



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 21, 2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 24-10003-MKN
)	Chapter 13
RUSSELL TODD LEFF,)	
)	Date: November 20, 2024
Debtor.)	Time: 2:30 p.m.
)	
)	

**ORDER ON DEBTOR'S OBJECTIONS TO PROOFS OF CLAIM
1-1 AND 4-1, AND DEBTOR'S MOTION TO QUASH¹**

On November 20, 2024, a hearing was held telephonically on three matters brought in pro se by Russell Todd Leff ("Debtor") in the above-captioned Chapter 13 proceeding. Those matters included the following: (1) Debtor's Objection to Proof of Claim 1-1; (2) Debtor's Objection to Proof of Claim 4-1; and (3) Debtor's Motion to Quash Response to Debtor's Objection to Proof of Claim 1-1 and 4-1 and Objection to Confirmation of Amended Chapter 13 Plan #2. The appearances of the Debtor as well as counsel for the responding parties were noted on the record. After conclusion of the hearing, the matters were taken under submission.²

BACKGROUND

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure. All references to "Evidence Rule" are to the Federal Rules of Evidence.

² At the conclusion of the hearing, the record was closed, and the parties were informed that no additional documents or materials could be filed in connection with the matters.

1 This is the Debtor's sixth bankruptcy case filed in this judicial district.³ On January 2,
2 2024, Debtor commenced this sixth bankruptcy case, in pro se, by filing a "skeleton" voluntary
3 Chapter 13 petition. (ECF No. 1). The proceeding is assigned to Kathleen A. Leavitt as the
4 Chapter 13 trustee to administer the case ("Trustee"). (ECF No. 14).

5 On January 16, 2024, a proof of claim⁴ in the secured amount of \$129,618.97 ("POC 1-
6 1") was filed by The Bank of New York Mellon f/k/a The Bank of New York as successor
7 Indenture Trustee to JPMorgan Chase Bank, National Association for CWHEQ Revolving Home
8 Equity Loan Trust, Series 2005-D ("BONY-CWHEQ").⁵

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10 ³ Chapter 7 case number 17-15143 ("First Bankruptcy") was filed on September 26,
11 2017, and dismissed on March 13, 2018, for the Debtor's failure to pay the required filing fee.
12 Chapter 7 case number 18-16288 ("Second Bankruptcy") was filed on October 19, 2018, and the
13 Debtor received a Chapter 7 discharge on January 29, 2019. Chapter 13 case number 20-10524
14 ("Third Bankruptcy") was filed on January 30, 2020, and was dismissed on October 23, 2020,
15 for failure to resolve the objections raised by the Chapter 13 trustee assigned to the case.
16 Chapter 13 case number 23-10047 ("Fourth Bankruptcy") was filed on January 6, 2023, and was
17 dismissed on September 19, 2023, pursuant to Section 1307(c). Chapter 13 case number 23-
18 14760 ("Fifth Bankruptcy") was filed in pro se on October 27, 2023, and dismissed on December
19 13, 2023, for failure to file the information required under Section 521(a). For all six of his
20 bankruptcy proceedings, Debtor discloses his residential address as 5004 Walbrook Lane, Las
21 Vegas, Nevada 89148 ("Residence").

22 ⁴ The Judicial Conference of the United States Courts approves official forms used in
23 bankruptcy proceedings. Official Form 410 is used to file a Proof of Claim. For claims secured
24 by a debtor's principal residence, Official Form 410-A entitled "Mortgage Proof of Claim
25 Attachment" must be filed with Official Form 410. The individual signing the claim attests that
26 the information contained in the official form, as well as the attachment, is true and correct.

27 ⁵ POC 1-1 is signed by Natalie E. Lea of Bonial & Associates, P.C., as authorized agent
28 of Specialized Loan Services. POC 1-1 was signed under penalty of perjury on January 16,
2024. Part 2, Paragraph 7 of POC 1-1 requires the creditor to state the amount of the claim and
to attach a statement itemizing interest, fees, expenses, or other charges. (A Mortgage Proof of
Claim Attachment is appended to POC 1-1. That attachment indicates that no payments have
been received on the subject loan since January 25, 2009.) Paragraph 8 requires the creditor to
attach redacted copies of any documents supporting the claim. (A Home Equity Credit Line
Agreement and Disclosure Statement" dated April 28, 2005, is appended to POC 1-1. The
document states that the limit of the line of credit is \$60,300.) Paragraph 9 requires the creditor
to state the basis for perfection of any lien securing the claim and to attach redacted copies of
documents that show evidence of perfection, such as a mortgage or other document that shows
the lien has been filed or perfected. (A Deed of Trust against the Residence dated April 28,
2005, and recorded on June 20, 2005, is appended to POC 1-1, along with an Assignment of

