

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

For information about appearing in person (or a hybrid hearing) please visit <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert>.

Case participants may connect to the video and audio feeds, free of charge, using the connection information provided below.

BY MANDATE OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, MEMBERS OF THE PUBLIC AND THE MEDIA MAY ONLY CONNECT TO THE ZOOMGOV AUDIO FEED, AND ONLY BY TELEPHONE. ACCESS TO THE VIDEO FEED BY THESE INDIVIDUALS IS PROHIBITED. IN THE CASE OF A TRIAL OR EVIDENTIARY HEARING, NO AUDIO ACCESS WILL BE PROVIDED.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1605728060>

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

10:00 AM

CONT...

Chapter

ZoomGov meeting number: 160 572 8060

Password: 371512

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

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Theodor C. Albert's Cases" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT...

Chapter

completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:22-11776 Elaheh Yazdi

Chapter 7

Adv#: 8:23-01006 Verdugo Plaza Pharmacy, Inc. et al v. Yazdi

- #1.00** STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debts (1) 11 USC Section 523(a)(4), (2) 11 USC Section 523(a)(6)
(cont'd from 5-04-23)
(cont'd from 8-10-23 per order approving stip. to cont. s/c entered 7-28-23)
(cont'd from 11-30-23)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-25-24 AT 11:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 1-19-24**

Tentative Ruling:

Tentative for November 30, 2023
See #8.

Tentative for 5/4/23:
See #6.

Party Information

Debtor(s):

Elaheh Yazdi

Represented By
Ahren A Tiller

Defendant(s):

Elaheh Yazdi

Pro Se

Plaintiff(s):

Verdugo Plaza Pharmacy, Inc.

Represented By
Stella A Havkin

Lawrence T Wong

Represented By
Stella A Havkin

Trustee(s):

Richard A Marshack (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT...

Elaheh Yazdi

Melissa Davis Lowe

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:22-11556 Stonebridge Ventures, LLC

Chapter 7

Adv#: 8:23-01013 A. Cisneros v. Colangelo et al

#2.00 STATUS CONFERENCE RE: Counterclaim

Docket 41

Tentative Ruling:

Tentative for February 1, 2024

No status report? Continue to coincide with Motion to Dismiss counterclaim scheduled 2/15/24. *Appearance required.*

Party Information

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw
Diana Torres-Brito

Defendant(s):

Joe Colangelo

Represented By
Christopher Hewitt

Monika Jensen

Represented By
Nicholas W Gebelt
Robert M. Aronson
Robert M Aronson

Plaintiff(s):

A. Cisneros

Represented By
Nathan F Smith

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT... Stonebridge Ventures, LLC

William Malcolm

Chapter 7

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:23-11546 Marie Salanga

Chapter 7

Adv#: 8:23-01128 Roth v. Salanga

#3.00 STATUS CONFERENCE RE: Adversary Complaint To Determine Dischargeability Of Debt, And Objection To Discharge

Docket 1

Tentative Ruling:

Tentative for February 1, 2024

Deadline for completing discovery is July 1, 2024.
Last date for filing pre-trial motions is July 19, 2024.
Pre-trial conference is on August 1, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Marie Salanga

Represented By
Richard G. Heston

Defendant(s):

Marie Salanga

Pro Se

Plaintiff(s):

Ivar Roth

Represented By
David B Lally

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:23-11672 Hugo Fabian Flores Flores
Adv#: 8:23-01129 Salgado v. Flores Flores

Chapter 7

**#4.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt
And To Except Debt Of Defendant From Discharge**

Docket 1

Tentative Ruling:

Tentative for February 1, 2024

Status of service/ default? Status conference is continued to March 28, 2024
at 10:00 a.m. with the expectation that judgment prove up will occur in the
meantime. *Appearance suggested.*

Party Information

Debtor(s):

Hugo Fabian Flores Flores Pro Se

Defendant(s):

Hugo Fabian Flores Flores Pro Se

Plaintiff(s):

Rocio Salgado Represented By
David R Chase

Trustee(s):

