

I

**UNDISPUTED FACTS AND EVIDENTIARY SUPPORT
(FIRST CAUSE OF ACTION – DECLARATORY RELIEF)**

<u>Undisputed Facts</u>	<u>Evidence</u>
<p>1. Defendant admits that this Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334, 28 U.S.C. §157, 11 U.S.C. 553(a), Rule 7001(a) and (g) of the Federal Rules of Bankruptcy Procedure and Local Rules and Orders of the United States District Court for the Central District of California governing the reference and conduct of proceedings arising under or related to cases under Title 11 of the United States Code.</p>	<p>1. Complaint, ¶ 1[*]; Answer of Massaji, ¶ 1, Exhibit A to Motion for Summary Judgment.</p>
<p>2. Defendant admits that this adversary proceeding is brought pursuant to Rule 7001 (a) and (g) of the Federal Rules of Bankruptcy Procedure. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K) and (O) and the Plaintiff otherwise consents to this Court entering final orders with respect to any matter concerning this adversary proceeding.</p>	<p>2. Complaint, ¶ 2; Answer of Massaji, ¶ 2, Exhibit A to Motion for Summary Judgment.</p>

* All references to "Complaint, Paragraph ___" refer to the Complaint filed by Plaintiff, a true and correct copy of which is filed as Exhibit A to Plaintiff's Request for Judicial Notice.

1 3. Defendant admits the venue is proper in
2 this judicial district pursuant to 28 U.S.C. §
3 1409(a).

4
5 4. Defendant admits that he filed a
6 Chapter 7 Petition on June 25, 2015, Case
7 No. 2:15-bk-20200-RK. Defendant, Brad
8 Krasnoff, was thereafter appointed as the
9 Chapter 7 Trustee in this case and serves
10 in that capacity. Defendant Krasnoff was
11 sued in that capacity but has been
12 dismissed by Stipulation.

13
14 5. Rofeh is the uncle of the Defendant.
15 As described herein, they each hold
16 judgments against the other that were final
17 judgments for liquidated amounts prior to
18 the commencement of the Debtor's case.

19
20 6. On February 17, 2015, the California
21 Court of Appeals, in Case No. B250315,
22 affirmed the lower court's Judgment
23 (entered on March 9, 2013 in Los Angeles
24 County Superior Court Case No.
25 BC405445 ("Case 2")), entering a
26 judgment in favor of Rofeh against Debtor.
27 The Judgment entered in Case 2 is a final
28 judgment for a liquidated amount.

3. Complaint, ¶ 3; Answer of Massaji, ¶ 3,
Exhibit A to Motion for Summary Judgment.

4. Complaint, ¶ 4; Answer of Massaji, ¶ 4,
Exhibit A to Motion for Summary Judgment;
Declaration of Carolyn A. Dye, ¶ 6.

5. Complaint, ¶ 5; Answer of Massaji, ¶ 5,
Exhibit A to Motion for Summary Judgment.

6. Complaint, ¶ 6; Answer of Massaji, ¶ 6,
Exhibit A to Motion for Summary Judgment;
Judgment, Case 2, Exhibit B to Motion for
Summary Judgment.

1 7. Defendant admits that he holds a
2 Judgment against Rofeh arising from an
3 earlier case, Los Angeles County Superior
4 Court Case No. BS107044 ("Case 1")
5 entered on May 16, 2013. The judgment
6 obtained in Case 1 is a final judgment for a
7 liquidated amount.

8
9 8. Defendant admits that on his Schedule
10 B he listed the Judgment he held against
11 Rofeh (obtained in Case 1) as an asset
12 valued at \$1,900,000. Debtor listed Rofeh
13 and his wife (erroneously named "Mary
14 Rofeh, Esq.") as creditors stating he owed
15 each of them \$2,000,000 arising from the
16 Judgment entered in Case 2. (Although
17 Rohef and his wife are each listed
18 individually as creditors, there is only one
19 debt for the Judgment amount from Case
20 2.)

21
22 9. The judgment in favor of Rofeh having
23 been entered than 90 days prior to the
24 commencement of the Debtor's case was a
25 final unavoidable judgment.

7. Complaint, ¶ 7; Answer of Massaji, ¶ 7,
Exhibit A to Motion for Summary Judgment;
Judgment, Case 1, Exhibit C to Motion for
Summary Judgment.

8. Complaint, ¶ 8; Answer of Massaji, ¶ 8,
Exhibit A to Motion for Summary Judgment;
Schedule B to Petition, Exhibit D to Motion
for Summary Judgment.

9. Declaration of Carolyn A. Dye, ¶ 5;
Judgment, Case 2, Exhibit B to Motion for
Summary Judgment; see *also*, Complaint, ¶
9 (the "see also" references to the
Complaint herein are for reference purposes
only since it is not evidence absent Debtor's
admissions).

1 10. The amounts owed under the two
2 judgments are mutual obligations between
3 Rofeh and Debtor, arising between them in
4 the same right and in the same capacity.

