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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

In re  
MARIA VILLARREAL CAMACHO,  
Debtor.  
MARIA VILLARREAL CAMACHO,  
Appellant,  
v.  
GREENPOINT MORTGAGE  
FUNDING, INC., et al.,  
Appellees.

No. 13-cv-00810-MCE  
Bankruptcy Adversary Proceeding  
No. 12-02608  
Bankruptcy Court Case No. 12-35648

**MEMORANDUM AND ORDER**

This matter is before the Court on a Motion to Dismiss Appeal of Chapter 7 Debtor Maria Villarreal Camacho (“Camacho”) filed by Appellee GreenPoint Mortgage Funding, Inc. (“GreenPoint”) on May 21, 2013. (ECF No. 4.) In its Motion, GreenPoint argues that this Court does not have jurisdiction to hear Camacho’s appeal because the appeal was filed after the fourteen-day appeal period set forth in Federal Rule of Bankruptcy Procedure 8002(a) had expired. (Id. at 6.<sup>1</sup>)

<sup>1</sup> The page numbers used in this Memorandum and Order refer to the pagination assigned by the Court’s ECF system and not to the pagination assigned by the parties.

1 Appellees Bank of America, N.A., (“Bank of America”) and US Bank National Association  
2 (“US Bank”) have joined in GreenPoint’s Motion. (ECF Nos. 13 & 20.) On May 20,  
3 2013, Camacho filed a Response to GreenPoint’s Motion opposing the dismissal of her  
4 appeal. (ECF No. 6.) For the reasons set forth below, GreenPoint’s Motion is  
5 GRANTED.<sup>2</sup>

## 7 BACKGROUND

9 On August 28, 2012, Camacho filed a voluntary Chapter 7 petition for relief under  
10 the Bankruptcy Code. (GreenPoint’s Request for Judicial Notice<sup>3</sup> (“RJN”) Ex. 1, ECF  
11 No. 5.) On October 17, 2012, Camacho filed a Complaint commencing the Adversary  
12 Proceeding against several defendants, including Appellees GreenPoint, US Bank and  
13 Bank of America. (RJN Ex. 3.) The Complaint asserted the following causes of action:  
14 (1) Fraud; (2) Breach of Fiduciary Duty; (3) Violation of Fiduciary Duty; (4) Civil  
15 Conspiracy to Defraud; (5) Negligence; (6) Slander of Title; (7) Declaratory Relief;  
16 (8) Violation of 12 U.S.C. § 2607(a); and (9) Negligence Per Se; Declaratory and  
17 Injunctive Relief re Civil Code Section 2923.5. (*Id.*)

18 On January 7, 2013, US Bank filed a motion to dismiss the Adversary Proceeding,  
19 which was set for hearing on February 26, 2013. (RJN Ex. 2.)

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22 <sup>2</sup> Because oral argument would not be of material assistance, the Court ordered this matter  
submitted on the briefs. E.D. Cal. R. 230(g).

23  
24 <sup>3</sup> Both parties filed requests for judicial notice of several documents filed in Camacho’s bankruptcy  
proceedings. (See ECF Nos. 5 & 6.) Pursuant to Rule 201 of the Federal Rules of Evidence, this Court  
25 may take judicial notice of complaints and briefs filed in another case to determine what issues were  
before that court and were actually litigated. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746  
26 n.6 (9th Cir. 2006). The Court may also take judicial notice of another court’s order for the limited purpose  
of recognizing the judicial act that the order represents or the subject matter of the litigation. *Opoka v.*  
27 *I.N.S.*, 94 F.3d 392, 395 (7th Cir. 1996). Accordingly, the Court will take judicial notice of the relevant  
documents filed in Camacho’s bankruptcy proceedings, not for the truth of the facts recited therein, but for  
28 the limited purpose of establishing that those documents exist. Since the parties’ requests for judicial  
notice concern the same documents, and in the interests of judicial efficiency, the Court will cite only to  
GreenPoint’s Request for Judicial Notice (ECF No. 5) throughout this Memorandum and Order.

1 On February 6, 2013, GreenPoint filed its motion to dismiss the Adversary Proceeding,  
2 which was set for hearing on March 12, 2013. (RJN Exs. 2 & 4.) On February 7, 2013,  
3 Bank of America filed its motion to dismiss the Adversary Proceeding, which was also  
4 set for hearing on March 12, 2013. (RJN Ex. 2.)

