UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

January 27, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	15-24800-D-7 BM-1	DENNIS CURRIER	OPPOSITION TO TRUSTEE'S REPORT OF NO DISTRIBUTION BY BRIAN MORRISION 12-23-15 [40]
2.	15-29502-D-7 UST-1	5065 PASADENA TRUST	MOTION TO DISMISS CASE 12-15-15 [8]

Final ruling:
The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss case based on the debtor, 5065 Pasadena Trust's, ineligibility to be a debtor is supported by the record. As such the court will grant the motion and the case will be dismissed by minute order. No appearance is necessary.

3.	15-27611-D-12 DBL-3	TERRY/VERA ADAMS	CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION 9-29-15 [1]
4.	11-39615-D-7 BHS-2	TERI HOGLUND	MOTION FOR TURNOVER OF PROPERTY 12-23-15 [30]
5.	14-22526-D-7 PA-10	DAVID JONES	CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 6-1-15 [130]

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemption of two IRAs. On November 3, 2015, the parties filed a stipulation indicating they had reached a conditional settlement and wished to continue the hearing to this date to allow them time to fulfill the condition. The court will use this hearing as a status conference to determine the parties' intentions at this time.

6.	15-29334-D-7 APN-1 SANTANDER CONSUMER USA, INC. VS.	RAYLENE JEFFREY AND MARK RUTLEDGE	MOTION FOR RELIEF FROM AUTOMATIC STAY 12-22-15 [9]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 15-24747-D-7 RAYMOND POQUETTE OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
BHS-4 12-24-15 [61]

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemption in an asset the debtor describes as "Property settlement: Residence at 14530 Lynshar Rd., Grass Valley, CA 95949." The debtor's former spouse, Paula Poquette, has filed a response, and the debtor has filed a motion by which he requests additional time to file opposition. The court will continue the hearing and allow the debtor an additional 14 days, or until February 10, 2016, to file opposition, including any evidence the debtor wishes to submit. The court adds the following for the guidance of the parties.

The debtor states in his motion that he "will move this court for an order setting a 28 day notice permitted by LBR 9014-1(f)(2), prior to the hearing date." He adds that "[t]he moving party, (the Trustee), shall file and serve the motion at least twenty-eight (28) days prior to the hearing date." These requests appear to be based on a belief that the trustee did not properly notice the objection to begin with. That is not accurate. The trustee's notice of hearing clearly informed the debtor, as the potential respondent, that under the applicable local rule, LBR 9014-1, any opposition must be filed and served at least 14 calendar days prior to the hearing date and that without good cause, no party would be heard at oral argument if written opposition had not been timely filed. The trustee served the debtor on December 24, 2015; the debtor admits he received it on December 26, 2015. Service on December 24, 2015 was sufficient to give the debtor 34 days' notice of the hearing, more than the amount of notice required under the local rule. That the debtor did not understand the notice, as he claims, is not sufficient to require the trustee to re-notice the hearing or to give the debtor a 28-day extension of time. [1]

As indicated above, the court will give the debtor until February 10, 2016 to file his opposition and evidence and will give the trustee until February 17, 2016 to file a reply. The hearing will be continued to February 24, 2016 at 10:00 a.m. The court will hear the matter.

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1 The debtor is advised that his reference to Rule 144(d), which he cites as providing for an initial 28-day extension of time, is a reference to a local rule for the district court in this district. The rule does not apply in this court. See LBR 1001-1(c). On the other hand, District Court Rule 183 does apply in this court (see id.); it provides that a person representing himself without an attorney is bound by the Federal Rules, local rules, and all other applicable law.

8. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED MOTION FOR SUMMARY JUDGMENT
12-2312 HLC-1
BURKART V. BISESSAR
7-1-15 [183]

This matter will not be called before 10:45 a.m.

9. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
12-2315
BURKART V. LAL
5-28-13 [60]

This matter will not be called before 10:45 a.m.

10. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
12-2319
BURKART V. SHARMA
8-15-12 [9]

This matter will not be called before 10:45 a.m.

11. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
12-2321
BURKART V. ATHWAL
8-15-12 [7]

This matter will not be called before 10:45 a.m.

12. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2356
BURKART V. MAHABIR

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [59]

This matter will not be called before 10:45 a.m.

13. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2357
BURKART V. LAL

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [59]

This matter will not be called before 10:45 a.m.

14. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2361
BURKART V. NARAYAN

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [56]

Final ruling:

The adversary proceeding was dismissed by order entered December 23, 2015. Accordingly, the pre-trial conference is concluded. No appearance is necessary.

15. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2367
BURKART V. PRASAD

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [57]

This matter will not be called before 10:45 a.m.

16. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2369
BURKART V. SINGH

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [59]

This matter will not be called before 10:45 a.m.

17. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2386
BURKART V. RAM

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE OF FRAUDULENT TRANSFER; AVOIDANCE OF PREFERENTIAL TRANSFERS; RECOVERY OF AVOIDED TRANSFERS, ETAL.
5-28-13 [59]

This matter will not be called before 10:45 a.m.

18. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2395
BURKART V. PRASAD ET AL

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE OF FRAUDULENT TRANSFER; AVOIDANCE OF PREFERENTIAL TRANSFERS; RECOVERY OF AVOIDED TRANSFERS, ET AL.
5-28-13 [60]

This matter will not be called before 10:45 a.m.

19. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2401 HLC-1
BURKART V. BISESSAR

CONTINUED MOTION FOR SUMMARY JUDGMENT
7-1-15 [171]

This matter will not be called before 10:45 a.m.

20. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2411
BURKART V. DILBECK

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [59]

This matter will not be called before 10:45 a.m.

21. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2415
BURKART V. NAIDU

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST; OBJECTION TO CLAIM
5-28-13 [56]

This matter will not be called before 10:45 a.m.

22. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2433
BURKART V. SINGH

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE OF FRAUDULENT TRANSFER; AVOIDANCE OF PREFERENTIAL TRANSFER; RECOVERY OF AVOIDED TRANSFERS, ET AL.
5-28-13 [57]

This matter will not be called before 10:45 a.m.

23. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2445
BURKART V. KUMAR

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE OF FRAUDULENT TRANSFER; AVOIDANCE OF PREFERENTIAL TRANSFERS; RECOVERY OF AVOIDED TRANSFERS, ET AL.
5-28-13 [56]

Final ruling:

The adversary proceeding was dismissed by order entered December 23, 2015. Accordingly, the pre-trial conference is concluded. No appearance is necessary.

24. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; RECOVERY OF USURIOUS INTEREST
12-2458
BURKART V. GUO
8-14-12 [1]

This matter will not be called before 10:45 a.m.

25. 10-42050-D-7 VINCENT/MALANIE SINGH — CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER; OBJECTION TO CLAIM
12-2487
BURKART V. KUMAR
5-28-13 [55]

Final ruling:

The adversary proceeding was dismissed by order entered December 23, 2015. Accordingly, the pre-trial conference is concluded. No appearance is necessary.

26. 14-20064-D-7 GLENN GREGO — MOTION FOR ORDER OF UNEARNED FEES
WR-72
12-4-15 [570]

Final ruling:

This is the debtor's motion for an order requiring attorney Scott Sagaria to disgorge alleged unearned attorney's fees. The motion will be denied for the following reasons. First, although the moving party served over 20 other persons and entities who have filed claims or appeared in this case, he did not serve originally serve Scott Sagaria or Sagaria Law (see below). Second, the notice states that opposition must be filed and served within 14 days of the hearing date, whereas the rule provides that if opposition is to be required, it must be filed and served at least 14 days preceding the hearing date. LBR 9014-1(f)(1)(B). Further, the notice does not include the cautionary language required by LBR 9014-1(d)(4). Third, the docket control number is one that has been used by the moving party for an earlier objection to claim, which is contrary to LBR 9014-1(c)(3). Fourth, the notice and motion were filed as a single document rather than separately, as required by LBR 9014-1(d)(3), 9004-1(a), and the court's Revised Guidelines for the Preparation of Documents, EDC Form 2-901.

On January 17, 2016, ten days before the scheduled hearing date, the moving party apparently realized that he had failed to serve Scott Sagaria and Sagaria Law. On that day, the moving party filed an amended notice that lists a hearing date of March 9, 2016 in the caption. According to a proof of service filed the same day, the moving party served the amended notice, together with the notice of motion and motion, declaration, and points and authorities, on Scott Sagaria and Sagaria Law. The amended notice, however, is incomplete. It states that without good cause, no party shall be heard at oral argument if written opposition has not been timely

filed. It adds that the failure to timely file written opposition may be deemed a waiver of any opposition or may result in the imposition of sanctions. The amended notice does not state the deadline for the filing of written opposition – either as a specific date or as at least 14 days prior to the continued date of the hearing. As the original notice incorrectly stated that written opposition must be filed within 14 days of the hearing date and as the amended notice did not correct that error, the amended notice will be disregarded. For the reasons stated above with regard to the original notice of motion and motion (except the failure to serve Scott Sagaria and Sagaria Law), the motion will be denied. The motion will not be calendared for March 9, 2016. Any motion the debtor may choose to file must be a new motion, not an amended motion, and must comply with all applicable procedural and other rules.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

27.	14-20064-D-7 15-2231 GREGO V. WHATLEY ET AL	GLENN GREGO BHS-1	MOTION TO DISMISS ADVERSARY PROCEEDING 12-30-15 [10]

Tentative ruling:

This is the motion of defendant Douglas Whatley (the "defendant") to dismiss the plaintiff's state court action against him, which the defendant has removed to this court. The plaintiff has filed opposition. For the following reasons, the motion will be denied.

The plaintiff, as Trustee of the Oscar Grego Living Trust dated April 7, 2005 (the "Trust"), commenced this action in the El Dorado County Superior Court by filing a petition for declaratory and injunctive relief on November 5, 2015. On December 3, 2015, the defendant, who is the trustee in the chapter 7 case in which this adversary proceeding is pending, removed the state court action to this court. The defendant has now filed this motion to dismiss the Superior Court action for failure by the plaintiff to obtain leave of this court prior to suing the defendant.

