

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

November 17, 2022 at 11:00 a.m.

1. [11-34464-E-7](#)
[11-2636](#)

STUART SMITS
Aristides Tzikas

**AMENDED MOTION TO VACATE
RENEWAL OF JUDGMENT ENTERED
AUGUST 22, 2022
10-13-22 [\[104\]](#)**

BARDIS V. SMITS

**CLOSED: 09/19/2012
REOPENED**

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 Amended Motion and supporting pleadings were served on Plaintiff's Attorney on October 12, 2022. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 to Vacate is granted, and

(1) the Renewal of Judgment entered on August 9, 2022 (Dckt. 95) is modified to provide \$8,247.08 in interest and a total renewed judgment of \$725,134.42; and

(2) the Renewal of Judgment entered on September 12, 2022 (Dckt. 102) is vacated, pursuant to California Code of Civil Procedure § 683.170(a).

Stuart Smits (“Defendant-Debtor”) seeks an order vacating two renewal of judgments, entered separately on August 9, 2022, Dckt. 95, and September 12, 2022, Dckt. 102, collectively “Renewals”. Amended Motion, Dckt. 104. The grounds stated in particularity include:

- (1) The August 9, 2022 Renewal (“August Renewal”) improperly calculates interest accrued;
- (2) Both Renewals fail to account for prior satisfactions of the judgment and fail to include appropriate offsets to which the Debtor is entitled;
- (3) Both Renewals do not reflect the property which is exempt from the Judgment via stipulation;
- (4) Both Renewals do not reflect that an additional Judgment Debtor was improperly named and should be stricken from the Judgment; and
- (5) The September 12, 2022 Renewal (“September Renewal”) was improperly entered as judgments may not be renewed more than once every five years.

In support of the Amended Motion, Defendant-Debtor filed a Memorandum of Points and Authorities in Support of the Amended Motion, Dckt. 106, incorporating their prior Memorandum Support of their Original Motion, Dckt. 99, and adding additional arguments for the August Renewal.

MULTIPLE RELIEF REQUESTED IN ONE MOTION

Local Bankruptcy Rule 9014-1(d)(5) states that “[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules.” Defendant-Debtor has requested relief to vacate two separate judgment renewals.

Upon review of the local rules, these two requests for relief are not an “automatic exception” that would allow for them to be joined as one motion. However, given how related the two requests are, the court waives the requirement of two separate motions this one time.

NO DOCKET CONTROL NUMBER

Defendant-Debtor is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the Defendant-Debtor failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

PLEADINGS FILED AS ONE DOCUMENT

Defendant-Debtor filed the Notice and Proof of Service of their original Motion as one document, and their Amended Motion, Amended Notice, and Amended Proof of Service as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

AMENDED PLEADINGS

In Defendant-Debtor’s Memorandum of Points and Authorities in Support of their Amended Motion, Debtor “incorporates his arguments set forth in his prior Memorandum of Points and Authorities (Docket No. 99) sections B-E as if they were fully set forth herein.” Typically, an amendment completely supersedes a prior pleading. *See* 3 Moore’s Federal Practice - Civil § 15.17 (2022). Additionally, to avoid the court flipping back and forth between documents, the court prefers an amendment to contain all requests, and legal and factual grounds for relief, not simply incorporate a prior filing, while adding on additional requests. However, at this time, since the Memorandum of Points and Authorities in support of the Amended Motion incorporates the prior Memorandum of Points and Authorities, the court will look to both memorandums when rendering a decision.

TIMELINE OF RELEVANT FILINGS AND EVENTS

Entry of Nondischargeable Judgment **September 19, 2012, Dckt. 57**

- A. Entered pursuant to stipulation between the parties.

- B. Amount: \$786,166.91
- C. Interest: .19% per annum
- D. Costs: Plaintiff entitled to future costs and attorneys' fees associated with enforcement/collection of the judgment

Forbearance Agreement

July 15 and 16, 2016,

Exhibit 18, Exhibits in Support of

Plaintiff's Motion to Vacate, Dckt. 100 at 142.

Plaintiff and Defendant-Debtor entered a forbearance agreement indicating:

- A. On or before July 29, 2016, Defendant-Debtor shall pay \$75,000.00 to Plaintiff which will count as credit against the Judgment.
- B. In return, Plaintiff will release their Judgment Lien against Defendant-Debtor's personal residence located at 166 Mills Road, Sacramento.
- C. Signed and dated July 15 and 16, 2016, by Plaintiff and Defendant-Debtor.

