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13 **UNITED STATES BANKRUPTCY COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **SACRAMENTO DIVISION**

16 In Re:)	
17 JOHN S. NOTMAN and)	CASE NO. 14-24824
)	
18 JEANETTE M. NOTMAN)	CHAPTER 7
)	
19 d/b/a NOTMAN FINANCIAL GROUP,)	
)	
20 Debtors.)	ADVERSARY
)	PROCEEDING
)	
21 _____)	CASE NO:
22 PENSION BENEFIT GUARANTY CORPORATION)	1402296-B
)	
23 Plaintiff,)	
24 v.)	
)	
25 JOHN S. NOTMAN)	
)	
26 Defendant.)	
27 _____)	

28 **PENSION BENEFIT GUARANTY CORPORATION’S RESPONSE TO JOHN AND
JEANETTE NOTMAN’S MOTION TO SET ASIDE ENTRY OF DEFAULT JUDGMENT**

1 The Pension Benefit Guaranty Corporation (“PBGC”) hereby responds on its own behalf and as statutory trustee of the Notman Financial Group Defined Benefit Pension Plan (“Pension Plan”) to Defendant’s Motion to Set Aside Default Judgment (“Notman Motion”)

1 [Doc. 67] and requests that the Court deny the Notman Motion. Mr. Notman's repeated
2 assertions that factual bases for the denial of discharge are results of innocent misunderstandings
3 are not credible. The record is clear that Mr. Notman consistently disregards the law, with respect
4 to both his duties as a pension plan fiduciary and the requirements of the Bankruptcy Code and
5 Rules.

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7 2. John Notman, Jeannette Notman, and Notman Financial Group filed for Chapter 7
8 protection on May 7, 2014. The Employee Retirement Security Act of 1974 ("ERISA") requires
9 contributing sponsors, such as the Notman Financial Group, to notify PBGC within 30 days when
10 a contributing plan sponsor files a bankruptcy petition under Title 11. 29 U.S.C. § 1343(c)(11).
11 Pursuant to 29 C.F.R. § 4071, the penalty for failure to file a reportable event notice with PBGC
12 is a \$1,100 daily fine. This notice was never filed with PBGC. (Montgomery Declaration attached
13 hereto as Ex. A, ¶ 5). The Notmans did not list PBGC or the Pension Plan itself as creditors in
14 schedules filed with this Court.

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16 3. On November 3, 2013, PBGC became statutory trustee of the Pension Plan. (Ex. A,
17 ¶ 6). Based on asset statements sent to PBGC, it appeared that the Pension Plan was underfunded
18 by approximately \$1,116,452. However, after extensive investigation and deposition testimony
19 from Mr. Notman, PBGC estimates that the Pension Plan is underfunded by nearly \$2 million.
20 (Exhibit A, ¶ 6). Much of this underfunding can be attributed to Mr. Notman's improper
21 conversion of the Pension Plan's assets for his own personal use.

22
23 4. In his deposition, Mr. Notman admitted under oath that he took loans from the
24 Pension Plan in excess of \$1.2 million in order to invest in real property. (Notman Dep. Sept. 3,
25 2014, Attached hereto as Exhibit B, 56:3-9). In his deposition, he states clearly that he was aware
26 that he owed the Pension Plan repayment of that amount. (Ex. B, 56:3-9) He also admits that he
27 did not repay the Pension Plan, but instead converted the proceeds of the real property sales to his
28

1 own use. (Ex. B, 43:3-21) Given the unambiguous testimony in his depositions, Mr. Notman's
2 assertion in his Declaration Supporting the Motion to Set Aside Default Judgment that the
3 Notmans did not list the Pension Plan as a creditor because "...we did not realize that we were
4 personally liable for this debt" cannot be credible. (Notman Declaration ¶ 20, [Doc. 69]).

5
6 5. Some of the funds that Mr. Notman withdrew from the Pension Plan were not loans
7 in Mr. Notman's view. In his deposition he stated that several fund transfers in 2013 and 2014 to
8 Mr. Notman himself were "withdrawals of pension plan money to me [John Notman], just as
9 retirement plan withdrawals." (Ex. B, 56:3-9). However, under the provisions of the Pension Plan
10 Document, Mr. Notman was not entitled to receive a benefit from the plan until he turned 65.
11 (Notman Defined Benefit Pension Plan Document attached hereto as Ex. C, §7.5(a)). Mr. Notman
12 did not turn 65 until August 19, 2014, well after the improper withdrawals.

