

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

October 10, 2018 at 2:00 p.m.

1. **12-38500-E-13** **DARLENE GRAY**
18-2097

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
6-20-18 [1]

GRAY V. WELLS FARGO HOME
MORTGAGE

Plaintiff's Atty: Connie Tche

Defendant's Atty:

Adam N. Barasch [Wells Fargo Home Mortgage]

Jennifer C. Wong [Quality Loan Services Corp.]

Adv. Filed: 6/20/18

Answer: 10/3/18

Nature of Action:

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

Injunctive relief - other

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Notes:

Continued from 9/5/18. Wells Fargo Bank, N.A. to have answer filed and served on or before 10/3/18.

Wells Fargo Bank, N.A.'s Answer to Plaintiff's Complaint filed 10/3/18 [Dckt 21]

SUMMARY OF COMPLAINT

Darlene Gray ("Plaintiff-Debtor") has filed a Complaint to commence this Adversary Proceeding following the completion of her bankruptcy case. It is alleged that after completing the bankruptcy case Plaintiff-Debtor, Defendant Wells Fargo Bank, N.A. ("Defendant-Bank") confirmed that Debtor was current on the secured claim, with there being no pre-petition and no post-petition defaults.

October 10, 2018 at 2:00 p.m.

- Page 1 of 37 -

Plaintiff-Debtor asserts that she mistakenly continued making plan payments, including those due on the Defendant-Bank obligation secured by Plaintiff-Debtor's residence, to the Trustee post plan completion. It is alleged that though Plaintiff-Debtor corrected this error and all payments were made to Defendant-Bank, the payments were either held in a suspense account or misapplied, leading to Plaintiff-Debtor to being told by Defendant-Bank that her home would be foreclosed on by Defendant-Bank.

Plaintiff-Debtor alleges claims citing to the following grounds: (1) Violation of Federal Rule of Bankruptcy Procedure 3002.1, (2) Violation of Discharge Injunction, (3) Violation of RESPA, (4) Breach of Contract, (5) a Determination that Plaintiff-Debtor is not in Default on the Loan, (6) Violation of California Civil Code § 17200 et seq. (Unfair Business Practices), and (7) the Recovery of Attorney's Fees and Costs.

SUMMARY OF ANSWER

Wells Fargo Bank, N.A. filed its Answer on October 3, 2018. Dckt. 21. In it Defendant-Bank specifically admits and denies the allegations in the Complaint. The Answer also asserts fifteen affirmative defenses.

NO ANSWER OR RESPONSIVE PLEADING FILED BY QUALITY LOAN SERVICE, CORP.

The court, pursuant to the Stipulation of Plaintiff-Debtor and Quality Loan Service, Corp., the time for Quality Loan Service, Corp. to file a response to the Complaint until August 28, 2018.

No responsive pleading has been filed by Quality Loan Service, Corp.

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 add to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the addition 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

proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter 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).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists for the claims arising out of and related to the Chapter 13 Case of Plaintiff-Debtor, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), with any claims based on non-bankruptcy law inextricably bound to the federal bankruptcy claims (and plan) process.. Complaint ¶¶ 1 - 4, Dckt. 1. Plaintiff-Debtor further expressly consents to the bankruptcy judge issuing all orders and final judgment for any non-core matters in this Adversary Proceeding.

In its Answer, Wells Fargo Bank, N.A. fails to respond to the allegations of federal jurisdiction and core matter issues. Wells Fargo Bank, N.A. fails to state whether federal court jurisdiction exists for any of the claims in this Adversary Proceeding.

In response to the allegations of jurisdiction and core matter proceedings, Wells Fargo Bank, N.A. and its counsel merely state, “This allegation contains a legal conclusion to which Defendant is not obligated to admit or deny.”

At the hearing ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

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 judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). **First Amended** Complaint, ¶¶ X, X, Dckt. X. The 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 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 -----, **2019**.
- e. Dispositive Motions shall be heard before -----, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on --**
-----, **2019**.

2. [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.

Final Ruling: No appearance at the October 10, 2018 Status Conference is required.

Plaintiff's Atty: John G. Downing
Defendant's Atty: unknown

Adv. Filed: 3/21/18
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

<p>The Status Conference is continued to 2:00 p.m. on January 9, 2019, to allow for the entry of the Judgment and any post-judgment Motions.</p>

Notes:

Continued from 9/5/18 to afford Plaintiff the opportunity to prosecute the Motion for Entry of Default Judgment.

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

CONTINUED 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]

STEVENS-GOREE V. CITIZENS
EQUITY FIRST CREDIT UNION

Tentative Ruling:

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 Pretrial Conference is continued to xxxxxxxxxxxxxx, 2019.
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Notes:
Continued from 9/5/18 to afford the Parties sufficient time to document the settlement and have the Complaint dismissed.

OCTOBER 10, 2018 STATUS CONFERENCE

On August 29, 2018, a Notice of Settlement and that a dismissal will be filed. Dckt. 26. As of the court's October 6, 2018 review of the Docket, no dismissal had been filed.

PUTNAM V. THOMAS, JR. ET AL

Final Ruling: No appearance at the October 10, 2018 Status Conference is required.

Continued to 11/14/18

Plaintiff's Atty: Pro Se
Defendant's Atty: Lucas B. Garcia

Adv. Filed: 6/7/18
Answer: none
Amd. Cmplt Filed: 8/29/18
Answer: none

Nature of Action:
Recovery of money/property - fraudulent transfer
Validity, priority or extent of lien or other interest in property
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

The Status Conference is continued to 11:00 a.m. on November 15, 2018, to be conducted in conjunction with a Motion to Dismiss the Adversary Proceeding.

Notes:

Pursuant to the Civil Minutes for the status conference held 9/5/18, the Status Conference is continued to 2:00 p.m. on 11/14/18 to afford the Parties the opportunity to review the Amended Complaint and address the issues therein.

[LBG-2] Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted filed 9/28/18 [Dckt 25], set for hearing 11/15/18 at 11:00 a.m.

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 court having previously continued the Status Conference, there now

pending a Motion to Dismiss this Adversary Proceeding, and good cause appearing,

IT IS ORDERED that the Status Conference in this Adversary Proceeding is continued to **11:00 a.m. on November 15, 2018**, (specially set time and day) to be conducted in conjunction with the Motion to Dismiss filed by Defendant.

5. [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]**

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)

Notes:
Continued from 9/5/18, the Parties advising the court that Defendant's accounting appears to have resolved the issues in this Adversary Proceeding.

The Pre-Trial Conference is continued to 2:00 p.m. on January 9, 2019. This is the final continuance, with the court setting the matter for trial on the first available court date if the Parties do not have it resolved by that time. If not resolved, both counsel and their clients must appear in person, no telephonic appearances permitted, for the Pre-Trial Conference.

