

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 4, 2015 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. [15-20600](#)-D-11 SAEED ZARAKANI STATUS CONFERENCE RE: VOLUNTARY
PETITION
1-28-15 [[1](#)]

2. [14-32406](#)-D-7 TIGER PAULK MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 1-26-15 [[21](#)]
COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company'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.

3. [15-20614](#)-D-11 M.K. AUTO, INC. STATUS CONFERENCE RE: VOLUNTARY PETITION
1-28-15 [[1](#)]

4. [12-40315](#)-D-7 OLUSEGUN/YVONNE LERAMO MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
SETERUS, INC. VS. FOR ADEQUATE PROTECTION
1-30-15 [[314](#)]

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. The debtors received their discharge on November 18, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

5. [13-30317](#)-D-7 JAMES COREY OBJECTION TO CLAIM OF FRANCHISE TAX BOARD, CLAIM NUMBER 4,
OBJECTION TO CLAIM OF INTERNAL REVENUE SERVICE, CLAIM NUMBER 7
1-23-15 [[39](#)]

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

Final ruling:

This is the debtor's objection to the claims of the Franchise Tax Board ("FTB") and the Internal Revenue Service ("IRS"), Claim Nos. 4 and 7, respectively. The notice of hearing does not state that written opposition is required in advance of the hearing; thus, ordinarily, the court would hear the matter to determine whether the IRS or the FTB wishes to present opposition. However, for the following reasons, the objection will be overruled.

First, the moving papers do not include a docket control number, as required by LBR 9014-1(c)(1); instead, they include an adversary proceeding number - the number of the trustee's adversary proceeding to deny the debtor's discharge - that has

nothing to do with the claim objection. Second, the debtor failed to serve the IRS at any of the three addresses listed on the Roster of Governmental Agencies, as required by LBR 2002-1(a). Third, the debtor has joined objections to two claims in a single objection, contrary to Fed. R. Bankr. P. 3007(c).

Fourth, the debtor has failed to submit evidence sufficient to shift the burden to the IRS and the FTB to prove the validity of their respective claims.¹ "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself]. . . . If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.'" Id. (citation omitted, emphasis added).

First, the debtor testifies he is objecting to the claims "because the claims have been paid in full prior to the filing of the Chapter 7 Case." Decl., filed Jan. 23, 2015, at 2:6. He also contends he has submitted documentation refuting the claims. This documentation consists of (1) lists, by date, check number, amount, and description, of payments allegedly made to the IRS, the FTB, Bequette & Kimmel (for "payroll"), the Employment Development Department, Plumas Bank (for payroll taxes and social security withholding), and State Comp Insurance; (2) copies of checks drawn on an account of Corey's Auto & Smog to the IRS, the Department of the Treasury, and the FTB; (3) a letter from Plumas Bank to the debtor referring to an IRS levy; (4) a copy of an IRS notice with the debtor's handwritten notes from a meeting with a revenue officer; (5) copies of letters from Snelling Bookkeeping & Tax Service to the debtor purporting to enclose copies of the debtor's tax returns; and (6) copies of checks from Corey's Auto & Smog to Bequette & Kimmel allegedly for quarterly tax payments.²

According to the debtor, the "Debtor's records reflect that \$0.00 is owing and that the claim amounts were indeed paid pre-petition." Debtor's Motion and Obj. to Claim Nos. 4 and 7, filed Jan. 23, 2015, at 4:19-20. The problem with the debtor's records presented thus far, assuming without deciding that they have been presented in admissible form, is that they demonstrate only what the debtor has paid to the IRS and the FTB, not what he owed for the particular tax periods for which amounts are included in the proofs of claim. The debtor has not shown that the amounts he paid covered all the amounts he owed. In short, there is no evidence to support a conclusion that the debtor owes no taxes, interest, or penalties to the IRS or the FTB or that he owes less than the amounts claimed by those entities. Thus, there is insufficient evidence to negate the sworn facts in the proofs of claim so as to shift the burden to the IRS and the FTB to prove the validity of the claims.