5
6
7 11. As of the Petition date in this case,
8 Rofeh owed Debtor \$1,694,786.78, and
9 Debtor owed Rofeh \$2,197,537.60. Thus,
10 the amount owed by Debtor exceeds the
11 amount owed to Rofeh.

12
13 12. The judgment against Rofeh is no
14 longer property of the estate.

15
16
17
18
19
20 13. Once the setoff is allowed, there will
21 be no amount collectible by the Defendant
22 from Rofeh.

23
24
25 14. Rofeh was permitted to file this
26 Complaint as the Court has granted
27 Rofeh's Motion for Relief from the
28 Automatic Stay, permitting Rofeh the right

10. Amended Statement of Undisputed
Facts herein, ¶¶ 6-9; Declaration of Carolyn
A. Dye, ¶ 6, Judgments, Case 2 and Case
1, Exhibits B and C to Motion for Summary
Judgment; see *also*, Complaint, ¶ 10.

11. Amended Statement of Undisputed
Facts herein, ¶¶ 6-10; Declaration of Mark
Rofeh, ¶ 6; Exhibit E to Motion for Summary
Judgment; see *also*, Complaint, ¶ 11.

12. Amended Statement of Undisputed
Facts herein, ¶¶ 6-10; Declaration of
Carolyn A. Dye, ¶ 6; Notice of
Abandonment; Exhibit F to Motion for
Summary Judgment; see *also*, Complaint, ¶
12.

13. Amended Statement of Undisputed
Facts herein, ¶¶ 6-10; Complaint, ¶ 13;
Answer of Massaji, ¶ 13; Declaration of
Carolyn A. Dye, ¶¶ 1-6.

14. Declaration of Carolyn A. Dye, ¶ 7; Stay
Relief Order, Exhibit G to Motion for
Summary Judgment; see *also*, Complaint, ¶
14.

1 to seek setoff under 11 U.S.C. Section
2 553(a).

3
4 **II**

5 **CONCLUSIONS OF LAW**

6 **NO GENUINE ISSUE OF FINAL MATERIAL FACT**

7 **(FIRST CAUSE OF ACTION – DECLARATORY RELIEF)**

8 Plaintiff incorporates by this reference as of set forth herein the Undisputed Facts
9 and Supporting Evidentiary Support set forth in I above, paragraphs 1-14.

10 Establishing the absence of a genuine issue of material fact regarding Defendant's
11 liability is shown by the following undisputed evidence:

12 (i) there is no genuine issue of material fact that each of Plaintiff and Defendant
13 hold judgments against each other;

14 (ii) each judgment was a "final" judgment entered prior to 90 days before the
15 Debtor's bankruptcy case was filed; and

16 (iii) Movant is entitled to a Declaratory Judgment that he is entitled to setoff.

17 **III**

18 **PLAINTIFF IS ENTITLED TO SETOFF**

19 **(SECOND CAUSE OF ACTION - SETOFF)**

20 Plaintiff incorporates by this reference as if set forth in full herein the Undisputed
21 Facts and Supporting Evidentiary Support set forth in I above, paragraphs 1-14.

22 The cause of action for setoff is established, as follows:

23 (i) the judgments are subject to setoff pursuant to 11 U.S.C. Section 553 in
24 that:

25 (a) Rofeh, the creditor, holds a claim that arose before the
26 commencement of the case;

27 (b) Rofeh, the creditor, owes a debt that also arose before the
28 commencement of the case;

- 1 (c) the claim and debt are mutual; and
2 (d) the claim and debt are each valid and enforceable.
3 (ii) the debt owed to Rofeh exceeds the amount owed to Defendant by
4 Rofeh; and
5 (iii) Rofeh is entitled to a judgment of setoff and a judgment that he owes
6 nothing to Debtor.

7
8 LAW OFFICE OF CAROLYN A. DYE

9
10 Dated: February 8, 2016

By: /s/ Carolyn A. Dye
Carolyn A. Dye, Attorneys for
Plaintiff, Mark Rofeh

11
12
13 **ORDER**

14 Having considered and revised Plaintiff's Amended Statement of Undisputed Facts
15 and Conclusions of Law recited above and having conducted an independent review of the
16 evidence in the record before the court on Plaintiff's Motion for Summary Judgment, the
17 court adopts Plaintiff's Amended Statement of Undisputed Facts and Conclusions of Law
18 as its Statement of Uncontroverted Facts and Conclusions of Law within the meaning of
19 Local Bankruptcy Rule 7056-1(b). In doing so, the court has considered and rejects
20 Defendant's Statement of Disputed Facts, and Conclusions of Law in Support of
21 Opposition to Motion for Summary Judgment. (The court disregards Defendant's Amended
22 Statement of Disputed Facts, lodged on March 18, 2016, as untimely in violation of the
23 court's scheduling order filed on February 1, 2016, and would otherwise consider the
24 Amended Statement of Disputed Facts as lacking of merit for the same reasons as the
25 initial Statement of Disputed Facts, and would moreover consider the objections of
26 Defendant to Plaintiff's Statement of Undisputed Facts and Conclusions of Law as lacking
27 foundation or otherwise lacking merit.)
28

