

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 2, 2023 at 11:00 a.m.

1. 18-25851-E-13 22-2087 PGM-2	ROBERT HUNTER Peter Macaluso	CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, PLAINTIFFS ATTORNEY(S) 7-3-23 [32]
HUNTER V. FILLMORE GROUP TRUST		

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 does not state that the Motion and supporting pleadings were served on Defendant. Rather, it states that the Summons was served by publication, pursuant to court order, Dckt. 15, on February 23, 2023, March 2, 2023, March 9, 2023, and March 16, 2023.

The Certificate of Service states that service was effectuated on July 3, 2023. The attestation states service by U.S. Mail, First Class, has been made to the address stated on the Deed of Trust and service has been made via email to lienservices@hotmail.com. However, the Attestation does not state the Motion was served by publication, like the Summons was.

Federal Rules of Civil Procedure Rule 5, as incorporated into Federal Rules of Bankruptcy Procedure 7005, governs service of pleadings and other papers, including a written motion or notice, appearance, demand, or offer of judgment, or similar paper. Federal Rule of Civil Procedure 5(a)(2) provides that no service is required on a party who is in default for failure to appear, stating:

(2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4

See also, Moore's Federal Practice - Civil which provides a discussion of the application of Federal Rule of Civil Procedure 5(a)(2) and that when a party fails to appear, service of the motion is not required. 1 MOORE'S FEDERAL PRACTICE - CIVIL § 5.03[2].

Here, service of the summons was effectuated on Defendant by publication and Defendant did not respond, thus Defendant was in default for failing to appear. Therefore, it does not appear that a Rule 55 Default Judgment needed to be served to Defendant. Thus, failure to serve Defendant by publication does not make insufficient notice.

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

The Motion for Entry of Default Judgment is granted.

DISCUSSION

Robert Hunter, Plaintiff-Debtor, requests this court to enter a Default Judgment of Declaratory Relief, Statutory Fine, and Attorney's Fees and Costs against Fillmore Group Trust, Defendant. Dckt. 33. Plaintiff-Debtor alleges that Defendant recorded a second deed of trust on the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670 ("Property") without Plaintiff-Debtor's authorization or consent, thus clouding title. *Id.* Plaintiff-Debtor further contends that Defendant's second deed of trust on the Property was obtained "illegally [and/or] fraudulently." *Id.* at ¶ 6. Accordingly, Plaintiff-Debtor requests this court to find for Plaintiff-Debtor and enter a Default Judgment against Defendant, thereby curing the cloud on Plaintiff-Debtor's title and granting Plaintiff-Debtor attorney's fees.

Pursuant to Federal Rules of Civil Procedure 55, a default judgment may be entered by either the clerk of the court, or by the court upon its own initiative and findings. Fed. R. Civ. P. 55. In *Eitel v. McCool*, the Ninth Circuit enumerated the following factors for the court to consider when deciding whether to enter default judgment:

(1) the merits of the plaintiff's substantive claim; (2) the sufficiency of the complaint; (3) the sum of money at stake in the action; (4) the possibility of prejudice to the plaintiff; (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 decision on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Importantly, "the general rule [is] that default judgments are ordinarily disfavored," and it is preferred that issues ordinarily be decided on their merits. *Id.* at 1472.

In this Adversary Proceeding, Plaintiff-Debtor has not submitted sufficient evidence that would allow this court to enter a default judgment against Defendant. This court will not enter default judgment solely on the basis of well-pleaded facts in a complaint or motion.

Plaintiff-Debtor submitted a single Declaration in support of this Motion, Dckt. 34. It is the Declaration of Plaintiff-Debtor's counsel. The testimony provided by Plaintiff-Debtor's counsel is:

- A. Plaintiff-Debtor's counsel filed this Adversary Proceeding. Dec., ¶ 3; Dckt. 34.
- B. That Plaintiff-Debtor's counsel has personal knowledge (see ¶ 1 of the Declaration) that:

In the petition, the claim held by the Defendant did not hold a claim as the applicable 2nd Deed of Trust was obtained by Fraud, was not authorized, nor did Plaintiff's [*sic*] have any contact with Fillmore Trust Group.

