

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 27, 2015 at 1:30 p.m.

1.	<u>09-27153</u> -E-13	GIL/JOANNE RAPOSO	MOTION FOR ENTRY OF DEFAULT
	<u>15-2095</u>	PLC-1	JUDGMENT
	RAPOSO ET AL V. OCWEN LOAN		7-28-15 [<u>11</u>]
	SERVICING, LLC ET AL		

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-OneWest on July 28, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Gil and Joanne Raposo ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on July 28, 2015. Dckt. 11. The Plaintiff-Debtor is seeking an entry of default judgment against OneWest Bank FSB ("Defendant-OneWest"), in the instant Adversary Proceeding No. 15-02095.

The complaint lists both OneWest Bank FSB and Ocwen Loan Servicing, LLC as defendants and seeks to have defendants held jointly and severally liable

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for the judgment. The court, after review of the underlying bankruptcy case, concludes that the reason for the Plaintiff-Debtor's request for joint and several liability is due to Ocwen Loan Servicing, LLC filing a Notice of Transfer of Claim. Proof of Claim No. 7 was filed on May 27, 2009 in this case by OneWest Bank, FSB. Case No. 09-27153. Proof of Claim No. 7 is signed by Marisol A Nagata, an attorney in Covina, California.

On September 4, 2015, a Notice of Transfer of Claim was filed stating that the claim of OneWest Bank, FSB, had been transferred to Ocwen Loan Servicing, LLC. Dckt. 96. No copies of any transfer documents were attached to the Notice and no amended Proof of Claim No. 7 setting forth Ocwen Loan Servicing, LLC standing as a creditor has been filed. The Certificate of Service for the Notice of Transfer of Claim does not provide notice to OneWest Bank, FSB that Ocwen Loan Servicing, LLC asserts that OneWest Bank, N.A. is no longer a creditor and that Ocwen Loan Servicing, LLC has obtained all of the rights held by OneWest Bank, N.A. for the debt upon which Proof of Claim No. 7 is based.

Complicating this Notice of Transfer is that in other cases when Ocwen Loan Servicing, LLC is just serving as the loan servicer for the actual creditor, it (and its attorneys) have filed statements under penalty of perjury incorrectly stating that it is the creditor and that the former creditor has transferred all of its right relating to a debt (the claim) to Ocwen Loan Servicing, LLC. Such a misrepresentation could lead the consumer debtor and consumer debtor's counsel to improperly sue Ocwen Loan Servicing, LLC to avoid a lien, value a claim, or the like. Then Ocwen Loan Servicing, LLC allows a default to be entered and then an order or judgment effecting only the "rights" of Ocwen Loan Servicing, LLC in the lien or debt (for which Ocwen Loan Servicing, LLC has none). Then, at a later date the actual creditor or third-party debt purchaser could assert that no order was entered against the creditor, the creditor's interests were never effected, and Ocwen Loan Servicing, LLC never had the right to misrepresent the transfer of the claim (for which the creditor was not provided notice).

The instant Adversary Proceeding was commenced on May 14, 2015. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 14, 2015. Dckt. 3. The complaint and summons were properly served on Defendant-OneWest. Dckt. 6.

Defendant-OneWest failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant-OneWest pursuant to Fed. R. Bankr. P. 7055(a) by the Clerk of the United States Bankruptcy Court on July 1, 2015. Dckt. 10.

COMPLAINT

The Complaint contains the following general allegations as summarized by the court. As a preface, the court notes that the Plaintiff-Debtor does not differentiate between OneWest Bank FSB and Ocwen Loan Servicing LLC as "Defendant(s)" in the Complaint:

1. Plaintiff-Debtor owns and resides in a parcel of real property known as 9090 Locust Street, Elk Grove, California ("Property").

2. The Property had a fair market value of approximately \$187,000.00.
3. Plaintiff-Debtor filed a Chapter 13 Bankruptcy Case No. 09-27153 on April 16, 2009.
4. As of the petition date the following liens encumbered the Property:
 - a. First Deed of Trust in favor of BAC Home Loans Servicing, LP (now serviced by Greentree Servicing LLC in the amount of approximately \$613, 319.00.
 - b. Second Deed of Trust in favor of OneWest Bank, FSB, now serviced by Ocwen Loan Servicing, LLC.
5. Defendant-OneWest has made a claim on Plaintiff-Debtor related to the Second Deed of Trust in the amount of approximately \$66,586.00.
6. As of the date of filing of the Chapter 13 bankruptcy, only the First Deed of Trust was a secured claim.
7. As of the date of the filing of the Chapter 13 bankruptcy, the Second Deed of Trust was entirely unsecured. The Honorable Judge Bardwil ordered that the Second Deed of Trust had a secured value of zero. Case No. 09-27153, Dckt. 24.
8. Plaintiff-Debtor completed their plan on September 8, 2014.

