

**United States Bankruptcy Court
Central District of California
Riverside
Magdalena Reyes Bordeaux, Presiding
Courtroom 303 Calendar**

Tuesday, April 16, 2024

Hearing Room 303

11:00 AM

6: -

Chapter

#0.00 Judge Reyes Bordeaux will hold hearings in person and remotely via Zoom.gov.

In person Appearance Policies

Parties may appear in person for hearings at United States Bankruptcy Court located at 3420 Twelfth Street, Riverside, CA 92501 in Courtroom 303. Parties appearing in person must wear face masks, practice social distancing, and comply with all applicable guidelines of the United States Bankruptcy Court, Central District of California, and any additional requirements required under California State Law at the time of the hearing. Please note that Judge Reyes Bordeaux will not be wearing a mask.

Remote Appearance Policies

Parties may also appear remotely for hearings using ZoomGov, which permits parties to appear by video or by telephone. Hearing participants and members of the public may use ZoomGov free of charge to connect to hearings before Judge Reyes Bordeaux. Video and audio connection information for hearing(s) on this calendar is listed below.

Individuals may use a personal computer (equipped with camera, microphone and speaker), or a mobile device (such as an iPhone) to appear by ZoomGov video and ZoomGov audio. Individuals may also use a telephone to appear by ZoomGov audio only (standard telephone charges may apply). A Zoom or ZoomGov account is not necessary to connect to the hearings and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

A Zoom or ZoomGov account is not necessary to participate in the hearings and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and will constitute its official record.

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Video/audio web address: <https://cacb.zoomgov.com/s/1615093469>

ZoomGov Meeting ID Number: 161 509 3469

Meeting Passcode: 3032024

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Reyes Bordeaux by ZoomGov, please see the information entitled "Procedures for Video & Telephonic Appearances" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-magdalena-reyes-bordeaux> under the tab "Phone/Video Appearances."

Docket 0

Tentative Ruling:

- NONE LISTED -

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6:23-12331 Nancy Sanchez Amaya

Chapter 7

#1.00 Motion RE: Objection to Claim Number 1 by Claimant Francisco Cabrera

EH ____

Docket 69

Tentative Ruling:

4/16/2024

APPEARANCES REQUIRED.

If you wish to be heard on this matter, you can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Party Information

Debtor(s):

Nancy Sanchez Amaya

Represented By
Richard L. Sturdevant

Movant(s):

Nancy Sanchez Amaya

Represented By
Richard L. Sturdevant

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui

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6:22-13093 Jose G Perez Castro and Antonia Benitez-Limas

Chapter 7

#2.00 Order to Show Cause re Civil Contempt for Violation of Court Order

Also #3

EH____

Docket 0

Tentative Ruling:

Having considered the *Chapter 7 Trustee's Declaration Addressing OSC Re Civil Contempt for Violation of Court Orders*, ECF doc. 28, wherein Trustee explains that Debtors have complied with the Turnover Order and that she has administered the asset, the Court finds cause to VACATE this OSC as moot.

COURT TO DRAFT ORDER.
APPEARANCES WAIVED ON 4/16/2024

Party Information

Debtor(s):

Jose G Perez Castro

Represented By
George C Panagiotou

Joint Debtor(s):

Antonia Benitez-Limas

Represented By
George C Panagiotou

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:22-13093 Jose G Perez Castro and Antonia Benitez-Limas

Chapter 7

#3.00 CONT Chapter 7 Trustee's Motion for Order Directing Turnover of Propety of the Estate (Tax Returns and Tax Refunds)

From: 1/30/24, 2/20/24, 2/27/24, 3/19/24

Also #2

EH___

Docket 18

Tentative Ruling:

Having considered the *Chapter 7 Trustee's Declaration Addressing OSC Re Civil Contempt for Violation of Court Orders*, ECF doc. 28, wherein Trustee explains that Debtors have complied with the Turnover Order and that she has administered the asset, the Court finds this matter is resolved per ECF doc. 20, and can go off calendar.

