsibilities of Plaintiff and Defendant for necessary expenses for the Florida Property which secured Defendant's secured claim and for which the foreclosure sale occurred on June 6, 2015. Plaintiff commenced her bankruptcy case on April 30, 2012. Bankr. E.D. Cal. 12-28312. It was converted to a Chapter 7 case on March 18, 2015.

Plaintiff's confirmed Chapter 13 Plan provided for surrender of Defendant's collateral and termination of the automatic stay so that it could immediately proceed with a foreclosure sale. 12-28312; Plan, Dckt. 5, and June 25, 2012 Order Confirming Plan, Dckt. 18.

5. [13-23119](#)-E-13 CYNTHIA MCDONALD  
[14-2210](#)  
MCDONALD V. JPMORGAN CHASE  
BANK, N.A. ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-21-14 [[1](#)]

*Continued to 9/9/15 at 2:30 p.m.*

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----  
Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Amy M. Spicer

<b>The Status Conference has been continued to 2:30 p.m. on September 9, 2015.</b>
--

Adv. Filed: 7/21/14  
Answer: none

Nature of Action:  
Recovery of money/property - other  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued to 9/9/15 at 2:30 p.m. by order dated 6/11/15 [Dckt 21]. Parties having advised the court that a settlement has been reached.

Joint Scheduling Conference Statement and Request to Continue Scheduling Conference filed 6/10/15 [Dckt 20]

6. [09-44339-E-13](#) GLEN PADAYACHEE  
[14-2282](#)  
PADAYACHEE V. TERRY, III

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-30-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Pro Se

**The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.**

Adv. Filed: 9/30/14  
Answer: 10/31/14

Nature of Action:

Declaratory judgment  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

#### JUNE 24, 2015 STATUS REPORT

All claims asserted in the Complaint have been fully resolved by summary judgment. June 5, 2015 Order, Dckt. 57. The order granting summary judgment required Plaintiff to lodge with the court on or before June 19, 2015, a proposed judgment consistent with the order granting summary judgment. *Id.* The court's review of the proposed order in-box on June 21, 2015, showed that no proposed judgment has been lodged with the court.

Any post-judgment claim for attorneys' fees must be filed and served on or before June 29, 2015. *Id.*

Notes:

Continued from 1/21/15 to 5/24/15 as a monitoring date to afford the Parties to timely litigate the remaining two issues and obtain entry of judgment thereon. Status conference continued from 5/24/15 to 6/24/15 by court order dated 3/27/15 [Dckt 22]

[PLC-1] Order denying Motion for Entry of Default Judgment filed 4/14/15 [Dckt 39]

[PLC-2] Order granting Motion for Summary Judgment filed 6/5/15 [Dckt 57]

Defendant's Status Conference Statement filed 6/10/15 [Dckt 58]

Plaintiff's Status Conference Statement filed 6/11/15 [Dckt 60]



7. [10-26240-E-13](#) STEVE/KRISTINE SCHARER  
[14-2253](#)  
SCHARER ET AL V. WELLS FARGO  
BANK, N.A.

CONTINUED STATUS CONFERENCE RE:  
AMENDED COMPLAINT  
10-9-14 [[12](#)]

Plaintiff's Atty: Selwyn D. Whitehead  
Defendant's Atty: Regina J. McClendon; Lindsey E. Kress

Adv. Filed: 8/28/14  
Answer: none

Amd Cmplt Filed: 10/9/14  
Reissued Summons: 10/10/14  
Answer: 5/11/15

Nature of Action:  
Dischargeability - other  
Other (e.g. other actions that would have been brought in state court if  
unrelated to the bankruptcy case)

**The Adversary Proceeding Status Conference is**

**XXXXXXXXXXXXXXXXXXXX.**

Notes:

Continued from 4/9/15

[LLL-3] Order granting in part and denying in part Motion to Dismiss Adversary  
Proceeding filed 4/14/15 [Dckt 51]

Defendant's Answer to Plaintiffs' First Amended Complaint filed 5/11/15  
[Dckt 52]

#### **JUNE 24, 2015 STATUS CONFERENCE**

On October 9, 2015, Steve and Kristine Scharer, the Plaintiff-Debtors, filed their First Amended Complaint. Dckt. 12. On November 24, 2014, Wells Fargo Bank, N.A. ("Defendant") filed a motion to dismiss. After a series of continuances to allow the parties to engage in settlement discussions, the court ruled on Defendant's motion to dismiss. By order filed on April 14, 2015, the court:

- A. Granted the motion and dismissed the first, second, seventh, eighth, and ninth causes of action.
- B. Denied the motion as to the Third, fourth, fifth, sixth, seventh, eleventh, twelfth, and thirteenth causes of action.
- C. Ordered Defendant to file an answer by May 11, 2015.

- D. Ordered that if Plaintiff-Debtors desired to file a further amended complaint, relief must first be obtained from this court.

Order, Dckt. 51.

On May 11, 2015, Defendant filed its Answer to the First Amended Complaint.

#### **SUMMARY OF COMPLAINT**

The Plaintiff-Debtors First Amended Complaint alleges the following claims:

- a. First Cause of Action - Dismissed.
- b. Second Cause of Action - Dismissed.
- c. Third Cause of Action - Breach of Contract
  - i. Plaintiff-Debtors allege that Defendant has failed to properly apply payments made by Plaintiff-Debtors.
- d. Fourth Cause of Action - Breach of Covenant of Good Faith and Fair Dealing
  - i. Plaintiff-Debtors allege that Defendant breach the covenant of good faith and fair dealing by failing to properly account for Plaintiff-Debtors' payments.
  - ii. Breaches are alleged to include providing inaccurate information to Consumer Reporting Agencies, threatening foreclosure proceedings, and assessing alleged late fees and charges.
- e. Fifth Cause of Action - Fraud (Cal. Civ. § 1572)
  - i. Plaintiff-Debtors allege that Defendant intentionally entered into an unenforceable oral contract with Plaintiffs.
  - ii. That Defendant misrepresented the terms of Trial Loan Payment Period ("TPP") for a potential loan modification.
  - iii. That Defendant misrepresented how the TPP payments would be applied to the debt.
  - iv. That Defendant fraudulent omitted material facts to induce Plaintiff-Debtors to enter into the TPP.
- f. Sixth Cause of Action - Commonly Law Fraud
  - i. Repeats the allegations of fraud and misrepresentation relating to the TPP.

