UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

May 13, 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.	14-29905-D-11 PD-1	RAVINDER GILL	CONTINUED MOTION TO APPROVE STIPULATION RE ADEQUATE PROTECTION PAYMENTS AND TREATMENT OF CLAIM UNDER DEBTOR'S PROPOSED CHAPTER 11 PLAN OF REORGANIZATION 2-26-15 [71]

Final ruling:

This is the motion of Wells Fargo Bank for an order approving a stipulation with the debtor regarding adequate protection payments to the Bank and treatment of the Bank's claim under the debtor's proposed plan of reorganization. The hearing was continued to allow the moving party to correct certain service defects; namely, the moving party had failed to serve the 20 largest creditors, as required by Fed. R. Bankr. P. 4001(d)(1)(C), and had failed to serve the parties filing requests for special notice in this case.

On April 1, 2015, the moving party filed a notice of hearing, not a notice of continued hearing or an amended notice of hearing. In other words, the notice filed

April 1, 2015 has exactly the same title as the original notice of hearing filed February 26, 2015, and there is nothing in the title to distinguish the two notices. The proof of service filed April 1, 2015 evidences service on the 20 largest unsecured creditors and on the parties requesting special notice in this case. However, because the proof of service identifies the document served only as the notice of hearing, which is the title of both notices – the one filed February 26 and the one filed April 1, the proof of service does not clearly evidence service of the notice filed April 1.

There is an additional problem with the notice of hearing filed April 1, 2015. The moving party served only the notice of hearing and not the motion or supporting documents, whereas the notice of hearing provided virtually no information about the motion, and therefore, did not comply with LBR 9014-1(d)(4) ["When notice of a motion is served without the motion or supporting papers, the notice of hearing shall . . . succinctly and sufficiently describe the nature of the relief being requested and set forth the essential facts necessary for a party to determine whether to oppose the motion."].

As a result of these service and notice defects, the motion will be denied without prejudice by minute order. No appearance is necessary.

2.	15-20106-D-12 BLG-2	TOMMY/LINDA THOMAS	MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES 4-2-15 [22]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Springleaf Financial Services at $0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Springleaf Financial Services' secured claim at $0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3.	15-20106-D-12 BLG-3	TOMMY/LINDA THOMAS	MOTION TO VALUE COLLATERAL OF HFC BENEFICIAL 4-2-15 [30]

4. 15-20106-D-12 BLG-4 — TOMMY/LINDA THOMAS — MOTION TO VALUE COLLATERAL OF CHECK INTO CASH
4-2-15 [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 the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

5. 14-25816-D-11 KMR-2 — DEEPAL WANNAKUWATTE — MOTION FOR RELIEF FROM AUTOMATIC STAY
4-15-15 [388]
DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company's motion for relief from automatic stay. The court records indicate that the trustee has filed a statement of non-opposition and that no other 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.

6. 13-30317-D-7 JRR-2 — JAMES COREY — MOTION FOR AUTHORITY TO DISMISS APPEALS
4-14-15 [137]

Tentative ruling:

This is the trustee's motion for authority to dismiss two appeals that were pending in the Court of Appeal of California for the Third Appellate District at the time this bankruptcy case was filed. The debtor has filed opposition, in which he has requested the appeals be abandoned by the trustee. The court will construe the request as a countermotion to compel the trustee to abandon the appeals. Creditor Kim Kalbaugh has filed a reply to the debtor's opposition. For the following reasons, the trustee's motion will be denied and the debtor's countermotion will be granted. In addition, the court will sua sponte lift the automatic stay to the extent necessary to permit the state court appeals to go forward.

By the appeals, the debtor appealed from judgments against him in favor of (1) Kim Kalbaugh and (2) Tracy and Cathy Wilburn. The trustee posits that the appeals are assets of the bankruptcy estate "and thus under the control of the Trustee." Trustee's Motion, filed April 14, 2015 ("Mot."), at 2:3-4. He notes that the appeals "have never been disclosed by the Debtor in his petition and schedules, nor in any amendments filed." Id. at 2:6-7. It is true the appeals were not listed as

assets on the debtor's Schedule B. However, it does not appear the debtor seeks any form of affirmative relief by way of the appeals; he merely seeks to reverse the judgments against him. The trustee suggests no reason the appeals should have been listed as assets any more than a debtor's defense of a lawsuit still pending in a trial court. The court notes that the debtor did list the lawsuits and judgments in his statement of financial affairs, filed with his petition in this case.