First Claim of Relief - Declaratory Relief

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

1. Plaintiff-Debtor incorporates all preceding paragraphs as though fully set forth herein.
2. Plaintiff-Debtor alleges that the Property because property of the bankruptcy estate upon the filing of the petition.
3. An actual controversy exists between Plaintiff-Debtor and Defendant-OneWest with respect to the validity, priority, and extent of liens or other interest in the Property of the Plaintiff-Debtor.
4. Plaintiff-Debtor seeks a Declaratory Judgment pursuant to Fed. R. Bankr. P. 7001(9) as the relief requested requires the voiding and subsequent release of lien of Defendant-OneWest thereby invoking Fed. R. Bankr. P. 7001(2) and Fed. R. Bankr. P. 7001(6).
5. Plaintiff-Debtor further seeks that the value stated in the Motion to Value ruled by Judge Bardwil on July 14, 2009 which ordered that the Second Deed of Trust had a secured value of

zero is a final non-appealable order.

6. Plaintiff-Debtor is informed and believes that the Second Deed of Trust is completely unsecured and under applicable law has been determined to be a general unsecured claim.
7. The court has the authority under applicable law, including 11 U.S.C. § 1322(b), to confirm a chapter 13 plan which treats the holder of the Second Deed of Trust as an unsecured creditor. Said plan was confirmed by the court.
8. Under applicable law, upon completion of Plaintiff-Debtor's chapter 13 plan, the court has the authority to void the Second Deed of Trust.
9. Plaintiff-Debtor has completed their plan.
10. Defendant-OneWest has not reconveyed via a Deed of Reconveyance, a process required under California law, the Second Deed of Trust, and Plaintiff-Debtor requests judgment to void the Second Deed of Trust, recorded in Sacramento County on October 5, 2006, in Book 20061005, Page 00967, in a form allowing for recording with the Sacramento County Recorder.
11. Plaintiff-Debtor requests that any such judgment contain language consistent with a Deed of Reconveyance that directs that title be reconveyed and restored to the Plaintiff-Debtor which includes "all right, title, and interest" acquired by said Deed of Trust to Defendant-OneWest related to the Second Deed of Trust they Hold.
12. The Second Deed of Trust contains an attorney's fees and cost provision (Dckt. 1, Exhibit B, pg. 4, ¶ 10). Pursuant to California Civil Code § 1717, the Plaintiff-Debtor is entitled to reimbursement of attorney's fees. Plaintiff-Debtor requests an award of attorney's fees as allowed for in the contract with Defendant.
13. As Defendant-OneWest has not taken any action to remove the deed of trust, it calls into question whether Defendant-OneWest believes it has been satisfied and discharged. Therefore, Plaintiff-Debtor seeks, pursuant to Fed. R. Bankr. P. 4007(a) - (b), a determination that the debt has been fully discharged and any security interest voided.

Second Cause of Action - Violation of California Civil Code § 2941(d)

The Plaintiff-Debtor alleges the following in the Second Cause of Action:

1. Plaintiff-Debtor incorporates all preceding paragraphs as though fully set forth herein.
2. On October 6, 2006 for a valuable consideration, made and delivered a HELOC Agreement (the note) in the sum of

approximately \$51,000.00.

3. On the same day, Plaintiff-Debtor executed and delivered to Defendant-OneWest, a certain trust deed recorded in Sacramento County, California covering the property.
4. Plaintiff-Debtor on or about September 8, 2014, by Notice from Trustee, competed their Chapter 13 plan which required the Defendant-OneWest to reconvey the Deed of Trust on said property.
5. Defendant-OneWest were placed on additional notice by the BNC's notification of the filing of the Trustee's final report after the plan completion.
6. "In spite of plaintiff's full compliance with the Court approved Chapter 13 plan defendants failed and refused, and continues to fail and refuse, to reconvey the deed of trust." Dckt. 1, pg 5, ¶ 41.
7. As a proximate result of the lack of reconveyance, Plaintiff-Debtor has been required to file an adversary preceeding, which is a breach of Defendant-OneWest's statutory dute and has damaged Plaintiff-Debtor by this cost.
8. Section 2941(b)(1) requires that within 30 days after an obligation secured by a deed of trust has been satisfied, the beneficiary or the assignee, Defendant-OneWest shall execute and deliver a full reconveyance. Plaintiff-Debtor asserts that this did not happen.
9. Plaintiff-Debtor contends that the obligation was satisfied upon completion of the plan.
10. More than 30 days have passed from the date that the Defendant-OneWest's time began in which to reconvey and Defendant-OneWest has not reconveyed.
11. § 2941(d) provides that a violation of § 2941 shall make the violator liable to the plaintiff for all damages sustained by the Plaintiff-Debtor.
12. Section 2491(d) provides that a violation of Civil Code § 2941 shall make the Defendant-OneWest liable to the Plaintiff-Debtor for a statutory penalty of \$500.00.
13. Plaintiff-Debtor requests damages, as allowed for in § 2941, equal to all attorneys fees and costs, as allowed for in the contract between the parties, they will sustain as a result of bringing an action to enforce § 2941 and a statutory penalty of \$500.00.

Third Cause of Action - Attorney's Fees

1. Plaintiff-Debtor incorporates all preceding paragraphs as

though fully set forth herein.

