UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 4, 2018 at 10:00 a.m.

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1. 12-35921-A-12 HARMINDER HEER — MOTION FOR ENTRY OF DISCHARGE
DB-12 — 5-21-18 [194]

Tentative Ruling: The motion will be denied without prejudice.

The debtor asks the court to enter his chapter 12 discharge.

11 U.S.C. § 1228(a) provides that:

"*Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—*

"*(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or*

"*(2) of the kind specified in section 523(a) of this title.*"

This case was filed on August 31, 2012. The court confirmed the debtor's chapter 12 plan on February 25, 2013. Docket 112.

The trustee filed a final report and account on May 15, 2018. The report and account has not been approved. Docket 190.

Moreover, Fed. R. Bankr. P. 5009(a) provides parties in interest with 30 days to object to the trustee's report. The 30-day period will not expire until June 14, whereas the hearing on this motion is 10 days earlier, on June 4. Granting the debtor's discharge prior to the approval of the trustee's report and account is premature.

Finally, the debtor has not filed a certificate that he is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a). The declaration in support of the motion avers:

"*The Plan required me to pay a domestic support obligation. I have paid all such amounts that the Plan required me to pay. I have also paid all domestic support obligations that became due between the filing of my bankruptcy petition and the date of my Motion for Entry of Discharge.*"

Docket 196 at 2.

This is not the same as stating that he is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation.

The motion will be denied without prejudice.

2. 17-26125-A-11 GEL-22 — FIRST CAPITAL RETAIL, L.L.C. — MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL 5-7-18 [403]

Tentative Ruling: The motion will be denied.

Hunt Jeppson & Griffin, L.L.P., special counsel for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of $44,977.50 in fees and $3,349.66 in expenses, for a total of $48,327.16. The services cover the period from September 14, 2017 through April 12, 2018. The movant's employment as special counsel for the estate was approved on November 14, 2017. Docket 137. The requested compensation is based on hourly rates of $240, $250, $295, $325 and $375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services consisted, without limitation, of:

(1) representing the debtor and its principal in state court litigation against First Capital Real Estate Investments, L.L.C. and its principal over the foreclosure of the membership interest in the debtor; and

(2) prosecuting three relief from actions for relief from lease forfeitures against landlords of the debtor.

Creditor Westfield, L.L.C. opposes the motion. Westfield's $96,000 administrative expense claim, for outstanding post-petition rent, has not been paid. Westfield also points out that the movant was not retained to represent the debtor in lease forfeiture proceedings.

First, the order approving the movant's employment provides that employment is retroactive for only 30 days prior to the date the employment motion is filed, November 14, 2017. Hence, the employment was approved only as of October 15, 2017. Nevertheless, the motion asks for the approval of services that started on September 14, 2017. The court will not approve compensation for services that started on September 14.

Second, the project billing information in the motion is far from adequate. The motion fails to clearly allocate the time and compensation between the two types of services provided by counsel. Nor is the motion clear as to the amount of time and compensation attributable to the three lease forfeiture actions. See Docket 403 at 7.

Third, the movant represented the debtor's principal with respect to the foreclosure of the principal's membership interest in the debtor. The motion does explain how this representation benefitted the estate.

Finally, with respect to the movant's representation of the debtor in lease forfeiture proceedings, the employment order did not include such representation.

The employment motion defined the scope of its employment as follows: "*The Debtor needs to employ Special Counsel to assist [i]n negotiations and disputes with Suneet Singal, the prior owner of Debtor for disputes arising out of and relating to Client's purchase of a membership interest in First Capital Retail, LLC.*" Docket 132 at 2. "*I have been requested by the Debtor to undertake legal representation and provide consulting and advice with respect to disputes with Suneet Singal and First Capital Real Estate Investments, Inc., arising out of and relating to Client's purchase of a membership interest in First Capital Retail, LLC.*" Docket 134 at 2, Tory Griffin Decl.

The employment motion and supporting declaration from the movant said nothing about the movant representing the debtor in state court lease matters.

Contrary to the debtor's assertion, this court does not "rubber stamp" employment orders. Just because no one objected to the movant's employment motion, which is hardly unexpected given that the motion was presented *ex parte*, does not mean that the court did not read the employment motion and rely on the debtor's representations in it.

The scope of employment of a professional employed by the bankruptcy estate is defined by the employment motion. When the court approved the movant's employment, it did not authorize it to do everything or anything the debtor asked. It was employed for a particular purpose. Dockets 132-37.

