UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

April 15, 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.	14-32105-D-7 15-2028 LEBUS V. FIRST BANK ET AL	NAOMI LEBUS GCK-1	MOTION TO DISMISS ADVERSARY PROCEEDING 3-5-15 [14]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. The matter is resolved without oral argument. This is the motion of defendants First Bank, dba First Bank Mortgage, and S.B.S. Trust Deed Network (the "defendants") to dismiss the complaint of the plaintiff, Naomi Marie LeBus (the "plaintiff"), pursuant to Fed. R. Civ. P. 12(b)(6), incorporated herein by Fed. R. Bankr. P. 12(b), for failure to state a claim upon which relief can be granted, and pursuant to Fed. R. Civ. P. 8(a), incorporated herein by Fed. R. Bankr. P. 7008(a), for failure to contain a short and plain statement of the claim showing the plaintiff is entitled to relief. For the following reasons, the plaintiff's complaint will be dismissed.

In her complaint in this adversary proceeding, the plaintiff alleges, in summary, that "[n]one of these alleged beneficiaries [the defendants, along with co-defendant Mortgage Electronic Registration Systems, Inc.] or representatives of the

beneficiaries have the original Promissory Note or Deed of Trust to prove that they are in fact the 'holder in due Course' and acknowledged and or properly recorded." Complaint & Jury Trial Demand, filed Feb. 4, 2015 ("Compl."), at 2:2-5. As the defendants point out, virtually all of the charging allegations in the complaint allege defects in the mortgage loan securitization process, including defects in endorsements, notarizations, assignments, and recordation of foreclosure notices. The plaintiff's conclusion is that "[t]he failure to timely assign the Deed of Trust, and/or to timely and properly endorse the Note to reflect the serial transfers, and the resulting material breach of the securitization agreements (MLPA & PSA) resulted to [sic] an irreversible break in the chain of title of the mortgaged property." Id. at 13:26-14:2. Thus, the plaintiff seeks to quiet title to the real property in herself free and clear of any interest of any of the defendants, to "terminate, cancel and invalidate" (id. at 16:24) an allegedly "illegal and unlawful foreclosure" (id. at 16:24-25) of that property, to reverse the transferring of title to the property, to enjoin the defendants from conducting any future foreclosure, to enjoin them from evicting the plaintiff from the property, to cancel the note and deed of trust that encumbered the property prior to the allegedly unlawful foreclosure and for issuance of a deed of reconveyance, and to direct the defendants to rescind previous negative credit reporting about the plaintiff. The plaintiff also seeks an award of general, consequential, and special damages according to proof, as well as costs and attorney's fees.

The court need not reach the issues raised by the defendants because the plaintiff's complaint must be dismissed for lack of jurisdiction. "Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000), citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982). See also Fed. R. Civ. P. 12(h)(3), incorporated herein by Fed. R. Bankr. P. 7012(b) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

The plaintiff filed her chapter 7 petition commencing the case in which this adversary proceeding was purportedly filed on December 15, 2014, at which time she also filed schedules and a purported statement of financial affairs. The latter, however, was nothing more than a completely blank copy of the form of the statement of financial affairs. Not only did the plaintiff fail to answer any of the questions in the statement of affairs, she did not even bother to check the "None" box in answer to any of the questions. Moreover, she did not sign the statement of affairs under oath, as required by Fed. R. Bankr. P. 1008, or at all. As a result, the statement of financial affairs, as filed with the court, does not constitute a "statement of the debtor's financial affairs," as required by § 521(a)(1)(B)(iii) of the Bankruptcy Code. At no time thereafter has the plaintiff filed any other version of the statement of financial affairs.

"[I]f an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition." § 521(i)(1). Because the plaintiff filed only a blank copy of the form of the statement of financial affairs, and failed to file a statement of her financial affairs, she failed to file all of the information required under § 521(a)(1) within 45 days of the petition date, and therefore, the case was automatically dismissed on the 46th day, January 30, 2015. The court will issue an order confirming the

automatic dismissal of the plaintiff's parent case. As a result of the automatic dismissal of the case on January 30, 2015, there was no pending bankruptcy case in which the plaintiff was a bankruptcy debtor on the day she filed her complaint commencing this adversary proceeding, February 4, 2015. As a result, this court has no jurisdiction to grant the relief requested in the plaintiff's complaint.

This court, by reference from the district court, has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §§ 1334(b), 157(a). The plaintiff's claims do not "arise under" title 11 because they do not "'involve a cause of action created or determined by a statutory provision of title 11.'" See Harris v. Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009). Further, these claims do not "arise in" a case under title 11. "'[A]rising in' proceedings are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy.'" Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431, 1435 (9th Cir. 1995). As the plaintiff's complaint was filed after her bankruptcy case had been automatically dismissed, her claims do not "arise in" in a case under Title 11. However, even if the case had still been pending when the complaint was filed, the claims cannot be said to have anything to do with the bankruptcy case; in fact, all of the claims could be brought outside of the bankruptcy case or outside of any bankruptcy case. Finally, this court does not have "related to" jurisdiction of these claims because there is no longer a pending bankruptcy case and no longer a bankruptcy estate being administered. Thus, the outcome of the claims could not conceivably have any effect on an estate being administered in bankruptcy. See In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988), citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984).

Because the plaintiff's underlying chapter 7 case has been automatically dismissed, and in fact had been automatically dismissed before her complaint in this adversary proceeding was filed, any amendment of the complaint would be futile, and the court will dismiss the complaint without leave to amend. See Marty v. Wells Fargo Bank, 2011 U.S. Dist. LEXIS 29686, *24 (E.D. Cal. March 22, 2011), citing Klamath-Lake Pharmaceutical Ass'n v. Klamath Medical Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983). The complaint will be dismissed as to all of the defendants named in the complaint.

For the reasons set forth above, the complaint will be dismissed by minute order. No appearance is necessary.

2.	14-25816-D-11 DEEPAL WANNAKUWATTE BRK-2 DOUGLAS BERTSCH VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-16-15 [376]

Final ruling:

This matter is resolved without oral argument. This is Douglas Bertsch'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 properties and the properties are 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. 13-30317-D-7 JAMES COREY MOTION TO RELEASE FUNDS
KRR-1 3-10-15 [84]

Final ruling:

The court finds that a hearing will not be helpful and is not necessary. The matter is resolved without oral argument. This is the motion of creditor Kim Kalbaugh ("Kalbaugh") for an order releasing certain sale proceeds upon the close of escrow of a pending sale. The debtor has filed opposition and Kalbaugh has filed a reply. For the following reasons, the motion will be granted.

By order filed March 26, 2015, the court approved the sale of real property of the estate consisting of a single-family residence and an adjacent vacant lot in Blairsden, Plumas County, California. The court authorized the payment of property taxes and certain liens out of escrow, the remaining proceeds to be blocked pending further court order. The court ordered that the sale would be free and clear of certain other liens, including Kalbaugh's, although those liens would attach to the sale proceeds. Kalbaugh now contends that portion of the sale proceeds which would otherwise be payable on account of Kalbaugh's judgment lien should be released to Kalbaugh upon the close of escrow. In response, the debtor points to his pending appeal of the state court's judgment in favor of Kalbaugh and contends the funds should not be released to Kalbaugh until this court has ruled on his objection to Kalbaugh's claim.[1] Ninth Circuit law supports Kalbaugh's position.

In ruling on the trustee's motion to approve the sale, the court determined that the debtor's pending state court appeal was sufficient to demonstrate the existence of a bona fide dispute for purposes of allowing the sale to go forward over the debtor's objections. The court did not go so far as to determine that the state court appeal created a bona fide dispute for the purpose of requiring the sale proceeds to be blocked indefinitely or pending the outcome of the appeal or even pending the outcome of an objection by the debtor to Kalbaugh's claim in this bankruptcy case. To do so would be to extend the concept of a bona fide dispute beyond what was intended by Congress in the Bankruptcy Code.

Kalbaugh cites Marciano v. Chapnick (In re Marciano), 708 F.3d 1123 (9th Cir. 2013), in which the court held that an appeal from an unstayed non-default state court judgment does not create a bona fide dispute that would preclude a creditor from filing an involuntary petition against a debtor under § 303(b)(1) of the Bankruptcy Code. 708 F.3d at 1128. The court noted that "[u]nder California law, these judgments, in the absence of a stay pending appeal, were plainly not contingent as to liability or amount. Rather, the Petitioning Creditors were entitled to immediate payment of those claims in the amounts set by the superior court judgments. . . . The Petitioning Creditors thus had fully vested property interests in these claims under California law." Id. at 1127 (citations omitted). The court rejected the debtor's argument that the bankruptcy court should have considered the merits of his state court appeals, stating that such a policy would "'turn[] the court into an odds maker on appellate decision-making.'" Id. (citation omitted). Finally, the court found that permitting a debtor to attempt to show a bona fide dispute as to a debt reduced to judgment would run counter to the principle of full faith and credit codified in 28 U.S.C. § 1738. "Such 'full faith and credit' would be of little consequence if a federal court treated a non-default unstayed state judgment differently than it would be treated in its state of origin. If the creditor is entitled to have the judgment treated as valid in the state courts, we see no reason why a bankruptcy court should be allowed to question the judgment." Id. at 1128.

It is arguable that this court is not bound by the Marciano decision in the present matter because Marciano concerned a judgment creditor's right to file an involuntary bankruptcy petition against the debtor whereas this case concerns a judgment creditor's right to be paid upon the sale of the collateral securing his judgment. Even if Marciano is not controlling, however, the court finds it persuasive and will follow its reasoning. In short, there is no basis in logic or policy to treat this case differently from Marciano. In this case, Kalbaugh obtained a judgment of the Superior Court of Plumas County following a trial at which the debtor was represented by counsel and presented evidence.[2] That is, Kalbaugh's judgment is not a default judgment. The debtor filed a notice of appeal on April 8, 2013; he substituted into the case in pro per on April 25, 2013.[3] He did not obtain a stay pending appeal. Thus, under California law, as cited by the Marciano court, Kalbaugh has a claim that is "not contingent as to liability or amount" and which, but for the automatic stay, he would be entitled to enforce immediately. See Marciano, 708 F.3d at 1127. In light of these fundamental principles, and in light of the policy of full faith and credit, the debtor's contention that "[t]he sufficiency of the filed claim needs to be determined before any release is made of escrow funds" [4] fails. To put it simply, the sufficiency of the claim has been determined by the state court.

The debtor argues he has been prevented by the automatic stay from prosecuting his appeal. Because the underlying state court action was an action by Kalbaugh against the debtor, the debtor's appeal has in fact been stayed by his bankruptcy filing. Parker v. Bain (In re Parker), 68 F.3d 1131, 1135-36 (9th Cir. 1995) (citations omitted). However, nothing prevented the debtor, during the 20 months this case has been pending, from seeking relief from the stay to prosecute the appeal. Instead, the debtor has chosen to repeatedly advise the state appellate court of the pending bankruptcy and automatic stay. On September 10, 2013, roughly a month after he filed this chapter 7 case, the debtor sent a letter to the appellate court, which the court returned to him because the letter lacked a proof of service and also because he had not included with his letter an endorsed filed copy of his bankruptcy petition. Although the docket does not so state, it is clear the debtor's letter was intended to inform the appellate court of his bankruptcy case. Thus, the court's docket states:

> Mr. Corey. Your September 10, 2013 letter is being returned unfiled at the direction of the court. . . . I left a telephone message for you . . . indicating that a proof of prior service was required as well as a copy of the endorsed filed bankruptcy petition (or like document showing a bankruptcy court file stamp and case number). Please note that until such time as notice of the bankruptcy has been filed in this court, the appeal remains active.