- g. Seventh Cause of Action - Constructive Fraud
  - i. Plaintiff-Debtors allege that Defendant owed an equitable and legal duty to act in good faith under the 2007 loan contract.
  - ii. That Defendant's breached these duties in entering into the 2007 loan contract.
- h. Eighth Cause of Action - Dismissed.
- i. Ninth Cause of Action - Dismissed
- j. Tenth Cause of Action - Intentional Infliction of Emotional Distress
  - i. Plaintiff-Debtor alleges that the conduct of Defendant relating to the TPP, and the alleged misrepresentations and omissions were intentionally done, or with such reckless disregard, as to cause emotional distress.
- k. Eleventh Cause of Action - Cal. B&P 17200
  - i. Plaintiff-Debtors allege that the asserted misrepresentations and omissions constituting fraud are a violation of California Business and Professionals §§ 17200 et. seq.
- l. Twelfth and Thirteenth Causes of Action - Cal. B&P § 17200
  - i. It is alleged that the above causes of action demonstrate conduct which are prohibited unfair business practices.

First Amended Complaint, Dckt. 12.

#### **SUMMARY OF ANSWER**

In its Answer, Defendant admits and denies specific allegations in the First Amended Complaint. Answer, Dckt. 52. The Answer asserts 13 affirmative defenses.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 4, Dckt. 1. In its answer, Wells Fargo Bank, N.A. denies the legal allegations of federal court jurisdiction under 28 U.S.C. § 1334 based on an allegation that "Defendant lacks knowledge or information sufficient to form a believe as to the truth of the remaining allegations in this paragraph [1] and therefore denies on this basis. Answer ¶ 1, Dckt. 52.

With respect to the allegations that this is a core proceeding, Defendant responds, "Defendant denies that this is a core proceeding. Defendant

responds that the remaining allegations of paragraph 4 contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 4." *Id.*, ¶ 4.

Federal Rule of Bankruptcy Procedure 7012(b) makes Federal Rule of Civil Procedure 12(b)-(I) applicable in Adversary Proceedings. Further, it requires that a responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 4, Dckt. 1. In its answer, Wells Fargo Bank, N.A. states that it lacks information or belief upon which it can state whether federal court jurisdiction exists. Answer ¶ 1, Dckt. 52. Defendant denies that this is a core proceeding, but does not state in the Answer that it does or does not consent to the bankruptcy judge issuing all final orders and the judgment in this Adversary Proceeding. Answer ¶ 4, *Id.*

At the Status Conference, ~~to the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.~~

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- A. The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 4, Dckt. 1. In its answer, Wells Fargo Bank, N.A. states that it lacks information or belief upon which it can state whether federal court jurisdiction exists. Answer ¶ 1, Dckt. 52. Defendant denies that this is a core proceeding, but does not state in the Answer that it does or does not consent to the bankruptcy judge issuing all final orders and the judgment in this Adversary Proceeding. Answer ¶ 4, *Id.*

At the Status Conference, ~~to the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.~~

- B. Initial Disclosures shall be made on or before ----, 2015.

- C. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- D. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- E. Dispositive Motions shall be heard before -----, 2015.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

8. [14-20352](#)-E-11 PATRICK GREENWELL

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-9-14 [[1](#)]

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Debtor's Atty: Patrick B. Greenwell

The Chapter 11 Plan having been confirmed, <b>the Status Conference is continued to 2:30 p.m. on October 14, 2015</b> , to allow for the filing and adjudication of post-confirmation motions, including the administrative closing of the case if appropriate.
---

Notes:

Continued from 4/1/15

Operating Report filed: 5/17/15

[PBG-5] Order confirming plan filed 4/27/15 [Dckt 128]

9. [11-26053](#)-E-13 SAMANTHA PINKSTON  
[15-2008](#)  
PINKSTON V. WELLS FARGO DEALER  
SERVICES, INC. ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-12-15 [[1](#)]

Final Ruling: No appearance at the June 24, 2015 Status Conference is required.

-----

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: unknown

Judgment having been entered, **the Status Conference is removed from the Calendar.** The Clerk of the Court may close the file for this Adversary Proceeding.

Adv. Filed: 1/12/15  
Answer: none

Nature of Action:  
Declaratory judgment  
Dischargeability - other  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 4/1/15

Judgment against Wells Fargo Bank, N.A. filed 6/2/15 [Dckt 11]

10. [09-38957-E-13](#) DONALD COOK  
[15-2059](#)  
COOK V. CITIMORTGAGE, INC.

STATUS CONFERENCE RE: COMPLAINT  
3-16-15 [[1](#)]

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Eddie R. Jimenez

**The Status Conference is continued to 2:30 p.m. on  
September 9, 2015.**

Adv. Filed: 3/16/15  
Answer: 4/16/15

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

Notes:

CitiMortgage, Inc.'s Corporate Disclosure Statement filed 4/16/15 [Dckt 10]  
Plaintiff's Status Conference Statement filed 6/9/15 [Dckt 12]

The parties report that this Adversary Proceeding to quite title to Plaintiff-Debtor's property upon completion of Plaintiff-Debtor's Chapter 13 Plan. Counsel for Plaintiff-Debtor and counsel for Defendant have resolved similar adversary proceedings for other clients by such stipulations.

Based on the Status Conference Statement and representations of the parties, the court continues the Status Conference.

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 Initial Status Conference in this  
Adversary Proceeding having been conducted by  
the court, the parties representing that this  
Adversary Proceeding has been settled and the  
documentation is being completed, and upon  
review of the pleadings, evidence, arguments of  
counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference  
is continued to 2:30 p.m. on September 9, 2015.

11. [09-47858-E-13](#) MARTIN/SHARON NICHOLS  
[15-2071](#)  
NICHOLS ET AL V. COUNTRYWIDE  
HOME LOANS, INC.

STATUS CONFERENCE RE: COMPLAINT  
4-9-15 [[1](#)]

Plaintiffs' Atty: Douglas B. Jacobs  
Defendant's Atty: unknown

<b>The Status Conference is <del>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</del>.</b>
--

Adv. Filed: 4/9/15  
Answer:

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if  
unrelated to bankruptcy case)

Notes:

Plaintiffs' Status Conference Statement filed 6/9/15 [Dckt 8]

#### **JUNE 24, 2015 STATUS CONFERENCE**

##### **Review of Complaint**

The Complaint was filed on April 9, 2015. The Complaint names Countrywide Home Loans, Inc. as the Defendant. Dckt. 1. The Certificate of Services attests to service of the summons and complaint by mail on April 16, 2015. No answer has been filed.