Cashier's Check

July 19, 2016,

Exhibit 19, Exhibits in Support of

Plaintiff's Motion to Vacate, Dckt. 100 at 152.

Cashier's check for \$75,000.00 was made payable to Plaintiff by Defendant-Debtor.

First Renewal of Judgment

("August Renewal")

August 9, 2022, Dckt. 95.

Application for Renewal of Judgment filed by Plaintiff, the judgment creditor. Plaintiff requests a renewal in the following amount:

| | |
|---|------------------------------|
| Total Judgment..... | \$786,166.91 |
| Costs after judgment..... | \$0.00 |
| Subtotal..... | \$786,166.91 |
| Credits after judgment..... | \$69,213.39 |
| Subtotal after credits..... | \$716,953.52 |
| Interest after judgment..... | \$13,469.03 (as of 8/9/2022) |
| Fee for filing renewal application..... | \$0.00 |
| Total renewed judgment..... | \$730,422.55 |

Notice of Renewal of Judgment
August 10, 2022, Dckt. 96.

The clerk of the court issued a notice of renewal extending the enforceability of the judgment until ten (10) years from the date the application for renewal was filed, August 9, 2022.

Motion fo Vacate Renewal of Judgment
September 12, 2022, Dckt. 97.

Defendant filed a Motion to Vacate the Renewal of Judgment filed for the following grounds:

- (1) The Renewal improperly calculates interest accrued;
- (2) The Renewal fails to account for prior satisfactions of the judgment and fails to include appropriate offsets to which the Debtor is entitled;
- (3) The Renewal does not reflect the property which is exempt from the judgment via stipulation; and
- (4) The Renewal does not an additional Judgment Debtor was improperly named and should be stricken from the Judgment.

In addition, Defendant filed a Memorandum of Points and Authorities (Dckt. 99), and 31 exhibits in support of the Motion (Dckt. 100).

Acknowledgment of Satisfaction of Judgment
September 12, 2022, Dckt. 101.

Plaintiff filed a partial acknowledgment of satisfaction of judgment indicating they received the \$75,000.00 cashier's check.

Second Application for Renewal of Judgment
("September Renewal")
September 12, 2022, Dckt. 102.

A Second Application for Renewal of Judgment was filed by Plaintiff, the judgment creditor. Plaintiff requests a renewal in the following amount:

| | |
|---|-----------------------------|
| Total Judgment..... | \$786,166.91 |
| Costs after judgment..... | \$0.00 |
| Subtotal..... | \$786,166.91 |
| Credits after judgment..... | \$69,279.57 |
| Subtotal after credits..... | \$716,887.34 |
| Interest after judgment..... | \$8,247.08 (as of 8/9/2022) |
| Fee for filing renewal application..... | \$0.00 |
| Total renewed judgment..... | \$725,134.42 |

Terms of judgment

remaining unsatisfied.....\$725,134.42 as of
August 9, 2022

Second Notice of Renewal of Judgment
September 12, 2022, Dckt. 96.

The clerk of the court issued a notice of renewal extending the enforceability of the judgment until ten (10) years from the date the second application for renewal was filed, September 12, 2022.

Amended Motion to Vacate
October 13, 2022, Dckt. 104.

Defendant-Debtor filed the current Amended Motion to Vacate on October 13, 2022. Dckt. 104. The Amended Motion seeks to vacate both Renewals on the following grounds:

- (1) The August Renewal improperly calculates interest accrued;
- (2) Both Renewals fail to account for prior satisfactions of the judgment and fail to include appropriate offsets to which the Debtor is entitled;
- (3) Both Renewals do not reflect the property which is exempt from the Judgment via stipulation;
- (4) Both Renewals do not reflect that an additional Judgment Debtor was improperly named and should be stricken from the Judgment; and
- (5) The September Renewal was improperly entered as judgments may not be renewed more than once every five years.

In support of the Amended Motion, Defendant-Debtor filed a Memorandum of Points and Authorities in Support of the Amended Motion , Dckt. 106, which incorporates their prior Memorandum, Dckt. 99, and adds additional arguments for the Second Renewal.

Plaintiff's Opposition
November 3, 2022, Dckt. 107.