Kalbaugh's Ex. A. On October 4, 2013, the appellate court docketed another letter from the debtor, describing it as a letter "w/ notice of bankruptcy filing (Eastern District of California, case 13-30317)." The docket indicates the appeal was stayed on October 7, 2013, undoubtedly in response to the debtor's letter. The parties were to file a status letter by April 7, 2014; on May 12, 2014, the appellate court received a letter from the debtor "advising that the bankruptcy stay remains in effect." On February 2, 2015, the appellate court received another letter from the debtor advising that his "bankruptcy has not yet been discharged." Id.

Nor has the debtor taken any action to object to Kalbaugh's claim filed in this case. As discussed above, this court would not second-guess the non-default

judgment Kalbaugh obtained in the state court. However, the debtor believes he has the right to a ruling from this court, but he has not sought one. He has attempted to blame his former attorney in this case for the failure to file claim objections in a timely manner. This court rejected the same argument in connection with the trustee's motion to sell the property, in its March 4, 2015 ruling, yet the debtor still has not filed an objection to Kalbaugh's claim. To be clear, the court does not mean to encourage the debtor to file a claim objection; in light of the Marciano decision, the court would not entertain it. The court includes this discussion of the debtor's delay in objecting to the claim and in prosecuting his appeal only to demonstrate that the debtor has not taken active steps to protect his right to challenge Kalbaugh's judgment.

For the reasons stated, the motion will be granted and the moving party is to submit an appropriate order. No appearance is necessary.

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1 The debtor's standing to object to the claim is not in issue because the trustee has a pending adversary proceeding in which he seeks to deny the debtor's discharge. A debtor has standing to object to a claim where his liability will not or may not be discharged. 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].

2 The court takes judicial notice of the judgment and amended judgment, copies of which are filed as attachments to Kalbaugh's proof of claim in this case.

3 The court takes judicial notice of the docket of the appellate court case, Kalbaugh's Ex. A.

4 Debtor's Objection to Motion, filed April 1, 2015, at 1:24-25.

4.	14-25820-D-11 FWP-18	INTERNATIONAL MANUFACTURING GROUP, INC.	MOTION TO APPROVE SUBSTANTIVE CONSOLIDATION WITH RELYAID GLOBAL HEALTHCARE, INC. AND DBS AIR, LLC 3-18-15 [560]

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

Tentative ruling:

This is the motion of Beverly N. MacFarland, the Chapter 11 Trustee in this case (the "Trustee"), requesting substantive consolidation of Relyaid Global Healthcare, Inc. ("RGHI") and DBS Air, LLC ("DBS") with the Chapter 11 estate of International Manufacturing Group, Inc. ("IMG") nunc pro tunc back to IMG's Chapter 11 petition date of May 30, 2014 (the "Motion"). General Electric Capital Corporation ("GECC") and GE Equipment Corporate Aircraft Trust 2012-1, LLC (collectively "GE") have filed opposition to the Motion and the Trustee has filed a reply. For the reasons stated below the Motion will be granted as to RGHI and denied as to DBS.

IMG and Deepal Sunil Wannakuwatte ("Wannakuwatte") filed separate voluntary Chapter 11 petitions on May 30, 2014. Trustees were appointed in both cases on June 25, 2014. Wannakuwatte, along with his wife, Betsy, are the sole owners of IMG and Wannakuwatte owns, or controls, over 25 to 30 related entities (the "related entities"). Wannakuwatte used IMG and a number of the related entities to perpetrate a massive Ponzi scheme in which Wannakuwatte raised over $200,000,000 from numerous investors.[1] Wannakuwatte operated his Ponzi scheme by channeling a significant portion of the $200,000,000 through one of IMG's bank accounts, which has been designated as the "Wholesale Account." Wannakuwatte also used bank accounts of some of the related entities in furtherance of the Ponzi scheme.

The Trustee asserts that the finances of RGHI and DBS are so intertwined and entangled with the finances of IMG, that substantive consolidation is appropriate and necessary. GE opposes substantive consolidation and asserts that neither entity had significant business activity or many creditors and that neither RGHI nor DBS were used in furtherance of Wannakuwatte's Ponzi scheme. Thus, substantive consolidation is not appropriate or warranted.

The guiding authority for the court to consider in assessing whether substantial consolidation is appropriate is Alexander v. Compton (In re Bonham), 229 F.3d 750, 763 (9th Cir. 2000). Substantive consolidation is appropriate where "either (1) the creditors dealt with the consolidated entities as if they were the same, or (2) the affairs of the consolidated entities are so entangled that is would not be feasible to identify and allocate all of their assets and liabilities." Bonham, 229 F.3d at 771 (emphasis added). Either of these two factors is sufficient to order substantive consolidation. Id. At 767.

The Bankruptcy Court's power to order substantive consolidation is not set forth in the Bankruptcy Code, but rather is generally recognized as permissible as part of the court's general equitable authority. Id. At 764. Determining whether equity requires substantive consolidation is a fact specific exercise necessitating case-by-case analysis. To aid in this analysis, the Ninth Circuit has adopted a two-part test from the Second Circuit which requires the court to determine: (1) "whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." Id. At p. 766, quoting Reider v. Fed. Deposit Ins. Corp. (In re Reider), 31 F. 3d 1102, 1108 (11th Cir. 1994) (citing Union Savings Bank v. Augie/Restivo Banking Co., Ltd. (In re Augie/Restivo Banking Co.), 860 F. 2d 515, 518 (2d Cir. 1988)).

Substantive consolidation based upon entanglement of the debtor's affairs is justified where the time and expense necessary even to attempt to unscramble the debtor's affairs is so substantial as to threaten the realization of any net assets for all the creditors or where no accurate identification and allocation of assets is possible; one or the other circumstances, great expense or impossibility, is sufficient and it is not necessary to establish both. Sharp v. Salyer (In re S.K. Foods, L.P.), 499 B.R. 809 (Bankr. E.D. Cal. 2013).

With regard to RGHI the record establishes the following:

1. RGHI is/was owned 100% by Wannakuwatte and his wife.

2. Since her appointment the Trustee has engaged in due diligence to ascertain the financial history and condition of, along with the financial dealings between,

IMG and RGHI. The Trustee has also investigated the financial dealings between IMG and RGHI, on the one hand, and many of the related entities, on the other hand.

3. The Trustee has been unable to locate separate books and records for RGHI that are reliable, and the records that do relate to RGHI that have been found are contradictory.

4. Between December 2012 through January 2013, RGHI took out two separate loans with Key Finance in an aggregate amount that exceeded $4,400,000 (the "Loans").[2] RGHI was to use the proceeds from the Loans to purchase manufacturing equipment and the Loans were to be secured by this equipment. At the time the loan transactions closed, the proceeds from the Loans were paid directly to Western Building Supplies ("WBS") as the purported manufacturer/seller of the equipment to be purchased by RGHI. WBS then, in turn, transferred the proceeds from the Loans back to one of RGHI's bank accounts. RGHI then, in turn, transferred the funds from the Loans to IMG's Wholesale Account. IMG then used a substantive portion of the proceeds from the Loans to pay investors in the Ponzi scheme. Thus, RFHI was used as a conduit for, and a vehicle to further, IMG and Wannakuwatte's Ponzi scheme.

5. WBS is owned by Byron Younger and Bryon Younger is a major investor in the Ponzi scheme.[3]

6. IMG transferred in excess of $9,500,000 million in investor funds to RGHI's bank accounts and RGHI directly paid over $1,400,000 from its bank accounts to investors in the Ponzi scheme.

7. For no apparent reason, and with no reliable bookkeeping entries, large amounts of money were transferred from RGHI's bank accounts to Wannakuwatte, his family members and/or some of the related entities. These transfers exceeded $1,162,000.

From the above the court finds that both IMG and RGHI were owned and controlled by Wannakuwatte and that he used both entities to serve his personal needs and to further his Ponzi scheme. Wannakuwatte disregarded corporate formalities and the separate entity status of both IMG and RGHI. Wannakuwatte commingled funds of RGHI and IMG and failed to properly keep accurate separate books and records. Simply put, Wannakuwatte transferred and diverted assets back and forth between RGHI and IMG and used RFHI and IMG as a conduit, and in furtherance of, his Ponzi scheme.

At a minimum, all of the foregoing has resulted in IMG and RGHI's financial affairs being so entangled and intertwined that it is not feasible to identify and allocate their separate assets and liabilities. Further, RGHI's dealings with IMG and Wannakuwatte has resulted in such excessive entanglement that trying to reconcile an accounting between IMG and RGHI would be cost prohibitive and likely diminish, if not eliminate, any return to creditors. Accordingly, the court finds that substantive consolidation of RGHI with IGM's bankruptcy estate is appropriate.

The situation of DBS is quite different than that of RGHI. With regard to DBS the record establishes the following:

1. DBS has few, if any, material creditors other than GE and Wannakuwatte, and/or one of the related entities.[4]

2. Generally, DBS ran its business by using one, possibly two, bank checking

account. Thus, tracing the flow of funds in and out of DBS is doable without being cost prohibitive.

3. Although IMG has made certain payments to DBS, those payments appear to be primarily on account of Wannakuwatte's or IMG's use of DBS's airplane.

4. The record does not show any investor in the Ponzi scheme paid funds directly to DBS, nor does the record reflect that any investor in the Ponzi scheme was paid directly from DBS.

5. DBS's financial dealings with IMG appear to be relatively straight forward and capable of being traced with being cost prohibitive.

From the above the court finds the financial affairs of DBS are not so entangled with IMG that it would not be feasible to identify and allocate its assets and liability separate and apart from that of IMG. DBS has very few creditors and GE, the objecting creditor herein, is certainly the largest non-insider creditor of DBS. Even taking the Trustee's evidence in support of the Motion most favorably, it only supports a finding that it would be convenient to consolidate DBS with IMG rather than meeting the test for substantive consolidation as set forth in Bonham.

For those reasons, the court concludes that substantive consolidation with IMG is not appropriate.

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1 Prior to the filing of Wannakuwatte's Chapter 11 case, he entered into a plea agreement with the U.S. Attorney's Office in which he admitted to engaging in criminal activity and said criminal activity centered around operating a Ponzi scheme. As part of Wannakuwatte's plea agreement he was required to file a personal Chapter 11 and a Chapter 11 for IMG and to stipulate to appointment of a trustee in both cases. The court has taken judicial notice of this plea agreement. See Docket Entry no. 106.

2 RGHI's loans with Key Finance were later assigned to GECC and are currently held by GE.

3 On September 29, 2014 Brian Younger filed a proof of claim in the IMG case for over $33,000,000.

4 DBS filed its own Chapter 11 case in this court on October 8, 2013. A review of the schedules filed in DBS's case shows few, if any, real creditors other than GE, Wannakuwatte, and Wanas Enterprises, LLC. In addition, the schedules and statement of financial affairs show that DBS's only business activity was owning and renting out an airplane and that the airplane was primarily used by IMG or Wannakuwatte. DBS maintained only one bank account, that being a checking account. The court notes that the Trustee's declaration indicates that DBS may have had a second bank account.

