

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

July 11, 2018, at 2:00 p.m.

1. [12-37605-E-13](#) CLEA JACOBS
[18-2026](#)

**CONTINUED STATUS CONFERENCE
RE: COMPLAINT
3-21-18 [1]**

**JACOBS V. J.P. MORGAN CHASE,
N.A.**

Plaintiff's Atty: John G. Downing

Defendant's Atty: unknown

Adv. Filed: 3/21/18

Answer: none

The Status Conference is XXXXXXXXXX.

Nature of Action:

Validity, priority or extent of lien or other interest in property

Notes:

Continued from 5/30/18. Plaintiff to address and correct the Certificate of Service, file an amended Certificate, or obtain a new summons and serve the Complaint and new summons on or before 6/15/18.

Corrected Certificate of Service filed 5/29/18 ??

JULY 11, 2018 STATUS CONFERENCE

The court continued the May 30, 2018 Status Conference "to afford Plaintiff-Debtor the opportunity to diligently prosecute the entry of a default judgment and post-judgment motions." Civil Minutes, Dckt. 10.

On May 30, 2018, the Clerk of the Court issued a Memorandum advising Plaintiff-Debtor that the Request for Entry of Default could not be granted because "The date the complaint was served on the defendant, or the date of service of the complaint on the defendant stated in the declaration/affidavit is incorrect" and that "Service does not appear to be proper." Dckt. 9. No action was taken by Plaintiff-Debtor in response to the Clerk's May 30, 2018 Memorandum until on July 3, 2018—thirty-three (33) days after

July 11, 2018, at 2:00 p.m.

- Page 1 of 60 -

the Memorandum—Plaintiff-Debtor filed a new Request for Entry of Default. Dckt. 12. This resulted in the Clerk of the Court issuing a further Memorandum stating that the July 3, 2018 Request could not be granted because “Service does not appear to be proper.” Dckt. 13. The Memorandum does not state why “Service does not appear proper.”

Review of Certificate of Service

The most recent Certificate of Service of the Summons and Complaint was filed on May 29, 2018. Dckt. 8. In it, Elizabeth Cullen states under penalty of perjury that the Summons, Notice of Adversary Proceeding, Complaint, and Notice of Availability of Bankruptcy Dispute Resolution Program were served on March 26, 2018. She further states under penalty of perjury that such service was made on the following:

Chase
Attn: Home Equity Loan Servicing
PO Box 24714
Columbus, OH 43224

Andrew Kussmaul
BUCKLEY MADOLE P.C.
14841 Dallas Parkway, Suite 300
Dallas, TX 75254

Via Certified Mail

JP Morgan Chase, N.A.
[Attn: Stephen Cutler, General Counsel]
1111 Polaris Parkway
Columbus, Ohio 43240

JPMorgan Chase, N.A.
CT Corporation System
818 W Seventh St
Los Angeles Ca 90017

Id.

The latest Request for Entry of Default, Dckt. 12, states that on March 26, 2018, the summons (issued on March 21, 2018) and complaint were timely served on J.P. Morgan Chase Bank, N.A. The Request further states that Defendant was required by file an answer or Federal Rule of Civil Procedure 12/Federal Rule of Bankruptcy Procedure 7012 motion.

The Summons was issued on March 21, 2018. Dckt. 3. An answer or appropriate motion was required to be filed within thirty days. April 21, 2018, was a Friday, a regular business day for the court.

The Request for Entry of Default affirmatively (mis)states that the Answer was due on April 20, 2018, which is only twenty-nine days from the March 21, 2018 date when the Summons was issued. Dckt. 12 at 1:22–25. While this appears to be a clerical error, it is an error.

At the Status Conference, Counsel for the Plaintiff-Debtor advised the court **XXXXXXXXXX**

MAY 30, 2018 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Clea Mills Jacobs, the Plaintiff-Debtor, filed her complaint for Judgment Voiding Lien on March 21, 2018. The Complaint alleges that Defendant J.P. Morgan Chase, N.A. has a claim secured by a second deed of trust recorded against the Archery View Property. On January 23, 2013, Defendant filed a Notice of Satisfaction of the Claim. Complaint ¶ 6.

It is further alleged that Defendant's claim was valued at \$0.00 by the court and so provided for in Plaintiff-Debtor's confirmed Chapter 13 Plan. Plaintiff-Debtor has completed her plan and has received a discharge in her Chapter 13 bankruptcy case.

Plaintiff-Debtor asserts that she is entitled to a "Judgment Voiding the Lien." From the Complaint, it appears that Plaintiff-Debtor is seeking a judgment quieting title and determining the deed of trust void (not voiding an otherwise valid lien), there being no obligation remaining for it to secure. *See Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd*, 469 B.R. 803 (E.D. Cal. 2012) (discussing "lien stripping" in a Chapter 13 case).

SUMMARY OF ANSWER

No Answer or other responsive pleading has been filed by named Defendant J.P. Morgan Bank, N.A. The Certificate of Service for the Summons and Complaint reflects services as required under Federal Rule of Bankruptcy Procedure 7004.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint 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)(J). Complaint ¶ 1, Dckt. 1.

2. [15-28908-E-13](#) [18-2053](#) WILLIAM/SARAH MCGARVEY STATUS CONFERENCE RE:
COMPLAINT
4-27-18 [\[1\]](#)

MCGARVEY V. USAA SAVINGS BANK

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Plaintiff's Atty: Kyle W. Schumacher
Defendant's Atty: Jaime Y. Ritton

Adv. Filed: 4/27/18
Reissued Summons: 4/30/18
Answer: none

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

The Status Conference is continued to 2:00 p.m. on September 5, 2018, an Amended Compliant and Reissued Summons having been filed in this Adversary Proceed.

Notes:
[DKM-1] Defendant USAA Savings Bank's Motion for Dismissal of Plaintiff's Adversary Complaint Re: Willful Automatic Stay Violation filed 5/29/18 [Dckt 8]; Order granting filed 7/3/18 [Dckt 17]

3. [16-28316-E-13](#) SHARRY STEVENS-GOREE
[17-2070](#)

STEVENS-GOREE V. CITIZENS
EQUITY FIRST CREDIT UNION

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR DECLARATORY
RELIEF, VIOLATION OF THE
AUTOMATIC STAY AND RELATED
STATE AND FEDERAL CAUSES OF
ACTION
4-28-17 [\[1\]](#)

Plaintiff's Atty: Gary Ray Fraley; Paramprit Singh Bindra
Defendant's Atty: Mark K. Worthge; Ji Yeon Yoo

Adv. Filed: 4/28/17
Answer: 5/31/17

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

The Status Conference is XXXXXXXXXX.
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Notes:
Scheduling order -
Initial disclosures by 8/4/17
Close of discovery 2/15/18
Dispositive motions heard by 4/20/18

JULY 11, 2018 PRETRIAL CONFERENCE

Defendant Citizens Equity First Credit Union filed its Pretrial Conference Statement on July 6, 2018. Dckt. 24. Plaintiff has not filed a Pretrial Conference Statement.

SUMMARY OF COMPLAINT

Sharry Stevens-Goree ("Plaintiff-Debtor") alleges that Defendant has "improperly filed a Proof of Claim that would make it impossible for Defendant to Comply with the standard [Chapter 13] plan in this District. . . ." Complaint ¶ 13; Dckt.1 It is alleged that in its Proof of Claim Defendant demands payment of excessive arrearage.

In the First Cause of Action, Plaintiff-Debtor alleges that the amounts sought in the Proof of Claim violate the automatic stay. The Second Cause of Action is an objection to Proof of Claim No. 3 filed by Defendant. The Third Cause of Action is one for "Declaratory Relief." In the Third Cause of Action, it is asserted that the past, completed conduct of Defendant in filing Form 1098's to the Internal Revenue Service was inaccurate. The "Declaration" sought appears to be the determination of the Defendant's claim.

In the Fourth Cause of Action, Plaintiff-Debtor asserts that Defendant has violated RESPA in computing the escrow amount obligations and payments. For a Fifth Cause of Action, Plaintiff-Debtor alleges that Defendant's conduct violates California Business and Professions Code §§ 17200 et seq.

Plaintiff-Debtor requests an award of attorney's fees pursuant to 11 U.S.C. § 362(k) and the contract between the parties.

SUMMARY OF ANSWER

Citizens Equity First Credit Union ("Defendant") has filed an Answer. Dckt. 8. Defendant admits and denies specific allegations in the Complaint. The Answer asserts twenty-one affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Complaint 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). Plaintiff-Debtor also expressly consents to the bankruptcy judge issuing all orders and final judgment for all non-core matters. Complaint ¶¶ 2, 3, 4, Dckt. 1.

In its Answer, Defendant fails to admit or deny the allegations of federal court jurisdiction, core matters, and the consent of Plaintiff-Debtor to the bankruptcy judge issuing final judgments and orders. Answer ¶¶ 2, 3, 4, Dckt. 8.

Defendant fails to comply with the requirements of Federal Rule of Bankruptcy Procedure 7012 and expressly address the allegations of jurisdiction and expressly state whether Defendant consents to the entry of final orders and judgments (for non-core matters). The court will address this oversight at the Status Conference.

At the Status Conference, the parties concurred that this is a core matter, as well as consenting on the record to the bankruptcy judge issuing the final orders and judgment in this Adversary Proceeding (as the claims are now pleaded in the Complaint).

CONSENT TO BANKRUPTCY JUDGE ISSUING FINAL ORDERS AND JUDGMENT FOR ALL NON-CORE MATTERS

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment 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.

ADDRESSING OF CLAIMS ASSERTED BY PLAINTIFF-DEBTOR

At the heart of Plaintiff-Debtor's Complaint is an objection to Proof of Claim No. 3 filed by Defendant in Plaintiff-Debtor's bankruptcy case. It is asserted that Defendant mis-computes the amount of its claim. It is alleged that the "error" in computing the amount due under the Proof of Claim is conduct that Defendant engaged in prior to the commencement of Plaintiff-Debtor's bankruptcy case.

It is also alleged that the misstatement of the amount due in Proof of Claim No. 3 constitutes a violation of the automatic stay.

Both of the above core proceedings may be conducted as contested matters rather than adversary proceedings. FED. R. BANKR. P. 7001. When other matters for which an adversary proceeding is required are related to the forgoing, however, the objection to claim and violation of automatic stay can be included in one adversary proceeding with the other claims.

At the Status Conference, the court addressed with the Parties the wisdom of segmenting the litigation. First, the court addresses the objection to claim. Once that is completed, next is the alleged violation of the automatic stay. Finally, there are the remaining claims asserted in the Complaint. That would allow the parties to address the substantive dispute, the amount of and proper computation of the obligation of Defendant in Plaintiff-Debtor's bankruptcy case before addressing what may be academic issues or put those legal issues in the economic context of any such violations.

A review of Plaintiff-Debtor's bankruptcy file does not disclose any objection to claim or contested matter asserting rights for violation of the automatic stay. 16-28316. The court did find a Stipulation and Order setting the adequate protection payments to be made to Defendant on its secured claim. *Id.*, Dckt. 100. There is no motion seeking such relief as is required by Federal Rule of Bankruptcy Procedure 9013, which in pertinent part provides:

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by these rules, **shall be by written motion**, unless made during a hearing.

