



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ARNO ARUTYUNYAN,

Debtor.

No. 2:19-bk-16510-RK

Chapter 7

Adv. No. 2:19-ap-01381-RK

**MEMORANDUM DECISION ON
DEFENDANT'S MOTION FOR DISMISSAL
OF ADVERSARIAL PROCEEDINGS FILED
BY PLAINTIFF AGAINST DEFENDANT**

SOROUSH JANAMIAN,

Plaintiff,

v.

ARNO ARUTYUNYAN,

Defendant.

This adversary proceeding came on for hearing before the undersigned United States Bankruptcy Judge on November 19, 2019 upon the motion of Defendant Arno Arutyunyan ("Defendant") to dismiss the complaint and adversary proceeding filed by Plaintiff Soroush Janamian ("Plaintiff"), entitled "Motion for Dismissal of Adversarial Proceedings Filed by Plaintiff Soroush Janamian Against Debtor[] Arno Arutyunyan," Electronic Case Filing ("ECF") Number 6, filed on October 3, 2019 (the "Motion") and for

1 a status conference. Defendant appeared for himself. Bruce T. McIntosh, Attorney at
2 Law, appeared for Plaintiff.

3 In the joint status report filed by the parties on November 8, 2019, ECF 11,
4 Plaintiff contended: "Defendant has claimed to have filed a Motion to Dismiss.
5 However, Plaintiff has no knowledge of such a motion and has never been served with
6 such a motion." ECF 11 at 2. At the hearing on November 19, 2019, Plaintiff again
7 contended that he was not properly served with the motion to dismiss. The court
8 ordered that Plaintiff file any opposition to the Motion no later than November 27, 2019,
9 that Defendant file any reply no later than December 7, 2019, and the court would take
10 the motion under submission without further hearing.

11 On November 27, 2019, Plaintiff filed two declarations in opposition to the
12 Motion. *See Declaration of Soroush Janamian in Opposition to Debtors' Motion to*
13 *Dismiss Adversary Proceeding*, ECF 13; *Declaration of Alex Spada in Support of*
14 *Plaintiff's Opposition to Debtors' Motion to Dismiss Adversary Proceeding*, ECF 14
15 (together, the "Opposition"). On December 4, 2019, Defendant filed his reply to
16 Plaintiff's Opposition. *Defendant's Response to Opposition to Defendant's Motion to*
17 *Dismiss*, ECF 15 (the "Reply"). Having considered the Motion, Opposition and Reply,
18 the court hereby rules on the motion and sets forth its reasons for its ruling.

19 **BACKGROUND**

20 On June 3, 2019, Defendant initiated the underlying bankruptcy case by filing a
21 voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. *In re*
22 *Arno Arutyunyan*, No. 2:19-bk-16510-RK, ECF 1. On Schedule E/F to his bankruptcy
23 petition Defendant listed Plaintiff as a creditor having a nonpriority unsecured claim of
24 \$104,577.00 as follows: "Soroush Janamian, C/O Bruce T Mcintosh, 1055 E Colorado
25 Blve. Ste. 500, Pasadena, CA, 91106." No. 2:19-bk-16510-RK, ECF 1 at 30 (internal
26 paginations, Schedule E/F at 5, creditor 4.10). On the same day, June 3, 2019,
27 Defendant also filed a Verification of Master Mailing List of Creditors [LBR 1007-1(d)],
28 certifying that the master mailing list of creditors filed in the bankruptcy case was

1 complete, correct, and consistent with the Defendant's schedules. No. 2:19-bk-16510-
2 RK, ECF 12.