5. 14-22526-D-7 DAVID JONES
PLC-3

MOTION TO COMPEL ABANDONMENT
3-3-15 [82]

Final ruling:

This is the debtor's motion to compel the abandonment of a real property and a fraud claim. Two parties-in-interest have filed opposition; however, the court is not prepared to consider the motion because the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. An earlier motion to compel abandonment of the real property was denied because, among other things, the proof of service was signed under oath only as to the facts of the declarant's age and non-party status and not as to the facts of service. This time, the proof of service is not signed under oath at all.

As a result of this defect in the evidentiary record, the motion will be denied and the court need not consider the positions of the opposing parties at this time. The motion will be denied by minute order. No appearance is necessary.

6. 14-21028-D-7 DANNY CAAMAL
SSA-3

MOTION TO SELL
2-18-15 [39]

7. 15-20730-D-7 LINDA FORSYTHE
EAT-1
U.S. BANK TRUST, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-15 [11]

Final ruling:

This matter is resolved without oral argument. This is U.S. Bank Trust, 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.

8. 06-22532-D-7 RIO MORALES
SMD-2

MOTION FOR COMPENSATION FOR MICHAEL GABRIELSON, ACCOUNTANT
3-13-15 [575]

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.

9. 13-36033-D-7 MARIA MENDEZ
HCS-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)
3-11-15 [53]

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.

10. 12-26444-D-7 MARY JUIP
HCS-10

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)
3-9-15 [168]

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.

11. 15-20344-D-7 DIRK/MARIA CREWS
DNL-2

MOTION TO EMPLOY COLDWELL BANKER REAL ESTATE AS BROKER(S)
3-18-15 [24]

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 employ Coldwell Banker Real Estate as Broker is supported by the record. As such the court will grant the motion to employ Coldwell Banker Real Estate as Broker. Moving party is to submit an appropriate order. No appearance is necessary.

12. 11-35346-D-7 JOHN QUILICI
NCK-1

MOTION TO AVOID LIEN OF SYSCO FOOD SERVICES OF SACRAMENTO, INC.
3-16-15 [87]

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.

13. 14-31446-D-7 BB-1 — WILLARD/MARGARET BODENSCHATZ — MOTION BY BONNIE BAKER TO WITHDRAW AS ATTORNEY 2-26-15 [19]

Tentative ruling:

This is the motion of Bonnie Baker to withdraw as attorney of record for the debtors in this case. No party-in-interest has filed opposition; however, the court is not prepared to consider the motion at this time for the following reasons. First, the notice of hearing gives the hearing date and time as April 15, 2015 at 10:00 a.m. in the caption but as December 14, 2010 at 9:32 in the text. Second, the motion states that the motion was served on the debtors and interested parties by e-mail and postal mail. That does not appear to be the case. The moving party served the debtors by email only, and not by mail, whereas the court's local rule permits service by electronic means only on persons who are registered users of the court's electronic filing system who have consented to service by electronic means. LBR 7005-1(d)(1). Service on persons who are not registered users must be made in the conventional manner. LBR 7005-1(d)(2).

In the event the debtors appear at the hearing, the court will hear the matter. If they do not, the court will continue the hearing and require the moving party to file a notice of continued hearing and serve it, together with the motion and supporting declaration, on the debtors by mail.

14. 10-42050-D-7 12-2314 BURKART V. LAL — VINCENT/MALANIE SINGH HLC-1 — MOTION FOR SUMMARY JUDGMENT 3-18-15 [109]

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Jadesh Kumar Lal, in the amount of $233,000. The defendant has not filed opposition. For the following reasons, the motion will be granted in part.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant filed a proof of claim in the underlying chapter 7 case; thus, the court finds that the defendant waived the right to an Article III adjudication. Accordingly, the court has authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendant and to the defendant's responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the

defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $233,000, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550. The trustee also asks the court to disallow the defendant's claim filed in the underlying case, pursuant to § 502(d).

The motion depends upon the trustee's requests for admissions directed to the defendant and on the defendant's failure to respond to them. Specifically, the trustee asked the defendant to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendant, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendant's failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. Although the defendant pled good faith as an affirmative defense in his answer to the complaint, he has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A), 550, and 502(d), and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has two concerns. First, the proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 21), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on January 9, 2015, the motion will be granted in part. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

Second, the amount sought in the plaintiff's complaint was "$159,600 plus such other amounts, if any, as may be subsequently discovered by or disclosed to [the trustee]" (First Amended Complaint, filed Aug. 15, 2012, at 3:1-2), whereas the trustee now seeks a judgment for $233,000. The court has previously allowed the trustee, in other related adversary proceedings in this case, to amend his complaints to add particular payments not included in his original complaints. The trustee has made no such motion to amend in this adversary proceeding, and so far as the record reveals, has not complied, with respect to this defendant, with the court's order establishing procedures for amendment of complaints. (Technically, the procedures established by that order would not apply in this adversary proceeding in any event, because the order was not entered in this proceeding.) True, this is a motion for summary judgment, not default judgment; however, it is based in large measure on matters deemed admitted by the defendant's failure to respond to the trustee's requests for admissions. The defendant may have based his decision not to

respond on the amount prayed for in the trustee's complaint. Thus, it appears Fed. R. Civ. P. 54(c) comes into play, which prevents a default judgment from exceeding the amount demanded in the pleadings. If the trustee wishes to brief this issue, the court will continue the hearing.

For the reasons stated, the motion will be granted in part upon submission of a signed copy of the proof of service of the requests for admissions. The court will hear the matter.

15. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION FOR SUMMARY JUDGMENT
12-2318 HLC-1 — 3-18-15 [120]
BURKART V. SHAIKH

Final ruling:

The hearing on this motion has been continued by order filed April 2, 2015 to April 29, 2015, at 10:00 a.m

16. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION TO SUBSTITUTE ATTORNEY
12-2370 KBP-6 — 3-16-15 [145]
BURKART V. TORRES

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

17. 10-42050-D-7 VINCENT/MALANIE SINGH — MOTION FOR SUMMARY JUDGMENT
12-2381 HLC-1 — 3-18-15 [111]
BURKART V. LAL

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Jia Lal, in the amount of $65,000. The defendant has not filed opposition. For the following reasons, the motion will be granted.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant filed a proof of claim in the

underlying chapter 7 case; thus, the court finds that the defendant waived the right to an Article III adjudication. Accordingly, the court has authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendant and to the defendant's responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $65,000, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550. The trustee also asks the court to disallow the defendant's claim filed in the underlying case, pursuant to § 502(d).

The motion depends upon the trustee's requests for admissions directed to the defendant and on the defendant's failure to respond to them. Specifically, the trustee asked the defendant to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendant, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendant's failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. Although the defendant pled good faith as an affirmative defense in his answer to the complaint, he has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A), 550, and 502(d), and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has one concern. The proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 10), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on January 9, 2015, the motion will be granted. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

For the reasons stated, the motion will be granted upon submission of a signed copy of the proof of service of the requests for admissions. The court will hear the matter.

18. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2394 HLC-1 3-18-15 [117]
BURKART V. PRAKASH ET AL

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendants, Raveen Prakash and Ravina Prakash, in the amount of $63,700. The defendants have not filed opposition. For the following reasons, the motion will be granted.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendants filed a proof of claim in the underlying chapter 7 case; thus, the court finds that the defendant waived the right to an Article III adjudication. Accordingly, the court has authority to enter a final judgment on the fraudulent transfer claim asserted against the defendants.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendants and to the defendants' responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendants between August 19, 2008 and August 19, 2010, a total of $63,700, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendants pursuant to § 550. The trustee also asks the court to disallow the defendants' claim filed in the underlying case, pursuant to § 502(d).

The motion depends upon the trustee's requests for admissions directed to the defendants and on the defendants' failure to respond to them. Specifically, the trustee asked the defendants to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendants, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendants' failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendants constituted actual fraudulent

transfers. Although the defendants pled good faith as an affirmative defense in his answer to the complaint, he has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A), 550, and 502(d), and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has one concern. The proofs of service of the requests for admissions, copies of which is filed as part of the trustee's exhibits (Ex. 4, p. 11 and second Ex. 4, p. 10), are unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendants on December 15, 2014, the motion will be granted. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proofs of service, that was Lea M. Placido.)

For the reasons stated, the motion will be granted upon submission of signed copies of the proofs of service of the requests for admissions. The court will hear the matter.

19. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2417 HLC-1 3-18-15 [101]
BURKART V. PRASAD

Final ruling:

The hearing on this motion has been continued by order filed April 2, 2015 to April 29, 2015, at 10:00 a.m.

20. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2437 HLC-1 3-18-15 [114]
BURKART V. SINGH

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Harkesh Singh, in the amount of $15,400. The defendant has not filed opposition. For the following reasons, the court will submit to the district court the following findings of fact and conclusions of law, pursuant to 28 U.S.C. § 157(c)(1).

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant is neither a creditor in the underlying bankruptcy case, nor was the defendant sufficiently active in the case to

give rise to a finding of a waiver of the defendant's right to an Article III adjudication. Accordingly, the court does not have authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant. Thus, the court will submit the following as its findings of fact and conclusions of law, together with its recommendation, to the district court.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendant and to the defendant's responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $15,400, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550.

The motion depends upon the trustee's requests for admissions directed to the defendant and on the defendant's failure to respond to them. Specifically, the trustee asked the defendant to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendant, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendant's failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. Although the defendant pled good faith as an affirmative defense in his answer to the complaint, he has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A) and 550, and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has one concern. The proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 9), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on December 15, 2014, the court will recommend to the district court that the motion be granted. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

For the reasons stated, upon submission of a signed copy of the proof of service of the requests for admissions, the court will recommend to the district court that the motion be granted. The court will hear the matter.

21. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO SUBSTITUTE ATTORNEY
12-2446 KBP-6 3-16-15 [141]
BURKART V. BELOLI

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

22. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2447 HLC-1 3-18-15 [69]
BURKART V. PRASAD

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Urmilla Prasad, in the amount of $47,399. The defendant has not filed opposition. For the following reasons, the court will submit to the district court the following findings of fact and conclusions of law, pursuant to 28 U.S.C. § 157(c)(1).

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant is neither a creditor in the underlying bankruptcy case, nor was the defendant sufficiently active in the case to give rise to a finding of a waiver of the defendant's right to an Article III adjudication. Accordingly, the court does not have authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant. Thus, the court will submit the following as its findings of fact and conclusions of law, together with its recommendation, to the district court.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendants and to the defendants' responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude

that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $47,399, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550.