Id.

It is not clear how Plaintiff-Debtor's counsel has personal knowledge that Fraud occurred, how the Petition addresses issues of fraud, and that if there was "fraud" then what was Plaintiff-Debtor's conduct in reliance on the fraud. Also, it is not clear how Plaintiff-Debtor's counsel has personal knowledge that Plaintiff-Debtor never had any contact with Fillmore Trust Group.

- C. Plaintiff-Debtor seeks recovery of \$8,000.00 in legal fees. *Id.*, ¶ 4.

Plaintiff-Debtor's counsel does not authenticate any exhibits. However, unauthenticated Exhibit A is filed in support of the Motion. Dckt. 35. This is identified as an "Hourly Billing For Legal Services." While the court could assume this is Plaintiff-Debtor's counsel's billing records, it does not state such and it is not authenticated. The Hourly Billing for Legal Services does not identify the attorney and the paralegal providing the services.

While it is true that the well-pleaded facts of this case indicate Defendant's behavior sounds in fraud, this court cannot enter a default judgment without some further evidence justifying the relief sought.

In the same Motion, Plaintiff-Debtor has also requested this court grant Plaintiff-Debtor's attorney's fees and costs of \$8,000.00 associated in pursuing this matter. Dckt. 33. Requests for attorney's fees should typically be made by separate motion within 14 day following the entry of judgment, and "such motion must specify the statute, rule, or other grounds giving rise to an entitlement to attorney's fees." *Lesnik v. Eisenmann SE*, Case No. 16-cv-01120-B:F, 2023 WL 3740318, at *6 (N.D. of Cal. May 30, 2023). Federal Rules of Civil Procedure 54(d)(2)(B) details what should be included in such motions, and how they should be filed with the court. In relevant part, the rule states:

(B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:

- (I) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

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This court has, when appropriate for the order or judgment to be entered, has allowed the motion for allowance of prevailing party fees to be heard in conjunction with the motion for an order or entry of default judgment. This reduces otherwise unnecessary costs and expenses by requiring multiple hearings when such are not warranted.

Merely because someone is a prevailing party does not grant them the right to attorney's fees. Under California Law, the prevailing party is entitled to recover attorney's fees and costs when such is so provided for by contract, statute, or law. See Cal. Civ. 1717, Cal. C.C.P. § 1033.5, and 7 WITKIN, CAL. PROC. 6TH JUDGM § 153 (2023).

The contractual, statutory, or law basis for the award of attorney's fees is not provided by Plaintiff-Debtor.

September 21, 2023 Hearing

At the hearing, the court addressed with counsel the need for evidence to be provided, and counsel reported some additional discovery being conducted regarding the County records.

PLAINTIFF-DEBTOR'S SUPPLEMENTAL DECLARATION

Plaintiff-Debtor submitted a Declaration on October 2, 2023, to address the court's need for evidence in support of the requested judgment. Dckt. 51. In its Declaration, Dckt. 51, Plaintiff-Debtor testimony includes (identified by the paragraph number in the Declaration):

2. "I [Plaintiff-Debtor] have paid a total of \$94,110.09 to the Trustee over the following fifty six (56) month since the commencement of my bankruptcy plan."

The Plaintiff-Debtor's Bankruptcy Case, 18-25851, was filed September 17, 2018, now more than five years prior to the hearing on this Motion is being conducted on November 7, 2023.

3. Plaintiff-Debtor is now delinquent in his Plan payments because he is a victim of title fraud.
4. Plaintiff-Debtor discovered two fraudulent deeds placed on his residence when he started the process of trying to obtain a reverse mortgage on the Property so that he could pay off his bankruptcy Plan.

5. Two deeds of trust were recorded against his Property without Plaintiff-Debtor's knowledge or consent.
6. "Fillmore Group Trust has slandered title to my residence by fraudulently placing a Deed of Trust on my property."
7. "Peachtree Group Trust has also slandered title to my residence by fraudulently placing a Deed of Trust on my property."