OCTOBER 10, 2018 STATUS CONFERENCE

The Parties filed a further Status Report advising the court that the Parties are continuing in productive discussions concerning the accounting. While hoping to have the matter resolved, the Parties are still resolving specific questions communicated by Plaintiff-Debtor on September 27, 2018.

It appears that while protracted, the Parties are endeavoring to address the issues in this Adversary Proceeding. To afford the Parties **One Final Opportunity** to conclude this Adversary Proceeding, the court **continues the Trial Setting Conference One Final Time**.

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 court having reviewed the file for the continued Pre-Trial Conference scheduled for October 10, 2018, the Parties having reported on several previous occasions that accounting have been provided and reviewed, this Adversary Proceeding having been filed on March 20, 2017, the court having provided for discovery, and good cause appearing,

IT IS ORDERED that the Pre-Trial Conference is continued **One Final Time to 2:00 p.m. on January 9, 2019**.

IT IS FURTHER ORDERED that if this Adversary Proceeding has not been dismissed as of the time of the January 9, 2019 Status Conference, Michael Farrace (the Plaintiff-Debtor), Gary R. Fraley, Esq. (counsel for Plaintiff-Debtor), a managing member with full settlement authority and personal knowledge of this litigation from New Pen Financial LLC, dba Shellpoint Mortgage Servicing (Defendant), and Erin M. McCartney, Esq. (counsel for Defendant), and each of them, shall appear in person at the January 9, 2019 Pre-Trial Conference - No Telephonic Appearances Permitted.

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

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 November 14, 2018.
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Notes:

Continued from 9/5/18. The Parties having stipulated to the dismissal of this Adversary Proceeding, the Status Conference was continued as a calendaring reminder to ensure that the order dismissing the Complaint is entered by the court.

OCTOBER 10, 2018

On August 24, 2018, the Parties filed a pleading titled "Joint Stipulation of Dismissal With Prejudice." Dckt. 40. The pleading states that it is a stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). That Rule, as incorporated into bankruptcy court adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, allows the parties to affirmatively dismiss an adversary proceeding without order of the court.

While permitting parties to stipulate to such dismissal, some attorney prefer to stipulate, which is construed as an ex parte motion, for the court to enter an order dismissing the adversary proceeding.

Though it appears that the parties may be fully utilizing Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and use their power to dismiss this Adversary Proceeding, the language used in the Stipulation does not affirmatively presently dismiss the Adversary Proceeding.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED
by and between the Parties that Case No. 18-02025-E **should be dismissed** with
prejudice in its entirety as to all parties and claims pursuant to FRCP
41(a)(1)(A)(ii).

Stipulation, p. 2:8-10; Dckt. 40 (emphasis added). While one may construe as being “syntax picayune,” in the nature of one’s freshman year English professor, words have meaning. As drafted, the Parties have stipulated that at some time in the future, the Adversary Proceeding “should be” dismissed. But it is not now dismissed by the parties.

The court continues the Status Conference to allow the parties to file an amended stipulation affirmatively dismissing the case or an ex parte motion for the court to enter an order dismissing this Adversary Proceeding.

7. [17-27397-E-13](#) **GEVORG/ARMINE POLADYAN** **STATUS CONFERENCE RE:**
[18-2130](#) **COMPLAINT**
8-8-18 [[1](#)]
POLADYAN ET AL V. TRIVEDI

Final Ruling: No appearance at the October 10, 2018 Status Conference is required.

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

Adv. Filed: 8/8/18
Answer: 9/6/18

Nature of Action:
Declaratory judgment

<p>The Status Conference is continued to 11:00 a.m. on October 25, 2018, to be conducted in conjunction with a Motion to Consolidate this Adversary Proceeding with another adversary proceeding.</p>
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Notes:

[PGM-2] Motion to Consolidate Adversary Proceedings & Claim Objections filed 9/12/18 [Dckt 14], set for hearing 10/25/18 at 11:00 a.m.

[PGM-2] Stipulation on Motion to Consolidate Adversary Proceedings & Claim Objections filed 9/24/18 [Dckt 18]

Defendant's Second Status Statement filed 10/3/18 [Dckt 19]

METROPOLITAN LIFE INSURANCE
COMPANY VS.

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 Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 23, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXXXXXXXXXXXXX.
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METROPOLITAN LIFE INSURANCE COMPANY ("Movant") seeks relief from the automatic stay with respect to Patricia Di Grazia ("Debtor") real property commonly known as 7176 Ludlow Drive, Roseville, California ("Property"). Movant has provided the Declaration of James Stefani to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Stefani Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$19,132.86 in post-petition payments past due. The Declaration also provides evidence that there are 17 pre-petition payments in default, with a pre-petition arrearage of \$50,217.00.

FILED PROOFS OF (SECURED) CLAIM

Proof of Claim No. 4.

Movant filed a Proof of Claim, No. 4 on April 9, 2018, asserting a claim of \$459,440.26 secured by the Property. The pre-petition arrearage for the obligation upon which Proof of Claim No. 4 is based is stated to be \$42,650.50. Proof of Claim No. 2, p. 2. In the Attachment to Proof of Claim No. 4, Creditor breaks down the arrearage as follows:

Principal and Interest.....	\$28,373.76
Prepetition Fees.....	\$ 5,047.82
Escrow Deficiency (funds advanced).....	\$ 6,576.08
Projected Escrow Shortage.....	\$ 2,652.91

Proof of Claim No. 4 Attachment, p. 5.

Proof of Claim No. 2.

Real Time Resolutions, Inc. as agent for RRA CP OPPORTUNITY TRUST 1 filed a Proof of Claim, No. 2 on March 22, 2108 asserting a claim of \$40,903.22 also secured by the Property. Debtor does not list this claim on Schedule D. Dckt. 1 at 10.

Proofs of Claim Nos. 5 and 7

Proofs of Claim, Nos. 5 and 7 are for claims secured by real property identified as 312 Bryan Avenue, Roseville, California (Bryan Property). Debtor does not list this Property on her Original and Amended Schedules A/B. Dckt. 1 and 24.

For Proof of Claim No. 5, the Promissory Note attached is signed by both Roland Di Grazia and Patricia Di Grazia Proof of Claim No. 5, p. 21-30. The Deed of Trust identified as securing this claim is granted by Roland Di Grazia and Patricia, as husband and wife. *Id.*, p. 7-8.

For Proof of Claim No. 7, the loan modification agreement is signed by Roland Di Grazia and Patricia Di Grazia. Proof of Claim No. 7, p. 22. The Deed of Trust securing this claim is granted by Roland Di Grazia and Patricia Di Grazia, as husband and wife. *Id.*, p. 27. The adjustable rate note identified as the basis for this claim is signed by Roland Di Grazia and Patricia Di Grazia.

REVIEW OF DEBTOR'S PETITION AND SCHEDULES

Debtor asserts the value of the Property is \$502,606.00. Amended Schedule A/B, Dckt. 24. While Debtor states on her Schedules that her interest in the Property is \$80,158.16, this appears to be Debtor's belief as to the equity in the Property not consumed by Movant's claim.