5 On February 26, 2013, the Bankruptcy Court held a hearing on US Bank's motion  
6 to dismiss. (RJN Exs. 2 & 5.) Camacho and counsel for US Bank, GreenPoint and Bank  
7 of America appeared at that hearing. (RJN Ex. 5.) On February 27, 2013, the  
8 Bankruptcy Court entered an Order holding, inter alia, that the Adversary Proceeding  
9 should be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(B)<sup>4</sup> because  
10 Camacho's spouse Pedro Zarate, acting on behalf of the marital community, had  
11 previously filed and subsequently voluntarily dismissed two lawsuits asserting the same  
12 claims as included in Camacho's Complaint filed in the Adversary Proceeding at issue.

13 (Id.) The Bankruptcy Court explained that the second voluntary dismissal of an identical  
14 action by Camacho's spouse operated as "adjudication on the merits" and eliminated  
15 Camacho's ability to file the Adversary Proceeding at issue on behalf of the marital  
16 community. (Id.) Having set forth its reasoning, the Bankruptcy Court concluded the  
17 Order by stating: "IT IS ORDERED that the adversary proceeding is DISMISSED, WITH  
18 PREJUDICE." (Id.) On the same day as the Order was entered, a "Notice of Entry of  
19 Order/Judgment in an Adversary Proceeding" was also entered by the Bankruptcy Court.  
20 (RJN Ex. 6.) A Certificate of Notice was issued certifying that the Notice of Order was  
21 mailed to Camacho at the address she provided in her bankruptcy petition. (RJN Ex. 7.)

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25 <sup>4</sup> Federal Rule of Civil Procedure 41(a)(1) allows a plaintiff to dismiss any action without a court  
26 order prior to filing (1) a notice of dismissal before the opposing party serves either an answer or a motion  
27 for summary judgment, or (2) a stipulation of dismissal signed by all parties who have appeared.  
28 Fed. R. Civ. P. 41(a)(1)(A). Unless the notice or stipulation provides otherwise, such voluntary dismissal  
by a plaintiff is without prejudice. Fed. R. Civ. P. 41(a)(1)(B). However, "if the plaintiff previously  
dismissed any federal - or state-court action based on or including the same claim, a notice of dismissal  
operates as an adjudication on the merits." Id.

1 On March 12, 2013, the Bankruptcy Court issued three separate Civil Minutes  
2 concerning a previously scheduled status conference and GreenPoint's and Bank of  
3 America's pending motions to dismiss. (RJN Ex. 8.) Each Minute Order stated:  
4 "Adversary Proceeding case dismissed 2/27/13." (Id.)

5 On March 18, 2013, the Adversary Proceeding was closed. (RJN Ex. 2.) On the  
6 same day, the Bankruptcy Court issued its Opinion setting forth detailed reasoning for  
7 the dismissal of the Adversary Proceeding. (RJN Ex. 9.)

8 Camacho filed her Notice of Appeal with the Bankruptcy Court on March 28,  
9 2013, twenty-nine days after the entry of the February 27, 2013, Order, and ten days  
10 after the entry of the March 18, 2013, Opinion. (RJN Ex. 10.)

## 11 12 ANALYSIS

13  
14 Pursuant to Federal Rule of Bankruptcy Procedure<sup>5</sup> 8002(a), "[t]he notice of  
15 appeal shall be filed with the clerk within 14 days of the date of the entry of the  
16 judgment, order, or decree appealed from." Fed. R. Bankr. P. 8002(a). The Ninth Circuit  
17 has explained that Rule 8002(a)'s requirement is jurisdictional: untimely filing of notice of  
18 appeal deprives appellate court of jurisdiction to review an order of the Bankruptcy  
19 Court. In re Wiersma, 483 F.3d 933, 938 (9th Cir. 2007); In re Slimick, 928 F.2d 304,  
20 306 (9th Cir. 1990). Because of the jurisdictional implications of Rule 8002(a), the court  
21 should construe the timeliness requirement strictly. In re Souza, 795 F.2d 855, 857  
22 (9th Cir. 1986).

23 The parties disagree whether the Bankruptcy's Court's February 27, 2013, Order  
24 or the subsequently filed Opinion triggered the appeal period under Rule 8002(a). If, as  
25 argued by GreenPoint, the appeal period started on February 27, 2013, Camacho's  
26 instant appeal is time-barred and should be dismissed.

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28 <sup>5</sup> Unless otherwise noted, all further references to "Rule" or "Rules" are to the Federal Rules of Bankruptcy Procedure.

1 If, however, the appeal period does not start running until the Bankruptcy Court had  
2 issued its Opinion setting forth rationale for the previously issued Order, then Camacho's  
3 appeal would be timely.

