UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Ashley Susan Aarons, Debtor.	Case No.: 2:19-bk-18316-NB Chapter: 7
Ashley Susan Aarons, Plaintiff, v. Patch of Land Lending, LLC, FCI Lender Services, Inc., California TD Specialists, Versus Residential LoanCo, LLC, Defendants.	Adv. No.: 2:22-ap-01008-NB **MEMORANDUM DECISION GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM** Original Hearing: Date: June 30, 2022 Time: 11:00 a.m. Place: Courtroom 1545 255 E. Temple Street Los Angeles, CA 90012 (or via Zoomgov per posted procedures) Continued Hearing: Date: August 2, 2022 Time: 2:00 p.m. Place: Courtroom 1545 255 E. Temple Street Los Angeles, CA 90012 (or via Zoomgov per posted procedures)

Plaintiff/Debtor has filed a Complaint (adv. dkt. 1) and other papers (adv. dkt. 28, 29, 32) asserting claims against Patch of Land Lending, LLC ("Patch") and others purportedly acting with it (collectively, "Defendants"). Those voluminous papers may obscure two very straightforward problems with the claims.

First, any preconfirmation claims were settled. Although Plaintiff/Debtor argues that she has an interest in those claims – pursuant to an exemption of $10,275.00 in them – she settled those claims, so they no longer exist. Plaintiff/Debtor vaguely asserts that she was fraudulently induced to enter the settlement, but she offers no allegations that would remotely support unwinding the settlement and the confirmed chapter 11[1] plan (the "Plan") that incorporates the settlement.

Second, supposing for the sake of discussion that Plaintiff/Debtor could assert any claims that were not settled, such as claims that are truly postconfirmation, all such claims vested in the bankruptcy estate when this case was converted to chapter 7. Plaintiff/Debtor has not articulated any basis to assert a surviving interest in those claims, so she lacks standing to prosecute them.

For the reasons set forth herein, and on the record at the above-captioned hearing, Defendants' "Motion to Dismiss Complaint for Failure to State a Claim" (adv. dkt. 20, the "MTD") will be granted by a separate order, issued concurrent with this Memorandum Decision.

1. BACKGROUND

In September of 2020 Plaintiff/Debtor executed a Modification and Release Agreement, both in her individual capacity and as trustee of the Ashley S. Aarons 2015 Trust. *See* dkt. 383 (copied at Ex. 10 to Request for Judicial Notice ("RJN"), adv. dkt. 20-2), at Ex. 1. That agreement (the "Original Modification") included Plaintiff/Debtor's

[1] Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

broad release of all claims, whether known or unknown, against Defendants. *Id.,* pp. 12-13 (dkt. 383 at PDF pp. 68-69 out of 153).[2]

In exchange, Patch agreed to modify its claim. The modifications included the following:

(x) Patch agreed to reduce its claim from $4,006,291.07 (as of June 1, 2020) (Original Modif., *id.,* Ex. 1, p. 4, recital L.) to a New Principal Balance of $3,432,916.07, plus a reserve then held by Defendants of $73,200.00 (*id.,* p. 7, para. 4.a.),

(y) Patch agreed to apply that $73,200.00 reserve to the first three new monthly payments of $21,455.73 and some smaller obligations (*id.,* p. 8, para. 4.d.), and

(z) Patch agreed to additional terms including a new interest rate, a new default rate, and a new maturity date of April 1, 2021 (*id.,* p. 8, para. 4.b.), with a conditional waiver of the $60,000.00 extension fee for that new maturity date provided that certain Conditions for Waiver of Extension Fee were satisfied, including remaining current. *Id.,* p. 9, para. 4.f.

This Original Modification agreement was modified by four addenda to become the Final Modification Agreement (the "Final Settlement"), which Plaintiff/Debtor incorporated into her proposed Plan (dkt. 313). The Final Settlement includes an even broader release than the Original Modification, by expanding the scope of Plaintiff/Debtor's releases to include any claims related to the "CARES" Act. *See* dkt. 383, Ex. 1, Final Settlement, p. 6, para. 6.d (at PDF p. 28 of 153).