On her Schedule C, Debtor claims an exemption of 353,321.00 in the Bryan Property. Schedule C, Dckt. 24. No exemption is claimed for the Property.

On her Schedule D, Debtor identifies as the sole creditor with a secured claim "FAY SERVICING," with a claim of \$422,447.84. Schedule D, Dckt. 1. While Debtor notes an unsecured

portion of the claim being 480,158.16, it again appears Debtor is referring to the alleged equity in the Property. Nowhere does Debtor list secured claims against the Bryan Property.

On her Schedule E/F, Debtor states under penalty of perjury that she has no unsecured claims.

As addressed above, these statements of assets (the real property) and claims (the creditors holding secured claims) are incorrect. Debtor owns at least one other real property not disclosed on the Schedules. Debtor has at least three other creditors with secured claims not disclosed on the Schedules.

Debtor's statement of there being \$80,000 of equity in the Property appears to be "incorrect," with there being at least an additional \$40,000 secured by the Property.

SEPTEMBER 5, 2018 MOTION TO DISMISS HEARING

After the September 5, 2018 hearing on the Motion, the court issued an Order granting the Motion and dismissing the case. Dckt. 51. The findings stated within the civil minutes for that hearing include:

Although Debtor appears to be trying to address the grounds raised by the Chapter 13 Trustee, there are outstanding problems in this case still. There is no evidence that Debtor has provided her tax returns or pay advices. Debtor has not served the Plan on all creditors. Debtor has not filed a motion to confirm the plan and has not set that motion for a confirmation hearing.

Looking at the Plan form attached as an exhibit to the declaration, the court notes that it is deficient in several ways:

- A. Monthly Plan Payment is \$697.06 for sixty months.
- B. Class 1 Claim of "Fay Servicing" consists of:
 - 1. Regular Monthly Post-Petition Installment of \$697.08, and
 - 2. Cure Payment for \$41,824.96 Arrearage over sixty months of \$697.08.
- C. The Class 2, 3, 4, 5, 6, and 7 (general unsecured) portions of the Plan form are left blank.

Dckt. 35 at 6–11.

Schedule I lists Debtor and non-debtor spouse having monthly income of \$5,535.00. Dckt. 24 at 20–21. No provision is made for the payment of income or self employment taxes on Schedule I. No statement of business gross income and expenses is provided with Schedule I showing how Debtor computes \$3,000 in net monthly business income.

Schedule J lists Debtor having \$4,512.99 in monthly expenses, which

includes \$3,146.88 payment for mortgage (and presumably insurance and taxes).
Id. at 22. On Schedule J, Debtor also states:

- A. Home Maintenance Expenses of
.....\$0.00
- B. Water, Sewer, Garbage Expenses
of.....\$0.00
- C. Phone, Internet, Cable Expenses
of.....\$0.00
- D. Transportation Expenses
of.....\$0.00
- E. Entertainment Expenses
of.....\$0.00
- F. Tax Expenses of
.....\$0.00

Id. at 22–23.

The Statement of Financial Affairs is not completed, with no income information provided in Sections 4 and 5. *Id.* at 27. Debtor affirmatively states under penalty of perjury that she had no income in calendar years 2018, 2017, and 2016.

Civil Minutes, Dckt. 50.

MOTION TO RECONSIDER AND OCTOBER 2, 2018 HEARING

On September 27, 2018, Debtor filed an *Ex Parte* Motion to Reconsider the Order granting this Motion. Dckt. 56.

At the October 2, 2018, hearing on this Motion, Debtor appeared and described efforts to obtain counsel and discussed a potential \$80,000.00 in equity in Debtor’s property set to be foreclosed upon.

In reviewing the *Ex Parte* Motion and oral arguments made, the court issued an Interim Order Vacating Order Dismissing Bankruptcy Case. Interim Order, Dckt. 57. The Interim Order set this Motion to be heard October 10, 2018 at 2:00 p.m.

TRUSTEE’S SUPPLEMENTAL RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Supplemental Response on October 4, 2018. Dckt. 61. Noting the Motion to Vacate Dismissal, Trustee adds that \$4,508.01 is available in the event the court considers any adequate protection payments.

The Trustee notes further the Property may have been sold pending contract.

STATUS OF POST-PETITION MORTGAGE PAYMENTS TO CREDITOR

As the court has discussed in connection with the Debtor's Motion to Vacate the Order Dismissing this Case, Debtor's financial information shows that there is \$3,146.88 in funds available monthly to pay Creditor for its post-petition current mortgage payments. The Debtor's proposed Chapter 13 Plan provides for such payments to be made in this case. There are now eight post-petition months for which such payments have come due, with a total amount of \$25,175.04 which should have been paid or which exists to so pay Creditor.

At the hearing Debtor reported, **XXXXXXXXXXXXXXXXXXXX**

ADEQUATE PROTECTION PAYMENT REQUIRED TO BE MADE TO CREDITOR

As discussed in connection with the Motion to Vacate the Order Dismissing the Bankruptcy Case (for which the court issued an *ex parte* interim order on October 2, 2018):

A. Debtor has failed for four months to engage counsel, though advising the court she would obtain counsel.

B. The Motion to Dismiss Debtor's bankruptcy case was continued multiple times based on Debtor's promise to obtain bankruptcy counsel, which she failed to do.

C. Debtor did not appear at the September 5, 2018 continued hearing on the Motion to Dismiss the Bankruptcy Case.

D. Though the court entered its order dismissing the Bankruptcy Case on September 10, 2018, (Dckt. 51), Debtor took no action to vacate such order except filing an *Ex Parte* Motion for Reconsideration until September 27, 2018. Dckt. 56. The *Ex Parte* Motion offers no real basis for vacating the order dismissing the bankruptcy case.

E. Debtor filed no opposition to Creditor's Motion for Relief from the Automatic Stay that was set for hearing on October 2, 2018. Debtor showed up late at the hearing, requesting the court deny the motion and vacate the order dismissing the bankruptcy case.

F. The grounds for vacating the dismissal was that a foreclosure was pending the next day. In reviewing the file, the court noted (now identified as erroneously) that there was approximately \$80,000 of equity in the property given that the only secured claim as stated under penalty of perjury on the Schedules was that of Creditor.

G. The court further noted that Debtor's lack of prosecution, delay, and the court vacating on an interim basis the dismissal of the case and "derailing" the scheduled foreclosure sale causes Creditor to incur further otherwise unnecessary expense.

H. However, in light of the Chapter 13 Trustee holding \$4,700+ in Plan Payments, the court

could fashion an adequate protection payment to Creditor for the costs, expenses, and damages caused by Debtor's inaction and ex parte action.

The Chapter 13 Trustee has confirmed that of the monies held, after allowing for Chapter 13 Trustee fees and expenses, there is \$4,508.01 which is available to disburse to creditors.