Services relating to the purchase of a membership interest require a different skill set than the prosecution of a relief from a lease forfeiture proceeding. The latter requires specifically commercial landlord-tenant experience.

Tory Griffin's declaration in support of the employment motion, while it says that he has "extensive experience in all aspects of civil litigation in state and federal courts, both at the trial and appellate levels, as well as in administrative proceedings," says nothing about commercial landlord-tenant litigation experience. Docket 134 at 1.

If the court had been told that the movant was being retained to prosecute lease forfeiture relief proceedings, it would have had questions about the movant's qualifications. At a minimum, a hearing would have been set on the employment motion with notice to parties in interest.

Moreover, the record strongly suggests that neither the debtor, nor the movant, contemplated that the movant would represent the debtor in lease forfeiture proceedings. This is evident from the movant's retainer agreement, which specifically excluded from its services representation any other litigation, arbitration, or other dispute resolution.

The retainer agreement provides that: "*Specifically excluded from the scope of representation is any representation of Client in any litigation, arbitration, or other dispute resolution forum. Any such representation must be the subject of a new or amended retainer agreement, and Firm retains the right to request a*

larger retainer amount in the event of any such future representation." Docket 135, Ex. A at 1.

The motion will be denied.

3. 17-26125-A-11 GEL-23 — FIRST CAPITAL RETAIL, L.L.C. — MOTION TO APPROVE COMPENSATION OF FINANCIAL ADVISOR 5-7-18 [413]

Tentative Ruling: The motion will be denied.

Donald A. Stukes of ASI Advisors, L.L.C., financial advisor and accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $18,000 in fees and $0.00 in expenses. This motion covers the period from December 5, 2017 through April 12, 2018. The court approved the movant's employment as the estate's financial advisor and accountant on December 20, 2017. The requested compensation is based on 1.5% of gross sales price fee for the assets the debtor sold in March 2018 (1.5% x $1,200,000 = $18,000).

Creditor Westfield, L.L.C. opposes the motion to the extent it permission to pay the compensation until Westfield's $96,000 administrative expense claim is paid.

The motion will be denied. The order approving the movant's employment provides that "[c]ompensation will be at the 'lodestar rate' applicable at the time that services are rendered . . . ." Docket 211 at 2. In other words, the court did not approve the movant's contingency 1.5% of gross sales price compensation arrangement. The court approved an hourly rate compensation arrangement.

Further, the court has no evidence of the amount of time the movant spent providing its services. While the movant gives a brief description of its services, the court sees nothing in the record about the time spent on such services. The motion will be denied.

4. 17-26125-A-11 GEL-24 — FIRST CAPITAL RETAIL, L.L.C. — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY 5-7-18 [418]

Tentative Ruling: The motion will be granted in part.

Law Offices of Gabriel Liberman, counsel for the debtor in possession, has filed a second interim motion for approval of compensation.

On March 19, 2018, the court adopted a ruling granting the movant's motion for first interim compensation, of $59,200 in fees and $798.68 in expenses, for a total of $59,998.68. Docket 329. The court has not yet entered an order on the movant's first interim compensation.

The requested second interim compensation consists of $55,550 in fees and $2,931.70 in expenses, for a total of $58,481.70. The second interim services cover the period from January 24, 2018 through April 12, 2018. The court approved the movant's employment as the debtor's chapter 11 attorney on October 3, 2017. In performing services, the movant charged an hourly rate of $250.

Creditor Westfield, L.L.C. opposes the motion to the extent it permission to pay the compensation until Westfield's $96,000 administrative expense claim is paid.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services during the second interim period included, without limitation:

(1) assisting the debtor with securing a buyer for its assets,

(2) negotiating with potential buyers of the debtor's assets,

(3) preparing and filing complaint to enjoin the foreclosure sale of 100% of the membership interest in the debtor,

(4) negotiating and communicating with lessors, the franchisor and potential buyers about various issues pertaining to a sale,

(5) preparing and prosecuting motion for the approval of bidding procedures for the sale of the debtor's assets,

(6) preparing and prosecuting pleadings for approval of the sale and the assumption and assignment of multiple leases,

(7) preparing and prosecuting a TRO request to stop the foreclosure sale of the debtor's membership interest,

(8) negotiating stipulation for continuance of the hearings on the TRO request,

(9) negotiating cash collateral, sale and carve-out issues with the main secured creditor,

(10) defending stay relief motions pending the sale of the debtor's assets,

(11) assisting the debtor in conducting the auction for the sale of the debtor's assets,

(12) assisting the debtor with the preparation of monthly operating reports,

(13) appearing at various court hearings, attending meetings and reviewing and preparing pleadings and documents,

(14) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of the debtor's bankruptcy estate. The requested compensation will be approved on interim basis.