Plaintiff-Debtor confirmed her Chapter 13 Plan on January 31, 2018. 16-28316, Order, Dckt. 123. Under the terms of the Chapter 13 Plan, adequate protection payments must be paid to Defendant-Debtor. *Id.*; Plan Addition Provision 6.01, Dckt. 110. No provision is made for how and when the "adequate protection" payments will terminate. Plaintiff-Debtor and Defendant did file a Stipulation agreeing to make an adequate protection payment until this Adversary Proceeding is concluded. *Id.*; Stipulation, Dckt. 65.

Trial-Setting Order

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2018**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2018**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2018**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2018**.
- F. The Trial shall be conducted at ----**x.m. on -----, 2018**.

Defendant's Pretrial Conference Statement filed on July 6, 2018, Dckt. 24, and Plaintiff-Debtor not having filed the required Pre-Trial Conference Statement, and the Parties have otherwise confirmed in writing and stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff-Debtor	Defendant
<p>Jurisdiction and Venue:</p> <p>1. Core Proceeding for which Federal Jurisdiction exists pursuant to 28 U.S.C. §§ 1334, 157, for which final orders and judgment shall be determined by the bankruptcy judge for all matters in this Adversary Proceeding.</p>	
Plaintiff-Debtor	Defendant
<p>Undisputed Facts:</p> <p>1. None Filed</p>	<p>Undisputed Facts:</p> <p>1. Defendant does not dispute that a bankruptcy petition was filed and that it received notice of the petition.</p> <p>2. Defendant does not dispute that a proof of claim was filed.</p>
<p>Disputed Facts:</p> <p>1. None Filed.</p>	<p>Disputed Facts:</p> <p>1. "Whether Plaintiff can prove that she was under the automatic stay provision at the time Defendant proceeded with collection actions."</p>

	<ol style="list-style-type: none"> 2. “Assuming Defendant violated the automatic stay provision, which is contested, what damages, if any, did the Plaintiff suffer.” 3. “Dispute” whether a Bankruptcy Plan was confirmed. (The court’s file in the bankruptcy case shows an order confirming in January 2018.) 4. “Whether the Plaintiff can prove that the proof of claim filed by Defendant was improper.” 5. “Whether the Plaintiff can prove that the amounts claimed in the proof are inaccurate.” 6. “Whether Plaintiff is entitled to automatic stay relief.” 7. “Whether the amounts claimed and confirmed in the bankruptcy plan are accurate.” 8. “Whether Plaintiff can prove that Defendant demanded excessive payments.” 9. “Whether Plaintiff can prove that Defendant failed to conduct an escrow account analysis.” 10. “Whether the filing of a proof of claim by Defendant constitutes unfair competition.” 11. “Whether to causes of actions alleged provided for a reward of attorney’s fees.” 12. “Which party is the prevailing party.” <p>(The court notes that the language used is curious, with Defendant appearing not to dispute a number of the grounds asserted, but just</p>
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	whether Plaintiff-Debtor's counsel can present the court with evidence of such alleged conduct and damages. This appears to be a stylistic drafting oddity and not a disguised admission on those points.)
Disputed Evidentiary Issues: 1. None Filed.	Disputed Evidentiary Issues: 1. None Anticipated.
Relief Sought: 1. None Filed.	Relief Sought: 1. "Defendant seeks a dismissal of the action with prejudice, costs, and attorney's fees." (While stated as "dismissal with prejudice," a Rule 12(b) term, presumably Defendant is seeking entry of judgment in Defendant's favor, denying relief for Plaintiff on all claims asserted in the Complaint.)
Points of Law: 1. None Filed.	Points of Law: 1. 11 U.S.C. § 362 2. With respect to the assertion that filing an incorrect proof of claim: <i>In re Clayton</i> , No. 09-80167-FLK, 2010 WL 4008335, at *1 (Bankr. E.D. Wash. Oct. 12, 2010); 11 U.S.C. §§ 101(5), 501(a). 3. With respect to escrow charges: 12 CFR 1024.17(c)(1)(ii), § 1024.17(f)(4)(iii)
Abandoned Issues: 1. None Filed.	Abandoned Issues: 1. None Identified.
Witnesses:	Witnesses:

<p>1. None Filed.</p>	<p>1. Sharry Stevens-Goree</p> <p>2. Haydee Garbero Hooten</p> <p>3. Custodian of Records for Defendant Citizens Equity First Credit Union</p> <p>4. PMK for Defendant Citizens Equity First Credit Union regarding Sharry Steven-Coree's account</p> <p>5. David Cusick</p> <p>6. Yvonne S. Bundy-George</p>
<p>Exhibits:</p> <p>1. None Filed.</p>	<p>Exhibits:</p> <p>1. Proof of Claim Filed 1/13/17</p> <p>2. Certificate of Service</p> <p>3. Deed of Trust</p> <p>4. Mortgage Statement 12/8/2016</p> <p>5. Itemization of Fee and Costs</p> <p>6. Bankruptcy Court Docket and Corresponding Documents 16-28316</p> <p>7. Plaintiff's Payment History</p> <p>8. All Communication between Plaintiff and Defendant</p> <p>9. Escrow Analysis</p> <p>10. Plaintiff's Response to Request for Production, Set One</p> <p>11. Plaintiff's Response to Request for Admission, Set One</p>

<p>Discovery Documents:</p> <p>1. None Filed.</p>	<p>Discovery Documents:</p> <p>1. Plaintiff's responses to Request for Production 1–32 attached hereto to Defendant's Pretrial Statement as Exhibit A.</p> <p>2. Plaintiff's responses to Request for Admissions 1–63 attached to Defendant's Pretrial Statement as Exhibit B.</p>
<p>Further Discovery or Motions:</p> <p>1. None Filed.</p>	<p>Further Discovery or Motions:</p> <p>1. None Anticipated.</p>
<p>Stipulations:</p> <p>1. None Filed.</p>	<p>Stipulations:</p> <p>1. Proposed, but no stipulation presented to the court.</p>
<p>Amendments:</p> <p>1. None Filed.</p>	<p>Amendments:</p> <p>1. None Anticipated.</p>
<p>Dismissals:</p> <p>1. None Filed.</p>	<p>Dismissals:</p> <p>1. None Anticipated.</p>
<p>Agreed Statement of Facts:</p> <p>1. None Filed.</p>	<p>Agreed Statement of Facts:</p> <p>1. Proposed, but no agreed statement filed.</p>
<p>Attorneys' Fees Basis:</p> <p>1. None Filed.</p>	<p>Attorneys' Fees Basis:</p> <p>1. 12 U.S.C. § 2607(d)(5)</p> <p>2. 11 U.S.C. § 362(a)</p>

Additional Items	Additional Items
1. None Filed.	1. None Identified.
Trial Time Estimation: None Filed.	Trial Time Estimation: 3 Days

4. [10-46636-E-13](#) **JOSEPH/KIMBERLY OLIVA** **STATUS CONFERENCE RE:**
[18-2062](#) **COMPLAINT**
5-4-18 [1]

**OLIVA ET AL V. OCWEN LOAN
SERVICING, LLC**

Plaintiff's Atty: Rick Morin
Defendant's Atty: Bernard J. Kornberg

Adv. Filed: 5/4/18
Answer: 6/11/18

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

Notes:
Stipulation to Extend Time to Respond to Complaint filed 6/4/18 [Dckt 7]

Joint Status Report and Discovery Plan filed 6/25/18 [Dckt 9]

SUMMARY OF COMPLAINT

Joseph Oliva and Kimberly Oliva ("Plaintiff-Debtor") filed a Complaint titled "Complaint for Damages For Willful Violation of the Automatic Stay. Dckt. 1 (The court notes that relief for all alleged violation of the automatic stay is brought as a contested matter. FN1.) The allegations in the Complaint as summarized as follows:

- A. The Edwards Lane Property is encumbered by two mortgages. Complaint ¶ 8, Dckt. 1.
- B. Plaintiff-Debtor confirmed a Chapter 13 Plan in the related bankruptcy case. The Plan provided for the payment of the secured claim, now held by Defendant Ocwen, and curing of the arrearage. *Id.*, ¶ 9.
- C. Proof of Claim No. 10 for the claim now held by Defendant listed the claim amount of \$205,371.52, with an arrearage of \$13,841.39. *Id.* ¶ 10.

- D. In January 2011, the automatic stay was modified to allow MERS, for the secured claim now held by Defendant, to fix “an alleged title defect in the vesting of the Edwards Lane Property.”
- E. Plaintiff-Debtor completed the Chapter 13 Plan and Debtor’s discharges were entered on March 13, 2018. *Id.* ¶¶ 13, 15.
- F. At various times during the Chapter 13 bankruptcy case, Defendant Ocwen, as the then owner of the secured claim, directly contacted the Plaintiff-Debtor to inform Plaintiff-Debtor of the default on the loan and “threatening foreclosure.” It is alleged that Defendant “flooded” Plaintiff-Debtor with “nonsensical correspondence” during the bankruptcy case threatening foreclosure, requesting information as to whether a bankruptcy had been filed, and demanding payment of the arrearage. Further, some of the notices were only in Spanish. Plaintiff-Debtor asserts having in their possession thirty-eight different such correspondence for the period December 6, 2013 through September 22, 2015. *Id.* ¶ 16.
- G. It is further alleged that Defendant directly contacted Plaintiff-Debtor at least seven times between February 20, 2014, and September 17, 2015. *Id.*, ¶ 18.
- H. Plaintiff-Debtor alleges that Defendant represented that it had been granted relief from the stay (apparently referring to the modification granted to MERS to correct a title issue). *Id.* ¶ 19.
- I. After conclusion of Plaintiff-Debtor’s bankruptcy plan (which provided for curing the arrearage on Defendant’s secured claim), Defendant initiated foreclosure proceedings. Plaintiff-Debtor alleges that a loan modification was sought, but denied because of the “title defect” for which MERS had obtained modification of the automatic stay to correct years before. *Id.*, ¶ 22.
- J. The First Cause of Action is for the alleged violations of the automatic stay during the pendency of the Chapter 13 bankruptcy case by all of the correspondence, including threatening foreclosure. *Id.* ¶¶ 25–31.
- K. In the prayer, Plaintiff-Debtor seeks entry of judgment for “violations of the Discharge Injunction” (though the Complaint states allegations for violation of the automatic stay), and for “economic” and “non-economic” damages, punitive damages, attorneys’ fees, and costs. *Id.*, p. 6:16–22.

Additionally, while stating grounds for federal court jurisdiction, Plaintiff-Debtor fails to allege whether this is a core matter proceeding, and if not, whether Plaintiff-Debtor consents to the bankruptcy judge entering all final orders and judgment herein. FED. R. BANKR. P. 7008.