The trustee "has evaluated the Appeals and, in his judgment, the Appeals lack merit and should not be prosecuted." Mot. at 3:7-8. The trustee notes there is no record from the trial court proceedings to submit to the appellate court. (Neither party arranged for a court reporter.) He claims the debtor has done nothing to prosecute the appeals, and that "[t]he Appeals are just another in a long line of delay tactics by the Debtor." Id. at 3:1. The trustee concludes that "[a]bandoning the Appeals will only cause further delay and give the debtor the ability to continue with his delay tactics." Id. at 3:10-11. The trustee has submitted his own declaration to that effect and a declaration of the attorney who represented Kalbaugh in the state court, who testifies that the debtor was "far less than cooperative in discovery" (P. Hentschel Decl., filed April 14, 2015, at 1:26-27), and that the debtor and his attorneys caused repeated delays in the case.

The debtor, on the other hand, claims the trustee has exhibited hostility towards him, that the present motion "is an attempt to de-rail the appeals for the benefit of preferred claimants" (Debtor's Opposition, filed April 29, 2015, at 2:13-14), and that "[t]his is a deliberate attempt to destroy the financial future of the Debtor who will more than likely prevail on the merits of each appeal." Id. at 2:14-15. The debtor blames the delay in prosecuting the appeals on the alleged failure of Kalbaugh and the Wilburns to cooperate with the debtor in the preparation of "settled statements," which are submitted to a California appellate court when there is no trial transcript. See Cal. Rules of Court, Rules 8.130(h), 8.137. The debtor also blames the delay on the trustee's filing of two adversary proceedings in this case – one to recover certain transfers of real property as fraudulent transfers, the other to deny the debtor's discharge. The latter has delayed entry of a discharge, which in turn, has delayed the lifting of the automatic stay, which would allow the parties to proceed with the appeals.[1]

Assuming the court could authorize the trustee to dismiss the appeals (see discussion below), the equities do not favor the trustee's position. Leaving aside the debtor's charge that the trustee is trying to destroy the debtor's financial future, the trustee's only motivation appears to be to benefit three particular creditors – Kalbaugh and the Wilburns – rather than the creditor body as a whole. Those three creditors are already in a better position to be paid than other creditors, as the proceeds of the trustee's sale of real property, recently approved by the court, will be sufficient to pay those three creditors' judgment lien claims in full. In fact, the court has recently granted Kalbaugh's motion for release of the funds being held on account of his lien.

Further, dismissal of the appeals would be unnecessarily punitive to the debtor. Although this court has recently noted that nothing prevented the debtor, during the then 20 months the case had been pending, from seeking relief from stay to prosecute the appeals,[2] by the same token, nothing prevented Kalbaugh or the Wilburns from seeking relief from stay either. If the appeals should be dismissed – for failure to prosecute or for any other reason – that is relief Kalbaugh and the Wilburns will be free to pursue in the state appellate court, as this court will sua sponte lift the automatic stay to the extent necessary to allow the appeals to proceed.[3] It is not appropriate that this court act as a substitute for the state

appellate court, and the court doubts it would have jurisdiction to do so.[4]

However, even if it would have jurisdiction, the court likely does not have the power to authorize the trustee to dismiss the appeals. A trustee administering a cause of action that is property of a bankruptcy estate generally has four options: he may sell the cause of action, prosecute it, settle it, or abandon it. Lopez v. Specialty Restaurants Corp. (In re Lopez), 283 B.R. 22, 32-33 (9th Cir. BAP 2002) (J. Klein, concurring). The trustee has cited minimal and inadequate authority for the fifth option he proposes here – to simply dismiss the appeals despite the fact that there would be no benefit to the estate and that the debtor would lose his right to appeal. First, the trustee "construes his proposed dismissal of the Appeals as equivalent to the use of property of the estate outside the ordinary course of business justifying resort to the Court under § 363(b)(1)." Mot. at 3:15-17. Assuming without deciding that the appeals are "property," to begin with, and "property of the estate," for purposes of § 363(b)(1), the trustee cites no authority for the proposition that a "use" of property under that subsection may include "destruction" of the property, which is what the trustee is proposing here with respect to the debtor's claims asserted in the appeals.

As a fallback position, the trustee states that if the court does not accept his § 363(b)(1) argument, he "urges the Court [to] approve the dismissals of the Appeals under § 105(a) as necessary and appropriate to carry out the complete administration of this estate." Mot. at 3:18-21. First, the trustee does not articulate how dismissal of the appeals is necessary to carry out the administration of the estate. The appeals are discrete disputes between the debtor, on the one hand, and Kalbaugh and the Wilburns, on the other hand. They do not involve the estate, the creditor body as a whole, or even the trustee.