2. Effective December 1, 2014, Plaintiff-Debtor is no longer required to plead attorney's fees as a separate claim for relief. However, in order to maintain consistency with the court holdings in this district, Plaintiff-Debtor is pleading attorney's fees as a separate claim for relief for clarity.
3. Plaintiff-Debtor is entitled to attorney's fees by statute, California Civil Code § 2941, and pursuant to the terms of the contract between the parties.
4. By contract, the note and Deed of Trust contains an attorney's fees and cost provision for the benefit of Defendant-OneWest.
5. As such, under California Civil Code § 1717, a reciprocal contractual attorneys' fees statute, the Plaintiff-Debtor is entitled to reimbursement of attorney's fees.
6. By statute, pursuant to § 2941, Plaintiff-Debtor is entitled to attorneys fees as the prevailing party in this action.

Prayer

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

1. Grants Declaratory relief that the order of the Honorable Robert S. Bardwil on July 14, 2009, was a final non-appealable order in determining the secured status of Defendant-OneWest lien as zero.
2. Grants Declaratory relief that the Plaintiff-Debtor has completed their confirmed plan and granted a discharge, that the debt and security interest therein has been discharged and the lien is void.
3. Grants Declaratory relief for a judgment in a format allowed for recording that voids the Deed of Trust of Defendant-OneWest.
4. Attorney's fees and costs as allowed for in the contract between Plaintiff-Debtor and Defendant-OneWest and pursuant to California Civil Code § 2941
5. A statutory penalty of \$500.00 pursuant to California Civil Code § 2491.
6. For such other and further relief as the court deems just and proper.

MOTION

The instant Motion was filed on July 28, 2015. Dckt. 11. The Plaintiff-Debtor requests the following in the Motion:

1. Declaratory Relief - First Claim for Relief - Void the Junior Lien of OneWest Bank FSB
2. Attorney's Fees and Costs Against OneWest Pursuant to the Contract Between the Parties and California Civil Code § 1717
 - a. Seeking a total of \$5,134.00
 - i. Instant Motion: fees \$4,140.00 and costs \$6.00
 - ii. Anticipated Costs:
 - (1) Hearing: \$875.00
 - (2) Supplemental costs for courier and recording fees of the order voiding the lien \$113.00, which includes recording fees of \$33.00, courier to obtain certified order from the court of \$40.00 and courier to record the order of an additional \$40.00.
3. Statutory Penalty Against OneWest Bank FSB Pursuant to Civil Code § 2941(d)

The Plaintiff-Debtor requests that the Defendant-OneWest and co-defendant Ocwen Loan Servicing, LLC be jointly and severally liable for the judgment.

APPLICABLE LAW

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

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

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

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. See *id.* at 775.

DISCUSSION

First Cause of Action

That First Cause of Action seeks a declaration as between the parties that the court's July 14, 2009 order is a real, enforceable order, and that it really means that Defendant-OneWest's secured claim has a value of \$0.00 (now that the plan has been completed), and therefore there is no debt for the Deed of Trust to secure. Further, it seeks a declaration that the court's order granting the Plaintiff-Debtor's discharge really means that the Defendant-OneWest's debt has been discharged.

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

However, within the First Cause of Action, is the request that the court grant declaratory relief "for a judgment in a format allowed for recording that voids the Deed of Trust of Defendant." To the court, this appears to be a request for a request of quit title and obtain a judgment that the deed of trust is not a lien on the property. The court, therefore, construes the First Cause of Action as a request for quiet title.

Plaintiff-Debtor states that on April 16, 2009 they filed a Chapter 13 bankruptcy case. As of that date, the Property had two liens encumbering the property: (1) "BAC Home Loans Servicing, LP (now serviced by Greentree Servicing LLC)" first deed of trust in the amount of \$613,319.00 and (2) Defendant-OneWest's second deed of trust in the amount of \$66,586.00.

Plaintiff-Debtor states that on or about September 8, 2014, the Plaintiff-Debtor completed their Chapter 13 plan which required the Defendant-OneWest to reconvey the Deed of Trust on the Property. Plaintiff-Debtor was discharged on November 3, 2014.

According to the Trustee's Final Report and Account in the Plaintiff-Debtor's bankruptcy case, Case Number: 2009-27153, Debtor's Plan was confirmed

on June 11, 2009, and completed on June 14, 2014. Bankr. E.D. Cal. No. 09-27153, Dckt. 101, September 12, 2014. The discharge of Plaintiff-Debtor was entered on November 3, 2014. Bankr. E.D. Cal. No. 09-27153, Dckt. 111. Plaintiff-Debtor states that more than 30 days have passed and Defendants have not reconveyed, and that Plaintiff has been required to file an adversary proceeding.

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

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between the Debtor, Defendant-OneWest, and creditors, there remains no obligation which is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

FN.1. 4 WITKIN SUMMARY OF CALIFORNIA 9 LAW, TENTH EDITION, § 117, citing California Civil Code § 2939 et seq.; Rest.3d, Property (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d, § 179:511.