On February 11, 2021, this Court issued an order confirming the Plan and approving the Final Settlement (the "Confirmation Order," dkt. 390, para. 20). This Court expressly relied on Plaintiff/Debtor's January 12, 2021 statement and declaration in support of the Plan. *Id.,* p. 2:6-8 (relying on dkt. 369). Plaintiff/Debtor did not, at that

[2] The RJN includes copies of various documents, but the page numbers are obscured on some papers, so for ease of reference this Court generally refers to the docket and page numbers of the original documents as filed in this bankruptcy case, rather than the copies attached to the RJN.

time, mention any concerns or alleged fraud in connection with the Final Settement or the Plan.

On February 26, 2021, fifteen days after the Confirmation Order was issued, Plaintiff/Debtor filed her declaration confirming that all preconditions had been satisfied "such that the Final [Settlement] is effective." Aarons Decl. (dkt. 402), p. 2:10-11. In other words, she agreed that she had released Defendants (and that, in reliance on those releases, their claim had been reduced).

Plaintiff/Debtor also reaffirmed her intention "to proceed with take-out financing to implement the Plan." *Id.,* p. 2:12-13. But thereafter no take-out financing occurred, and she does not deny that meanwhile she failed to make any of the new monthly payments to which she had agreed.

Thereafter, this Court converted the case to chapter 7. *See* Order (dkt. 464). The real property that is at the heart of the parties' disputes (the "Property") was sold at a nonjudicial foreclosure sale.

2. PLAINTIFF/DEBTOR'S COMPLAINT

Plaintiff/Debtor filed a complaint in State Court asserting that Defendants "added" $432,916.07 to the principal balance, which purportedly "was incorrect, false and fraudulent rendering the deed [recorded on February 26, 2021 pursuant to the Final Settlement] void." Complaint (Ex.B to Notice of Removal, adv. dkt. 1), para. 41 (at p. 8:13-17) (emphasis added). Plaintiff/Debtor offers no explanation, in her Complaint or in her Opposition to the MTD, how she arrives at this $432,916.07 figure (she has not "done the math"), nor has she explained why this dollar amount was "incorrect, false and fraudulent" and how that would render any of Defendants' acts "void" as distinguished from merely creating an alleged breach of the settlement agreement.

As near as this Court can discern, Plaintiff/Debtor's allegation that Defendants "added" $432,916.07 to the principal balance appears to include at least the following two items about which she objects. First, the Complaint alleges that the $60,000.00 extension fee charged by Defendants was "in violation of California Lending Laws."

Complaint, para. 46 (at p. 9:9). The Complaint does not address her reaffirmation of this $60,000.00 fee as part of the Final Settlement (dkt. 383, Ex. 1, Original Modif., incorporated into Final Settlement, p. 9, para. 4.f. (at PDF p. 65 out of 153)), nor does the Complaint address any basis for excepting any claimed "violation of California Lending Laws" from the broad releases incorporated into the Final Settlement. *See id.,* para. 6 & 7 (at PDF pp. 68-70 out of 153).

Second, the Complaint also asserts that "late fees and daily interest" of "hundreds of thousands of dollars" would not be owed if Defendants had properly (in her view) applied "the $73,200 payment" that had been held in suspense. Complaint, para. 35-36 (at pp. 7:22-8:1). Neither her Complaint nor her Opposition to the MTD explain how there was any violation of the agreement regarding application of the "$73,200 payment" incorporated into the Final Settlement, or how those provisions were fraudulent. *See* dkt. 383, Ex. 1 (Original Modif., incorporated into Final Settlement), p. 8 para. 4.d. (at PDF p. 64 out of 153) (the "$73,200 shall be credited to the Loan and applied … to the first three (3) months of New Monthly Payments …").