Plaintiff-Debtor seeks to have Defendant's deed of trust determined void and title cleared to the Plaintiff-Debtor's property. Defendant's secured claim was provided for as valued pursuant to 11 U.S.C. § 506(a) and Plaintiff-Debtor has completed the Chapter 13 Plan.

Though no answer or other responsive pleading has been filed, Plaintiff-Debtor has not requested entry of Defendant's default. There have been no settlement communications. Status Report, Dckt. 8.



12. [13-31975](#)-E-13 JACK/LINDA GANAS  
PLC-3

CONTINUED OBJECTION TO NOTICE  
OF MORTGAGE PAYMENT CHANGE  
AND/OR MOTION FOR ATTORNEY'S  
FEES  
11-13-14 [[55](#)]

**No Tentative Ruling:** The Objection to Notice of Mortgage Payment Change 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 Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 13, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Hearing on the Objection is xxxxx</b>
--

**JUNE 24, 2015 HEARING**

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxx

**OBJECTION TO NOTICE OF PAYMENT CHANGE**

Jack and Linda Ganas ("Debtors") filed the instant Objection to Notice of Mortgage Payment Change and Request for Attorney's Fees on November 13, 2014. Dckt. 55.

Debtors state that Wells Fargo Bank, N.A. filed Proof of Claim No. 4 on January 15, 2014 where they claimed an arrearage existed at the time of the bankruptcy filing. The escrow shortage they listed was \$529.34 as of the petition date. On October 28, 2014, Wells Fargo Bank, N.A. filed a Notice of Payment Change. The documents submitted with their Notice of Mortgage Payment Change state that there was an escrow shortage on the date of the petition of (\$8,977.23). Debtors argue that this pre-petition shortage was not listed on Wells Fargo's Proof of Claim and is unsupported by any explanation on an amended proof of claim or on the Notice of Mortgage Payment Change.

Wells Fargo Bank, N.A.'s Notice of Mortgage Payment Change requests that the current escrow payment change from \$167.74 to \$348.05.

Debtors allege that the inconsistencies are the result of pre-petition arrearage escrow amounts not being properly credited in the analysis which result in the pre-petition arrearage also being paid post-petition, thereby resulting in a duplicate payment. The deed of trust only provides for payment of collection fees in to protect their security interest as stated in paragraph 18 of the deed of trust note attached to Proof of Claim 4.

Debtor additionally requests that the court grant reasonable attorney's fees pursuant to California Civil Code § 1717.

#### **DECEMBER 16, 2014 HEARING**

At the hearing, the court continued to 2:30 p.m. on February 18, 2015 to be heard in conjunction with the Status Conference in Adversary case number 14-2080-E. Dckt. 67.

#### **FEBRUARY 18, 2015 STATUS CONFERENCE**

The parties reported that due to illness of counsel they have not been able to advance their settlement discussions. However, all attorneys are now available and actively addressing the issues. The court continues the Status Conference as requested. At the Status Conference, the court continued the hearing to 2:30 p.m. on June 24, 2015 to be heard in conjunction with the Status Conference. Dckt. 71.

#### **WELLS FARGO BANK, N.A.'S OPPOSITION**

Wells Fargo Bank, N.A. filed an opposition to the instant Objection on February 4, 2015. Dckt. 68. Wells Fargo Bank, N.A. objects on the following basis:

1. Debtors' objection should be overruled because it lacks merit as it fails to accurately represent Wells Fargo Bank, N.A.'s escrow analysis and has failed to establish an inconsistencies with Wells Fargo Bank, N.A. Proof of Claim.

Debtors misstate the escrow shortage as provided in Wells Fargo Bank, N.A.'s Notice. Debtors contend that the escrow shortage totals \$8,977.23. However, the quoted amount is the actual escrow balance, not the escrow shortage. The correct escrow shortage is \$1,998.08 (Notice, pg. 6). The reason for this

escrow shortage was that Wells Fargo Bank, N.A. made several post-petition tax and hazard disbursements on the subject loan. As the Debtors have misinterpreted the escrow analysis, their premise that the Notice is inconsistent with Wells Fargo Bank, N.A.'s Proof of Claim is misrepresented.

Furthermore, Debtors contend that inconsistencies between the Notice and Proof of Claim are the result of pre-petition arrearage escrow amounts not being properly credited to Debtors' account. The alleged result of pre-petition escrow amounts not being properly credited is pre-petition arrears are being collected post-petition, resulting in a duplicate payment. However, there are no inconsistencies between the Proof of Claim and the Notice. In addition the Debtors have not offered any evidence the pre-petition arrearage escrow amounts not being properly credited to their account. As provided in the Proof of Claim, the pre-petition escrow shortage is \$529.34. This amount was not included in the post-petition escrow analysis. It was included on the Notice as a negative balance since it was claimed in the pre-petition arrears and also notes that "an escrow adjustment of \$529.34 is scheduled to be repaid through the bankruptcy."

2. Debtors' Objection is substantially related to the adversary proceeding and should be continued until the Adversary Proceeding is concluded. The sole remaining cause of action is Debtors' objection to Wells Fargo Bank, N.A.'s Proof of Claim. Specifically, Debtors are alleging that the pre-petition accounting regarding the loan is incorrect. The resolution of this matter directly relates to the issues raised in the instant Objection. Wells Fargo Bank, N.A.'s counsel and Debtor's counsel are working towards a potential resolution of the Adversary Proceeding which will likely result in a global resolution of the Objection. Wells Fargo Bank, N.A. requests that the court continue the hearing so that the parties may reach a global resolution regarding Debtor's Adversary Proceeding and Objection.

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response on May 28, 2015. Dckt. 75. The Trustee first states that he does not oppose the matter being continued as being substantially related to the pending adversary proceeding.

The Trustee agrees that the Escrow Analysis may be insufficient without further explanation. The Trustee states that he has examined the Notice of Mortgage Payment change filed on October 28, 2014 and notes that on page 6, a starting December 2014 balance of -<\$2,153.75> in the Projected Escrow balance column. This number appears to be the actual escrow balance as of November 2014, which appears to include pre-petition amounts as the analysis commences July 2013. No explanation is provided for the \$7,203.85 payment to escrow posted September 2014. Additionally, the Trustee notes the Projected Payments to escrow do not agree with the Escrow Disclosure Statement filed with Proof of Claim No. 4-1.

The Trustee states that the projected disbursements from escrow total \$2,178.50 or \$181.54 per month. The new monthly escrow payment computed per the Notice is \$348.05. Property taxes and insurance appear escrowed in the payment, and for 2014 were \$736.75 x 2 (\$1,473.50) and \$705.00 for a total of \$2,178.50; this would require payments of \$181.55 per month on average.