3 On June 3, 2019, the court filed and entered an Official Form 309A, "Notice of
4 Chapter 7 Bankruptcy Case — No Proof of Claim Deadline," ECF 15, which stated in
5 bold "This notice has important information about the case for creditors, debtors, and
6 trustees, including information about the meeting of creditors and deadlines. Read all
7 pages carefully." No. 2:19-bk-16510-RK, ECF 15 at 1. The Official Form 309A, Notice
8 of Chapter 7 Bankruptcy Case, also stated that "Creditors who assert that the debtors
9 are not entitled to a discharge of any debts or who want to have a particular debt
10 excepted from discharge may be required to file a complaint in the bankruptcy clerk's
11 office within the deadlines specified in this notice, (See line 9 for more information).[.]"
12 *Id.* Line 6 of Official Form 309A, Notice of Chapter 7 Bankruptcy Case, listed the
13 address, operating hours and contact phone number for the Bankruptcy Court Clerk's
14 office with an explanation that "Documents in this case may be filed at this address." *Id.*
15 at 2. Line 7 of the Official Form 309A, Notice of Chapter 7 Bankruptcy Case, under the
16 heading "Meeting of Creditors," stated the date of the meeting of creditors in bold: "July
17 8, 2019 at 08:00 a.m." *Id.* Line 9 of the Official Form 309A, Notice of Chapter 7
18 Bankruptcy Case, under the heading "Deadlines," stated in bold: "File by the deadline to
19 object to discharge or to challenge whether certain debts are dischargeable: . . . Filing
20 deadline: 9/6/19." *Id.*¹ Thus, the Official Form 309A, Notice of Chapter 7 Bankruptcy
21 Case, stated that the 11 U.S.C. § 341(a) Meeting of Creditors was scheduled for July 8,
22 2019, and objections for discharge had to be filed no later than September 6, 2019. *Id.*
23 (emphasis added).

24 On June 4, 2019, the court filed and entered the Master Mailing List of Creditors
25 on the case docket, and included therein was: "Soroush Janamian, C/O Bruce T
26 Mcintosh, 1055 E Colorado Blvd. Ste. 500, Pasadena, CA, 91106." No. 2:19-bk-16510-
27

28 ¹ The form also notes that "You must file a complaint: . . . if you want to have a debt excepted from
discharge under 11 U.S.C. § 523(a)(2), (4), or (6)." *Id.*

1 RK, ECF 16 (listing seven total creditors).

2 On June 5, 2019, the Bankruptcy Noticing Center filed and entered its Certificate
3 of Notice, ECF 17, attesting that the Official Form 309A, Notice of Chapter 7 Bankruptcy
4 Case, ECF 15, was served on all creditors, including Soroush Janamian. ECF 17 at 1.
5 According to the Certificate of Notice, the Bankruptcy Noticing Center served the Official
6 Form 309A, Notice of Chapter 7 Bankruptcy Case, ECF 15, on “Soroush Janamian, C/O
7 Bruce T McIntosh, 1055 E Colorado Blvd. Ste. 500, Pasadena, CA, 91106” by first class
8 mail on June 5, 2019. *Id.*

9 On September 13, 2019, Plaintiff filed his “Complaint for Damages and to
10 Determine Dischargeability of Damages Under 11 U.S.C. Section 523(1)(2), (a)(4) and
11 (a)(6).” ECF 1 (the “Complaint”). The face of the Complaint indicated that Plaintiff was
12 filing it as “Plaintiff in pro se.” *Id.* The Complaint was signed and dated by Plaintiff on
13 September 6, 2019. *Id.* at 6.

14 On October 3, 2019, Defendant filed and served his “Motion for Dismissal of
15 Adversarial Proceedings Filed by Plaintiff Soroush Janamian against Debtor[] Arno
16 Arutyunyan.” ECF 6. According to the proof of service of the Motion, Asbet A.
17 Issakhanian, who is Defendant’s bankruptcy attorney, served a copy of the Motion on
18 “Soroush Janamian, PO Box 56872, Sherman Oaks, CA 91413” by United States mail
19 on October 2, 2019. *Id.* This was the address listed for Plaintiff on page 1 of the
20 Complaint. ECF 1.

21 On October 3, 2019, Plaintiff filed a substitution of attorney whereby Bruce T.
22 McIntosh, Attorney at Law, was formally representing him. ECF 8.

