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8 Attorney for Movant, Defendant, and Chapter 7  
9 Trustee, WESLEY H. AVERY

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 LOS ANGELES DIVISION

CHANGES MADE BY COURT

11	In re	)	CASE NO. 2:15-bk-25283-RK
12	ARTURO GONZALEZ, an individual, dba Long Beach Realty, Inc., dba South Bay Realty; dba Mindset, aka Art Gonzalez; aka Art Gonzalez, Jr.,	)	[Chapter 7]
13		)	ADV. CASE NO. 2:19-ap-01483-RK
14	Debtor.	)	ORDER AFTER HEARING ON MOTION BY THE DEFENDANT AND CHAPTER 7 TRUSTEE, WESLEY H. AVERY, FOR ORDER DISMISSING COMPLAINT PURSUANT TO FRCP 12(b)(1) AND 12(b)(6) WITHOUT LEAVE TO AMEND DUE TO LACK OF SUBJECT MATTER JURISDICTION, ISSUE PRECLUSION, AND CLAIM PRECLUSION (Adv. Dkt. 6)
15	ARTURO GONZALEZ, dba Long Beach Realty, Inc., dba South Bay Realty; dba Mindset, aka Art Gonzalez; aka Art Gonzalez, Jr.,	)	
16		)	
17	Plaintiff,	)	
18	v.	)	
19	WESLEY H. AVERY, as Chapter 7 Trustee for the Bankruptcy Estate of Arturo Gonzalez	)	Date: December 18, 2019
20		)	Time: 11:00 a.m.
21	Defendant.	)	Place: Courtroom 1675 Edward R. Roybal Federal Building 255 E. Temple Street Los Angeles, CA 90012-3300

22  
23 The “Motion by the Defendant and Chapter 7 Trustee, Wesley H. Avery, for Order Dismissing  
24 Complaint Pursuant to FRCP 12(b)(1) and 12(b)(6) Without Leave to Amend Due to Lack of  
25 Subject Matter Jurisdiction, Issue Preclusion, and Claim Preclusion (Docket No. 6)” (“Motion”)  
26 came on for hearing on December 18, 2019 at 11:00 a.m. before the above-referenced bankruptcy  
27 court, the Honorable Robert N. Kwan, Bankruptcy Judge, presiding.  
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1 The Defendant, Wesley H. Avery (“Defendant”), as Chapter 7 Trustee for the Bankruptcy  
2 Estate of In re Arturo Gonzalez, appeared through his attorneys of record, Law Offices of Brett  
3 Curlee, through attorney, Brett B. Curlee, Esq. The Plaintiff and Debtor, Arturo Gonzalez, an  
4 individual, dba Long Beach Realty, Inc., dba South Bay Realty; dba Mindset, aka Art Gonzalez;  
5 aka Art Gonzalez, Jr. (“Plaintiff”), appeared in pro se. No other appearances were made or stated  
6 for the record.  
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8 The Court, having reviewed the Notice of Motion (Docket No. 8), the Motion (Docket No.  
9 6), Defendant’s Request of Judicial Notice in Support of the Motion (Docket No. 7), Plaintiff’s  
10 Response to the Motion (Docket No. 10), and Defendant’s Reply to the Opposition (Docket No.  
11 11), and having heard the oral argument of Defendant’s counsel and the Plaintiff at the hearing,  
12 and having determined that the Motion was timely and properly served, and the Court having  
13 adopted the tentative ruling which is attached hereto as Exhibit “1” as its ruling and having made  
14 such other further and additional findings of fact and conclusions of law on the record as was  
15 stated on the record at the time of the hearing on the Motion after oral argument,  
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17 IT IS HEREBY ORDERED THAT:

- 18 1. The Motion is **GRANTED FOR FAILURE TO STATE A CLAIM UPON WHICH**  
19 **RELIEF CAN BE GRANTED (BUT NOT FOR LACK OF SUBJECT MATTER**  
20 **JURISDICTION)**; and,  
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2. The Complaint and Adversary Proceeding are **DISMISSED** without leave to amend,  
with prejudice.

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Date: December 20, 2019



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Robert Kwan  
United States Bankruptcy Judge

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Wednesday, December 18, 2019**

**Hearing Room 1675**

11:00 AM

**2:15-25283 Arturo Gonzalez**

**Chapter 7**

Adv#: 2:19-01483 Gonzalez v. Wesley H. Avery, as the Chapter 7 trustee for the

- #3.10** Cont'd hearing re: Motion by the defendant and chapter 7 trustee, Wesley H. Avery, for order dismissing complaint pursuant to FRCP 12(B)(1) AND 12(b)(6) without leave to amend due to lack of subject matter jurisdiction, issue preclusions; and claim preclusion fr. 12/17/19

Docket 6

**Tentative Ruling:**

Deny in part and grant in part defendant's motion to dismiss the complaint and adversary proceeding. Deny motion to dismiss for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because the claims in the complaint do not seek to alter or amend the judgment on appeal. Grant motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) as follows: (1) issue preclusion bars plaintiff from bringing the first cause of action that trustee breached his fiduciary duty because the same issue of whether the trustee breached his fiduciary duty was decided in favor of trustee when the court decided that debtor was equitably estopped from claiming a homestead exemption; (2) issue preclusion bars plaintiff from bringing the second cause of action that trustee breached his fiduciary duty in selling the residence because the same issue of whether the trustee breached his fiduciary duty was decided in favor of trustee when the court decided that debtor was equitably estopped from claiming a homestead exemption; (3) plaintiff fails to state a claim upon which relief can be granted by alleging that trustee unnecessarily adjudicated plaintiff as a bankruptcy because there was no such adjudication since plaintiff became a debtor when he filed his voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. 301; (4) claim preclusion bars plaintiff from bringing the third cause of action that trustee unnecessarily revoked plaintiff's because the same claim of whether plaintiff's discharge should be revoked was decided in favor of trustee when the court entered judgment revoking plaintiff's discharge. Pursuant to Federal Rule of Evidence

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Robert Kwan, Presiding  
Courtroom 1675 Calendar**

Wednesday, December 18, 2019

Hearing Room 1675

11:00 AM

CONT... Arturo Gonzalez

Chapter 7

201, the court takes judicial notice of decisions in trustee's favor determining that he did not breach any fiduciary duty and that plaintiff's discharge should be revoked. Appearances are required on 12/18/19, but counsel and self-represented parties may appear by telephone in accordance with the court's telephone appearance procedures posted online on the court's website.

**Party Information**

**Debtor(s):**

Arturo Gonzalez

Pro Se

**Defendant(s):**

Wesley H. Avery, as the Chapter 7

Represented By  
Brett B Curlee

**Plaintiff(s):**

Arturo Gonzalez

Pro Se

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
Brett B Curlee  
Dennis E McGoldrick

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**EXHIBIT “1”**