APPEARANCES WAIVED ON 4/16/2024

Party Information

Debtor(s):

Jose G Perez Castro

Represented By
George C Panagiotou

Joint Debtor(s):

Antonia Benitez-Limas

Represented By
George C Panagiotou

Movant(s):

Lynda T. Bui (TR)

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:23-13929 Kelly Tran

Chapter 7

Adv#: 6:23-01120 First National Bank Of Omaha v. Tran

#1.00 Motion for Default Judgment

Also #2

EH ____

Docket 12

***** VACATED *** REASON: NOTICE OF DISMISSAL FILED 3/29/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly Tran

Represented By
Benjamin Heston

Defendant(s):

Kelly Tran

Pro Se

Movant(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:23-13929 Kelly Tran

Chapter 7

Adv#: 6:23-01120 First National Bank Of Omaha v. Tran

#2.00 CONT Status Conference re Complaint by First National Bank Of Omaha against Kelly Tran. Nature of Suit: false pretenses, false representation, actual fraud)),(65 (Dischargeability - other))

From: 3/5/24

Also #1

EH__

Docket 1

***** VACATED *** REASON: NOTICE OF DISMISSAL FILED 3/29/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly Tran

Represented By
Benjamin Heston

Defendant(s):

Kelly Tran

Pro Se

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:23-12057 Bruce Pino

Chapter 7

Adv#: 6:23-01084 Pino v. Department of Education/Aidvantage et al

#3.00 Status Conference RE: Complaint by Bruce Pino against Department of Education/Aidvantage .Nature of Suit re: (63 (Dischargeability - 523(a)(8), student loan))

(Another Summons Issued 1/10/24)

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 7/16/24 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bruce Pino

Pro Se

Defendant(s):

Department of

Pro Se

U.S. Department of Education

Represented By
Elan S Levey

Plaintiff(s):

Bruce Pino

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:23-14451 Arthur Eugene Scott

Chapter 7

Adv#: 6:23-01125 Bingham v. Scott et al

#4.00 Status Conference RE: Complaint by Jeffrey L. Bingham against Arthur Eugene Scott, Robyn Eileen Scott. Complaint to Determine Dischargeability of A Debt Pursuant To 11 U.S.C. § 523(a)(6) Nature of Suit re: (68 (Dischargeability - 523(a)(6), willful and malicious injury))

EH___

Docket 1

Tentative Ruling:

The Court's tentative is to continue the status conference to **May 14, 2024, at 2:00 p.m.** for failure to file a joint status report as required under Local Bankruptcy Rule 7016-1(a)(2) or (a)(3). A joint status report is due no later than **April 30, 2024**. If parties are unable to file a joint status report, unilateral status reports by each party are due **May 7, 2024**.

Under LBR 7016-1(a)(2), a joint status report is to be filed and served at least 14 days before the date set for each status conference, or under LBR 7016-1(a)(3), a unilateral status report is to be filed and served at least 7 days by each party before the date of each status conference. The Court's Mandatory Joint Status Report Form can be accessed on the Court's website and is accessible at <https://www.cacb.uscourts.gov/forms/joint-status-report-lbr-7016-1a2>. Please note that failure to complete the necessary preparations to appear at a status conference **including the filing of a joint or unilateral status report** could result in the imposition of sanctions including dismissal of the adversary proceeding under LBR 7016-1(f) or (g).

Appearances are REQUIRED on 4/16/2024. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Party Information

Debtor(s):

Arthur Eugene Scott

Represented By

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CONT... Arthur Eugene Scott

Chapter 7

Jenny L Doling

Defendant(s):

Arthur Eugene Scott

Represented By
Jenny L Doling

Robyn Eileen Scott

Represented By
Jenny L Doling

Joint Debtor(s):

Robyn Eileen Scott

Represented By
Jenny L Doling

Plaintiff(s):

Jeffrey L. Bingham

Represented By
Gregory K Jones

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:23-12456 Christine Diane Melendez

Chapter 7

Adv#: 6:23-01117 Whitmore, Chapter 7 Trustee v. Melendez

#5.00 Chapter 7 Trustee's Motion for Default Judgment Against Defendant Jose Salvador Melendez

Also #6

EH__

Docket 10

Tentative Ruling:

The Court's tentative ruling is to GRANT Plaintiff's Motion for Default Judgment under 11 U.S.C. § 542 for turnover of property of the estate.

