

FILED & ENTERED

JUL 21 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

ART & ARCHITECTURE BOOKS OF THE 21ST
CENTURY,

Debtor.

SAM LESLIE, PLAN AGENT FOR ART &
ARCHITECTURE BOOKS OF THE 21ST
CENTURY,

Plaintiff,

v.

ACE GALLERY NEW YORK CORPORATION,
a California corporation; ACE GALLERY NEW
YORK, INC., a dissolved New York corporation;
ACE MUSEUM, a California corporation;
DOUGLAS CHRISMAS, an individual;
JENNIFER KELLEN, an individual; SHIRLEY
HOLST, an individual,

Defendants.

400 S. LA BREA, LLC, a California limited
liability Company,

Cross-Claimant,

v.

ACE GALLERY NEW YORK CORPORATION,
a California corporation; ACE GALLERY NEW
YORK, INC., a dissolved New York corporation;
ACE MUSEUM, a California corporation;
DOUGLAS CHRISMAS, an individual; SAM
LESLIE as, TRUSTEE OF THE PLAN TRUST

Case No. 2:13-bk-14135-RK

Chapter 11

Adv. No. 2:15-ap-01679-RK

Consolidated with:

Adv. No. 2:15-ap-01680-RK,

Adv. No. 2:14-ap-01771-RK

**REPORT AND RECOMMENDATION
OF THE UNITED STATES
BANKRUPTCY COURT THAT THE
UNITED STATES DISTRICT COURT
ADOPT THE PROPOSED
STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW RE:
MOTION OF RAYMOND PETTIBON
FOR SUMMARY JUDGMENT ON HIS
COMPLAINT IN INTERVENTION
AND GRANT THE MOTION FOR
SUMMARY JUDGMENT**

Hearing Date and Time:

Date: March 16, 2021

Time: 2:30 p.m.

Place: Courtroom 1675

255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

Hon. Robert N. Kwan

FOR ART & ARCHITECTURE BOOKS OF THE
21ST CENTURY,

Cross-Defendants.

DOUGLAS CHRISMAS, an individual,

Counter-Claimant,

v.

ART & ARCHITECTURE BOOKS OF THE 21ST
CENTURY,

Counter-Claim Respondent.

TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA:

The United States Bankruptcy Court hereby issues its findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 9033 and recommends that the United States District Court adopt the following Statement of Uncontroverted Facts and Conclusions of Law ¹ and grant the motion of Richard Pettibon for summary judgment on his complaint in intervention in this adversary proceeding:

UNCONTROVERTED FACTS

No.	Uncontroverted Fact	Evidence in Support of Uncontroverted Fact
1.	Raymond Pettibon is a renowned, contemporary American visual artist whose drawings have achieved critical and commercial success since the 1990s.	Declaration of Raymond Pettibon, executed Jan. 25, 2021 ("Pettibon Decl.") ¶ 2-6.
2.	In 2017, New York's New Museum presented <i>A Pen of All Work</i> , a major Pettibon monographic retrospective featuring over 700 hundred Pettibon	<i>Id.</i> ¶ 4; https://www.davidzwirner.com/artists/raymond-pettibon/biography .

¹ In adopting this statement of uncontroverted facts and conclusions of law, the United States Bankruptcy Court has independently reviewed the proposed statement of uncontroverted facts and conclusions of law filed by Richard Pettibon and the statement of genuine issues filed by Douglas Christmas. The United States Bankruptcy Court determines that the statement of genuine issues filed by Christmas is deficient in that it does not identify each material fact that is disputed and does not cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission or other document relied upon to establish the dispute and the existence of a genuine issue precluding summary judgment or adjudication as required by Local Bankruptcy Rule 7056-1(c)(2); *see also*, Federal Rule of Civil Procedure 56(c)(1). The plan agent did not file a statement of genuine issues pursuant to Local Bankruptcy Rule 7056-1(c)(2).