As an aside, the court notes that the debtor devoted a significant portion of the objection to complaints about his former attorney in this case. This material is irrelevant to the objection, and the court has not considered it in arriving at this ruling.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

¹ As a preliminary matter, the court notes that, in general, debtors do not have

standing to object to claims unless there is "'a sufficient possibility' of a surplus to give them a pecuniary interest." Law v. Golden (In re Eisen), 2007 Bankr. LEXIS 4864, at *21 (9th Cir. BAP 2007), quoting Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 429 (9th Cir. BAP 2005). The debtor has not attempted to demonstrate a possibility that there will be a surplus in this case.

There is another exception, however. Where the claim objected to is on account of a debt that will not or may not be discharged, the debtor has standing to object to the claim. See Wellman v. Ziino (In re Wellman), 2007 Bankr. LEXIS 4291, *5 n.5 (9th Cir. BAP 2007) [debtor has standing to object to claims where his discharge has been denied]; Vandevort v. Creditor's Adjustment Bureau, Inc. (In re Vandevort), 2007 Bankr. LEXIS 4919, *12 n.9 (9th Cir. BAP 2007) [debtor has standing to object to claims where judgment denying discharge is on appeal, and debtor could remain liable on the debts represented by the claims].

In this case, the trustee has a pending adversary proceeding to deny the debtor's discharge. As a result of that proceeding, the debtor has standing to object to claims.

2 The debtor adds that "[a]s the payment evidence is voluminous, the tangible proofs of payment regarding these claims will be provided to all parties and the Court at the scheduled hearing." Decl. at 2:6-9. That is not proper procedurally. LBR 3007-1(a) requires that an objection to claim be "accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed."

6. [13-30317](#)-D-7 JAMES COREY

OBJECTION TO CLAIM OF DAN
HOWE-INDIAN VALLEY AUTO PARTS,
CLAIM NUMBER 8
2-2-15 [[49](#)]

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

Final ruling:

This is the debtor's objection to the claim of Daniel Howe, owner and operator of Indian Valley Auto Parts (the "Claimant"), Claim No. 8. The notice of hearing does not state that written opposition is required in advance of the hearing; thus, ordinarily, the court would hear the matter to determine whether the Claimant wishes to present opposition. However, for the following reasons, the objection will be overruled.

First, the moving papers do not include a docket control number, as required by LBR 9014-1(c)(1); instead, they include an adversary proceeding number - the number of the trustee's adversary proceeding to deny the debtor's discharge - that has nothing to do with the claim objection. Second, the debtor served the Claimant at the address listed on his proof of claim as the address where payments should be sent, and not at the address at which notices should be sent.

Third, the debtor has failed to submit evidence sufficient to shift the burden to the Claimant to prove the validity of his claim.¹ "Upon objection, [a] proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" Lundell v. Anchor Constr.

Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). "To defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proof[] of claim [itself]. . . . If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence.'" Id. (citation omitted, emphasis added).

First, the debtor testifies he is objecting to the claim "because the claim has been paid in full and prior to the filing of the Chapter 7 Case." Decl., filed Jan. 23, 2015, at 2:6. He also contends he has submitted documentation refuting the claim. This documentation consists of a list of payments allegedly made to Indian Valley Auto Parts, by payment method (Visa or check number), date, and amount.² According to the debtor, the "Debtor's records reflect that \$0.00 is owing and that the amounts claimed were indeed paid pre-petition." Debtor's Motion and Obj. to Claim No. 8, filed Feb. 2, 2015, at 4:19. The problem with the debtor's records presented thus far, assuming without deciding that they have been presented in admissible form, is that they demonstrate only what the debtor has paid to the Claimant, not what he owed. The debtor has not shown that the amounts he paid covered all the amounts he owed. In short, there is no evidence to support a conclusion that the debtor owes nothing to the Claimant or that he owes less than the amount claimed. Thus, there is insufficient evidence to negate the sworn facts in the proof of claim so as to shift the burden to the Claimant to prove the validity of the claim.

As an aside, the court notes that the debtor devoted a significant portion of the objection to complaints about his former attorney in this case. This material is irrelevant to the objection, and the court has not considered it in arriving at this ruling.

For the reasons stated, the objection will be overruled by minute order. No appearance is necessary.

1 As a preliminary matter, the court notes that, in general, debtors do not have standing to object to claims unless there is "'a sufficient possibility' of a surplus to give them a pecuniary interest." Law v. Golden (In re Eisen), 2007 Bankr. LEXIS 4864, at *21 (9th Cir. BAP 2007), quoting Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 429 (9th Cir. BAP 2005). The debtor has not attempted to demonstrate the possibility that there will be a surplus in this case.