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

California Civil Code § 2941(b)(1) requires that within 30 days of the obligation secured by a deed of trust having been satisfied, the beneficiary [Defendant-OneWest] shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has 21 days from receipt of the request for reconveyance to reconvey the deed of trust. Cal. Civ. § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here the Plaintiff. Cal. Civ. § 2941(b)(1)(B)(ii).

Here, the Plaintiff-Debtor completed their plan on September 8, 2014. To date, Defendant-OneWest has not reconveyed the Deed of Trust as required by § 2941 within 30 days after the obligation has been satisfied (here being after

the completion of the plan). Therefore, the court grants judgment in favor of Plaintiff-Debtor and finds that the Second Deed of Trust held by OneWest Bank, FSB is void and unenforceable.

Second Cause of Action

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

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

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

- I. Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - A. execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - B. The trustee shall execute and record the reconveyance within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and fees as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - C. The trustee shall deliver a copy of the reconveyance to the beneficiary or its servicing agent, if known.
- II. If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

Cal. Civ. § 2924(b)

The 30-day period at issue is for the beneficiary to execute and deliver the original note, deed of trust, and request for reconveyance to the trustee under the deed of trust. Plaintiff-Debtor presents evidence, which is uncontradicted, that as of September 8, 2014, Defendant-OneWest knew of the bankruptcy plan being completed and a "demand" by Plaintiff-Debtor that the deed of trust had to be reconveyed.

Defendant-OneWest, having failed to answer, offers no evidence that it

took any action to provide the documents or demand the reconveyance within the 30-day period.

Therefore, based on the foregoing, Plaintiff-Debtor is granted default judgment against Defendant-OneWest in the amount of \$500.00 for the statutory forfeiture mandated by California Civil Code § 2941(d).

Third Cause of Action

The Plaintiff-Debtor in their Third Cause of Action request attorney's fees pursuant to California Civil Code §§ 1717 and 2941. For the § 1717 request, the Plaintiff-Debtor argues that they are entitled to reimbursement of attorney's fees under the reciprocal contractual attorney's fees because the Deed of Trust contains an attorney's fees and cost provision. Dckt. 13, Exhibit B, pg. 4, ¶ 10.

For their request pursuant to § 2941, the Plaintiff-Debtor asserts that it they are entitled to fees as the prevailing party in this action. Plaintiff-Debtor has not provided evidence of the award of any actual damages, and the court awards \$0.00 of actual damages pursuant to Plaintiff's motion for summary judgment.

However, as to the request for attorney's fees pursuant to § 1717, Plaintiff-Debtor has provided a contractual basis for the award of "reasonable" and "necessary" attorneys' fees and costs. The Plaintiff-Debtor shall file a costs bill and motion for attorneys' fees and costs, if any, on or before September 18, 2015. Any motion for attorneys' fees shall be in a format similar to that use when professionals seek fees in a bankruptcy case, including providing the court with a task billing analysis.

CONCLUSION

Therefore, as discussed supra, the court grants the Motion for Entry of Default judgment as to the First, Second, and Third Causes of Action and judgment shall be entered in favor of Gil and Joanne Raposo, Plaintiff-Debtor, and against OneWest Bank FSB, Defendant. The Third Cause of Action is a claim for attorneys' fees, which shall be the subject of a further post-judgment motion for allowance of fees and costs, which shall be filed and served on or before September 18, 2015.

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

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

The Motion for Entry of Default Judgment by Gil Mariano Raposo and Joanne Carol Raposo, Plaintiff-Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and judgment shall be entered for Gil and Joanne Raposo, Plaintiff-Debtor, and against OneWest Bank FSB, on the First Cause of Action and the Deed of Trust recorded on July 9, 20105, against the real

property commonly known as 9090 Locust Street, Elk Grove, California, Book 20050729, Page No. 1573, is determined to be void, and of no force or effect.

IT IS FURTHER ORDERED that the Motion is granted and judgment shall be entered for Gil and Joanne Raposo, Plaintiff-Debtor, and against OneWest Bank FSB, on the Second Cause of Action in the amount of \$500.00 for the statutory forfeiture pursuant to California Civil Code § 2941(d). Ocwen Loan Servicing, LLC and OneWest Bank, FSB, are jointly and severally liable on this \$500.00 award of statutory damages.

IT IS FURTHER ORDERED that the Third Cause of Action is one for attorneys' fees, pleaded pursuant to former Federal Rule of Bankruptcy Procedure 9008(b) which required a separate claim in the Complaint for attorneys' fees. This claim for attorneys's fees and costs shall be addressed pursuant to a post-judgment motion, filed and served on or before September 18, 2015, requesting attorneys' fees, if any, as provided in Federal Rule of Bankruptcy Procedure 5054(b)(2).

The court shall prepare judgment consistent with this ruling.

2. [09-27153-E-13](#) GIL/JOANNE RAPOSO
[15-2095](#) PLC-2
RAPOSO ET AL V. OCWEN LOAN
SERVICING, LLC ET AL

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
7-28-15 [[16](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Ocwen on July 28, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Gil and Joanne Raposo ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on July 28, 2015. Dckt. 16. The Plaintiff-Debtor is seeking an entry of default judgment against Ocwen Loan Servicing LLC ("Defendant-Ocwen"), in the instant Adversary Proceeding No. 15-02095. FN.1.