Appearances are REQUIRED on 4/16/2024. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Factual and Procedural Background

Trustee's Action

Among the assets of the Estate is a joint tenancy interest in residential property located at 32330 Pink Carnation Court, Winchester, CA 92596 [Accessor's Parcel Number 476-202-025] (the "Property"). Trustee is seeking Turnover of the Property.

Factual Background

On March 23, 2015, Debtor Christine Diane Melendez ("Debtor") acquired an interest in the Property—by Grant Deed recorded as Document No. 2015-0114274 in the Official Records of the Riverside County Recorder's Office—with title vesting in Debtor and Defendant Jose Salvador Melendez ("Defendant") as follows:

"Jose Salvador Melendez and Christine Diane Melendez, Husband and Wife as community property with right of survivorship." *Request for Judicial Notice in*

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Support of Motion for Default Judgment ("RJN"), Ex. 2, ECF doc. 10.

Concurrent with the recordation of the March 2015 Grant Deed, a Deed of Trust in favor of Broker Solutions, Inc. dba New American Funding was recorded on March 23, 2015, as Document No. 2015-0114275. Under the terms of the Deed of Trust, both Debtor and Defendant are borrowers against the Property in the amount of \$382,000 as of March 19, 2015. *RJN*, Ex. 3.

On or about October 29, 2020, Debtor and Defendant refinanced the New American Funding loan against the Property, causing a Deed of Trust in favor of Broker Solutions, Inc. dba New American Funding to be recorded on October 29, 2020, as Document No. 2020-0528518 in the Official Records of the Riverside County Recorder's Office (the "New America DoT"). Under the terms of the New American DoT, both Debtor and Defendant are borrowers in the amount of \$375,000. *RJN*, Ex. 4.

Marital Dissolution Family Court Case

On October 23, 2015, Debtor filed a marital dissolution action against Defendant, initiating *Melendez v. Melendez*, Case No. HED1501057 before the Riverside Family Court ("Dissolution Case"). On April 15, 2022, the petition in the Dissolution Action was amended, and remains pending. *RJN*, Ex. 1.

Bankruptcy Filing

On June 8, 2023 (the "Petition Date"), Debtor filed a voluntary petition under chapter 7. Bankr. ECF doc. 1. On September 18, 2023, Debtor's discharge was entered in the Chapter 7 case. Bankr. ECF doc. 21.

Adversary Proceeding

On November 20, 2023, Plaintiff Trustee ("Plaintiff" or "Trustee") filed an adversary complaint, alleging Defendant is required to turnover Property under § 542, so that Plaintiff can administer the asset by selling Property for the benefit of creditors of the

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estate. Ad. ECF doc. 1.

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Plaintiff alleges Defendant has been in possession of property of Debtor's Estate, namely the Property since the Petition Date. Trustee also alleges that Property is not of inconsequential value or benefit to Estate, and that Plaintiff is entitled to use, sell, or lease the Estate's legal and equitable interests in the Property under 11 U.S.C. § 363. Therefore, under 11 U.S.C. § 542, Plaintiff, as Trustee, is entitled to turnover of occupancy and possession of property of the Estate, namely the Property. Plaintiff seeks that Defendant deliver to Plaintiff, and account for the Property, unless the Property is of inconsequential value or benefit to the Estate.

On November 21, 2023, Plaintiff served the Defendant with the summons and complaint. The deadline to respond to the adversary complaint was December 20, 2023. ECF doc. 3.

Plaintiff's Motion for Default Judgment

On January 5, 2024, Plaintiff filed a request for clerk to enter default under LBR 7055-1. ECF doc. 5 and 6. On January 5, 2024, the Clerk entered default against Defendant. *Id.*, ¶ 7.

On March 26, 2024, Plaintiff then filed the instant Motion for Default Judgment on the Second Cause of Action for Turnover ("Motion"). ECF doc. 10. In the Motion, Plaintiff argues that, based upon the March 2015 Grant Deed, title to the Property is vested in Debtor to an undivided 50% interest and Defendant as to an undivided 50% interest, as joint tenants. Trustee contends that Debtor has explicitly agreed to assign her interest in the Property to Trustee so that it may be sold to pay her creditors. Trustee is informed and believes Property is currently occupied by Defendant. *RJN*, Ex. 2.