Plaintiff filed an Opposition to Defendant-Debtor's Motion to Vacate. Dckt. 107. Plaintiff opposes on grounds of "Hearsay" regarding various claims and exhibits prevented by Defendant-Debtor surrounding the nature and quality of oil deposits. Additionally, Plaintiff filed a Memorandum of Points and Authorities in support of their Opposition. Dckt. 108.

Plaintiff states the only two issues that can and should be resolved by Defendant's Motion are whether there has been a partial or full satisfaction of the judgment and the amount of interest accrued. Memorandum, Dckt. 108 at 8:10-12. Additionally, Plaintiff clarifies that the Second Renewal is an attempt to amend the First Renewal, due to the incorrect interest rate. *Id.* at 10-11.

APPLICABLE LAW

Federal Rules of Civil Procedure 69, as incorporated in Federal Rules of Bankruptcy Procedure 7069, governs the execution of money judgments. Under Federal Rules of Civil Procedure 69(a)(1), the procedure on execution, and in proceedings supplementary to and in aid of judgment or execution, accords with the procedure of the state where the court is located. This includes the renewal of judgments. *See McCarthy v. Johnson*, No. 98-4003, 1999 U.S. App. LEXIS 1519, at *4 (10th Cir. Feb. 3, 1999) (“... we think it beyond question that renewal of a judgment is a type of relief available to litigants, and that the requirements governing the granting of such relief are governed by state law.”); *See also Cigna Prop. & Cas. Ins. Co. v. Polaris Pictures Corp.*, No. CV 93-2259-GW, 2008 U.S. Dist. LEXIS 128281, at *5 (C.D. Cal. Apr. 8, 2008); *Hill v. Hill*, No. SACV 07-823 JVS (MLGx), 2022 U.S. Dist. LEXIS 109036, at *1 (C.D. Cal. Feb. 3, 2022); *Fyfe v. Pompey*, No. 96-01613 CW, 2011 U.S. Dist. LEXIS 111766, at *1 (N.D. Cal. Sep. 29, 2011).

Under California law, there is a ten-year statutory period for enforcement of a judgment. California Code of Civil Procedure § 603.020. After the ten-year period, a judgment may not be enforced, all enforcement proceedings must cease, and any lien created by the judgment is extinguished. *Id.* However, this ten-year period may be extended by the renewal of judgment. California Code of Civil Procedure § 683.110(a). Renewal is automatic if a renewal application is filed. California Code of Civil Procedure § 683.120(a)-(b). If a judgment is renewed, the date of filing the application for renewal starts a new ten-year statutory enforcement period. California Code of Civil Procedure § 683.220.

Pursuant to California law, on the filing of the renewal application, the clerk must enter the renewal. California Code of Civil Procedure § 683.150(a). The judgment debtor, in turn, has thirty days to file and set a hearing on a motion to vacate or modify the renewal with the court. California Code of Civil Procedure § 683.170(b). The Motion must be based on grounds that would be a defense to an action on a judgment, including that the amount of the renewed judgment is incorrect. California Code of Civil Procedure § 683.170(a). At the hearing on the motion, the court may vacate or modify the renewal, including entering a renewal in the correct amount. *Id.*

Additionally, a judgment shall not be renewed if renewal is filed within five years from the time judgment was previously renewed. California Code of Civil Procedure § 683.110(b). A renewal must be vacated if the application was filed within five (5) years of a previous renewal. California Code of Civil Procedure § 683.170(a).

DISCUSSION

September Renewal in Violation of California Code of Civil Procedure § 683.170(a)

To start, the court begins with Defendant-Debtor’s September Renewal and whether it amends the August Renewal. The court finds no provision in the California Code of Civil Procedure that allows for “amending” an application for renewal of judgment. Rather, from review of the applicable code sections, at the hearing the court has the ability to modify any discrepancies in the application.

Even if, procedurally, Plaintiff were allowed to amend their application, Plaintiff has not labeled their September Renewal as an amended renewal, relating back to the date of the August Renewal. Dckt. 102. There is no indication from review of the September Renewal that this is intended to be an amendment. Although in Plaintiff’s Memorandum they mention the court should treat the

September Renewal as “an amended version of the initial renewal and relate it back,” Plaintiff gives the court no legal grounds to do so. The court declines to treat the September Renewal as an amendment to the August Renewal. Rather, as Plaintiff followed the procedures for a renewal of judgment, the September Renewal is a second application for renewal of judgment, filed and entered only one month and three days after the August Renewal was entered.