Thomas H Casey (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room **5B**

10:00 AM

8:23-11649 George Joseph Sano

Chapter 7

Adv#: 8:23-01130 Shockley v. Sano

#5.00 STATUS CONFERENCE RE: Amended Complaint By Judgment Creditor
Devan Shackley To Demtermine That The Debt Owed By George Joseph Sano
Is Nondischargeable Debt Pursuant To 11 USC Sections 523 (a)(4) And (a)(6)

Docket 3

***** VACATED *** REASON: CONTINUED TO 2-29-24 AT 10:00 A.M.
PER REQUEST FOR ANOTHER SUMMONS ISSUED ON 12-04-23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

George Joseph Sano

Represented By
Christopher J Langley

Defendant(s):

George Joseph Sano

Pro Se

Plaintiff(s):

Devan Shockley

Represented By
Michael Creamer Jr

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:22-11039 Craig Chang

Chapter 7

Adv#: 8:22-01087 Fransen v. Chang

**#6.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Non-Dischargeability
Of Debt Pursuan To 11 USC Section 523(a)(2)(A)
(cont'd from 2-2-23)
(set from s/c hrg held on 3-09-23)**

Docket 1

Tentative Ruling:

Tentative for February 1, 2024

Nothing has been filed in connection with this pretrial conference. Continue to hearing on Motions to compel and for relief of scheduling order 2/15.

Appearance required.

Tentative for 3/9/23:

Particularly in view of the motion to dismiss, do any deadlines already established need to change?

Tentative for 2/2/23:

Deadline for completing discovery: September 1, 2023

Last date for filing pre-trial motions: September 8, 2023

Pre-trial conference on: September 28, 2023 @ 10:00AM

Appearance: required

Tentative for 12/15/22:

In view of recent hearing on motion to dismiss, and expected amendment, continue about 45 days?

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT... Craig Chang

Chapter 7

Appearance: required

Party Information

Debtor(s):

Craig Chang

Represented By
John M Boyko

Defendant(s):

Craig Chang

Pro Se

Plaintiff(s):

Arthur Fransen

Represented By
Robert P Goe

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01141 East West Bank v. Kim et al

- #7.00** PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt, in objection to debtor's discharge pursuant to 11 U.S.C. Section 523(a)(2) (A) and (B), and 727(a)(2)(A); or alternatively for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Section 547(b), and 550]; (2) Avoidance and recovery of fraudulent transfers [11 U.S.C. Section 548, and 550]; (3) Preservation of avoided transfers [11 U.S.C. Section 551]; (4) Disallowance of any claims held by defendants [11 U.S.C. Section 502(d); and (5) California voidable transactions act [Civil Code Section 3439-3439.14]
(set from s/c hrg held on 12-17-20)
(cont'd from 7-6-23)
(cont'd from 11-30-23)

Docket 1

Tentative Ruling:

Tentative for February 1, 2024
See #8. Appearance required.

Tentative for November 30, 2023
See 3.1. Appearance required.

Tentative for October 12, 2023
Order approving settlement is in process. Continue to November 20, 2023 at 10:00 a.m. as a holding date. Appearance is optional.

Tentative for 7/6/23:
Settled? Status?

Appearance: required

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT... Katie Ki Sook Kim

Chapter 7

Tentative for 4/27/23:
Set a continued pretrial conference in view of ongoing settlement discussions?

Appearance: required

Tentative for 1/12/23:
Status? Still no pre-trial stipulation but notes indicate parties were discussing settlement.

Appearance: required

Tentative for 10/27/22:
Set trial date approximately 90 days out. Week of March 20?

Appearance: required

Tentative for 12/17/20:
Deadline for completing discovery: November 23, 2021
Last date for filing pre-trial motions: December 2, 2021
Pre-trial conference on: December 16, 2021@ 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

8:20-10545 Katie Ki Sook Kim

Chapter 7

#8.00 East West Bank's Motion For Order Approving Settlement And Compromise Of Disputes Regarding Chrysanthemum By Eileen LLC, SMT Apparel, Inc. and Verna Fashion, Inc.
(cont'd from 11-30-23)

Docket 93

Tentative Ruling:

Tentative for February 1, 2024

The standing issue was apparently resolved by stipulation with Trustee. But the reformation of the docket to deal with wrongly entered discharge on March 17, 2023 is still outstanding. The court had requested plaintiff to give notice of this, but the docket does not reflect it. See also #7. *Appearance required.*

Tentative for November 30, 2023

There are complications.