On February 13, 2024, Debtor filed his schedules of assets and liabilities (“Schedules”) along with his statement of financial affairs (“SOFA”). (ECF No. 19). Debtor signed the Schedules and SOFA under penalty of perjury. On property Schedule “A/B,” at Part 1, Item 1, Debtor lists the Residence as having a current value of \$500,000. In the same Schedule “A/B,” at Part 4, Items 33 and 34, Debtor attests that he has no “Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment” and no “Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims.”⁶ On secured creditor Schedule “D,” Debtor lists the Residence as having a current value of \$500,000, subject to a disputed first lien in favor of Shellpoint Mortgage securing a claim in the amount of \$840,000, and a disputed second lien in favor of Real Time Resolutions securing a claim in the amount of \$60,000. On his income Schedule “I,” Debtor discloses that he is not employed and has no monthly income other than \$1,500 from a source identified only as “CONTRIBUTE.” On his expense Schedule “J,” Debtor lists no home ownership or rental expenses other than \$52.75 for home maintenance, in addition to \$1,240 in other living expenses, resulting in net monthly income of \$207.25. In Part 2 of his SOFA, at Question 4, Debtor states that he had no income from employment or operating a business during the two previous calendar years. At Question 5, Debtor states during this year or the two previous calendar years that his non-employment income is described as: Contribution - \$1,500, Contribution - \$1,500, and Contribution - \$12,500.

On March 12, 2024, a proof of claim in the secured amount of \$869,334.25 (“POC 4-1”) was filed by The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the

Deed of Trust dated October 1, 2018 recorded on October 2, 2018.) Paragraph 9 also requires the creditor to state the amount of the secured claim and the amount necessary to cure any default as of the current bankruptcy petition date. (POC 1-1 attests that the secured amount of the claim is \$129,618.97 and amount in default is \$71,653.51.) Part 3 of POC 1-1 attests “that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received towards the debt.” All of the documents attached to POC 1-1 appear to be admissible into evidence as business records under Evidence Rule 803(6).

⁶ On April 15, 2024, Debtor filed, *inter alia*, an amended property Schedule “A/B.” In the amended Schedule, Debtor again attests that he has no assets that would be encompassed by Items 33 and 34.

1 Certificateholders of CWALT, Inc., Alternative Loan Trust 2005-38, Mortgage Pass-through
2 Certificates, Series 2005-38 (“BONYM-CWALT”).⁷

3 On April 15, 2024, Debtor filed in pro se a proposed Chapter 13 Plan #1 (“Plan #1”) that
4 was set for a confirmation hearing to be held on May 16, 2024. (ECF No. 30 and 31).

5 On April 22, 2024, an objection to confirmation of Plan #1 was filed by claimant BONY-
6 CWHEQ. (ECF No. 36).

7 On April 25, 2024, an objection to confirmation of Plan #1 was filed by claimant BONY-
8 CWALT. (ECF No. 39). (Hereafter, BONY-CWHEQ and BONY-CWALT are referred to
9 jointly in this Order as “Claimants.”)

10 On April 29, 2024, the Trustee filed an opposition to confirmation of Plan #1 along with
11 a request for dismissal of the Chapter 13 proceeding. (ECF No. 41).