It is the law in the Ninth Circuit that "a party must first obtain leave of the bankruptcy court before it initiates an action in another forum against a bankruptcy trustee or other officer appointed by the bankruptcy court for acts done in the officer's official capacity." Beck v. Fort James Corp. (In re Crown Vantage, Inc.), 421 F.3d 963, 970 (9th Cir. 2005). The principle, known as the Barton doctrine, derives from Barton v. Barbour, 104 U.S. 126 (1881), in which the Supreme Court formulated the doctrine with respect to court-appointed receivers. See Crown Vantage, 421 F.3d at 969, n.4, citing Barton, 104 U.S. at 127. Based on the Barton doctrine, as applied to bankruptcy trustees by Crown Vantage, the defendant contends the state court action must be dismissed because the plaintiff filed his petition in the state court without first obtaining leave of this court.

However, the rationale underlying the Barton doctrine is eliminated once the state court action has been removed to the bankruptcy court that appointed the trustee. Harris v. Wittman (In re Harris), 590 F.3d 730, 742 (9th Cir. 2009). Thus, it would be error to dismiss the state court action now that it has been removed to this court. Id.

The defendant has also alluded to the issue of immunity of bankruptcy trustees, and the plaintiff has raised questions concerning this court's jurisdiction, core and non-core proceedings, the rights of trust beneficiaries, and the liability of trustees under the California Probate Code. None of these is before the court at this time. The only issue raised by the defendant's motion is whether the state court action should be dismissed under the Barton doctrine. The court would add, however, that the question of this court's jurisdiction is not resolved simply by the plaintiff's citation to Stern v. Marshall, 131 S. Ct. 2594 (2011). According to the plaintiff, Stern held that "a probate proceeding is specifically excluded from Bankruptcy Court jurisdiction." The plaintiff has not provided a pin cite for his proposition, and in fact, that is not the holding of Stern.

Finally, in his declaration in opposition to the motion, the plaintiff requests that his petition be remanded back to the state court. He has filed as exhibits copies of a purported notice of motion and motion for remand, with attached declaration and points and authorities, bearing a hearing date of February 24, 2016 in this court. The motion is not yet on file and the request in the declaration is not properly construed as a countermotion to the trustee's motion. The court will hear any properly-noticed motion to remand in due course. The plaintiff is cautioned that the notice of motion and motion, with the other attached documents, are not prepared in accordance with the court's local rule governing motion practice, LBR 9014-1, or the court's Revised Guidelines for the Preparation of Documents, made mandatory by LBR 9004-1(a).

The court will hear the matter.

28.	15-27366-D-7 JME-1	LINDA MILLER	AMENDED MOTION TO AVOID LIEN OF CHASE CARD 12-22-15 [33]

Final ruling:

This is the debtor's motion to avoid a judicial lien ostensibly held by Chase Card, presumably Chase Bank (the "Bank"). The motion will be denied for the following reasons. First, the designation of Chase Card as the holder of the judicial lien is insufficient to allow the court to determine which of the three different active entities having "Chase Bank" in their names, as listed on the FDIC's website, is actually the holder of the lien and insufficient to provide notice to the actual holder of the lien. Second, the moving party served the Bank by certified mail at a street address with no attention line, whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer. Fed. R. Bankr. P. 7004(h). Third, the moving party filed an amended motion and amended notice of hearing three days after the originals were filed but the proof of service filed with the amended documents does not purport to evidence service of the amended documents, but only the original ones. Thus, there is no evidence the amended documents, which changed the hearing date to this date, were ever served. Further, the proof of service filed with the amended documents states that service was made on December 18, 2015, which was three days before the amended documents were signed. Thus, if the proof of service was intended to refer to the amended documents, it cannot be accurate. Fourth, the moving party filed the exhibits as attachments to the amended motion, rather than separately, as required

by LBR 9004-1(a) and the court's Revised Guidelines for the Preparation of Documents, EDC Form 2-901.

Fifth, the moving party failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(6). The motion, at ¶ 8, gives the total of liens superior to the judicial lien as $248,308, which if correct, would leave substantial equity in the property to secure the judicial lien. Although the moving party did file a copy of her Schedule D, which lists the senior lien at a much higher amount, with the apparent inaccuracy in the motion, notice was not sufficient to enable the potential respondent to determine whether to oppose the motion or the court to determine whether to grant it.

Sixth, for another reason, the moving party failed to submit sufficient evidence. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be . . . a judicial lien. 11 U.S.C. § 522(f)(1)." In re Goswami, 304 B.R. 386, 390-91 (9th Cir. BAP 2003), citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)." Mohring, 142 B.R. at 391. Here, there is insufficient evidence of a judicial lien held by the Bank, as created by an abstract of judgment recorded in the county in which the debtor's property is located. The debtor has filed as an exhibit a copy of an unrecorded abstract of judgment. There is no copy of the recorded abstract of judgment on file; thus, the debtor has failed to demonstrate that the Bank holds a judicial lien that impairs the debtor's exemption.