23 November 5, 2019, 14 days before the hearing on the Motion, was the deadline
24 for Plaintiff to file and serve any written opposition to the Motion pursuant to Local
25 Bankruptcy Rule 9013-1(f)(1). As reflected on the case docket for this adversary
26 proceeding, Plaintiff did not file a written opposition to the Motion by this date. As stated
27 above, Plaintiff in the joint status report filed on November 8, 2019 asserted that he had
28 no knowledge of the Motion and had not received it. In his declaration in opposition to

1 the Motion filed on November 27, 2019, Plaintiff stated that he never received a copy of
2 the Motion despite checking his post office box regularly at least once every week or 10
3 days, although he acknowledged that his post office box was P.O. Box 56872, Sherman
4 Oaks, California. ECF 13 at 1-2.

5 In his declaration in opposition to the Motion filed on November 27, 2019, ECF
6 14, Alex Spada, a registered process server, stated that he worked on behalf of Plaintiff,
7 and that on Friday September 6, 2019, the Complaint was signed, and he (Spada)
8 attempted to “fax file it with the Court. However, I was unsuccessful.” ECF 14 at 1-2.
9 Mr. Spada also stated: “On Monday, September 9, 2019, I submitted the Summons and
10 Complaint in this action to One Legal, an electronic filing service, for filing with the
11 Court.” *Id.* at 2. Mr. Spada then stated that on Wednesday September 11, 2019, he
12 checked the status of the filing with One Legal, which told him that the filing was
13 rejected because the “original paperwork” was needed. *Id.* Mr. Spada further stated
14 that on the following day, Thursday, September 12, 2019, he drove to the Bankruptcy
15 Court and tried to file the Summons and Complaint but was not able to do so because
16 he was told that the court needed an “original wet signature.” *Id.* Mr. Spada then stated
17 that on Friday, September 13, 2019, he obtained new original wet signatures and filed
18 the Complaint with the Bankruptcy Court. *Id.* According to Mr. Spada, Plaintiff made “a
19 good faith effort to timely file the Summons and Complaint in this action.” *Id.*

20 DISCUSSION

21 Federal Rule of Bankruptcy Procedure 4007(c) provides that a complaint to
22 determine dischargeability of debt under 11 U.S.C. § 523(a) “shall be filed no later than
23 60 days after the first date set for the meeting of creditors under [11 U.S.C.] § 341(a)
24 . . . On motion of a party in interest, after hearing on notice, the court may for cause
25 extend the time fixed under this subdivision. The motion shall be filed before the time
26 has expired.” Since the first date set for the meeting of creditors under 11 U.S.C. §
27 341(a) as stated in the Official Form 309A, Notice of Chapter 7 Bankruptcy Case, was
28 July 8, 2019, and the Official Form 309A, Notice of Chapter 7 Bankruptcy Case was

1 served on all creditors, including Plaintiff, the 60-day deadline to challenge whether
2 certain debts are dischargeable was September 6, 2019. ECF 15 and 17; *see also*,
3 Federal Rule of Bankruptcy Procedure 4007(c). This filing deadline, September 6,
4 2019, was also expressly stated in the Official Form 309A, Notice of Chapter 7
5 Bankruptcy Case. ECF 15 and 17. Plaintiff did not file the Complaint until September
6 13, 2019, which was after the deadline without an extension.

7 “[W]hen a creditor seeks to extend the 60-day window to file a
8 nondischargeability complaint, the creditor must file a motion before the deadline
9 passes and show cause why the extension is necessary.” *Willms v. Sanderson*, 723
10 F.3d 1094, 1100 (9th Cir. 2013) (citing Federal Rule of Bankruptcy Procedure
11 9006(b)(3) and noting that the deadline for filing a nondischargeability complaint may be
12 extended only to the extent and under the conditions stated in Federal Rule of
13 Bankruptcy Procedure 4007(c)). The Federal Rules of Bankruptcy Procedure “afford [a
14 bankruptcy court] no discretion to extend retroactively the deadline set in [Federal Rule
15 of Bankruptcy Procedure] 4007(c) for filing nondischargeability complaints.” *Anwar v.*
16 *Johnson*, 720 F.3d 1183, 1185-1186 (9th Cir. 2013) (an attorney’s computer problems
17 did not excuse his late filing of two dischargeability complaints by 26 and 38 minutes).