FN.1. As discussed in Collier on Bankruptcy:

[2] Violation of Stay Is Contempt of Court

A violation of the stay is punishable as contempt of court.⁸Link to the text of the note
Most courts will impose contempt sanctions for a knowing and willful violation of a court order, and the automatic stay is considered as equivalent to a court order.

...

[a] Procedure for Dealing with Contempt

Federal Rule of Bankruptcy Procedure 9020 formerly set out a detailed procedure for dealing with contempt. The procedure was abrogated by the 2001 amendments to the rule, and the rule now simply provides for application of Rule 9014 to motions for contempt. Rule 9020 does not address contempt proceedings initiated by the court *sua sponte*.

...

[3] Recovery of Damages for Willful Violation of the Stay; §362(k)

Section 362(k)(1), which was designated as section 362(h) prior to the 2005 amendments, provides for a recovery of damages, costs and attorney's fees by an individual damaged by a willful violation of the stay. . .

3 Collier on Bankruptcy ¶ 362.12.

SUMMARY OF ANSWER

Ocwen Loan Servicing, LLC ("Defendant") filed its Answer to the Complaint on June 11, 2018. Dckt. 8. The Answer admits and denies specific allegations of the Complaint.

With respect to the allegations in paragraphs 1 and 2 of the Complaint, subject to the certifications given pursuant to Federal Rule of Bankruptcy Procedure 9011 made by Defendant and Defendant's Counsel, the Answer states:

1. This allegation contains a legal conclusion to which Ocwen is not obligated to admit or deny.
2. This allegation contains a legal conclusion to which Ocwen is not obligated to admit or deny.

Answer, Dckt. 8.

Interestingly, the allegations in paragraphs 1 and 2 of the Complaint are:

1. This adversary proceeding arises out of and is related to the above-captioned Chapter 13 bankruptcy case.

2. Jurisdiction exists pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. § 1409(a)

Complaint, Dckt. 1.

As addressed below, the United States Supreme Court has adopted Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, which govern adversary proceedings in the United States Bankruptcy Court, which is a division of the United States District Court. 28 U.S.C. § 151. Whether a party is filing pleadings in an adversary proceeding filed in the bankruptcy court or filed in or withdrawn to the district court, the Rules are the same.

The court does not see a basis for Defendant having exempted itself from addressing the issue of jurisdiction or pleading whether this is a core or non-core matter.

The court allowed counsel for Defendant to address the legal basis for Defendant refusing to address the allegation of federal court jurisdiction. At the hearing, XXXXXXXXXXXXXXXXXXXXXXXXXXXX

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional pleading requirement concerning whether the matters in the complaint are core or non-core:

“Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.**”

FED. R. BANKR. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceedings. FED. R. BANKR. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matters are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(b) Applicability of Rule 12(b)-(I) F.R.Civ.P. Rule 12(b)-(I) F.R.Civ.P. applies in adversary proceedings. 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.”

FED. R. BANK. P. 7012(b) (emphasis added).

Neither Plaintiff-Debtor nor Defendant address whether this is a core or non-core proceeding, and if non-core, whether they consent to the bankruptcy judge issuing all orders and final judgment herein.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), but does not address whether this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Defendant Ocwen Loan Servicing, LLC fails to admit or deny the allegations of jurisdiction, and it also fails to provide the required core proceeding pleadings. Answer ¶¶ 1, 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment 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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), but does not address whether this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Defendant Ocwen Loan Servicing, LLC fails to admit or deny the allegations of jurisdiction, and it also fails to provide the required core proceeding pleadings. Answer ¶¶ 1, 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- B. Initial Disclosures shall be made on or before **----, 2018.**

- C. Expert Witnesses shall be disclosed on or before -----, **2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018**.
- D. Discovery closes, including the hearing of all discovery motions, on -----, **2018**.
- E. Dispositive Motions shall be heard before -----, **2018**.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2018**.

5. [11-44540-E-13](#) **MERCEDES PEREZ**
[18-2041](#)

STATUS CONFERENCE RE:
COMPLAINT
4-5-18 [[1](#)]

PEREZ V. STOCKTON MORTGAGE

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

Adv. Filed: 4/5/18
Answer: none

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

The Status Conference is XXXXXXXXXX.
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Notes:

JULY 11, 2018 STATUS CONFERENCE

The Complaint in this Adversary Proceeding was filed on April 5, 2018, by Mercedes Perez, the Plaintiff. No Certificate of Service has been filed. No other pleadings or other documents have been filed since April 5, 2018.

At the Status Conference **XXXXXXXXXX**.

6. [11-44540-E-13](#) **MERCEDES PEREZ**
[18-2042](#)

**STATUS CONFERENCE RE:
COMPLAINT**
4-5-18 [[1](#)]

PEREZ V. CAMP

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

Adv. Filed: 4/5/18
Answer: none

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

Notes:

JULY 11, 2018 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Mercedes Perez ("Plaintiff-Debtor") filed her twenty-three (23) page Complaint on April 5, 2018. Dckt. 1. The twenty-three page Complaint is titled: "Complaint for Declaratory Relief to Void Liens Pursuant to 11 U.S.C. § 506(a); Related Stated Causes of Action; Determination of Dischargeability of Debt Under FRBP § [sic] 4007."

In the Complaint, Plaintiff-Debtor alleges that in her related Chapter 13 case she completed her Plan and obtained her discharge. In her Chapter 13 Case, Plaintiff-Debtor obtained an order pursuant to 11 U.S.C. § 506(a) that Defendant William Camps's secured claim had a value of \$0.00 as a secured claim.

The First Cause of Action is titled as one for "Declaratory Relief," that being one in which no immediately effective judgment effecting the rights of the parties, but merely a "declaration" of their respective rights so that their future conduct can be conducted accordingly and they can avoid creating damage to the other. FN.1.

FN.1. 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. "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).

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.*

Plaintiff-Debtor states that she seeks a declaratory judgment that voids the second and third deeds of trust securing Defendant’s claim, and “thereby quieting title” to the real property.

Plaintiff-Debtor then requests that the declaratory judgment “contain language” equivalent to a deed of reconveyance for the second deed of trust. Such language are pleaded to “in effect, ‘quiet title’ of Plaintiff[-Debtor].”

Then, buried in paragraph 37 of the Complaint, Plaintiff-Debtor further requests the following “declaratory relief” as part of the First Cause of Action:

“37. Pleading alternative theories, that if Defendant contends that only the in personam liability has been discharged, Plaintiff seeks, pursuant to FRBP §4007(a)-(b), a determination that both the in personam and in rem liability of the debt has been fully discharged and any security interest voided.”

Though Plaintiff-Debtor does not have to provide a points and authorities with the Complaint, the court is unsure as to what legal authority there is for a “discharge” of “in rem liability” or the legal concept of “in rem liability.”

For a Second Cause of Action, Plaintiff-Debtor seeks relief pursuant to California Civil Code § 2941(d) based on Defendant’s failure to reconvey the second and third deeds of trust after the Plaintiff-Debtor’s Chapter 13 Plan was completed, the valuation of Defendant’s secured claim pursuant to 11 U.S.C. § 506(a) having become the final “contract” by completion of the Plan, there being no obligation left owing to Defendant being secured by the second and third deeds of trust, and Defendant then failing to reconvey the second and third deed of trust as required by California law. Plaintiff-Debtor seeks actual and statutory damages pursuant to California Civil Code § 2941 and on other state law grounds. FN.2.

FN.2. This court, now more than several years ago, addressed the interplay between state and federal bankruptcy law concerning deeds of trust for which the secured claim is valued pursuant to 11 U.S.C. § 506(a) and the effect of completion of the bankruptcy plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013); *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff’d*, 469 B.R. 803 (E.D. Cal. 2012).

Plaintiff-Debtor also requests statutory and contractual attorney’s fees and costs, in addition to actual, statutory, and punitive damages.

SUMMARY OF ANSWER

No answer has been filed by William Camp, the named Defendant.

NO CERTIFICATE OF SERVICE

The Complaint was filed and the Summons was issued on April 5, 2018. No certificate of service of the Summons and Complaint has been filed by Plaintiff-Debtor.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint 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). Complaint ¶¶ 1, 2, Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. Plaintiff alleges in the Complaint 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). Complaint ¶¶ 1, 2, Dckt. 1. Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- B. Initial Disclosures shall be made on or before -----, **2018**.
- C. Expert Witnesses shall be disclosed on or before -----, **2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018**.
- D. Discovery closes, including the hearing of all discovery motions, on -----, **2018**.
- E. Dispositive Motions shall be heard before -----, **2018**.

F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2018.**

7. [16-20743-E-7](#) ANNA PETERSON
[17-2234](#)

THOMPSON V. PETERSON

STATUS CONFERENCE RE:
OBJECTION TO NOTICE OF ADVERSE
ACTION
5-21-18 [[22](#)]

Plaintiff's Atty: Pro Se
Defendant's Atty: Pro Se

Adv. Filed: 12/8/17
Summons Reissued: 3/2/18
Answer: none

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

Notes:
Set by order of the court filed 7/2/18 [Dckt 31]. Plaintiff and Defendant to appear in person, no telephonic appearances permitted for either of the Parties or their counsel, if either are subsequently represented by counsel.

**JULY 11, 2018 CONFERENCE ON DEFENDANT'S
OBJECTION TO NOTICE OF ADVERSARY PROCEEDING**

Anna Krin Peterson, Defendant-Debtor, has not filed an answer or motion asserting a defense arising under Federal Rule of Civil Procedure 12 and Federal Rule of Bankruptcy Procedure 7012. Defendant Debtor has filed a pleading titled as an "Objection," which is summarized as follows:

- A. The Pleading is titled "Objection to Notice of Adverse Action." Dckt. 22 at 1.
- B. Defendant-Debtor states that United Law Center formerly represented her as counsel in Defendant-Debtor's related bankruptcy case, but is no longer representing Defendant-Debtor. *Id.*, ¶ 2.
- C. Defendant-Debtor states that she does not have a PACER Account. *Id.*, ¶ 5.

- D. Through an online search, Defendant-Debtor discovered that this Adversary Proceeding is pending. *Id.*, ¶ 6.
- E. Defendant-Debtor states that she has not been “personally served” with the Complaint, summons, or any other document. *Id.*, ¶ 7.
- F. Defendant-Debtor then requests that the court order Plaintiff to properly serve the summons and Complaint as required by Federal Rule of Bankruptcy Procedure 7004. *Id.*, ¶ 6. The court notes that Defendant-Debtor manifests a knowledge of the Federal Rules of Bankruptcy Procedure, a level of sophistication not shown by many pro se debtors and defendants who appear in this court.
- G. In paragraphs 9, 10, 11, and 12 Defendant-Debtor makes some factual arguments about the debt that is the subject of the Complaint. *Id.*, p. 2.
- H. In her prayer, all Defendant-Debtor “requests” is that the court order Plaintiff to “personally serve” the summons and complaint, the court continue proceedings, and the court allow Defendant-Debtor to appear telephonically. *Id.*, p. 2:25–26, 3:1–5.