The complaint lists both OneWest Bank FSB and Ocwen Loan Servicing, LLC as defendants and seeks to have defendants held jointly and severally liable for the judgment. The court, after review of the underlying bankruptcy case, concludes that the reason for the Plaintiff-Debtor's request for joint and several liability is due to Ocwen Loan Servicing, LLC filing a Notice of Transfer of Claim. Proof of Claim No. 7 was filed on May 27, 2009 in this case by OneWest Bank, FSB. Case No. 09-27153. Proof of Claim No. 7 is signed by Marisol A Nagata, an attorney in Covina, California.

On September 4, 2015, a Notice of Transfer of Claim was filed stating

that the claim of OneWest Bank, FSB, had been transferred to Ocwen Loan Servicing, LLC. Dckt. 96. No copies of any transfer documents were attached to the Notice and no amended Proof of Claim No. 7 setting forth Ocwen Loan Servicing, LLC standing as a creditor has been filed. The Certificate of Service for the Notice of Transfer of Claim does not provide notice to OneWest Bank, FSB that Ocwen Loan Servicing, LLC asserts that OneWest Bank, N.A. is no longer a creditor and that Ocwen Loan Servicing, LLC has obtained all of the rights held by OneWest Bank, N.A. for the debt upon which Proof of Claim No. 7 is based.

Complicating this Notice of Transfer is that in other cases when Ocwen Loan Servicing, LLC is just serving as the loan servicer for the actual creditor, it (and its attorneys) have filed statements under penalty of perjury incorrectly stating that it is the creditor and that the former creditor has transferred all of its right relating to a debt (the claim) to Ocwen Loan Servicing, LLC. Such a misrepresentation could lead the consumer debtor and consumer debtor's counsel to improperly sue Ocwen Loan Servicing, LLC to avoid a lien, value a claim, or the like. Then Ocwen Loan Servicing, LLC allows a default to be entered and then an order or judgment effecting only the "rights" of Ocwen Loan Servicing, LLC in the lien or debt (for which Ocwen Loan Servicing, LLC has none). Then, at a later date the actual creditor or third-party debt purchaser could assert that no order was entered against the creditor, the creditor's interests were never effected, and Ocwen Loan Servicing, LLC never had the right to misrepresent the transfer of the claim (for which the creditor was not provided notice).

The instant Adversary Proceeding was commenced on May 14, 2015. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 14, 2015. Dckt. 3. The complaint and summons were properly served on Defendant-Ocwen. Dckt. 6.

Defendant-Ocwen failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant-Ocwen pursuant to Fed. R. Bankr. P. 7055(a) by the Clerk of the United States Bankruptcy Court on July 1, 2015. Dckt. 10.

COMPLAINT

The Complaint contains the following general allegations as summarized by the court. As a preface, the court notes that the Plaintiff-Debtor does not differentiate between OneWest Bank FSB and Ocwen Loan Servicing LLC as "Defendant(s)" in the Complaint:

1. Plaintiff-Debtor owns and resides in a parcel of real property known as 9090 Locust Street, Elk Grove, California ("Property").
2. The Property had a fair market value of approximately \$187,000.00.
3. Plaintiff-Debtor filed a Chapter 13 Bankruptcy Case No. 09-27153 on April 16, 2009.
4. As of the petition date the following liens encumbered the Property:

- a. First Deed of Trust in favor of BAC Home Loans Servicing, LP (now serviced by Greentree Servicing LLC in the amount of approximately \$613, 319.00.
 - b. Second Deed of Trust in favor of OneWest Bank, FSB, now serviced by Ocwen Loan Servicing, LLC.
5. Defendant-Ocwen has made a claim on Plaintiff-Debtor related to the Second Deed of Trust in the amount of approximately \$66,586.00.
 6. As of the date of filing of the Chapter 13 bankruptcy, only the First Deed of Trust was a secured claim.
 7. As of the date of the filing of the Chapter 13 bankruptcy, the Second Deed of Trust was entirely unsecured. The Honorable Judge Bardwil ordered that the Second Deed of Trust had a secured value of zero. Case No. 09-27153, Dckt. 24.
 8. Plaintiff-Debtor completed their plan on September 8, 2014.

First Claim of Relief - Declaratory Relief

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

1. Plaintiff-Debtor incorporates all preceding paragraphs as though fully set forth herein.
2. Plaintiff-Debtor alleges that the Property because property of the bankruptcy estate upon the filing of the petition.
3. An actual controversy exists between Plaintiff-Debtor and Defendant-Ocwen with respect to the validity, priority, and extent of liens or other interest in the Property of the Plaintiff-Debtor.
4. Plaintiff-Debtor seeks a Declaratory Judgment pursuant to Fed. R. Bankr. P. 7001(9) as the relief requested requires the voiding and subsequent release of lien of Defendant-Ocwen thereby invoking Fed. R. Bankr. P. 7001(2) and Fed. R. Bankr. P. 7001(6).
5. Plaintiff-Debtor further seeks that the value stated in the Motion to Value ruled by Judge Bardwil on July 14, 2009 which ordered that the Second Deed of Trust had a secured value of zero is a final non-appealable order.
6. Plaintiff-Debtor is informed and believes that the Second Deed of Trust is completely unsecured and under applicable law has been determined to be a general unsecured claim.
7. The court has the authority under applicable law, including 11 U.S.C. § 1322(b), to confirm a chapter 13 plan which treats the

holder of the Second Deed of Trust as an unsecured creditor. Said plan was confirmed by the court.