1		drawings, in an exhibition that subsequently traveled to The Netherlands and to Moscow.	
2	3.	Major museums that hold Pettibon's work in their collections include the Museum of Modern Art and the Whitney Museum of American Art, both in New York; the Los Angeles County Museum of Art; the San Francisco Museum of Art; and the Centre Georges Pompidou in Paris.	<i>Id.</i> ¶ 5.
3			
4	4.	Two leading art galleries currently represent Pettibon: the David Zwirner Gallery in New York City and Regen Projects in Los Angeles.	<i>Id.</i> ¶ 7; Declaration of Shaun Regen, executed Jan. 22, 2020 ("Regen Decl."), ¶¶2, 4; https://www.davidzwirner.com/artists ; http://www.regenprojects.com/artists .
5	5.	Defendant-in-intervention Douglas Christmas is a gallerist with whom Pettibon worked in the late 1980s.	Declaration of Gregory A. Clarick, executed Jan. 26, 2021 ("Clarick Decl."), at 2, Exhibit D, Transcript of Deposition of Douglas Christmas ("Christmas Dep.") at 17:23-18:25.
6	6.	Christmas has owned and operated art galleries in Los Angeles for decades, including Ace Gallery, Doug Christmas Fine Art and Ace Contemporary Exhibitions.	Christmas Dep. at 18:5-21:9; 35:16-36:25.
7	7.	Christmas always has owned his entities, despite changing names and corporate identities several times.	<i>Id.</i> at 18:5-21:9.
8	8.	Christmas's entities Doug Christmas Fine Art and Ace Contemporary Exhibitions were the same corporate entity (together "Ace Gallery"), with the latter reflecting a name change to the business.	<i>Id.</i> at 35:16-36:25.
9	9.	Art & Architecture Books of the 21st Century (the "Debtor") is a gallery previously owned and operated by Christmas.	<i>Id.</i> at 20:19-21:9.
10	10.	Debtor was an entity separate and apart from Christmas's prior Ace Gallery, <i>i.e.</i> , Doug Christmas Fine Art and Ace Contemporary Exhibitions.	<i>Id.</i> at 20:19-22.
11	11.	Twenty-seven (27) drawings by Pettibon (the "Pettibon Drawings") are currently in the possession of Sam Leslie, Plan Agent (the "Plan Agent") for the Debtor's post-confirmation bankruptcy estate.	Clarick Decl. at 2, Ex. C (email from Debtor's counsel attaching list of Pettibon Drawings currently in the Debtor's inventory).
12	12.	In addition to Pettibon, both Christmas and the Plan Agent claim ownership of the Pettibon Drawings.	Christmas Dep. at 56:12-22, 57:7-21; Clarick Decl. at 3, Ex. M (Plan Agent Interrogatory Response), No. 1 and Ex. 1 attached thereto.
13	13.	In or around 1988, Ace Gallery held an exhibition of Pettibon's artworks.	Christmas Dep. at 18:12-25.
14	14.	In 1988, Pettibon consigned the Pettibon Drawings to Christmas's Ace Gallery.	Clarick Decl. at 2, Ex. A (Consignment Note); Clarick Decl. at 2, Ex. B (Consignment Sheets); Christmas Dep. at 34:18-25, 33:3-5; Pettibon