The court finds it interesting that the Plaintiff-Debtor, a non-lawyer layperson has chosen to provide the court with legal terms such as "slander of title" and "fraudulently." These are not terms one would expect from a layperson testifying in court.

8. Plaintiff-Debtor states that he does not know who the above entities are, he has not contacted them, and he has not given either of them a deed of trust to be recorded against the property.
9. Plaintiff-Debtor then provides his legal conclusions that: (1) his attorney has filed the appropriate documents to obtain a default judgment; (2) has served the Defendant by publication; (3) has waited the required time and notice; and (4) has provided "evidence to establish proper protocol was followed in this procedure."
- 10., 11. Due to unexpected, normal expenses, Plaintiff-Debtor defaulted in the Plan payments, but then sought a reverse mortgage to pay off the Plan and move forward. The deeds of trust at issue have blocked Plaintiff-Debtor's efforts to complete his Plan.
13. Plaintiff-Debtor did not authorize, consent, or have any contract with the Fillmore Group.

November 2, 2023 Hearing

With the testimony provided in the Supplemental Declaration, the court has been provided evidence to support the allegations that the Deed of Trust recorded on March 3, 2014, Book 20140303 and Page 0394, with the Sacramento County Reorder naming the Fillmore Group Trust, Robert Hunter, Co-Trustee, as beneficiary, encumbering the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670, was not authorized, was forged, and is of no legal effect.

Judgment is granted for Plaintiff-Debtor and against Defendant that said Deed of Trust is void and of no legal force or effect.

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 Entry of Default Judgment filed by Debtor Robert Paul Hunter ("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 Motion for Entry of Default Judgment is granted and judgment shall be entered for Plaintiff-Debtor Robert Hunter and against Defendant Fillmore Group Trust determining that the Deed of Trust recorded on March 3, 2014, Book 20140303 and Page 0394, with the Sacramento County Reorder naming the Fillmore Group Trust, Robert Hunter, Co-Trustee, as beneficiary, encumbering the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670, is void and of no legal force and effect.

Counsel for the Plaintiff-Debtor shall prepare a proposed judgment consistent with this Order and lodge such proposed judgment with the court.

Attorney's Fees and Costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054

2. [18-25851-E-13](#) **ROBERT HUNTER**
[22-2087](#)
CAE-1

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT**
9-1-22 [[1](#)]

HUNTER V. FILLMORE GROUP TRUST

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none

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

Notes:
Continued from 9/21/23 to be conducted in conjunction with the continued hearing on the Motion for Entry of Default Judgment.

The Status Conference is continued to 2:00 p.m. on xxxxxxxx, 2024.

NOVEMBER 2, 2023 STATUS CONFERENCE

The court having granted the Plaintiff-Debtor's Motion for Entry of Default Judgment, the Status Conference is continued to 2:00 p.m. on xxxxxxxx, 2024 for administrative management purposes to allow for the filing and conclusion of any post judgment motions.

SEPTEMBER 21, 2023 STATUS CONFERENCE

At the Status Conference, the court continued the Status Conference to be conducted in conjunction with the continued hearing on the Motion for Entry of Default Judgment at 11:00 a.m. on November 2, 2023.

AUGUST 8, 2023 STATUS CONFERENCE

Robert P. Hunter, the Plaintiff-Debtor, has filed a Motion for Entry of a Default Judgment. The only evidence presented in support of the Motion is the Declaration of Plaintiff-Debtor’s counsel in support of recovering legal fees. No evidence is presented in support for the entry of the judgment.