"The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of the recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

Finally, the moving papers all name Chase Card as the holder of the judicial lien but the unrecorded copy of the abstract of judgment names the judgment creditor as Persolve, LLC, dba Account Resolution Associates. On the exhibit cover sheet, the moving party characterizes the abstract of judgment as "recorded by Chase Card through sale of debt to Persolve, LLC a limited liability company, dba, Account Resolution Associates." This is insufficient to allow the court to conclude that Chase Card (or Chase Bank), as named in the motion (and which was the only entity the moving party attempted to serve), is actually the holder of the judicial lien she seeks to avoid.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

29. 15-27366-D-7 LINDA MILLER — AMENDED MOTION TO AVOID LIEN OF CHASE CARD
JME-2 — 12-22-15 [37]

Final ruling:

This is the debtor's motion to avoid a judicial lien ostensibly held by Chase Card, presumably Chase Bank (the "Bank"). The motion will be denied for the following reasons. First, the designation of Chase Card as the holder of the judicial lien is insufficient to allow the court to determine which of the three different active entities having "Chase Bank" in their names, as listed on the FDIC's website, is actually the holder of the lien and insufficient to provide notice to the actual holder of the lien. Second, the moving party served the Bank by certified mail at a street address with no attention line, whereas the rule requires that service on an FDIC-insured institution, such as the Bank, be to the attention of an officer. Fed. R. Bankr. P. 7004(h). Third, the moving party filed an amended motion and amended notice of hearing three days after the originals were filed but the proof of service filed with the amended documents does not purport to evidence service of the amended documents, but only the original ones. Thus, there is no evidence the amended documents, which changed the hearing date to this date, were ever served. Further, the proof of service filed with the amended documents states that service was made on December 18, 2015, which was three days before the amended documents were signed. Thus, if the proof of service was intended to refer to the amended documents, it cannot be accurate. Fourth, the moving party filed the exhibits as attachments to the amended motion, rather than separately, as required by LBR 9004-1(a) and the court's Revised Guidelines for the Preparation of Documents, EDC Form 2-901.

Fifth, the moving party failed to submit evidence sufficient to establish the factual allegations of the motion and to demonstrate she is entitled to the relief requested, as required by LBR 9014-1(d)(6). The motion, at ¶ 8, gives the total of liens superior to the judicial lien as $248,308, which if correct, would leave substantial equity in the property to secure the judicial lien. Although the moving party did file a copy of her Schedule D, which lists the senior lien at a much higher amount, with the apparent inaccuracy in the motion, notice was not sufficient to enable the potential respondent to determine whether to oppose the motion or the court to determine whether to grant it.

Finally, the moving papers all name Chase Card as the holder of the judicial lien but the abstract of judgment names the judgment creditor as Pride Acquisition, LLC. On the exhibit cover sheet, the moving party characterizes the abstract of judgment as "recorded by Chase Card through sale of the debt to Pride Acquisitions, LLC." This is insufficient to allow the court to conclude that Chase Card (or Chase Bank), as named in the motion (and which was the only entity the moving party attempted to serve), is actually the holder of the judicial lien she seeks to avoid.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

30. 15-28866-D-7 EVELYN BRENNAN
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-29-15 [12]

HSBC BANK USA, N.A. VS.

Final ruling:

This matter is resolved without oral argument. This is HSBC Bank USA, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

31. 15-25873-D-7 RAMON GONZALEZ
15-2210 DL-1
SACRAMENTO MUNICIPAL UTILITY DISTRICT V. GONZALEZ

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-16-15 [13]

Tentative ruling:

As the court intends to grant the motion to set aside the default, the court will deny this motion as moot.

The court will hear the matter.

32. 15-29890-D-11 GRAIL SEMICONDUCTOR
FWP-1

MOTION TO AUTHORIZE THE CONTINUED EMPLOYMENT AND RETENTION OF MICHAEL F. BURKART AS THE DEBTOR'S CHIEF RESOLUTION OFFICER EFFECTIVE AS OF THE PETITION DATE
12-30-15 [4]

This matter will not be called before 10:30 a.m.

33. 16-20003-D-7 ENRIK MARSHALL-LONG

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
1-4-16 [5]

34.	13-33804-D-7 BHS-3	RHONDA STIJAKOVICH-SANTILLI	STATUS CONFERENCE RE: OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND/OR MOTION TO SET ASIDE 11-14-14 [100]
35.	15-27611-D-12 JPJ-1	TERRY/VERA ADAMS	MOTION TO DISMISS CASE 1-11-16 [38]
36.	15-27611-D-12 USA-1 UNITED STATES DEPT. OF AGRICULTURE/FSA VS.	TERRY/VERA ADAMS	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-8-16 [31]
37.	15-25626-D-11 WSS-2	GERT/LAURALEE JENSEN	CONTINUED MOTION TO DISMISS CASE 12-8-15 [84]

38. 15-24747-D-7 RAYMOND POQUETTE
BHS-4

MOTION FOR 28 DAYS SERVICE OF TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION IN A PROPERTY SETTLEMENT
1-13-16 [73]

Final ruling:

This is the debtor's motion "for an order setting a 28 day notice permitted by LBR 9014-1(f)(2), prior to the hearing date." Motion, DN 73, at 1:26-27. In essence, the debtor is seeking additional time to respond to the trustee's objection to exemptions, Item 7 on this calendar. The court has issued a tentative ruling on the objection, which addresses the debtor's request for additional time. Accordingly, the debtor's motion for an order setting a 28-day notice will be denied as moot by minute order. No appearance is necessary.

39. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2417
BURKART V. PRASAD

CONTINUED MOTION TO REOPEN ADVERSARY PROCEEDING, MOTION TO VACATE
11-13-15 [128]

ADV. CLOSED: 05/27/2015

Tentative ruling:

This is the motion of defendant Kishore Prasad to reopen this case and vacate dismissal. The plaintiff, who is the trustee in the underlying chapter 7 case (the "trustee"), has filed opposition. At the trustee's request in response to the court's initial tentative ruling on the matter, the court permitted further briefing on the application of Fed. R. Civ. P. 60(b)(6), incorporated herein by Fed. R. Bankr. P. 9024 ("Rule 60(b)(6)"). The trustee filed supplemental opposition; the defendant filed nothing. For the following reasons, the motion will be denied.

The defendant's characterization of the relief he seeks is inaccurate, likely because he is representing himself in pro se. What he actually wants is to reopen this adversary proceeding and vacate the judgment previously entered against him. The court finds the motion is appropriately construed as a motion for relief from judgment under Rule 60(b)(6) (permitting relief for "any other reason that justifies relief.")[1] Both parties having had an opportunity to brief the motion as a motion under that rule, the court concludes that the defendant has not met the applicable standards for relief under that rule.

This adversary proceeding is one of a large group of similar proceedings brought by the trustee against defendants who were investors in a Ponzi scheme run by the debtor in the underlying chapter 7 case, Vincent Singh, before he filed his bankruptcy case. In the adversary proceedings, the trustee seeks to avoid as fraudulent transfers the payments Singh made to the defendants in order to keep the scheme going. On March 18, 2015, the trustee filed an initial round of motions for summary judgment in a group of adversary proceedings, including this one, which he set for hearing on April 15, 2015. The defendant in this particular proceeding filed a request for additional time to file opposition. The request was granted and the hearing was continued. The defendant filed opposition, the trustee filed a reply, and the court heard oral argument and granted the motion. A judgment was then entered in the trustee's favor against the defendant for $49,200, and in addition, the defendant's claim against the estate was disallowed under § 502(d) of the Bankruptcy Code. The judgment was entered on the court's docket on May 11, 2015. The

deadline for filing a notice of appeal was 14 days later (Fed. R. Bankr. P. 8002(a)(1)); the defendant did not appeal. He filed a motion to reopen the case and vacate dismissal on October 7, 2015.[2]

In granting the trustee's motion, in May of 2015, the court relied on basic summary judgment law to the effect that once the moving party has met his burden of proof, the opposing party must come forward with evidence sufficient to demonstrate the existence of genuine issues of material fact that should be tried. The court found that, although the defendant asserted a "good faith and for value" defense under § 548(c), he had failed to submit admissible evidence other than his conclusionary declaration in which he testified he had made good faith investments into the Ponzi scheme and had invested more into the scheme than he had received back, such that he was a "net loser." The court concluded that up against the trustee's evidence those statements were too conclusory to demonstrate the existence of genuine issues of material fact for trial; therefore, the court granted the motion and judgment was entered against the defendant.

Some time later, the court held pretrial conferences in a large number of the trustee's adversary proceedings at which the court heard from many of the defendants who, like the defendant here, were representing themselves in pro se. The court permitted the defendants to tell the court of the circumstances that had befallen them as a result of their investments in the Ponzi scheme. Those defendants' remarks made the court acutely aware of the tragic nature of the financial, and in many cases social and family, consequences of the defendants' investments. In light of those remarks and the fact that these hearings were pre-trial conferences, the court determined that for those pro se defendants who responded to future motions for summary judgment brought by the trustee and the defendant asserted an affirmative defense, the court would defer a decision on the good faith defense until trial. However, the court would grant partial summary adjudication and determine certain factual matters to be not genuinely in dispute and to be treated as established in the adversary proceedings, but would not consider affirmative defenses in the context of a summary judgment motion but rather determine this issue at trial. The court has followed this approach in resolving the trustee's subsequent rounds of summary judgment motions.

Although the court has adopted the above procedure, the court's ruling in May of 2015 on the trustee's motion for summary judgment against this defendant was a reasoned decision founded in the law applicable to summary judgment motions. If the defendant disagreed with the court's position, he was free to file an appeal. However, he chose not to and he has offered no explanation for his decision.

