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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICK SILLMAN,
Plaintiff,

No. 2:14-CV-1945-JAM-CMK

vs.

FINDINGS AND RECOMMENDATIONS

LISA TALCOTT, et al.,
Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff’s complaint (Doc. 1) and plaintiff’s response (Doc. 5) to the court’s order to show cause why the action should not be dismissed for lack of jurisdiction.

In the order to show cause, the court stated:

In his complaint, plaintiff states that he is seeking enforcement of a United States Bankruptcy Court judgment. He also states that this matter is related to a case pending in the Bankruptcy Court, case no. “09-22188-E-13,” an adversary proceeding pending in that court, case no. “12-0202-3-E-13,” as well as a bankruptcy appeal pending in this court, case no. 2:14-CV-0587-MCE. Plaintiff asserts that the complaint seeks damages “caused by defendants during violations of the automatic stay of bankruptcy. . . .” Given that plaintiff seeks, among other things, enforcement of a judgment issued in the United States Bankruptcy Court – apparently the same judgment at issue in the related adversary proceeding and bankruptcy appeal – plaintiff shall be required to show cause why this action is properly filed in this court and not the bankruptcy court.

In response to the order to show cause, plaintiff argues that this court, and not the bankruptcy

1 court, should hear his dispute because: (1) the bankruptcy court lacks authority to hear the
2 dispute; (2) the case is too complicated for the bankruptcy court; and (3) the case requires more
3 “discipline” than the bankruptcy court can provide.

4 The court does not agree. This case stems from the bankruptcy petition filed by
5 Sillman. In the context of that proceeding, Sillman initiated an adversary proceeding against
6 John Walker and Lisa Talcott alleging violations of the automatic stay. In a January 21, 2014,
7 Memorandum Opinion and Decision, United States Bankruptcy Judge Ronald H. Sargis entered
8 judgment in favor of Sillman against Walker and Talcott and determined that “the April 1009
9 non-judicial foreclosure sale and the April 2009 Trustee’s Deed issued pursuant thereto are void
10 for being in violation of the automatic stay in the Rick Sillman Chapter 13 case. . . .” The
11 bankruptcy court also concluded that neither Walker nor Talcott acquired any interest in the “5
12 Powtan Property” and that title at all times remained with Sillman. The court ordered Walker to
13 pay \$45,000.00 in damages to Sillman. As to Talcott, the bankruptcy court stated:

14 Though Lisa Talcott is named as a Defendant, Plaintiff-Debtor
15 [Sillman] did not present the court with evidence to establish a claim for
16 the continuing violation of the automatic stay by Talcott. Though
17 Plaintiff-Debtor may have disputes with Talcott, it is Walker who engaged
18 in the conduct that violated the automatic stay. It is the Plaintiff-Debtor
19 and Walker who have been locked in the violation of automatic stay death
20 spiral which has culminated with this trial.

21 With respect to the determination that the non-judicial foreclosure
22 sale was in violation of the automatic stay, and such sale and trustee’s
23 deed issued thereon are void, the court grants judgment for Plaintiff-
24 Debtor and against Talcott. The court grants judgment for Lisa Talcott
25 and against Plaintiff-Debtor on the other remaining claims in the FAC for
26 violation of the automatic stay, and the Plaintiff-Debtor takes nothing from
Talcott thereon.

22 Walker appealed the January 21, 2014, decision to this court. See In re Sillman, 2:14-CV-0587-
23 MCE. In a March 20, 2015, decision, Judge England affirmed.

24 It appears that the gravamen of plaintiff’s argument that this court should hear the
25 instant action is plaintiff’s belief that the dispute with respect to Talcott is unresolved because the
26 bankruptcy court lacked the authority and/or sophistication to resolve it. This is simply not true.

1 The January 21, 2014, decision makes clear that the dispute as against Talcott was in fact
2 resolved. Specifically, the bankruptcy court concluded that plaintiff had not presented evidence
3 that Talcott violated the automatic stay. Moreover, the court directed Walker to pay damages and
4 said that Sillman takes nothing from Talcott. Nowhere did the bankruptcy court state that it
5 lacked authority to rule on Sillman's claims against Talcott. To the contrary, the court ruled in
6 her favor on the damages claims.

7 With Judge England's decision affirming the bankruptcy court's determinations,
8 the matter was resolved. Plaintiff Sillman, through this action, is attempting a second bite at the
9 apple. Plaintiff had an opportunity to litigate his claims of damages resulting from violation of
10 the automatic stay and won as against Walker and lost as against Talcott. The current action,
11 which seeks to re-litigate these claims, should be dismissed.

12 Based on the foregoing, the undersigned recommends that this action be
13 dismissed.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. Responses to objections shall be filed within 14 days after service of
18 objections. Failure to file objections within the specified time may waive the right to appeal.

19 See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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21 DATED: January 24, 2017

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23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE
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