As Judge Christopher M. Klein has long stated, while a judge may assume and find that allegations in a complaint are true and admitted in the absence of an answer being filed, the judge is not required to. As the court requires of creditors who went seeking entry of default judgments against less sophisticated debtors, Plaintiff-Debtor must provide competent, admissible evidence in support of the relief requested. While such evidence may be easy to present to the court, such evidence generally must be filed in support of the Motion for Entry of Default Judgment. ^{FN.1.}

FN. 1. See Federal Rule of Civil Procedure 55, which is incorporated into Federal Rule of Bankruptcy Procedure 7055, which provides in pertinent part:

- (b) Entering a Default Judgment.
- ...
- (2) By the Court. In all other cases, the party must apply to the court for a default judgment. . . The court may conduct hearings . . .—when, to enter or effectuate judgment, it needs to:
 - (A) conduct an accounting;
 - (B) determine the amount of damages;
 - (C) **establish the truth of any allegation by evidence;** or
 - (D) investigate any other matter.

At the August 8, 2023 Status Conference, Counsel for Plaintiff-Debtor addressed this issue with the court and that Plaintiff-Debtor has been required to serve Defendant by publication due to an inability to locate Defendant. Plaintiff-Debtor’s counsel also reported that an attempt to obtain information from the notary public who notarized the Deed of Trust is no longer available, the notary having passed away.

The Court has previously authorized Service by Publication on Defendant. Order, Dckt. 15. As the court noted in that Order, the Deed of Trust at issue exists in some unusual circumstances, including:

- A. Trustor.....Robert Hunter (the Plaintiff-Debtor)

B. Beneficiary.....Fillmore Group Trust, Robert Hunter Co-Trustee

...

D. Secured Obligation.....Unidentified dollar amount in an unidentified note, plus future advances of \$65,000.00.

E. The borrower to whom the advances are made is not identified, and the borrower is expressly stated not to be Robert Hunter (the Plaintiff-Debtor).

F. The Address for Fillmore Group Trust stated in the Recording Request by and Address for Mailing the Recorded Copy of the Deed of Trust is:

12021 Gold Pointe Lane
Gold River, CA 95670

This is the same address as the real Property which Robert Hunter, the Plaintiff-Debtor, owns and seeks to have the deed of trust removed from clouding title to that Property.

Order, p. 1:27 - 2:9. With respect to the obligation secured by the Deed of Trust, the court noted:

Third, the obligation secured by the Deed of Trust is not identified, the “note” is not identified, the obligation on the note is not identified, and it states that an additional \$65,000.00 in advances would also be secured.

Id., p. 2:22-24.

The court in error addressed the substance of the Motion for Entry of Default Judgment at the Status Conference. The hearing on the Motion for Entry of Default judgment is set for 11:00 a.m. on August 24, 2023. The court will have to address the substance of the Motion at the August 24, 2023 scheduled hearing.

With respect to identification of the persons involved with the Deed of Trust, the court asked counsel for Plaintiff-Trustee whether the notary for the Deed of Trust had been contacted. Counsel indicated that the notary was not available, with the court understanding the statement to be that the notary had died.

A review of the California Secretary of State Website for Notary Public Listing produces information that the notary, E.C. Hokom has an active notary license. This information is:

E. C. Hokom,
THE UPS STORE #1614
11230 Gold Express Dr No 310
Gold River CA 95670

Commission No.	Expiration Date
2314809	12/07/2023

MAY 10, 2023 STATUS CONFERENCE

On May 4, 2023, Plaintiff-Debtor filed an updated Status Report. Dckt. 24. Plaintiff-Debtor reports that no answer has been filed to the Complaint and Defendant has not communicated with Plaintiff-Debtor's counsel. Additionally, no answer having been filed, Plaintiff-Debtor requests a sixty (60) day continuance so he may prosecute the entry of a default judgment.

Plaintiff-Debtor's Certificate of Service by Publication, U.S. Mail, and electronic was filed on February 21, 2023. Dckt. 18. The service made is stated to have been made as follows:

1. Pursuant to Court Order (Doc 15), service by Publication has been ordered in The Daily Recorder in Sacramento, California, and the publication dates are 2/23/23, 3/2/23, 3/9/23, and 3/16/23. The Proof of Publication will be mailed to Plaintiff's counsel's office after the last date of publication (see attachment A);
2. Pursuant to Court Order (Doc 15), service by U.S. Mail, First Class, postage prepaid, has been made to the address stated on the Deed of Trust: 12021 Gold Pointe Lane, Gold River, CA 95670;
3. Pursuant to Court Order (Doc 15), service has been made via email to the <LienServices@hotmail.com> email address.