There is another exception, however. Where the claim objected to is on account of a debt that will not or may not be discharged, the debtor has standing to object to the claim. See Wellman v. Ziino (In re Wellman), 2007 Bankr. LEXIS 4291, *5 n.5 (9th Cir. BAP 2007) [debtor has standing to object to claims where his discharge has been denied]; Vandevort v. Creditor's Adjustment Bureau, Inc. (In re Vandevort), 2007 Bankr. LEXIS 4919, *12 n.9 (9th Cir. BAP 2007) [debtor has standing to object to claims where judgment denying discharge is on appeal, and debtor could remain liable on the debts represented by the claims].

In this case, the trustee has a pending adversary proceeding to deny the debtor's discharge. As a result of that proceeding, the debtor has standing to object to claims.

2 The debtor adds that "[a]s the payment evidence is voluminous, the tangible proofs of payment regarding these claims will be provided to all parties and the Court at the scheduled hearing." Decl. at 2:6-9. That is not proper procedurally. LBR 3007-1(a) requires that an objection to claim be "accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed."

7. [13-30317](#)-D-7 JAMES COREY
JRR-1

MOTION TO SELL
2-4-15 [[54](#)]

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

Tentative ruling:

This is the trustee's motion to sell certain real property located in Blairsden, California consisting of a single-family residence and an adjacent vacant lot. The debtor has filed opposition. No other opposition has been filed. For the following reasons, the court intends to grant the motion after a brief continuance, and will entertain overbidding, if any, at the continued hearing.

The trustee proposes to sell the single-family residence for \$165,000 and the vacant lot for \$25,000. He projects that after payment of undisputed liens, property taxes, real estate commissions, and closing costs, the estate will net approximately \$58,000 from the sale. Even after withholding approximately \$20,842 on account of three liens disputed by the debtor, as outlined in the motion, the net proceeds should be sufficient to make a meaningful distribution to unsecured creditors. The debtor disputes two liens in addition to the three the trustee has identified in the motion; the trustee proposes to pay those two out of escrow. The treatment of those liens will be discussed below.

The debtor raises several objections. First, he claims his former attorney failed to follow the debtor's instructions to file claim objections, that the debtor is now pursuing such objections, and that he needs more time to gather the documentation required. The debtor requests the motion be either denied or deferred pending his filing of various claim objections. If the sale goes forward now, the debtor claims, his claim objections may become moot or more difficult to pursue. He also requests the sale be deferred pending state court appeals involving two of the judgment liens the trustee proposes to pay from the sale proceeds. In the debtor's view, "[t]he reversal of the judgments would eliminate these claims against the bankruptcy estate leaving the Debtor with the primary interest in the properties, to which the Debtor, *qua individual* would become entitled once the bankruptcy case is closed." Debtor's Objs. to Motion for Sale, filed Feb. 18, 2015 ("Objs."), at 6:18-21.

The proofs of claim in this case were filed between September and December of 2013; that is, all were filed more than 14 months ago. Yet no claim objections were filed until January 23, 2015, when the debtor filed an objection to the claims of the Internal Revenue Service and the Franchise Tax Board. According to the debtor, "[t]he bar date for filing Proofs of Claim was December 12, 2013. Debtor's Attorney of Record . . . was promptly entrusted to file the appropriate objections to the claims. Debtor recently became aware that objections still have not been filed." Objs. at 2:23-26. As the debtor presumably gave the necessary documentation to his attorney when he instructed him to file the objections, in or shortly after December 2013, those statements conflict with the debtor's contention that he still needs

more time to gather documentation for his claim objections. More important, the debtor failed to take any action for over a year to ensure that the claim objections were filed. The timing of the objections was within the debtor's control, and he should not be able to rely on the delay as a means to tie up or possibly torpedo this sale. As for the pending state court appeals, the debtor filed them in February and April of 2013, roughly two years ago. He gives no indication of the status of the appeals or of when they are likely to be resolved. Regardless of their status, however, the fact that the appeals have not been concluded is no basis on which to delay a sale of property of the estate.