The motion depends upon the trustee's requests for admissions directed to the defendants and on the defendants' failure to respond to them. Specifically, the trustee asked the defendants to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendants, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendants' failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. The defendant did not plead good faith as an affirmative defense in her answer to the complaint, and has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A) and 550, and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has two concerns. First, the proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 20), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on January 22, 2015, the court will recommend to the district court that the motion be granted in part. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

Second, the amount sought in the plaintiff's complaint was "$23,985 plus such other amounts, if any, as may be subsequently discovered by or disclosed to [the trustee]" (First Amended Complaint, filed Feb. 28, 2013, at 3:8-9), whereas the trustee now seeks a judgment for $47,399. The court has previously allowed the trustee, in other related adversary proceedings in this case, to amend his complaints to add particular payments not included in his original complaints. The trustee has made no such motion to amend in this adversary proceeding, and so far as the record reveals, has not complied, with respect to this defendant, with the court's order establishing procedures for amendment of complaints. (Technically, the procedures established by that order would not apply in this adversary proceeding in any event, because the order was not entered in this proceeding.) True, this is a motion for summary judgment, not default judgment; however, it is based in large measure on matters deemed admitted by the defendant's failure to respond to the trustee's requests for admissions. The defendant may have based his decision not to respond on the amount prayed for in the trustee's complaint. Thus, it appears Fed. R. Civ. P. 54(c) comes into play, which prevents a default judgment from exceeding the amount demanded in the pleadings. If the trustee wishes to brief this issue, the court will continue the hearing.

For the reasons stated, upon submission of a signed copy of the proof of service of the requests for admissions, the court will recommend to the district court that the motion be granted in part. The court will hear the matter.

23. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2485 HLC-1 3-18-15 [107]
BURKART V. PRASAD

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Vinod Prasad, in the amount of $170,100. The defendant has not filed opposition. For the following reasons, the motion will be granted.

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison,134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant filed a proof of claim in the underlying chapter 7 case; thus, the court finds that the defendant waived the right to an Article III adjudication. Accordingly, the court has authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendant and to the defendant's responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendant; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $170,100, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550. The trustee also asks the court to disallow the defendant's claims filed in the underlying case, pursuant to § 502(d).

The motion depends upon the trustee's requests for admissions directed to the defendant and on the defendant's failure to respond to them. Specifically, the trustee asked the defendant to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendant, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendant's failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. Although the defendant pled good faith as an affirmative defense in his

answer to the complaint, he has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A), 550, and 502(d), and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has one concern. The proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 22), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on January 22, 2015, the motion will be granted. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

For the reasons stated, the motion will be granted upon submission of a signed copy of the proof of service of the requests for admissions. The court will hear the matter.

24. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION TO SUBSTITUTE ATTORNEY
12-2496 KBP-6 3-16-15 [132]
BURKART V. MORA

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

25. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION FOR SUMMARY JUDGMENT
12-2501 HLC-1 3-18-15 [110]
BURKART V. SINGH

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

Tentative ruling:

This is the motion of the plaintiff, who is also the trustee in the underlying chapter 7 case (the "trustee"), for summary judgment against the defendant, Prabeen Singh, in the amount of $10,436. The defendant has not filed opposition. For the following reasons, the court will submit to the district court the following findings of fact and conclusions of law, pursuant to 28 U.S.C. § 157(c)(1).

Following the Ninth Circuit's decision in Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012), aff'd, Exec. Bens. Ins. Agency v. Arkison, 134 S. Ct. 2165, 2175 (2014), bankruptcy courts do not have constitutional authority to enter final judgments on fraudulent transfer claims against non-creditors. 702 F.3d at 565. The Bellingham court, however, also held that a defendant's right to a hearing in an Article III court is waivable. Id. at 566. "[A] litigant's actions may suffice to establish consent" to adjudication by a non-Article III court. Id. at 569. Here, the defendant is neither a creditor in the underlying bankruptcy case, nor was the defendant sufficiently active in the case to

give rise to a finding of a waiver of the defendant's right to an Article III adjudication. Accordingly, the court does not have authority to enter a final judgment on the fraudulent transfer claim asserted against the defendant. Thus, the court will submit the following as its findings of fact and conclusions of law, together with its recommendation, to the district court.

The evidence submitted by the trustee consists of (1) the declaration of his attorney, who testifies to certain discovery propounded to the defendant and to the defendant's responses or lack thereof; (2) exhibits consisting of copies of checks signed by the debtor in the underlying case, Vincent Singh, payable to the defendant, and a copy of the trustee's requests for admissions to the defendants; and (3) a declaration of Gerard A. McHale, Jr., who testifies that in his opinion, Vincent Singh was operating a Ponzi scheme from 2005 or 2006 until August of 2010, and that "all payments from and to investors during that period which were for 'investment' purposes were payments in furtherance of the Ponzi scheme." McHale Decl., at 2:17-19. A copy of Mr. McHale's expert report is also filed as an exhibit. Based in large part on his requests for admissions to the defendant, which the trustee's counsel testifies went unanswered, the trustee asks the court to conclude that the payments made by Singh to the defendant between August 19, 2008 and August 19, 2010, a total of $10,436, are avoidable as fraudulent transfers pursuant to § 548(a)(1)(A) of the Bankruptcy Code, and may be recovered from the defendant pursuant to § 550.

The motion depends upon the trustee's requests for admissions directed to the defendant and on the defendant's failure to respond to them. Specifically, the trustee asked the defendant to admit that, for each payment identified by the trustee in a list attached to the requests, the payment (1) was a payment from Vincent Singh, (2) was received by the defendant, and (3) was made pursuant to a Ponzi scheme orchestrated by Vincent Singh. Those facts, which are deemed admitted by the defendant's failure to respond (Fed. R. Civ. P. 36(a)(3), incorporated herein by Fed. R. Bankr. P. 7036), together with the trustee's evidence of Vincent Singh's Ponzi scheme – the McHale declaration and expert report, are sufficient to demonstrate that the payments to the defendant constituted actual fraudulent transfers. Although the defendant pled good faith as an affirmative defense in her answer to the complaint, she has failed to submit any evidence of the same in response to this motion. Accordingly, the court concludes there is no genuine dispute as to any material fact of the trustee's causes of action under § 548(a)(1)(A) and 550, and, assuming the requests for admissions were actually served (see discussion below), the trustee is entitled to judgment on those causes of action as a matter of law.

The court has one concern. The proof of service of the requests for admissions, a copy of which is filed as part of the trustee's exhibits (Ex. 4, p. 8), is unsigned. Upon submission of admissible evidence that the requests for admissions were served on the defendant on December 15, 2014, the court will recommend to the district court that the motion be granted. (The trustee's attorney testifies in his declaration that the requests were served; however, the person having personal knowledge of that fact is the person who served them. According to the proof of service, that was Lea M. Placido.)

For the reasons stated, upon submission of a signed copy of the proof of service of the requests for admissions, the court will recommend to the district court that the motion be granted. The court will hear the matter.

26. 14-31950-D-7 PHILIP/SHAYLYNNE SLACK
PPR-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-10-15 [26]

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.

27. 15-20461-D-7 CHELSEY LAPLACA
ASW-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-15 [14]

28. 15-21761-D-7 JUSTIN HAMMAR

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-5-15 [5]

29. 09-29162-D-11 SK FOODS, L.P.
SH-314

OBJECTION TO CLAIM OF WASHINGTON INTERNATIONAL INSURANCE COMPANY, CLAIM NUMBER 342
2-24-15 [5491]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

30. 09-29162-D-11 SK FOODS, L.P. OBJECTION TO CLAIM OF STEVE
SH-315 SAMRA FARMS, CLAIM NUMBER 357
2-24-15 [5495]

Tentative ruling:

This is the trustee's objection to the claim of Steve Samra Farms, Claim No. 357 on the court's claims register. Steven S. Samra ("Samra") has filed opposition. Based on the record as it now stands, the court is inclined to sustain the objection in part and to overrule it in part. Alternatively, the court will schedule an evidentiary hearing, as properly requested by Samra.

The trustee objects to the claim on two grounds. First, the proof of claim was filed November 10, 2010, after the claims bar date fixed by the court, September 14, 2009. Samra states in his opposition that his address as listed on the debtor's master address list was incorrect, and that he therefore never received notice of the claims bar date. He testifies to that effect in his declaration, adding that he has never received mail at P.O. Box 5817658, Elk Grove, CA 95758, which, the court has confirmed, is the address on the master address list and the address at which Samra was served with the notice of commencement of the case, including notice of the claims bar date. Samra testifies he became aware of the bankruptcy case around September of 2010, consulted with an attorney, and then filed his proof of claim on November 11, 2010. (The claim was actually filed on November 10, 2010.) Having considered the Pioneer factors,[1] the court intends to grant Samra's countermotion, included in his opposition, for allowance of his late-filed claim to the extent that the court will consider the claim despite the fact that it was filed late.

Second, the trustee objects to the claim, contending Samra never delivered the tomatoes it had contracted to grow for debtor SK Foods, L.P., and that Samra has failed to show it suffered damages in excess of the amount of the advance payment it received from the debtor, $121,500. The trustee has submitted the declaration of Shondale Seymour, who was the debtor's Chief Financial Officer from July 2008 through December 2009. She testifies to the authenticity of the Processing Tomato Contract between the debtor and Samra which is filed as an exhibit, and adds that "SK Foods, however, never received any of the tomatoes that were the subject of the Contract due to the failure of Samra Farms tomato crop." Seymour Decl., filed Feb. 24, 2015, at 2:20-21.

Samra testifies in considerable detail about the genesis of the contract, its terms, and its results, arriving at a conclusion contrary to Seymour's:

> **In or around early June 2008, SK Foods, LP (the "Debtor") approached me to grow a tomato crop in Sacramento for Debtor. On or around June 16, 2008, I entered into that certain Processing Tomato Contract No.-410849A (the "Contract") with the Debtor. Pursuant to the Contract, I agreed to sell and Debtor agreed to purchase, 9,748 net tons of tomatoes for the 2008 crop year. I complied with all aspects of the Contract and prepared for harvest by Debtor a sufficient quantity of tomatoes to deliver the agreed tonnage amount under the Contract. The tomatoes that I prepared for harvest by Debtor were of good and merchantable quality and suitable for usage by Debtor in the manner contemplated by the Contract.**
>
> **In or around early October 2008, I notified the Debtor that the tomatoes I had grown in Sacramento pursuant to the Contract would be ready for harvest in late October. The Debtor subsequently sent its field representative to evaluate the tomatoes I had been growing in**

> Sacramento for the Debtor. The Debtor then unreasonably refused to harvest the tomatoes I had grown in Sacramento pursuant to the Contract, on the purported grounds that the tomatoes would mature too late, instead demanding that I deliver tomatoes growing in Merced that had been contracted to another party and were not contracted to the Debtor. This conversation was witnessed by my field hand Luke Peaster. I could not sell the tomatoes growing in Merced to the Debtor, since such an action would have forced me to breach my contract with the other purchaser. The Debtor thus breached the Contract by refusing to harvest the tomatoes in Sacramento, despite the fact that they were viable for processing. I was unable to sell the tomatoes growing in Sacramento after the Debtor refused to harvest them, thus causing me to lose profits in the amount of $659,840.00.

Samra Decl., filed April 1, 2015 ("Samra Decl."), at 2:1-23. Samra's testimony that the tomatoes were to be grown in Sacramento, that they were to be harvested by the debtor, and that they were to be harvested in late October of 2008 is corroborated by the contract itself. The contract states that "Grower [Samra] shall deliver to Company [the debtor], ready for harvest by Company, the Contract Tons . . ." and that "The production acreage will be located in Sacramento County, California . . ." Trustee's Ex. A. An addendum to the contract shows the harvest date as the "week ending 10/19/2008." Id. Although Samra's expected harvest date in "late October" may have been beyond that week, and may in fact have been too late for the debtor's purposes, the trustee has submitted no evidence to that effect, instead alleging only that Samra's crop failed.