The court orders that the Chapter 13 Trustee immediately disburse \$4,508.01 to Creditor for application of: (1) not more than \$1,000.00 for post-petition legal fees, costs, and expenses, and (2) the balance of the monies to the post-petition obligations of the Debtor on the claim secured by the Property.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$513,253.49 (including Movant's first deed of trust in the amount of \$459,440.26, and the second deed of trust held by RRA CP OPPORTUNITY TRUST 1 in the amount of \$40,903.22), as stated in the Stefani Declaration and Proofs of Claims, Nos. 2 and 4. The value of the Property is determined to be \$502,606.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). ~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due and Debtor's failure to proceed with her bankruptcy case in good faith. 11 U.S.C. § 362(d)(1); In re Ellis, 60 B.R. 432.~~

Additionally, Movant requests relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant states within the Motion "any co-debtor stay should also be terminated as it has not been shown to have any basis to exist independent of the stay under 11 U.S.C. §362(a)." Dckt. 44 at ¶ 11.

The Motion identified Roland Di Grazia as a co-borrower who has not filed bankruptcy with the Debtor. Motion ¶ 5, Dckt. 44. Upon granting relief from the automatic stay as to the Debtor, granting relief pursuant to 11 U.S.C. § 1301(c) is proper for the co-debtor stay.

At the hearing, Counsel for Debtor explained that Debtor was now pursuing a course of reorganization to preserve or recover her equity in the Property by ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Counsel for Debtor further explained that in the prospective good faith prosecution of this case amendments to the Schedules and Statement of Financial Affairs and ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances.

Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by METROPOLITAN LIFE INSURANCE COMPANY and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted METROPOLITAN LIFE INSURANCE COMPANY and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

The court shall issue an 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 Relief from the Automatic Stay filed by METROPOLITAN LIFE INSURANCE COMPANY (“Movant”) 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 Chapter 13 Trustee immediately disburse \$4,508.01 to Creditor for application of: (1) not more than \$1,000.00 for post-petition legal fees, costs, and expenses which it is entitled to recover from Debtor as provided in the Promissory Note upon which its secured claim is based and the Deed of Trust providing the security for such claim, and (2) the balance of the monies to the post-petition obligations of the Debtor on the claim secured by the Property.

~~**IT IS FURTHER ORDERED** that the Motion for Relief From the Automatic Stay is denied without prejudice/continued to xxxxxxxxxxxxxxxxxxxxxx~~

~~**IT IS FURTHER ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow METROPOLITAN LIFE INSURANCE COMPANY, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 7176 Ludlow Drive, Roseville, California, (“Property”) to~~

~~secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~**IT IS FURTHER ORDERED** that the request to terminate the co-~~
~~debtor stay of Roland Di Grazia of 11 U.S.C. § 1301(a) is granted to the same~~
~~extent as provided in the forgoing paragraph granting relief from the automatic~~
~~stay arising under 11 U.S.C. § 362(a);~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

~~No other or additional relief is granted.~~

9. [18-20473](#)-E-13 PATRICIA DI GRAZIA CONTINUED MOTION TO DISMISS
[DPC](#)-1 Pro Se CASE
3-29-18 [28]

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 29, 2018. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is XXXXXXXXXXXXXXXXXXXX.

David Cusick (“the Chapter 13 Trustee”) argues that Patricia Di Grazia (“Debtor”) did not commence making plan payments and is \$1,394.16 delinquent in plan payments, which represents multiple months of the \$697.08 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;
- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 16, 2018. Dckt. 36. The Opposition is two pages long, but the bottom of the two pages are numbered "1" and "3." Reading the Opposition, clearly there are several paragraphs missing from the unfiled page 2.

Page 3's first full paragraph is number "5" which argues that Debtor has prepared a motion to confirm that will be filed. Paragraph 6 argues that Debtor has attached the missing credit counseling certificate as an exhibit. *See* Exhibit F, Dckt. 35.

Also on May 16, 2018, Debtor filed a Declaration Requesting Entry of Order Confirming Chapter 13 Plan Without Chapter 13 Trustee's Approval of Form of Order. Dckt. 35. The court is unsure what such a document is, but it appears to be Debtor's attempt at filing a motion to confirm the plan in this case.

The Declaration contains stock legal conclusions that are unsupported by any evidence and appear to be copy-and-pasted by Debtor without any consideration of the statements' impact. At the end of the Declaration, there are six exhibits, the ones at least partially referenced in the Opposition.

Exhibit A appears to be two print-outs from Golden1 Credit Union for two checks, one in the amount of \$1,394.16 and the other in the amount of \$697.08. The Chapter 13 Trustee is listed as the payee for each check.

Exhibit B is a plan submitted on the court's current plan form. Nothing is attached to Exhibit C because the pages appear to be out of order. Exhibit D is a letter detailing retirement benefits received by Roland Di Grazia and a Residential Lease Agreement. Exhibit E is a profit and loss statement for Roland Di Grazia. Finally, Exhibit F is a Certificate of Debtor Education for Debtor.

MAY 30, 2018 HEARING

At the hearing, Debtor acknowledged the shortcomings in this case and the need for legal counsel. Dckt. 37. The court continued the hearing to 10:00 a.m. on July 11, 2018, to allow Debtor time to obtain counsel. Dckt. 38.

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, the court continued the hearing on the Motion to Dismiss to September 5, 2018, at 10:00a.m. Dckt. 39.

SEPTEMBER 5, 2018 HEARING

After the September 5, 2018 hearing on the Motion, the court issued an Order granting the Motion and dismissing the case. Dckt. 51. The findings stated within the civil minutes for that hearing include:

Although Debtor appears to be trying to address the grounds raised by the Chapter 13 Trustee, there are outstanding problems in this case still. There is no evidence that Debtor has provided her tax returns or pay advices. Debtor has not served the Plan on all creditors. Debtor has not filed a motion to confirm the plan and has not set that motion for a confirmation hearing.

Looking at the Plan form attached as an exhibit to the declaration, the court notes that it is deficient in several ways:

- A. Monthly Plan Payment is \$697.06 for sixty months.
- B. Class 1 Claim of "Fay Servicing" consists of:
 - 1. Regular Monthly Post-Petition Installment of \$697.08, and
 - 2. Cure Payment for \$41,824.96 Arrearage over sixty months of \$697.08.
- C. The Class 2, 3, 4, 5, 6, and 7 (general unsecured) portions of the Plan form are left blank.

Dckt. 35 at 6–11.

Schedule I lists Debtor and non-debtor spouse having monthly income of \$5,535.00. Dckt. 24 at 20–21. No provision is made for the payment of income or self employment taxes on Schedule I. No statement of business gross income and expenses is provided with Schedule I showing how Debtor computes \$3,000 in net monthly business income.