#### **REVIEW OF NOTICE OF MORTGAGE PAYMENT CHANGE**

Wells Fargo Bank, N.A. filed Proof of Claim 4 on January 1, 2014. In the Proof of Claim, Wells Fargo Bank, N.A. states that the "Escrow shortage or deficiency" as of the petition date is \$529.34.

Wells Fargo Bank, N.A. filed a Notice of Mortgage Payment Change on October 28, 2014. The Notice states the following:

1. Date of payment change: 12/1/2014
2. New total payment: \$1,138.35
3. Part 1: Escrow Account Payment Adjustment:
  - a. Current escrow payment: \$167.74
  - b. New escrow payment: \$348.05

The Notice of Mortgage Payment Change also has attached an escrow statement that, in part, outlines the Debtors' escrow account history. In relevant part, for September 2013, the statement provides:

Payments to escrow			Payments from escrow		Escrow balance	
Date	Projected	Actual	Projected	Actual	Projected	Actual
Sep. 2013	\$164.01	\$348.54	\$0.00	\$0.00	\$772.50	(\$8,977.23)

A review of the Objection, Proof of Claim No. 7, and the Notice of Mortgage Payment Change shows that there is no evidentiary basis for the substantial increase in escrow shortage. Wells Fargo Bank, N.A. does not explain how they calculated the escrow shortage to determine that, at the time of the petition, the (\$529.34) listed on the Proof of Claim 4 (filed on January 15, 2014) is actually (\$1,998.23) as listed on the Notice of Mortgage Payment Change (filed on October 28, 2014).

While Wells Fargo Bank, N.A. gives generic, nonspecific answers such as "several post-petition tax and hazard disbursements on the subject loan" were the cause of the recalculated escrow shortage, Wells Fargo Bank, N.A. gives no evidence or specifics of how the escrow shortage nearly quadrupled in amount. Instead, Wells Fargo Bank, N.A. attempts to shift the burden onto the Debtors.

The Escrow Analysis attached to the Notice of Mortgage Payment Change provides the following information. Page 4 of the Escrow Analysis provides the actual payments made during the period July 2013 through August 2014, and

estimates for September - November 2014. Through August 2014, Wells Fargo Bank, N.A. reports receiving actual escrow payments totaling \$3,921.70. For these fourteen months, escrow payments of \$2,296.98 (14 x \$164.07 a month) were required.

For the period December 2014 through November 2015, Wells Fargo Bank, N.A. projects disbursements from escrow for taxes and insurance to total \$2,178.50. Escrow Analysis, pg. 3. During that period, monthly escrow payments of \$181.54 would be required. This portion of the Escrow Analysis states, "Scheduled escrow payment \$181.54." *Id.*

However, Wells Fargo Bank, N.A. then states on page 1 of the Escrow Analysis that the monthly principal and interest payment is \$790.30 and the Escrow payment will be \$348.54. The court cannot identify the basis for the additional \$167.00 a month in escrow payments for the twelve months through November 2015 - which total \$2,004.00 (12 x \$167.00).

Wells Fargo Bank, N.A.'s response concentrates on the fact that the pending Adversary Proceeding deals with the treatment and calculation of the pre-petition payments has a direct effect on the outcome of the instant Objection. As part of this foundational argument, Wells Fargo Bank, N.A. does not provide any specific pieces of evidence or explanation as to how the escrow shortage was calculated and instead just points to the same information the court initially reviewed at the first hearing on the Objection.

#### **REQUEST FOR ATTORNEYS' FEES**

As to the Debtor's request for attorney's fees under California Civil Code § 1717, the Debtor has not pleaded with particularity under Local Bankr. R. 9013 to justify such relief.

In support for attorney fees, the Objection states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. California Civil Code Section 1717 provides for attorney fees for the prevailing party whenever there is an attorney fee provision, there has been notice and a hearing, wherein the reasonable attorney's fees shall be fixed by the Court.

The Objection does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 for attorneys' fees because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the code section. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

While the Debtor's counsel does provide for a time sheet, the Debtor failed to provide the specific contract provisions that justify an award for attorneys' fees nor does Debtor provide how the applicable statute applies to the instant case. The court does not have the resources to fill-in the blanks for Debtor and Debtor's counsel.

13. [13-31975-E-13](#) JACK/LINDA GANAS  
[14-2080](#)  
GANAS ET AL V. WELLS FARGO  
BANK, N.A.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
3-14-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Eddie R. Jimenez

<b>The Adversary Proceeding Status Conference is</b> <b>XXXXXXXXXXXXXXXXXXXXXXXXXXXX.</b>
--

Adv. Filed: 3/14/14  
Answer: none

Nature of Action:  
Recovery of money/property - other  
Other (e.g., other actions that would have been brought in state court if  
unrelated to bankruptcy case)

Notes:

Continued from 2/18/15



14. [14-22679-E-7](#) DENNIS FLORES  
[14-2193](#)  
FLORES V. NATIONSTAR MORTGAGE,  
LLC ET AL  
ADV. PROCEEDING DISMISSED:  
06/09/2015

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
7-1-14 [[1](#)]

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Mark Lapham  
Defendant's Atty: Adam Barasch

Adv. Filed: 7/1/14  
Answer: none

The Complaint having been dismissed pursuant to the Stipulation of the Parties, <b>the Status Conference is removed from the Calendar.</b>
--

Nature of Action:  
Recovery of money/property - preference  
Recovery of money/property - fraudulent transfer  
Validity, priority or extent of lien or other interest in property  
Dischargeability - willful and malicious injury  
Injunctive relief - other  
Declaratory judgment

Notes:

Continued from 2/18/15  
Adversary Proceeding dismissed 6/9/15

15. [14-31280-E-13](#) JANET JENDREJACK  
[14-2319](#)  
JENDREJACK V. NATIONSTAR  
MORTGAGE, LLC ET AL

STATUS CONFERENCE RE: AMENDED  
COMPLAINT  
3-16-15 [[10](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: none

Adv. Filed: 11/18/14  
Answer: none

Amd Cmplt Filed: 3/16/15  
Answer: none

Nature of Action: Declaratory judgment

**The Adversary Proceeding Status Conference is**  
**XXXXXXXXXXXXXXXXXXXX.**

Notes:

Initial status conference conducted 1/21/15; first amended complaint to be filed and served on or before 2/6/15.