Given that the debtor has no funds to pay any administrative expenses, the court will not permit payment of the compensation.

5. 17-26125-A-11 FIRST CAPITAL RETAIL, L.L.C. RBS-4
18-2030 FIRST DATA MERCHANT SERVICES L.L.C. V. MCA RECOVERY, L.L.C. ET AL
MOTION TO DISMISS AND DISCHARGE PLAINTIFF
O.S.T.
5-17-18 [34]

Tentative Ruling: The motion will be granted.

The plaintiff, First Data Merchant Services, L.L.C., asks the court to discharge it from this interpleader action, as it has already deposited the funds in question ($214,932.33) with the court and it has no interest in the funds.

"*Once a court determines that interpleader is proper and the stakeholder deposits the res with the court, the court may discharge a disinterested stakeholder from the action by issuing a judgment in interpleader*." State Farm Life Ins. Co. v. Cai, No. 09-CV-00396-LHK, 2013 WL 4782383, at *1 (N.D. Cal., Sept. 6, 2013); 28 U.S.C. § 2361 (permitting under statutory interpleader for the discharge of the plaintiff).

Both defendants, First Capital Retail, L.L.C. and MCA Recovery, L.L.C., have competing claims against the funds. The plaintiff has no claim against the funds. The plaintiff has legitimate fears of multiple vexation directed against the funds. The court is convinced of the plaintiff's good faith belief that the competing claims to the funds are colorable.

No one contests that the plaintiff has no interest in the funds. No one contests the amount of the funds in question either. See Schirmer Stevedoring Co. v. Seaboard Stevedoring Corp., 306 F.2d 188, 194 (9th Cir. 1962). As to the plaintiff, then, there are no issues that remain to be adjudicated. As such, the court will discharge the plaintiff from this proceeding.

"*We think that the proper rule, in an action in the nature of interpleader, is that the plaintiff should be awarded attorney fees for the services of his attorneys in interpleading*."

Schirmer at 194; see also Metro. Life Ins. Co. v. Sanchez, Case No. 2:16-CV-00787-MCE-AC, 2017 WL 2081794, at *2 (E.D. Cal., May 15, 2017).

The plaintiff shall have 30 days from the hearing on this motion, to file and serve a motion for attorney's fees and costs in litigating this interpleader action.

6. 15-29136-A-12 P&M SAMRA LAND INVESTMENTS L.L.C.
JPJ-4
VS. SOUTHERN COUNTIES OIL CO.
AMENDED OBJECTION TO CLAIM
4-4-18 [588]

Tentative Ruling: The objection will be sustained.

The chapter 12 trustee objects to the general unsecured claim of Southern Counties Oil Co. for $4,809.47, filed on March 28, 2017, as untimely. The deadline for non-governmental creditors to file proofs of claim was March 23, 2017.

The creditor opposes the objection, contending that the reason for the late filing of the proof of claim was that it found out about the bankruptcy case late. The creditor also contends that all claims are presumed to be valid. It references the U.S. Trustee's handbook on chapter 7 claims, noting that the

tardiness of such claims should not be basis for their disallowance.

The court rejects the creditor's argument based on late-filed claims in chapter 7 cases. Tardy claims in chapter 7 cases — to the extent they are "filed in time to permit payment of such claim[s]" — are not disallowed because they are paid with a different, lower priority than timely chapter 7 claims. 11 U.S.C. § 726(a)(2)(C); see also 11 U.S.C. § 502(b)(9)(permitting the filing of tardy claims under 11 U.S.C. § 726(a)(2)(C)). Such privilege is not afforded to tardy chapter 12 claims under the Bankruptcy Code.

Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See Spokane Law Enforcement Federal Credit Union v. Barker (In re Barker), 839 F.3d 1189, 1197-98 (9th Cir. 2016) (citing Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) and other cases and noting that "the bankruptcy court lacks equitable power to extend this deadline"); Gardenhire at 1148-49 (citing Fed. R. Bankr. P. 3002(c) and prescribing that "*a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules*"); In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The creditor does not dispute that the proof of claim was filed late. It was filed five days after the claims bar date and it is tardy. This is fatal. The claim will be disallowed. The court has no discretion to allow a late claim in a chapter 12 case. The deadline to file a proof of claim set by Fed. R. Bankr. P. 3002(c) cannot be extended. First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Nor has the creditor mentioned, much less briefed Rule 3002(c) and the exceptions.

Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case. Barker at 1197-98; Gardenhire at 1145 (claims in a chapter 13 case must be filed within deadline set by rule unless that deadline is extended on motion made within the original deadline).

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3), prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditor. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 12 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 12 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above, Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the

deadline even when excusable neglect is present. Barker at 1198 (noting that "[the debtor] will not get the 'fresh start' she seeks if creditors are continually allowed to add additional claims far after the deadline to file has expired").

In chapter 12 cases, the bankruptcy court lacks the equitable power to enlarge the time for filing a proof of claim apart from the six situations described in Rule 3002(c). See Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). Because none of those situations are present here, and because the excusable neglect standard is not applicable in chapter 12 cases, the court cannot retroactively extend the time for the respondent to file a proof of claim.

Even when there is no notice to the claimant of the commencement of the case and of the deadline to file claims, this is not sufficient to allow a late claim in a chapter 12 case. See Stanislaus v. Ellett (In re Ellett), 506 F.3d 774 (9th Cir. 2007) (holding that a creditor not receiving notice of the bankruptcy proceeding does not satisfy the "provided for by the plan" language of 11 U.S.C. § 1328(a), to qualify the debt for discharge). When such notice is absent, the debtor would be unable to discharge the claim. To discharge a debtor's personal liability for a claim in a chapter 12 case, the plan must provide for that claim. To provide for the claim, the creditor must be given notice so that it has the opportunity to participate in the chapter 12 case and the plan must provide for the creditor's claim. If this did not occur in this case, the claim will not be discharged. In re Lee, 182 B.R. 354 (Bankr. S.D. Ga. 1995); Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11th Cir. 1989), cert. denied, 497 U.S. 1007 (1990). See also Ellett v. Stanislaus, 506 F.3d 774 (9th Cir. 2007).

The court finally notes that the creditor has made no argument that it filed a timely informal claim. The Ninth Circuit recognizes that a claim may be presented informally. An informal proof of claim by a creditor "must state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable." Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc.), 754 F.2d 811, 815 (9th Cir. 1985); see also In re Franciscan Vineyards, Inc., 597 F.2d 181 (9th Cir. 1979), cert. denied, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985) (involving a motion for relief from automatic stay that was considered an informal proof of claim).

7. 18-21349-A-7 MYRNA SYKES — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLL-1 — 4-20-18 [13]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from May 21, after the debtor converted the case from chapter 13 to chapter 7, in order to permit service of the motion on the chapter 7 trustee.

The movant, Federal National Mortgage Association, seeks relief from the automatic stay as to real property in Sacramento, California. The movant purchased the property at a pre-petition foreclosure sale, on July 31, 2017. Docket 17, Ex. 1. On November 9, 2017, the movant served the debtor with a notice to quit the premises. Docket 15; Docket 17, Ex. 2. After the debtor did not quit the premises, on February 13, 2018, the movant commenced an unlawful detainer proceeding. The debtor filed the instant petition on March

8, 2018.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. The court also notes that the chapter 7 trustee filed a non-opposition to the motion. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property. If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

8. 17-23968-A-7 PATRICK/MICHELE PITTS — MOTION FOR SUMMARY JUDGMENT
17-2161 RJ-2
LAKOTA V. PITTS ET AL — 5-7-18 [27]

Tenative Ruling: The motion will be denied.

The defendants, Patrick and Michele Pitts, the debtors in the underlying chapter 7 bankruptcy case, seek summary judgment against the plaintiff, Michael Lakota, an assignee judgment creditor, based on unauthorized practice of law.

The plaintiff opposes the motion.

The motion will be denied for the following reasons.

First, the motion is not accompanied by a statement of undisputed facts in violation of Local Bankruptcy Rule 7056-1, which requires that:

"Each motion for summary judgment or partial summary judgment shall be accompanied by a 'Statement of Undisputed Facts' which shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish that fact. The moving party shall be responsible for the filing with the Court of all evidentiary documents cited in the moving papers."

The motion does not satisfy this requirement.

Second, the movants' unauthorized practice of law argument is without merit.

Summary judgement is appropriate when there exists "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no genuine issues of material fact exist. See Anderson at 255. A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court

may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323.