"Relief under Rule 60(b)(6) must be requested within a reasonable time and is available only under extraordinary circumstances." Twentieth Century-Fox Film Corp. v. Dunnahoo, 637 F.2d 1338, 1341 (9th Cir. 1981) (citation omitted). More specifically, "to bring himself within the limited area of Rule 60(b)(6) a petitioner is required to establish the existence of extraordinary circumstances which prevented or rendered him unable to prosecute an appeal." Id.; accord Martella v. Marine Cooks & Stewards Union, etc., 448 F.2d 729, 730 (9th Cir. 1971). The defendant here has suggested no such circumstances. A "conscious and deliberate decision not to appeal" from an adverse judgment, such as the defendant made here, does not constitute exceptional circumstances so as to bring the matter within the scope of Rule 60(b)(6). Plotkin v. Pacific Tel. & Tel. Co., 688 F.2d 1291, 1293 (1982).

Further, "Rule 60(b) was not intended to provide relief for error on the part

of the court or to afford a substitute for appeal." Dunnahoo, 637 F.2d at 1341, quoting Title v. United States, 263 F.2d 28, 31 (9th Cir. 1959). "Nor is a change in the judicial view of applicable law after a final judgment sufficient basis for vacating such judgment entered before announcement of the change." Title, 263 F.2d at 31; see also Collins v. Wichita, 254 F.2d 837, 839 (10th Cir. 1958) ["[T]he fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside."]. If a change in the court's view of the applicable law is not a sufficient basis for relief under Rule 60(b)(6), this court's change in procedure as to how summary judgment motions would be handled in other adversary proceedings in this case cannot be said to be sufficient. For the reasons stated, the court concludes that the circumstances presented here do not rise to the level of extraordinary circumstances justifying relief under Rule 60(b)(6), and the motion will be denied. The court will hear the matter.

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1 The authority cited by the defendant in support of his motion either is inapplicable to the relief he is actually seeking or does not permit the granting of relief at this late date. First, the defendant cites §350(b) of the Bankruptcy Code, Fed. R. Bankr. P. 5010, and cases construing them. These authorities apply to the reopening of a bankruptcy case, not an adversary proceeding. The defendant also cites Fed. R. Bankr. P. 9023 and Fed. R. Civ. P. 59(e), which govern motions for a new trial and motions to alter or amend a judgment. Both rules set deadlines that had passed months before the defendant filed this motion (under the former, 14 days after entry of judgment; under the latter, 28 days).

2 Because the defendant did not file a notice of hearing, that motion was not calendared. The defendant re-filed the motion on November 13, 2015, along with a notice of hearing - that is the motion the court considers here. For purposes of this analysis, the court finds it makes no difference whether the October 7, 2015 or the November 13, 2015 filing date is considered.

40.	14-29651-D-7 GJH-3	DISTRIBUTION PROPERTIES, LLC	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, SPECIAL COUNSEL(S) 1-4-16 [26]

41.	15-28060-D-11 MLA-6	ACADEMY OF PERSONALIZED LEARNING, INC.	CONTINUED MOTION TO AUTHORIZE ADDITIONAL INDEPENDENT CONTRACTORS TO BE PAID WAGES ACCRUED PRE-PETITION 12-16-15 [162]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is debtor's motion for authorization to make payments to certain independent contractors for pre-petition services. The motion was continued from its initial hearing date to permit the debtor to correct certain service defects. Notice of the continued hearing was given pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following concern.

The moving party was advised in the court's initial ruling that it had failed to serve three parties listed on its Schedule G and six parties listed on an amended E filed December 29, 2015. The court also noted that all six of those latter parties are among the independent contractors whose pre-petition contracts are the subject of this motion. The ruling informed the moving party the hearing would be continued, the moving party to file a notice of continued hearing and serve it, <u>together with the motion</u>, on the parties not previously served.

Instead, on January 13, 2016, the moving party filed a notice of continued hearing and served it, <u>without the motion</u>, on the parties previously omitted from service, including the six parties directly affected by the motion. The notice of continued hearing did not comply with LBR 9014-1(d)(5) in that it did virtually nothing more than parrot the title of the motion. The rule provides that when notice of a motion is served without the motion or supporting papers, the notice of hearing shall succinctly and sufficiently described the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. The rule also provides that the motion and supporting papers shall be served on those parties who are directly affected by the requested relief.

Here, as a result of the moving party's failure to comply with the rule or the court's initial ruling, the six parties who have been served only with the notice of continued hearing have not been informed of the amounts of gross wages proposed in the motion to be paid to them. In fact, they have not even been informed that the motion pertains to them. The notice of continued hearing did advise that copies of the motion and supporting papers might be obtained through PACER, at computer terminals in the clerk's office, and from the debtor's attorneys. That language is not sufficient to constitute substantial compliance with LBR 9014-1(d)(5).

The court will hear this matter but cautions the debtor's counsel that LBR 9014-1(d)(5) will be strictly enforced in the future.

42. 15-28060-D-11 RAL-3 — ACADEMY OF PERSONALIZED LEARNING, INC. — CONTINUED MOTION FOR AUTHORIZATION TO ASSUME EXECUTORY CONTRACT 12-16-15 [158]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is debtor's motion for authorization to assume an executory contract. The motion was continued from its initial hearing date to permit the debtor to correct certain service defects. Notice of the continued hearing was given pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. The court notes that, as with the debtor's motion to make payments to independent contractors for pre-petition services, also on this calendar, the moving party served the notice of continued hearing on previously-omitted parties without also serving the motion and declaration, as the court had required in its initial tentative ruling. The notice of continued hearing did not comply with LBR 9014-1(d)(5).