Cert. of Serv.; Dckt 18 at 6.

At the Status Conference, counsel reported that Plaintiff-Debtor would promptly be filing a request for entry of default and then a motion for entry of default judgment.

The court continues the Status Conference to afford Plaintiff-Debtor the opportunity to prosecute this Adversary Proceeding to judgment.

FEBRUARY 22, 2023 STATUS CONFERENCE

On January 5, 2023, the court entered an order authorizing that service may be made by publication. Dckt. 16.

No updated Status Report has been filed by Plaintiff-Debtor.

At the Status Conference, Plaintiff-Debtor reported that service by Publication has been made.

Plaintiff-Debtor requested the Status Conference be continued so that the response period could end and Plaintiff-Debtor proceed with a motion for entry of default judgment if no responses are filed.

NOVEMBER 30, 2022 STATUS CONFERENCE

The Plaintiff-Debtor has commenced this Adversary Proceeding to quiet title with respect to a deed of trust naming Fillmore Group Trust, et al., as the beneficiary. Plaintiff-Debtor alleges that he has not authorized the deed of trust, is the victim of identity theft, and the deed of trust is void.

On September 15, 2022, a Reissued Summons was issued for Plaintiff. Dckt. 6. No certificate of service has been filed.

At the Status Conference, counsel for Plaintiff-Debtor addressed how they will proceed in trying to identify the Defendant (the entity named in the Deed of Trust) and complete service (including service by publication).

Counsel for the Plaintiff-Debtor further reported that the title company listed as Trustee on the Deed of Trust states that it has no record of this Deed of Trust and is not the trustee thereunder.

Based on the identify theft alleged, the named Defendant not being readily identifiable, and a possible need for service by publication, the court extends the deadline for service of the summons and complaint as provided in Federal Rule of Civil Procedure 4(m) and incorporated into Federal Rule of Bankruptcy Procedure 7004(a), to and including February 23, 2023, which deadline may be extended by further order of the court.

In reviewing the copies of the Deed of Trust alleged to have been forged, the court observes that the named beneficiary, Fillmore Group Trust, is stated to have an address of 12021 Gold Pointe Lane, Gold River, California, which is the same address as the Debtor's residence. Additionally, the co-trustee of the Fillmore Group Trust is stated to be the Debtor, who lives at the Gold Pointe Lane Property.

The Deed of Trust states that the borrower is not the Debtor, the Trustor under the Deed of Trust. However, no borrower or specific obligation is identified in the Deed of Trust.

3. [18-25851-E-13](#)
[22-2088](#)
PGM-2

ROBERT HUNTER
Peter Macaluso

**HUNTER V. PEACHTREE GROUP
TRUST**

**CONTINUED MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND/OR MOTION
FOR COMPENSATION FOR PETER G.
MACALUSO, PLAINTIFFS ATTORNEY(S)
7-3-23 [33]**

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.

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The Motion for Entry of Default Judgment is granted.

DISCUSSION

Robert Hunter, Plaintiff-Debtor, requests this court to enter a Default Judgment of Declaratory Relief, Statutory Fine, and Attorney's Fees and Costs against Peachtree Group Trust, Defendant. Dckt. 33. Plaintiff-Debtor alleges that Defendant recorded a second deed of trust on the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670 ("Property") without Plaintiff-Debtor's authorization or consent, thus clouding title. *Id.* Plaintiff-Debtor further contends that Defendant's second deed of trust on the Property was obtained "illegally [and/or] fraudulently." *Id.* at ¶ 6. Accordingly, Plaintiff-Debtor requests this court to find for Plaintiff-Debtor and enter a Default Judgment against Defendant, thereby curing the cloud on Plaintiff-Debtor's title and granting Plaintiff-Debtor attorney's fees.