The date and time listed for the Objection to Notice of Adverse Action is stated to be May 30, 2018 at 2:00 p.m. *Id.* at 1. No notice of hearing was filed, and Defendant-Debtor did not set a hearing on the request for relief from the court. LOCAL BANKR. R. 9014-1.

The pleading does not appear to be an answer or motion in response to the Complaint. Rather, Defendant-Debtor, who expressly cites to Federal Rule of Bankruptcy Procedure 7004, believes that she can require “personal service” to be made, rather than the rules for service as enacted by the Supreme Court in the Federal Rules of Bankruptcy Procedure.

As Defendant-Debtor is aware from reviewing Federal Rule of Bankruptcy Procedure 7004, service may be made several ways in an adversary proceeding, and provides, as relevant to this Adversary Proceeding:

(a) Summons; service; proof of service.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(1), (e)–(j), (l), and (m) F. R. Civ. P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F. R. Civ. P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(2) The clerk may sign, seal, and issue a summons electronically by putting an “s/” before the clerk’s name and including the court’s seal on the summons.

(b) Service by first class mail. Except as provided in subdivision (h) [federally insured financial institutions], in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) **Upon an individual** other than an infant or incompetent, **by mailing a copy** of the summons and complaint to the **individual’s dwelling house or** usual place of abode or to the **place where the individual regularly conducts** a business or profession.

...

(9) **Upon the debtor, after a petition has been filed** by or served upon the debtor and until the case is dismissed or closed, **by mailing a copy of the summons and complaint to the debtor at the address shown in the petition** or to such other address as the **debtor may designate in a filed writing.** . . .

FED. R. BANKR. P. 7004(a)(1), (2) & (b)(1) (9) [emphasis added].

In the Objection to Notice of Adverse Action, Defendant-Debtor lists her address on her pleading for this Adversary Proceeding to be P.O. Box 469, Carmichael, California. The post office address is an address designated by Defendant-Debtor in this Adversary Proceeding.

In her Chapter 7 bankruptcy case (originally filed as a Chapter 13 case and converted to Chapter 7 by Defendant-Debtor), 16-20743, Defendant-Debtor listed in her Petition a street address as 5105 Fair Oaks Blvd, 101-251, Carmichael, California. 16-20743, Dckt. 1. Defendant-Debtor was represented by counsel in filing the Petition. Using Google Maps, 5105 Fair Oaks, Blvd, 101, Carmichael, California is identified as a UPS Store which has mail boxes in addition to its shipping services.¹

The address shown by the court for Defendant-Debtor in her bankruptcy case is:

Anna Krin Peterson
PO Box 469
Carmichael CA 95609
Date Added: 2/10/2016
(Debtor)
(aka) Krin Peterson

1

<https://www.google.com/maps/dir/38.5959536,-121.3458384/5105+Fair+Oaks+Blvd,+Carmichael,+CA+95608/@38.595956,-121.346201,100m/data=!3m1!1e3!4m8!4m7!1m0!1m5!1m1!1s0x809adc7c8038273b:0x4afb3be8bd1ec26a!2m2!1d-121.3458391!2d38.5959477?hl=en>

Additionally, UPS identified the 5105 Fair Oaks Blvd, 101, as a location for one of its stores on its website.
https://carmichael-ca-1242.theupsstorelocal.com/?utm_campaign=Listings&utm_medium=organic&utm_source=Yext

Clerk's Records, 16-20743.

On Schedule A/B, Defendant-Debtor does not list any interests in real property. *Id.* at 11. For her personal property, Defendant-Debtor states that it is located at 5150 Fair Oaks Blvd. 101-251, Carmichael CA 95608. *Id.* On Schedule G, Defendant-Debtor states that she has no unexpired leases. *Id.* at 38.

On Schedule I, when the bankruptcy case was filed, Defendant-Debtor stated that her occupation was a paralegal at United Law Center (her attorneys in the bankruptcy case). *Id.* at 41. Defendant-Debtor working as a paralegal at a consumer bankruptcy firm may explain her knowledge of Federal Rule of Bankruptcy Procedure 7004 and bankruptcy court proceedings.

Defendant-Debtor's Chapter 7 case has not been closed.

The Certificate of Service for the Reissued Summons and Complaint is stated to be Post Office Box 469, Carmichael, CA 95609. Dckt. 17. That is the address designated by Defendant-Debtor in her bankruptcy case and now in this adversary proceeding (Dckt. 22).

For purposes of entering the Default, it appears that Defendant-Debtor has been served at the address that she has designated in this Adversary Proceeding and her related bankruptcy case.

Defendant-Debtor, though filing an Objection to Notice of Adversary Proceeding and requesting that the court make the provisions of Federal Rule of Bankruptcy Procedure 7004(b)(1) and (9) ineffective in this Adversary Proceeding, rather than filing an answer or motion, Defendant-Debtor may intend to diligently prosecute any actual opposition or defense she may have to the claims asserted in the Complaint. Though Defendant-Debtor appears to have specialized knowledge (having worked as a paralegal for a bankruptcy law firm), this ineffective Objection may be by mistake and not part of an intentional strategy to abuse the federal judicial process to cause unnecessary expense and improper delay. This led to the court *sua sponte* setting this Conference on the Notice of Objection.

8. [16-20743-E-7](#) ANNA PETERSON
[17-2234](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
12-8-17 [1](#)

THOMPSON V. PETERSON

Plaintiff's Atty: Pro Se
Defendant's Atty: Pro Se

Adv. Filed: 12/8/17
Summons Reissued: 3/2/18
Answer: none

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

The Adversary Proceeding Status Conference has been continued to 2:00 p.m. on September 5, 2018 by prior order of the court (Dckt. 32).

Notes:
Continued from 5/30/18

Request for Entry of Default filed 6/26/18 [Dckt 26]; Memorandum re Request for Entry of Default filed 6/27/18 [Dckt 30]

Order for Hearing on Defendant Debtor's Objection to Notice of Adverse Action filed 7/2/18 [Dckt 31], set for hearing 7/11/18 at 2:00 p.m.

Order Continuing Status Conference and For Entry of Defendant Debtor's Default filed 7/2/18 [Dckt 32], set for hearing 9/5/18 at 2:00 p.m.

9. [16-27854-E-11](#) **GARY STEINGROOT**
Stephan Brown

CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
11-29-16 [1]

Debtor's Atty: Edward A. Smith; Stephan M. Brown

The Status Conference is XXXXXXXXXX.
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Notes:

Continued from 1/17/18

Operating Reports filed: 1/25/18; 2/14/18; 3/14/18; 4/17/18; 5/14/18; 6/13/18

[UST-1] Motion for Conversion or Dismissal of Chapter 11 Case filed 6/1/18 [Dckt 178], set for hearing 7/19/18 at 10:30 a.m.

[TBG-9] Motion to Approve Sale of Real Property and Compensation of Broker filed 6/7/18 [Dckt 182]; Order granting filed 6/29/18 [Dckt 194]

JULY 11, 2018 STATUS CONFERENCE

Debtor in Possession filed a Status Report on July 5, 2018. In the Status Report, Debtor in Possession advises the court and parties in interest that the sale of the Hutley Way Property has been closed and the sales proceeds have been deposited in a Debtor in Possession account.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2017. By the court's calculation, 96 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is XXXXXXXXXX.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

November 2, 2017 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

December 4, 2017 Last Day for Submitting Written Acceptances or Rejections

December 4, 2017 Last Day to File Objections to Confirmation

December 11, 2017 Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Administrative Expenses	Estimated Amount Owed	Treatment
Expenses arising in the ordinary course of business after petition date	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later
Broker's professional fees, as approved by the court	Estimated to be 5% of the fair market value of the 1055 Hutley Way, Granite Bay, California, property sale, or \$37,500.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Debtor in Possession's attorney's fees, as approved by the court	Estimated to be \$35,000.00	Paid in full after the sale of 1055 Hutley Way, subject to court approval. Creditors may object to motion to approve interim or final fees
Other administrative expenses	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation if later, subject to court approval
Clerk's office fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
TOTAL	\$72,500.00	

Creditor/Class	Treatment	
Class 1: Secured Claim of SunTrust Mortgage, Inc.	Claim Amount	\$455,042.01
	Impairment	Impaired
	<p>Claim No. 1 filed on December 14, 2016. The claim was filed in the amount of \$455,042.01 and is secured by a first priority deed of trust against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-petition interest shall accrue pursuant to the underlying loan documents filed. Proof of Claim 1, pp. 2, 48. The value of 1055 Hutley Way is estimated at \$750,000.00 per Debtor in Possession's amended schedules. Dckt. 16, p.12. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. The Class 1 secured claim will be paid through escrow upon court approval of a motion to sell 1055 Hutley Way.</p> <p>To provide adequate protection, Debtor in Possession will make monthly interest payments to the Class 1 secured claim at the contract rate of 4.5%. Payments will commence on the first of the month following the effective date of the Plan.</p>	
Class 2: Secured Claim of Capital One	Claim Amount	\$5,603.00
	Impairment	Impaired
	<p>No claim has been filed. This claim was scheduled as claim 2.1 in Debtor in Possession's amended petition. This claim is valued in the amount of \$5,603.00 secured by a judgment lien against 1055 Hutley Way. This class is impaired due to receiving deferred payment under the proposed Plan. Post-judgment interest, from before and after Debtor's petition filing date, will continue to accrue pursuant to applicable nonbankruptcy law, California Code of Civil Procedure § 685.010. The Class 2 secured claim of Capital One is junior to Class 1. Debtor in Possession anticipates selling 1055 Hutley Way within six months of the effective date of the Plan. Each holder of a Class 2 secured claim will be paid in full through escrow upon court approval of a motion to sell 1055 Hutley Way.</p>	
Class 3: General Unsecured Claim of CACH, LLC (Allowed)	Claim Amount	\$9,874.79
	Impairment	Unimpaired

	No claim has been filed. This claim is scheduled as claim 4.3 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Allowed Class 3 claims total \$9,874.79. Each holder of a Class 3 claim will be paid in full on the effective date of the Plan out of the funds available in Debtor in Possession's bank account.	
Class 4: General Unsecured Claims (Not Allowed)	Claim Amount	
	Impairment	Unimpaired
	No claims have been filed. These claims schedules as claims 4.1, 4.2, and 4.4 through 4.11 in Debtor in Possession's amended Schedule E, filed January 19, 2017. Dckt. 30. Each holder of a Class 4 general unsecured claim is not an allowed claim under 11 U.S.C. § 502(b)(1) because these claims are time-barred pursuant to applicable non-bankruptcy law, California Code of Civil Procedure § 337.	
Class 5: Interest of the individual Debtor in property of the Estate	Claim Amount	
	Impairment	Unimpaired
	To be distributed upon successful completion of the Plan.	

CREDITOR'S OBJECTION

Citizens Bank, N.A. FKA RBS Citizens ("Creditor") filed an Objection on December 5, 2017. Dckt. 140. FN.1. Creditor argues that the Plan does satisfy 11 U.S.C. § 1129(a)(8) because Class 1 (containing Creditor's claim) has rejected the Plan. Additionally, Creditor argues that the Plan violates 11 U.S.C. § 1129(a)(3) & (11) because Debtor in Possession has proposed an "illusory" plan that calls for sale of property within six months, even though the property is not being marketed in any meaningful way. Creditor argues that the Plan is merely an attempt to delay Creditor from exercising its rights.