43. 15-28060-D-11 RAL-2 — ACADEMY OF PERSONALIZED LEARNING, INC. — CONTINUED MOTION FOR AUTHORIZATION TO ASSUME UNEXPIRED LEASE OF REAL PROPERTY 12-16-15 [149]

This matter will not be called before 11:00 a.m.

Tentative ruling:

This is debtor's motion to assume an unexpired lease of real property. The motion was continued from its initial hearing date to permit the debtor to correct certain service defects, including failure to serve the lessor to the attention of an agent authorized to receive service of process, such as the trustee of the trust, and failure to serve the lessor at the agent's dwelling house, usual place of abode, or business address, as opposed to a post office box address. Thus, the moving party failed to serve the lessor in compliance with Fed. R. Bankr. P. 7004(b)(8), as required by Fed. R. Bankr. P. 6006 and 9014. The ruling informed the moving party the hearing would be continued, the moving party to file a notice of continued hearing and serve it, <u>together with the motion and supporting declaration</u>, on the lessor and on certain other parties not previously served.

Instead, on January 13, 2016, the moving party filed a notice of continued hearing and served it, <u>without the motion and declaration</u>, on the parties previously omitted from service and on the lessor, to the attention of its trustee at two different street addresses. The notice of continued hearing did not comply with LBR 9014-1(d)(5) in that it did virtually nothing more than parrot the title of the motion. The rule provides that when notice of a motion is served without the motion or supporting papers, the notice of hearing shall succinctly and sufficiently described the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion. The rule also provides that the motion and supporting papers shall be served on those parties who are directly affected by the requested relief.

Here, as a result of the moving party's failure to comply with the rule or the court's initial ruling, the lessor has never been served as required by applicable

rules with notice of the debtor's proposed cure amount – zero – or the debtor's position that its continued operation of the school and the concomitant right to receive state and other funding are sufficient to demonstrate adequate assurance of future performance.

For the reasons stated, the motion will be denied for failure to provide adequate notice to the lessor. In the alternative, the court will continue the hearing one last time and require the moving party to file a notice of continued hearing and serve it, together with the motion and supporting declaration, on the lessor in compliance with Fed. R. Bankr. P. 7004(b)(8). The court will hear the matter.

44.	15-28060-D-11 RAL-4	ACADEMY OF PERSONALIZED LEARNING, INC.	CONTINUED MOTION TO EMPLOY FEDDERSEN AND COMPANY AS ACCOUNTANT(S) 12-16-15 [153]

This matter will not be called before 11:00 a.m.

45.	15-28060-D-11 SKB-1	ACADEMY OF PERSONALIZED LEARNING, INC.	CONTINUED MOTION TO EMPLOY SARAH KALAS BANCROFT AS ATTORNEY(S) 12-1-15 [136]

This matter will not be called before 11:00 a.m.

46.	14-27267-D-7 RLG-4	SARAD/USHA CHAND	CONTINUED MOTION BY ROBERT L. GOLDSTEIN TO WITHDRAW AS ATTORNEY 11-10-15 [182]

47. 14-27267-D-7 SARAD/USHA CHAND — CONTINUED MOTION TO COMPEL
HSM-8 — 12-11-15 [199]

48. 15-29971-D-7 ELIZABETH SULLIVAN — MOTION TO COMPEL ABANDONMENT
SNM-3 — 1-4-16 [15]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon certain property of the estate consisting of business assets. The court intends to deny the motion for the following reasons: (1) the moving party failed to serve the U.S. Dept. of Education at its address on the Roster of Governmental Agencies, as required by LBR 2002-1; and (2) the moving party failed to serve the three parties listed on her Schedule G as parties to executory contracts. Minimal research into the case law concerning § 101(5) and (10) of the Bankruptcy Code discloses an extremely broad interpretation of "creditor," certainly one that includes parties to executory contracts with the debtor. See also Fed. R. Bankr. P. 1007(a)(1), requiring the debtor to include parties listed on Schedule G on master address list.

As a result of these service defects, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to cure these service defects. The court will hear the matter.

49. 15-25873-D-7 RAMON GONZALEZ — MOTION FOR RELIEF FROM DEFAULT
15-2210 CAH-1 — 1-8-16 [25]
SACRAMENTO MUNICIPAL UTILITY DISTRICT V. GONZALEZ

Tentative ruling:

This is the defendant's motion for relief from default. The plaintiff has filed opposition. For the following reasons, the motion will be granted.

The standard for setting aside a default is "good cause." Fed. R. Civ. P. 55(c). The factors the court is to consider are these: "(1) whether [the defendant] engaged in culpable conduct that led to the default; (2) whether [the defendant] had a meritorious defense; or (3) whether reopening the default judgment would prejudice [the plaintiff]." Franchise Holding II, LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-26 (9th Cir. 2004). As indicated by the use of the word "or," these factors are in the disjunctive; a motion to set aside a default or default judgment may be denied if any one of them is present. Id. at 926. The burden of proof is on the moving party. Id.