Second, the trustee misquotes § 105(a), which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" (emphasis added), not to carry out "the complete administration of the estate." The trustee does not articulate how dismissal of the appeals is necessary to carry out any provision of the Bankruptcy Code. Various provisions of the Code and Rules provide the actions a trustee may take with respect to a cause of action that is property of the estate – he may sell it (§ 363(b)(1)), prosecute it (§ 323(b)), settle it (Fed. R. Bankr. P. 9019(a)), or abandon it (§ 554(a)). The court will not use § 105(a) to create a new right in the trustee to dismiss a cause of action he believes has no merit.

"[Section] 105(a) is not a 'roving commission to do equity.'" Willms v. Sanderson, 723 F.3d 1094, 1103 (9th Cir. 2013) (citation omitted). "A court's inherent power must not be used to create substantive rights that are not available under applicable law." Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 14 (9th Cir. BAP 2002), citing Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988) ("whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."). As the Ninth Circuit has put it, permitting courts to utilize § 105 to create new substantive rights "would put us in the business of legislating." Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 507 (9th Cir. 2002). "[I]t is not up to us to read other remedies into the carefully articulated set of rights and remedies set out in the Bankruptcy Code. . . . [T]he 'provisions of this title' [in § 105] simply denote a set of remedies fixed by Congress. A court cannot legislate to add to them." Id.

Finally, Kim Kalbaugh has filed a reply to the debtor's opposition to the motion, in which he states he supports the trustee's motion. Supporting the

trustee's theory that the debtor is intent on delay, Kalbaugh points to the debtor's filing of an objection to Kalbaugh's claim in this bankruptcy case, set for May 27, 2015, as being in contravention of the court's ruling on Kalbaugh's motion for release of the funds attributable to his judgment lien. In that ruling, the court found that the sufficiency of the claim had already been determined by the state court, and that having the claim revisited by this court would run counter to the principle of full faith and credit to be accorded by a federal court to final judgments issued by a state court. Kalbaugh concludes that the debtor's filing of an objection to Kalbaugh's claim in the face of the court's ruling on the motion to release funds "needlessly drive[s] the cost of litigation and erode[s] the fruits of the judgment creditors[']award / judgment and claim." Kalbaugh's Reply, filed April 15, 2015, at 2:17-18. The court is inclined to agree; that does not, however, afford the court jurisdiction where it otherwise has none or power where it otherwise has none.

To conclude, the court likely does not have jurisdiction to authorize the dismissal of the appeals; even if it does, the trustee has not demonstrated that the court has the power to do so. Finally, even if the court has jurisdiction and power to authorize the dismissal of the appeals, the equities of the situation do not favor dismissal, but rather abandonment of the appeals to the extent they are property of the estate.

The court will hear the matter.

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1 Because the debtor was the defendant in the underlying actions, the appeals are stayed despite the fact that the debtor is the appellant. Parker v. Bain (In re Parker), 68 F.3d 1131, 1135-36 (9th Cir. 1995) (citations omitted).

2 See court's ruling on Kalbaugh's motion to release funds, in civil minutes for April 15, 2015, DN 144.

3 The court has the power under § 105(a) of the Code to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

4 This court likely does not have "related to" jurisdiction of the debtor's claims seeking a reversal of the judgments against him, because their outcome would not 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). Dismissal of the appeals would benefit only Kalbaugh and the Wilburns, who would no longer have to defend the appeals; dismissal would have no effect on the estate or the creditor body as a whole.

7.	13-30317-D-7 JRR-3	JAMES COREY	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH KIM HOOVEN KALBAUGH 4-8-15 [128]

8. 15-21617-D-7 KAZ-1 M&T BANK VS.

TIM/CARISSA ALDRICH

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-13-15 [14]

Final ruling:

This matter is resolved without oral argument. This is M&T Bank'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.

9. 10-23821-D-7 DBJ-1

JEFFREY/DENISE CRAWFORD

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
4-1-15 [27]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Wells Fargo Bank, N.A. (the "Bank"). The motion will be denied because the moving parties 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 parties served the Bank (1) by certified mail to the attention of an "Officer, managing or general agent, or person authorized to receive service of process"; and (2) by certified mail to the Bank's agent for service of process, as registered with the California Secretary of State. The first method was insufficient because the rule requires that service on an FDIC-insured institution, such as the Bank, 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 (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, managing or general agent, or person authorized to receive service of process" were appropriate, the distinction in the manner of service, as between the two rules, would be superfluous.