1		Decl. ¶ 8.
2	15. The Pettibon Drawings were among 83 Pettibon artworks identified (by category) in a handwritten list of works delivered to Ace Gallery by Pettibon at or about that time (the “Consignment Note”).	Clarick Decl. at 2, Ex. A (Consignment Note); Christmas Dep. at 33:3-5.
3		
4	16. The Consignment Note is on Ace Contemporary Exhibitions letterhead, which includes the gallery address and identifies Christmas as Director. The Consignment Note reads in relevant part:	Clarick Decl. at 2, Ex. A (Consignment Note).
5		
6		
7		
8	Received on consignment	
9	23 VAVOOM	
10	40 BASEBALL	
11	10 STALIN	
12	10 ODDS	
13	From Raymond Pettibon	
14	...	
15	11x14 is 150-200	
16	18x14 is \$350.00 retail	
17	17. Christmas wrote the Consignment Note, which states that the works were received on consignment, and Pettibon signed it during or after the exhibition referenced in paragraph 13 above.	Clarick Decl. at 2, Ex. A (Consignment Note); Christmas Dep. at 29:3-14, 30:2-6.
18	18. The potential prices for different sized drawings (\$150-\$200, \$350) listed on the Consignment Note reflects Christmas and Pettibon’s conversation “about what they possibly could be sold for.”	Clarick Decl. at 2, Ex. A (Consignment Note); Christmas Dep. at 32:2-9.
19		
20	19. A multi-page, internal Ace Gallery list of works by Pettibon bearing the header “Accounting, Inventory, & Consignment Sheet – Doug Christmas Fine Art” (the “Consignment Sheets”) listed specific works Pettibon consigned to Ace Gallery in or about 1988.	Clarick Decl. at 2, Ex. B (Consignment Sheets); Christmas Dep. at 34:12-24, 39:14-21.
21		
22	20. The Consignment Sheets were a “typical form” for Ace Gallery.	Christmas Dep. at 34:12-24.
23	21. The Consignment Sheets listed works that Pettibon had consigned to Ace Gallery and that were located in the Gallery at the time the list was made.	<i>Id.</i> at 38:2-15; 39:14-21.
24		
25	22. The Consignment Sheets list 80 works, for each noting an “Asking	Clarick Decl. at 2, Ex. B (Consignment Sheets).

	Price” (ranging from \$200 to \$2,700 for each drawing listed) and a “Sale Date & Price”—each of which remains blank.	
23.	The Consignment Sheets include at least 20 of the 27 Pettibon Drawings.	The following 20 works are both included in the Pettibon Drawings (Clarick Decl. at 2, Ex. C) and reflected on the Consignment Sheets (Clarick Dec. at 2, Ex. B): <i>Father I Give the Sign Before Every Home Run, 1987</i> (compare Ex. C at 1 with Ex. B at Pettibon 000004 Entry 8); <i>How Did You Like the Opera, 1987</i> (Set of 8 works) (compare Ex. C at 1 with Ex. B at Pettibon 000005 Entry 5); <i>I Modeled My Life After that Swing, 1987</i> (compare Ex. C at 1 with Ex. B at Pettibon 000003 Entry 7); <i>Inexhaustible Russia, 1987</i> (compare Ex. C at 2 with Ex. B at Pettibon 000005 Entry 4); <i>Look Farther and Deeper Into Them #1, #2, and #3, 1988</i> (3 works) (compare Ex. C at 2 with Ex. B at Pettibon 000010 Entry 5); <i>Two Hundred Guineas—Is That All #1, #2, #3, 1988</i> (3 works) (compare Ex. C at 3 with Ex. B at Pettibon 000010 Entry 7); <i>Vavoom, But Now the Call Is, 1987</i> (compare Ex. C at 4 with Ex. B at Pettibon 000005 Entry 1); <i>Vavoom, Now I Return, 1987</i> (compare Ex. C at 4 with Ex. B at Pettibon 000006 Entry 4); <i>Vavoom, Sometimes This Expressive Beauty, 1987</i> (compare Ex. C at 5 with Ex. B at Pettibon 000004 Entry 4).
24.	Under the consignment arrangement, Pettibon retained exclusive title to and ownership of all consigned works unless and until they were sold and title transferred to a buyer.	Christmas Dep. at 23:9-16.
25.	Christmas did not purchase the Pettibon Drawings from Pettibon.	Pettibon Decl. ¶ 9.
26.	No documents show that Christmas purchased the works from Pettibon after Pettibon consigned them to Ace Gallery.	Christmas Dep. at 61:13-17; Clarick Decl. at 3, Ex. E & F (Christmas Interrogatory Response, No. 3.)
27.	No documents show that Christmas paid Pettibon or Ace Gallery for the Pettibon Drawings.	Christmas Dep. at 66:13-15.
28.	No documents show that Christmas owned the Pettibon Drawings at any time.	<i>Id.</i> at 61:18-20.
29.	During the Raymond Pettibon exhibition, Ace Gallery sold “very few pieces.”	<i>Id.</i> at 23:21-24
30.	After the 1988 Ace Gallery exhibition, Pettibon never had another	Regen Decl. ¶ 4; Pettibon Decl. ¶¶ 7-8.