The court finds Samra's testimony to be considerably more detailed than Seymour's, and more likely to be based on personal knowledge. Seymour, for example, does not indicate how she comes to have knowledge of the alleged fact that the debtor never received any of the tomatoes due to the failure of Samra Farms' tomato crop. In light of Samra's testimony, it seems unlikely that Seymour's conclusion is accurate. Thus, the court is inclined to overrule the objection in part and to allow the claim in part. As to the amount of the claim, the court is not convinced it accurately represents the amount of the damages Samra suffered as a result of the debtor's breach of the contract. Samra's opposition states that "the Debtor's unreasonable refusal to harvest Samra's tomato crop caused him to lose profits in the amount of $659,840.00 in excess of the amount advanced by the Debtor." Samra's Opp., filed April 1, 2015, at 4:9-11 (emphasis added). However, Samra testifies in his declaration: "I was unable to sell the tomatoes growing in Sacramento after the Debtor refused to harvest them, thus causing me to lose profits in the amount of $659,840.00." Decl. at 2:20-22. In other words, he does not testify that the $659,840 figure represents his losses "in excess of the amount advanced by the debtor," $121,500. The court concludes, therefore, that at the very least the amount of the claim should be reduced by the amount of the advance the debtor made under the contract, and that the trustee's objection should be sustained as to any amount in excess of $538,340.

The court will hear the matter.

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1 See Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993) ["the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith"].

31. 09-29162-D-11 SH-316 — SK FOODS, L.P. — OMNIBUS OBJECTION TO CLAIMS 2-25-15 [5500]

Final ruling:

The hearing on this objection is continued to May 13, 2015 at 10:00 a.m. No appearance is necessary on April 15, 2015.

32. 09-29162-D-11 SH-317 — SK FOODS, L.P. — OBJECTION TO CLAIM OF GUGA MERCANTIL S A DE C V, CLAIM NUMBER 88 2-26-15 [5504]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Guga Mercantil S A De C V, Claim No. 88. Moving party is to submit an appropriate order. No appearance is necessary.

33. 09-29162-D-11 SH-318 — SK FOODS, L.P. — OBJECTION TO CLAIM OF IGPS COMPANY, LLC, CLAIM NUMBER 252 2-26-15 [5508]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of IGPS Company, LLC, Claim No. 252. Moving party is to submit an appropriate order. No appearance is necessary.

34. 09-29162-D-11 SH-319 — SK FOODS, L.P. — OBJECTION TO CLAIM OF SKY PARK 200, LLC, CLAIM NUMBER 303 2-26-15 [5512]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Sky Park 200, LLC, Claim No. 303 and disallow that portion of the claim that exceeds $160,108. Moving party is to submit an appropriate order. No appearance is necessary.

35. 09-29162-D-11 SH-320 — SK FOODS, L.P. — OBJECTION TO CLAIM OF HAARBERG ENTERPRISES, INC., CLAIM NUMBER 25
2-26-15 [5516]

Final ruling:

This is the trustee's objection to the claim of Haarberg Enterprises, Inc. (the "Claimant"), Claim No. 25 on the court's claims register in the RHM case, Case No. 09-29161. The trustee objects to the claim on the ground that the Claimant included no documentation supporting the amount of the claim. However, a lack of documentation is not a basis for disallowing a claim. Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424, 426 (9th Cir. BAP 2005). The trustee has also submitted evidence – in the form of the debtor's Schedule F, to the effect that, as of the petition date, the debtor owed the Claimant $10,000. This evidence is sufficient to shift the burden of proving the amount of the $25,000 claim back to the Claimant, who has not responded. Thus, the court will sustain the objection in part and disallow the claim to the extent it exceeds the amount of $10,000.

The trustee suggests the claim should be disallowed in its entirety, with the Claimant to retain its $10,000 claim as scheduled on the debtor's Schedule F. However, Fed. R. Bankr. P. 3003(c)(4) provides that a filed proof of claim supersedes any scheduled claim. Thus, the Claimant's filed proof of claim has superseded the scheduled claim, and the filed proof of claim should be allowed in the amount the trustee does not dispute, $10,000.

The trustee shall submit a proposed order sustaining the objection in part and disallowing the claim to the extent it exceeds the amount of $10,000. No appearance is necessary.

36. 09-29162-D-11 SH-321 — SK FOODS, L.P. — OBJECTION TO CLAIM OF PIONEER RESEARCH CORPORATION, CLAIM NUMBER 192
2-27-15 [5521]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Pioneer Research Corporation, Claim No. 192. Moving party is to submit an appropriate order. No appearance is necessary.

37. 09-29162-D-11 SH-322 — SK FOODS, L.P. — OBJECTION TO CLAIM OF MARK M. MCCORMICK, CLAIM NUMBER 333
2-27-15 [5525]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

38. 09-29162-D-11 SK FOODS, L.P. OMNIBUS OBJECTION TO CLAIMS
SH-323 2-27-15 [5529]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the Liquidating Trustee's Sixteenth Omnibus Objection to Claim Nos. 164, 165 and 166 Filed by Anthony R. Manuel. Moving party is to submit an appropriate order. No appearance is necessary.

39. 09-29162-D-11 SK FOODS, L.P. OBJECTION TO CLAIM OF GMAC,
SH-324 CLAIM NUMBER 10
2-27-15 [5533]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of GMAC, Claim No. 10. Moving party is to submit an appropriate order. No appearance is necessary.

40. 09-29162-D-11 SK FOODS, L.P. OMNIBUS OBJECTION TO CLAIMS
SH-325 2-27-15 [5537]

Tentative ruling:

This is the trustee's omnibus objection to several claims filed in this case. The objection was brought pursuant to LBR 3007-1(b)(1) and no party-in-interest has filed opposition. Thus, the court is prepared to sustain the objection except with respect to (1) Ecolab Food Beverage, which was served at the address designated on its proof of claim for payments on the claim, rather than the address designated for notices, and (2) Spice Spice, Inc., which was served at 635 Deep Valley Road, rather than 655 Deep Valley Road, as listed on its proof of claim. The trustee shall submit a proposed order sustaining the objection as to the remaining claims. As to those two claims, the court will continue the hearing to allow the trustee to file and serve a notice of continued hearing, along with the objection and supporting documents, under either LBR 3007-1(b)(1) or (b)(2), at the trustee's election.

The court will hear the matter.

41. 09-29162-D-11 SK FOODS, L.P. OBJECTION TO CLAIM OF BELLISIO
SH-326 FOODS, INC., CLAIM NUMBER 148
2-27-15 [5541]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Bellisio Foods, Inc., Claim No. 148 and disallow that portion of the claim that exceeds $125,000. Moving party is to submit an appropriate order. No appearance is necessary.

42. 09-29162-D-11 SK FOODS, L.P. OMNIBUS OBJECTION TO CLAIMS
SH-327 2-27-15 [5547]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's Eighteenth Omnibus Objection to Claims (Claims held by Jake Brazie) and disallow Claim No. 76 in its entirety; allow Claim No. 89 as $3,890 priority and $9,915 general unsecured; except as so stated, Claim No. 89 is disallowed. Moving party is to submit an appropriate order. No appearance is necessary.

43. 09-29162-D-11 SK FOODS, L.P. OBJECTION TO CLAIM OF CAMPBELL
SH-328 SOUP SUPPLY CO., LLC, CLAIM NUMBER 243
2-27-15 [5551]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Campbell Soup Supply Co., LLC, Claim No. 243 and disallow that portion of the claim that exceeds $533,682. Moving party is to submit an appropriate order. No appearance is necessary.

44. 09-29162-D-11 SK FOODS, L.P. OBJECTION TO CLAIM OF
SH-329 EMPLOYMENT DEVELOPMENT DEPARTMENT, CLAIM NUMBER 341
2-27-15 [5555]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the liquidating trustee's objection has been filed and the objection is supported by the record. Accordingly, the court will sustain the liquidating trustee's objection to the claim of Employment Development Department, Claim No. 341. Moving party is to submit an appropriate order. No appearance is necessary.

45. 09-29162-D-11 SK FOODS, L.P. OMNIBUS OBJECTION TO CLAIMS
SH-330 2-27-15 [5559]

Final ruling:

This is the trustee's objection to the claims of the Internal Revenue Service, Claim No. 360-1, as amended by Claim No. 360-2, on the ground that both claims assert administrative priority, whereas both were filed after the administrative claims bar date, February 15, 2010. The objection will be overruled because the trustee failed to serve the IRS at any of the three addresses required by LBR 2002-1(c).

The objection will be overruled by minute order. No appearance is necessary.

46. 09-29162-D-11 SK FOODS, L.P.
SH-331

OBJECTION TO CLAIM OF AMYS KITCHEN, CLAIM NUMBER 80
2-27-15 [5563]

Final ruling:

Objection withdrawn pursuant to stipulated order. Matter removed from calendar.

47. 15-20462-D-7 ROBERT MARTELL
PPR-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-10-15 [11]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'s motion for relief from automatic stay. The court's 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 debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

48. 14-20064-D-7 GLENN GREGO
WR-6

MOTION TO DISQUALIFY BANKRUPTCY JUDGE ROBERT BARDWIL FOR ACTUAL BIAS AND FOR THE APPEARANCE OF BIAS
3-4-15 [236]

Final ruling:

This purports to be the debtor's motion to disqualify the judge in this department as the judge in this bankruptcy case and in a related adversary proceeding. However, the motion was signed and filed by an attorney, Wiley Ramey, who had the day before signed a substitution of attorneys in which he substituted out of the bankruptcy case as the debtor's attorney of record and another attorney, Scott Sagaria, substituted in. As a result, attorney Ramey had no authority, at the time he signed and filed this motion, to act as the debtor's attorney in the bankruptcy case, and no such authority when, a month later, he signed and filed a reply to Pacific Western Bank's opposition to the motion. As a result, as it pertains to the bankruptcy case, the motion will be denied as having been filed without authority. (The same motion, as filed in the adversary proceeding, is also on this calendar. Because no substitution of attorneys has been filed in the adversary proceeding, the court will consider the motion on its merits as it applies to the adversary proceeding, and will issue a separate ruling.)

The motion will be denied by minute order. No appearance is necessary.

49. 14-20064-D-7 GLENN GREGO — MOTION TO DISQUALIFY BANKRUPTCY JUDGE ROBERT BARDWIL FOR ACTUAL BIAS AND FOR THE APPEARANCE OF BIAS
WR-7
3-5-15 [238]

Final ruling:

This motion will be denied by minute order as being a duplicate of the motion on the court's docket as DN 236, Docket Control No. WR-6. No appearance is necessary.

50. 14-20064-D-7 GLENN GREGO — MOTION TO DISQUALIFY BANKRUPTCY JUDGE ROBERT BARDWIL FOR ACTUAL BIAS AND FOR THE APPEARANCE OF BIAS
15-2042 WR-6
GREGO V. PACIFIC WESTERN BANK
3-4-15 [7]

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

Tentative ruling:

This is the motion of the debtor, who is the plaintiff in this adversary proceeding, to disqualify the judge in this department as the judge in his bankruptcy case and in this adversary proceeding. The motion is also on this calendar as it pertains to the bankruptcy case; the court will issue a separate ruling in that matter. In this ruling, the court will address the motion as it pertains to this adversary proceeding. Defendant Pacific Western Bank (the "Bank") has filed opposition, and the debtor has filed a reply. For the following reasons, the motion will be denied.