The second method was insufficient because the rule requires service on an officer of the Bank, whereas it is unlikely an officer of the Bank is to be found at the location of the Bank's agent for service of process.

As a s result of this service defect, the motion will be denied by minute order. No appearance is necessary.

10. 14-22526-D-7 DAVID JONES — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
PA-8 — 3-20-15 [93]

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

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions comprised of two IRAs. In response to the objection, the debtor filed an amended Schedule C on May 1, 2015. As a result of the amended Schedule C filed by the debtor, the trustee's objection has become moot. Accordingly, the court will overrule the objection by minute order as moot. However, the debtor has twice amended his Schedule C, each time claiming exemptions under the same statutes utilized in earlier schedules but adding new exemption statutes on a piecemeal basis. The court will not indefinitely defer consideration of the issues raised by the trustee. Thus, the court likely will consider any future objection even if the debtor files a further amended schedule. Therefore, in the event of a future objection, the debtor should file a response even if he also files a further amended schedule. Further, in any subsequent objection and response, the parties should fully brief the issue of the burden of proof, in light of In re Barnes, 275 B.R. 889 (Bankr. E.D. Cal. 2002) and In re Davis, 323 B.R. 732 (9th Cir. B.A.P. 2005), and subsequent case law.

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

11. 14-22526-D-7 DAVID JONES — MOTION TO SELL
PA-9 — 4-15-15 [112]

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

Tentative ruling:

This is the trustee's motion to sell to creditor John Meredith ("Meredith") all of the estate's right, title, and interest in all claims of the debtor against Meredith for $6,500. No party-in-interest has filed opposition. However, the court has one concern.

The Bankruptcy Appellate Panel has held that the disposition of an asset of the estate that consists of a cause of action must be evaluated as both a sale, under § 363(b), and a compromise, pursuant to Fed. R. Bankr. P. 9019(a). Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003); In re Lahijani, 325 B.R. 282, 284 (9th Cir. BAP 2005).[1] Here, the trustee has analyzed the transaction only as a sale and not as a compromise in light of the Woodson factors – the probability of success in the litigation; the collectibility of any judgment; the complexity, expense, inconvenience, and delay involved in pursuing the litigation; and the paramount interest of the creditors. See In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The trustee has included a general allegation that litigating the claims would cause extensive delay and significant administrative costs. He also believes the debtor has been dishonest about his financial affairs, and thus, has little

credibility, which would make it difficult to prosecute the debtor's claims against Meredith and could lead to a defense verdict on those claims. However, a thorough analysis of the probability of success in the litigation should include at least a cursory evaluation of the substance and merits of the debtor's claims, which the trustee has not mentioned. He has also failed to discuss the difficulties that would be encountered in collecting on a judgment or, except as just mentioned, the paramount interest of creditors. As to the latter, the court has determined from its own analysis of the claims register that the $6,500 payment from Meredith, if it were a net payment, would return approximately 10% to creditors other than Meredith. (Meredith has agreed that if he is the successful bidder in the sale, he would not share in any distribution of the $6,500.) Given the relatively low purchase price, the trustee should offer some indication as to how trustee compensation and the likely amount of attorney's fees would affect the dividend.

For these reasons, the court intends to continue the hearing to supplement the record and permit the trustee to provide an assessment of the proposed sale as a compromise in light of the Woodson standards. The court will hear the matter.

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1 In Lahijani, the Panel held that "[w]hen a cause of action is being sold to a present or potential defendant over the objection of creditors, a bankruptcy court must, in addition to treating it as a sale, independently evaluate the transaction as a settlement . . . ." 325 B.R. at 284. Here, no creditor has objected to the sale, so arguably, analysis of the sale as a compromise is not required. However, the Panel has, since Lahijani and Mickey Thompson, required the dual analysis where the only objecting party was the debtor. See Debilio v. Golden (In re Debilio), 2014 Bankr. LEXIS 3886, *13-17 (9th Cir. BAP 2014).

12. 14-22526-D-7 DAVID JONES — MOTION TO COMPEL ABANDONMENT
PLC-4 — 4-14-15 [103]

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

Tentative ruling:

This is the debtor's motion to compel abandonment of (1) the real property commonly known as 9211 Parfait Drive, Sacramento, CA; and (2) the debtor's claims in what he describes as a "fraud lawsuit" against John Meredith.1 The trustee and Meredith have filed opposition to the motion as it pertains to the fraud claims; neither opposes the motion as it pertains to the real property.2 The motion will be granted as to the real property. For the following reasons, as the motion pertains to the fraud claims, the court intends to continue the hearing.