However, "judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." United States v. Signed Personal Check No. 730, 615 F.3d 1085, 1091 (9th Cir. 2010) (citations omitted). Thus, the court will consider the various factors in light of this overriding principle.

First, the court finds that the defendant's conduct in failing to timely answer the complaint was not culpable. "[A] defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer." Signed Personal Check No. 730, 615 F.3d at 1092, quoting TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 697 (9th Cir. 2001) (emphasis in original). "[I]n this context the term 'intentionally' means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an 'intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process.'" Signed Personal Check No. 730, 615 F.3d at 1092 (citation omitted). There is no suggestion in this case that the defendant did any of those things.

The defendant testifies he did not willfully intend to default on the complaint, but instead, did not understand the deadlines in the summons. He adds that he was unable to work on the matter without an attorney and that he eventually hired counsel to represent him. The plaintiff counters that the defendant responded to the plaintiff's state court complaint and filed a cross-complaint a month and a half after the complaint was filed. Thus, the plaintiff concludes, "Defendant is aware of time constraints in responding to a lawsuit complaint. This shows that Defendant was, or should have been, aware of the time constraints in responding to a lawsuit and Defendant's ability and experience with representing himself in a lawsuit." However, that the defendant had previously responded to a complaint one and one-half months after it was filed (that is, perhaps timely, perhaps not) is not evidence that he failed to timely answer this one with an intention to take advantage of the plaintiff, interfere with judicial decisionmaking, or otherwise manipulate the legal process. There is no evidence here of anything more than mere negligence.

Second, the plaintiff believes the defendant's conduct was culpable because his attorney in the underlying chapter 7 case, who practices regularly before this court and who was served with the summons and complaint, had a duty to inform his client of the consequences of not timely responding to the complaint. The local rule, however, does not require the attorney for the debtor in a parent bankruptcy case to represent the debtor in an adversary proceeding (LBR 2017-1(a)(1)), and the debtor's testimony here is that he did not initially retain the attorney in the adversary proceeding. Thus, although clients may be held accountable for the acts of their attorneys (Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 113 S. Ct. 1489, 1499 (1993)), here, the defendant's attorney in the underlying case was not his attorney for purposes of the adversary proceeding at the time the defendant failed to timely answer the complaint, and the attorney's conduct should not be attributed to the defendant. The court concludes that the defendant's conduct was not "culpable" as defined by the case law interpreting culpable conduct for purposes of a motion to set aside a default.

Next, the court finds that the defendant has presented factual allegations which, if true, would constitute a defense in this action. A party seeking to set aside a default must present specific facts that would constitute a defense; however, "the burden . . . is not extraordinarily heavy." TCI Group, 244 F.3d at

700. In fact, the Ninth Circuit has referred to "the minimal nature" of that burden. See Signed Personal Check No. 730, 615 F.3d at 1094. "All that is necessary to satisfy the 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a defense . . . ." Id. Whether the facts alleged are true is not to be determined on the motion to set aside the default. Id.

The plaintiff claims the defendant has offered nothing more than the conclusory statements that he has presented meritorious defenses and that he "denies each and every allegation of fraud and charges." The defendant's testimony, however, is considerably more detailed than that. He testifies that based on his past experiences with the plaintiff and his electrical usage, he estimates his electrical charges at $100 per month or less. He states that for the period of the alleged electrical diversion (approximately two years), service would be closer to $2,400 in total rather than the $14,750.37 alleged by the plaintiff. He concludes that "[t]he alleged amount is unjust and is without any foundation." The court finds this testimony sufficient to demonstrate the existence of a dispute regarding materials facts and to demonstrate that the defendant has a meritorious defense. It is not for the court to weigh the evidence and determine the validity of the defense at this time.

Finally, the court is to consider whether the plaintiff will be prejudiced if the default is set aside. "To be prejudicial, the setting aside of a judgment must result in greater harm than simply delaying resolution of the case." TCI Group, 244 F.3d at 701. "Rather, 'the standard is whether [plaintiff's] ability to pursue his claim will be hindered.'" Id. "[T]o be considered prejudicial, 'the delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.'" Id. (citations omitted). In this case, the plaintiff's complaint was filed less than three months ago and the defendant's default was entered less than two months ago. In these circumstances, there will be no prejudice to the plaintiff of the type discussed above from denying the motion and requiring the plaintiff to proceed on the merits. The only prejudice cited by the plaintiff is that it has "spent the time and incurred the expense to go through the default judgment process." That is insufficient. TCI Group, 244 F.3d at 701.

To conclude, all of the factors the court is to consider weigh in favor of setting aside the default, and the motion will be granted. The court will hear the matter.

50.	15-29890-D-11	GRAIL SEMICONDUCTOR	STATUS CONFERENCE RE: VOLUNTARY PETITION 12-30-15 [1]

This matter will not be called before 10:30 a.m.