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3. Plaintiff-Debtor is now delinquent in his Plan payments because he is a victim of title fraud.
4. Plaintiff-Debtor discovered two fraudulent deeds placed on his residence when he started the process of trying to obtain a reverse mortgage on the Property so that he could pay off his bankruptcy Plan.
5. Two deeds of trust were recorded against his Property without Plaintiff-Debtor's knowledge or consent.
6. "Fillmore Group Trust has slandered title to my residence by fraudulently placing a Deed of Trust on my property."
7. "Peachtree Group Trust has also slandered title to my residence by fraudulently placing a Deed of Trust on my property."

The court finds it interesting that the Plaintiff-Debtor, a non-lawyer layperson has chosen to provide the court with legal terms such as “slander of title” and “fraudulently.” These are not terms one would expect from a layperson testifying in court.

8. Plaintiff-Debtor states that he does not know who the above entities are, he has not contacted them, and he has not given either of them a deed of trust to be recorded against the property.
9. Plaintiff-Debtor then provides his legal conclusions that: (1) his attorney has filed the appropriate documents to obtain a default judgment; (2) has served the Defendant by publication; (3) has waited the required time and notice; and (4) has provided “evidence to establish proper protocol was followed in this procedure.”
- 10., 11. Due to unexpected, normal expenses, Plaintiff-Debtor defaulted in the Plan payments, but then sought a reverse mortgage to pay off the Plan and move forward. The deeds of trust at issue have blocked Plaintiff-Debtor’s efforts to complete his Plan.
13. Plaintiff-Debtor did not authorize, consent, or have any contract with the Peachtree Group Trust.

November 2, 2023 Hearing

With the testimony provided in the Supplemental Declaration, the court has been provided evidence to support the allegations that the Deed of Trust recorded on December 2, 2013, Book 20131202 and Page 0973, with the Sacramento County Reorder naming the Peachtree Group Trust, Robert Hunter, Co-Trustee, as beneficiary, encumbering the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670, was not authorized, was forged, and is of no legal effect.

Judgment is granted Plaintiff-Debtor and against Defendant that said Deed of Trust is void and of no legal force or effect.

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 Entry of Default Judgment filed by Debtor Robert Paul Hunter (“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 Motion for Entry of Default Judgment is granted and judgment shall be entered for Plaintiff-Debtor Robert Hunter and against Defendant Peachtree Group Trust, Robert Hunter, Trustee, determining that the Deed of Trust recorded on March 3, 2014, Book 20140303 and Page 0394, with the Sacramento County Reorder naming the Peachtree Group Trust, Robert Hunter, Co-Trustee, as beneficiary, encumbering the real property commonly known as 12021 Gold Pointe Lane, Gold River, Ca. 95670, is void and of no legal force and effect.

Counsel for the Plaintiff-Debtor shall prepare a proposed judgment consistent with this Order and lodge such proposed judgment with the court.

Attorney's Fees and Costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054

4. [18-25851-E-13](#) **ROBERT HUNTER**
[22-2088](#)
CAE-1

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
9-1-22 [1]**

**HUNTER V. PEACHTREE GROUP
TRUST**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none

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

Notes:
Continued from 9/21/23

The Status Conference is continued to 2:00 p.m. on xxxxxxxx, 2024.

NOVEMBER 2, 2023 STATUS CONFERENCE

The court having granted the Plaintiff-Debtor's Motion for Entry of Default Judgment, the Status Conference is continued to 2:00 p.m. on xxxxxxxx, 2024 for administrative management purposes to allow for the filing and conclusion of any post judgment motions.

SEPTEMBER 21, 2023 STATUS CONFERENCE

At the Status Conference, the court continued the Status Conference to be conducted in conjunction with the continued hearing on the Motion for Entry of Default Judgment at 11:00 a.m. on November 2, 2023.

AUGUST 8, 2023 STATUS CONFERENCE

Robert P. Hunter, the Plaintiff-Debtor, has filed a Motion for Entry of a Default Judgment. The only evidence presented in support of the Motion is the Declaration of Plaintiff-Debtor’s counsel in support of recovering legal fees. No evidence is presented in support for the entry of the judgment.