As regards the fraud claims, the debtor testifies as follows: "It is my belief that [these are] of inconsequential value to the estate but [are] of value to me to the extent of an offset or a recoupment as a counter-claim to an adversary proceeding filed by John Meredith." Debtor's Decl., filed April 14, 2015, at 3:1-4. The debtor also claimed in the motion that the trustee had failed, during the 14 months the case has been pending, to take any action to litigate the fraud claims against Meredith, which, the debtor contended, supports a conclusion that the claims are of inconsequential value to the estate. The trustee replies that he reached an agreement in principle earlier in the case, under which he would sell the claims to the debtor in exchange for a waiver of his and his spouse's IRA exemption claims, but that the debtor later backed out of the deal.

More important, after this abandonment motion was filed, the trustee filed a motion to sell the claims to Meredith. The fact that the sale would generate $6,500 to the estate undercuts the notion that the claims are of inconsequential value to the estate. In addition, the debtor will be free to bid on the claims at the hearing; the successful bid will establish the best value that can be obtained by the estate. In these circumstances, the claims are not of inconsequential value to the estate. As discussed in the court's ruling on the sale motion, the hearing on that motion will be continued. The court will also continue the hearing on this abandonment motion; if the sale motion is granted, the abandonment motion, as it pertains to the debtor's fraud claims, will be denied.

This decision will not, however, limit the debtor's ability to assert affirmative defenses in the adversary proceeding. The court previously found, in its ruling on the motion of the debtor's spouse, Pamela Ann Jones, in Meredith's adversary proceeding, that the claims for affirmative relief asserted by Pamela in her counterclaim are property of the bankruptcy estate in this case, but added that this did not mean she could not assert the allegations set forth in the counterclaim to support affirmative defenses to Meredith's complaint.

The court in Beach v. Bank of Am. (In re Beach), 447 B.R. 313 (Bankr. D. Idaho 2011), analyzed this distinction. In that case, the debtors asserted claims against their mortgage lender for violations of the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq. ("TILA"). The lender sought to dismiss the claims on the ground that because the debtors' TILA claims arose pre-petition, they belonged to the bankruptcy estate and not the debtors. The court found that the debtors' claims were in the nature of "recoupment claims [that] were raised defensively to a debt collection action" (447 B.R. at 322), and as such, could be asserted by the debtors as well as the trustee. Id. at 323-24. "Section 541(a)(1) encompasses offensive causes of action based on pre-petition events, and those actions may only be brought by a bankruptcy case trustee. Debtors, however, have not instituted an offensive cause of action; they have raised TILA violations as a matter of defense by recoupment under TILA's statute of limitations." Id. at 323 (citation omitted).

The court cited § 558 of the Bankruptcy Code,[3] and concluded:

> [W]hile § 541(a)(1) effectively transfers a debtor's causes of action into the bankruptcy estate, the debtor still has access to, and may assert, personal defenses. A leading treatise has explained the reasons for the different treatment:
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> > [T]he trustee's right under section 558 to assert the debtor's defenses differs from the trustee's exclusive right to assert the debtor's causes of action. The reason for this difference is clear. A cause of action is an asset of the estate to be used as the trustee sees fit. By contrast, a defense is something that may prevent an unjust claim against the estate. If a defense can be raised by both the trustee and the debtor, the possibility of recovery from the estate is minimized.

5 Collier on Bankruptcy ¶ 558.01[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

Beach, 447 B.R. at 323. See also In re Papercraft Corp., 127 B.R. 346, 350 (Bankr. W.D. Pa. 1991) ["Section 558 preserves to the Debtor its prepetition defenses to causes of action. In that context, either setoff or recoupment would be available as a defense and, if established, would result in a netting out of what each party owes the other."]. This court concludes that the debtor's claims for affirmative relief against Meredith are not of inconsequential value to the estate. As such, the court intends to deny the abandonment motion. However, that will not deprive the debtor of the right to assert recoupment, unjust enrichment, and so on, as affirmative defenses in the adversary proceeding.[4]

The debtor raises two additional arguments. First, he claims the sale of fraud claims to the person who allegedly committed the fraud would violate public policy. The debtor cites In re North American Coin & Currency, 767 F.2d 1573 (9th Cir. 1985), which did not involve an attempt to sell fraud claims at all, and thus, does not stand for the proposition for which the debtor cites it. Instead, in that case, the court noted that "[b]ankruptcy trustees have been held to have no interest in property acquired by fraud of bankrupts, as against the rightful owners of the property." 767 F.2d at 1576. The court added that "[t]he principle underlying this rule is that the creditors should not benefit from fraud at the expense of those who have been defrauded." Id. The debtor acknowledges that the facts were different in North American Coin – in that case, the court declined to impose a constructive trust on a particular fund of money in favor of one group of creditors allegedly defrauded by the debtor at the expense of other creditors. Id. at 1575-78. The debtor claims, however, that the trustee's proposed sale to Meredith of the fraud claims against Meredith is a slap in the face of the principle that creditors should not benefit from fraud at the expense of those who were defrauded.