It is appropriate, however, to block the net sale proceeds, with the three liens the trustee has identified as disputed by the debtor - those of the IRS, the Franchise Tax Board, and Daniel Howe, to attach to those proceeds rather than being paid out of escrow. The court also finds it appropriate that the proceeds designated for two other lien creditors be blocked as well. The debtor states there are pending state court appeals from the judgments in favor of (1) Kim Kalbaugh, and (2) Tracy Wilburn and Cathy Wilburn. Those pending appeals provide a sufficient basis for a finding of a bona fide dispute, such that the court, subject to further notice to those creditors, is prepared to approve the sale free and clear of their liens, pursuant to § 363(f), the liens to attach to the net sale proceeds pending further court order.

The trustee's motion provided notice to the IRS, the Franchise Tax Board, and Daniel Howe that their liens would attach to the net sale proceeds, to be held by the trustee pending further court order. The motion did not provide such notice to Kalbaugh and Wilburn; instead, the trustee proposed to pay them out of escrow. The court intends to continue the hearing for a short period to allow the trustee to provide notice to those creditors that the sale will be free and clear of their liens, their liens to attach to the net sale proceeds pending further court order. The notice may be pursuant to LBR 9014-1(f)(1) or (f)(2) at the trustee's choosing.

Second, the debtor claims the trustee is only interested in a quick sale, and that the proposed sale prices are lower than the properties' fair market values. According to the debtor, "[b]ased on the trustee's own research he identifies the value of the parcels far above the selling price in his motion." Objs. at 4:2-3. That statement is not accurate. The "research" the debtor cites is an undated LexisNexis search report that gives the "median home value," based on "census data for [the] geographical region" in the area of the single-family residence and vacant lot, as \$489,175.¹ This is of virtually no assistance in assessing the value of the particular properties the trustee proposes to sell. The debtor also cites a broker's market analysis of the vacant lot, in which the broker arrived at a value of \$52,750. However, that opinion dates from August of 2013, and the broker is now the trustee's broker in connection with this sale. It is safe to assume if she believed her earlier estimate reflected the current market value of the lot, she would have encouraged the trustee to hold out for more.

Finally, the debtor cites an offer he made to the trustee in October 2013 in which he would have waived his exemption in his auto repair and smog shop in Quincy in the expectation that the Red Willow Court properties would remain with his girlfriend, to whom he had transferred them pre-petition. His attorney's e-mail to the trustee making the proposal indicated the sale would satisfy creditors and possibly leave a surplus for the debtor. The debtor's schedules do not support that conclusion. He listed the value of the auto repair shop at \$165,000 and acknowledged there were judgment liens against it totaling \$115,405. He scheduled general unsecured claims totaling \$177,255. The debtor now claims he "received a

substantial offer for the shop and all amenities" and that "[t]he sale proceeds would have far exceeded that of the sale of the residence and would have satisfied all the creditors." Objs. at 4:18-20. However, there is no evidence of the "substantial offer" for the shop or any offer, and no evidence such an offer would have generated enough to satisfy all claims or that it would have netted as much as the present sale will.² To conclude, the debtor's "evidence" as to value is insubstantial and unpersuasive.³

As an aside, the court notes that in his opposition, the debtor has made various attacks on the trustee's alleged motives; these are rejected as unsupported and unfounded.

For the reasons stated, the court intends to grant the motion following a brief continuance and to permit overbidding, if any, at the continued hearing. The court will hear the matter.

1 The debtor cites the LexisNexis search as "produc[ing] a Median Home Value of \$489,175 for 2 Red Willow Court." Objs. at 4:13. To the extent this is intended to suggest that the value of the property at that address is \$489,175, it appears to be a complete misstatement. The search also produced a median age for head of household, a median income, and a median number of years of education for the geographical region; the median home value the debtor cites is no more specific to that particular property than any of those other figures.

2 It is ironic that the debtor refers to the trustee's present offer for the single-family residence, \$165,000, as "paltry," when that is the amount at which he valued the auto repair shop at the time he offered to waive his exemption in it. The liens against both properties consist solely of judgment and tax liens - the same liens - and property taxes, which appear to be minimal here; thus, there is no basis on which to conclude that the sale of the repair shop, assuming one had been available, would have netted more than the present sale of the single-family residence.