The defendants asserted as an affirmative defense that the plaintiff, who is not a licensed attorney, engaged in the unauthorized practice of law by filing this adversary proceeding to enforce collection on behalf of judgment creditor Penny England.

California Business and Professions Code § 6125 states that no person shall practice law in California unless the person is an active member of the State Bar. "As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court." People v. Merchants Protective Corp., 209 P. 363, 365 (1922).

The California state court entered judgment in favor of Penny England against the defendants on December 19, 2016. On that same day, Ms. England assigned the judgment to the plaintiff. Docket 33 at 7. Under the terms of the assignment contract, the plaintiff agreed to pay Ms. England 64% of any monies recovered. Docket 33 at 10. The defendants contend that this payment arrangement is indicative of an attorney/client relationship. The defendants also argue that the plaintiff is acting as a collection agent, rather than an assignee, because he was one of two partners that operated a now defunct collection agency.

The court disagrees. On its face, the assignment contract is for the purchase agreement of the judgment. The plaintiff can therefore be characterized as a judgment debt buyer, rather than a debt collection agent. As for the purchase price being contingent upon successful enforcement of the debt, the court has found no authority for the proposition that this means the plaintiff is practicing law for the benefit of the assignor. Further, the defendants do not cite any binding authority for the proposition that the assignee is precluded from sharing anything recovery with the assignor. Rather, the defendants rely on a Fifth Circuit case that states, *in dicta*, that a contract made by a non-lawyer to render debt collection services constituted the unauthorized practice of law under Louisiana statute because "the assignment [. . .] did not transfer an ownership interest in [the judgment] debt." Poirier v. Alco Collections, Inc., 107 F.3d 347, 350 (5th Cir. 1997). In a footnote, the court mentioned that the contract at issue, which was merely titled "Assignment," referred to the purported assignor as "the client" and stated that the collection agency "agreed to make a good faith effort to collect this debt." Id. at n.3.

The defendants' reliance on the Fifth Circuit case is misplaced. Here, the assignment and the state court records clearly indicate the judgment was assigned by Penny England to the plaintiff. The contract states: "Penny England herein transfers, and assigns all title, rights, ownership and interest in this Judgment to the following: Mathew M. Lakota." Docket 33 at 7. The contract neither establishes a duty to collect the debt nor includes any indication of a client relationship. Notably, the contract is titled "Acknowledgment of Assignment of Judgment" and refers to the plaintiff as the assignee. Docket 33 at 7.

If the plaintiff had chosen to do nothing, or even give the defendants a satisfaction of the judgment, he would have been within his rights under the

assignment. Ms. England would have no recourse against him.

In sum, the court concludes that the plaintiff Mathew Lakota brought this adversary complaint in his individual capacity, to enforce a judgment that was assigned to him by the judgment creditor For the forgoing reasons, the motion is denied.

9. 17-23968-A-7 PATRICK/MICHELE PITTS — STATUS CONFERENCE
17-2161 — 8-22-17 [1]
LAKOTA V. PITTS ET AL

Tentative Ruling: None.

10. 17-23968-A-7 PATRICK/MICHELE PITTS — MOTION TO COMPEL ABANDONMENT
RJ-2 — 4-30-18 [31]

Tentative Ruling: The motion will be granted.

The debtors seek an order compelling the trustee to abandon the estate's interest in claims related to real property located at 20 Pamela Jane Court in Oroville, California.

This matter was continued from May 14, 2018 to allow the debtors to provide supplemental pleadings to establish the subject property is of inconsequential value to the estate.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtors have scheduled the value of the claims at $7,000 and claimed an exemption for that amount under Cal. Code Civ. Pro. § 703.7140(b)(5). In support of the motion, the debtors state that they claim equitable ownership of the property in addition to damages. The property has a scheduled value of $185,000 and is subject to encumbrances of approximately $50,000.

The trustee has filed a supplemental declaration in support of the motion which states that further investigation into the debtors' claim of partial ownership in the property is burdensome to the estate. Docket 39. After investigating the issue, the trustee concluded that ownership of the property was and always had been deeded to Penny and Terry England and that any possible verbal agreement regarding the debtors' right to purchase the property was not reduced to writing. Docket 39 at 1.

As the trustee's declaration highlights, there is no record of persuasive evidence to support the debtors' claim of ownership. Thus, the court may reasonably conclude that further investigation is burdensome and the property is of inconsequential value to the estate. Accordingly, the motion is granted.