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17 ⁷ POC 4-1 is signed by Gatlyn Lindbergh of Bonial & Associates, P.C., as authorized
18 agent of New Rez LLC d/b/a Shellpoint Mortgage Servicing. POC 4-1 was signed under penalty
19 of perjury on March 12, 2024. Part 2, Paragraph 7 of POC 4-1 requires the creditor to state the
20 amount of the claim and to attach a statement itemizing interest, fees, expenses, or other charges.
21 (A Mortgage Proof of Claim Attachment is appended to POC 4-1. That attachment indicates that
22 the last payment received on the subject loan occurred on December 29, 2008.) Paragraph 8
23 requires the creditor to attach redacted copies of any documents supporting the claim. (An
24 “Adjustable Rate Note” dated April 28, 2005, as well as an Allonge to Mortgage Note, is
25 appended to POC 4-1. The note indicates a loan in the original principal amount of \$482,400.)
26 Paragraph 9 requires the creditor to state the basis for perfection of any lien securing the claim
27 and to attach redacted copies of documents that show evidence of perfection, such as a mortgage
28 or other document that shows the lien has been filed or perfected. (A Deed of Trust against the
Residence dated April 28, 2005, and recorded on June 20, 2005, is appended to POC 4-1, along
with an Assignment of Deed of Trust dated April 25, 2011, recorded on April 27, 2011.)
Paragraph 9 also requires the creditor to state the amount of the secured claim and the amount
necessary to cure any default as of the current bankruptcy petition date. (POC 4-1 attests that the
secured amount of the claim is \$869,334.25 and amount in default is \$522,687.95.) Part 3 of
POC 4-1 attests “that when calculating the amount of the claim, the creditor gave the debtor
credit for any payments received towards the debt.” All of the documents attached to POC 4-1
appear to be admissible into evidence as business records under Evidence Rule 803(6).

On May 13, 2024, “Debtor’s Objection to Proof of Claim 1-1” (“POC 1-1 Objection”)⁸ and “Debtor’s Objection to Proof of Claim 4-1” (“POC 4-1 Objection”)⁹ were filed (together “Claim Objections”). (ECF Nos. 42 and 43).

On May 13, 2024, Debtor filed a response to the Trustee’s opposition to plan confirmation. (ECF No. 44).

On May 16, 2024, the hearing on confirmation of proposed Plan #1 was continued to June 5, 2024. (ECF Nos. 46, 47, and 48).

On June 3, 2024, Debtor filed in pro se a proposed Amended Chapter 13 Plan #2 (“Plan #2”). (ECF No. 49).

⁸ In the POC 1-1 Objection, Debtor asserted that the claim is not perfected, that the claim is time-barred, that the creditor is not entitled to enforce the promissory note, that the creditor has not disclosed the amount paid to acquire the underlying promissory note, that the claim is subject to setoff, and that the claim is a false claim. Attached to the Objection is an “Affidavit” to which there is a separate notary certificate. The Affidavit asserts the information in the Objection “to be accurate, truthful, and valid to the best of my ability.” It also asserts that the Debtor is “prepared to validate all claims and will provide evidence to substantiate all fraud allegations contained in this opposition to proofs of claim by the opposition.” The Affidavit contains no representation that the affiant has personal knowledge of any of the factual statements alleged in the POC 1-1 Objection. Also attached to the Objection is a copy of the Assignment of Deed of Trust that was included with POC 1-1, as well as a copy of a receipt dated 05/01/2024 from Clark County for a records search regarding the Residence.

⁹ In the POC 4-1 Objection, Debtor asserted that the claim is not perfected, that the claim is time-barred, that the creditor is not entitled to enforce the promissory note, that the creditor has not disclosed the amount paid to acquire the underlying promissory note, that the claim is subject to setoff, and that the claim is a false claim. Attached to the Objection is an “Affidavit” to which there is a separate notary certificate. The Affidavit asserts the information in the POC 4-1 Objection “to be accurate, truthful, and valid to the best of my ability.” It also asserts that the Debtor is “prepared to validate all claims and will provide evidence to substantiate all fraud allegations contained in this opposition to proofs of claim by the opposition.” The Affidavit contains no representation that the affiant has personal knowledge of any of the factual statements alleged in the POC 4-1 Objection. Also attached to the Objection are copies of three documents marked as exhibits A, B, and C: a copy of an Assignment of Deed of Trust dated 04/25/2011, recorded on April 27, 2011; copies of correspondence between the Debtor and Shellpoint as loan servicer; and a copy of the Deed of Trust dated April 28, 2005 recorded on June 20, 2005.

1 On June 3, 2024, Debtor filed a notice scheduling the Claim Objections to be heard on
2 July 18, 2024. (ECF No. 51).

3 On June 4, 2024, Debtor filed separate “Verifications” in support of the assertions
4 contained in his Claim Objections. (ECF Nos. 55 and 56). Other than stating that he knows the
5 contents of the Claim Objections, the Verifications contain no representation that the Debtor has
6 personal knowledge of any of the factual statements alleged in the POC 1-1 Objection nor the
7 POC 4-1 Objection.