1		exhibition with Christmas and Ace Gallery and, in or about the early 1990s, Shaun Regen and her gallery Regen Projects began to represent Pettibon as his art dealer in Los Angeles.	
2	31.	Christmas and Ace Gallery returned some of Pettibon's works, but they did not return the Pettibon Drawings.	Christmas Dep. at 52:10-18; Pettibon Decl., ¶8; Clarick Decl. at 2, Ex. C; Christmas Dep. At 56:12-22, 57:7-21; Clarick Decl. at 2, Ex. N (Plan Agent Interrogatory Response, No. 1).
3	32.	In the years after 1988, Ace Gallery sold "a few" ("not a lot") of the Pettibon artworks listed among the 83 works on the Consignment Note.	Christmas Dep. at 71:10-14.
4	33.	Ace Gallery sold the works and collected the sale proceeds.	<i>Id.</i> at 110:15-21.
5	34.	Invoices for such sales were set forth on Ace Gallery letterhead and indicate the sales were made directly by Ace Gallery to various collectors, without mentioning Christmas in the provenance for the works or otherwise.	Clarick Decl. at 3, Exs. G through J (invoices for sales by Ace Gallery of drawings by Pettibon).
6	35.	No documentation shows that Christmas ever transferred ownership of any Pettibon drawings from himself to Debtor, dba Ace Gallery by sale or gift.	Christmas Dep. at 75:10-13; 108:2-24; 110:22-111:13; 123:11-14; <i>see also id.</i> at 123:11-14, 134:13-18 (no documentation showing transfer from Christmas to Ace Gallery of drawings sold by Ace Gallery to Elizabeth Kellen); <i>id.</i> at 127:16-20, 131:7-22 (same concerning sales to Greg Econn).
7	36.	In December 2004, in his personal bankruptcy case, Christmas filed a sworn "Schedule B" list of his assets.	Clarick Decl. at 3, Ex. K (2004 Schedule B).
8	37.	In the sworn 2004 Schedule B in his personal bankruptcy case, Christmas did not list the Pettibon Drawings as personal assets.	Clarick Decl. at 3, Ex. K (2004 Schedule B).
9	38.	In the sworn 2004 Schedule B in his personal bankruptcy case, Christmas identified his personal property comprising "books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles" as valued, all together, at less than \$5,000.	<i>Id.</i> ; Christmas Dep. at 88:23-89:12.
10	39.	In 2004, the Pettibon Drawings were worth in excess of \$200,000.	Regen Decl. ¶ 6 (in 2004, six Pettibon drawings of approximately 9x12 inches from the 1980s were sold for \$8,000 each and drawings of approximately 18 x 24 inches from the 1980s would have been valued at least that much. 27x\$8,000=\$216,000).
11	40.	In the Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs, signed by Christmas under penalty of perjury in this	Clarick Decl. at 3, Ex. L (Debtor's Schedules of Assets and Liabilities and Statement of Financial Affairs, Case No. 2:13-bk-14135-RK, Dkt. No. 50).

1		bankruptcy case on March 5, 2013, Christmas did not identify the Pettibon Drawings as property held by the Debtor on Christmas's behalf.	
2			
3	41.	In or about 2017, Pettibon learned that the Pettibon Drawings remained with Christmas and Ace Gallery, and ultimately were in the Debtor's inventory.	Regen Decl. ¶ 7; Pettibon Decl. ¶ 10.
4			
5	42.	Through his counsel, Pettibon promptly demanded the return of the Pettibon Drawings.	Pettibon Decl. ¶ 10.
6			
7	43.	The Plan Agent has no documents supporting the claim that Christmas owns the Pettibon Drawings.	Clarick Decl. at 3, Ex. M (Plan Agent Interrogatory Response, No. 2).
8			

CONCLUSIONS OF LAW

1. The United States Bankruptcy Court has jurisdiction over the complaint in intervention of Richard Pettibon in this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(1), 1334(a) and (b) and 1367(a). See also, "Order Granting Motion of Raymond Pettibon for Leave to Intervene as a Plaintiff and for Authorization to File Complaint in Intervention," Dkt. No. 578.