8. Under applicable law, upon completion of Plaintiff-Debtor's chapter 13 plan, the court has the authority to void the Second Deed of Trust.
9. Plaintiff-Debtor has completed their plan.
10. Defendant-Ocwen has not reconveyed via a Deed of Reconveyance, a process required under California law, the Second Deed of Trustee, and Plaintiff-Debtor requests judgment to void the Second Deed of Trust, recorded in Sacramento County on October 5, 2006, in Book 20061005, Page 00967, in a form allowing for recording with the Sacramento County Recorder.
11. Plaintiff-Debtor requests that any such judgment contain language consistent with a Deed of Reconveyance that directs that title be reconveyed and restored to the Plaintiff-Debtor which includes "all right, title, and interest" acquired by said Deed of Trust to Defendant-Ocwen related to the Second Deed of Trust they Hold.
12. The Second Deed of Trust contains an attorney's fees and cost provision (Dckt. 1, Exhibit B, pg. 4, ¶ 10). Pursuant to California Civil Code § 1717, the Plaintiff-Debtor is entitled to reimbursement of attorney's fees. Plaintiff-Debtor requests an award of attorney's fees as allowed for in the contract with Defendant-Ocwen.
13. As Defendant-Ocwen has not taken any action to remove the deed of trust, it calls into question whether Defendant-Ocwen believes it has been satisfied and discharged. Therefore, Plaintiff-Debtor seeks, pursuant to Fed. R. Bankr. P. 4007(a) - (b), a determination that the debt has been fully discharged and any security interest voided.

Second Cause of Action - Violation of California Civil Code § 2941(d)

The Plaintiff-Debtor alleges the following in the Second Cause of Action:

1. Plaintiff-Debtor incorporates all preceding paragraphs as though fully set forth herein.
2. On October 6, 2006 for a valuable consideration, made and delivered a HELOC Agreement (the note) in the sum of approximately \$51,000.00.
3. On the same day, Plaintiff-Debtor executed and delivered to Defendant-Ocwen, a certain trust deed recorded in Sacramento County, California covering the property.
4. Plaintiff-Debtor on or about September 8, 2014, by Notice from Trustee, competed their Chapter 13 plan which required the

Defendant-Ocwen to reconvey the Deed of Trust on said property.

5. Defendant-Ocwen were placed on additional notice by the BNC's notification of the filing of the Trustee's final report after the plan completion.
6. "In spite of plaintiff's full compliance with the Court approved Chapter 13 plan defendants failed and refused, and continues to fail and refuse, to reconvey the deed of trust." Dckt. 1, pg 5, ¶ 41.
7. As a proximate result of the lack of reconveyance, Plaintiff-Debtor has been required to file an adversary proceeding, which is a breach of Defendant-Ocwen's statutory duty and has damaged Plaintiff-Debtor by this cost.
8. Section 2941(b)(1) requires that within 30 days after an obligation secured by a deed of trust has been satisfied, the beneficiary or the assignee, Defendant-Ocwen shall execute and deliver a full reconveyance. Plaintiff-Debtor asserts that this did not happen.
9. Plaintiff-Debtor contends that the obligation was satisfied upon completion of the plan.
10. More than 30 days have passed from the date that the Defendant-Ocwen's time began in which to reconvey and Defendant-Ocwen has not reconveyed.
11. § 2941(d) provides that a violation of § 2941 shall make the violator liable to the plaintiff for all damages sustained by the Plaintiff-Debtor.
12. Section 2491(d) provides that a violation of Civil Code § 2941 shall make the Defendant-Ocwen liable to the Plaintiff-Debtor for a statutory penalty of \$500.00.
13. Plaintiff-Debtor requests damages, as allowed for in § 2941, equal to all attorneys fees and costs, as allowed for in the contract between the parties, they will sustain as a result of bringing an action to enforce § 2941 and a statutory penalty of \$500.00.

Third Cause of Action - Attorney's Fees

1. Plaintiff-Debtor incorporates all preceding paragraphs as though fully set forth herein.
2. Effective December 1, 2014, Plaintiff-Debtor is no longer required to plead attorney's fees as a separate claim for relief. However, in order to maintain consistency with the court holdings in this district, Plaintiff-Debtor is pleading attorney's fees as a separate claim for relief for clarity.
3. Plaintiff-Debtor is entitled to attorney's fees by statute,

California Civil Code § 2941, and pursuant to the terms of the contract between the parties.