The Complaint makes the following two claims for relief:

- (1) that Property is property Trustee may sell under 11 U.S.C. § 363(h); and
- (2) that all Defendants are entities in possession, custody, or control of the Property during the bankruptcy case who shall turn over the Property.

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By this Motion, Trustee hereby withdraws Section 363(h) from consideration because it is clear that Property is community property that Trustee may already sell without regard to interests of a cotenant under 11 U.S.C. § 541(a)(2). Instead, Trustee seeks default judgment only on his one remaining claim: the turnover of the Property under Section 542 of the Bankruptcy Code.

Legal Analysis

1. Plaintiff's Request for Judicial Notice under Fed. R. Evid. 201

In support of Plaintiff's Motion for Default Judgment, Plaintiff included the following documents and requests that the Court take Judicial Notice of the said documents:

Exhibit	Description of Documents
Exhibit 1	A copy of the docket from <i>Melendez v. Melendez</i> , Case No. HED1501057 pending before the Riverside Family Court (the "Dissolution Case").
Exhibit 2	A copy of the Grant Deed recorded in the Official Records of the Riverside County Recorder's Office on March 23, 2015 as Document No. 2015- 0114274 for real property located at 32330 Pink Carnation Court, Winchester, CA 92596 ("Property") by with title vesting in "Jose Salvador Melendez and Christine Diane Melendez, Husband and Wife as community property with right of survivorship." (the "March 2015 Grant Deed")
Exhibit 3	A copy of the Deed of Trust in favor of Broker Solutions, Inc. dba New American Funding that was recorded in the Official Records of the Riverside County Recorder's Office on March 23, 2015 as Document No. 2015-0114275. (the "March 2015 Deed of Trust")
Exhibit 4	A copy of a Deed of Trust in favor of Broker Solutions, Inc. dba New American Funding recorded on October 29, 2020, as Document No. 2020-0528518 in the Official Records of the Riverside County Recorder's Office, memorializing the refinance of the Property by Debtors and Defendant (the "October 2020 Deed of Trust").

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Exhibit 5	A copy of the Full Reconveyance recorded in the Official Records of the Riverside County Recorder's Office on November 9, 2020, as Document No. 2020-05528253, showing that the March 2015 Deed of Trust was reconveyed back to Debtor and Defendant after refinancing (the "2020 Reconveyance").
Exhibit 6	A true and correct copy of Debtor's Petition, Schedules, and Statements filed in Debtor's Voluntary Chapter 7 Petition, Case No. 6:23-bk-12456-RB, filed on June 8, 2023, as ECF doc. 1 (the "Petition and Schedules").

Federal Rule of Evidence 201(b) states that "a judicially noticed fact must be one not subject to reasonable dispute in that it is either:

- (1) generally known within the territorial jurisdiction of the trial court or
- (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

A Court is compelled to take judicial notice of such adjudicative facts under Federal Rule of Evidence 201(d) when requested by a party and supplied with the necessary information. *Barefield v. HSBC Mortgage Servs.*, 2023 U.S. Dist. LEXIS 43645, *3 (ED Cal., March 15, 2023). And Federal Rule of Evidence 201(c) states that the Court may take judicial notice whether requested or not.

Federal courts may take judicial notice of facts which are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Federal Rule of Evidence 201(c)(2). *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) *see also In re Popple*, 532 B.R. 581, 61 (Bankr. M.D. Pa. 2015) (finding that a bankruptcy court may take judicial notice of the docket events in a case and the contents of the bankruptcy schedules to determine the timing and status of case events, as well as other facts not reasonably in dispute. This also includes proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to the matters at issue).

a. Exhibit 1 - the Dissolution Case

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The Ninth Circuit has determined it is appropriate to "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *US. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d at 248. Thus, it is appropriate to "take judicial notice of the court docket in the unlawful detainer and eviction proceedings" in state court proceedings. *Smith v. 116 S Mkt. LLC*, 831 Fed. App'x 355, 356 n.1 (9th Cir. 2020); *see also Mangaoang v. Special Default Servs.*, 427 F. Supp. 3d 1195, 1205 (ND. Cal. 2019) (records from other courts, "including an unlawful detainer action[] and the state court action," were proper subjects of judicial notice.).