First Amended Complaint filed 3/16/15 [Dckt 10]; status conference set by reissued summons filed 3/17/15 [Dckt 11]

#### **SUMMARY OF COMPLAINT**

On March 16, 2015, Plaintiff-Debtor filed her First Amended Complaint. The Certificate of Service attests to service of the First Amended Complaint and Reissued Summons on March 18, 2015. Dckt. 12. The claims asserted in the First Amended Complaint are summarized as follows:

A. The First Cause of Action seeks declaratory relief that:

1. The possessory interest for the real property commonly known as 8712 Woodman Way, #F (the "Property") belongs to the Defendants by virtue of a Settlement Agreement (attached to the Complaint as Exhibit A).
2. The loan with Defendants which was secured by the Property was discharged in the Plaintiff-Debtor's prior Chapter 7 bankruptcy case.
3. The Settlement Agreement is binding on all of the Defendants.

B. The Second Cause of Action seeks declaratory relief that:

1. States the "actual debts" of the Plaintiff-Debtor arising from the Settlement Agreement.

2. Denying Plaintiff-Debtor the right to rent the property, if Plaintiff-Debtor is responsible for debts relating to the Property after Defendants had the right to possession, results in unjust enrichment for Defendants.
  3. That Plaintiff-Debtor be granted rent in the amount of \$1,500.00 a month from Defendants.
- C. The Third Cause of Action is for Assumption of Executory Settlement Agreement
1. Plaintiff-Debtor alleges that the Settlement Agreement between Plaintiff-Debtor and Defendants is an "executory contract."
  2. Plaintiff-Debtor asserts that she is not in default under the Settlement-Agreement.
  3. Plaintiff-Debtor requests the court to "assume jurisdiction" to enforce the Settlement Agreement upon assumption thereof.
- D. The Fourth Cause of Action Requests an Award of Attorneys' Fees (pleadings a claim as formerly required under Fed. R. Bankr. P. 7008(b)).
1. The Settlement Agreement contains an attorneys' fee provision (citing the court to Page 7, ¶ Q of the Settlement Agreement filed as Exhibit A).
  2. California Civil Code § 1717 makes such contractual attorneys' fees provisions reciprocal for the parties to the contract.

#### **SUMMARY OF ANSWER**

No answer or other responsive pleading has been filed. Pursuant to the Reissued Summons, an answer or other responsive pleading was due on or before April 16, 2015. Reissued Summons, Dckt. 11.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

The First Amended Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I), (K), (L), and (O). Further, that this Adversary Proceeding concerns the administration and liquidation of the bankruptcy estate, which are core matter proceedings, because the determinations effect the possible priority claims in the Plaintiff-Debtor's bankruptcy case. Complaint ¶¶ 20, 22 (paragraph numbering begins with paragraph 20), Dckt. 10.

16. [15-22780](#)-E-11 DAY & NIGHT TRUCK  
TRAILER REPAIR INC.

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
4-6-15 [[1](#)]

No Tentative:

Debtors' Atty: Robert McCann

**The Chapter 11 Status Conference is**

**XXXXXXXXXXXXXXXXXXXX.**

Notes:

Notice of Motion and Motion for Relief From the Automatic Stay filed 4/9/15 [Dckt 11]; Order granting filed 4/29/15 [Dckt 32]; Appeal filed 5/6/15 [Dckt 33]

Motion to Delay Dismissal filed by creditor River City Petroleum 4/15/15 [Dckt 18]

Report of Trustee at 341 Meeting filed 5/6/15; debtor did not appear; continued to 6/24/15 at 11:00 a.m.

Motion for Emergency Stay of Bankruptcy Court Order filed 5/6/15 [Dckt 37]; Order denying filed 5/6/15 [Dckt 38]

#### **JUNE 24, 2015 STATUS CONFERENCE**

This Chapter 11 case was commenced by Day & Night Truck Repair, Inc., the Debtor, on April 6, 2015. The Debtor has served as the fiduciary of the bankruptcy estate as the Debtor in Possession since the commencement of this case.

On April 29, 2015, this court issued an order modifying the automatic stay to allow River City Petroleum, inc. to proceed in non-bankruptcy courts to enforce its asserted right to possession of the real property commonly known as 850 Delta Lane, West Sacramento, California (the "Property"). Order, Dckt. 32. In issuing that Order, the court stated its findings of fact and conclusions of law in the Civil Minutes from the April 23, 2015 hearing on the motion for relief from the automatic stay. Civil Minutes, Dckt. 30.

In granting the motion, the court noted that the Debtor did not list any business assets for any business conducted on the Property or any business assets (such as equipment, leases, accounts receivable, or tools). *Id.* The motion for relief from the stay was filed for purposes of enforcing a judgment for possession of the property obtained from the state court.

On May 6, 2015, a document titled "Notice of Appeal" from the order granting relief from the automatic stay was purportedly filed for the Debtor in Possession. However, the Debtor in Possession is a corporation and must be represented by an attorney. See Order Denying Motion for Stay Pending Appeal.

Order, Dckt. 38. In the upper left hand corner of the Notice of Appeal the following information is stated as to the party filing the Notice,

"Surinder Singh, Secretary,  
Day & Night Truck  
Trailer Repair, Inc.,  
Appellant  
850 Delta Lan,  
W. Sacramento, CA 95691  
TEL: (707) 720-8128  
Pro Se"

A corporation cannot be a party "in pro se" to be represented by an officer of the corporation. Robert McCann, a California attorney, is the Debtor in Possession's attorney of record in this case. FN.1.

-----  
FN.1. While attorney of record, there is no order authorizing the employment of Mr. McCann as counsel for the Debtor in Possession as required by 11 U.S.C. § 327. The failure to obtain authorization of such employment precludes such counsel from being allowed any compensation pursuant to 11 U.S.C. § 330 or 331.  
-----

Since the Motion for Stay Pending Appeal was filed on May 6, 2015, no other pleadings have been filed by any parties in this case. The Debtor in Possession has failed to file the Monthly Operating Report for May 2015, which as due no later than June 14, 2015. L.B.R. 2015-1(c).

The Order scheduling the Status Conference further required the Debtor in Possession to file a Chapter 11 Status Report on or before April 24, 2015. Order, Dckt. 7. No Status Report has been filed by the Debtor in Possession.

On April 21, 2015, the Debtor filed Schedules in this case, stating under penalty of perjury:

A. Debtor has no interests in any real property. Schedule A, Dckt. 24 at 1.

B. Debtor's personal property assets consist of the following:

1.	Cash.....	\$ 180.00
2.	Banking Accounts.....	\$2,700.00
3.	Household Goods.....	\$1,500.00
4.	Wearing Apparel.....	\$1,200.00
5.	Pick-up Truck.....	\$3,500.00.