3 The debtor also contends the trustee would get substantially higher offers if he waited until winter is over. The trustee has had the benefit of a broker's advice and has chosen to accept the present offer. The court will not second-guess the trustee's exercise of his business judgment. The trustee notes in his supporting declaration that the residence suffers from neglect and deferred maintenance. That condition will not be improved by delay.

8. [14-28017](#)-D-7 JANET COPELAND-NOVAK MOTION TO SELL
BHS-2 2-2-15 [[22](#)]

9. [14-32521](#)-D-7 MARILYN PERKINS MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 1-26-15 [[9](#)]
VS.

10. [14-32521](#)-D-7 MARILYN PERKINS MOTION TO REDEEM
HDR-1 1-28-15 [[18](#)]

11. [14-28224](#)-D-7 DONALD/JAMI PEREA MOTION TO AVOID LIEN OF
DPR-5 PORTFOLIO RECOVERY ASSOCIATES,
LLC
2-2-15 [[68](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

12. [14-28224](#)-D-7 DONALD/JAMI PEREA MOTION TO AVOID LIEN OF UNIFUND
DPR-6 CCR, LLC
2-2-15 [[74](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

13. [14-22526](#)-D-7 DAVID JONES OBJECTION TO DEBTOR'S CLAIM OF
PA-7 EXEMPTIONS
1-30-15 [[64](#)]

Tentative ruling:

This is the trustee's objection to the debtor's claim of exemptions comprised of two IRAs. In response to the objection, the debtor filed an amended Schedule C on February 18, 2015. As a result of the amended Schedule C filed by the debtor, the trustee's objection has become moot. Accordingly, the court will overrule the objection by minute order as moot. The court will hear the matter.

14. [11-49741](#)-D-7 WAGDI/NATALYA WAHBA MOTION FOR COMPENSATION BY THE
DNL-8 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH AND CUNNINGHAM FOR J.
LUKE HENDRIX, TRUSTEES
ATTORNEY(S)
2-4-15 [[289](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

15. [11-49741](#)-D-7 WAGDI/NATALYA WAHBA MOTION FOR COMPENSATION FOR
JMH-2 GABRIELSON AND COMPANY,
ACCOUNTANT(S)
2-4-15 [[283](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

16. [14-25146](#)-D-7 GILBERT CHAVEZ MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
NATIONSTAR MORTGAGE, LLC VS. 2-3-15 [[54](#)]

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. The debtor received his discharge on December 15, 2014 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

17. [14-30246](#)-D-7 GREGORY VINCENT AND DAWN MOTION FOR RELIEF FROM
BN-1 VINCENT- TARANTINO AUTOMATIC STAY
THE GOLDEN 1 CREDIT UNION 1-29-15 [[21](#)]
VS.

Final ruling:

This matter is resolved without oral argument. This is The Golden 1 Credit Union'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.

18. [14-30449](#)-D-7 JOSE/LISA MUNIZ MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
CHRISTIANA TRUST VS. 1-29-15 [[19](#)]

Final ruling:

This matter is resolved without oral argument. This is Christiana Trust'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.

19. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2312](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. BISESSAR TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[126](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

20. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2320](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. ZOU TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[111](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

21. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2368](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. PRASAD TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[106](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

22. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2370](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. TORRES TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[113](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

23. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2371](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. WU TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[106](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

24. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2374](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. WANG TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[110](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

25. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2387](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. SHARMA TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[108](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

26. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2400](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. PRASAD TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[108](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

27. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2401](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. BISESSAR TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[115](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

28. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2418](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. TRACH TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[106](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

29. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2429](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. STEELE TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[106](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

30. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2430](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. SINGH ET AL TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[131](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

31. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2434](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. REDDY TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[106](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

32. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2446](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. BELOLI TRANSFER AND/OR MOTION FOR
SUMMARY JUDGMENT
2-2-15 [[110](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

33. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2448](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. SINGH TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[104](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

34. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2461](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. WENG TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[103](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

35. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2469](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. ALLEN TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[62](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

36. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2478](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. SINGH TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[126](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

37. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2483](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. NARAYAN TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[101](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

38. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2486](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. PRASAD TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[101](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

39. [10-42050](#)-D-7 VINCENT/MALANIE SINGH MOTION TO DISMISS USURY CLAIMS
[12-2496](#) KBP-5 AND CONSTRUCTIVE FRAUDULENT
BURKART V. MORA TRANSFER CLAIMS AND/OR MOTION
FOR SUMMARY JUDGMENT
2-2-15 [[101](#)]

Final ruling:

The hearing on this motion is continued to March 19, 2015 at 11:00 a.m. No appearance is necessary on March 4, 2015.