Schedule J lists Debtor having \$4,512.99 in monthly expenses, which includes \$3,146.88 payment for mortgage (and presumably insurance and taxes). *Id.* at 22. On Schedule J, Debtor also states:

- A. Home Maintenance Expenses of\$0.00
- B. Water, Sewer, Garbage Expenses of.....\$0.00
- C. Phone, Internet, Cable Expenses of.....\$0.00
- D. Transportation Expenses of.....\$0.00
- E. Entertainment Expenses of.....\$0.00
- F. Tax Expenses of\$0.00

Id. at 22–23.

The Statement of Financial Affairs is not completed, with no income information provided in Sections 4 and 5. *Id.* at 27. Debtor affirmatively states under penalty of perjury that she had no income in calendar years 2018, 2017, and 2016.

Civil Minutes, Dckt. 50.

MOTION TO RECONSIDER AND OCTOBER 2, 2018 HEARING

On September 27, 2018, Debtor filed an *Ex Parte* Motion to Reconsider the Order granting this Motion. Dckt. 56. On October 2, 2018, the Debtor appeared at a hearing on a motion for relief from the automatic stay in their case. *See* Dckt. 44. Debtor described efforts to obtain counsel and discussed a potential \$80,000.00 in equity in Debtor’s property set to be foreclosed upon.

In reviewing the *Ex Parte* Motion and oral arguments made, the court issued an Interim Order Vacating Order Dismissing Bankruptcy Case. Interim Order, Dckt. 57. The Interim Order set this Motion to be heard October 10, 2018 at 2:00 p.m.

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXXXXXX**.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by David Cusick (“the Chapter 13 Trustee”) 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 to Dismiss is **XXXXXXXXXX**.

10. [18-20473-E-13](#) [DPC-1](#) **PATRICIA DI GRAZIA** **MOTION TO RECONSIDER**
Pro Se **DISMISSAL OF CASE**
9-27-18 [56]

**No Telephonic Appearance is Permitted
for Debtor or Debtor’s Counsel**

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

The Motion to Reconsider Dismissal of Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Reconsider Dismissal of Case is **XXXXX.**

BACKGROUND

Debtor commenced this Bankruptcy Case on January 30, 2018. The dismissal was not quick in coming, with the Chapter 13 Trustee's Motion to Dismiss having been filed on March 29, 2018. The Trustee's Motion was based on several grounds. Dckt. 28. First, Debtor was \$1,394.16 delinquent in payments (two monthly payments), with no payments having been made when the Motion was filed. Second, Debtor did not use the required Chapter 13 Plan, but a general "Official Form" not used in this District. Third, Debtor failed to provide copies of pay advices. Fourth, Debtor failed to serve the proposed Chapter 13 Plan and motion to confirm on creditors. Fifth, Debtor failed to file the required credit counseling certificate.

Debtor filed her Notice of Opposition to the Motion to Dismiss on May 16, 2018. Dckt. 36. As the court addresses in the Civil Minutes from the May 30, 2018 hearing, the Opposition form filed is incomplete, with page 2 missing. On page 3 reference is made to Exhibits D, E, and F, none of which were filed with the court.

The Opposition form has a fax header at the top, which reads: "From: Member Support 5 Fax: (888) 880-1562. An Internet search ties that phone number to Financial Education Services for an entity named "ICAN CASA").^{FN.1}. Debtor and her husband made reference to "ICAN CASA" at the October 2, 2018 emergency hearing on the *Ex Parte* Motion to Vacate the Order Dismissing the Bankruptcy Case. Debtor stated that they were receiving assistance from ICAN in the prosecution of this bankruptcy case. ICANCASA, LLC webpage describes itself as:

ICANCASA is a for profit membership organization, working with a network of 501 (c) 3 Non-Profit Organizations, lawyers nationwide, forensic auditors, counselors, and funders who believe that every member of an American household deserves a better financial future (American Dream). Financially stable homes will "Make America Great Again".

<https://icancasa.org/>. From the website it appears that users of the service pay a monthly fee.

FN.1. <https://www.financialeducationservices.com/default.aspx?rid=jlim3>.

The court's Civil Minutes from the May 30, 2018 hearing address some serious "challenges" of the Debtor in this case. Dckt. 37. These comments include:

Although Debtor appears to be trying to address the grounds raised by the Chapter 13 Trustee, there are outstanding problems in this case still. There is no evidence that Debtor has provided her tax returns or pay advices. Debtor has not served the Plan on all creditors. Debtor has not filed a motion to confirm the plan and has not set that motion for a confirmation hearing.

Looking at the Plan form attached as an exhibit to the declaration, the court notes that it is deficient in several ways:

- A. Monthly Plan Payment is \$697.06 for sixty months.

B. Class 1 Claim of "Fay Servicing" consists of:

1. Regular Monthly Post-Petition Installment of \$697.08, and
2. Cure Payment for \$41,824.96 Arrearage over sixty months of \$697.08.

C. The Class 2, 3, 4, 5, 6, and 7 (general unsecured) portions of the Plan form are left blank.

Dckt. 35 at 6–11.

Schedule I lists Debtor and non-debtor spouse having monthly income of \$5,535.00. Dckt. 24 at 20–21. No provision is made for the payment of income or self employment taxes on Schedule I. No statement of business gross income and expenses is provided with Schedule I showing how Debtor computes \$3,000 in net monthly business income.

Schedule J lists Debtor having \$4,512.99 in monthly expenses, which includes \$3,146.88 payment for mortgage (and presumably insurance and taxes). Id. at 22. On Schedule J, Debtor also states:

A. Home Maintenance Expenses of	\$0.00
B. Water, Sewer, Garbage Expenses of.....	\$0.00
C. Phone, Internet, Cable Expenses of.....	\$0.00
D. Transportation Expenses of.....	\$0.00
E. Entertainment Expenses of.....	\$0.00
F. Tax Expenses of	\$0.00

Id. at 22–23.

The Statement of Financial Affairs is not completed, with no income information provided in Sections 4 and 5. Id. at 27. Debtor affirmatively states under penalty of perjury that she had no income in calendar years 2018, 2017, and 2016.

At the hearing Debtor acknowledged the shortcomings and the need for counsel. The court continues the hearing to afford Debtor the opportunity to obtain counsel.

At the May 30, 2018 hearing, these significant shortcomings having been identified, Debtor requested that the hearing be continued so that she could obtain counsel. As discussed below, even as of the October 2, 2018 emergency hearing on the *Ex Parte* Motion to Vacate (one hundred and twenty-five (125) days later) Debtor still had not obtained counsel to represent her in this case.

The continued hearing, was conducted on July 11, 2018. Though continued for the express

purpose of allowing Debtor to engage counsel to address the shortcomings in this case, no counsel was substituted in as counsel for her in this case. The Civil Minutes for that continued hearing notes the continuing challenges (deficiencies) in Debtor prosecuting this case. Dckt. 39. The hearing on the Motion was further continued to September 5, 2018.

At the continued hearing on September 5, 2018, the court determined that the case should be dismissed. No appearance was made by Debtor at the September 5, 2018 hearing.