18 Therefore, under the Federal Rules of Bankruptcy Procedure, Plaintiff was
19 required to either file a nondischargeability complaint or a motion to extend the deadline
20 to file such a complaint, for cause, within 60 days of the 11 U.S.C. § 341(a) meeting of
21 creditors, i.e. by September 6, 2019. Plaintiff did not file the Complaint or a motion to
22 extend the deadline by September 6, 2019, and therefore, the Complaint is time-barred.

23 In *Willms v. Sanderson*, the Ninth Circuit stated that “Ninth Circuit law strictly
24 construes Rule 4007(c) and courts cannot extend its time limit implicitly where no such
25 motion is made.” 723 F.3d at 1100 (alterations and citations omitted). The strict
26 application of Rule 4007(c) is “necessary due to the need for certainty in determining
27 which claims are and are not discharged.” *Id.* (citation omitted). The Ninth Circuit has
28 “repeatedly held that the sixty-day time limit for filing nondischargeability complaints

1 under [§ 523(a)] is strict and, without qualification, cannot be extended unless a motion
2 is made before the 60-day limit expires.” *Anwar v. Johnson*, 720 F.3d at 1187 (citations
3 and internal quotation marks omitted).

4 The evidentiary record described herein indicates that Plaintiff was aware of the
5 deadline to file a complaint to determine dischargeability of debt that Defendant owes to
6 him because: (1) the Official Form 309A, Notice of Chapter 7 Bankruptcy Case notified
7 creditors of the filing deadline and was served on Plaintiff on June 5, 2019 as indicated
8 by the Bankruptcy Noticing Center certificate of notice, ECF 17, which gave him notice
9 of the deadline of over 90 days, more than the minimum 30 day notice required by
10 Federal Rule of Bankruptcy Procedure 4007(c); (2) Plaintiff was preparing to file the
11 Complaint and had signed it on the last day of the filing period under Federal Rule of
12 Bankruptcy Procedure 4007(c) on September 6, 2019; (3) Plaintiff had tasked Mr.
13 Spada, a registered process server, to file the Complaint for him on September 6, 2019;
14 (4) however, Mr. Spada’s attempt to file the Complaint on time on September 6, 2019 by
15 fax was ineffective; and (5) Mr. Spada’s last attempt to file the Complaint on September
16 13, 2019 was effective, but beyond the sixty-day filing deadline. None of these facts are
17 disputed by Plaintiff in the declarations that he filed in opposition to the Motion.

18 Mr. Spada’s attempt to file the Complaint on time was ineffective because fax
19 filing is not a proper method of filing a complaint. Under Federal Rule of Bankruptcy
20 Procedure 5005(a), complaints and other papers required to be filed under the Federal
21 Rules of Bankruptcy Procedure “shall be filed with the clerk in the district where the
22 case under the [Bankruptcy] Code is pending.” Because Defendant’s bankruptcy case
23 was pending in the Central District of California, Plaintiff was required to file the
24 Complaint with the Clerk of the Bankruptcy Court in the Central District of California.
25 The Local Bankruptcy Rules for the Central District of California mandate the electronic
26 filing with the Clerk of “all documents submitted in any case or proceeding,” on the
27 Bankruptcy Court’s Case Management/Electronic Case Filing (“CM/ECF”) System
28 unless the filing includes confidential court records or the filing party is a pro se litigant