13
14 6. Mr. Notman has a Master's Degree in business from San Francisco State University
15 and he purports to have provided investment advice and managed investment portfolios. His
16 pretense of a lack of understanding of the applicable law and the implications of his conduct is
17 not credible. The Court should give no credence to Mr. Notman's assertions that he didn't know
18 that he had to repay loans to the Pension Plan and list the Pension Plan as a creditor. As Pension
19 Plan administrator, Mr. Notman clearly knew or should have known that he was not entitled to
20 take pension distributions from the Pension Plan before his 65th birthday. This restriction was
21 clearly listed in the Plan documents which Mr. Notman signed. It was Mr. Notman's fiduciary
22 duty to fully understand his obligations to the Pension Plan and the restrictions contained within
23 the Pension Plan documents.
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25 7. Mr. Notman asserts in the Motion to Set Aside, that PBGC "insures these accounts
26 and [PBGC] has been fully informed of all of the Debtors' activities." [Doc. 67 at 9]. PBGC does
27 insure retirement benefits under defined benefit pension plans up to certain limits pursuant to
28

1 Title IV of ERISA. However, PBGC does not insure fraudulent activity, which in this case has
2 resulted in the conversion of well over a million dollars for the Plan trustee's personal use. Under
3 29 U.S.C. § 1342, PBGC has the authority to seek to recover funds fraudulently converted from
4 pension plans, which PBGC is attempting to do in this matter. Additionally, PBGC has not been
5 informed of all of the Debtor's activities. The Debtor has only provided partial responses to
6 requests for information and failed entirely to respond discovery requests in PBGC's adversary
7 proceeding.

8
9 8. As a result of limits on benefits guaranteed by PBGC under 29 U.S.C. § 1322, Mr.
10 Notman's actions with respect to the Pension Plan will cause significant harm to the one Pension
11 Plan participant that is not related to the Debtors. That participant's pension benefit will be
12 significantly reduced as a direct result of Mr. Notman's misuse of Pension Plan assets. (Ex. A, ¶
13 7).

14
15 9. PBGC filed a Complaint To Determine Dischargeability [Adv. Pro. 14-02230, Doc 1]
16 against Defendant Debtor John Notman. In that proceeding, the Defendant ignored this Court's
17 rules governing litigation and response deadlines, and did not file an answer until months after the
18 response deadline passed. [Adv. Pro. 14-02230, Doc 14]. After the Defendant filed his untimely
19 answer, PBGC repeatedly attempted to contact Defendant's counsel to set a discovery schedule.

20
21 10. PBGC filed a status report [Adv. Proc. 14- 02230, Doc. 20] stating that Defendant's
22 counsel failed to respond to PBGC's request to set a discovery schedule. Specifically,
23 Defendant's counsel did not respond for several months. Defendant's counsel finally contacted
24 PBGC one hour before a status hearing before this Court. During the status conference both
25 parties agreed to a discovery schedule.

26
27 11. On March 13, 2015, PBGC's counsel contacted Defendant's counsel asking
28 Defendant's counsel to consent to acceptance of service via email of the initial discovery request.

1 Defendant's counsel consented to this request and PBGC sent the initial discovery request on
2 March 16, 2015. The deadline to respond to this initial request was April 6, 2015. To date,
3 PBGC has not received any response to that discovery request. The Defendants have invited this
4 Court to set aside the Default Judgment so that they can litigate their case with the Chapter 7
5 Trustee yet they have not responded to discovery which is over two months past due.
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7 12. Granting the Notman Motion would be prejudicial to PBGC. After entry of the
8 Order on Default Judgment Against John S. Notman [Doc. 53], PBGC was preparing to seek a
9 dismissal of its adversary proceeding on the ground that relief sought therein was accomplished
10 by the order denying general discharge. PBGC did not further pursue discovery in its adversary
11 proceeding, or engage in briefing, as such activity would be to waste resources of the Court and
12 the Parties, in light of the relief granted in the Default Judgment. If the Defendant's Motion to Set
13 Aside is granted, it will be necessary to fully litigate the PBGC adversary proceeding. Since the
14 deadlines for discovery and dispositive motions in PBGC's adversary proceeding have passed or
15 are at hand, a new schedule will have to be established to afford PBGC the opportunity to develop
16 its case.
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18 13. If PBGC's adversary proceeding is litigated, PBGC is likely to prevail on the
19 merits. The Defendant's defalcation with respect to the Pension Plan assets in his case are
20 flagrant, and well supported by documentary evidence and multiple admissions by Notman in his
21 September 2014 deposition.
22

23 14. Inasmuch as the Pension Plan related claims against the Defendant are some of the
24 largest claims in this case, the likely denial of a discharge of those claims will leave the
25 Defendant in a position not significantly different from the position he is in under the extant
26 default judgment. To set aside the default, only to arrive at a similar result after many months of
27 litigation with PBGC, would be a waste of this Court's resources, and those of PBGC.
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WHEREFORE, PBGC requests that this Court deny the Notman Motion.

Date: June 23, 2015

Respectfully submitted,

/s/ Cassandra B. Caverly, Esq.
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