Ultimately, it does not matter for purposes of this Memorandum Decision whether this Court's above attempts are correct in parsing the dollar amounts at issue in the Complaint. The point is only that Plaintiff/Debtor has some sort of dispute about dollar amounts, and neither the Complaint nor her opposition to the MTD explains what she means when she alleges that Defendants "added" $432,916.07 to the principal balance, or why such amounts were "incorrect, false and fraudulent."

In addition to these dollar disputes, the Complaint asserts "defects in ... dual tracking [*i.e.,* proceeding with foreclosure notwithstanding a pending and qualifying request for a loan modification, and] other relief [sic] under California Civil Code sections 2923.5 [etc.]" Complaint, para. 49 (at p. 9:22-27). The Complaint does not specify any other violations of California Civil Code "sections 2923.5 etc.," beyond "dual tracking."

Based on all of the foregoing, the Complaint asserts claims for quiet title, cancellation of instrument, and wrongful foreclosure.

3. JURISDICTION, AUTHORITY, AND VENUE

This Bankruptcy Court has jurisdiction, and venue is proper, under 28 U.S.C. §§ 1334 and 1408. No party has challenged these matters, nor is this Bankruptcy Court aware of any basis to challenge them, and the Complaint's claims are squarely within this Court's retention of jurisdiction to interpret and enforce that Plan. *See* Confirmation Order (dkt. 390), p. 11:24-26 (retention of jurisdiction over any "proceedings, whether or not commenced or contemplated as of the Effective Date, regarding the implementation, interpretation, or enforcement of this Plan or the administration of the bankruptcy case or estate"); Plan (dkt. 313), p. 7 (same).

But there is a distinction between (a) the broad statutory grant of jurisdiction and (b) whether this Bankruptcy Court has authority to enter a final judgment or order, as distinguished from making proposed findings of fact and conclusions of law to be reviewed by the District Court. *See In re AWTR Liquidation, Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (Bason, J.) (discussing *Stern v. Marshall*, 131 S.Ct. 2594 (2011)); *In re Deitz*, 469 B.R. 11 (9th Cir. BAP 2012) (same). Plaintiff/Debtor has expressly declined to consent to entry of any final judgment or order by this Bankruptcy Court (*see* Status Report (adv. dkt. 12), p. 4), and has demanded a jury trial (adv. dkt. 1, Ex. B, p. 1:17 and p. 4:14-15), so this Bankruptcy Court must address its authority to issue any final ruling on the MTD. *See AWTR Liquidation*, 547 B.R. 831, 836.

The short answer is that the only party with standing to assert the Complaint's claims is the Chapter 7 Trustee – as discussed below – and the Trustee has expressly consented to this Court's entry of a final ruling on the MTD. *See* Status Report (adv. dkt. 19), p. 4, para. "(f)". That alone is sufficient to resolve any dispute as to this Court's authority. *See Wellness Intern. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015). *See also* Rules 7008 & 7012(b) (Fed. R. Bankr. P.).

Alternatively, there are several other grounds on which this Bankruptcy Court concludes that it has the authority to issue a final judgment or order in this matter. No party has cited any authority to the contrary.[3]

For the foregoing reasons, this Bankruptcy Court respectfully concludes that it is not necessary to burden an Article III Court with *de novo* adjudication of the findings of fact and conclusions of law addressed in this Memorandum Decision. But, if any court with jurisdiction over these matters were to conclude otherwise in future, this Bankruptcy Court requests that this Memorandum Decision be deemed to be proposed findings of fact and conclusions of law for *de novo* review by an Article III Court.

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[3] There are two components to this Bankruptcy Court's authority to make any final rulings on the MTD. First, there is a statutory component under 28 U.S.C. § 157(b). Second, there are considerations under the U.S. Constitution, as set forth in *Stern,* 131 S.Ct. 2594.