"A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall be disqualified from presiding over the case." Fed. R. Bankr. P. 5004(a).

Section 455 of Title 28, in turn, provides in part:

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party . . . .

Under § 455(a), "[t]he standard for recusal is clearly objective: 'whether a reasonable person with knowledge of all of the facts would conclude that the judge's impartiality might reasonably be questioned.'" In re Georgetown Park Apts., Ltd., 143 B.R. 557, 559 (9th Cir. BAP 1992), quoting United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983) (other citations omitted).

Similarly, "[u]nder the canons of judicial ethics, every judicial officer must satisfy himself that he is actually unbiased towards the parties in each case and

that his impartiality is not reasonably subject to question." In re Bernard, 31 F.3d 842, 843 (9th Cir. 1994). Under this standard, the judge must not only be subjectively confident that he is unbiased; it is also objectively necessary that "an informed, rational, objective observer would not doubt his impartiality." Id. at 844, citing United States v. Winston, 613 F.2d 221, 222 (9th Cir. 1980).

Finally, if the motion is brought on the ground of bias or prejudice, the bias or prejudice "to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." Liteky v. United States, 510 U.S. 540, 545, n.1 (1994) (citation omitted).

> [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved.

In re Focus Media, Inc. 378 F.3d 916, 930 (9th Cir. 2004), quoting Liteky, 510 U.S. at 555 (internal citation omitted).

As grounds for disqualification, the debtor has a variety of complaints about a series of rulings in the bankruptcy case that went against him. However, he does not suggest the court relied on anything other than what it learned from its participation in the case; that is, he makes no suggestion of an extrajudicial source. Instead, he simply reiterates the arguments he made in support of or in opposition to the original motions and objections. While the debtor recognizes that adverse rulings do not usually constitute grounds for disqualification, he argues "there is no case that holds that one can ignore a string of rulings, up to 7." Notice of Motion and Motion, filed March 4, 2015 ("Mot."), at 10:4. The debtor has cited no authority for the proposition that the number of unfavorable rulings can take the case outside the extrajudicial source rule, and to permit it to do so would open the door to judge-shopping to any party who consistently takes incorrect positions.

The debtor also complains repeatedly about certain of the court's remarks at the initial status conference, and accuses the court of making a statement in a later ruling which the debtor finds "fundamentally and unnecessarily adversarial." Mot. at 3:9-10. "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." Liteky, 510 U.S. at 555. The court has reviewed the transcript of the initial status conference and the ruling containing the alleged fundamentally and unnecessarily adversarial statement and finds that the court's remarks and statement did not derive from an extrajudicial source and, while they were obviously not pleasing to the debtor or his counsel, did not come close to exhibiting such a high degree of antagonism as to make fair judgment impossible.

The debtor also complains about various ways the court has managed the case procedurally. He claims the court "repudiated" (Mot. at 11:6) its own tentative ruling by converting the case to chapter 7 when it had tentatively decided to continue the status conference; that the court denied the debtor's motion to dismiss

the case even though it was unopposed by both the chapter 7 trustee and the United States Trustee; that the court gave too much credence to an opposing party's declaration that, in the debtor's counsel's opinion, was "fundamentally nonresponsive and insubstantial" (id. at 4:10); that the court sustained the Bank's objection to the debtor's exemptions without acknowledging that the Bank is a defendant in "a substantial lawsuit" pending in state court, such that the Bank's declarations are "completely self-serving and highly suspect" (id. at 4:22-25); and finally, that the court did not allow the debtor's counsel to present oral argument on certain motions and objections.

As to the first of these, of course, a tentative ruling is just that – tentative; the debtor's only complaint about the final ruling is that it went against him. Second, the debtor's motion to dismiss was not entirely unopposed – it was opposed by the Bank. Third, a trial court is always free to weigh the credibility of evidence. Fourth, the court was well aware of the Bank's position as a state court defendant when it considered the Bank's declarations and issued its ruling on the debtor's exemptions. And finally, the court's local rules permit the court to decide that resolution of a matter does not require oral argument. LBR 9014-1(h). None of these matters would cause a reasonable person to question the court's impartiality. And the court is persuaded that it is unbiased and impartial towards the parties in this adversary proceeding and their counsel.

Finally, the debtor complains that his bankruptcy case is related to an earlier case filed by the Oscar Grego Living Trust, which was assigned to a different department, and therefore, that the debtor's case was "misassigned" (Mot. at 12:18) by the clerk's office. Although the debtor filed a statement of related cases in his case, the manner in which a case is assigned and the department to which it is assigned are not matters for the debtor's choosing.

For the reasons stated, the motion will be denied. The court will hear the matter.

51.	14-26167-D-7 EJS-2	BRETT/JESSICA WATERBURY	OBJECTION TO CLAIM OF U.S. DEPARTMENT OF EDUCATION, CLAIM NUMBER 5 2-26-15 [27]

Final ruling:

This is the debtors' objection to the claim of the U.S. Department of Education (the "Claimant"), Claim No. 5 on the court's claims register. The court is not prepared to consider the objection at this time because, although the moving parties served the Claimant at the address on its proof of claim and at its address on the Roster of Governmental Agencies, they failed to serve the Claimant also at its different address listed on the debtors' schedules, as required by LBR 3007-1(c). The court will continue the hearing to April 29, 2015, at 10:00 a.m., the moving parties to file a notice of continued hearing and serve it, together with the objection and exhibits, on the Claimant at its address as listed on the debtors' schedules. The notice of continued hearing shall be a notice pursuant to LBR 9014-1(f)(2) (no written opposition required).

The hearing will be continued by minute order. No appearance is necessary on April 15, 2015.

52. 14-32367-D-7 THOMAS/DIANE WARD
PPR-1
BANK OF AMERICA, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-12-15 [19]

Final ruling:

This matter is resolved without oral argument. This is Bank of America, N.A.'s motion for relief from automatic stay. The court's 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 debtors are not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. Accordingly, the court will grant relief from stay by minute order. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

53. 14-23368-D-7 JESSE M. LANGE
BLL-9 DISTRIBUTOR, INC.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CENTRAL VALLEY WATER BOARD, STATE WATER BOARD
3-18-15 [72]

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.

54. 13-28369-D-7 EDWIN GERBER
JB-2

MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)
3-3-15 [204]

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.

55. 15-20575-D-7 RICK MURPHY
BHT-1
OCWEN LOAN SERVICING, LLC
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-15 [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 debtor's Statement of Intentions indicates he 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.

56. 15-21475-D-7 KATHRYN/JACK HELLYER
DVD-2

MOTION FOR EXEMPTION FROM CREDIT COUNSELING
3-4-15 [15]

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 for exemption from credit counseling is supported by the record. As such the court will grant the motion for exemption from credit counseling. Moving party is to submit an appropriate order. No appearance is necessary.

57. 15-20978-D-7 EDUARDO/MYRNA SANCHEZ
APN-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-15 [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.

58. 15-20486-D-7 ALISON ABELS
PPR-1
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
3-13-15 [18]

Tentative ruling:

This is U.S. Bank, N.A.'s (the "Movant") motion for relief from stay. The Movant asserts that there is no equity in the real property that is the subject of the motion and, as this is a Chapter 7 case, the property is not necessary for an effective reorganization. Based on the foregoing, the Movant asserts relief from stay is appropriate under Bankruptcy Code § 362(d)(2). The debtor has filed opposition asserting that Movant is not the lawful holder of the note and deed of trust attendant to the property, thus attacking the Movant's standing to bring the motion. Pursuant to Bankruptcy Code ("Code") § 362(g) the moving party has the

burden of proof to demonstrate that there is no equity in the property, and the debtor has the burden of proof on all other issues.

The debtor claims that because the Movant has not demonstrated it is the lawful holder of the promissory note that is secured by a deed of trust on the property, Movant does not have standing to bring this motion. However, under California Civil Code § 2924(a)(1), a "trustee, mortgagee, beneficiary, or any of their authorized agents may conduct the foreclosure process. . . . There is no stated requirement in California's non-judicial foreclosure scheme that requires a beneficial interest in the note to foreclose. These is also no requirement for the production of the original note to initiate a non-judicial foreclosure. Rather, the statute broadly allows a trustee, mortgagee, beneficiary, *or any of their authorized agents*, to initiate non-judicial foreclosure. According, the statute does not require a beneficial interest in both the note and deed of trust to commence a non-judicial foreclosure sale." Lydia Manlangit v. National City Mortgage, 210 Westlaw 2044687 (E.D. CA May 2010). Also, see Hafiz v. Greenpoint Mortg. Funding, Inc., 652 F.Supp. 2d 1039. In the instant case the Movant has demonstrated it holds the beneficial interest in the deed of trust. As a result, the Movant has standing to bring this motion.

As the court finds the Movant has standing to bring this motion and as the Movant has established there is no equity in the property and this is a Chapter 7 case the property is not necessary for an effective reorganization, the court will grant relief from stay under Code § 362(d)(2) by minute order.

The court will hear the matter.

59.	13-35288-D-7 14-2097 GENERAL COUNCIL OF THE ASSEMBLIES OF GOD V. BOLE ET	DUSTIN/KAREN BOLE MGB-2	MOTION FOR SUMMARY JUDGMENT 3-18-15 [71]

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

Tentative ruling:

This is the motion of the plaintiff, General Council of the Assemblies of God, for summary judgment against the defendants, Dustin Bole and Karen Bole, on the plaintiff's complaint to determine that the defendants' debt is nondischargeable pursuant to § 523(a)(6) of the Bankruptcy Code. The motion was brought pursuant to LBR 9014-1(f)(1); the defendants have not filed opposition. For the following reasons, however, the motion will be denied.

In considering a motion for summary judgment, the court looks beyond the pleadings and considers the materials in the record, including depositions, documents, declarations, discovery responses, and so on. Fed. R. Civ. P. 56(c)(1), incorporated herein by Fed. R. Bankr. P. 7056. The moving party has the burden of producing evidence showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Celotex v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). Once the moving party has met its initial burden, the non-moving party must present affirmative evidence showing the existence of genuine issues of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,

256-57 (1986). The plaintiff's motion raises two issues.

I. Is the Plaintiff's District Court Judgment Entitled to Preclusive Effect?

Relying on the doctrine of issue preclusion, the plaintiff contends that the issue of whether its claim arose from willful and malicious injury by the defendants has been conclusively determined by a pre-petition judgment of the federal District Court for the Northern District of Illinois, and thus, that there is no genuine issue of material fact and that the plaintiff is entitled to judgment as a matter of law. Issue preclusion, formerly known as collateral estoppel, applies in nondischargeability actions. Grogan v. Garner, 498 U.S. 279, 285 n.11 (1991). In assessing the preclusive effect of a federal court judgment, the court looks to federal common law. Taylor v. Sturgell, 553 U.S. 880, 891 (2008); Western Sys. v. Ulloa, 958 F.2d 864, 891, n.12 (9th Cir. 1992). Under that law, for the doctrine to apply, the court must find that "(1) there was a full and fair opportunity to litigate the issue in the previous action; (2) the issue was actually litigated in that action; (3) the issue was lost as a result of a final judgment in that action; and (4) the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action." Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1050 (9th Cir. 2008). The burden of proof is on the party seeking application of the doctrine. Id. at 1050-51.