Schedule B, *Id.* at 2-6.

C. This corporation Debtor has also attempted to improperly claim exemption due an individual arising under the California Code of Civil Procedure §§ 704.010 et seq. Schedule C, *Id.* at 7.

D. On Schedule G Debtor lists a 10 year lease with River City Petroleum, Inc. for the Property. *Id.* at 12.

Debtor's Statement of Financial Affairs also filed on April 21, 2015,

disclose the following information under penalty of perjury:

- A. The Debtor had income of \$4,000.00 for some unstated period during an unstated year. Question 1, statement of gross income for current year and the two years preceding filing of bankruptcy case; *Id.* at 1.
- B. Debtor has no business, responding "None" to Questions 18, "Nature, location, and name of business." *Id.* at 11.
- C. Debtor has no bookkeepers or accountants who have kept or supervised the keeping of books or account and records of the Debtor. No financial statements have been prepared for Debtor within the two years preceding the filing of the bankruptcy case. Question 19, *Id.* at 25.
- D. The Debtor has no officers or directors, and has no shareholders who directly or indirectly owns or controls five percent or more of the voting stock. Question 21, answered "None," *Id.* at 13.

The Schedules and Statement of Financial Affairs are signed under penalty of perjury by Surinder Singh, Corporate Secretary.

The Order Scheduling the Status Conference and ordering the filing of a Status Report also specifies that the Debtor shall serve the Scheduling Order and Status Report on various creditors and parties in interest. No certificate of service has been filed by the Debtor or the Debtor in Possession.

The Status Conference Order further expressly provides,

**"Sanctions for Failure to Comply.** Failure to comply with this order may result in sanctions including dismissal, conversion, or the appointment of a trustee. Filing a status report with perfunctory conclusions and no meaningful factual detail does not comply with this order. The court expects to receive sufficient information to understand the current status of the case, the debtor's anticipated plan of reorganization, and the types of contested matters and adversary proceedings that will likely be filed."

Order, Dckt. 7 [*emphasis added*].

The failure to serve the Status Conference Order or failure to file a status report and serving it on the parties in interest is grounds for dismissal, conversion, or appointment of a trustee, in addition to other possible monetary and non-monetary sanctions. Upon review of the Schedules and Statement of Financial Affairs, the information stated under penalty of perjury indicates that there is no effective reorganization in the offing.

The court is also concerned that the Schedules and Statement of Financial Affairs were prepared in a perfunctory, intentionally misleading basis. The court does not see a reason why a corporate debtor represented by counsel would be filing Schedules which do not disclose any business assets, a Statement of Financial Affairs which states that the Debtor has no business, and does not

list claims against any third-parties, and then oppose relief from the stay asserting that the Debtor in Possession is operating a business. FN.2. However, such a contention is at odds with the information provided under penalty of perjury in the Schedules and Statement of Financial Affairs.

-----

FN.2. In the Opposition, signed by counsel of record for the Debtor in Possession, it is represented (subject to the warranties and obligations arising under Fed. R. Bankr. P. 9011):

- A. "In the matter currently before the Court the Debtor is entitled to the automatic stay to provide them with the opportunity prepare to reorganize their corporation or in the alternative to convert the Chapter 11 petition to a Chapter 7." Opposition, p.3:26-27, 4:1; Dckt. 19.
- B. "The subject property is a fully operational business for truck and trailer repair." *Id.*, p. 4:4.
- C. "Debtor has a truck and trailer repair facility." *Id.*, p.6:13-14.

The Debtor in Possession did not provide a declaration by one of its officers or another representative with personal knowledge of its business (if any) and assets (if any). Rather, Debtor's in Possession bankruptcy counsel of record chose to provide his testimony under penalty of perjury. While some of this testimony relates to the state court litigation, other attempts to provide the attorney's testimony as to what his client's representative would testify to, if they were willing to so testify under penalty of perjury. Counsel for the Debtor in Possession testifies that the Debtor has a truck and trailer repair facility. Declaration, ¶ 9, Dckt. 20. However, no such assets are listed on the Schedules and no such business is stated on the Statement of Financial Affairs.

-----

The Debtor's in Possession and Debtor's failure to comply with the Scheduling Order and duty to file monthly operating reports may well be symptomatic of a greater problem (and breach of duties) relating to the filing of this case, preparation and filing of Schedules and the Statement of Financial Affairs, and failure to prosecute this case.

The court concludes that dismissal of this case is proper. Dismissal of the case does not preclude further action by this court or investigation and action by other parties in interest concerning the conduct of persons in connection with the information disclosed under penalty of perjury, preparation of documents, and filing of this case.

17. [15-22182-E-13](#) RUTH CLARK  
[15-2084](#)  
CLARK V. EL DORADO SAVINGS  
BANK ET AL

STATUS CONFERENCE RE: COMPLAINT  
4-29-15 [[1](#)]

**Final Ruling: No appearance at the June 24, 2015 Status Conference is required.**

-----

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty:  
Thomas P. Griffin [El Dorado Savings Bank]  
unknown [Joshua Road Investments, Inc.]

<b>The Status Conference has been continued to 2:30 p.m. on October 14, 2015 (Order, Dckt. 49).</b>
---

Adv. Filed: 4/29/15  
Answer: none

Nature of Action:  
Declaratory judgment

Notes:

[PGM-2] Motion for Temporary Restraining Order filed 4/29/15 [Dckt 6];  
Temporary Restraining Order and Order Setting Preliminary Injunction Hearing  
[5/14/15 at 1:30 p.m.] filed 4/30/15 [Dckt 16]

[PGM-3] Motion for Preliminary Injunction filed 5/4/15 [Dckt 19]; Order  
Granting Preliminary Injunction and Setting Preliminary Injunction Status  
Conference [7/9/15 at 1:30 p.m.] filed 5/15/15 [Dckt 41]



18. [14-29284-E-7](#) CHARLES MILLS  
[15-2064](#)  
MANNING V. MILLS, JR.

STATUS CONFERENCE RE: COMPLAINT  
3-24-15 [[1](#)]

**Final Ruling:** No appearance at the June 24, 2015 Status Conference is required.

-----

Plaintiff's Atty: Bruce A. Emard  
Defendant's Atty: unknown

No answer having been filed and Plaintiff requesting the entry of Defendant-Debtor's default (Dckt. 7), **the Status Conference is continued to 2:30 p.m. on August 20, 2015.**

Adv. Filed: 3/24/15  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

Notes:

#### **SUMMARY OF COMPLAINT**

The Complaint alleges claims to have a pre-bankruptcy settlement agreement enforced and reduced to a judgment in the amount of \$115,000.00 and that said judgment be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [fraud].