First, there is a glaring question of standing which is not answered in the papers. Avoidance actions under §§547 and 548 belong to the estate. In re United Energy Corp, 944 F.2d 589, 594 (9th Cir. 1999); see also In re Wolf & Vine, 825 F.2d 197, 199 (9th Cir. 1987) ("Section 547 of the Bankruptcy Code gives the bankruptcy trustee the power to avoid "preferential" transfers by the debtor to creditors when the transfers are made within a certain period of time before the filing of the bankruptcy petition.") Normally the estate's avoidance actions are prosecuted for the estate by its trustee. The court notes that trustee Marshack at one time had his own avoidance action adv. 22-01039 pending but then that was apparently dismissed and a "no asset" report was filed 12/05/2022. Although there is some authority suggesting a private party can prosecute an avoidance action for the estate by agreement normally that is accompanied by an approved arrangement whereby some of the proceeds are shared with the estate. In re Parmetex, Inc., 199 F.3d 1029, 1030 (9th Cir.

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

10:00 AM

CONT... **Katie Ki Sook Kim**

Chapter 7

1999) (where the court found that where a trustee stipulated that the creditors could sue on his behalf and the bankruptcy court approved that stipulation, the creditors had standing to bring the suit.). No such understanding appears on the docket that the court can find. This raises a dilemma which the court needs answered. To be clear, there is nothing wrong with the proposed settlement and its terms seem eminently reasonable, but some kind of answer or arrangement resolving the standing question must be addressed. Even a modest sum might cure the problem. Or, it could be that East West Bank is only proceeding on select theories not involving the avoidance powers. But this record is unclear.

In reviewing the docket the court also notes the possible discrepancy between the general discharge entered 3/17/23 and the judgment favoring East West Bank entered in its adversary proceeding 20-01141 TA on October 15, 2021, since that action involved allegations under §727(a)(2) and the judgment includes a pronouncement that "discharge is denied." Should an order issue correcting the docket that the discharge is in fact denied?

An appearance by the trustee Mr. Marshack would be useful and it might be that the case needs to be reopened and he reappointed.

Appearance required and the former trustee is strongly invited to appear.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

8:23-10028 Young Yol Byeon

Chapter 13

Adv#: 8:23-01113 OH v. Bank of New York Mellon Corporation et al

#9.00 Defendant's Dane Exnowski And McCalla Raymer Leibert Pierce, LLP's Motion To Dismiss First Amended Complaint With Prejudice **[FRCP 12(b)(1), 12(b)(5), 12(b)(6)]**

Docket 5

Tentative Ruling:

Tentative for February 1, 2024

A very similar motion to dismiss brought by other defendants was heard in this adversary proceeding last week, January 25. The reader may wish to consult that earlier opinion although it is substantially similar to below.

Defendants Dane Exnowski and McCalla Raymer Leibert Pierce, LLP (collectively "Defendants") bring this motion to dismiss the complaint of Plaintiff Myong Suk Oh ("Plaintiff") pursuant to FRCP 12(b)(1), (5), and (6) on the grounds that Plaintiff lacks standing, the complaint was not properly served, and the complaint fails to state any claim against Defendant. Plaintiff filed a consolidated opposition to this motion to dismiss and others filed by other defendants. To the court's reading, the opposition is identical to another on calendar and from last week.

Plaintiff's complaint relates to the real property commonly known as 22 Lilly Pool, Irvine, CA 92620 ("Property"). Plaintiff is the borrower under a note secured by a deed of trust on the Property ("Loan"), and co-defendant Bank of New York Mellon ("Secured Creditor") is the secured creditor with respect to the Loan. At the time of the loan, Plaintiff appeared to have owned the Property, but currently, it is owned by Debtor Young Byeon ("Debtor") and Jae S. Chung via a grant deed on December 5, 2022.