2. The United States Bankruptcy Court determines that it may not enter a final judgment on Pettibon's motion for summary judgment on his complaint in intervention and Christmas's related counterclaims pertaining to the Pettibon Drawings based on the following circumstances. The complaint in intervention asserts claims under California law to quiet title to personal property, for declaratory relief that Pettibon is the owner of the Pettibon Drawings and for recovery of specific personal property, California Code of Civil Procedure §§ 1060, 760.020 and 761.020; *Aerotek, Inc. v. Johnson Group Staffing Co., Inc.*, 55 Cal.App.5th 670, 687-688 (2020), citing *Berry v. Bank of Bakersfield*, 177 Cal. 206, 209 (1918), which claims are "noncore" state law claims. See 28 U.S.C. § 157(b)(2) (defining "core" proceedings). The complaint in intervention relates to the counter-complaint of Douglas Christmas that was filed in response to the plan agent's Fifth Amended Consolidated Complaint on behalf of the Debtor, and in his counter-complaint Christmas sought similar claims for declaratory relief claiming title to art works being held by the Debtor, including the Pettibon Drawings, for related injunctive relief, conversion and replevin to recover his claimed art works. Christmas alleged that jurisdiction over his counter-complaint arose under Federal Rule of Civil Procedure 13 made applicable to this adversary

1 proceeding by Federal Rule of Bankruptcy Procedure 7013. Christmas later filed a First Amended
2 Counter-Complaint, asserting the same claims.²

3 3. Christmas's claims in his counter-complaints are permissive, not compulsory,
4 counterclaims because his claims of title to certain art assets held by the plan agent from the
5 bankruptcy estate in Debtor's bankruptcy case do not arise of the same transaction or occurrence
6 as the plan agent's Fifth Amended Consolidated Complaint against Christmas asserting claims for
7 avoidance of transfers of assets, fraud, conversion and breach of fiduciary duty relating to property
8 transferred out of the Debtor. *See* Federal Rule of Civil Procedure 13(a) and (b). Pettibon
9 contendss that the court may enter a final judgment on his complaint in intervention as to
10 Christmas based on his filing of permissive counterclaims in his counter-complaints in this
11 adversary proceeding. In support of this position, Pettibon cites *In re Professional Facilities*
12 *Management, Inc.*, 2015 WL 6501231 (Bankr. M.D. Ala. 2015); *In re Danley*, 552 B.R. 871
13 ((Bankr. M.D. Ala. 2015); *In re Perkins*, 553 B.R. 242 (Bankr. W.D. Mich. 2015).

14 4. The United States Bankruptcy Court has subject matter jurisdiction over
15 Christmas's claims of his counter-complaints and Pettibon's claim in his complaint in intervention
16 under its jurisdiction of 28 U.S.C. § 1334(b) over matters related to a bankruptcy case under the
17 Bankruptcy Code, 11 U.S.C., because such claims are competing claims to what is asserted to
18 have been property of the bankruptcy estate as the plan agent on behalf of the Debtor claims title
19 to the art assets. The bankruptcy court may enter final judgment on noncore claims within its
20 related to jurisdiction if such claims relate to the claims allowance process or when the parties
21 consent to the bankruptcy court jurisdiction. *Wellness International Network, Ltd. v. Sharif*, 575
22 U.S. 665, 674-686 (2015). The plan agent and Pettibon have expressly consented to bankruptcy
23 court jurisdiction in this adversary proceeding by their statements of consent in at least one status
24 report filed in this adversary proceeding (Docket No. 625, filed on July 10, 2019). Christmas in the
25 same status report and in his counter-complaints expressly stated that he did not consent to the

26 _____
27 ² The First Amended Counter-Complaint deleted a claim asserted on behalf of Ace Museum, a
28 separate legal entity owned by Christmas. Also, the plan agent's Fifth Amended Consolidated
Complaint has been superseded by a Sixth Amended Consolidated Complaint.