The copy of the docket for the Dissolution Case, Plaintiff's *Request for Judicial Notice*, Ex. 2, is related to matters at issue in this case. That Debtor filed a petition of dissolution, and the dates on which certain matters were filed, are facts not reasonably in dispute. Those facts are also capable of accurate and ready determination by review of the docket of the Riverside Family Court, a source whose accuracy cannot reasonably be questioned.

Therefore, Plaintiff's unopposed request for judicial notice of Exhibit "1" the docket for the Dissolution Case is GRANTED.

b. Exhibit 2 - the March 2015 Grant Deed

Judicial notice may be taken of recorded instruments because they are public records that are not subject to reasonable dispute. *See* Fed. R. Evid. 201; *Lane v. Vitek Real Estate Indus. Group*, 713 F.Supp.2d 1092, 1096-97 (E.D. Cal. 2010) (explaining that "publicly recorded documents related to plaintiffs' mortgage ... are matters of public record whose accuracy cannot be questioned"). The court may also take judicial notice of undisputed facts that are contained in extrinsic materials, such as public land records. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

Thus, judicial notice may be taken of a deed of trust, an assignment of deed of trust, and substitution of trustee. *See, e.g., Lane*, 713 F.Supp.2d at 1096-97 (taking judicial notice of a trustee substitution and assignment of deed of trust); *Argueta v. JP. Morgan Chase*, 787 F.Supp.2d 1099, 1102-03 (E.D. Cal. 2011) (taking

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judicial notice of a "Deed of Trust" and "Substitution of Trustee"); *Hotel Emples. & Rest. Emples. Local 2 v. Vista Inn Mgmt. Co.*, 393 F.Supp.2d 972, 978 (ND. Cal. 2005) ("A grant deed is an official record of easily verifiable accuracy" of a property transfer).

Here, it is appropriate for the Court to take judicial notice of Exhibit 2 under FRE 201, because the March 2015 Grant Deed is an instrument on record with the Riverside County Recorder's Office and reflects matters of public record that are not subject to reasonable dispute. Plaintiff's unopposed request for judicial notice of Exhibit "2" the March 2015 Grant Deed is GRANTED.

c. Exhibit 3 - the March 2015 Deed of Trust

Judicial notice may be taken of recorded instruments because they are public records that are not subject to reasonable dispute. *See* Fed. R. Evid. 201; *Lane v. Vitek Real Estate Indus. Group*, 713 F.Supp.2d 1092, 1096-97 (E.D. Cal. 2010) (explaining that "publicly recorded documents related to plaintiffs' mortgage ... are matters of public record whose accuracy cannot be questioned"). The court may also take judicial notice of undisputed facts that are contained in extrinsic materials, such as public land records. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

Thus, judicial notice may be taken of a deed of trust, an assignment of deed of trust, and substitution of trustee. *See, e.g., Lane*, 713 F.Supp.2d at 1096-97 (taking judicial notice of a trustee substitution and assignment of deed of trust); *Argueta v. JP. Morgan Chase*, 787 F.Supp.2d 1099, 1102-03 (E.D. Cal. 2011) (taking judicial notice of a "Deed of Trust" and "Substitution of Trustee"); *Hotel Emples. & Rest. Emples. Local 2 v. Vista Inn Mgmt. Co.*, 393 F.Supp.2d 972, 978 (ND. Cal. 2005) ("A grant deed is an official record of easily verifiable accuracy" of a property transfer).

Here, it is appropriate for the Court to take judicial notice of Exhibit 3 under FRE 201, because the March 2015 Deed of Trust is an instrument on record with the Riverside County Recorder's Office and reflects matters of public record that are not subject to reasonable dispute. Plaintiff's unopposed request for judicial notice of Exhibit "3" the March 2015 Deed of Trust is GRANTED.