FN.1. Creditor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion, but a consistent Docket Control Number when responding to a particular motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party used a new Docket Control Number. That is not correct. The Court will consider the objection, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny relief. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

TABULATION OF BALLOTS

Class	Voting	Result
Class 1 (Impaired)	For: 0 Against: 1	Rejected
Class 2 (Impaired)	For: 0 Against: 0	No ballots cast
Class 3 (Unimpaired)	For: 0 Against: 0	No ballots cast
Class 4 (Unimpaired)	For: x Against: x	
Class 5 (Unimpaired)	For: x Against: x	

Debtor in Possession argues that even though Creditor rejected the Plan originally, it indicated at the December 7, 2017 hearing that it was open to plan amendments. Dckt. 152. Debtor in Possession's counsel indicated that amendments would be proposed to satisfy Creditor's objection, which presumably would lead to Creditor accepting the Plan.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed a Reply on December 11, 2017. Dckt. 149. Debtor in Possession argues that terms were presented at the December 7, 2017 hearing that address Creditor's objection. Debtor in Possession states that an amended plan will be filed to include the terms of the amendments. Debtor in Possession argues that Creditor's objection is now moot because it will presumably accept the amendments.

Debtor in Possession requests that the court confirm the Plan, as later amended. *Id.* at 2:9.5.

SECOND AMENDED PLAN

Debtor in Possession filed a Second Amended Plan on December 12, 2017. Dckt. 156. It contains two major changes. First, Class 1 contained adequate protection language that has been changed to read:

Pursuant to the Court Order dated December 7, 2017, Docket Number 145, Debtor will make monthly payments to Creditors in Class 1 in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.

If a monthly payment is not timely made by the 15th day of the month, Creditor may seek relief from the automatic stay by a supplemental *ex parte* motion to amend the

adequate protection order of the court. This motion shall be supported by competent, credible evidence of such default in timely payment. The *ex parte* motion and supporting pleadings [*sic*] shall be served on the Debtor in Possession, counsel for Debtor in Possession, and the U.S. Trustee.

The Debtor in Possession shall have 10 days to file an opposition to the *ex parte* motion, with the only issue being whether the Debtor in Possession failed to make the timely payment. The Debtor in Possession shall notice a hearing on the *ex parte* motion to amend the Court's order for the first regular law and motion hearing date on this court's Modesto calendar which is at least 10 days after service of the *ex parte* Motion by the Class 1 Creditor. The only issues for the Court at the hearing is whether the Debtor in Possession defaulted in timely making the monthly payment as asserted in the *ex parte* motion and supporting evidence.

If no opposition is timely filed, Creditor shall lodge with the Court a proposed order granting relief from the automatic stay.

Dckt. 156 at 6–7. Article VIII also contains new language. Section 8.02 adds a sentence at the end that reads “These remedies are in addition to, and not limited by, those remedies outlined in Articles II through IV. Section 8.03 reads:

Modification of Automatic Stay by Court Order. Unless otherwise ordered by the Court, pursuant to the order dated December 7, 2017, Docket Number 145, the automatic stay is modified effective July 1, 2018, to allow the Class 1 Creditor to foreclose on, and the buyer to obtain possession of, 1055 Hutley Way.

Id. at 11.

DECEMBER 19, 2017 HEARING

At the hearing, the court continued the hearing to 2:00 p.m. on January 17, 2018. Dckt. 162, 164.

DEBTOR IN POSSESSION'S STATUS REPORT

Debtor in Possession filed a Status Report on January 3, 2018. Dckt. 165. Debtor in Possession pleads that SunTrust Mortgage, Inc. has expressed concerns about the Second Amended Plan, and Debtor in Possession plans to address those concerns with a third amended plan.

JANUARY 17, 2018 HEARING

At the hearing, Creditor stated that it was not voting for the Plan, but Creditor support Debtor in Possession continuing to actively pursue a sale of the property through the bankruptcy case, consistent with the parties' stipulation. Dckt. 167. The court continued the hearing to 2:00 p.m. on July 11, 2018. *Id.*

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CONFIRMATION

The Memorandum of Points and Authorities filed in support of confirmation provides argument (but not evidence) of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Argument: Dckt. 151, pg. 7

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Argument: Dckt. 151, pg. 7

3. The plan has been proposed in good faith and not by any means forbidden by law.

Argument: Dckt. 151, pg. 9

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Argument: Dckt. 151, pg. 9

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Argument: Dckt. 151, pg. 9 (stating that this provision is inapplicable)

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Argument: Dckt. 151, pg. 9 (stating that this provision is inapplicable)

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Argument: Dckt. 151, pg. 10

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Argument: Dckt. 151, pg. 10

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Argument: Dckt. 151, pg. 10

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Argument: Dckt. 151, pg. 10

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Argument: Dckt. 151, pg. 10

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Argument: Dckt. 151, pg. 10–11

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Argument: Dckt. 151, pg. 11

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Argument: Dckt. 151, pg. 11

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Argument: Dckt. 151, pg. 12 (stating that this provision is inapplicable)

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Argument: Dckt. 151, pg. 12 (stating that this provision is inapplicable)

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Argument: Dckt. 151, pg. 12 (stating that this provision is inapplicable)

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Argument: Dckt. 151, pg. 12 (stating that this provision is inapplicable)

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Argument: Dckt. 151, pg. 12–13

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

- (i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
- (II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
- (ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (I) or (iii) of this subparagraph; or
- (iii) for the realization by such holders of the indubitable equivalent of such claims.

Argument: Dckt. 151, pg. 12–13

(B) With respect to a class of unsecured claims—

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class, will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an

individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Argument: Dckt. 151, pg. 13

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

Argument: Dckt. 151, pg. 13

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

Nothing on the docket indicates that Creditor has accepted the Plan at this time. At the December 7, 2017 hearing on Creditor's Motion for Relief from the Automatic Stay, the parties stipulated to the following terms:

- A. Debtor shall make monthly payments to Creditor in the amount of \$2,794.57, commencing with the January 2018 payment and continuing through the June 2018 payment.
- B. If a monthly payment is not timely made by the fifteenth day of the month, Creditor may seek relief from the automatic stay by a supplemental *ex parte* motion to amend the court's adequate protection order. That supplemental *ex parte* motion shall be filed using the Docket Control Number for the Motion for Relief contested matter (ASW-1), and no additional filing fee would be required. The *ex parte* motion and supporting pleadings shall be served on Debtor in Possession, Debtor in Possession's counsel, and the United States Trustee.

- C. Debtor in Possession shall have ten days to file an opposition to the *ex parte* motion, with the only issue being whether Debtor in Possession failed to make the timely payment. Debtor in Possession shall notice a hearing on the *ex parte* motion to amend the court's order for the first regular law and motion hearing date on the court's Modesto calendar that is at least ten days after service of the *ex parte* motion.
1. The only issue for the court at the hearing would be whether Debtor in Possession defaulted in timely making the monthly payment as asserted in the *ex parte* motion and supporting evidence.
- D. If no opposition is timely filed, Creditor shall lodge with the court a proposed order granting relief from the automatic stay.
- E. The automatic stay is modified effective July 1, 2018, to allow Creditor to foreclose on, and the buyer obtain possession of, 1055 Hutley Way, Granite Bay, California.

Dckt. 145.

Since the last confirmation hearing in January 2018, the United States Trustee has moved to dismiss this case or convert it to Chapter 7. Dckt. 178. The hearing on that motion is set for 10:30 a.m. on July 19, 2018. Dckt. 179.

Debtor in Possession also moved to sell real property for a total purchase price of \$710,000.00, which the court approved, albeit without granting a request to sell free and clear of a lien to "Capital One." Dckt. 194.

At the hearing, the parties reported that **the sale of property has generated sufficient monies to fund the proposed plan.**

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 Confirm the Amended Chapter 11 Plan filed by Gary Steingroot ("Debtor in Possession") 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 **XXXXXXXXXXXXX**.

11. [18-20456-E-13](#) MARIA ANDRICHUK
[18-2044](#)

STATUS CONFERENCE RE:
COMPLAINT
4-9-18 [\[1\]](#)

U.S. TRUSTEE V. ANDRICHUK

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Plaintiff's Atty: Jason M. Blumberg
Defendant's Atty: unknown

Adv. Filed: 4/9/18
Answer: none

Nature of Action:
Injunctive relief - other

The Status Conference is continued to 2:00 p.m. on September 5, 2018.
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Notes:

Request for Entry of Default by Plaintiff filed 5/18/18 [Dckt 8]
Entry of Default and Order Re: Default Judgment Procedures filed 5/23/18 [Dckt 11]

[UST-1] Plaintiff's Application for Entry of Default Judgment filed 6/18/18 [Dckt 16], set for hearing 7/19/18 at 11:00 a.m.

JULY 11, 2018 STATUS CONFERENCE

Defendant's default has been entered (Dckt. 11), and Plaintiff U.S. Trustee's Motion for Entry of Default Judgment is set for hearing on July 19, 2018. Motion, Dckt. 16. The Status Conference is continued to allow for the prosecution of Plaintiff's Motion and any remedial action to be undertaken by Defendant if she believes such is proper.

12. [13-24657](#)-E-13 MICHAEL FARRACE
[17-2040](#)

FARRACE V. NEW PENN FINANCIAL,
LLC

CONTINUED PRE-TRIAL
CONFERENCE RE: COMPLAINT FOR
DECLARATORY RELIEF, VIOLATION
OF THE AUTOMATIC STAY AND
RELATED STATE AND FEDERAL
CAUSES OF ACTION
3-20-17 [[1](#)]

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Erin M. McCartney

Adv. Filed: 3/20/17
Answer: 5/10/17

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

The Status Conference is continued to 2:00 p.m. on September 5, 2018.
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Notes:
Continued from 5/30/18

Joint Status Report filed 6/29/18 [Dckt 41]

JULY 11, 2018 PRETRIAL CONFERENCE

On June 29, 2018, the Parties filed a Joint Status Report advising the court that an accounting has been provided to counsel for Plaintiff (he having substituted in on May 9, 2018) and that the Parties request that the Pretrial Conference be continued sixty-days for an analysis of the accounting to be completed and the Parties attempt to settle this matter.

13. [17-25576](#)-E-11 **KEVIN KENNEDY**
Mikalah Liviakis

**CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
8-23-17 [1]**

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Debtor's Atty: Mikalah R. Liviakis

The Status Conference is concluded and removed from the calendar, the case having been converted to one under Chapter 7.

Notes:

Continued from 5/30/18. Kevin Kennedy, Debtor and Debtor in Possession, and Mikalah Liviakis, counsel for Debtor in Possession, and each of them, to appear in person. No telephonic appearances permitted.