The court disagrees. In North American Coin, the parties seeking the imposition of a constructive trust were particular creditors, not the debtor. And it was the debtor's alleged fraud that was the issue, not a creditor's. The debtor has cited no authority, and the court has found none, for the proposition that a constructive trust may be imposed in favor of a debtor, even a defrauded debtor, so as to prevent his fraud claims from becoming property of his bankruptcy estate, which appears to be the point of the debtor's argument. On the contrary, "[p]roperty of a bankruptcy estate includes 'all legal or equitable interests of the debtor in property as of the commencement of the case.'" Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001), quoting § 541(a)(1). Property of the estate includes any of the debtor's causes of action. Id.

As with his public policy argument, the debtor's final argument also rests on a decision that does not support the proposition for which the debtor cites it. He cites In re Moore, 110 B.R. 924, 927 (Bankr. C.D. Cal. 1990), for his conclusion that the sale of his fraud claims by the trustee "requires [the] trustee to take affirmative action to resolve the claim of Meredith." Debtor's P. & A., filed April 14, 2015, at 3:18-19. The Moore decision does include the statement that "if consideration is offered for a cause of action, then the cases are clear that the trustee must take affirmative action to resolve the matter." 110 B.R. at 928. The affirmative action the court was talking about, however, was making some response to an offer to purchase the cause of action as opposed to ignoring the offer, as the trustee did in that case. The trustee's response might be "acceptance of the offer, a counteroffer, negotiation, open bidding, or bringing a formal motion for abandonment . . . ." Id. Here, the trustee did take affirmative action to "resolve

the claim of Meredith," as the Moore court meant by the quoted language – he filed a motion to sell the claims to Meredith. The Moore case adds no support to the debtor's position.

For the reasons stated, the court concludes that the debtor's claims against Meredith are not likely to be of inconsequential value to the estate; thus, the court intends to deny the motion as it pertains to those claims. However, the court will continue the hearing to coincide with the hearing on the trustee's motion to sell the claims. The court will hear the matter.

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1 Although the debtor's motion refers only to his "fraud lawsuit" against Meredith, he has asserted a variety of claims in his counterclaim in Meredith's nondischargeability/bar to discharge action against him. The court assumes this motion pertains, like the trustee's motion to sell, to all of the debtor's claims against Meredith. For the sake of clarity, the court will refer in this ruling to the debtor's "fraud claims" rather than his "fraud lawsuit."

2 The debtor has demonstrated that, based on the value of the property, the liens against it, and his claim of exemption, the real property has no realizable value for the estate.

3 "The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate." § 558.

4 At one point in his answer/counterclaim, the debtor appears to acknowledge this distinction. As a preface to the counterclaim, he states that "[t]he counter-claim related to this action is property of the estate of which only the trustee can pursue or abandon. However, as an affirmative defense, Plaintiff asserts the counter-claim as it is [an] indispensable part of the defense to the adversary complaint filed by the Plaintiff." Amended Answer and Counterclaim, filed Sept. 24, 2014 in AP No. 14-2161, at 6:22-25. However, in the prayer, the debtor seeks compensatory and punitive damages on the counterclaim.

13.	14-31938-D-7 SLC-2	JOSEPH THOMPSON	MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S) 4-8-15 [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 for compensation for West Auctions, Inc. is supported by the record. As such the court will grant the motion and allow compensation of $2,502 for West Auctions, Inc. Moving party is to submit an appropriate order. No appearance is necessary.

14. 10-50339-D-7 HSM-2 — ELEFTHERIOS/PATRICIA EFSTRATIS — MOTION TO EXTEND TIME 4-7-15 [181]

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 extend the time to object to the debtors' claim of exemptions is supported by the record. As such the court will grant the motion to extend the time to object to the debtors' claim of exemptions. Moving party is to submit an appropriate order. No appearance is necessary.

15. 14-30752-D-7 HSM-3 — ANDREW BRUNT — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 4-7-15 [42]

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 extend the deadline to file a complaint objecting to discharge of the debtor is supported by the record. As such the court will grant the motion to extend the deadline to file a complaint objecting to discharge of the debtor. Moving party is to submit an appropriate order. No appearance is necessary.