1 jurisdiction of the bankruptcy court to enter a final judgment.

2 5. The United States Bankruptcy Court does not find that Christmas impliedly
3 consented to bankruptcy court jurisdiction to enter a final judgment by filing permissive
4 counterclaims as argued by Pettibon as none of the cases cited by Pettibon actually held that filing
5 a permissive counterclaim is implied consent to the jurisdiction of the bankruptcy court.
6 Pettibon's argument is contradicted by *Stern v. Marshall*, 564 U.S. 462 (2011), in which the
7 Supreme Court noted that the bankruptcy court lacked jurisdiction over Vickie Marshall's
8 counterclaim, which the bankruptcy court had determined to be compulsory, but the Supreme
9 Court found to be permissive, and that the permissive/compulsory distinction did not affect its
10 analysis that the bankruptcy court did not have jurisdiction to enter a final judgment on the
11 counterclaim. *Stern v. Marshall*, 564 U.S. at 498-500. Absent consent of all of the parties to
12 Pettibon's claims in his complaint in intervention and Christmas's counterclaims relating to the
13 Pettibon Drawings, this United States Bankruptcy Court lacks jurisdiction to enter a final
14 judgment on these claims.

15 6. The United States Bankruptcy Court, however, does have jurisdiction to hear
16 Pettibon's complaint in intervention and Christmas's counterclaims relating to the Pettibon
17 Drawings, which are noncore claims under its "related to" jurisdiction pursuant to 28 U.S.C. §
18 1334(b) and issue proposed findings of fact and conclusions of law for *de novo* review by the
19 United States District Court. 28 U.S.C. § 157 (c)(1); *Executive Benefits Insurance Agency v.*
20 *Arkison*, 573 U.S. 25, 39-40 (2014). Accordingly, the United States Bankruptcy Court determines
21 that it may issue proposed findings of fact and conclusions of law pursuant to Federal Rule of
22 Bankruptcy Procedure 9033 in submitting its ruling on the motion as a report and recommendation
23 to the United States District Court for the Central District of California for *de novo* review.

24 7. Venue for this proceeding is proper in this federal judicial district pursuant to 28
25 U.S.C. § 1409.

26 8. There are no genuine disputes of material facts. The uncontroverted facts establish
27 that Pettibon consigned the Pettibon Drawings to Ace Gallery, that ownership of the Pettibon
28 Drawings remained with Pettibon at all times, and that Pettibon is the owner of the Pettibon

1 Drawings today.

2 9. *First*, the “Schedules of Assets and Liabilities and Statement of Financial Affairs”
3 signed by Christmas for the Debtor and filed under penalty of perjury in this bankruptcy case on
4 March 5, 2013 constitute an uncontroverted evidentiary, if not judicial, admission that Christmas
5 does not own the Pettibon Drawings in that Debtor’s schedules did not list the Pettibon Drawings
6 as assets held by Debtor for others, such as Christmas on his personal behalf. *See In re Rolland*,
7 317 B.R. 402, 421-422 (Bankr. C.D. Cal. 2004) (“Statements in bankruptcy schedules are
8 executed under penalty of perjury and, when offered against a debtor, are eligible for treatment as
9 judicial admissions.”). ³

10 10. *Second*, Christmas is judicially estopped from asserting ownership of the Pettibon
11 Drawings by the absence of the drawings from the Debtor’s “Schedules of Assets and Liabilities
12 and Statement of Financial Affairs” filed under penalty of perjury in this bankruptcy case on
13 March 5, 2013. *Hamilton v. State Farm Fire & Casualty Co.*, 270 F.3d 778, 785 (9th Cir. 2001).

