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Wednesday, October 31, 2001
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In re

LEO ALLEN MAGERS,

No. 01-12250

[Debtor](#) ⁱ(s).

Memorandum of Decision

The petitioning [creditor](#) ⁱ in this involuntary [Chapter 7](#) ⁱ case, Carol Mardeusz, is well known to the court. She has, for several years, been abusing the legal system to harass Leo Magers, the alleged debtor. Magers is the father of Mardeusz' daughter, and has custody of the daughter pursuant to state court order. In 1998, the state court found Mardeusz to be a vexatious litigant and curtailed her right to commence actions in state court. In 1999, this court found that Mardeusz had in bad faith removed a state court action by Magers seeking a restraining order to protect himself and his daughter. The court dismissed Mardeusz' [Chapter 13](#) ⁱ case with a bar to re-filing, a remedy reserved for the worst abusers of the bankruptcy

courts. Mardeusz commenced this involuntary case against Magers on September 14, 2001, alleging that Magers owed her \$64,000.00 in child support pursuant to a judgment entered in state court on February 24, 1992. The case first came to the court's attention when Mardeusz sought entry of an order for relief pursuant to FRBP 1013(b) after Magers failed to contest the petition. The court recognized Mardeusz' name right away. Moreover, the court noted that all of the proofs of service in this case were signed by one Ronald Mazzaferro, who had himself been sanctioned \$10,000.00 by this court for abuse of process. The court accordingly declined to enter the default and set a hearing for October 26, 2001.

Magers finally appeared on October 17, 2001. He alleged that he had never been served, and only found out about the petition when he was solicited by a lawyer from Oakland. The court granted his request for an order shortening time so that his motion to dismiss could be heard on October 26. Magers has produced certified copies of a state court order providing that the support order of February 24, 1992, has been fully satisfied and another state court order, made in 1996, that Mardeusz is required to pay child support to Magers. Mardeusz' arguments, insofar as the court is able to glean them, are that the abstract of judgment she recorded in 1992 establishes a debt even though the support order has been fully satisfied, that the judge who vacated the 1992 support order was not a real judge, and that the court lacked discretion to hold a hearing before entering an order for relief against Magers. An abstract of judgment is nothing more than notice to the world that a judgment exists so that a [lien](#) on the debtor's property can be perfected. There is no basis for the assertion that an abstract itself creates a debt, or that it has any effect once the underlying judgment has been satisfied. Mardeusz' argument that the judge who vacated her 1992 support order was not a real judge is based on the unsupported allegation that the judge did not become a judge of the superior court until a month after he made the order. However, California Evidence Code § 666 provides that

"[a]ny court of this state or the United States, or any court of general jurisdiction in any other state or nation, or any judge of such a court, acting as such, is presumed to have acted in the lawful exercise of its jurisdiction. This presumption applies only when the act of the court or judge is under collateral attack." Mardeusz has not produced any evidence to rebut the presumption.

Rule 1013(b) provides that if no pleading is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition. Mardeusz argues that the court was without discretion to delay entry of an order for relief against Magers, even though Mardeusz was known to the court to be a vexatious litigant and even though the proof of service upon Magers was signed by a person known by the court to be an abuser of process. The court disagrees. Mardeusz' history of vexatious litigation and Mazzaferro's history of abusive tactics were sufficient to rebut the presumption that Magers had been properly served with the petition. Since the 20-day time for response provided by FRBP 1011 did not begin to run until Magers was served, it was appropriate for the court to hold a hearing on whether or not there had been proper service before ordering relief by default. Moreover, the court has the discretion, pursuant to FRBP 9006(b)(1), to permit a debtor to file a response after the 20-day period has expired. 9 **Collier on Bankruptcy** (15th Ed. Rev.) ¶ 1011.03. To the extent it is necessary, such leave will be granted. The court finds that Mardeusz filed the instant petition in bad faith and for the sole purpose of harassing Magers in federal court after being barred from doing so in state court, knowing full well that Magers owed her nothing. Accordingly, the court will grant Magers' motion to dismiss this case. The court will award Magers his attorneys' fees as well as \$5,000.00 in punitive damages. Moreover, the court will issue an order that prior to filing

any petition, [adversary proceeding](#)ⁱ, complaint, or other request for relief or damages in propria persona in any federal court Mardeusz must henceforth first obtain leave of the judge before whom the matter is to be litigated or the chief judge of such court. A copy of this Memorandum shall be attached to any request for such leave. Counsel for Magers shall submit an appropriate form of order.

Dated: October 31, 2001

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)ⁱ

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