When Plaintiff filed for chapter 13 bankruptcy on February 7, 2023, Debtor did not contest Secured Creditor's claim or the Loan in the schedules. A chapter 13 plan was confirmed on April 4, 2023, and the plan provided for a class 2 claim with respect to the Loan and a sale of the Property by August

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

11:00 AM

CONT... **Young Yol Byeon**

Chapter 13

2023. On October 10, 2023, Plaintiff filed her complaint (original and amended), seeking (1) Declaratory Relief whether certain assignments of the deed of trust and related to the foreclosure on the Property are invalid or fraudulent; and (2) setting aside and vacating this court's order confirming the Debtor's chapter 13 plan, as well as certain judgments or orders dismissing actioned filed by Attorney Oh in the U.S. district court and state court. Plaintiff failed to serve Defendants with a Summons or Complaint.

A. Legal Standards

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

B. Standing

The Article III case or controversy requirement limits federal courts'

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

subject matter jurisdiction by requiring, inter alia, that plaintiffs have standing. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121 (9th Cir. 2010). To have Article III standing, a plaintiff must demonstrate that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (citation omitted). A litigant must also meet non-constitutional or prudential requirements to invoke federal jurisdiction; prudential standing encompasses, inter alia, the general prohibition on a litigant's raising another person's legal rights. *United States v. Lazarenko*, 476 F.3d 642, 649-50 (9th Cir. 2007).

Here, Defendants argue that Plaintiff lacks Article III standing. First, the complaint seeks to challenge the assignments of Secured Creditor's lien on the Property and the recorded foreclosure documents. However, Plaintiff is not owner of the Property, and thus cannot be legal injured by the recorded documents. Defendants also contend that Plaintiff lacks prudential standing because the Property is co-owned by Debtor and a third party, who have not challenged the Loan, as indicated by the confirmed chapter 13 plan that treats the claim. Finally, Defendant asserts that Plaintiff is not a real party in interest as this Property is part of the bankruptcy estate and controlled by the bankruptcy trustee. Plaintiff failed to address any of these arguments in the opposition, and mostly reasserted the allegations in the complaint and stating that they are sufficient. Consequently, the court is persuaded by Defendants argument and supporting case law, as there has been no other argument against it.

C. Service of Summons and Complaint

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 7004(e), service must be made within 14 days after the summons is issued. Here, Defendants state that the summons was issues on October 3, 2023, but that they were not served with the complaint (or summons). It is well past 14 days from the date of the issuance of the summons, so Plaintiffs are not in compliance and the complaint has grounds for dismissal under FRCP 12(b) (5).

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

D. Failure to State a Claim

Defendants' argument in thin here, but they contend that the complaint fails to state any claim, and instead appears to be some dilatory or retributive filing of legal conclusions. The opposition carries this same tone of conclusory allegations without further explanation. Further, the court's tentative on a similar motion to dismiss favored granting of the motion to dismiss the complaint.

E. Privilege

In the event this court finds that the complaint sets forth cognizable claims against Defendants, they argue that they are privileged under Cal. Civ. Code § 47(b). "Section 47 creates a privilege for a "publication or broadcast" made in "any . . . judicial proceeding." *Johnson v. Liberty Mut. Ins.*, No. 12-CV-01851-LHK, 2013 U.S. Dist. LEXIS 13867, at *11 (N.D. Cal. Jan. 31, 2013) [citing Cal. Civ. Code § 47(b)]. "Any doubt about whether the privilege applies is resolved in favor of applying it." *Id.* (citations omitted). "The principal purpose of [the litigation privilege] is to afford litigants and witnesses the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions." *Id.* (alteration and emphasis original) (citation omitted). Furthermore, for communications made in relation to judicial and quasi-judicial proceedings, the litigation privilege grants "absolute immunity" from "all torts other than malicious prosecution, including fraud, negligence and negligent misrepresentation." *Id.* at 13.

Here, Defendants assert that they are privileged as to the proof of claim for the Loan filed on behalf of their client Secured Creditor in federal bankruptcy court. The court agrees, as there is no opposition as to this argument.

F. Leave to Amend

In determining whether to grant leave to amend a complaint, the court generally considers: "(1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party." *Hurn v. Retirement Fund Trust*, 648 F.2d 1252, 1254 (9th Cir. 1981).