16. 15-21761-D-7 — JUSTIN HAMMAR — CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE 3-5-15 [5]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and upon consideration of the debtor's declaration filed April 21, 2015, the debtor's request to waive the filing fee is supported by the record,. As such the court will grant the motion and waive the filing fee by minute order. No appearance is necessary.

17. 15-21861-D-12 KMR-1 — LAURA BRANDON — MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 4-14-15 [13]

18. 09-29162-D-11 SH-315 — SK FOODS, L.P. — CONTINUED OBJECTION TO CLAIM OF STEVE SAMRA FARMS, CLAIM NUMBER 357
2-24-15 [5495]

Final ruling:

Pursuant to the stipulated order entered on May 12, 2015 the hearing on this objection is continued to May 27, 2015 at 10:00 a.m. No appearance is necessary on May 13, 2015.

19. 09-29162-D-11 SH-316 — SK FOODS, L.P. — CONTINUED OMNIBUS OBJECTION TO CLAIMS
2-25-15 [5500]

Tentative ruling:

This is the trustee's objection to the claims of the Kings County Tax Collector, Claim Nos. 307 and 374 on the court's claims register. The Tax Collector has filed opposition, and the trustee has filed a reply. The court will use this hearing as a status conference to determine whether the parties have reached or believe they may be able to reach a resolution. The court will hear the matter.

20. 14-26469-D-7 CLH-1 — GERARDO CHAVEZ — MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
4-15-15 [62]

Final ruling:

This is the debtor's motion to avoid a judicial lien held by Ford Motor Credit Company, LLC. The motion will be denied because it is not accompanied by evidence establishing its factual allegations and demonstrating that the moving party is entitled to the relief requested, as required by LBR 9014-1(d)(6).

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be … a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) (internal quotation marks omitted). In this case, the debtor has not claimed as exempt any interest in the property as against which he seeks to avoid the lien. Thus, he has not established that he is entitled to relief under § 522(f)(1)(A).

As a result of this evidentiary defect, the motion will be denied by minute order. No appearance is necessary.

21. 15-22171-D-7 MONIQUE JACKSON — MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
3-19-15 [5]

22. 08-90575-D-11 CHATEAUX FRAMING, INC. — ORDER TO SHOW CAUSE
4-15-15 [88]

23. 14-26078-D-7 LUISITA SONGCO — MOTION TO WITHDRAW AS ATTORNEY
3-19-15 [44]

Final ruling:
Motion withdrawn by moving party. Matter removed from calendar.

24. 10-30583-D-7 STEVEN LONG — MOTION FOR COMPENSATION FOR
SMD-7 SUSAN M. DIDRIKSEN, CHAPTER 7 TRUSTEE
3-25-15 [507]

Final ruling:

This is the trustee's application for a first and final allowance of fees and costs incurred in this case. No party-in-interest has filed opposition. However, the court is not prepared to consider the application at this time for the following reasons. First, the trustee did not file an actual application, only a notice of hearing, declaration, and exhibits. Second, those documents do not contain sufficient information to allow the court to determine whether the fees requested are within the caps fixed by § 326(a) of the Bankruptcy Code.

The moving papers do not disclose the total amount of the disbursements on which the trustee calculated her fee. The court has examined the trustee's final report, and cannot determine that total from the report and its attachments. The final report raises additional questions the trustee may wish to address in her supplemental papers. On page 1 of the final report, the trustee has listed "payments made under an interim distribution" totaling $10,858.98 and administrative expenses totaling $97,329.45. Neither of those totals appears in the attachments to the final report, and the court has been unable to discern how they were calculated.

The court will continue the hearing to June 10, 2015 at 10:00 a.m., the trustee to supplement the record no later than May 27, 2015. The hearing will be continued by minute order. No appearance is necessary on May 13, 2015.

25. 14-31685-D-7 BRL-1 — CATHERINE PALPAL-LATOC — MOTION TO USE CASH COLLATERAL AND/OR MOTION TO OBTAIN AN ACCOUNTING OF CALHOUN AND PARROT PROPERTIES
4-14-15 [63]

26. 15-21687-D-7 — DALIA QUESADA — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-16-15 [21]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

27. 15-20898-D-7 — DOUGLAS MOODY — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-15-15 [29]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

28. 15-21710-D-7 KJH-1 — PATRICIA PALACIOS — TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-13-15 [24]

29. 15-22721-D-7 PAUL MILLS — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-21-15 [18]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

30. 14-31725-D-11 FWP-5 TAHOE STATION, INC. — CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION , MOTION FOR REPLACEMENT LIENS PURSUANT TO STIPULATION
4-3-15 [115]