1 or an “attorney who files documents in fewer than 5 bankruptcy cases or adversary
2 proceedings in a single calendar year[.]” Local Bankruptcy Rule 5005-4 and Section 3.1
3 of the Court Manual for the United States Bankruptcy Court, Central District of California
4 (effective August 2019 and available online at
5 [https://www.cacb.uscourts.gov/sites/cacb/files/documents/court-
7 manual/CourtManual_Complete.pdf](https://www.cacb.uscourts.gov/sites/cacb/files/documents/court-
6 manual/CourtManual_Complete.pdf), accessed on December 23, 2019) (the “Court
8 Manual”). As stated in the Court Manual, “Case Management /Electronic Case Filing
9 (CM/ECF) is a case management system that allows attorneys to electronically file
10 petitions and other documents via the internet.” Court Manual, §3.1(a). Generally, only
11 attorneys admitted to practice in the Central District of California, currently in good
12 standing, are eligible to use the CM/ECF system and file documents with the
13 Bankruptcy Court electronically, and the attorneys must be registered with CM/ECF,
14 must have completed online training on the CM/ECF system and prove competence on
15 the system to use it and file documents with the court electronically. Court Manual, §
16 3.2(a), (b) and (c).

17 In this case, Plaintiff, who was filing the Complaint “in pro se,” is not eligible to file
18 documents with the Bankruptcy Court electronically on the court’s CM/ECF system and
19 thus was not required to file the Complaint electronically. Pursuant to Local Bankruptcy
20 Rule 1071-1(c), “Documents filed non-electronically, other than a petition, must be filed
21 only in the divisional office of the clerk to which the relevant case or proceeding has
22 been assigned. However, the clerk may, by special waiver or upon the order of the
23 court, accept documents in any office of the clerk irrespective of division.” Further, a
24 “document delivered for filing to the clerk will be accepted if accompanied by any
25 required fee and signature[. . .].” Local Bankruptcy Rule 5005-1.

26 Section 3.11 of the Court Manual is nearly identical to Local Bankruptcy Rule
27 5005-4 and repeats the exceptions to mandatory electronic filing. Court Manual, § 3.11
28 at 3-18 and 3-19. Moreover, the Court Manual states that if, for example, the court is
unable to accept electronic filings for any reason, “the option of filing documents

1 manually at the filing window always remains available and should be utilized whenever
2 it is essential that a particular document be filed by a particular date.” *Id.*, § 3.12 at 3-
3 19. The court’s local rules and the Court Manual thus provide that the filing of a
4 complaint or other document with the Clerk of the Bankruptcy Court is to be done
5 electronically if the filer is required to file electronically, and if the filer is not required to
6 file electronically, the filer is to file the complaint or other document manually at the filing
7 window of the Clerk’s Office. There is no authorization in the court’s local rules or the
8 Court Manual for “fax filing.” Accordingly, Mr. Spada’s purported fax filing of the
9 Complaint for Plaintiff was unauthorized and ineffective, and his manual filing of the
10 Complaint at the filing window, which was properly executed and effective, was late.

11 Because the Complaint was not filed within the time period required under
12 Federal Rule of Bankruptcy Procedure 4007(c) and is therefore time-barred,
13 Defendant’s motion to dismiss the Complaint and the adversary proceeding will be
14 granted and the Complaint and the adversary proceeding will be dismissed with
15 prejudice. *Anwar v. Johnson*, 720 F.3d at 1189 (affirming the bankruptcy court’s
16 dismissal of the dischargeability complaint with prejudice for filing the complaint late
17 under Federal Rule of Bankruptcy Procedure 4007(c)). As indicated by the case law
18 discussed above, the time limit of Federal Rule of Bankruptcy Procedure 4007(c) is
19 strictly enforced and cannot be extended once the deadline has passed, which
20 happened here as the Complaint was filed late, without any request for extension of

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1 time filed before the deadline. A separate final order granting the Motion is being filed
2 and entered concurrently herewith.

3 IT IS SO ORDERED. ###

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25 Date: December 26, 2019



Robert Kwan
United States Bankruptcy Judge