(1) Statutory analysis

The Complaint's claims are statutorily "core" because: (i) the Complaint asserts counterclaims against persons (Defendants) who have filed claims against the estate (28 U.S.C. § 157(b)(2)(C)); (ii) the Complaint challenges the validity and extent of the liens asserted by Defendants against the subject Property (28 U.S.C. § 157(b)(2)(K)); (iii) the Complaint asserts fraud in connection with the Final Settlement that forms the heart of the Plan, and thus concerns "confirmations of plans" (28 U.S.C. § 157(b)(2)(L)); and (iv) more generally, the Complaint concerns "the administration of the estate" and is a proceeding "affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship," within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O), because the Complaint's claims for "fraud in the inducement to enter the Chapter 11 plan" (Opp. To MTD (adv. dkt. 28), pp. 7:28-8:1, emphasis added) are inextricably intertwined with the Plan preparation and confirmation process presided over by this Bankruptcy Court (and which could not have been presided over by any nonbankruptcy court). *See generally, e.g., In re Harris,* 590 F.3d 730, 738-41 (9th Cir. 2009) (debtor's state law breach of contract action, against bankruptcy trustee and other estate representatives, was "core" proceeding under "catchall" provisions of 28 U.S.C. § 157(b)(2)(A) and (O)).

(2) Constitutional authority

In the view of the undersigned Bankruptcy Court, the statutory authority to issue final judgments or orders is not superseded by limitations under the U.S. Constitution. For one thing, it is impossible to untangle the Final Settlement/Plan that allowed Patch's claim against the bankruptcy estate (in a reduced dollar amount) from the Complaint's claims that the Final Settlement/Plan was fraudulently induced. Therefore, the Complaint's claims are "necessarily" resolved as part of the "claims allowance process," which is an alternative basis that the Supreme Court has articulated for final adjudication by the bankruptcy courts. *See Stern,* 131 S.Ct. 2594, 2618; *AWTR Liquidation,* 547 B.R. 831, 836-37.

(3) Alternative basis to issue a final ruing on the MTD

Alternatively, regardless whether any given proceeding is "core" or "noncore" under the statute and the U.S. Constitution, this Bankruptcy Court can issue final rulings on pretrial matters that do not require findings on disputed factual issues, including claim-dispositive motions such as the MTD. *See AWTR Liquidation,* 547 B.R. 831, 839 (citing authorities).

4. DISCUSSION

This Court has reviewed the Complaint (adv. dkt. 1), the MTD (adv. dkt. 20), Plaintiff/Debtor's opposition papers (adv. dkt. 28, 29, 32), Defendants' reply papers (adv. dkt. 33), and the other filed documents and records in this adversary proceeding and in the related bankruptcy case (Case No. 2:19-bk-18316-NB). This Court has also considered the parties' oral arguments set forth on the record at a hearing on June 30, 2022 at 11:00 a.m.

a. Legal Standards

The parties' briefs summarize the legal standards applicable to the MTD, so this Court will only summarize key legal principles here. First, to "survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when a court can draw a reasonable inference that the defendant is liable for misconduct. *Id.* It is not necessary "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors,* 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

Second, fraud must be alleged with particularity. "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud and mistake." Rule 9(b) (Fed. R. Civ. P.) (incorporated by Rule 7009, Fed. R. Bankr. P.) (emphasis added).

b. Plaintiff/Debtor's preconfirmation claims were all settled

The releases in the Final Settlement leave no room for any of Plaintiff/Debtor's preconfirmation claims: she settled them all. Any exemption she asserts in those claims is irrelevant, because such claims have ceased to exist.

Plaintiff/Debtor vaguely asserts that she was fraudulently induced to enter into the Final Settlement by purported oral promises that "interest and penalties would be

waived for at least a six-month period so that she could refinance the property." Opp. To MTD (adv. dkt. 28), p. 8:14-17. This asserted fraudulent inducement is unpersuasive for multiple alternative reasons.

First, she cites no authority setting forth the standards for enforcing an alleged oral promise that is directly contrary to the parties' Final Settlement and Plan, on which creditors and this Court relied. That lack of authority, by itself, constitutes a waiver and forfeiture of this argument. See *In re Hamer*, 138 S. Ct. 13, 17 n.1 (2017) (distinguishing forfeiture and waiver).