Operating Report filed: 6/13/18

[MRL-5] Order granting motion to convert filed 7/3/18 [Dckt 86]

Appointment of Interim Trustee and Notice of Selection filed 7/5/18 [Dckt 87]

Notice to File Documents in Converted Case filed 7/5/18 [Dckt 88]

Notice of Conversation to Chapter 7 Bankruptcy Case—No Proof of Claim Deadline filed 7/5/18 [Dckt 89]

14. [09-22188-E-13](#) **RICK SILLMAN**
[18-2063](#)

STATUS CONFERENCE RE:
COMPLAINT
5-7-18 [1]

SILLMAN V. TALCOTT ET AL

Plaintiff's Atty: Pro Se

Defendant's Atty:

Nicholas Lazzarini [Lisa Talcott]

Dana M. Andreoli [Mid Valley Title and Escrow Company; Dan Hunt; Tami Barlow; Heidi Gomez]
unknown [John Walker; Coldwell Banker Ponderosa Real Estate; Quincy L. Jackson]

Adv. Filed: 5/7/18

Answer:

Nature of Action:

Recovery of money/property - turnover of property

Recovery of money/property - preference

Recovery of money/property - fraudulent transfer

Declaratory judgment

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

Notes:

Motion to Dismiss Adversary Complaint for Failure to State a Claim or, Alternatively, for a More Definite Statement and to Strike Immaterial Matter From the Complaint filed 5/31/18 [Dckt 24], set for hearing 7/19/18 at 11:00 a.m.

Debtor/Plaintiff's Notice of and Motion for Appointment of Counsel, Trustee, or Receiver to Recover Bankruptcy Assets, Memorandum of Points and Authorities in Support, Declaration in Support filed 6/1/18 [Dckt 28], set for hearing 7/19/18 at 11:00 a.m.

[NBL-1] Motion to Dismiss Complaint Pursuant to FRCP Rules 12(b)(6) & 9(b) filed 6/19/18 [Dckt 35], set for hearing 7/19/18 at 11:00 a.m.

Debtor/Plaintiff's Notice of and Motion for Court to Impose Sanctions on Defendants Coldwell Banker Real Estate Ponderosa and Troy Davis, Lisa Talcott/John Walker, and Quincy Jackson, for Failure to Respond to Summons in Well Over 30 Days filed 6/27/18 [Dckt 46], set for hearing 8/16/18 at 11:00 a.m.

JULY 11, 2018 STATUS CONFERENCE

This Adversary Proceeding arises from a judgment entered for Plaintiff Rick Sillman against John Walker in the amount of \$45,000.00 on January 14, 2014, in Adversary Proceeding 12-2023. That judgment was affirmed on appeal in *Walker v. Sillman*, E.D. Cal. No. 2:14-cv-0587, on March 20, 2015. 12-2023, Dckt. 210. The court's file in that Adversary Proceedings shows two abstracts of judgment having been issued—one on December 13, 2016, and the other on October 20, 2017.

Adversary Proceeding 12-2023 between Mr. Sillman and Mr. Walker presented the court with a number of challenges—the makings of both Plaintiff and Defendant. For Plaintiff, as the court noted in its Memorandum Opinion and Decision

“From the presentation of the parties and pleadings in this case, it is clear to the court that the Plaintiff-Debtor (who so admitted to the court) copes with mental health issues. His ability to focus on the significant matters on issues before the court appears to be compromised, leading to his being distracted by other issues. From what was presented, this is exactly the type of person who a less than honorable creditor might believe could be the subject to improper influence and unable to reasonably protect his rights. Whether Murphy's Law further compounded the problems in this case or Walker and his attorneys devised a strategy intended to "run over" the Plaintiff-Debtor, this court will never know, in large part due to the Plaintiff-Debtor's limitations in presenting evidence to the court. At best for Walker, he and his attorneys devised an ill-conceived strategy which worked to obfuscate the real issue and divert attention from the violation of the automatic stay.”

12-2023; Memorandum Opinion and Decision FN. 45, Dckt. 158. As is clear in the above, the challenges from Plaintiff were identified to mental health issues, while for Defendant, John Walker and his counsel did not so impress the court that such mental health challenges were at the heart of their conduct, but that it was “at best” an ill-conceived strategy to hide Mr. Walker’s continuing violation of the automatic stay.

Review of Current Complaint

Plaintiff has filed this Complaint in *pro se*, attempting to assert his legal rights himself. The court attempts to summarize the contentions and rights that Plaintiff believes he is (and can) assert in an adversary proceeding is as follows.

However, before beginning the summary, the court first notes that Plaintiff’s Chapter 13 Case was dismissed on July 30, 2010. 09-22188; Order, Dckt. 33. There is no bankruptcy case pending for Plaintiff in this District.

- A. Plaintiff identifies himself as “Debtor in possession of judgment plaintiff for his adversary complain. . . .” Complaint, p. 2: 2–3; Dckt. 1.
- B. “Defendants [in the first adversary proceeding] and their counsel did not alert the Court, the Debtor, or the standing trustee that they John Walker and Lisa Talcott] were a married couple, at any time during the bankruptcy, adversary, or appeal, when they had such duty.” *Id.*, ¶ 6.
- C. The defendants named by Plaintiff in the Complaint are:
 - 1. John Walker, and Lisa Talcott (his wife), are judgment debtors under the judgment in the first adversary proceeding.

2. “Defendant Coldwell Banker Ponderosa Real Estate in Paradise, California, Seller John Walker's listing company for judgment lien on '15 & 16' Powtan Trail, listed on or before June 1, 2014.” *Id.*, ¶ 10.
 3. “Defendant Tray Davis, John Walker's listing broker, an employee broker of Coldwell Banker Ponderosa, on or before June 1, 2014.” *Id.*, ¶ 11.
 4. “Defendant Mid Valley Title and Escrow (Main), Chico, California Title Company for '15 & 16' judgment lien on Powtan Trail.” *Id.*, ¶ 12.
 5. “Defendant Mid Valley Title and Escrow (branch), Paradise, California, company that did title search for '15 & 16' Powtan Trail.” *Id.*, ¶ 13.
 6. “Defendant Dan Hunt, President of Mid Valley Title and Escrow in Chico, California.” *Id.*, ¶ 14.
 7. “Defendant Tami Barlow, Vice-President of Mid Valley Title and Escrow in Paradise, California.” *Id.*, ¶ 15.
 8. “Defendant Heidi Gomez, Title Officer for Mid Valley Title and Escrow, Paradise, California, who did the title search on '15 & 16' Powtan Trail.” *Id.*, ¶ 16.
 9. “Defendant Quincy L. Jackson, 'Buyer' of '15 & 16' Powtan Trail.” *Id.*, ¶ 17.
- D. Plaintiff recorded an abstract of judgment against the '15 & 16' Powtan Trail property. *Id.*, ¶ 18.
- E. “Exhibit "F", which is attached hereto, and specifically incorporated by reference, is a true certified copy of "Debtor's proof of Defendant John Walker's attempt to wait until the last minute before the sale and do a voidable interspousal transfer to Lisa Talcott, his wife, to attempt to avoid the judgment lien." *Id.*, ¶ 23.
1. Exhibit F is titled “Interspousal Transfer Grant Deed” and bears a recorder stamp stating that it was recorded on December 2, 2016. Dckt. 6, pages 64–66 of Exhibits. The Abstract of Judgment filed as Exhibit A by Plaintiff has a recording date of July 3, 2014. *Id.*, pages 1–2 of Exhibits. The abstract of judgment states it was recorded in Butte County, California and recorder

stamp states it was recorded in Butte County, California, approximately 29 months before the recording of the Interspousal Transfer Grant Deed.

- F. For the First Cause of Action, Plaintiff seeks to “avoid” the immediate transfer by the Interspousal Grant Deed and then subsequent deeds in the chain of title pursuant to 11 U.S.C. §§ 547, 548 549. Though it appears that various theories could possibly be asserted, including the judgment lien itself, there is no bankruptcy trustee, or Chapter 13 debtor or a debtor in possession, to exercise the avoiding powers for a bankruptcy estate. As stated above, Plaintiff’s bankruptcy case was dismissed long ago.
- G. It appears that the title company Defendants are named as cooperating with the transfers, even though they knew of the judgment lien. If the judgment lien was of record, one only needs to review California real property law to understand the effect of that lien on the property and the responsibility of people taking to property subject to such judgment lien.
- H. Much of the Complaint focuses on Plaintiff asserting that he demanded payment on his lien from various people, but that none of them would pay him. From the complaint, it appears that Plaintiff’s mental health issues have continued, impairing his ability to enforce his rights. Additionally, Plaintiff is not an attorney, and various enforcement of judgment tactics and claims to be brought against various persons involved in the alleged transfers that would be apparent to a creditor attorney, bank attorney, collection attorney, or collection agency would not be apparent to a lay person.
- I. It is alleged that there was damage to the property, Defendant Jackson obtained payment of insurance proceeds, stated that the insurance more than paid him for his investment in the property, and has refused to address the judgment line.
- J. The Second Cause of Action seeks recovery of property of the bankruptcy estate pursuant to 11 U.S.C. § 550 and the Third Cause of Action for disallowance of claim. As stated above there is no bankruptcy case pending in which there a bankruptcy estate and no claims at issue to be adjudicated.
- K. Much of the Complaint is a long recitation of how Plaintiff believes he has been wronged. In the Fourth Cause of Action, he asserts that these allegations constitute a claim under California Business and Professions Code §§ 17200 and 1750. It appears that some of these claims relate to the title company not enforcing Plaintiff’s judgment lien, while others date back to the alleged violations of the automatic stay, for which the issues

have already been litigated as to John Walker and Lisa Talcott in the first adversary proceeding.

- L. The Fifth Cause of Action is stated to be one for fraud and deceit. It appears that this case is premised on the title company and persons involved in the alleged transfers not honoring or enforcing Plaintiff's judgment lien.

RESPONSES OF DEFENDANTS

No answers have been filed. The title company defendants have filed a motion to dismiss and to strike immaterial matters from the Complaint. Dckt. 24. That Motion is set for hearing on July 19, 2018. It does not appear that the Motion complies with Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, which require that the Motion itself state the grounds upon which the relief is based. Instead, these Defendants direct the court to read, digest, and assemble the grounds from the following documents:

- ◆ Notice of Motion
- ◆ Points and Authorities
- ◆ Reply in Support of the Motion
- ◆ The Complete Files of this Adversary Proceeding (leaving it to the court to determine what documents from the court's file these Defendants would rely on as grounds if they so stated the grounds with particularity)

and

- ◆ Any other evidence or arguments that these Defendants may present
prior to
during or
after
any hearing on Defendants' motion.

Motion, p. 2:25–27, 3:1.

Motion to Dismiss Filed by Lisa Talcott

On June 19, 2018, Lisa Talcott filed a Motion to Dismiss the Complaint as to her. Dckt. 35. Her Motion is also set for hearing on July 19, 2018. Here, the Motion appears to state the grounds relied upon with particularity as required by Federal Rule of Bankruptcy Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 (the court does not address the sufficiency or merits of the grounds, but recognizes that Ms.