The court entered its order dismissing this Bankruptcy Case on September 10, 2018. Dckt. 51.

The only document filed by Debtor after the incomplete Opposition on May 16, 2018, was a pleading titled "Motion for Referral to Mortgage Modification Mediation Program." Dckt. 41. This is a "Check the Box" form. In the bottom left-hand corner is the designation "FORM ND-MMM-!00." This appears to be a form used in the U.S. Bankruptcy Court for the Northern District of California. No such "Mediation Program" exists for the U.S. Bankruptcy Court for the Eastern District of California. The "Motion for Referral" was filed *ex parte*, not set for hearing, and was not addressed by or brought to the attention of the court.

On August 23, 2018, Metropolitan Life Insurance Company ("Creditor") filed a Motion for Relief From the Stay as to the Debtor and Co-Debtor. Dckt. 44. The co-debtor is identified in the Motion as Roland Di Grazia. Creditor alleges that Debtor defaulted in the obligations secured by the Deed of Trust for the property at issue, with a notice of default recorded on June 8, 2017, a Notice of Trustee's sale on November 9, 2018, and then a foreclosure sale set for August 29, 2018. Motion for Relief ¶ 8, Dckt. 44.

The Motion for Relief From the Stay was set for hearing on October 2, 2018. The Notice given was pursuant to Local Bankruptcy Rule 9014-1(f)(1), which required Debtor to file an opposition at least fourteen days before the October 2, 2018 hearing. Notice, Dckt. 45. No opposition was filed by the Debtor.

MOTION TO VACATE DISMISSAL ORDER

On September 27, 2018, Debtor filed (in *pro se*) a pleading titled "Ex-Parte to Reopen My Bankruptcy Case and Ex-Parte Motion for Reconsideration of the Court's Order Dated Granting Motion/Application to Dismiss." Dckt. 56. The grounds stated with particularity in the Motion upon which such relief is based (Fed. R. Bankr. P. 9013) are:

Furthermore, reconsider its Order of Granting Trustee's Motion/ Application to dismiss my bankruptcy case prior to the hearing on October 2, 2018 for the Motion for Relief from Automatic Stay filed by Metropolitan Life Insurance Co. which denies my opposition on that motion being heard which I have filed on September 14, 2018.

Ex Parte Motion, p. 1:18-22. No "opposition" was filed by Debtor on September 14, 2018, or any other date (other than the Opposition to the Motion to Dismiss filed in May 2018).

In support of this request the Debtor states that, through inadvertence, a timely objection to the motion was filed but deemed incomplete.

Id., p.1:22-24. Other than the May 2018 Opposition reference above, there is no “timely” objection which was deemed “incomplete” and rejected because it was “incomplete.”

FILED PROOFS OF (SECURED) CLAIM

Proof of Claim No. 4.

Movant filed a Proof of Claim, No. 4 on April 9, 2018, asserting a claim of \$459,440.26 secured by the Property. The pre-petition arrearage for the obligation upon which Proof of Claim No. 4 is based is stated to be \$42,650.50. Proof of Claim No. 2, p. 2. In the Attachment to Proof of Claim No. 4, Creditor breaks down the arrearage as follows:

Principal and Interest.....	\$28,373.76
Prepetition Fees.....	\$ 5,047.82
Escrow Deficiency (funds advanced).....	\$ 6,576.08
Projected Escrow Shortage.....	\$ 2,652.91

Proof of Claim No. 4 Attachment, p. 5.

Proof of Claim No. 2.

Real Time Resolutions, Inc. as agent for RRA CP OPPORTUNITY TRUST 1 filed a Proof of Claim, No. 2 on March 22, 2108 asserting a claim of \$40,903.22 also secured by the Property. Debtor does not list this claim on Schedule D. Dckt. 1 at 10.

Proofs of Claim Nos. 5 and 7

Proofs of Claim, Nos. 5 and 7 are for claims secured by real property identified as 312 Bryan Avenue, Roseville, California (Bryan Property). Debtor does not list this Property on her Original and Amended Schedules A/B. Dckt. 1 and 24.

For Proof of Claim No. 5, the Promissory Note attached is signed by both Roland Di Grazia and Patricia Di Grazia Proof of Claim No. 5, p. 21-30. The Deed of Trust identified as securing this claim is granted by Roland Di Grazia and Patricia, as husband and wife. *Id.*, p. 7-8.

For Proof of Claim No. 7, the loan modification agreement is signed by Roland Di Grazia and Patricia Di Grazia. Proof of Claim No. 7, p. 22. The Deed of Trust securing this claim is granted by Roland Di Grazia and Patricia Di Grazia, as husband and wife. *Id.*, p. 27. The adjustable rate note identified as the basis for this claim is signed by Roland Di Grazia and Patricia Di Grazia.

REVIEW OF SCHEDULES, PLAN, AND CONDUCT OF DEBTOR

At the emergency hearing on the *Ex Parte* Motion, October 2, 2018, the court addressed with Debtor and her husband, in plain language, the grossly deficient conduct of Debtor in prosecuting this case. Further, as discussed below, Debtor’s failure to follow through on her representation that she would obtain counsel if the court continued the prior hearings on the Motion to Dismiss.

On the Petition, Debtor lists her residence as 7176 Ludlow Drive. Petition, Question 4, p. 2; Dckt. 1. On Schedule A/B, Debtor lists owning only the 7176 Ludlow Drive Property ("Property"). *Id.* at 9. On it, Debtor states that the Property has a value of \$502,606.00, that only the Debtor has an interest in the Property, and that Debtor's interest had a value of only \$80,158.16. *Id.* at 9.

On her Chapter 13 Statement of Current Monthly Income Debtor states that she has \$1,500.00 in net monthly income from her business. Dckt. 22 at 1. Debtor also states that she has \$1,500.00 in net income from rental or other real property. *Id.* Though stating that she is married, no income information is listed for her spouse. *Id.* Debtor states that her income in the six months proceeding this case was limited to only \$3,000.00 a month.

On February 27, 2018, Debtor filed an Amended Schedule A/B. Dckt. 24. Debtor lists owning an interest only the 7176 Ludlow Property. *Id.* at 3. Debtor does not list owing any business on Schedule A/B. *Id.* at 7-11.

While listing only the Ludlow Property, on Schedule C, Debtor claims an exemption (not stating the legal basis for an exemption) in real property identified as 213 Bryan Ave. *Id.*, p. 13. On Schedule E/F Debtor states under penalty of perjury that she has no creditors with unsecured claims.

