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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKIE WALKER,
Plaintiff,
v.
SPECIALIZED LOAN SERVICING LLC,
Defendant.

No. 2: 16-cv-01794 TLN GGH

ORDER

The court is in the process of adjudicating the Motion to Dismiss, ECF 14, but has encountered potential jurisdictional problems not discussed by the parties.

Plaintiff filed a claim in bankruptcy on February 24, 2015; the Proof of Claim (POC), which plaintiff alleges is a FDCPA violation, was filed in bankruptcy court on July 31, 2015. In the motion to dismiss, defendant attached an Exhibit 5, a notice of trustee sale of the property at issue in this case—sale date October 6, 2016 (filed seemingly by yet another successor loan servicing company). While it might be inferred that the bankruptcy action has been finally adjudicated because of the filing of the notice of sale, as far as the undersigned can discern, the pleadings in this action filed in federal court are silent about the finality of the bankruptcy action.

Because the court should not address the merits of claims when subject matter jurisdiction is lacking, i.e., whether the bankruptcy court retains jurisdiction to adjudicate the present dispute, or it is otherwise moot, and because the undersigned desires to short circuit later arguments on the

1 merits of plaintiff's allegations which might otherwise dispose of this case before more judicial
2 resources are expended, the parties shall file contemporaneous pleadings, no later than January
3 11, 2018, discussing the following:

- 4 1. Whether the bankruptcy action is final, and if so, when did it become so;
- 5 2. If the bankruptcy action is final, and the allegation herein is that defendant's POC filed in
6 that bankruptcy action was deceitful, untimely, or otherwise in error, why was that issue
7 not adjudicated in the bankruptcy action; if the asserted FDCPA violation was not
8 adjudicated in the bankruptcy action, why the final adjudication of the bankruptcy action
9 is not *res judicata* of the issue sought to be litigated here.
- 10 3. Whether the assumed final sale of the property at issue has been made by a successor-to-
11 defendant loan servicing company in accordance with a bankruptcy adjudication which
12 moots the alleged errors set forth in paragraph 2.

13 **IT IS SO ORDERED.**

14 Dated: December 28, 2017

15 /s/ Gregory G. Hollows
16 UNITED STATES MAGISTRATE JUDGE
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