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

In this case, Defendants argue that denial of leave to amend as to Defendants would not prejudice Plaintiff as they are nominal parties here and otherwise privileged. Further, amendment would be futile as Plaintiff has no standing and is not a real party in interest. Defendants also contend that the filing was in bad faith as their only role was filing a proof of claim on behalf of substantive parties.

As with the previous motion to dismiss, Plaintiff fails to allege facts new or different sufficient to state the claims that passes the plausibility standards of *Iqbal* and *Twombly*. Further amendment would be futile as these issues cannot likely be cured, and the Opposition contains little or no showing on this point. Accordingly, the motion is granted without leave to amend.
Appearance required.

Party Information

Debtor(s):

Young Yol Byeon

Represented By
Rex Tran

Defendant(s):

NewRez LLC

Represented By
Jonathan C Cahill

Dane Exnowski

Represented By
Dane W Exnowski

Bank of New York Mellon

Pro Se

BAYVIEW LOAN SERVICING,

Pro Se

MTC Financial, Inc

Represented By
John C Steele

Auction.Com, Inc.

Represented By
Meagan S Tom

McCalla Raymer Leibert Pierce,

Represented By
Dane W Exnowski

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

11:00 AM

CONT... Young Yol Byeon
Wright, Finlay & Zak, LLP

Represented By
Jonathan C Cahill

Chapter 13

Klinedinst, PC

Pro Se

Locke Lord LLP

Represented By
Meagan S Tom

Plaintiff(s):

MYONG Suk OH

Represented By
Yi Y Oh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

11:00 AM

8:23-10028 Young Yol Byeon

Chapter 13

Adv#: 8:23-01113 OH v. Bank of New York Mellon Corporation et al

#10.00 Newrez LLC's Motion To Dismiss Plaintiff's Complaint Pursuant To Federal Rules Of Civil Procedure **12(B)(1) And (6)**

Docket 9

Tentative Ruling:

Tentative for February 1, 2024

This motion is substantially similar to calendar #9 and to a Motion to Dismiss heard last week, January 25 brought by Tother defendants. The reader is invited to review those opinions.

This is the motion of Defendants NewRez LLC dba Shellpoint Mortgage Servicing, The Bank of New York Mellon fka The Bank of New York; Bayview Loan Servicing, LLC; Klinedinst PC ("Defendants") to dismiss the complaint of Plaintiff Myong Suk Oh ("Plaintiff") pursuant to FRCP 12(b) (1) and (6) on the grounds that Plaintiff's complaint fails to state any claim against Defendants. Plaintiff filed a consolidated opposition to this motion to dismiss and others filed by other Defendants. The court can see no difference between the various versions of the Opposition.

Plaintiff borrowed \$1,000,000 to purchase the real property located at 22 Lily Pool, Irvine, CA 92620 ("Property"), secured by a deed of trust recorded on January 21, 2005. The deed of trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary and nominee for the lender, and CTC Real Estate Services ("CTC") as trustee. The beneficial interest was allegedly assigned from MERS to The Bank of New York Mellon fka The Bank of New York ("BONY") as trustee for CWMBBS 2005-3 trust, recorded on February 8, 2012. May 2, 2016, a Substitution of Trustee was allegedly recorded, substituting Trustee Corps as trustee under the deed of trust. On August 15, 2019, a second notice of default was recorded against the Property and several notices of trustee's sales were recorded thereafter.

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room 5B

11:00 AM

CONT... Young Yol Byeon

Chapter 13

However, no foreclosure sale has taken place.

In January of 2020, Newrez LLC dba Shellpoint Mortgage Servicing ("Newrez") began servicing Myong's loan. On November 5, 2021, a notice of trustee's sale was recorded against the Property. On June 22, 2022, a notice of trustee's sale was recorded against the Property.

Plaintiff filed a first lawsuit in 2016 contending that her mortgage loan documents were fraudulently recorded and forged. Her 2016 action resulted in final judgment of dismissal, which was affirmed on appeal. However, Plaintiff filed another California state court action in 2019, based on the same allegations, which was dismissed with prejudice on the grounds that the claims were barred by res judicata and collateral estoppel. Plaintiff filed a third lawsuit in federal court, which also resulted in a judgment of dismissal on grounds of res judicata. Plaintiff's son -in-law Jaw Sun Chung, filed a lawsuit in 2022 seeking to relitigate the same claims again, but the court ultimately dismissed the lawsuit on the grounds that Chung's claims were barred by res judicata and collateral estoppel, without any opportunity to amend.