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d. Exhibit 4 – the October 2020 Deed of Trust

Judicial notice may be taken of recorded instruments because they are public records that are not subject to reasonable dispute. *See* Fed. R. Evid. 201; *Lane v. Vitek Real Estate Indus. Group*, 713 F.Supp.2d 1092, 1096-97 (E.D. Cal. 2010) (explaining that "publicly recorded documents related to plaintiffs' mortgage ... are matters of public record whose accuracy cannot be questioned"). The court may also take judicial notice of undisputed facts that are contained in extrinsic materials, such as public land records. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

Thus, judicial notice may be taken of a deed of trust, an assignment of deed of trust, and substitution of trustee. *See, e.g., Lane*, 713 F.Supp.2d at 1096-97 (taking judicial notice of a trustee substitution and assignment of deed of trust); *Argueta v. JP. Morgan Chase*, 787 F.Supp.2d 1099, 1102-03 (E.D. Cal. 2011) (taking judicial notice of a "Deed of Trust" and "Substitution of Trustee"); *Hotel Emples. & Rest. Emples. Local 2 v. Vista Inn Mgmt. Co.*, 393 F.Supp.2d 972, 978 (ND. Cal. 2005) ("A grant deed is an official record of easily verifiable accuracy" of a property transfer).

Here, it is appropriate for the Court to take judicial notice of Exhibit 4 under FRE 201, because the October 2020 Deed of Trust is an instrument on record with the Riverside County Recorder's Office and reflects matters of public record that are not subject to reasonable dispute. Plaintiff's unopposed request for judicial notice of Exhibit "4" the October 2020 Deed of Trust is GRANTED.

e. Exhibit 5 – the November 2020 Reconveyance

Judicial notice may be taken of recorded instruments because they are public records that are not subject to reasonable dispute. *See* Fed. R. Evid. 201; *Lane v. Vitek Real Estate Indus. Group*, 713 F.Supp.2d 1092, 1096-97 (E.D. Cal. 2010) (explaining that "publicly recorded documents related to plaintiffs' mortgage ... are matters of public record whose accuracy cannot be questioned"). The court may also take judicial notice of undisputed facts that are contained in extrinsic materials, such as public land records. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

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Thus, judicial notice may be taken of a deed of trust, an assignment of deed of trust, and substitution of trustee. *See, e.g., Lane*, 713 F.Supp.2d at 1096-97 (taking judicial notice of a trustee substitution and assignment of deed of trust); *Argueta v. JP. Morgan Chase*, 787 F.Supp.2d 1099, 1102-03 (E.D. Cal. 2011) (taking judicial notice of a "Deed of Trust" and "Substitution of Trustee"); *Hotel Emples. & Rest. Emples. Local 2 v. Vista Inn Mgmt. Co.*, 393 F.Supp.2d 972, 978 (ND. Cal. 2005) ("A grant deed is an official record of easily verifiable accuracy" of a property transfer).

Here, it is appropriate for the Court to take judicial notice of Exhibit 5 under FRE 201, because the November 2020 Reconveyance is an instrument on record with the Riverside County Recorder's Office and reflects matters of public record that are not subject to reasonable dispute. Plaintiff's unopposed request for judicial notice of Exhibit "5" the November 2020 Reconveyance is GRANTED.

f. Exhibit 6 – the Bankruptcy Petition and Schedules

The Court may take judicial notice documents filed before this Court and other courts. *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *see also Montijo v. Hrdlicka*, 2021 US. Dist. LEXIS 164082, 2021 WL 3857643, at *1 n. 1 (E.D. Cal. Aug. 30, 2021) (finding judicial notice was proper for an unlawful detainer complaint filed in the state court).

Further, judicial notice may be taken of a court's own documents and orders. *Mullis v. United States Bank Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (ND. Cal. 1978), *aff'd*, 645 F.2d 699 (9th Cir. 1981). "[T]he authenticity and existence of a particular order..., which is a matter of public record, is judicially noticeable." *United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 974 (E.D. Cal. 2004).

Here, it is appropriate for the Court to take judicial notice of Exhibit 6 under FRE 201, because the Petition and Schedules are the Court's own documents, which the Court may take judicial notice that said documents were filed before the Court. Therefore, the Court GRANTS Plaintiff's unopposed request for judicial notice of Exhibit "6" the Bankruptcy Petition and Schedules filed before this Court in

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Conclusion

For the reasons explained above, the Court GRANTS Plaintiff's Request for Judicial Notice of Exhibits 1-6, filed in support of this Motion for Default Judgment.