8 On June 13, 2024, in the current bankruptcy proceeding, the court entered an Order
9 Regarding Confirmation of Chapter 13 Plan #1 and Trustee’s Motion to Dismiss (“June 13
10 Order”).¹⁰ (ECF No. 58). In that order, the court vacated any further proceedings on Plan #1
11 because the Debtor’s proposal of Plan #2 rendered Plan #1 moot. See June 13 Order at 4:2-4.

12 On June 27, 2024, “Debtor’s Motion for Reconsideration and Request to Implement
13 Automatic Stay Relief & Debtor’s Affidavit in Support of” was filed with the court
14 (“Reconsideration Motion”) that was noticed to be heard on July 31, 2024. (ECF Nos. 61 and
15 62).

16 On July 3, 2024, responses to the Claim Objections were filed by the law firm of Tiffany
17 & Bosco, P.A. (ECF Nos. 64 and 65).

18 On July 18, 2024, the hearings on the Claim Objections were continued to August 14,
19 2024. (ECF Nos. 67 and 68).

20 On July 31, 2024, the Reconsideration Motion was heard and taken under advisement,
21 while the hearings on the Claim Objections were continued from August 14, 2024, to August 28,
22 2024. (ECF Nos. 70 and 71).

23 On August 6, 2024, the court entered an order denying the Reconsideration Motion
24 (“August 6 Order”).¹¹ (ECF No. 72). The June 13 Order and August 6 Order describe the
25 background of this Chapter 13 proceeding and are incorporated herein by reference.

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27 ¹⁰ That order denied confirmation of the Debtor’s proposed Chapter 13 plan and denied
28 the motion to dismiss brought by the Trustee.

1 On August 20, 2024, “Debtor’s Motion to Quash Response to Debtor’s Objection to
2 Proof of Claim 1-1 and 4-1 and Objection to Confirmation of Amended Chapter 13 Plan #2” was
3 filed (“Motion to Quash”) and was noticed to be heard on October 24, 2024. (ECF Nos. 78 and
4 79). By that motion, Debtor seeks to quash the responses filed by the Tiffany & Bosco law firm
5 to the Claim Objections, as well as its objections to confirmation of the Debtor’s proposed
6 amended Plan #2.

7 On August 28, 2024, the hearings on the Claim Objections were continued to October 16,
8 2024. (ECF Nos. 81 and 82).

9 On September 18, 2024, oppositions to the Motion to Quash were filed by the Claimants,
10 along with supporting declarations of their common counsel. (ECF Nos. 85, 86, 87, and 88).¹²

11 On October 9 and 10, 2024, Debtor filed amendments to both Claim Objections.¹³ (ECF
12 Nos. 89, 90, and 91).

13 On October 16, 2024, the hearings on the Claim Objections and Motion to Quash were
14 continued to November 20, 2024, to allow the Claimants to respond to the amendments filed by
15 the Debtor. (ECF Nos. 92-94).

17 ¹¹ That order denied the Debtor’s request under Section 362(c)(4) to impose the
18 automatic stay, which previously had elapsed pursuant to Section 362(c)(3)(A).

19 ¹² Attached to the oppositions are four exhibits: (1) a copy of Clark County Recorder
20 Search Results from June 18, 2004, through October 3, 2023; (2) a copy of a certificate for
21 admission to practice dated November 3, 2003, issued by the U.S. District Court for the District
22 of Nevada for Regina A. Habermas; (3) a copy of a permanent bar card issued by the State Bar of
23 Nevada reflecting the bar number for Regina A. Habermas; and (4) a membership certification
24 from the State Bar of Nevada reflecting the 2024 active membership status of Regina A.
25 Habermas. The oppositions are accompanied by a common declaration of Regina A. Habermas
26 (“Habermas Declaration”), counsel for the Claimants.

27 ¹³ Debtor filed an amendment to the POC 1-1 Objection (“Amended POC 1-1
28 Objection”) and two amendments to the POC 4-1 Objection (“Amended POC 4-1 Objection”).
In his amendment regarding POC 1-1, he asserts all or some of the arguments made in the POC
1-1 Objection and alleges that the underlying debt has been satisfied apparently as a result of a
setoff. In his amendments regarding POC 4-1, Debtor asserts all or some of the arguments made
in the POC 4-1 Objection and alleges that the debt has been satisfied apparently as a result of a
setoff.