Plaintiff now brings another lawsuit against the same Defendants in this bankruptcy court. Defendants contend that Plaintiff seeks to adjudicate the same issues as those advanced in her prior lawsuits. As Plaintiff (and others) have unsuccessfully litigated all claims against Defendants numerous times, Defendants contend that this adversary proceeding should be dismissed with prejudice.

A. Legal Standards

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the Defendants is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a Defendants has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

B. Barred by Res Judicata/Collateral Estoppel

Federal Courts must give "full faith and credit" to judgments of state courts. 28 U.S.C. § 1738; *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 84 (1984). "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 466, fn. 6 (1980) (emphasis added). Federal courts follow the state's rules of preclusion in determining the preclusive effect of a state court judgment. *White v. City of Pasadena*, 671 F.3d 918, 926 (9th Cir. 2012) (citing *Dremer*, supra, 456 U.S. at 482). "In California, '[c]laim preclusion arises if a second suit involves: (1) the same causes of action (2) between the same parties [or parties in privity with them] (3) after a final judgment on the merits in the first suit." *Furnace v. Giurbino*, 838 F.3d 1019, 1023 (9th Cir. 2016) (quoting *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813, 824 (Cal. 2015)). "The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same." *People v. Barragan*, 32 Cal.4th 236, 253 (Cal. 2004) (quotations omitted).

Here, the first element is met as this instant lawsuit attempts to relitigate the same claims adjudicated in the 2016 lawsuit and those filed thereafter that were already determined and barred by res judicata and

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

collateral estoppel. These claims are the forging of loan documents and foreclosure notices and that Defendants lack beneficial interest in the loan and deed of trust. The second element is also met as Plaintiff has already brought litigation against Defendants, or in privity with Defendants regarding these claims without success. There has been a final judgment on the merits as required by the third element because the Orange County Supreme Court entered judgment with prejudice in favor of BONY and prior servicer, Bayview on December 13, 2017 which was affirmed on appeal. Defendants Shellpoint is the current servicer of the loan on behalf of BONY and is in contractual privity with these Defendants. As all elements have been met, and Plaintiff does not provide a persuasive rebuttal to these arguments in the opposition, the court finds that Plaintiff's complaint is precluded, as determined in the previous court proceedings.

C. Dismissal under FRCP 12(b)(1)

The Rooker-Feldman doctrine "prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment." *Reusser v. Wachovia Bank*, 525 F.3d 855, 859 (9th Cir. 2008). In this case, Defendants argue that Plaintiff's complaint recycles arguments rejected by prior courts, and that this is a de facto appeal of those rulings and judgments. Plaintiff does not provide any counterargument here but does request in the complaint that the court "vacate dismissal in the district court and superior court". It is undisputed that Plaintiff is attempting to relitigate the same issues that have been determined by other courts and this court in another motion to dismiss to be barred by res judicata and collateral estoppel. It appears, under the Rooker-Feldman doctrine that this court is also precluded from exercising subject matter jurisdiction over this adversary for the same reasons.

D. Dismissal under FRCP 12(b)(6)

Defendants also alleges that the complaint should be dismissed for failure to allege any viable claim against them, as explained below.

1. Declaratory Relief

Declaratory relief is known to be a remedy Defendants not a separate,

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT... **Young Yol Byeon**

Chapter 13

independent claim, and not a cause of action in and of itself. Defendants argues that Plaintiff's declaratory relief is based on the same allegations as the preceding causes of action, which have all been barred and fail as a matter of law. Further, Defendants contends that the complaint fails to allege any actual case or controversy demonstrating wrongdoing by Defendants. It is Defendants' position that since its actions were justifiable and protected by the trustee privilege, then the derivative declaratory relief must also fail. Plaintiff argues that an actual controversy exists between Plaintiff and Defendants as to the Defendants' standing to commence foreclosure. However, it seems that this issue has already been decided by the state and federal court in the previous proceedings. Thus, the court finds in favor of Defendants that the claim for declaratory relief fails.