40. [09-29162](#)-D-11 SK FOODS, L.P. CONTINUED MOTION TO DISGORGE
DB-28 FEES
6-24-14 [[4885](#)]

Tentative ruling:

The court intends to use this hearing as a status conference.

41. [09-29162](#)-D-11 SK FOODS, L.P. CONTINUED OBJECTION TO CLAIM OF
SH-286 FARELLA BRAUN + MARTEL, CLAIM
NUMBER 380
7-22-14 [[5025](#)]

Tentative ruling:

The court intends to use this hearing as a status conference.

42. [15-20382](#)-D-7 CELESTE CAMACHO MOTION TO AVOID LIEN OF CAPITAL
FF-1 ONE SERVICES, INC.
1-21-15 [[6](#)]

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. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

43. [13-32183](#)-D-7 IVAN CAZARES MOTION TO COMPROMISE
ICE-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JANET TERANGO
1-29-15 [[20](#)]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

44. [12-32294](#)-D-7 JOWARA/YOLANDA MORGANDE MOTION TO COMPEL ABANDONMENT
SNM-2 1-28-15 [[22](#)]

45. [14-30194](#)-D-7 DIANA KINLOCH MOTION TO COMPROMISE
JRR-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH HOLLISTER AND
LANCASTER
1-27-15 [[15](#)]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

46. [13-27995](#)-D-7 RON SUTTON'S WINNER'S MOTION FOR COMPENSATION FOR
GMR-2 CIRCLE, INC. GABRIELSON AND COMPANY,
ACCOUNTANT(S)
2-5-15 [[46](#)]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

47. [14-23397](#)-D-7 MICHAEL ANTHONY/MARIA MOTION TO SELL
HCS-4 ORTIZ 2-4-15 [[42](#)]

48. [10-27398](#)-D-7 PETER ANDERSON MOTION TO AVOID LIEN OF GENERAL
GJS-2 ELECTRIC CAPITAL CORPORATION
1-28-15 [[43](#)]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by General Electric Capital Corporation (the "Creditor"). The motion will be denied for the following reasons. First, the attorney who signed and filed the motion and related documents is not the attorney of record for the debtor, and thus, may not participate in the case. LBR 2017-1(b) (1) ["no attorney may participate in any action unless the attorney has appeared as an attorney of record."]. The attorney who filed the motion has not appeared in this case in any of the ways described in LBR 2017-1(b) (2), and in particular, has not substituted in to the case as the debtor's counsel.

Second, the moving party failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Creditor (1) at a street address with no attention line; and (2) through the attorneys who obtained the Creditor's abstract of judgment. The first method was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line. The second method was insufficient because there is no evidence the attorneys who obtained the Creditor's abstract of judgment are authorized to accept service of process on its behalf in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(h) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Third, the motion contains two factual misrepresentations. The motion states that the debtor has claimed the property as exempt in the amount of \$5,000 and, "no objection to such claim being made, such real property has been declared exempt for the above mentioned amount." The problem is that the amended Schedule C on which the debtor claimed the exemption for the first time was filed the same day as the motion. Thus, the time period for objecting to the claim of exemption had not expired, and the property had not been "declared exempt" in any amount. (Nor is property of a bankruptcy estate ever, in the usual case, "declared exempt.") In addition, the motion states that the judgment lien "was duly listed as part of the Chapter 7." Although the Creditor was listed on the debtor's Schedule F and the lawsuit was disclosed on his Statement of Financial Affairs, there had been no mention of the judgment lien until this motion was filed.

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

49. [10-27398](#)-D-7 PETER ANDERSON
GJS-3

MOTION TO AVOID LIEN OF LOOMIS
BASIN VETERINARY CLINIC, INC.
1-28-15 [[46](#)]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by General Electric Capital Corporation (the "Creditor"). The motion will be denied for the following reasons. First, the attorney who signed and filed the motion and related documents is not the attorney of record for the debtor, and thus, may not participate in the case. LBR 2017-1(b)(1) ["no attorney may participate in any action unless the attorney has appeared as an attorney of record."]. The attorney who filed the motion has not appeared in this case in any of the ways described in LBR 2017-1(b)(2), and in particular, has not substituted in to the case as the debtor's counsel.