31. 10-50339-D-7 HSM-3 ELEFTHERIOS/PATRICIA EFSTRATIS — MOTION TO EMPLOY MELINDA JANE STEUER AS SPECIAL COUNSEL
4-27-15 [213]

32. 14-25148-D-11 MF-31 HENRY TOSTA — MOTION TO EMPLOY VANDE POL REALTY AS BROKER(S)
4-16-15 [402]

33.	10-42050-D-7 GJH-6	VINCENT/MALANIE SINGH	CONTINUED MOTION FOR COMPENSATION FOR GERARD A. MCHALE, JR., OTHER PROFESSIONAL(S) 3-25-15 [511]
34.	10-42050-D-7 GJH-8	VINCENT/MALANIE SINGH	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY(S) 4-8-15 [528]
35.	10-42050-D-7 GJH-5	VINCENT/MALANIE SINGH	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOHN H. KIM, MAN J.KIM, DAVID KIM AND CHEOLHO LEE 3-25-15 [506]
36.	15-21861-D-12	LAURA BRANDON	MOTION TO IMPOSE AUTOMATIC STAY 4-29-15 [17]

Tentative ruling:

This is the debtor's motion to continue or impose the automatic stay as to all creditors. The motion is on a form used in the bankruptcy court for the Central District of California, on which the debtor has added the words "Eastern District Court." Thus, the notice of motion, motion, declaration, and proof of service are a single document, which is contrary to this court's local rules and procedures. See LBR 9004-1(a) and Revised Guidelines for the Preparation of Documents, Form EDC 2-901. In addition, the motion does not include a docket control number, as required by LBR 9014-1(c)(1).

The debtor has checked the boxes on the form for both continuing and imposing the automatic stay, pursuant to § 362(c)(3) and (c)(4), respectively, of the Bankruptcy Code. Because the debtor was a debtor in two cases pending and dismissed within the year prior to the filing of the present case, the applicable subsection is § 362(c)(4); thus, the court will construe the motion as a motion to impose the stay. The debtor indicates in the motion that the present case was filed in good faith because she "filed all forms on requested list," and that there has been a substantial change in the debtor's personal or financial affairs since the dismissal of the prior cases because "Debtor has [a] full time job." These statements in the motion are supported by the debtor's declaration at the end of the Central District's form, in which she testifies under penalty of perjury that the foregoing matters are true and correct.

Pursuant to § 362(c)(4)(B), "if, within 30 days after the filing of the later case, a party in interest requests," the court may impose the automatic stay. The debtor filed this case on March 10, 2015; the 30th day after that date was April 9, 2015. The debtor did not file this motion until April 29, 2015; thus, the debtor is not entitled to an order imposing the stay, nor is the court authorized to impose the automatic stay.

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

37.	15-22561-D-7 NF-1	DWIGHT/PAULA GRUMBLES	MOTION TO COMPEL ABANDONMENT 4-23-15 [11]

38.	09-29162-D-11 SH-315	SK FOODS, L.P.	CONTINUED COUNTER MOTION TO ALLOW LATE FILED CLAIM 4-1-15 [5598]

39. 14-20064-D-7 GLENN GREGO — MOTION TO SUBSTITUTE ATTORNEY
GG-4 — 4-24-15 [317]

40. 14-24788-D-11 CHRISTIAN/AMANDA BADER — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-27-15 [127]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

41. 14-24788-D-11 CHRISTIAN/AMANDA BADER — CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF REYNOLDS LAW CORPORATION FOR STEPHEN M. REYNOLDS, DEBTORS' ATTORNEY(S)
RLC-7 — 3-27-15 [110]

CASE DISMISSED 03/06/2015

Final ruling:

This is the motion of Stephen M. Reynolds for an allowance of fees as counsel for the debtors. Moving party served the notice of hearing only, and not the motion or supporting documents, on the debtors and the party requesting special notice in this case, contrary to LBR 9014-1(d)(4). Moving party also served the notice of hearing only on creditors, whereas the notice did not contain sufficient information to meet the requirements of that rule. The hearing is continued to June 10, 2015 at 10:00 a.m. Moving party is to file a notice of continued hearing and serve it, together with the motion and supporting documents, on the debtors and creditors, including the party requesting special notice. The notice of continued hearing may be a notice pursuant to LBR 9014-1(f)(1) or (f)(2) depending on the amount of notice given. No appearance is necessary on May 13, 2015.

42. 15-20891-D-7 JENNIFFER BURNETT — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-21-15 [21]