14 11. *Third*, the absence of the Pettibon Drawings from the list of assets Christmas
15 included on “Schedule B,” filed under penalty of perjury on December 22, 2004 in a personal
16 bankruptcy case before the Honorable Barry Russell in Case No. 2:04-bk-35276-BR (Bankr. C.D.
17 Cal.) constitutes an uncontroverted evidentiary admission that Christmas does not own the Pettibon
18 Drawings in that he failed to list the Pettibon Drawings as his assets. ⁴

19 12. *Fourth*, Christmas has produced no evidence to dispute the material facts.
20
21

22 ³ The judicial admissions that Christmas made in signing the bankruptcy schedules of the Debtor in
23 the main bankruptcy case are binding on him since he signed them and at the time, he was the
24 president and sole owner of the Debtor, thus he was in privity with the Debtor. Russell,
25 *Bankruptcy Evidence Manual*, §801.16 (online edition October 2020 update), *citing inter alia*,
Federal Rule of Evidence 807 (“At common law, statements by a person in privity with a party
were receivable in evidence as an admission of the party.”).

26 ⁴ The court disagrees with Pettibon’s contention that Christmas’s admissions in his 2004 personal
27 bankruptcy case constitute judicial admissions since judicial admissions are limited to those in the
28 case at bar, and such admissions were made in a different case, though such admissions may be
considered as evidentiary admissions. Russell, *Bankruptcy Evidence Manual*, § 801.22, *citing*, *In*
re Webster Place Athletic Club, LLC, 599 B.R. 20, 27-28 (Bankr. N.D. Ill. 2019); *see also*,
Higgins v. Mississippi, 217 F.3d 951, 954 (7th Cir. 2000) (citations omitted).

1 Pettibon's direct evidence shows that Pettibon consigned the Pettibon Drawings to Ace Gallery
2 and that Pettibon never sold the Drawings to Ace Gallery, Christmas, and/or the Debtor. Christmas
3 has produced no documents showing a sale or other transfer of ownership to himself, or his
4 entities, Ace Gallery, and/or the Debtor. Christmas's uncorroborated and self-serving assertion of
5 ownership is flatly contradicted by his prior sworn admissions and the remainder of the record,
6 and no reasonable jury could believe him. *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th
7 Cir. 1996).

8 13. *Fifth*, the Plan Agent has produced no evidence to dispute the material facts. The
9 Plan Agent has produced no evidence that the Debtor owns the Pettibon Drawings.

10 14. Accordingly, Raymond Pettibon is entitled to (a) a declaratory judgment that he is
11 the sole owner of each of the Pettibon Drawings and (b) injunctive relief awarding him possession
12 of each of the Pettibon Drawings.

13 15. Pettibon's claims in his complaint and intervention and Christmas's counterclaims
14 relating to the Pettibon Drawings are discrete claims separate and apart from the other claims in
15 this adversary proceedings, and therefore, the court expressly determines that there is no just
16 reason for delay and that the court may and should direct entry of final judgment on these claims
17 pursuant to Federal Rule of Civil Procedure 54(b) made applicable to this adversary proceeding by
18 Federal Rule of Bankruptcy Procedure 7054.

19 16. To the extent that any of the foregoing Uncontroverted Facts are instead
20 Conclusions of Law, they shall be deemed to be Conclusions of Law instead of Uncontroverted
21 Facts, and to the extent that any of the foregoing Conclusions of Law are instead Uncontroverted
22 Facts they shall be deemed Uncontroverted Facts.

23 ///

24 ///

25 ///

1 17. IT IS THEREFORE RECOMMENDED by the United States Bankruptcy Court
2 that for the foregoing reasons, the United States District Court accept this Report and
3 Recommendation, adopt the above-stated statement of uncontroverted facts and conclusions of
4 law, and grant the motion for summary judgment.

5 IT IS SO ORDERED. ###

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24 Date: July 21, 2021



Robert Kwan
United States Bankruptcy Judge