4 In In re Slimick, the Ninth Circuit considered "the recurrent problem of which of  
5 two documents filed by a court, both arguably pronouncing the court's final order in a  
6 matter, constitutes the final, appealable order." 928 F.2d at 306-07. The Ninth Circuit  
7 explained: "[I]f, after filing a final disposition, a court filed a more formal judgment, the  
8 latter does not constitute a second final disposition or extend the appeal period." Id. at  
9 307. "A disposition is final if it contains 'a complete act of adjudication,' that is, a full  
10 adjudication of the issues at bar, and clearly evidences the judge's intention that it be the  
11 court's final act in the matter." Id.; see also In re Wiersma, 483 F.3d at 938 ("An order is  
12 final if it constitutes a complete adjudication of the issues at bar and clearly evidences  
13 the judge's intention that it be final."). "Evidence of intent consists of the Order's content  
14 and the judge's and parties' conduct." In re Slimick, 928 F.2d at 308.

15 Unlike in an ordinary civil case, "in bankruptcy, a complete act of adjudication  
16 need not end the entire case, but need only end any of the interim disputes from which  
17 appeal would lie." Id. at 307 n.1. Here, the February 27, 2013, Order of the Bankruptcy  
18 Court clearly and unambiguously dismissed the Adversary Proceeding with prejudice in  
19 its entirety as to all parties, leaving no issues unresolved. (See RJN Ex. 5.) Accordingly,  
20 the Order constitutes the Bankruptcy Court's complete act of adjudication. See In re  
21 Professional Ins. Mgmt., 285 F.3d 268, 281 (3d Cir. 2002) ("A bankruptcy court order  
22 ending a separate adversary proceeding is appealable as a final order even though that  
23 order does not conclude the entire bankruptcy case.").

24 Further, the February 27, 2013, Order on its face evidences the Bankruptcy  
25 Court's intent that the disposition be final. By stating that "IT IS ORDERED that the  
26 adversary proceeding is DISMISSED, WITH PREJUDICE," (RJN Ex. 5), the Bankruptcy  
27 Court clearly intended its Order to be final and immediately operative.

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1 See In re Slimick, 928 F.2d at 308 (“Although no formal words of judgment are  
2 necessary to convey finality,” an order “stating ‘IT IS THEREFORE ORDERED that the  
3 objection . . . is, hereby sustained,’ contained language typical of a final disposition.”).  
4 Nothing in the Order indicates that the Bankruptcy Court contemplated entering the  
5 subsequent Opinion or that it did not consider its Order to be final and complete  
6 adjudication of the Adversary Proceeding. See id. at 308 (explaining that an order is  
7 final when it “does not refer to any contingency upon which finality depends”). The fact  
8 that the Bankruptcy Court entered its Judgment in the Adversary Proceeding  
9 immediately following the issuance of the Order further solidifies the finality of the court’s  
10 February 27, 2013, ruling. Thus, the Order presented a “clear and unequivocal  
11 manifestation by the trial court of its belief that the decision made . . . is the end of the  
12 case.” In re Brown, 484 F.3d 1116, 1122 (9th Cir. 2007) (quotation omitted); see also In  
13 re Cahn, 188 B.R. 627, 630 (B.A.P. 9th Cir. 1995) (finding that the bankruptcy court’s  
14 ruling was a final appealable order, and that the court’s subsequent actions had no effect  
15 on the appeal period, where the order clearly dismissed the adversary proceeding, did  
16 not require counsel to lodge another form of order, was entered on the bankruptcy court  
17 docket, and where a conformed copy of the order was sent to the debtor).

18 Plaintiff, however, argues that the Order did not trigger the appeal period under  
19 Rule 8002(a) because “the chronology of proceedings” subsequent to the issuance of  
20 the Order allegedly shows that the Bankruptcy Court’s February 27, 2013, ruling was not  
21 a complete act of adjudication. (ECF No. 6 at 4.) In particular, Camacho points out that,  
22 after the Order was entered, the Bankruptcy Court “held” several status conferences and  
23 a “hearing” on Bank of America’s and GreenPoint’s motions to dismiss, and had not  
24 closed the Adversary Proceeding until March 18, 2013, when it published its Opinion.  
25 (Id. at 5.) The Court does not find Camacho’s reasoning persuasive.

26 First, all three Civil Minutes, on which Camacho relies, state: “Adversary  
27 Proceeding case dismissed 2/27/13.” (RJN Exs. 2 & 8.)