Talcott's attorneys do attempt to follow the Rules adopted by the United States Supreme Court for federal trial court matters).

**Joinder by Mid Valley Title and Escrow Company, Dan Hunt,
Tami Barlow, and Heidi Gomez (the "Title Company Defendants")**

On June 22, 2018, the Title Company Defendants filed their "Notice of Joinder" to Ms. Talcott's Motion to Dismiss. Dckt. 42. The sum total of the "Notice of Joinder" consists of:

"Defendants Mid Valley Title and Escrow Company and its employees, Dan Hunt, Tami Barlow and Heidi Gomez hereby join in defendant Lisa Talcott's motions to dismiss debtor and plaintiff Rick Sillman's ("Debtor") Adversary Complaint ("Complaint") set for hearing on July 19, 2018."

No legal authority is given for how the Title Company Defendants force themselves into another Motion by announcing their "Joinder."

Counsel for the Title Company Defendants was requested by the court to address this issue and provide the legal basis upon which such "Notice of Joinder" was made and Counsel for the Title Company Defendants had a good faith belief to support the certifications made under Federal Rule of Bankruptcy Procedure 9011 when the "Notice of Joinder" was filed.

At the Status Conference, Counsel for the Title Company Defendants reported **XXXXXXXXXX**.

Motion for Appointment of Counsel

On June 1, 2018, Plaintiff filed a Motion for Appointment of Counsel, Trustee, or Receiver to Recover Bankruptcy Assets. Dckt. 28. It appears that Plaintiff states that he is so outmatched with respect to the rights he is trying to enforce, that it is necessary for the court to appoint counsel to represent him. As an alternative, he suggests the appointment of a receiver to enforce his various lien rights and claims relating to his judgment lien and judgment. Plaintiff's points and authorities focus on the appointment of a trustee when a bankruptcy case is pending. However, there is no bankruptcy case for Plaintiff pending in this court.

In substance, it appears that Plaintiff contends that the court should appoint a personal representative to replace Plaintiff in this Adversary Proceeding and possibly the prior adversary proceeding in which there is a judgment and various rights exist with respect to the judgment lien. Such a representative may be appointed pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 25.

This court has been addressed with this issue several times in the past eight years, including one in which the bankruptcy litigation was tethered to district court litigation. One approach has been to refer the matter to the county office of adult protective services for them to evaluate the situation and provide personal representative candidates.

Motion for Sanctions Filed by Plaintiff

Plaintiff on June 27, 2018, filed a Motion for Sanctions against the Title Company Defendants, John Walker, Lisa Talcott, and Quincy Jackson for not answering the Complaint. Dckt. 46. This Motion further demonstrates not only Plaintiff's lack of basic understanding of federal court proceedings (such as if an answer or responsive motion is not filed, then the Plaintiff requests entry of a default and seeks the issuance of a default judgment), but that the appointment of a personal representative may be necessary with respect to the various rights and interests of Plaintiff in this and the prior adversary proceeding.

Motion to Avoid Transfers Filed by Plaintiff

On July 6, 2018, Plaintiff filed another Motion, this one seeking for the court to order the transfers alleged in the Complaint void and cancelled. This shortcut to the Complaint is sought, in large part, based on the various Defendants not honoring or enforcing Plaintiff's judgment lien. While Plaintiff does not provide a legal basis for the court granting the requested relief by motion, Plaintiff does cite to California fraudulent conveyance law.

15. [12-24491-E-13](#) SCOTT/KIMBERLY TRICOMO CONTINUED STATUS CONFERENCE
[18-2025](#) RE: COMPLAINT
3-15-18 [\[1\]](#)

**TRICOMO ET AL V. JPMORGAN
CHASE BANK, N.A.**

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Matthew S. Henderson

Adv. Filed: 3/15/18
Answer: 5/16/18

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)
Dischargeability - willful and malicious injury

The Status Conference is continued to 2:00 p.m. on September 5, 2018.
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Notes:
Continued from 5/30/18 to allow the Parties to complete their settlement discussions.

[PGM-1] Plaintiffs' Motion for Summary Judgment filed 6/28/18 [Dckt 18], set for hearing 8/16/18 at 11:00 a.m.

Status Conference Report of Defendant JPMorgan Chase Bank, N.A. filed 7/3/18 [Dckt 25]

Plaintiffs' 2nd Status Statement filed 7/3/18 [Dckt 27]

JULY 11, 2018 STATUS CONFERENCE

Continuance of Status Conference

On July 9, 2018, the parties filed a Joint Notice of Settlement and Request to Continue Status Conference. Dckt. 29. The parties note that a settlement has been reached, and when its terms are performed, the parties will file a stipulation to dismiss this adversary proceeding. The parties move for the status conference to be continued to 2:00 p.m. on September 5, 2018.

Status Conference Reports

Defendant JPMorgan Chase Bank, N.A. reports that a settlement offer is outstanding. Dckt. 25. Further, it reports that the deed of trust has been reconveyed.

Plaintiff-Debtor's status report confirms the deed of reconveyance having been recorded on April 17, 2018, which was one month after the Complaint in this Adversary Proceeding was filed. Dckt. 27. Plaintiff-Debtor filed a Motion for Summary Judgment on June 28, 2018, a month after the deed of trust was reconveyed. Dckt. 18. In the summary judgment "Motion" (discussed below), it is asserted that economic damages of \$7,230.00 (comprised of \$6,500 in attorneys' fees, \$500.00 in statutory damages, and \$230.00 in costs).

Review of Complaint

This Adversary Proceeding was commenced by the filing of the Complaint on March 15, 2018, by Scott and Kimberly Tricomio, Plaintiff-Debtor. Dckt. 1. The allegations in the Complaint and relief sought are summarized as follows:

- A. Plaintiff-Debtor confirmed a Chapter 13 Plan in the related bankruptcy case (12-24491). Complaint ¶ 12; Dckt. 1.
- B. In the related bankruptcy case, the court issued an order valuing the secured claim of Defendant JPMorgan Chase Bank, N.A. *Id.*, ¶ 11.
- C. Payments were made to Defendant on its secured claim through the Chapter 13 Plan. *Id.*, ¶ 13.
- D. Defendant filed a Notice of Satisfaction of the obligation on Proof of Claim 6-1 it filed in Plaintiff-Debtor's bankruptcy case. *Id.*, ¶ 14.

- E. Plaintiff-Debtor obtained a discharge in the related Chapter 13 case. *Id.*, ¶ 15. (The allegations in the Complaint allude to the plan being completed, but such is not expressly alleged. The court notes that a Notice of Completed Plan Payments has been filed in the related bankruptcy case. 12-24491, Dckt. 54).
- F. Defendant has not released the lien for the secured claim that was paid through the plan, for which any unsecured amount has now been discharged. *Id.*, ¶ 16.
- G. Counsel for Plaintiff-Debtor has sent a series of communications (copies of which are not identified as exhibits to the Complaint) requesting that the lien be released. *Id.*, ¶ 17.
- H. Defendant has not reconveyed the lien, and it clouds Plaintiff-Debtor's title to the property. *Id.* ¶¶ 18, 19.

First Cause of Action

- I. The First Cause of Action asserts a breach of the "discharge contract." It generally states that Defendant is not "honoring this contract, and therefore breached the contract." FN.1.

FN.1. This first cause of action has some curious, and circuitous, language about the breach of the contract. As with other similar actions, it appears that the contracts being breached are the underlying note and deed of trust that contain provisions (found in all institutional notes and deeds of trust) to reconvey liens upon satisfaction of the obligation secured. Here, it appears that Plaintiff-Debtor is contending that the secured obligation, as valued by the court's determination pursuant to 11 U.S.C. § 506(a), was paid in full through the plan, thus resulting in there being no remaining obligation to be secured upon completion of the plan (which is treated as a "contract" permanently fixing the amount of the secured claim as determined by the court). See *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. Cal. 2013), for the court's discussion of the effect of Chapter 13 Plan completion. One may also want to review this court's decision in *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *aff'd*, 469 B.R. 803 (E.D. Cal. 2012) (discussion of "lien stripping" in Chapter 13 case) concerning that there is not a need for a discharge, only completion of a Chapter 13 plan. See also *HSBC Bank USA, N.A. v. Blendheimn (In re Blendheim)*, 803 F.3d 477, 491 (9th Cir. 2015), for the Ninth Circuit subsequent decision that a discharge is not necessary for voiding of a lien after completion of a Chapter plan.

- J. The Second Cause of Action is for a judgment quieting title. There is a general reference to the court having the power to "void" or extinguish an otherwise valid lien given that "Plaintiffs have been discharged from the Chapter 13 case and Plan more thirty (30) days ago." (*Id.* ¶ 40) FN.2.

FN.2. In the Second Cause of Action, Plaintiff-Debtor again uses “curious” language. A debtor is not “discharged from a Chapter 13 case” or “discharged from a Chapter 13 Plan.” Upon completion of a Chapter 13 Plan the court may grant the debtor a discharge, which is greater than merely somehow “exiting” a bankruptcy case or plan. See 11 U.S.C. § 524 addressing the effect of a discharge and the statutory injunctive relief granted thereunder.

Second Cause of Action

- K. The Second Cause of Action requests for some form of declaratory relief that the court’s prior final order is actually an order and actually means what that final order says.

“42. Defendant does not appear to honor the Court’s order, **Plaintiffs further seek that the value stated in the Order Granting Motion to Value the Subject Property**, which ordered that the Defendant’s 2nd Deed of Trust had a secured value of \$0.00, **is a final and non-appealable order.**”

Id., ¶ 42 (emphasis added).

- L. Plaintiff-Debtor requests that any judgement issued by the court should contain language “consistent with a Deed of Reconveyance” and that the judgment “directs that title be reconveyed and restored to Plaintiff-Debtor. *Id.*, ¶ 45. Thus, it appears that Plaintiff-Debtor does not request the court to simply declare that the deed of trust at issue has been rendered void by operation of law (state law when there is no remaining obligation secured or federal law under 11 U.S.C. § 506(d)), but merely issue some sort of injunctive relief from Defendant to, at some future date, issue the deed of reconveyance that it, as alleged by Plaintiff-Debtor, has failed to as of the filing of the Complaint.
- M. In Paragraph 47 of the Complaint, as part of the Second Cause of Action Plaintiff-Debtor seeks: (1) “a determination that the debt has been fully discharged” and (2) “any security interest voided and Quiet Title.”

Third Cause of Action

- N. For the Third Cause of Action, Plaintiff-Debtor asserts a monetary claim for damages pursuant to California Civil Code § 2941(d). It is first alleged that upon completion of the Chapter 13 Plan Defendant was “required” by the “plan” to reconvey the deed of trust security the claim which the court valued pursuant to 11 U.S.C. § 506(a). *Id.*, ¶ 49.

- O. Defendant has failed to reconvey said deed of trust, and such failure is a violation of California Civil Code § 2941(d). *Id.* ¶¶ 51, 52.
- P. Plaintiff-Debtor requests \$500.00 in statutory damages and statutory attorneys' fees.