2. Default Judgment

Fed. R. Civil P. 55(b), applicable in bankruptcy adversary proceeding pursuant to Fed. R. Bankr. P. 7055, allows a party to apply to the Bankruptcy Court for a default judgment where "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend," after the applicant has obtained the clerk's entry of default. Where a defendant has defaulted, the factual allegations in the complaint are deemed admitted by the defendant and may be taken as true. To determine whether default judgment should be entered the Court may consider:

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

See Eitel v. McCool, 782 F.2d 1470, 1471-71 (9th Cir. 1986) *citing*, 6 *Moore's Federal Practice*, ¶ 550-05[2], at 55-24 to 55-26.

Courts often consider the second and third factors to be most important. *Vietnam Reform Party v. Viet Tran — Vietnam Reform Party*, 416 F. Supp. 3d 948, 961 (N.D. Cal. 2019) (citations omitted). The decision whether to enter default judgment is discretionary and given lack of merit in substantive claims, there is no abuse of discretion in declining to enter default judgment in favor of plaintiff. *See*

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Aldabe v. Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980).

3. Plaintiff is Entitled to Relief on the § 542 Turnover Claim

11 U.S.C. § 541 provides, in pertinent part:

- (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

...

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a)(2) (emphasis added).

Section 542(a) of the Bankruptcy Code provides as follows:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542.

In California, all community property is liable for the debts incurred by either spouse before or during marriage. Cal. Family Code § 910(a). "[U]ntil division, ***all community property of the divorcing couple is property of the bankruptcy estate*** pursuant to § 541(a)(2)." *Dumas v. Mantle (In re Mantle)*, 153 F.3d 1082,

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1085 (9th Cir. 1998). (emphasis added) The bankruptcy court has exclusive jurisdiction over all estate property, 28 U.S.C. § 1334(e)(1), and the trustee has both the authority and the duty to administer that property, § 704(a)(1).

In furtherance of this duty, § 363(b)(1) enables the trustee to sell estate property outside the ordinary course of business, *Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 872 F.3d 892, 897 (9th Cir. 2017), and § 363(f) authorizes him to sell property free and clear of interests, including liens, see *In re PW, LLC*, 391 B.R. at 37. *Richards v. Marshack (In re Richards)*, 2022 Bankr. LEXIS 3156, *8-9 (B.A.P. 9th Cir., November 7, 2022).

Thus, the Property is community property the Trustee may use, sell, or lease under Section 363(b) of the Bankruptcy Code because it is property of the estate.

Possession or Control of the Property

Defendant is only resident of Property

Trustee has shown that Defendant has possession of the Property and uses the Property. Trustee has searched for the identities of those persons known to live at or use the Property as a mailing address. A public records search on the Property shows that the only current resident of record is the Defendant. *Declaration of Brandon J. Iskander* ("Iskander Declaration"), ¶ 4; Ex. 7, p.3.

Defendant is not a custodian of Property

Further, Trustee contends there is no evidence that Defendant is a custodian (*e.g.*, state court receiver) as that term is defined in the Bankruptcy Code. 11 U.S.C. § 101(11) that would excuse him from turnover § 542(a). Trustee has demonstrated that Defendant is an entity who is in possession of the Property, controls the Property, or is in custody of the Property because he lives there or is using Property as his mailing address.

Not of Inconsequential Value

Trustee also demonstrates that Property is not of inconsequential value or benefit

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to the Estate. Trustee refers to Debtor's Petition, Schedules, and Statements affirmed under penalty of perjury, the Property has approximately \$380,000 of nonexempt equity available for payment to Debtor's creditors, as well as a potential surplus to Debtor.

Accordingly, Trustee is entitled to a judgment on his second claim for relief, granting turnover under § 542 against Defendant of occupancy and possession of the Property to the Plaintiff upon entry of Judgment in Plaintiff's favor. Trustee requests that Judgment be without prejudice to Trustee and Defendant making alternative arrangements based on Defendant's cooperation with the Trustee's effort to market and sell the Property.

If default Judgment is granted as requested above, Trustee waives and requests dismissal of all other claims for relief set forth in the Complaint.

4. Plaintiff is Entitled to Default Judgment on the § 542 Turnover Claim

To determine whether default judgment should be entered the Court may consider:

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

See Eitel v. McCool, 782 F.2d 1470, 1471-71 (9th Cir. 1986) *citing*, 6 *Moore's Federal Practice*, ¶ 550-05[2], at 55-24 to 55-26.