As Judge Christopher M. Klein has long stated, while a judge may assume and find that allegations in a complaint are true and admitted in the absence of an answer being filed, the judge is not required to. As the court requires of creditors who went seeking entry of default judgments against less sophisticated debtors, Plaintiff-Debtor must provide competent, admissible evidence in support of the relief requested. While such evidence may be easy to present to the court, such evidence generally must be filed in support of the Motion for Entry of Default Judgment. ^{Fn.1.}

FN. 1. See Federal Rule of Civil Procedure 55, which is incorporated into Federal Rule of Bankruptcy Procedure 7055, which provides in pertinent part:

(b) Entering a Default Judgment.

...

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. . . The court may conduct hearings . . .—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) **establish the truth of any allegation by evidence;** or
- (D) investigate any other matter.

At the August 8, 2023 Status Conference, Counsel for Plaintiff-Debtor addressed this issue with the court and that Plaintiff-Debtor has been required to serve Defendant by publication due to an inability to locate Defendant. Plaintiff-Debtor’s counsel also reported that an attempt to obtain information from the notary public who notarized the Deed of Trust is no longer available, the notary having passed away.

The Court has previously authorized Service by Publication on Defendant. Order, Dckt. 15. As the court noted in that Order, the Deed of Trust at issue exists in some unusual circumstances, including:

- A. Trustor.....Robert Hunter (the Plaintiff-Debtor)
- B. Beneficiary.....Peachtree Group Trust, Robert Hunter Co-Trustee
- ...
- D. Secured Obligation.....Unidentified dollar amount in an unidentified note, plus future advances of \$65,000.00.

E. The borrower to whom the advances are made is not identified, and the borrower is expressly stated not to be Robert Hunter (the Plaintiff-Debtor).

F. The Address for Fillmore Group Trust stated in the Recording Request by and Address for Mailing the Recorded Copy of the Deed of Trust is:

12021 Gold Pointe Lane
Gold River, CA 95670

This is the same address as the real Property which Robert Hunter, the Plaintiff-Debtor, owns and seeks to have the deed of trust removed from clouding title to that Property.

Order, p. 1:27 - 2:9. With respect to the obligation secured by the Deed of Trust, the court noted:

Third, the obligation secured by the Deed of Trust is not identified, the “note” is not identified, the obligation on the note is not identified, and it states that an additional \$65,000.00 in advances would also be secured.

Id., p. 2:22-24.

The court in error addressed the substance of the Motion for Entry of Default Judgment at the Status Conference. The hearing on the Motion for Entry of Default judgment is set for 11:00 a.m. on August 24, 2023. The court will have to address the substance of the Motion at the August 24, 2023 scheduled hearing.

With respect to identification of the persons involved with the Deed of Trust, the court asked counsel for Plaintiff-Trustee whether the notary for the Deed of Trust had been contacted. Counsel indicated that the notary was not available, with the court understanding the statement to be that the notary had died.

A review of the California Secretary of State Website for Notary Public Listing produces information that the notary, Roya Asnaashari does not have an active notary license. <https://www.sos.ca.gov/notary/notary-public-listing>.

MAY 10, 2023 STATUS CONFERENCE

On May 4, 2023, Plaintiff-Debtor filed an updated Status Report. Dckt. 25. Plaintiff-Debtor reports that no answer has been filed to the Complaint and Defendant has not communicated with Plaintiff-Debtor’s counsel. Additionally, no answer having been filed, Plaintiff-Debtor requests a sixty (60) day continuance so he may prosecute the entry of a default judgment.