The problem here is that the plaintiff's district court judgment was a default judgment, whereas under federal common law, a default judgment is not issue preclusive because the issues are considered not to have been "actually litigated." Palmer v. United States (In re Palmer), 1998 Bankr. LEXIS 1226, *9-10 (9th Cir. BAP 1998); Silva v. Smith's Pac. Shrimp (In re Silva), 190 B.R. 889, 893, 894 (9th Cir. BAP 1995); Marlee Elecs. Corp. v. Antonakis (In re Antonakis), 207 B.R. 201, 204-05 (Bankr. E.D. Cal. 1997). California law on issue preclusion, and the law in some other states, is to the contrary. See e.g., Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800-01 (9th Cir. 1995) (Florida law); Clarke v. Latimer (In re Latimer), 2014 Bankr. LEXIS 2368, *5 (Bankr. D. Hawaii 2014) (Idaho law); Younie v. Gonya (In re Younie), 211 B.R. 367, 375 (9th Cir. BAP 1997) (California law). In fact, almost all the cases cited by the plaintiff construed state law on issue preclusion, not the federal common law.

The plaintiff cites FDIC v. Daily (In re Daily), 47 F.3d 365, 368 (9th Cir. 1995), in which the Ninth Circuit upheld the application of collateral estoppel to a default judgment issued by a federal district court. The court found, however, that the judgment "was not an ordinary default judgment." Id. at 368. Instead, the defendant had "actively participated in the litigation, albeit obstructively, for two years before judgment was entered against him." Id. The court cited the district court's ruling on the plaintiff's motion for a default judgment, FDIC v. Renda, 126 F.R.D. 70 (D. Kan. 1989). That decision reveals that the defendant failed respond to discovery requests for nine months, until after the plaintiff had filed a motion to compel, in response to which the defendant requested additional time but failed to provide responses for an additional ten months, and ultimately served responses only after the plaintiff filed its motion for default judgment. And the responses served at that time were evasive and otherwise inadequate. The district court entered the default judgment as a discovery sanction. 126 F.R.D. at 73.

Having reviewed that decision, the Ninth Circuit held that "[a] party who deliberately precludes resolution of factual issues through normal adjudicative procedures may be bound, in subsequent, related proceedings involving the same

parties and issues, by a prior judicial determination reached without completion of the usual process of adjudication." Daily, 47 F.3d at 368.

> Daily did not simply give up but actively participated in the adversary process for almost two years prior to the FDIC's motion for default judgment. As the bankruptcy court observed, 'Daily had a full and fair opportunity to litigate the allegations contained in the [RICO complaint] but [instead] . . . chose not to participate in the discovery process and pre-trial proceedings[, and to] frustrate[] and thwart[] the FDIC's trial preparation[] and defy the order of the United States District Court compelling discovery.'"

Id. In those circumstances, the court held, collateral estoppel was properly applied. Id.

The plaintiff in the present case has offered a number of exhibits tending to support the conclusion that defendant Karen Bole, with the assistance of defendant Dustin Bole, who was served early on, went to significant lengths to evade service of process in the district court action, and thereby refused to participate in the action. The court does not agree, however, that defendant Karen Bole's conduct in evading service of process or defendant Dustin Bole's conduct is assisting her brings the case within Daily so as to take it outside the general rule that default judgments issued by federal district courts are not entitled to preclusive effect. The plaintiff filed its district court complaint on November 2, 2010 and obtained its default judgment on June 29, 2011. The default judgment was based solely on the defendants' failure to respond to the complaint, not on any conduct obstructing or delaying discovery.

Because the district court judgment was a default judgment, and because federal common law does not afford preclusive effect to default judgments, the plaintiff has not demonstrated that any of the issues were "actually litigated" in the district court case. Accordingly, the court concludes that the district court judgment is not entitled to preclusive effect, and the court need not consider the other elements required for application of the doctrine.

II. Independent of the District Court Judgment, Is the Plaintiff Entitled to Summary Judgment?

The plaintiff also contends "the established facts are sufficient to support entry of summary judgment" independent of the district court judgment. Plaintiff's Memo. of P. & A., at 24:13-14. Immediately following the statement of this proposition, the plaintiff cites the entry of the defendants' default in the district court action as resulting in the well-pleaded allegations of the district court complaint being true. Thus, the argument is not "independent of" the district court judgment, and the plaintiff has cited no authority for the proposition that facts deemed admitted by entry of default in pre-petition litigation are also deemed admitted in a subsequent nondischargeability action. Further, the proposition seems to contradict the rule that federal court judgments are not entitled to preclusive effect in subsequent litigation.

By its complaint in this adversary proceeding, the plaintiff seeks a determination that the district court judgment – a judgment for $6,141,714 – is a nondischargeable debt under § 523(a)(6). To prevail under § 523(a)(6) claim, a creditor must demonstrate that the debtor's conduct giving rise to the claim was

both willful and malicious. Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 711 (9th Cir. 2008). The willfulness component "is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." Carillo v. Su (In re Su), 290 F.3d 1140, 1142 (9th Cir. 2002). The maliciousness element requires "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1209 (9th Cir. 2001).

The plaintiff has included in its memorandum of points and authorities a "Statement of Undisputed Facts."[1] However, for the most part, the statements of alleged fact are supported only by citation to the plaintiff's district court complaint, and not to any other admissible evidence. Because the district court complaint is not entitled to preclusive effect in this action, it does not constitute admissible evidence of the facts alleged therein. The remaining "evidence" cited by the plaintiff falls far short of satisfying the plaintiff's burden of demonstrating that there is no genuine issue of material fact. The evidence consists solely of exhibits which are not properly authenticated. Further, apparently confident that the court would apply issue preclusion to the district court judgment, the plaintiff offers virtually no analysis of which alleged facts support which elements of its § 523(a)(6) claim. In short, the plaintiff has failed to meet its burden of producing evidence showing that there is no genuine issue of material fact. Thus, the burden does not shift to the defendants to produce countervailing evidence, and the motion will be denied.

The court will hear the matter.

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1 The plaintiff has cited the court's local rule requiring a statement of undisputed facts, LBR 7056-1(a). The court would point out for future reference that although the rule does not specify that the statement must be filed separately from the motion and supporting documents, it is generally understood in this district that the statement should be filed separately.

60.	13-20497-D-7 DNL-4	B&G HOME IMPROVEMENTS	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH AND CUNNINGHAM FOR J. LUKE HENDRIX, TRUSTEES ATTORNEY(S) 3-16-15 [90]

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.

61. 15-21798-D-7 ET-1 — PATRICIA KERWIN — MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK 3-12-15 [11]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by American Express Centurion Bank (the "Bank"), an FDIC-insured institution. The motion will be denied because the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) by certified mail at a post office box address and at a street address, both with no attention line; (2) through the attorneys who obtained the Bank's abstract of judgment; and (3) by regular [presumably, first-class] mail at a post office box address and at a street address to the attention of an "Officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." The first method was insufficient because the rule requires that service on an FDIC-insured institution be made to the attention of an officer (Fed. R. Bankr. P. 7004(h)), whereas here, there was no attention line. The second method was insufficient because there is no evidence the attorneys who obtained the Bank'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).

The third method was insufficient for two reasons. First, the rule requires that service on an FDIC-insured institution be by certified mail, not first-class mail. Second, the rule requires that service on an FDIC-insured institution be to the attention of an officer and only an officer. Fed. R. Bankr. P. 7004(h). This distinction is important. For service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution, the applicable rule requires service to the attention of an officer, managing or general agent, or agent for service of process (see Fed. R. Bankr. P. 7004(b)(3)), whereas service on an FDIC-insured institution must be to the attention of an officer. Fed. R. Bankr. P. 7004(h). If service on an FDIC-insured institution to the attention of an "Officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

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

62. 13-33420-D-7 DAT-3 — CONG TRAN AND PHUONG HUYNH — MOTION TO AVOID LIEN OF ARCADIA MANAGEMENT GROUP, INC 3-31-15 [39]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Arcadia Management Group, Inc. (the "Creditor"). The motion will be denied for the following reasons. First, the proof of service does not adequately set forth the manner of service. It states only that the documents were served "by placing a true copy thereof enclosed in a sealed envelope addressed as follows . . . ." It does not state that the documents were then served by U.S. mail or otherwise. Second, it is a requirement

of avoiding a judicial lien that it impair an exemption to which the debtor would have been entitled; thus, the debtor must claim as exempt the property against which he seeks to avoid the lien. 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). Here, the debtors purported to file an amended Schedule C on March 31, 2015 to claim an exemption in the property. However, the schedule was not filed under cover of an amendment cover sheet and was not otherwise verified, as required by Fed. R. Bankr. P. 1008. Thus, the debtors have failed to demonstrate that the lien impairs an exemption to which they are entitled.

Finally, although the motion makes clear in the opening sentence that the debtors are seeking to avoid the lien in their real property, in the prayer they request an order that the lien is void. The abstract of judgment names as judgment debtors Cong Tran, who is the debtor in this bankruptcy case, and an individual who is not the joint debtor and, so far as can be determined, has no connection to this bankruptcy case. Any subsequent motion should make clear that the debtors are seeking to avoid the lien as a lien on their real property only, described in the motion, and not on any other assets of theirs or any assets of the other judgment debtor.

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

63. 14-31725-D-11 FWP-2 — TAHOE STATION, INC. — CONTINUED FINAL HEARING RE: MOTION TO USE CASH COLLATERAL 3-6-15 [75]

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

64. 14-31725-D-11 NCK-1 — TAHOE STATION, INC. — MOTION TO DISMISS CASE 3-25-15 [95]

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

65. 14-29547-D-7 PA-7 — FRANCIS/ISABEL FAHRNER — MOTION TO APPROVE STIPULATION FOR USE OF CASH COLLATERAL AND PAYMENT TO SECURED CREDITOR
4-1-15 [89]

66. 10-42050-D-7 GJH-5 — VINCENT/MALANIE SINGH — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOHN H. KIM, MAN J.KIM, DAVID KIM AND CHEOLHO LEE
3-25-15 [506]

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

Tentative ruling:

This is the trustee's motion to approve a compromise. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. As a preliminary matter, however, it appears the moving party failed to serve notice of the motion in accordance with the order limiting notice in this case, in that he failed to serve all the creditors who have filed proofs of claim in the case. Thus, the court is inclined to continue the hearing to require such service.

The court will hear the matter.

67. 10-42050-D-7 GJH-6 — VINCENT/MALANIE SINGH — MOTION FOR COMPENSATION FOR GERARD A. MCHALE, JR., OTHER PROFESSIONAL
3-25-15 [511]

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

Tentative ruling:

This is the trustee's motion for authorization to pay a fee to his expert witness. The motion was brought pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. As a preliminary matter, however, it appears the moving party failed to serve notice of the motion in accordance with the order limiting notice in this case, in that he failed to serve all the creditors who have filed proofs of claim in the case. Thus, the court is inclined to continue the hearing to require such service.

The court will hear the matter.