4. By contract, the note and Deed of Trust contains an attorney's fees and cost provision for the benefit of Defendant-Ocwen.
5. As such, under California Civil Code § 1717, a reciprocal contractual attorneys' fees statute, the Plaintiff-Debtor is entitled to reimbursement of attorney's fees.
6. By statute, pursuant to § 2941, Plaintiff-Debtor is entitled to attorneys fees as the prevailing party in this action.

Prayer

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

1. Grants Declaratory relief that the order of the Honorable Robert S. Bardwil on July 14, 2009, was a final non-appealable order in determining the secured status of Defendant-Ocwen lien as zero.
2. Grants Declaratory relief that the Plaintiff-Debtor has competed their confirmed plan and granted a discharge, that the debt and security interest therein has been discharged and the lien is void.
3. Grants Declaratory relief for a judgment in a format allowed for recording that voids the Deed of Trust of Defendant-Ocwen.
4. Attorney's fees and costs as allowed for in the contract between Plaintiff-Debtor and Defendant-Ocwen and pursuant to California Civil Code § 2941
5. A statutory penalty of \$500.00 pursuant to California Civil Code § 2491.
6. For such other and further relief as the court deems just and proper.

MOTION

The instant Motion was filed on July 28, 2015. Dckt. 16. The Plaintiff-Debtor requests the following in the Motion:

1. Declaratory Relief - First Claim for Relief - Void the Junior Lien of Defendant-Ocwen.
2. Attorney's Fees and Costs Against OneWest Pursuant to the Contract Between the Parties and California Civil Code § 1717
 - a. Seeking a total of \$5,134.00
 - i. Instant Motion: fees \$4,140.00 and costs

\$6.00

ii. Anticipated Costs:

- (1) Hearing: \$875.00
- (2) Supplemental costs for courier and recording fees of the order voiding the lien \$113.00, which includes recording fees of \$33.00, courier to obtain certified order from the court of \$40.00 and courier to record the order of an additional \$40.00.

3. Statutory Penalty Against Defendant-Ocwen Pursuant to Civil Code § 2941(d)

The Plaintiff-Debtor requests that the Defendant-Ocwen and co-defendant OneWest Bank, FSB be jointly and severally liable for the judgment.

APPLICABLE LAW

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

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

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

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but

factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. See *id.* at 775.

DISCUSSION

First Cause of Action

That First Cause of Action seeks a declaration as between the parties that the court's July 14, 2009 order is a real, enforceable order, and that it really means that Defendant's secured claim has a value of \$0.00 (now that the plan has been completed), and therefore there is no debt for the deed of trust to secure. Further, it seeks a declaration that the court's order granting the Plaintiff-Debtor's discharge really means that the Defendant-Ocwen's debt has been discharged.

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

However, within the First Cause of Action, is the request that the court grant declaratory relief "for a judgment in a format allowed for recording that voids the Deed of Trust of Defendant." To the court, this appears to be a request for a request of quit title and obtain a judgment that the deed of trust is not a lien on the property. The court, therefore, construes the First Cause of Action as a request for quiet title.

Plaintiff-Debtor states that on April 16, 2009 they filed a Chapter 13 bankruptcy case. As of that date, the Property had two liens encumbering the property: (1) "BAC Home Loans Servicing, LP (now serviced by Greentree Servicing LLC)" first deed of trust in the amount of \$613,319.00 and (2) OneWest's second deed of trust in the amount of \$66,586.00.

Plaintiff-Debtor states that on or about September 8, 2014, the Plaintiff-Debtor completed their Chapter 13 plan which required Defendant-Ocwen to reconvey the Deed of Trust on the Property. Plaintiff-Debtor was discharged on November 3, 2014.

According to the Trustee's Final Report and Account in the Plaintiff-Debtor's bankruptcy case, Case Number: 2009-27153, Debtor's Plan was confirmed on June 11, 2009, and completed on June 14, 2014. Bankr. E.D. Cal. No. 09-27153, Dckt. 101, September 12, 2014. The discharge of Plaintiff-Debtor was entered on November 3, 2014. Bankr. E.D. Cal. No. 09-27153, Dckt. 111. Plaintiff-Debtor states that more than 30 days have passed and Defendants have not reconveyed, and that Plaintiff has been required to file an adversary proceeding.

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

Upon completion of the Chapter 13 Plan and its terms becoming the final, modified contract between the Debtor, Defendant-Ocwen, and creditors, there remains no obligation which is secured by the Second Deed of Trust. As a matter of California law, the Second Deed of Trust is void. FN.1. The lien is also rendered void by operation of 11 U.S.C. § 506(d) upon completion of the Chapter 13 Plan. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, 491 B.R. 122 (Bankr. E.D. CA 2013).

FN.1. 4 WITKIN SUMMARY OF CALIFORNIA 9 LAW, TENTH EDITION, § 117, citing California Civil Code § 2939 et seq.; Rest.3d, Property (Mortgages) § 6.4; 4 Powell § 37.33; C.E.B., 2 Mortgage and Deed of Trust Practice 3d, § 8.84; and 13 Am.Jur. Legal Forms 2d, § 179:511.