On November 13, 2024, supplemental responses to the Claim Objection amendments were filed by the Claimants. (ECF Nos. 95 and 96).¹⁴

On November 20, 2024, “Debtor’s Statement for November 20, 2024, Hearing” was filed, to which is attached what appears to be an affidavit referencing the “Debtor’s Motion for Continuance.” Because there is no such motion pending before the court, the document is construed to be the Debtor’s statement in connection with the Claim Objections and Motion to Quash.¹⁵ (ECF No. 97).

DISCUSSION

The court has considered the written and oral arguments presented, as well as the materials submitted by the parties. The court also has considered the documents appearing in the record of this proceeding. The court addresses the Motion to Quash before reaching the POC 1-1 Objection and POC 4-1 Objection.

I. The Motion to Quash.

Debtor asserts that counsel for the Claimants has violated Bankruptcy Rule 9010 by failing to make a proper appearance in this Sixth Bankruptcy proceeding. He also maintains that the law firm representing the Claimants has an impermissible conflict of interest in representing both Claimants in the same proceeding. Debtor’s position, however, is belied by the record of the proceedings in this case as well as any applicable legal standards.

Bankruptcy Rule 9010(a) authorizes a creditor to appear in a case on its own behalf or through an attorney authorized to practice law and to perform any other act not constituting the practice of law through an authorized agent.¹⁶ See FED.R.BANKR.P. 9010(a)(1 and 2). Bankruptcy Rule 9010(b) requires attorneys to file a notice of appearance unless the attorney’s

¹⁴ Claimants filed a supplemental response to the Debtor’s Amended POC-1 Objection as well as to the Debtor’s two Amended POC 4-1 Objections (hereafter, “Supp. Response POC 1-1” and “Supp. Response POC 4-1,” respectively).

¹⁵ At the telephonic hearing, Debtor requested and was granted permission to orally read the document into the record.

¹⁶ POC 1-1 and POC 4-1, see notes 5 and 7, supra, were signed by authorized agents of the Claimants who were not engaged in the practice of law.

appearance is already noted in the record. See FED.R.BANKR.P. 9010(b). The Habermas Declaration is based on personal knowledge and establishes that counsel is authorized to practice law. Counsel has appeared in this Chapter 13 proceeding on behalf of the Claimants on numerous occasions as noted in the record of proceedings maintained by the court. Counsel has properly appeared in this case.

Creditors and other non-debtor parties in a bankruptcy proceeding generally are not required to seek approval of their legal representatives. Unlike counsel employed on behalf of and compensated from assets of the bankruptcy estate, see 11 U.S.C. § 327(a), and who must be “disinterested” within the meaning of Section 101(14), creditors in a bankruptcy proceeding generally are entitled to counsel of their choosing. In this instance, Claimants BONY-CWHEQ and BONYM-CWALT are represented in this Chapter 13 proceeding by the same law firm. Even if there is a conflict between the Claimants, they are free to waive it.

Debtor does not suggest that he has or ever has had an attorney-client or other relationship with Claimants’ counsel that would raise a conflict of interest. Debtor cannot seek to disqualify Claimants’ counsel simply because counsel represents his adversaries. Debtor cites no applicable rule of professional conduct that would support the relief he seeks.

Based on the foregoing, the Motion to Quash counsel’s responses to the POC 1-1 Objection, the POC 4-1 Objection, and any opposition to Plan #2 will be denied.

II. The Objections to POC 1-1 and POC 4-1.

POC 1-1¹⁷ and POC 4-1¹⁸ are signed under penalty of perjury and constitute prima facie evidence of the validity and amount the asserted claims. See FED.R.BANKR.P. 3001(f). Under

¹⁷ As mentioned in note 2, supra, Debtor commenced five prior bankruptcy proceedings while living at the same Residence. The Mortgage Proof of Claim Attachment appended to POC 1-1 includes a column for the date on which a loan payment is due and the date the required payment is received. It also includes a column for the past due balances of principal and interest as of particular dates. For POC 1-1, the Mortgage Proof of Claim Attachment reflects that from 01/25/2009, no payments were received on the note. The attachment further reflects the past due balances on POC 1-1 apparently existing at the time the Debtor filed his five prior bankruptcy petitions as follows: First Bankruptcy - \$40,572.56 as of 10/25/2017; Second Bankruptcy - \$45,165.68 as of 10/25/2018; Third Bankruptcy - \$51,061.44 as of 02/25/2020; Fourth Bankruptcy - \$64,970.38 as of 01/25/2023; Fifth Bankruptcy - \$71,034.24 as of 11/25/2023.