68. 10-42050-D-7 GJH-7 VINCENT/MALANIE SINGH — MOTION TO DETERMINE AND APPROVE PAYMENT OF A REASONABLE DEPOSITION FEE TO ADVERSE EXPERT WITNESS
3-25-15 [517]

Final ruling:

This court finds that a hearing will not be helpful and is not necessary. This is the trustee's motion for a determination of the appropriate amount to pay Joffrey Long, an expert witness retained by the defendants in certain of the trustee's pending adversary proceedings (the "defendants"), and to authorize the trustee to pay whatever amount the court deems appropriate. The defendants have filed opposition, and the trustee has filed a reply. For the following reasons, the court will grant the motion in part and determine that a reasonable fee for Mr. Long's services, to be paid by the estate, is $7,106.68.

The motion is brought pursuant to Fed. R. Civ. Proc. 26(b)(4)(E), incorporated herein by Fed. R. Bankr. P. 7026, which requires a party seeking discovery in the form of a deposition of an adverse party's expert witness to pay the expert a reasonable fee for responding to the discovery. Mr. Long was retained by the defendants and has been deposed by the trustee. Mr. Long has submitted a bill to the trustee for $6,741.68; the trustee, however, believes an appropriate amount would be $2,758.95. The defendants believe the $6,741.68 figure, supplemented as discussed below, represents a reasonable fee.

The court will begin by observing that the trustee may likely incur fees equivalent to the amount he requests be deducted from Mr. Long's bill in preparing this motion and replying to the opposition. For this reason, the court is not impressed with the trustee's contention in his reply that he brought the motion because he was "concerned that legitimate creditors may criticize the decision to pay an unreasonable fee" and that "[a]n order from this Court determining the amount of the fee to be paid . . . will obviate the Trustee's concerns." Trustee's Reply, filed April 8, 2015, at 1:28-2:3. A reasonable approach by both parties to Mr. Long's billings should have resulted in the matter being resolved short of court intervention. The court also is not impressed with the trivial nature of the trustee's attacks on Mr. Long's work or the trustee's claim that Mr. Long seeks to charge the estate for work the defendants should have paid for. As an example of the former, Mr. Long discovered during the deposition that his expert report, prepared before the deposition, indicated he had reviewed discovery responses of some 45 different defendants whereas he had not actually reviewed the responses of six of those, although he had reviewed notes from their depositions. The trustee's interpretation is this: "In other words, although Mr. Long stated, as part of his report, that he relied on various documents (and presumably read those documents), he later figured out that he had not in fact reviewed those documents. He did not explain how he was able to list items of which he could have no independent knowledge when they had not been furnished to him." Trustee's Motion, filed March 25, 2015 ("Mot."), at 4:18-22. Considering the number of defendants whose documents Mr. Long did review, it appears the inclusion of those six in his expert report was simply inadvertent. Mr. Long supplemented his report at the time to add that, having reviewed the responses of those six, his opinions had not changed.

As another example, the trustee charges Mr. Long with having prepared his expert report based almost exclusively on conversations with the defendants'

attorney, Ms. Phelps, rather than on reviewing documents. The trustee bases this conclusion on the fact that Mr. Long's invoice for that time period includes but a single entry for "review of documents." On the other hand, however, a large part of the time billed in that invoice was for "preparation of expert report," which almost certainly included reviewing documents. At any rate, the trustee has no evidence Mr. Long did not review the documents prior to or while preparing his report. Thus, the trustee's conclusions that Mr. Long "spent his 'deposition preparation' time reviewing the documents that he should have reviewed prior to preparing his report" (Mot. at 7:3-4) and "delayed reviewing any documents until just a few days prior to the deposition, so that he could include 'review of documents' in his preparation for the deposition" (7:5-7) are unfounded. The trustee also attacks Mr. Long's decision to review notes taken by the defendants' attorney at the defendants' depositions. According to the trustee, "Mr. Long had no basis for thinking that these incomplete hearsay documents were of any validity. What's worse is that he apparently did not even realize that the notes were not appropriate materials for him to be relying on." Mot. at 7:19-21. The evidentiary record does not support these conclusions, but in any event, it is not the court's role at this stage to evaluate what Mr. Long did and did not rely on in preparing his expert report.

The court has reviewed Mr. Long's invoices – the one he submitted to the defendants for his work in preparing his expert report, for which he does not seek to charge the estate, and the one he submitted to the trustee for his work in reviewing documents and preparing for his deposition and for attending the deposition. The court finds that the time spent was reasonable (10.249 hours preparing for and 5.917 hours attending the deposition) and that the hourly rates changed, $350 and $475, respectively ($150 for travel time) were not, so far as the court can tell, unreasonable. The trustee claims requiring the estate to pay one rate for preparing a report and preparing for a deposition and a higher rate for attending the deposition would result in the estate being "fleeced." Mot. at 8:4. The court disagrees. Mr. Long has testified in his declaration in opposition to the motion that he charges those two different rates to all of his clients for expert witness work, and the court believes this to be not uncommon.

It is not the court's role in considering this motion to evaluate the quality of Mr. Long's work. The court has considered the length of Mr. Long's expert report, 26 pages (for which he has not charged the estate but which he almost certainly reviewed in preparing for his deposition), together with the number of defendants whose documents he was required to examine (at least 45), and concludes that his time spent and hourly rates charged were not unreasonable. Accordingly, the court finds that a reasonable fee for Mr. Long's services chargeable to the estate is $6,741.68 plus, as he requests, fees for defending his fee – for one hour, at $350 per hour, for preparing a five-page declaration in opposition to the motion. However, as the court has determined a hearing is not necessary, the $350 for attending the hearing will not be allowed. The court will issue a minute order allowing Mr. Long's fees of $7,106.00. No appearance is necessary.

69. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2312 KBP-6
BURKART V. BISESSAR

MOTION BY KATHY B. PHELPS TO WITHDRAW AS ATTORNEY
3-25-15 [159]

Final ruling:

This is the motion of Diamond McCarthy, LLP to withdraw as counsel of record for the defendant in this adversary proceeding. The motion will be denied for the following reasons: (1) the notice of hearing purports to require the filing of written opposition not later than 14 days before the date of the hearing, whereas the moving party gave only 21 days' notice of the hearing, rather than 28 days', as required for such a notice (LBR 9014-1(f)(1)); and (2) the notice of hearing twice lists the location of the hearing as 501 I Street, Suite 3-200, which is incorrect. As the granting of the motion would leave the defendant in propria persona, it is particularly important that the notice of the hearing be accurate.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

70. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2368 KBP-6
BURKART V. PRASAD

MOTION BY KATHY B. PHELPS TO WITHDRAW AS ATTORNEY AND/OR MOTION TO SUBSTITUTE ATTORNEY
3-25-15 [139]

Final ruling:

This is the motion of Diamond McCarthy, LLP ("DM") requesting leave that the defendant be substituted as in propria persona and that DM be relieved as counsel. The motion will be denied for the following reasons: (1) the notice of hearing purports to require the filing of written opposition not later than 14 days before the date of the hearing, whereas the moving party gave only 21 days' notice of the hearing, rather than 28 days', as required for such a notice (LBR 9014-1(f)(1)); and (2) the notice of hearing twice lists the location of the hearing as 501 I Street, Suite 3-200, which is incorrect. As the granting of the motion would leave the defendant in propria persona, it is particularly important that the notice of the hearing be accurate. The court recognizes that DM has apparently been requested by the defendant to file this motion; however, the rules need to be followed nonetheless.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

71. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION BY KATHY B. PHELPS TO
12-2374 KBP-6 WITHDRAW AS ATTORNEY
BURKART V. WANG 3-25-15 [143]

Final ruling:

This is the motion of Diamond McCarthy, LLP to withdraw as counsel of record for the defendant in this adversary proceeding. The motion will be denied for the following reasons: (1) the notice of hearing purports to require the filing of written opposition not later than 14 days before the date of the hearing, whereas the moving party gave only 21 days' notice of the hearing, rather than 28 days', as required for such a notice (LBR 9014-1(f)(1)); and (2) the notice of hearing twice lists the location of the hearing as 501 I Street, Suite 3-200, which is incorrect. As the granting of the motion would leave the defendant in propria persona, it is particularly important that the notice of the hearing be accurate.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

72. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION BY KATHY B. PHELPS TO
12-2401 KBP-6 WITHDRAW AS ATTORNEY
BURKART V. BISESSAR 3-25-15 [148]

Final ruling:

This is the motion of Diamond McCarthy, LLP to withdraw as counsel of record for the defendant in this adversary proceeding. The motion will be denied for the following reasons: (1) the notice of hearing purports to require the filing of written opposition not later than 14 days before the date of the hearing, whereas the moving party gave only 21 days' notice of the hearing, rather than 28 days', as required for such a notice (LBR 9014-1(f)(1)); and (2) the notice of hearing twice lists the location of the hearing as 501 I Street, Suite 3-200, which is incorrect. As the granting of the motion would leave the defendant in propria persona, it is particularly important that the notice of the hearing be accurate.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

73. 10-42050-D-7 VINCENT/MALANIE SINGH MOTION BY KATHY B. PHELPS TO
12-2434 KBP-6 WITHDRAW AS ATTORNEY
BURKART V. REDDY 3-25-15 [138]

Final ruling:

This is the motion of Diamond McCarthy, LLP to withdraw as counsel of record for the defendant in this adversary proceeding. The motion will be denied for the following reasons: (1) the notice of hearing purports to require the filing of written opposition not later than 14 days before the date of the hearing, whereas the moving party gave only 21 days' notice of the hearing, rather than 28 days', as required for such a notice (LBR 9014-1(f)(1)); and (2) the notice of hearing twice lists the location of the hearing as 501 I Street, Suite 3-200, which is incorrect. As the granting of the motion would leave the defendant in propria persona, it is particularly important that the notice of the hearing be accurate.

As a result of these notice defects, the motion will be denied by minute order. No appearance is necessary.

74. 09-29162-D-11 SK FOODS, L.P. COUNTER MOTION TO ALLOW LATE FILED CLAIM
SH-315 4-1-15 [5598]

Tentative ruling:

This is the motion of claimant Steven S. Samra, brought as a countermotion to the trustee's objection to his claim, for allowance of his claim as a late-filed claim. As the motion was brought as a countermotion, no written opposition was required. LBR 9014-1(i). As indicated in the court's tentative ruling on the trustee's claim objection, also on this calendar, the court intends to grant the countermotion to the extent that the court will consider the claim despite the fact that it was filed late. The court will also, however, entertain any request by the trustee to continue the hearing on the countermotion to allow him to file opposition.

The court will hear the matter.

75. 14-26862-D-7 VLADIMIR/YELENA TIMCHUK MOTION TO SELL
DMW-3 3-24-15 [37]

76. 14-24578-D-7 VICTOR CAMACHO CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH VICTOR MANUEL CAMACHO AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING
PA-5 3-11-15 [64]

77. 14-31685-D-7 CATHERINE PALPAL-LATOC MOTION FOR TURNOVER AND MONEY JUDGMENT
DNL-4 4-1-15 [57]

78. 14-31725-D-11 FWP-4 — TAHOE STATION, INC. — MOTION TO EMPLOY CONVENIENCE MANAGEMENT SERVICES, INC. AS MANAGEMENT AND OPERATOR O.S.T. 4-3-15 [121]

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

79. 14-31725-D-11 FWP-5 — TAHOE STATION, INC. — MOTION TO USE CASH COLLATERAL, MOTION FOR ADEQUATE PROTECTION AND MOTION FOR REPLACEMENT LIENS PURSUANT TO STIPULATION O.S.T. 4-3-15 [115]

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