1 Defendant's Statement of Disputed Facts relying upon the Declaration of David
2 Massaji asserts that the two judgments in Cases 1 and 2 "derive from two separate and
3 distinct lawsuits and facts," and thus, Defendant in his Conclusions of Law argues that
4 setoff is inappropriate here because mutuality of claims is lacking, and therefore,
5 Defendant urges that the Motion should be denied. The court disagrees with Defendant.
6 The so-called Disputed Facts, even if true, are immaterial because they purport to show
7 that the debts are not mutual because they do not arise out of the same transaction, and
8 the case law is contrary to this proposition because under 11 U.S.C. § 553, "[t]he mutual
9 debt need not, however, have arisen out of the same transaction in order for setoff to be
10 available under the statute." *In re Davidovich*, 901 F.2d 1533, 1537 (10th Cir. 1990)
11 (citation omitted); *accord*, 3 March, Ahart and Shapiro, *California Practice Guide:*
12 *Bankruptcy*, ¶ 17:212 at 17-28 (2015); *see also*, 5 Resnick and Sommer, *Collier on*
13 *Bankruptcy*, ¶ 553.03[3][a] at 553-27 – 533-28 (16th ed. 2015) (citations omitted). The right
14 of offset under 11 U.S.C. § 553 "applies only to *mutual* claims arising prepetition." 3
15 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 17:210 at 17-27
16 (emphasis in original), *citing*, 11 U.S.C. § 553(a); *In re Wade Cook Financial Corp.*, 375
17 B.R. 580, 594 (9th Cir. BAP 2007); and *In re Davidovich*, 901 F.2d at 1538. "Mutuality
18 means that the debts involved must be between the *same* parties standing in the *same*
19 *capacity*, and that each debt must be *valid and enforceable*." 3 March, Ahart and Shapiro,
20 *California Practice Guide: Bankruptcy*, ¶ 17:211 at 17-28 (emphasis in original), *citing*, 11
21 U.S.C. § 553(a); *In re Wade Cook Financial Corp.*, 375 B.R. 580, 594 (9th Cir. BAP 2007);
22 and *In re Davidovich*, 901 F.2d at 1537; *Matter of O.P.M. Leasing Services, Inc.*, 68 B.R.
23 979, 986 (Bankr. S.D.N.Y. 1987); and *In re Commercial Reprographics, Inc.*, 95 B.R. 174,
24 179 (Bankr. E.D. Cal. 1988); *see also*, *England v. Industrial Commission of Utah (In re*
25 *Visiting Home Services, Inc.)*, 643 F.2d 1356, 1360 (9th Cir. 1981)(interpreting case under
26 the Bankruptcy Act of 1898)("Mutuality requires that the debts and credits must be in the
27 same right, between the same individual, and in the same capacities."), *citing*, former 11
28 U.S.C. § 108 and *Collier on Bankruptcy*, ¶ 68.04[2.1] at 860 (14th ed. 1976). (With respect

1 to the “same right” requirement, *Collier on Bankruptcy* comments: “The precise meaning of
2 the term is often obscured in the case law, and in many instances, it is used synonymously
3 with the concept of ‘capacity. The distinguishing feature of the concept is that it subsumes
4 the separate question of whether any of the obligations sought to be offset are owed jointly
5 with some other entity.” 5 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 553.03[3] at
6 553-37 – 533-38, *citing inter alia*, *Gray v. Rollo*, 85 U.S. 629, 632 (1873) (footnotes
7 omitted). This case does not involve joint obligations which raise any issue of whether the
8 “same right” was involved.)

9 The requirements of mutuality as described herein are met because the debts
10 involved, the judgment debts in Cases 1 and 2, are between Plaintiff and Defendant, who
11 are the same parties in the same capacity as individuals (as opposed to being in different
12 capacities, i.e., not in a representative or fiduciary capacity, *see*, 5 Resnick and Sommer,
13 *Collier on Bankruptcy*, ¶ 553.03[3][c] at 553-32 – 533-38; 3 March, Ahart and Shapiro,
14 *California Practice Guide: Bankruptcy*, ¶¶ 17:219 – 17-231 at 17-29 – 17-32 (citations
15 omitted), and the debts are valid and enforceable as based on final judgments of the
16 California state courts, which are courts of competent jurisdiction. Thus, the court
17 disagrees with Defendant’s arguments and determines that such arguments are not
18 supported by applicable legal authority. In this regard, the court agrees with Plaintiff’s
19 arguments in his Reply to Debtor’s Response to Motion for Summary Judgment, which
20 completely refute Defendant’s arguments.

21 ///

22 ///