The facts explained above satisfy the requirements of § 542 as set forth below:

1. Possibility of prejudice to plaintiff

The first *Eitel* factor favors default judgment, as Plaintiff will be prejudiced if a

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default judgment is not entered, especially as it appears that no defendant intends to defend the adversary proceeding. The Bankruptcy Code mandates that a trustee to "collect and reduce to money the property of the estate . . . as expeditiously as is compatible with the best interests of parties in interest . . ." 11 U.S.C. § 704(a) (1).

Trustee explains that the status of mortgage payments for the property is presently unknown. If Defendant is not making mortgage payments, then the equity in the Property may be diminishing, which harms both the unsecured creditors as well as Debtor's interest in any surplus from the sale of the Property. This arguably includes preserving the Debtor's interest in a surplus from a sale of the Property..

2. Merits of plaintiff's substantive claims & 3. sufficiency of the complaint

The second and third of the *Eitel* factor favor default judgment on these claims because the record as explained above demonstrates the merits of Plaintiff's substantive claims, as well the Complaint sufficiently explains the legal and factual basis for their grounds for relief.

5. Sum of money at stake in the action

The fourth *Eitel* factor is neutral, as no sum of money is being demanded from Defendants by way of this Judgment. To the extent that Trustee prays for interest, attorney's fees and costs in the Complaint, the Trustee agrees to waive them at this time. *Motion*, 10:2-4.

6. Possibility of a dispute concerning material facts

The fifth *Eitel* factor favors entry of a default judgment, because there is no possibility of genuine dispute that the Property was community property on the Petition Date and that it is now property of the Estate for which Trustee may obtain turnover.

7. Whether default was due to excusable neglect

The sixth *Eitel* factor also favors default judgment, as here, Defendant was

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properly served by mail at the Property and did not respond. There is nothing in the record showing that Defendant's default was due to excusable neglect.

8. *Strong policy favoring decisions on the merits*

The seventh *Eitel* factor favors entry of default judgment because, here, a decision on the merits is not possible since Defendant failed to respond or otherwise defend this case.

Here, six of the seven *Eitel* factors favor default judgment on Plaintiff's § 727(a) (6) claim. As such, the Court will grant Plaintiff's Motion for Default Judgment on the Second Claim for Relief for Turnover. Trustee assents to dismissal of all other claims for relief set forth in the Complaint. *Motion*, 11:9-10.

Accordingly, it is hereby ORDERED that Plaintiff's Motion for Default Judgment is GRANTED under 11 U.S.C. § 542 on the Second Claim for Relief - Turnover of residential property located at 32330 Pink Carnation Court, Winchester, CA 92596.

Party Information

Debtor(s):

Christine Diane Melendez

Represented By
Daniel Moaddel

Defendant(s):

Jose Salvador Melendez

Pro Se

Movant(s):

Robert S. Whitmore, Chapter 7

Represented By
Brandon J. Iskander

Plaintiff(s):

Robert S. Whitmore, Chapter 7

Represented By
Brandon J. Iskander

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Trustee(s):

Robert Whitmore (TR)

Represented By
Robert P Goe
Brandon J. Iskander

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Adv#: 6:23-01117 Whitmore, Chapter 7 Trustee v. Melendez

#6.00 CONT Status Conference RE: Complaint by Robert S. Whitmore, Chapter 7 Trustee against Christine D. Melendez. Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))).

From: 2/20/24

Also #5

EH __

Docket 1

Tentative Ruling:

As the Court's tentative ruling is to grant Plaintiff's *Motion for Default Judgment*, cal. no. 5, this status conference will be vacated as moot.

Appearances WAIVED on 4/16/24. You can appear at the hearing in person or remotely. **For ZoomGov instructions, please see Page 1 of this week's Tentative Rulings.**

Party Information

Debtor(s):

Christine Diane Melendez

Represented By
Daniel Moaddel

Defendant(s):

Jose Salvador Melendez

Pro Se

Plaintiff(s):

Robert S. Whitmore, Chapter 7

Represented By
Brandon J. Iskander

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Trustee(s):

Robert Whitmore (TR)

Represented By
Robert P Goe
Brandon J. Iskander