Plaintiff-Debtor’s Certificate of Service by Publication, U.S. Mail, and electronic was filed on February 21, 2023. Dckt. 19. The service made is stated to have been made as follows:

1. Pursuant to Court Order (Doc 16), service by Publication has been ordered in The Daily Recorder in Sacramento, California, and the publication dates are 2/23/23, 3/2/23, 3/9/23, and 3/16/23. The Proof of Publication will be

mailed to Plaintiff's counsel's office after the last date of publication (see attachment A);

2. Pursuant to Court Order (Doc 16), service by U.S. Mail, First Class, postage prepaid, has been made to the address stated on the Deed of Trust: 12021 Gold Pointe Lane, Gold River, CA 95670;
3. Pursuant to Court Order (Doc 16), service has been made via email to the <LienServices@hotmail.com> email address.

Cert. of Serv.; Dckt 19 at 6.

At the Status Conference, counsel reported that Plaintiff-Debtor would promptly be filing a request for entry of default and then a motion for entry of default judgment.

The court continues the Status Conference to afford Plaintiff-Debtor the opportunity to prosecute this Adversary Proceeding to judgment.

FEBRUARY 22, 2023 STATUS CONFERENCE

On January 5, 2023, the court entered an order authorizing that service may be made by publication. Dckt. 16.

No updated Status Report has been filed by Plaintiff-Debtor.

At the Status Conference, Plaintiff-Debtor reported that service by Publication has been made.

Plaintiff-Debtor requested the Status Conference be continued so that the response period could end and Plaintiff-Debtor proceed with a motion for entry of default judgment if no responses are filed.

NOVEMBER 30, 2022 STATUS CONFERENCE

The Plaintiff-Debtor has commenced this Adversary Proceeding to quiet title with respect to a deed of trust naming Peachtree Group Trust et al., as the beneficiary. Plaintiff-Debtor alleges that he has not authorized the deed of trust, is the victim of identity theft, and the deed of trust is void.

On September 15, 2022, a Reissued Summons was issued for Plaintiff. Dckt. 6. No certificate of service has been filed.

At the Status Conference, counsel for Plaintiff-Debtor addressed how they will proceed in trying to identify the Defendant (the entity named in the Deed of Trust) and complete service (including service by publication).

Counsel for the Plaintiff-Debtor further reported that the title company listed as Trustee on the Deed of Trust states that it has no record of this Deed of Trust and is not the trustee thereunder.

Based on the identify theft alleged, the named Defendant not being readily identifiable, and a possible need for service by publication, the court extends the deadline for service of the summons and complaint as provided in Federal Rule of Civil Procedure 4(m) and incorporated into Federal Rule of Bankruptcy Procedure 7004(a), to and including February 23, 2023, which deadline may be extended by further order of the court.

In reviewing the copies of the Deed of Trust alleged to have been forged, the court observes that the named beneficiary, Peachtree Group Trust, is stated to have an address of 12021 Gold Pointe Lane, Gold River, California, which is the same address as the Debtor's residence. Additionally, the co-trustee of the Peachtree Group Trust is stated to be the Debtor, who lives at the Gold Pointe Lane Property.

FINAL RULINGS

5. [17-27077-E-13](#)
[23-2022](#)
CAE-1

MICHAEL SCALLIN

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-16-23 [1]

SCALLIN V. U.S. DEPARTMENT OF
EDUCATION

Final Ruling: No appearance at the November 2, 2023 Status Conference is required.

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

Adv. Filed: 2/16/23
Summons Reissued: 3/7/23
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 10/18/23 to be conducted in conjunction with the hearing on the Plaintiff-Debtor's Motion for Entry of Default Judgment

The Status Conference has been continued to 11:00 a.m. on November 30, 2023, pursuant to prior Order (Dckt. 37) of the court.

6. [17-27077-E-13](#)
[23-2022](#)
PLC-2

MICHAEL SCALLIN
Peter Cianchetta

CONTINUED MOTION FOR ENTRY OF
DEFAULT JUDGMENT
7-5-23 [\[17\]](#)

SCALLIN V. U.S. DEPARTMENT OF
EDUCATION

Final Ruling: No appearance at the November 2, 2023 hearing is required.

The hearing on the Motion for Entry of Default Judgment has been continued to 11:00 a.m. on November 30, 2023, pursuant to prior Order (Dckt. 36) of the court.