Section 502(a), a claim evidenced by a proof of claim is deemed allowed unless a party in interest objects. To overcome the prima facie validity afforded to a properly filed POC, an objecting party must submit evidence to overcome its presumption of validity or amount. See Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell), 223 F.3d 1035, 1039 (9th Cir. 2000); Enpark Landscape, LLC v. AKF, Inc. (In re Enpark Landscape, LLC), 2024 WL 4328581, at *3 (B.A.P. 9th Cir. Sep. 27, 2024). An objecting party must overcome the presumption of validity by presenting sufficient evidence of probative force equal to the allegations of the proof of claim. See Burke v. Reno-Sparks Indian Colony (In re Affordable Patios & Sunrooms), 2022 WL 1115413, at *3 (B.A.P. 9th Cir. Apr. 22, 2022), aff'd, 2024 WL 1364187 (9th Cir. Apr. 1, 2024); Reger v. Essex Bank (In re Landes), 626 B.R. 531, 545 (Bankr. E.D. Cal.2021).

Section 502(b) sets forth nine grounds for which an objection may be sustained to disallow a claim entirely, the most common of which is that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...” 11 U.S.C. §502(b)(1). All of these grounds for objection, of course, must be supported by evidence of equal probative force. While the pleadings of unrepresented parties are afforded a liberal construction, there is no relief from compliance with basic rules of evidence. See In re Greene, 2013 WL 1724924, at *17 (Bankr. E.D. Va. Apr. 22, 2013) (“Although the pleadings of pro se litigants are construed liberally, there is no lower standard when it comes to rules of evidence and procedure.”); see, e.g., In re Wright, 223 B.R. 886, 893 (Bankr. E.D. Pa. 1998) (pro se debtors’ objections to proofs of claim subject to ordinary evidence rules). More important, arguments are not evidence. See In re Marsh, 2012 WL 4482581, at *4 (Bankr. Mont. Sep. 26,

¹⁸ The Mortgage Proof of Claim Attachment appended to POC 4-1 includes a column for the date on which a loan payment is due and the date the required payment is received. It also includes a column for the past due balances of principal and interest as of particular dates. For POC 4-1, the Mortgage Proof of Claim Attachment reflects that the last payment received was on 12/29/2008, but the payment was reversed on 01/08/2009; no other payments were received thereafter. The attachment further reflects past due balances on POC 4-1 apparently existing at the time the Debtor filed his five prior bankruptcy petitions as follows: First Bankruptcy - \$241,550.72 as of 10/01/2017; Second Bankruptcy - \$274,042.34 as of 11/01/2018; Third Bankruptcy - \$314,489.21 as of 02/01/2020; Fourth Bankruptcy - \$401,966.70 as of 01/06/2023; Fifth Bankruptcy - \$426,985.16 as of 11/01/2023.

2012), citing, e.g., Wood v. Stratos Prod. Dev., LLC (In re Ahaza Sys.), 482 F.3d 1118, 1122 n.1 (9th Cir. 2007). Factual statements made by individuals without personal knowledge, see FED.R.EVID. 602, or that are based on hearsay, see FED. R. EVID. 801, are inadmissible. See FED.R.EVID. 601; FED.R.EVID. 802. For similar reasons, the personal opinions of lay witnesses generally are not admissible. See FED.R.EVID. 701.

As previously discussed at note 8, supra, an Affidavit is attached to the POC 1-1 Objection in which the Debtor attests that the information in the objection is “accurate, truthful, and valid to the best of my ability” but makes no attestation that he has personal knowledge of any factual statements made in the objection. Similarly, an Affidavit is attached to the POC 4-1 Objection attesting the same but also includes no attestation of personal knowledge. See discussion at note 9, supra. As previously discussed at 6, supra, Debtor also filed separate Verifications in support of both of his claim objections, but neither Verification contains any representation that the Debtor has personal knowledge of any factual allegations on which the objections are based. According to the Mortgage Proof of Claim Attachment appended to POC 1-1, Debtor’s last payment on the underlying note was made on or about January 25, 2009. According to the Mortgage Proof of Claim Attachment appended to POC 4-1, Debtor’s last payment on the underlying note was made on or about December 29, 2008. In his objection to each claim, Debtor offers no evidence that he made payments after those dates or that any payments made before those dates were not accurately reflected in the attachments. Such information would be within the Debtor’s personal knowledge or access and might be of sufficient probative force to overcome the prima facie validity and amount reflected in POC 1-1 and POC 4-1. But Debtor has offered no such evidence in support of his claim objections.