11. 17-26578-A-13 JEFFREY HADRYCH AND — MOTION TO
18-2034 RACHEL SPENCER BMM-1 — WITHDRAW CLAIM
HADRYCH ET AL V. RESURGENT — 4-25-18 [7]
CAPITAL SERVICES L.P. ET. AL

Final Ruling: This motion was withdrawn by the movant on May 21, 2018. Docket

14.

12. 17-26578-A-13 JEFFREY HADRYCH AND RACHEL SPENCER BMM-1
18-2035
HADRYCH ET AL V. RESURGENT CAPITAL SERVICES L.P. ET. AL

MOTION TO WITHDRAW CLAIM
4-25-18 [7]

Final Ruling: This motion was withdrawn by the movant on May 21, 2018. Docket 14.

13. 16-21585-A-11 AIAD/HODA SAMUEL
FWP-34

MOTION TO APPROVE COMPENSATION FOR OTHER PROFESSIONAL
5-7-18 [1064]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtors, the chapter 11 trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The chapter 11 trustee, Scott Sackett, on behalf of Sackett Corporation, the company retained to manage the debtors' shopping center real properties, has filed a third and final motion for approval of compensation for services rendered by SC from April 1, 2017 through February 28, 2018. The requested compensation for the third and last period of services consists of $7,150 in fees and $0.00 in expenses.

This employment was approved by the court after the trustee disclosed his connection to the Sackett Corporation, as discussed in the minutes of the hearing on June 27, 2017. Docket 146. The court also determined that the rate of compensation was significantly below market rates. The order authorizing the employment was filed on August 29, 2017. Docket 239.

The court entered an order on March 28, 2017, granting a first interim award to the movant in the amount of $15,544.50, covering the period of August 1, 2016 through December 31, 2016. Docket 757.

The court entered an order on August 11, 2017, granting a second interim award to the movant in the amount of $9,389.50, covering the period of January 1, 2017 through and including March 2017. Docket 888.

This case was filed on March 15, 2016. The court approved the chapter 11 trustee's appointment on May 10, 2016. SC's retention by the trustee was approved by the court on August 29, 2016. Docket 239. SC's fees are $650 a month or 5% of the gross rents from the properties, whichever is greater. See Docket 146.

The fees for the remaining Rio Linda shopping center are $650 a month for 11

months (April 2017 through February 2018).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." SC's services included assisting the trustee with the management of the debtors' last remaining Rio Linda shopping center, including, without limitation, administering the leases at the properties, collecting rents, administering service contracts, and preparing income and expense statements.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved. The court will ratify on final basis the prior interim awards.

14. 16-21585-A-11 AIAD/HODA SAMUEL — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
FWP-35 — 5-7-18 [1072]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtors, the chapter 11 trustee the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, attorney for the chapter 11 trustee, has filed its third interim motion for approval of compensation. The requested compensation consists of $129,625 in fees (reduced by $11,021) and $2,792.05 in expenses, for a total of $132,417.05. This motion covers the period from April 1, 2017 through March 31, 2018. The court approved the movant's employment as the trustee's attorney on May 19, 2016. In performing its services, the movant charged hourly rates of $195, $350, $395, $405, and $495.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) obtaining court approval to use insurance proceeds and cash collateral for repairs of water damage sustained to the Rio Linda shopping center,

(2) assisting the trustee with the substantive consolidation into the estate of the debtors' limited liability company,

(3) analyzing claims secured by the Rio Linda shopping center,

(4) preparing and prosecuting motions for the sale of the Rio Linda shopping center and the assumption and assignment of leases at the center,

(5) assisting the trustee with the sale closing,

(6) communicating with Tri-Counties Bank about the turnover of $100,000,

(7) obtaining the $100,000 from Tri-Counties Bank,

(8) responding, including written responses, to multiple objections by the debtor to the sale of the Rio Linda shopping center,

(9) responding to motions for stay pending appeal by the debtors,

(10) responding, including written responses, to nine appeals filed by Debtor Hoda Samuel,

(11) preparing and prosecuting motions for the approval of cash collateral use,

(12) assisting the trustee with the sale of personal property,

(13) preparing and prosecuting motion for the sale of the personal property,

(14) preparing and prosecuting motion for the abandonment of exercise equipment formerly used by one of the tenants at the West Sacramento shopping center,

(15) attending various court hearings,

(16) drafting and submitting various orders,

(17) assisting the trustee with the general administration of the estate,

(18) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

15. 18-22245-A-11 PLUSH GROUP CORPORATION STATUS CONFERENCE
4-15-18 [1]

Tentative Ruling: None.