Second, as Defendants point out (MTD, adv. dkt. 20, p. 15:7-8, 17-23), any alleged fraud must be pled with particularity. A complaint alleging fraud must "identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false." *Davidson v. Kimberly-Clark Corp.,* 889 F.3d 956, 964 (9th Cir. 2018) (citation and internal quotation marks omitted, emphasis added). None of this is provided in the Complaint.

For example, which attorney for Patch or other authorized agent allegedly made oral promises? On what dates did they make those promises? How did they explain away the fact that such promises directly contradicted the heavily-negotiated, repeatedly restated provisions of the modification agreements, culminating in the Final Settlement and the Plan, that set forth exactly which interest charges and other charges were and were not being modified? How was it justifiable for Plaintiff/Debtor to have relied on these alleged promises, despite the fact that they blatantly contradicted the written documents? *See, e.g., Lazar v. Superior Ct.,* 909 P.2d 981, 638 (1996) (elements of promissory fraud).

Third, on that last element of "justifiable" reliance, this Court cannot conceive of any way that Plaintiff/Debtor's purported reliance could be justifiable when it is directly contrary to the written documents and Plan, notice of which was sent to all creditors and relied on by them in voting in favor of the Plan, and on which this Court also relied in

confirming the Plan. Rarely if ever could there be a more prominent and thoroughly vetted set of terms than the releases and other settlement terms publicly agreed to by Plaintiff/Debtor as part of her chapter 11 Plan distributed to creditors, voted on by them, and confirmed by this Court. It is preposterous to suggest that any reliance on a purported secret oral agreement contradicting those terms could be justifiable.

Plaintiff/Debtor also vaguely asserts that her Final Settlement should not be binding because her Plan was not "fully consummate[d]." Opp. To MTD (adv. dkt. 28), p. 8:2-6. But, as Defendants point out (Reply, adv. dkt. 33, pp. 5:19-6:24 & n. 7), the two cases on which she relies are entirely different.

In both cases, defendants who were being sued by a chapter 7 trustee for recovery of purportedly avoidable payments asserted that claims against them had been settled by confirmation of a chapter 11 plan, and the courts rejected that broad an interpretation of the plan and the law under the specific language of the plans in those cases. *In re RJW Lumber Co.,* 262 B.R. 91, 92-93 (Bankr. N.D. Cal. 2001); *In re Silver Mill Frozen Foods, Inc.,* 23 B.R. 179, 182-83 (Bankr. W.D. Mich. 1982). But Plaintiff/Debtor cites no authority that she can use her <u>own</u> breach of her Plan to revive claims that <u>she released</u> in that Plan. Such a conclusion would make all settlements and all resolutions of disputed issues in any chapter 11 plan meaningless because they would be terminable at will by the settling party, simply by choosing not to perform.

Additionally, there does not appear to be any basis to grant leave to amend the Complaint because Plaintiff/Debtor has not suggested any amendment that would cure the foregoing defects. In other words, she has failed to explain how she plausibly could assert that Defendants somehow fraudulently induced her to settle with them despite (x) the plain language of the Final Settlement, including the explicit and comprehensive releases, (y) her own proposed Plan incorporating those releases and other terms, on which creditors relied in voting on the Plan, and on which this Court relied in confirming the Plan, and (z) her own declaration that the Plan had become effective.

For all of these reasons, all of Plaintiff/Debtor's prepetition claims no longer exist. The MTD must be granted as to those claims, and it appears that there are no grounds to grant leave to amend.

c. Alternatively, Plaintiff/Debtor lacks standing to assert any non-settled claims

Even if Plaintiff/Debtor could assert any non-settled claims, those claims belong to her chapter 7 estate, not her. For example, supposing purely for the sake of discussion that (contrary to the above analysis) she could assert a viable claim for fraud in the inducement to enter into her settlement, that "inducement" occurred postpetition, so it would be a postpetition claim belonging to her chapter 7 estate.