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1 Thus, the Civil Minutes clearly refer back to the date of the February 27, 2013, Order and  
2 reiterate the fact that the Order dismissed the Adversary Proceeding in its entirety.  
3 Although the Minutes indicate that a status conference and a hearing were “held,” the  
4 docket demonstrates that no party appeared at those “hearings,” indicating that the Civil  
5 Minutes were entered by the Bankruptcy Court for the purpose of administratively  
6 clearing its docket of pending matters, which had become moot in light of the earlier  
7 Order dismissing the Administrative Proceeding in its entirety. (Id.)

8 Moreover, in her recently filed Ex Parte Application for Extension of Time to File  
9 Opening Brief, Camacho herself acknowledged that the Bankruptcy Court’s February 27,  
10 2013, Order was a “ruling dismissing the entire case,” and that “[i]t is this ruling for which  
11 the Appellant appeals.” (ECF No. 8 at 4.) Therefore, it is clear that Camacho fully  
12 understood that the entire Adversary Proceeding had been dismissed by the Bankruptcy  
13 Court’s February 27, Order, and that the Order was a final and complete adjudication of  
14 the dispute between the parties.

15 Further, the case law is clear that, if a bankruptcy court issues a final appealable  
16 order, the court’s subsequent issuance of a more detailed opinion -- or findings and  
17 conclusions -- does not deprive the first order of its finality and does not extend or restart  
18 the appeal period. See In re Slimick, 928 F.2d at 307 (“[I]f, after filing a final disposition,  
19 a court files a more formal judgment, the latter does not constitute a second final  
20 disposition or extend the appeal period. . . . The absence of accompanying findings and  
21 conclusions did not prevent the Order from fully adjudicating the [dispute].”); In re  
22 Dahnken's of Santa Barbara, Inc., 11 B.R. 536, 537-38 (B.A.P. 9th Cir. 1981)  
23 (concluding that the issuance of a “memorandum of decision” setting forth rationale for  
24 the previously issued written order had no effect on the period to file an appeal  
25 challenging the bankruptcy court’s ruling); In re Weston, 18 F.3d 860, 862-63 (10th Cir.  
26 1994) (concluding that the issuance of a second “redundant” order did not supersede the  
27 previously issued final ruling of the bankruptcy court and had no effect on the time for  
28 filing an appeal); In re City of Harrisburg, PA, 462 B.R. 510, 513 (Bankr. M.D. Pa. 2011)

1 (“Rule 8002 states unambiguously that the time for filing an appeal runs from the date of  
2 the entry of the order, not from the date of the entry of an opinion.”); In re Lahtinen,  
3 No. 03 C 7981, 2004 WL 421734, at \*3 (N.D. Ill. Feb. 19, 2004) (“As a general rule, a  
4 second order creates a new appeal period only if the second order actually alters the  
5 first order, changing the result.”).

6 Here, the March 18, 2013, Opinion in no way altered the ruling announced by the  
7 Bankruptcy Court in its February 27, 2013, Order, but merely provided a more detailed  
8 factual background and a comprehensive legal analysis supporting the earlier dismissal  
9 of the Adversary Proceeding. Accordingly, the February 27, 2013, Order was a final  
10 appealable order of the Bankruptcy Court which triggered the fourteen-day time period  
11 within which Camacho had to file her Notice of Appeal. Because Camacho did not file  
12 her appeal within the requisite time period, this Court does not have jurisdiction to review  
13 the Bankruptcy Court’s decision and must dismiss Camacho’s appeal.

## 14 15 **CONCLUSION**

16  
17 For the reasons set forth above, the Court finds that the Order entered by the  
18 Bankruptcy Court on February 27, 2013, was the final disposition of the Adversary  
19 Proceeding. The time for appeal thus ran from the date of entry of that Order. Because  
20 Camacho failed to file her Notice of Appeal within the fourteen-day period as required by  
21 Rule 8002(a), this Court has no jurisdiction to hear the appeal. Accordingly,  
22 GreenPoint’s Motion to Dismiss Appeal of Chapter 7 Debtor Maria Villarreal Camacho  
23 (ECF No. 4) is GRANTED, and the Bankruptcy Appeal filed by Camacho in this case  
24 (ECF No. 1) is DISMISSED.

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1 In light of this ruling, Camacho's Ex Parte Application for Extension of Time to File  
2 Opening Brief (ECF No. 8) is DENIED as moot.

3 The Clerk of the Court is directed to close this case.

4 IT IS SO ORDERED.

5 Dated: July 1, 2013

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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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