Instead, the objections are replete with factual allegations, expressions of opinion, and legal arguments, none of which are admissible through the Verifications offered by the Debtor. The asserted “Factual Background” contained in his objections, see Amended POC 1-1 Objection at 2:8 to 6:15 and Amended POC 4-1 Objection at 2:8 to 6:19, include multiple statements of alleged information obtained from unidentified sources, in addition to multiple

1 accusations of forgery, fabrication of documents, fraud, and malfeasance.¹⁹ The asserted
 2 “Arguments” contained in the Debtor’s objections, see Amended POC 1-1 Objection at 6:17 to
 3 11:21 and Amended POC 4-1 Objection at 6:20 to 12:17, simply are not evidence.²⁰

4 As previously discussed at notes 5, 7, 17 and 18, supra, the Mortgage Proof of Claim
 5 Attachments reflect the claimants’ record of receipt of payments from the Debtor for the
 6 obligations encompassed by POC 1-1 and POC 4-1. Debtor does not attest that the debts secured
 7 by the Residence were never incurred. Debtor does not attest or even assert that he made any
 8 payments on the debt underlying POC 1-1 after January 25, 2009. Debtor does not attest or even
 9 assert that he made any payments on the debt underlying POC 4-1 after December 29, 2008.
 10 Debtor does not offer any evidence that he made any payments on the debts that were not
 11 reflected in the Mortgage Proof of Claim Attachments.

12 Debtor’s lack of evidence is infused in his argument that the obligations underlying POC
 13 1-1 and POC 4-1 were somehow “set-off” by his transmittal to the U.S. Treasury Department of
 14 a Form 1040-V Payment Voucher for 2022, an FS Form 1832 Special Form of Assignment for
 15 U.S. Registered Definitive Securities²¹ dated December 20, 2023, and a draft signed by the
 16

17 ¹⁹ As discussed at 3 & n.6, supra, Debtor attests in his current property Schedule “A/B”
 18 that he has no claims against third parties or unliquidated claims of every nature, including
 19 counterclaims or rights to set off claims. Given his own testimony that he has no unliquidated
 20 claims of every nature, it is unclear whether the doctrine of judicial estoppel would prevent
 21 Debtor from asserting that POC 1-1 and POC 4-1 are unenforceable due to forgery, fabrication,
 22 fraud, or malfeasance. Compare Ah Quin v. County of Kauai Dept. of Transp., 733 F.3d 267,
 23 271 (9th Cir. 2013). The property Schedules “A/B” filed in his First Bankruptcy [ECF No. 14],
 Second Bankruptcy [ECF Nos. 1 and 17], Third Bankruptcy [ECF No. 1], and Fourth
 Bankruptcy [ECF No. 1], also did not list any such claims. Debtor never filed any property
 Schedules in the Fifth Bankruptcy, before it was dismissed.

24 ²⁰ Debtor’s references to passages from religious scripture, see Amended POC 1-1
 25 Objection at 7:13 to 8:7 and Amended POC 4-1 Objection at 8:1-18, also do not and would not
 26 elevate his arguments to become evidence.

27 ²¹ The instructions for use of FS Form 1832, provide that “It is appropriately used only at
 the discretion of the Bureau of the Fiscal Service in one of the following circumstances:

28 * To correct a defective assignment already made on the back of a
 registered definitive security;

Debtor payable to the United States Treasury in the amount of \$867,663 dated December 18, 2023.²² See Amended POC 1-1 Objection (ECF No. 89) at pages 44-46 of 90; Amended POC 4-1 Objection (ECF No. 90) at pages 47-49 of 93; Amended POC 4-1 Objection (ECF No. 91) at pages 49-51 of 98. Debtor argues that those materials were received by the Treasury Department no later than December 23, 2023. See Amended POC 1-1 Objection (ECF No. 89) at pages 43 of 90; Amended POC 4-1 Objection (ECF No. 90) at pages 46 of 93; Amended POC 4-1 Objection (ECF No. 91) at pages 48 of 98. Because he has proof of delivery to the Treasury Department, Debtor argues that “The presentment [was]...processed, and US Treasury Tax Credits were sent to Shellpoint’s Master File wherein Shellpoint was to accept and set off/discharge said debts OR, if refused, the credits are to be returned to the Debtor. To date, the Debtor has not received the unapplied credits, therefore, they were accepted and to be applied to said loans.” See Amended POC 1-1 Objection (ECF No. 89) at page 6:6-11 of 90; Amended POC 4-1 Objection (ECF No. 90) at page 6:10-15 of 93; Amended POC 4-1 Objection (ECF No. 91) at page 6:26 to 7:3 of 98.