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

California Civil Code § 2941(b)(1) requires that within 30 days of the obligation secured by a deed of trust having been satisfied, the beneficiary [Defendant-Ocwen] shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has 21 days from receipt of the request for reconveyance to reconvey the deed of trust. Cal. Civ. § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here the Plaintiff. Cal. Civ. § 2941(b)(1)(B)(ii).

Here, the Plaintiff-Debtor completed their plan on September 8, 2014. To date, Ocwen Loan Servicing, LLC has not reconveyed the Deed of Trust as required by § 2941 within 30 days after the obligation has been satisfied (here being after the completion of the plan). While not providing the underlying documents, Ocwen Loan Servicing, LLC has filed a Notice of Transfer by which it asserts that it, and not OneWest Bank, FSB, is the creditor, has all of the rights of a creditor, and has all of the burdens (including reconveying the deed of trust) of the creditor.

Second Cause of Action

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

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

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

- I. Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall:
 - A. execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - B. The trustee shall execute and record the reconveyance within 21 calendar days after receipt by the trustee of the original note, deed of trust, request for a full reconveyance, and fees as may be necessary to reconvey, or cause to be reconveyed, the deed of trust.
 - C. The trustee shall deliver a copy of the reconveyance to the beneficiary or its servicing agent, if known.
- II. If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

Cal. Civ. § 2924(b)

The 30-day period at issue is for the beneficiary to execute and deliver the original note, deed of trust, and request for reconveyance to the trustee under the deed of trust. Plaintiff-Debtor presents evidence, which is uncontradicted, that as of September 8, 2014, Defendant-Ocwen knew of the bankruptcy plan being completed and a "demand" by Plaintiff-Debtor that the deed of trust had to be reconveyed.

Defendant-Ocwen, having failed to answer, offers no evidence that it took any action to provide the documents or demand the reconveyance within the 30-day period.

Therefore, based on the foregoing, Plaintiff-Debtor is granted default judgment against Defendant-Ocwen in the amount of \$500.00 for the statutory forfeiture mandated by California Civil Code § 2941(d).

Third Cause of Action

The Plaintiff-Debtor in their Third Cause of Action request attorney's fees pursuant to California Civil Code §§ 1717 and 2941. For the § 1717 request, the Plaintiff-Debtor argues that they are entitled to reimbursement of attorney's fees under the reciprocal contractual attorney's fees because the Deed of Trust contains an attorney's fees and cost provision. Dckt. 13, Exhibit B, pg. 4, ¶ 10.

For their request pursuant to § 2941, the Plaintiff-Debtor asserts that it they are entitled to fees as the prevailing party in this action. Plaintiff-Debtor has not provided evidence of the award of any actual damages, and the court awards \$0.00 of actual damages pursuant to Plaintiff's motion for summary judgment.

However, as to the request for attorney's fees pursuant to § 1717, Plaintiff-Debtor has provided a contractual basis for the award of "reasonable" and "necessary" attorneys' fees and costs. The Plaintiff-Debtor shall file a costs bill and motion for attorneys' fees and costs, if any, on or before September 18, 2015. Any motion for attorneys' fees shall be in a format similar to that use when professionals seek fees in a bankruptcy case, including providing the court with a task billing analysis.

CONCLUSION

Therefore, as discussed supra, the court grants the Motion for Entry of Default judgment as to the First, Second, and Third Causes of Action and judgment shall be entered in favor of Gil and Joanne Raposo, Plaintiff-Debtor, and against OneWest Bank FSB, Defendant. The Third Cause of Action is a claim for attorneys' fees, which shall be the subject of a further post-judgment motion for allowance of fees and costs, which shall be filed and served on or before September 18, 2015.

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

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

The Motion for Entry of Default Judgment by Plaintiff-Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and judgment shall be entered for Gil and Joanne Raposo, Plaintiff-Debtor, and against Ocwen Loan Servicing, LLC, on the First Cause of Action and the Deed of Trust recorded on July 9, 20105, against the real property commonly known as 9090 Locust Street, Elk Grove, California, Book 20050729, Page No. 1573, is determined to be void, and of no force or effect.

IT IS FURTHER ORDERED that the Motion is granted and judgment shall be entered for Gil and Joanne Raposo, Plaintiff-Debtor, and against Ocwen Loan Servicing, LLC, on the Second Cause of Action in the amount of \$500.00 for the statutory forfeiture pursuant to California Civil Code

§ 2941(d). Ocwen Loan Servicing, LLC and OneWest Bank, FSB, are jointly and severally liable on this \$500.00 award of statutory damages.

IT IS FURTHER ORDERED that the Third Cause of Action is one for attorneys' fees, pleaded pursuant to former Federal Rule of Bankruptcy Procedure 9008(b) which required a separate claim in the Complaint for attorneys' fees. This claim for attorneys's fees and costs shall be addressed pursuant to a post-judgment motion, filed and served on or before **September 18, 2015**, requesting attorneys' fees, if any, as provided in Federal Rule of Bankruptcy Procedure 5054(b)(2).

The court shall prepare judgment consistent with this ruling.