On Schedule I, Debtor states that she receives \$3,000.00 a month in net income from rental property or a business and \$638.00 in Social Security income. *Id.* at 21. Debtor does not include the required statement of gross income and expenses from her business and rental of real property. Debtor also states that her spouse receives \$1,897.00 in monthly Social Security income. *Id.*

On Schedule J, Debtor states that she has one dependent, her "wife." *Id.* at 22. For expenses on Schedule J, Debtor states under penalty of perjury that the total monthly expenses for Debtor and her spouse are \$4,512.88. *Id.* at 24. Of this, (\$3,146.88) is listed for the monthly mortgage payment. (This is 69.7% of Debtor's stated total monthly expenses.) On Schedule J, Debtor states under penalty of perjury that she:

- 4c. No Home Maintenance or Repair Expense
- 6b. No Water, Sewer, Garbage Collection Expense
- 6c. No Telephone, Cell Phone, Internet, Satellite, and Cable Services Expense
- 12. No Transportation (including gas, maintenance, registration) Expense

The court notes that on Schedule A/B Debtor states under penalty of perjury owning a 2002 Honda Odyssey. *Id.* at 4.

- 13. No Entertainment Expense
- 15. No Vehicle Insurance
- 16. No Taxes For Debtor's \$3,000 Monthly Business/Rental Income

Schedule J Information, *Id.* at 22-24.

On the Statement of Financial Affairs, in the three years preceding the Bankruptcy Case Debtor lived at no other place than the 7176 Ludlow Property. Statement of Financial Affairs Question 2, *Id.* at 26. Debtor then states under penalty of perjury that notwithstanding being married and living at the Ludlow Property located in California, that she has not lived with her spouse in California. Statement of Financial Affairs Question 1, *Id.*

In response to Questions 4 and 5, Debtor states under penalty of perjury that she had no employment, business, rental, or other income for 2018, 2017, and 2016. *Id.* at 27. All of the other questions in the Statement of Financial Affairs are “no.”

In sum, Debtor’s statements of assets (the real property) and claims (the creditors holding secured claims) are incorrect. Debtor owns at least one other real property not disclosed on the Schedules. Debtor has at least three other creditors with secured claims not disclosed on the Schedules.

Debtor’s statement of there being \$80,000 of equity in the Property appears to be “incorrect,” with there being at least an additional \$40,000 secured by the Property.

PROSECUTION OF THIS BANKRUPTCY CASE

At the October 2, 2018 emergency hearing on the *Ex Parte* Motion to Vacate, Debtor and her spouse stated that they had been consulting various legal service providers, including ICAN CASA. They had talked to attorneys, identifying one by name. They advised the court that the attorney stated to them that “there was nothing he could do to help them in this case.”

It appears that there have been “outside forces” directing Debtor and her spouse in the prosecution of this bankruptcy case. Debtor was desperately seeking the court to vacate the order dismissing the case to stop the foreclosure on the 7176 Ludlow Property. The foreclosure sale was stated to be set for October 3, 2018.

Debtor also appears to have intentionally not completely, accurately, and truthfully completing the Schedules and Statement of Financial Affairs in this case. Given Debtor and Debtor’s spouse’s statement that they have relied on various services provided to them by others (represented to include ICANCASA), such “omissions” would not appear to be inadvertent, but part of a scheme in the presentation of this Bankruptcy Case to the Court.

Though not listed on the Schedules, it appears that Debtor also owns the 213 Bryan Avenue property.

Debtor’s “prosecution” of this case has been “non-active,” appearing to only enjoy the relief of the automatic stay and not attempt to comply with the requirements of Chapter 13 under the Bankruptcy Code. From the Schedule I income information and the Schedule J expense information it appears that Debtor’s ability to afford a \$3,000+ monthly mortgage payment and the cure of the arrearage is highly questionable. Debtor argues the secured claim encumbering Debtor’s residence has an \$80,000.00 equity cushion, rendering it oversecured. However, discussed *supra*, this asserted equity relies on Debtor’s omission of secured claims.

EMPLOYMENT OF COUNSEL

At the October 2, 2018 emergency hearing on the *Ex Parte* Motion, Debtor and her spouse told the court that they were hiring an attorney, with whom they would be meeting that afternoon. To the extent that Debtor’s “missteps” putting at risk the loss of the represented \$80,000.00 of equity were caused by inadvertence or innocent mistake, finally hiring knowledgeable bankruptcy counsel would remedy that in short order. If not inadvertent or innocent, such “remedy” may not be possible.

The court notes that on October 5, 2018, a substitution of attorney was filed in which Peter G. Macaluso, Esq., an experienced and well known consumer attorney in the Eastern District of California, was substituted in as counsel for Debtor. Dckt. 74.

INTERIM ORDER VACATING THE ORDER DISMISSING THE CASE

On October 2, 2018, the court determined that an Interim Order Vacating the Order Dismissing the case was proper. *See* Order, Dckt. 57. In granting the Interim Order, the court reasoned as follows:

Several factors, notwithstanding the limited “grounds” set forth in the *Ex Parte* Motion weigh in favor thereof. First, if Debtor and her spouse have been drawn into a scheme to frustrate creditors and “get a house for free,” by Debtor’s count there is \$80,000.00 in equity. If Debtor actually hires competent counsel, such equity could be preserved, rather than lost to foreclosure, even if the house cannot be “saved.”

Second, the Trustee reports that he is holding in excess of \$4,700.00 in plan payments to date. Such monies may be used to provide adequate protection for Creditor caused due to the ineffective prosecution of this case by Debtor.

Third, the Schedules and Statement of Financial Affairs do not appear to be fully and accurately completed. It appears that Debtor owns more assets than disclosed on Schedule A/B.

Thus, the court determined that the Order Dismissing the Bankruptcy Case would be vacated on an interim basis, with an initial hearing on the Motion to Vacate to be conducted at 2:00 p.m. on October 10, 2018 (special set date and time). At the initial hearing, the court will determine what portion, or all, of the \$4,700.00 held by the Trustee is to be paid to Creditor for the cost, expense, delay, caused by Debtor’s failure to prosecute this case but pleading with the court to vacate the dismissal to derail the October 3, 2018 foreclosure sale so the Debtor would not lose the 7176 Ludlow Property (or the \$80,000.00 equity Debtor asserts exists therein). The payment of even the full \$4,700.00 to be applied to Creditor’s post-petition fees and expenses, and post-petition payments that have come due, is not unfair or inappropriate.

The court further notes that Debtor affirmatively states under penalty of perjury that in addition to the \$697.08 a month Chapter 13 Plan payment (Plan ¶ 2.1, Dckt. 23) Debtor has \$3,146.88 to make the current post-petition month mortgage payments to Creditor. Schedule J, Dckt. 24 at 22-23; Chapter 13 Plan ¶ 3.1, Dckt. 23 at 2.

Taken at face value there is \$25,175.04 that has been paid to Creditor for the period February through September 2018 (8 months x \$3,146.88 current monthly mortgage payment) or there is \$25,175.04 that the Debtor has set aside pending making that payment to Creditor. The court shall address at the hearing

on the Motion to Vacate the status of such current post-petition payments and the location of the \$25,175.04.

Order, Dckt. 68.

