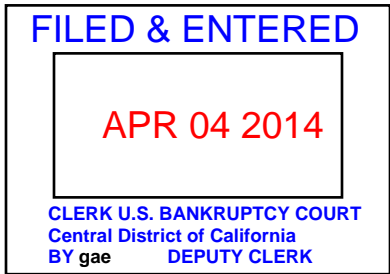


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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re  
GARRY MICHAEL KANN.  
Debtor.  
GARRETT KELLY KRAUSE.  
Plaintiff(s),  
vs.  
GARRY MICHAEL KANN.  
Defendant(s).

Case No. 2:13-bk-23722-RK  
Chapter 7  
Adversary No. 2:13-ap-01840-RK

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS PLAINTIFF'S  
SECOND AMENDED COMPLAINT AND  
SETTING FURTHER PROCEEDINGS**

DATE: April 8, 2014  
TIME: 3:30 p.m.  
PLACE: Courtroom 1675  
255 East Temple Street  
Los Angeles, CA 90012

Pending before the court is the motion of defendant Garry Michael Kann to dismiss the second amended complaint of plaintiff Garrett Krause, which is now set for hearing on April 8, 2014. Having reviewed and considered the moving and opposing papers,

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1 pursuant to Local Bankruptcy Rule 9013-1(j)(3), the court dispenses with oral argument,  
2 takes the motion under submission, vacates the hearing on April 8, 2014 and rules on the  
3 motion as follows:

- 4 1. Pursuant to Fed. R. Civ. P. 12(d) and Fed. R. Bankr. P. 7012(b), the court  
5 declines to consider the matters presented by defendant outside the pleadings  
6 in support of his motion to dismiss.
- 7 2. The court determines that the allegations of plaintiff's second amended  
8 complaint set forth a plausible claim for relief on its face under 11 U.S.C. §  
9 523(a)(2)(A) for purposes of Fed. R. Civ. P. 12(b) and Fed. R. Bankr. P.  
10 7012(b), see *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(citation omitted), and  
11 thus, denies the motion to dismiss the second amended complaint for failure to  
12 state a claim upon which relief can be granted.
- 13 3. The court denies plaintiff's request to deny the motion to dismiss with prejudice  
14 since that relief is unnecessary, assuming *arguendo* that such relief is  
15 authorized under the Federal Rules of Civil Procedure to begin with.
- 16 4. The court notes that plaintiff by counsel filed and served his opposition late in  
17 violation of Local Bankruptcy Rule 9013-1(f), which requires that an opposition  
18 to a motion be filed at least 14 days in advance of the date designated for the  
19 hearing and that such late filing and service are without prior leave of court or  
20 are not otherwise excused. While the late filing and service of papers may be  
21 deemed by the court to be consent to the granting of the motion, the court  
22 exercises its discretion not to impose such a sanction, which would be a  
23 terminating sanction. Instead, the court orders counsel for plaintiff, Daren M.  
24 Schlecter, to show cause by filing a written declaration under penalty of perjury  
25 why monetary sanctions of \$100 should not be imposed against him personally  
26 for failing to file and serve a timely opposition to defendant's motion and that  
27 such written responsive declaration must be filed by Mr. Schlecter on or before  
28 April 22, 2014. Afterwards, the court will take the order to show cause under

1 submission and will issue a ruling on the appropriate sanction for counsel  
2 pursuant to Local Bankruptcy Rule 9011-3.

3 5. The hearing on defendant's motion to dismiss plaintiff's second amended  
4 complaint set for April 8, 2014 at 3:30 p.m. is hereby vacated, and no  
5 appearances are required on that date and time.

6 6. Defendant Garry Michael Kann must file and serve his answer to plaintiff's  
7 second amended complaint on or before April 22, 2014 pursuant to Fed. R.  
8 Bankr. P. 7012(a).


9 7. Pursuant to Local Bankruptcy Rule 9013-1(j)(3), the courtroom deputy is  
10 authorized and directed to notify counsel and Mr. Kann, an unrepresented  
11 party, that the court is dispensing with oral argument on the motion, taking it  
12 under submission and vacating the hearing on April 8, 2014.

13 8. A status conference in this adversary proceeding is hereby set for May 27,  
14 2014 at 1:30 p.m., and the parties are ordered to comply with Local Bankruptcy  
15 Rule 7016-1, including the preparation and filing of a joint status report, which  
16 must be filed on or before May 20, 2014.

17 IT IS SO ORDERED.

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23 Date: April 4, 2014

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26 Robert Kwan  
27 United States Bankruptcy Judge  
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