Fourth (misabeled Eight) Cause of Action

- Q. Plaintiff-Debtor also expressly asserts the right to statutory and contractual attorneys' fees.

Answer by Defendant

Defendant JPMorgan Chase Bank, N.A. filed an Answer to the Complaint on May 16, 2018. Dckt. 10. In the Answer, Defendant refuses to respond to the allegations of jurisdiction, venue, and core proceeding. Answer ¶ 2–5. Further, JPMorgan Chase Bank, N.A. admits in the Answer that it and its attorneys are bereft of any knowledge concerning federal court jurisdiction that they cannot comply with the pleading requirement of Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 and cannot respond, other than to deny based on a lack of knowledge and information, whether federal court jurisdiction exists, whether this is a core proceeding, and if not a core proceeding whether Defendant consents to the bankruptcy judge issuing the final orders and judgment in this Adversary Proceeding.

The court cannot identify any legal basis for JPMorgan Chase Bank, N.A. and its attorneys exempting Defendant from complying with the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure that have been enacted by the United States Supreme Court. The court cannot identify what basis exists, consistent with the certifications made by Defendant and its counsel pursuant to Federal Rule of Bankruptcy Procedure 9011, in exempting Defendant from responding or contending that it has no information or knowledge as to federal court jurisdiction.

Motion for Summary Judgment

On June 28, 2018, Plaintiff-Debtor filed a Motion for Summary Judgment. Dckt. 18. That Motion, which is required to state with particularity the grounds upon which the relief is based (FED. R. CIV. P. 7(b) and FED. R. BANKR. P. 7007), states the following grounds:

“In this action, Plaintiffs seek compliance with the Chapter 13 Bankruptcy Order(s) and Discharge, and the arising duty to release the second deed of trust (lien) within thirty (30) days, a statutory fine (\$500), and reasonable attorneys fees and costs pursuant to C.C.P. 2491, which was not complied with to this point by JP Morgan Chase Bank, N.A. (“Chase” or “Defendant”).

Plaintiffs, therefore, respectfully move this Court for summary judgment pursuant to Fed. R. Civ. P. 56, as incorporated by Fed. R. Bank. P. 7056 and LR 7056-1, on Plaintiffs' claim that Defendant is liable for the proximate cause of Defendant's intentional actions in breach of contract, fair dealings, and good faith.

Plaintiffs have sustained damages and, as a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiffs have sustained economic damages, including attorney fees and costs and other benefits in amounts of \$7,230.00 (attorney fees of \$6,500 thus far, and statutory fine of \$500.00, and cost to reopen the case of \$230.00)."

Motion, p. 1:25.5–27.5, 2:1–14; Dckt. 18.

The above does not state "grounds" with particularity, but merely the demand that a judgment be entered.

The Motion does also include the direction to the court to canvas the Statement of Undisputed Fact, Exhibits, Request for Judicial Notice, and the Memorandum of Points and Authorities to uncover, develop, and articulate for Plaintiff-Debtor the grounds upon which such a Motion should be brought, relieving Plaintiff-Debtor and Counsel of the burden of such task. FN.3.

FN.3. The court notes that it may appear so obvious to Defendant that if the secured debt as determined pursuant to 11 U.S.C. § 506(a) has been paid and the plan completed (thereby fixing the plan terms, valuation of the secured claim, and payment in full of the secured claims), this is merely a "Notice to Get Real" and reconvey the deed of trust before further attorneys' fees and costs will be sought by Plaintiff-Debtor. If so, it may serve such purpose. If Defendant seeks to further litigate the issue, the adversary proceeding will continue grinding forward.

16. [10-26293-E-13](#) **LIDOINE/GUADALUPE PEREZ** **CONTINUED STATUS CONFERENCE**
[18-2018](#) **RE: COMPLAINT**
2-26-18 [1]

**PEREZ ET AL V. GREEN TREE
SERVICING, LLC ET AL**

Final Ruling: No appearance at the July 11, 2018 status conference is required.

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty:

Christopher O. Rivas [Green Tree Servicing, LLC]

Unknown [Bank of America, N.A.; Real Time Resolutions, Inc.]

Adv. Filed: 2/26/18

Answer: none

Amd. Cmplt Filed: 6/28/18

Answer: none

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)

Dischargeability - willful and malicious injury

The Status Conference is continued to 2:00 p.m. on September 5, 2018. An Amended Complaint has been filed (Dckt. 19) and a Summons (Dckt. 20) reissued setting said date and time for the Status Conference.

Notes:

Continued from 5/30/18 to afford the Parties the opportunity to focus on their settlement negotiations and documentation thereof.

Order Dismissing Defendant from Adversary Proceeding [Ditech Financial, LLC] filed 6/29/18 [Dckt 21]

Plaintiffs' 2nd Status Statement filed 7/3/18 [Dckt 24]

17. [17-27397-E-13](#) **GEVORG/ARMINE POLADYAN** **STATUS CONFERENCE RE: AMENDED COMPLAINT**
[18-2014](#)
TRIVEDI V. POLADYAN ET AL **5-10-18 [31]**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Peter L. Cianchetta

Adv. Filed: 2/14/18
Answer: none

Amd. Cmplt. Filed: 5/10/18
Answer: none

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

The Status Conference is ~~XXXXXXXXXX~~.

Notes:
Case transferred to Dept. E on 6/18/18.

JULY 11, 2018 STATUS CONFERENCE

This Adversary Proceeding was commenced on February 14, 2018. It and the related bankruptcy case were transferred to the current judge on or about June 18, 2018.

The Complaint filed by Tapan Trivedi, as the Administrator for the Estate of Ortansa Ambrus-Cernat, the Plaintiff, asserts that the obligation owed by Debtor to Plaintiff is nondischargeable based on fraud, breach of fiduciary duty, and injury caused by willful and malicious conduct. The court summarizes the allegations in the Complaint as follows:

- A. In Superior Court for Sacramento County Case No. 34-2015-00188010, Plaintiff alleges that she obtained a default judgment against Defendant-Debtor Armenia Astryan. Amended Complaint ¶ 1–2, Dckt. 1.
- B. Defendant-Debtor Gevorg Poladyan filed an answer to the Complaint. *Id.* ¶ 3.
- C. On August 8, 2008, Ortansa purchased the Palmwood Property at a shortsale from Defendant-Debtors for \$180,000. *Id.*, ¶ 14. To finance the \$180,000 purchase, it is alleged that Defendant-Debtors agreed that Ortansa

would refinance her home to fund the short sale purchase. *Id.*, ¶ 24. It is further alleged that “Defendants convinced Ortansa to borrow money on her home, purchase the Palmwood Property at foreclosure, transfer the Palmwood Property back to Defendants, and then refinance the home a repay the \$180,000.00 to Ortansa to save Defendants’ home.” *Id.*, ¶ 26.

- D. Defendant-Debtors (collectively) purchased the “Palmwood Property” from Ortansa for \$180,000 on April 30, 2011. *Id.*, ¶ 15.
- E. Defendant-Debtor promised—
 - 1. They would care for Ortansa’s mentally challenged son;
 - 2. They would refinance the Palmwood Property and “re-pay” Ortansa. *Id.* ¶¶ 16–18.
- F. On February 2, 2012, Ortansa executed the grant deed to transfer the Palmwood Property to Defendant-Debtors. *Id.*, ¶ 19.
- G. Defendant-Debtors signed a loan agreement for \$100,000 with Outsourced Legal Support, LLC (“Outsourced”) on October 1, 2012, and a second loan agreement for \$80,000 with Outsourced on April 1, 2013. *Id.*, ¶¶ 20, 21. Defendant-Debtors encumbered the Palmwood Property with an additional \$50,000 obligation. *Id.*, ¶ 29.
- H. Defendant-Debtors did not, and it is alleged did not intend, to pay Ortansa the \$180,000 purchase price. *Id.*, ¶ 28.
- I. Ortansa died on May 20, 2014. *Id.*, ¶ 30.
- J. On November 5, 2017, Outsource recorded the two deeds of trust for the \$100,000 2012 loan and the \$80,000 2013 loan. *Id.*, ¶ 36. Defendant-Debtors commenced their bankruptcy case on November 8, 2017 (three days later). *Id.* ¶ 34.
- K. In the First Cause of Action, Plaintiff merely requests that the court issue Declaratory Relief that the obligations of Defendant-Debtors would be nondischargeable if such litigation were to be commenced sometime in the future.
- L. In the Second Cause of Action, Plaintiff asserts that Defendant-Debtors’ obligation to pay the \$180,000 is nondischargeable because the statement that Defendant-Debtors would repay the loan was false when made, Defendant-Debtors having no such intention at that time.

The allegations include that Defendant-Debtors used the money from the refinance, instead of repaying Ortansa, to purchase “In-N-Out Honda,” an auto wrecking yard. *Id.*, ¶ 61.

- M. In the Third Cause of Action, Plaintiff asserts that, in light of the terms of the sale to Defendant-Debtors including promises for the case of Ortansa’s handicapped son, the obligation to pay the \$180,000 is nondischargeable “for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny” pursuant to 11 U.S.C. § 523(a)(4).
- N. In the Fourth Cause of Action, Plaintiff alleges that Defendant-Debtors are obligated to Ortana in the amount of \$210,000 “by failing to make any payments, failing to care for Ortana’s son resulting in his death, encumbering the property, causing willful and malicious injury to Ortana’s estate” pursuant to 11 U.S.C. § 523(a)(6).
- O. In the Fifth Cause of Action, Plaintiff alleges that Defendant-Debtors transferred property of the bankruptcy estate with the intent to hinder, delay, or default a creditor or officer of the estate within one year of the bankruptcy case and they should be denied a discharge pursuant to 11 U.S.C. § 727(b)(2)(A).
- P. In the Sixth Cause of Action, Plaintiff asserts that the 2017 transfer to Outsource was made within ninety days of the commencement of the bankruptcy case and may be avoided pursuant to 11 U.S.C. § 544.
- Q. In the Seventh Cause of Action, Plaintiff asserts that the transfers to Outsouce are avoidable as preferences pursuant to 11 U.S.C. § 547.

Answer of Defendant-Debtors

Defendant-Debtors have filed a Motion to Dismiss the Amended Complaint. Dckt. 34. It is asserted that the allegations in the Complaint do not meet the basic pleading requirements of the Federal Rules of Civil Procedure.

A complaint must provide more than labels and conclusions, or a formulaic recitation of a cause of action; it must plead factual allegations sufficient to raise more than a speculative right to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Federal Rule of Civil Procedure 8, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7008, requires 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). As the Court held in *Twombly*, the pleading standard under Rule 8 does not require “detailed factual allegations,” but it does demand more than an unadorned accusation or conclusion of a cause of action. 550 U.S. at 555.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has

facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009) (citations and quotation marks omitted). Rule 8 also requires that allegations be “simple, concise, and direct.” FED. R. CIV. P. 8(d)(1).

In ruling on a Rule 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).

The court will address the merits of such motion to dismiss in the hearing on that matter, but the parties can be guided by the above statement of the law that the court has used in connection with Rule 12(b) motions in other adversary proceedings.