Similarly, although the Complaint is unclear, it appears that Plaintiff/Debtor might be asserting defects in foreclosure notices that arose after her Plan was confirmed and that do not depend on her settled claims. But, if any such post-confirmation claims were valid, they also would belong to the chapter 7 estate.

The legal analysis is straightforward. Plaintiff/Debtor has the burden to establish her standing to prosecute any non-settled claims. *See In re Meehan,* 2014 Bankr. LEXIS 4219, at * 10 (9th Cir. BAP Sept. 29, 2014). To meet that burden she must, among other things, demonstrate that she is asserting her own legal claims and not those belonging to others. *In re Veal*, 450 B.R. 897, 907 (9th Cir. BAP 2010) (citation omitted).

But when this case was converted from chapter 11 to chapter 7 all then-existing claims vested in the bankruptcy estate, pursuant to the conversion order (*id.,* p. 2:1-3) and the Confirmation Order (dkt. 390, p. 12:3-7). In other words, any claims that still exist belong to the estate and are controlled by the Chapter 7 Trustee, not Plaintiff/Debtor. *See In re Pretscher-Johnson*, 2017 Bankr. LEXIS 1463, at *9-10 (9th Cir. BAP May 31, 2017) (citing *Spirtos v. One San Bernardino Cnty. Super. Ct. Case*, 443 F.3d 1172, 1175-76 (9th Cir. 2006)) (as the representative of the bankruptcy estate,

the trustee is the proper party in interest and the only party with standing to prosecute causes of action belonging to the estate)).

The Chapter 7 Trustee has elected not to oppose the MTD so he has waived and forfeited any defenses to dismissal on the merits. *See Hamer*, 138 S. Ct. 13, 17 n.1. Therefore, the MTD must be granted, and Plaintiff/Debtor lacks standing to argue otherwise.

True, Plaintiff/Debtor has pointed to two exceptions to the general rule that chapter 7 debtors lack standing. But neither one applies.

First, Plaintiff/Debtor has maintained that she has standing because of the exemption she asserted on her bankruptcy Schedule C in $10,275.00 out of any claims against Defendants. But bankruptcy Schedule C is used to assert purported exemptions in prepetition assets, not postpetition assets. As noted above, the Complaint's claims for fraud in the inducement or alleged defects in foreclosure notices all arose postpetition, and upon conversion to chapter 7 all of Plaintiff/Debtor's then-existing property, including these claims, was vested in the bankruptcy estate for the purpose of paying creditors whom she failed to pay under her Plan. She has not pointed to any provision in her Plan or in law that would allow her to retain these claims for her own benefit.

Second, theoretically, if the bankruptcy estate were solvent then Plaintiff/Debtor might well have standing, concurrent with the Chapter 7 Trustee, to assert the claims in the Complaint. But Plaintiff/Debtor has not shown how there is even a remote possibility of a surplus estate (Opp. To MTD, adv. dkt. 28, pp. 5:1-7:7), let alone that there is a reasonable possibility of a surplus. *See, e.g., In re Wellman*, 2007 Bankr. LEXIS 4291, at *4, n.5 (9th Cir. BAP Nov. 9, 2007) (chapter 7 debtor standing exists "when there is a sufficient possibility of a surplus to give the chapter 7 debtor a pecuniary interest" in the outcome of the dispute) (citations omitted).

As Defendants point out, in addition to their own claims there are numerous other claims and large administrative expenses. Plaintiff/Debtor has not even attempted to show how, in the face of all of these debts, there is any hope of solvency.