2. Vacate the Confirmation Orders

Plaintiff appears to request that the court vacate orders related to Young's bankruptcy petition due to "fraud on the court" under FRCP 60(d)(3). However, Defendants argues that this request is based on her conclusion that Defendants lacked standing to record the foreclosure-related notices and commence foreclosure. These claims have been litigated on numerous occasions and rejected under the doctrines of res judicata and collateral estoppel. Further, Defendants argues that Plaintiff has failed to allege any facts demonstrating that she is entitled to the requested relief. Rule 60 allows the Court an opportunity, on motion or on its own, to relieve "a party or its legal representative from a final judgment, order, or proceeding" in certain situations, including instances of "fraud on the court." See FRCP 60(a)-(d). Here, Defendants contend that Plaintiff is not the debtor in this bankruptcy case, and the only real effect the orders would have on Plaintiff is to frustrate the recent efforts to wrongfully forestall foreclosure sale. The court agrees that Plaintiff has not complied with the procedural requirements of Rule 60 to demonstrate that she is a "party" and to file this request for relief through a noticed motion instead of a cause of action in this complaint.

E. Time-Barred

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT...

Young Yol Byeon

Chapter 13

One of Plaintiff's arguments is that the Note and Deed of trust are invalid. Defendants assert that this loan originated in 2005 and Plaintiff delayed until October 2023 to bring this action, waiting 18 years to file suit. The statute of limitations is two years for breach of oral contract (California Code of Civil Procedure § 339), four years for breach of written contract (Code Civ. Proc., § 337, subd. 1), three years for fraud (California Code of Civil Procedure § 338(d)) and four years for rescission (California Code of Civil Procedure § 337(c)). Thus, Defendants assert that Plaintiff's claims related to the origination of the Loan are time-barred. Plaintiff does not provide any counterargument to this in the opposition, but the court is unclear as to when Plaintiff became aware of the breach, which may impact when the statute of limitations applies. Nonetheless, the complaint should be dismissed on other grounds.

F. Litigation Privilege

Defendants argue that the claims against the law firm of Klinedinst, PC and Wright, Finlay, & Zak LLP are barred by litigation privilege. Cal. Civ. Code § 47(b) provides protection for conduct even if it "alleged to be fraudulent, perjurious, unethical, or even illegal. *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 920. "The litigation privilege is held to be absolute in nature." *Silberg v. Anderson*, (1990) 50 Cal.3d at 212.

Here, Plaintiffs claims arise from allegations that there was a "scheme" by law firm defendants in representing their clients. Defendants contend, and the court agrees, that these allegations (however implausible) cannot state any liability because of the litigation privilege.

To conclude, this court has already ruled on a related motion to dismiss on January 25, 2024 for another defendant in this adversary. As this motion to dismiss asserts similar arguments of claim and issue preclusion, privilege, and failure to state a claim, and Plaintiff provides the same opposition as to the previous motion to dismiss, the court adopts its prior tentative here. There does not appear to be any additional reason or argument brought by Plaintiff as to why that ruling should not apply here. Accordingly, the motion to dismiss is granted without leave to amend.

Appearance required.

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, February 1, 2024

Hearing Room

5B

11:00 AM

CONT... Young Yol Byeon

Chapter 13

Party Information

Debtor(s):

Young Yol Byeon

Represented By
Rex Tran

Defendant(s):

Bank of New York Mellon

Pro Se

BAYVIEW LOAN SERVICING,

Pro Se

MTC Financial, Inc

Represented By
John C Steele

Auction.Com, Inc.

Represented By
Meagan S Tom

McCalla Raymer Leibert Pierce,

Represented By
Dane W Exnowski

Wright, Finlay & Zak, LLP

Represented By
Jonathan C Cahill

Klinedinst, PC

Pro Se

Locke Lord LLP

Represented By
Meagan S Tom

NewRez LLC

Represented By
Jonathan C Cahill

Dane Exnowski

Represented By
Dane W Exnowski

Plaintiff(s):

MYONG Suk OH

Represented By
Yi Y Oh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se