The September Renewal was entered within five (5) years of the prior renewal (the August Renewal). This attempted September Renewal is in violation of California law:

California Code of Civil Procedure § 683.110 Authorization for renewal; Successive renewals [Effective until January 1, 2023] (emphasis added)

(a) The period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment as provided in this article.

(b) **A judgment shall not be renewed** under this article **if the application for renewal is filed within five years** from the time the judgment **was previously renewed** under this article.

California Code of Civil Procedure § 683.170. Vacation or modification of renewal [Effective until January 1, 2023]

(a) The renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment, including the ground that the amount of the renewed judgment as entered pursuant to this article is incorrect, **and shall be vacated if the application for renewal was filed within five years from the time the judgment was previously renewed under this article.**

This being in violation of California Code of Civil Procedure § 683.110(b), the court is required (“shall be vacated”) to vacate the September Renewal as provided in California Code of Civil Procedure § 683.170(b).

The September Renewal, Dckt. 102, is vacated as a matter of law.

Modification of First Renewal Pursuant to California Code of Civil Procedure § 683.170(a)

As for the August Renewal, Defendant-Debtor requests this renewal also be vacated.

Interest Computation

Defendant-Debtor claims the interest is exaggerated by over \$5,000.00. Memorandum in Support of the Original Motion, Dckt. 99 at 10. Defendant-Debtor, as of July 19, 2016, after the \$75,000.00 payment, had a total outstanding judgment amount of \$716,887.34 with \$0.00 in interest not paid. As of August 9, 2022, the date of the August Renewal, interest at .19% annum should be \$8,247.08, not \$13,469.03.

In Plaintiff's Memorandum of Points and Authorities in support of their Opposition to Defendant-Debtor's Motion, they admit the interest rate is miscalculated. Memorandum, Dckt. 108 at 5:22-23. Plaintiff supports the correct interest as \$8,247.08, with a total renewed judgment of \$725,134.42. *Id.*

Offsets not Included

Defendant-Debtor claims Plaintiff, in their August Renewal, did not include offsets. Memorandum in Support of the Original Motion, Dckt. 99 at 11. Defendant-Debtor claims Plaintiff received ownership interests that should be credited to the Judgment.

The court notes, however, the original judgment only includes a monetary amount of \$786,166.91, and does not include terms handling hypothetical transfers of ownership. Therefore, the court does not find the offsets need or should be included in the August Renewal.

No Acknowledgment of Partial Satisfaction of Judgment

Defendant-Debtor claims Plaintiff failed to execute a partial satisfaction of judgment, in violation of California Code of Civil Procedure § 724.110. Memorandum in Support of the Original Motion, Dckt. 99 at 11.

The court notes, however, on September 12, 2022, Plaintiff filed a partial acknowledgment of satisfaction of judgment. Dckt. 101. Additionally, Defendant-Debtor provides no grounds, and the court, independently, finds no grounds, for why a delayed filing of a partial satisfaction of judgment is grounds for vacating a renewal.

Personal Residence Has Been Released

Defendant-Debtor claims Plaintiff failed to include in the renewed judgment that in exchange for the July 2016 payment of \$75,000, Plaintiff released the lien against Defendant-Debtor's personal residence. Memorandum in Support of the Original Motion, Dckt. 99 at 12. Defendant-Debtor states Plaintiff has violated their forbearance agreement.

First, Defendant-Debtor has not provided the court any grounds indicating how Plaintiff violated their forbearance agreement, and whether Plaintiff has breached any terms in the agreement.

Second, Defendant-Debtor has not provided grounds indicating why such a "side agreement" that release of a lien against or an agreement not to enforce the judgment against specific property would be included in a renewal of a judgment.

It appears, that the parties have missed California Code of Civil Procedure § 697.370, which provides (emphasis added):

§ 697.370. Release or subordination of judgment lien

(a) The **judgment creditor may** do either of the following:

(1) Release from the judgment lien all or a part of **the real property subject to the lien.**

(2) Subordinate to another lien or encumbrance the judgment lien on all or a part of the real property subject to the judgment lien.

The court notes, again, the original judgment only includes a monetary amount of \$786,166.91 and does not include terms surrounding releases of ownership. If Defendant-Debtor believes there has been a breach of a material term in their forbearance agreement with Plaintiff, the proper avenue, it would appear, would be to enforce that agreement, not add substantive provisions to a judgment when the judgment creditor renews the judgement.