* To accommodate owners required to sign a large number of registered definitive securities; or

* To obtain the assignment of two or more geographically separated assignors.”

See Supp. Response POC 1-1 at 7:9-23; Supp. Response POC 4-1 at 7:15 to 8:4. (Emphasis added).

²² It is unclear how the Debtor could have assigned any designated securities on December 20, 2023. As previously discussed in note 3, supra, Debtor’s Fourth Bankruptcy was commenced through bankruptcy counsel on January 6, 2023, and dismissed on September 19, 2023. Debtor filed his schedules of assets and liabilities that were signed under penalty of perjury. His personal property Schedule “A/B” listed no securities, tax refunds, rights to setoff claims, or any financial assets not already listed. Debtor listed no business-related property of any kind. On his income Schedule “I,” the Debtor identified himself as unemployed with no income other than contributions from an unidentified source. Debtor’s Fifth Bankruptcy was filed in pro se on October 27, 2023, and dismissed on December 13, 2023. Debtor never filed any schedules listing any assets or liabilities. Debtor’s Sixth and current bankruptcy was commenced in pro se on January 2, 2024. In Part 3 of his current SOFA, Debtor attested that he has primarily consumer debts, but that during the 90 days preceding the current bankruptcy filing he made no payments to any creditor exceeding \$600. In Part 7 of his current SOFA, Debtor also attested that within two years prior to the bankruptcy filing, he did not transfer any property to anyone other than property transferred in the ordinary course of business or financial affairs.

Debtor has presented no evidence that the Bureau of Fiscal Service ever used its discretion, see note 21, supra, to process the attempted assignment in the manner or for the purpose alleged by the Debtor.

In response, Claimants raise a variety of factual and legal arguments, see Supp. Response POC 1-1 at 5:2 to 10:2 and Supp. Response POC 4-1 at 5:5 to 9:22, including that the Debtor is not the holder of any designated securities that he would be able to assign to achieve a setoff of his obligations to the claimants. See Supp. Response POC 1-1 at 7:6-26 and Supp. Response POC 4-1 at 7:12 to 8:6. It is unnecessary to reach that argument, however, inasmuch as the Debtor has provided no evidence that his attempt to assign any designated securities was successful.

Based on the foregoing, the court concludes that the Debtor has failed his burden of providing evidence of probative force equal to the allegations of POC 1-1 and POC 4-1.²³

IT IS THEREFORE ORDERED that Debtor's Motion to Quash Response to Debtor's Objection to Proof of Claim 1-1 and 4-1 and Objection to Confirmation of Amended Chapter 13 Plan #2, Docket No. 78, be, and the same hereby is, **DENIED**.

IT IS FURTHER ORDERED that Debtor's Objection to Proof of Claim 1-1, Docket Nos. 43 and 89, be, and the same hereby is, **OVERRULED**.

IT IS FURTHER ORDERED that Debtor's Objection to Proof of Claim 4-1, Docket Nos. 42, 90 and 91, be, and the same hereby is, **OVERRULED**.

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²³ During the Fourth Bankruptcy, Debtor, through bankruptcy counsel, objected to the proof of claim filed by creditor BONYM-CWALT in the amount of \$827,787.31. On September 19, 2023, an order was entered overruling the objection because the Debtor had offered no evidence of equal probative force to overcome the prima facie validity of the claim. See Order Regarding Objection to Proof of Claim 4-1, Case No. 23-10047-mkn at ECF No. 55. On the same date, a separate order was entered in the Fourth Bankruptcy denying confirmation of the Debtor's proposed Chapter 13 plan and dismissing the Chapter 13 proceeding. See Order Regarding Chapter 13 Plan #1 Confirmation Hearing, Case No. 23-10047-mkn at ECF No. 56. Thus, when pursuing his claim objections through bankruptcy counsel or in pro se, Debtor has been unable to offer evidence on personal knowledge sufficient to overcome the instant claims.

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