For all of these reasons, Plaintiff/Debtor lacks standing to assert any claims in the Complaint. She has not suggested any basis on which she could overcome the foregoing obstacles and have standing. Therefore, the MTD must be granted, and it appears that there are no grounds to grant leave to amend the Complaint.

d. Alternatively, Defendants' arguments on the merits are persuasive

Defendants set forth in detail their defenses to Plaintiff/Debtor's claims. *See* MTD (adv. dkt. 20), pp. 14:6-24:17 (modified by their acknowledgment, in the Reply, that the Complaint is verified). Her only response is that (A) some defenses purportedly are inapplicable if the Notices of Default ("NODs") and other documents are "void," and (B) she argues that those documents are void because the dollar "amount[s]" specified in them purportedly are wrong. *See* Opp. To MTD (adv. dkt. 28), p. 7:12-19 and p. 9:28-10:8. This response is inadequate for numerous reasons.

First, as set forth above, she has failed to "do the math" to show how the dollar amounts are wrong. *Compare* MTD (adv. dkt. 20), p. 21:1-24 (Defendants' math). Second, she has failed to respond to Defendants' arguments and citations that, even if the NODs were wrong (which Defendants deny), that would not render the NODs void (MTD, adv. dkt. 20, p. 19:12-19), or preclude other defenses, such as Defendants' argument that some of the statutes on which she relies are simply inapplicable (*e.g., id.,* at pp. 21:25-24:2), and alternatively that she suffered no damages. *Id.,* p. 24:3-17. Her failure to respond to those arguments constitutes a waiver and forfeiture of any contrary arguments. See *Hamer*, 138 S. Ct. 13, 17 n.1.

In sum, even if the Complaint's claims were not barred by Plaintiff/Debtor's settlement of pre-confirmation claims and her lack of standing to assert any remaining claims, she loses on the merits. This is an alternative reason to grant the MTD. In addition, because she has not suggested any amendment to the Complaint that would

cure these defects, it appears that there are no grounds to grant leave to amend the Complaint.

e. Defendants' mention of possible sanctions

In their reply papers, Defendants refer to seeking an award of sanctions against Plaintiff/Debtor's Counsel, should this matter proceed. Reply (adv. dkt. 33), pp. 7:22-9:3. This Court's recollection is that Defendants confirmed on the record that their reference to sanctions is only a caveat that they will seek sanctions in future if there are further proceedings on this matter. In any event, (i) any request for sanctions under Rule 9011, the Court's inherent contempt authority, or § 105(a) must be brought by separate motion, and (ii) any request for sanctions under 28 U.S.C. § 1927 is unavailing because that statute is not applicable before this Bankruptcy Court. *See In re DeVille*, 361 F.3d 539, 546 (9th Cir. 2004). Accordingly, this Court is not persuaded to award any sanctions at this time.

5. CONCLUSION

Plaintiff/Debtor (Ms. Aarons) borrowed millions of dollars secured by the Property. She failed to repay that loan, but through hard-fought negotiations her lawyers were able to obtain a substantial reduction in Defendants' claims, and forbearance long enough for her to seek to refinance the Property, in exchange for broad releases of all claims against Defendants. She agreed to those releases, incorporated them into her Plan, persuaded creditors to vote for her Plan, and persuaded this Court to confirm her Plan based on her assertions that this was a feasible, realistic opportunity to refinance pursuant to her settlement with Defendants.

But then, despite numerous extensions, she failed to refinance the Property, and it was sold at a foreclosure sale. Now she seeks to sue Defendants for the same claims that she previously settled, and possibly for new claims, despite the fact that any non-settled claims belong not to her but to her estate and the Chapter 7 Trustee. Her only responses to Defendants' numerous defenses are vague allegations of some sort of

oral promises, directly contrary to her settlement and her Plan, that purportedly render Defendants' NODs and other documents void.

Her arguments are not remotely persuasive. In fact, they are frivolous.

The MTD will be granted by separate order. This Court will issue that order after the forthcoming status conference and above-captioned Continued Hearing on the MTD, at which this Court will address whether there is any basis to grant leave to amend the Complaint. The tentative ruling is that there is no such basis.

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Date: July 29, 2022

Neil W. Bason
United States Bankruptcy Judge