#### **SUMMARY OF ANSWER**

No answer has been filed by the Defendant-Debtor.

#### **REQUEST FOR ENTRY OF DEFAULT**

On June 19, 2015, Plaintiff filed a Request for Entry of Default. Dckt. 7. The Certificate of Service attests that the Summons and Complaint were served on the Defendant-Debtor on March 25, 2015, the day after the Summons was issued. Dckt. 6.

19. [11-41387-E-13](#) STEVE/ROBIN GRIGSBY  
[14-2340](#)  
GRIGSBY ET AL V. WELLS FARGO  
BANK N.A.

STATUS CONFERENCE RE: COMPLAINT  
12-11-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Austin P. Nagel

Adv. Filed: 12/11/14  
Answer: 2/13/15

Nature of Action:  
Declaratory judgment  
Dischargeability - other  
Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.</span></b>
--

Notes:

Status Conference Statement [Wells Fargo Bank, N.A.] filed 2/13/15 [Dckt 9]

#### **JUNE 24, 2015 STATUS CONFERENCE**

None of the Parties to this Adversary Proceeding have filed a Status Report for the June 24, 2015 Conference. Nothing has been filed since the Wells Fargo Bank, N.A. ("Defendant") Status Report filed on February 13, 2015. As of February 2015, Defendant reported:

- a. Ninety (90) days is requested for discovery.
- b. The parties have conducted preliminary settlement discussions.

No settlement having been presented to the court, the matter will be set for the discovery schedule and pre-trial conference as set forth below.

#### **FEBRUARY 18, 2015 STATUS CONFERENCE**

The parties reported that due to illness of counsel they have not been able to advance their settlement discussions. However, all attorneys are now available and actively addressing the issues. The court continues the Status Conference as requested.

#### **SUMMARY OF COMPLAINT**

This Adversary Proceeding is to obtain clear title to real property after the completion of the Chapter 13 Plan. Plaintiff-Debtor alleges that Defendants claims, secured pursuant to a second deed of trust, was valued by the court to be \$0.00 as a secured claim. Plaintiff-Debtor alleges that the Chapter 13 Plan has been completed. Therefore, Plaintiff-Debtor seeks a determination that Defendants deed of trust is void and does not encumber Plaintiff-Debtors Plaintiff-Debtor also seeks damages pursuant to California Civil Code § 2941(b), alleging that Defendant has not complied with its statutory duties to reconvey the deed of trust and clear title to the property of that void lien.

## SUMMARY OF ANSWER

Defendant admits and denies the specific allegations in the Complaint. Defendant also states twelve affirmative defenses.

## FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2 Dckt. 1. In its answer, Wells Fargo Bank, N.A. ("Defendant") admits that the Complaint "arises out of and is related to [the Plaintiff-Debtor's] Chapter 13 case..." Answer ¶ 1, Dckt. 7. Defendant denies the allegations in Paragraph 2 of the Complaint. *Id.*, ¶ 2. Paragraph 2 of the Complaint alleges,

"2. Defendant herein has a claim against Plaintiff, as defined by 11 U.S.C. §101(5). The complaint, as set forth herein, involves the voiding of the secured status of a claim pursuant to 11 U.S.C. §506, and as such, constitutes a "core" proceeding pursuant to 28 U.S.C. §157(b)(2)."

The court construes this denial as not only denying the contention that this is a core proceeding, but also denying that Wells Fargo Bank, N.A. has a claim against the Plaintiff-Debtor. This denial (or admission that Defendant has no claim against Plaintiff-Debtor) is inconsistent with Proof of Claim No. 6 filed by Wells Fargo Bank, N.A. asserting a claim in the amount of \$81,386.07. Wells Fargo Bank, N.A. further states in Proof of Claim No. 6 that the claim is secured by the real property commonly known as 6151 26<sup>th</sup> St, Rio Linda, California. Plaintiff-Debtor's confirmed Chapter 13 Plan provides for this secured claim of Wells Fargo Bank, N.A. as a Class 2 Claim to be paid \$0.00 though the Plan. 11-41387; Plan, Dckt. 5, and Order Confirming, Dckt. 19. The court determined pursuant to 11 U.S.C. § 506(a) that the Wells Fargo Bank, N.A. secured claim had a value of \$0.00. *Id.*

The Complaint seeks relief based upon the completion of the confirmed Chapter 13 Plan and operation of Chapter 13 plan provisions enacted by Congress under Chapter 13 of the Bankruptcy Code. The Complaint seeks a determination of the effect of the Wells Fargo Bank, N.A. deed of trust arising under the Bankruptcy Code. 11 U.S.C. §§ 1325 (confirmation), 1322 (terms of chapter 13 plan), 1327 (effect of confirmation), 1328 (discharge), 506(a) (valuation of secured claim), and 506(d) (voiding claim to extent claim exceeds value of collateral). These are all federal law matters arising under the Bankruptcy Code itself and core proceedings as provided for by Congress in 28 U.S.C. § 157(b), including, but not limited to, 11 U.S.C. § 157(b)(2)(A), (B), (E), (I), (K), and (O). Jurisdiction for this Adversary Proceeding (as the complaint is currently drafted) 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.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- A. The Complaint seeks relief based upon the completion of the confirmed Chapter 13 Plan and operation of Chapter 13 plan provisions enacted by Congress under Chapter 13 of the Bankruptcy Code. The Complaint seeks a determination of the effect of the Wells Fargo Bank, N.A. deed of trust arising under

the Bankruptcy Code. 11 U.S.C. §§ 1325 (confirmation), 1322 (terms of chapter 13 plan), 1327 (effect of confirmation), 1328 (discharge), 506(a) (valuation of secured claim), and 506(d) (voiding claim to extent claim exceeds value of collateral). These are all federal law matters arising under the Bankruptcy Code itself and core proceedings as provided for by Congress in 28 U.S.C. § 157(b), including, but not limited to, 11 U.S.C. § 157(b)(2)(A), (B), (E), (I), (K), and (O). Jurisdiction for this Adversary Proceeding (as the complaint is currently drafted) 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.

- B. Initial Disclosures shall be made on or before June 30, 2015.
- C. Expert Witnesses shall be disclosed on or before July 15, 2015, and Expert Witness Reports, if any, shall be exchanged on or before August 14, 2015.
- D. Discovery closes, including the hearing of all discovery motions, on September 30, 2015.
- E. Dispositive Motions shall be heard before November 20, 2015.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:30 p.m. on December 17, 2015.

20. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
[14-2004](#)  
G & K HEAVEN'S BEST, INC. V.  
MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-4-14 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14  
Answer: 2/5/14

Crossclaim Filed: 2/5/14  
Answer: 2/24/14

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury

Notes:

Continued from 1/21/15 to 5/27/15 to allow parties to document settlement.

Continued from 5/27/15 by the court.

#### **JUNE 24, 2015 STATUS CONFERENCE**

On February 22, 2015, the court filed its order confirming Defendant-Debtor's Third Amended Chapter 13 Plan. 13-32494, Dckt. 238. The Chapter 13 Plan was confirmed with the consent of the Plaintiff. Though the court entered its order granting Defendant-Debtor's motion to confirm the Third Amended Chapter 13 Plan on January 29, 2015, the order prepared by Defendant-Debtor's counsel confirming the plan was not lodged with the court until February 19, 2015. See Order Confirming, Dckt. 238.

No action has been taken by Defendant-Debtor in the bankruptcy case since lodging the order on February 19, 2015.

In this Adversary Proceeding Defendant-Debtor's conduct has been equally inactive. The last document filed in this Adversary Proceeding by Plaintiff-Debtor was a stipulation on January 20, 2015, requesting that the court continue the Status Conference to April 1, 2015 to allow the parties to attempt to resolve all issues through a stipulation and conditional judgment.

No stipulation has been presented to the court to date.

On June 17, 2015, Plaintiff G&K Heaven's Best, Inc. filed Plaintiff's "6<sup>th</sup> Status Report." In the prior Status Conference Statement, filed January 12, 2015 (Dckt. 58), Plaintiff advised the court (1) confirmation of the Plaintiff-Debtor's Third Amended Chapter 13 Plan resolves this dispute, upon the plan being completed, and (2) the parties are "preparing" to enter conditional judgments.

On June 19, 2015, Defendant-Debtor filed a Status Report. Dckt. 70. Defendant-Debtor reports: (1) the parties are "drafting" conditional judgments and (2) the parties "anticipate" entering the conditional judgments "shortly." Therefore, based on these representations, Defendant-Debtor requests that he court continue the Status Conference (again).

This Adversary Proceeding was commenced on January 21, 2014. It has survived the Defendant-Debtor converting the bankruptcy case to one under Chapter 7, and then quickly seeking to re-convert it to Chapter 13 once Defendant-Debtor realized the significance of having a Chapter 7 trustee appointed and set to investigate the conduct of the Defendant-Debtor and Defendant-Debtor's counsel concerning the dealings with the corporation whose assets were transferred to Defendant-Debtors on the eve of the bankruptcy case being filed.

At this juncture, the Adversary Proceeding is languishing from inactivity by the parties and their counsel. The court does not know if this is a lack of activity and attention by both parties or only the Plaintiff-Debtor and Plaintiff-Debtor's counsel. The court is not inclined to just once again routinely continue the case, only to again be told at a later date further continuance is required for the parties to negotiate a settlement.

Therefore, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

#### **JANUARY 21, 2015 STATUS CONFERENCE**

The Parties have reached an agreement which is part of the Chapter 13 Plan to be confirmed in this the Plaintiff-Debtors bankruptcy case. On January 13, 2015, the court granted the Plaintiff-Debtors motion to confirm the proposed Chapter 13 Plan (order pending).

The Status Conference was continued to allow the parties to document the settlement.

21. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
[14-2027](#)  
MCQUEEN ET AL V. G & K  
HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-21-14 [[1](#)]

Plaintiff's Atty: C. Anthony Hughes  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14  
Answer: 2/17/14

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Recovery of money/property - preference

Notes:

Continued from 1/21/15 to 5/27/15 to allow parties to document settlement.

Continued from 5/27/15 by the court.

#### **JUNE 24, 2015 STATUS CONFERENCE**

On February 22, 2015, the court filed its order confirming Plaintiff-Debtor's Third Amended Chapter 13 Plan. 13-32494, Dckt. 238. The Chapter 13 Plan was confirmed with the consent of the Defendant. Though the court entered its order granting Plaintiff-Debtor's motion to confirm the Third Amended Chapter 13 Plan on January 29, 2015, the order prepared by Plaintiff-Debtor's counsel confirming the plan was not lodged with the court until February 19, 2015. See Order Confirming, Dckt. 238.

No action has been taken by Plaintiff-Debtor in the bankruptcy case since lodging the order on February 19, 2015.

In this Adversary Proceeding Plaintiff-Debtor's conduct has been equally inactive. The last document filed in this Adversary Proceeding by Plaintiff-Debtor was a stipulation on January 20, 2015, requesting that the court continue the Status Conference to April 1, 2015 to allow the parties to attempt to resolve all issues through a stipulation and conditional judgment.

No stipulation has been presented to the court to date.

On June 17, 2015, Defendant G&K Heaven's Best, Inc. filed Defendant's "6<sup>th</sup> Status Report." In the prior Status Conference Statement, filed January 12, 2015 (Dckt. 58), Defendant advised the court (1) confirmation of the Plaintiff-Debtor's Third Amended Chapter 13 Plan resolves this dispute, upon the plan being completed. Further, the Parties would be submitting a conditional judgment to void Defendant's security interest.

This Adversary Proceeding was commenced on January 21, 2014. It has survived the Plaintiff-Debtor converting the bankruptcy case to one under Chapter 7, and then quickly seeking to re-convert it to Chapter 13 once Plaintiff-Debtor realized the significance of having a Chapter 7 trustee appointed and set to investigate the conduct of the Plaintiff-Debtor and Plaintiff-Debtor's counsel concerning the dealings with the corporation whose assets were transferred to Plaintiff-Debtors on the eve of the bankruptcy case being filed.

At this juncture, the Adversary Proceeding is languishing from inactivity by the parties and their counsel. The court does not know if this is a lack of activity and attention by both parties or only the Plaintiff-Debtor and Plaintiff-Debtor's counsel. The court is not inclined to just once again routinely continue the case, only to again be told at a later date further continuance is required for the parties to negotiate a settlement.

Therefore, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

**JANUARY 21, 2015 STATUS CONFERENCE**

The Parties have reached an agreement which is part of the Chapter 13 Plan to be confirmed in this the Plaintiff-Debtors bankruptcy case. On January 13, 2015, the court granted the Plaintiff-Debtors motion to confirm the proposed Chapter 13 Plan (order pending).

The Status Conference was continued to allow the parties to document the settlement.