Second, the moving party failed to serve the Creditor in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Creditor at a post office box address with no attention line. This was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

Third, the motion contains two factual misrepresentations. The motion states that the debtor has claimed the property as exempt in the amount of \$5,000 and, "no

objection to such claim being made, such real property has been declared exempt for the above mentioned amount." The problem is that the amended Schedule C on which the debtor claimed the exemption for the first time was filed the same day as the motion. Thus, the time period for objecting to the claim of exemption had not expired, and the property had not been "declared exempt" in any amount. (Nor is property of a bankruptcy estate ever, in the usual case, "declared exempt.") In addition, the motion states that the judgment lien "was duly listed as part of the Chapter 7." Although the Creditor was listed on the debtor's Schedule F and the lawsuit was disclosed on his Statement of Financial Affairs, there had been no mention of the judgment lien until this motion was filed.

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

50. [14-32419](#)-D-7 STEPHENIE HOBSON MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
GREEN TREE SERVICING, LLC 2-10-15 [[9](#)]
VS.

51. [14-31725](#)-D-11 TAHOE STATION, INC. MOTION FOR ORDER APPROVING
HTP-1 STIPULATION FOR USE OF CASH
 COLLATERAL
Tentative ruling: 2-18-15 [[55](#)]

This is the motion of the debtor-in-possession in this case for approval of its stipulation with Valley Business Bank (the "Bank") for the use of the Bank's cash collateral. The stipulation provides that the Bank's authorization for the use of cash collateral shall terminate at the earliest of three events, one of which is the appointment of a chapter 11 trustee in this case. By order filed February 18, 2015, the court directed the appointment of a Chapter 11 trustee; thus, as soon as a trustee is appointed, the Bank's stipulation with the debtor will terminate, and the motion will be moot. (As of this date, no trustee has been appointed.)

The court assumes a trustee will have been appointed by the time of the hearing on this motion; thus, the court intends to deny the motion as moot. The court will hear the matter.

52. [12-32928](#)-D-7 JOSHUA DAVIS MOTION TO WAIVE FILING FEE
 2-5-15 [[28](#)]

53. [12-32928](#)-D-7 JOSHUA DAVIS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
2-5-15 [[29](#)]
54. [14-27541](#)-D-7 JAMES TEETERS CONTINUED MOTION TO CONVERT
PLC-4 CASE FROM CHAPTER 7 TO CHAPTER
13
2-2-15 [[40](#)]
55. [14-27541](#)-D-7 JAMES TEETERS CONTINUED MOTION TO CONVERT
PLC-4 CASE FROM CHAPTER 7 TO CHAPTER
13
2-2-15 [[40](#)]
56. [14-25146](#)-D-7 GILBERT CHAVEZ MOTION TO SELL
BHS-2 2-11-15 [[60](#)]

57. [14-25148](#)-D-11 HENRY TOSTA MOTION TO USE CASH COLLATERAL
MF-28 2-11-15 [[359](#)]
58. [13-31256](#)-D-7 MARIO AUGUSTINE MOTION TO AVOID LIEN OF CAPITAL
JOS-1 ONE BANK (USA.), N.A.
2-17-15 [[25](#)]
59. [11-46559](#)-D-7 MARK THOMAS MOTION TO AVOID LIEN OF
SLH-3 AMERICAN EXPRESS CENTURION BANK
2-19-15 [[28](#)]
60. [13-27995](#)-D-7 RON SUTTON'S WINNER'S MOTION FOR COMPENSATION BY THE
GJH-3 CIRCLE, INC. LAW OFFICE OF HUGHES LAW
CORPORATION FOR GREGORY J.
HUGHES, TRUSTEE'S ATTORNEY
2-11-15 [[54](#)]

61. [14-21431](#)-D-7
HM-1

TELECOMM ENGINEERING,
INC.

OBJECTION TO TRUSTEE'S REPORT
OF NO DISTRIBUTION AND MOTION
FOR LEAVE TO AVOID AND RECOVER
FRAUDULENT TRANSFERS
1-29-15 [[35](#)]