Improper Judgment Debtor

Defendant-Debtor claims Plaintiff includes Stuart L. Smits, Trustee of the Smits Family Trust (“Trustee Smits”) as a judgment debtor. Memorandum in Support of the Original Motion, Dckt. 99 at 12. Defendant-Debtor states Plaintiff agreed not to pursue the Defendant-Debtor’s personal residence, which is the trust’s only asset.

Upon review of the August Renewal, Stuart Lansing Smits is listed as a judgment debtor. Dckt. 95. This is consistent with the Stipulated Judgment. Dckt. 57.

Subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, in the Amended Notice of Motion, Motion, and Certificate of Service (improperly combined into one pleading) affirmatively states:

[a]nd (4) they do not reflect that an additional Judgment Debtor was improperly named and should be stricken from the Judgment;

In the Original Points and Authorities (which is improperly combined with a Certificate of Service) Defendant-Debtor asserts:

Bardis, in a 2019 Affidavit of Identity, identified Stuart L. Smits, trustee of the Smits Family Trust as an alternate name for Smits. Bardis did so in order to continue pursuit of Smits' personal residence. In the Affidavit, Bardis omitted any reference to the 2015 Forbearance Agreement and the release continued therein.

Points and Authorities, p. 12:22-25; Dckt. 99. Defendant-Debtor further asserts that this is improper because Defendant-Debtor asserts that the only asset of the Trust is the personal residence of Defendant-Debtor, which Plaintiff has agreed not to pursue in satisfaction of the Judgment. *Id.*, p. 12:26-28, 13:1-5.

A Forbearance Agreement dated April 22, 2016, has been filed by Defendant-Debtor. Dckt. 18, 2016. Under the terms of the 2016 Forbearance Agreement:

1. Plaintiff will release the judgment lien against personal residence. *Id.*, ¶ 1.

Defendant-Debtor’s Declaration, which is improperly filed as Exhibit 1, Dckt. 100; stated under penalty of perjury that the \$75,000 payment was made in exchange for releasing the lien against

the residence. Dec., ¶ 13; *Id.* Defendant-Debtor repeats this in Paragraphs 37 and 45, of his Declaration. The court cannot identify any agreement to release Defendant-Debtor as trustee from his obligations under the Judgment (which apparently would effectively allow Defendant-Debtor to “shelter” future acquired assets in the Trust safe and secure from the enforcement of this Judgment).

Thus, the court does not find there to be any basis for exonerating Defendant-Debtor, as Trustee of his trust.

The court does not find grounds to vacate the First Renewal. Rather, pursuant to California Code of Civil Procedure § 683.170(a), the court finds good cause to modify the August Renewal, entered on August 9, 2022, Dckt. 95, to reflect the following:

| | |
|---|--------------|
| Total Judgment..... | \$786,166.91 |
| Costs after judgment..... | \$0.00 |
| Subtotal..... | \$786,166.91 |
| Credits after judgment..... | \$69,279.57 |
| Subtotal after credits..... | \$716,887.34 |
| Interest after judgment..... | \$8,247.08 |
| Fee for filing renewal application..... | \$0.00 |
| Total renewed judgment..... | \$725,134.42 |
| Terms of judgment | |
| remaining unsatisfied..... | \$725,134.42 |

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 Vacate filed by Stuart Smits (“Defendant-Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Vacate is granted, and the Renewal of Judgment entered on August 9, 2022, Dckt. 95, is modified to provide:

| | |
|---|--------------|
| Total Judgment..... | \$786,166.91 |
| Costs after judgment..... | \$0.00 |
| Subtotal..... | \$786,166.91 |
| Credits after judgment..... | \$69,279.57 |
| Subtotal after credits..... | \$716,887.34 |
| Interest after judgment..... | \$8,247.08 |
| Fee for filing renewal application..... | \$0.00 |
| Total renewed judgment..... | \$725,134.42 |
| Terms of judgment | |
| remaining unsatisfied..... | \$725,134.42 |

pursuant to California Code of Civil Procedure § 683.170(a).

IT IS FURTHER ORDERED that the Renewal of Judgment entered on September 12, 2022, Dckt. 102, is vacated, pursuant to California Code of Civil Procedure § 683.170(a).