On October 4, 2018, the court issued an Order Setting Hearing On Motion To Vacate Order Dismissing Bankruptcy Case. Order, Dckt. 68. In setting the hearing, the court provided :

IT IS ORDERED that an initial noticed hearing on the Motion to Vacate the Order Dismissing this Bankruptcy Case (the court previously having issued an Interim Order Vacating the Dismissal Order pending further hearing on the Motion to Vacate) will be conducted at **2:00 p.m. on October 10, 2018**. No written opposition is required to be filed, with such opposition grounds being allowed to be presented orally at the hearing. If further proceedings are warranted, the court will set a briefing schedule.

IT IS FURTHER ORDERED that at the October 20, 2018 hearing the court will determine what portion, or all, of the \$4,700+ in Chapter 13 Plan payments received by the Chapter 13 Trustee will be paid to creditor Metropolitan Life Insurance Company for the post-petition payments that have come due on its claim and the costs and expenses caused by Debtor's ineffective and non-diligent prosecution of this Bankruptcy Case. Additionally, the court shall address the status of the \$3,146.88 monthly post-petition mortgage payment provided for in Debtor's budget for the eight post-petition months which have transpired in this case.

IT IS FURTHER ORDERED that Debtor Patricia Di Grazia and Roland Di Grazia (identified as the Debtor's husband), and each of them, and Patricia Di Grazia's attorney in this bankruptcy case shall appear in person at the October 10, 2018 hearing - No Telephonic Appearances Permitted.

Id.

DISCUSSION

The court's initial Interim Order Vacating Dismissal of the Case relied in the appearance of approximately \$80,000.00 in equity in Debtor's Property. As discussed above, a review of Debtor's filing and claims filed demonstrate that it is unlikely any equity exists.

At the hearing, Debtors explained Debtors' efforts to genuinely prosecute the bankruptcy case since the October 2, 2018 hearing will include: **XXXXXXXXXXXXXXXXXX**.

The court shall issue an 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 Reconsider Dismissal of Case is filed by Patricia Di

Grazia ("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 **XXXXXXXXXXXXXXXXXXXXX**.

11. <u>18-20473</u> -E-13	PATRICIA DI GRAZIA Pro Se	MOTION TO RECONSIDER GRANTING RELIEF FROM THE AUTOMATIC STAY 10-2-18 [60]
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Final Ruling: No appearance at the October 10, 2018, hearing is required.

The Motion having previously been denied by Order of this court (Dckt. 65), **the Motion to Reconsider Granting Relief From Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

12. <u>15-28908</u> -E-13 <u>18-2053</u>	WILLIAM/SARAH MCGARVEY MCGARVEY V. USAA SAVINGS BANK	CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT 7-6-18 [18]
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Plaintiff's Atty: Kyle W. Schumacher
Defendant's Atty: Jaime Y. Ritton

Adv. Filed: 4/27/18
Reissued Summons: 4/30/18
Answer: none
Amd. Cmplt. Filed: 7/6/18
Reissued Summons: 7/6/18
Answer: 9/6/18

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

Notes:

Continued from 9/5/18 to afford Defendant the opportunity to have an answer filed before the court sets the matter for a pre-trial conference.

Defendant USAA Savings Bank's Answer to Plaintiff-Debtor Sarah McGarvey First Amended Adversary Complaint / Demand for a Jury Trial filed 9/6/18 [Dckt 33]

OCTOBER 10, 2018

CONTINUED STATUS CONFERENCE

SUMMARY OF COMPLAINT

Sarah McGarvey ("Plaintiff-Debtor") filed her Amended Complaint on July 6, 2018. Dckt. 18. On August 17, 2018, the court entered an order granting Defendant USAA Savings Bank's Motion to Dismiss for all claims stated in the Amended Complaint except for the one claim identified as follows:

IT IS ORDERED that the Motion to Dismiss is granted, and all claims against Defendant are dismissed, with the exception of:

1. The claim stating relief for the alleged failure of Defendant to update, correct, or include in the information reported to the consumer reporting agencies that the asserted obligation owed to Defendant is included in or subject to Plaintiff-Debtor's bankruptcy case.

Order, Dckt. 30.

SUMMARY OF ANSWER

USAA Savings Bank ("Defendant") filed its Answer (Dckt. 33) to the Amended Complaint (the one remaining claim after the order dismissing all remaining claims was entered) on September 6, 2018.

In the Answer Defendant makes specific admissions and denials of the allegations in the Complaint. The Answer also asserts ten Affirmative Defenses.

**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 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 an adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter 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).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, asserting “because the automatic stay arises out of Title 11.” Amended Complaint ¶ 1, Dckt. 18. Plaintiff-Debtor further states that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2),^{FN.1.} arising under the Bankruptcy Code automatic stay provisions, and further consents to the bankruptcy judge issuing all orders and final judgment in this Adversary Proceeding (for the Amended Complaint as now existing). *Id.* ¶ 7.

FN.1. As did the Defendant, the court notes the typographical error in the reference to 28 U.S.C. § 157(b)(2) in paragraph 7 of the Amended Complaint, it being mistyped as “28 U.S.C. § 15(b)(2).

In the Answer Defendant first admits that federal court jurisdiction exists under 28 U.S.C. § 1334, and denies the remaining allegations (presumably that the claim arises under 11 U.S.C. § 362). Answer ¶ 1, Dckt. 33. In responding to the statement that this is a core proceeding, Defendant notes the typographical error in Paragraph 7 of the Amended Complaint and correctly states that the contention of this being a core proceeding arises under 28 U.S.C. § 157(b)(2), Plaintiff-Debtor asserting that the one remaining claim arises under the automatic stay provisions of the Bankruptcy Code. Answer ¶ 7, *Id.* Defendant further states that it too consents to the entry of orders and the final judgment of this Bankruptcy Court “per the Federal Rules of Bankruptcy Procedure Rule 7012(b).” *Id.*

Federal Rule of Bankruptcy Procedure 7012(b) provides that the provisions of Federal Rule of Civil Procedure 12(b)-(I) applies in adversary proceedings. Those provisions address how a defendant

presents defenses in response to a complaint and motion practice before trial.

At the hearing, counsel for Defendant explained ~~XXXXXXXXXXXXXXXXXXXX~~

~~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 judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.~~

REQUEST FOR JURY TRIAL

At the end of the Answer, Defendant USAA states that it “demands a trial by jury” in this Adversary Proceeding. At the hearing, counsel for Defendant explained ~~XXXXXXXXXXXXXXXXXXXX~~. The issues for a trial by jury were identified as ~~XXXXXXXXXXXXXXXXXXXX~~.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). ~~First Amended Complaint, ¶¶ X, X, Dckt. X. The 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 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 ~~-----~~, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before ~~-----~~, **2019**.
- d. Discovery closes, including the hearing of all discovery motions, on ~~-----~~, **2019**.
- e. Dispositive Motions shall be heard before ~~-----~~, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ~~-----~~ **p.m. on --** ~~-----~~, **2019**.